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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 7430. February 15, 2012]

MARTIN LAHM III and JAMES P. CONCEPCION, *complainants, vs.* **LABOR ARBITER JOVENCIO Ll. MAYOR, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; WHEN MAY BE SUSPENDED OR DISBARRED.— A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor. Gross misconduct is any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose. x x x It is well settled that the Court may suspend or disbar a lawyer for any conduct on his part showing his unfitness for the confidence and trust which characterize the attorney and client relations, and the practice of law before the courts, or showing such a lack of personal honesty or of good moral character as to render him unworthy of public confidence.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; THE RULES GOVERNING THE CONDUCT OF LAWYERS SHALL APPLY TO LAWYERS IN GOVERNMENT

SERVICE IN THE DISCHARGE OF THEIR OFFICIAL TASKS.— The Code of Professional Responsibility does not cease to apply to a lawyer simply because he has joined the government service. In fact, by the express provision of Canon 6 thereof, the rules governing the conduct of lawyers "shall apply to lawyers in government service in the discharge of their official tasks." Thus, where a lawyer's misconduct as a government official is of such nature as to affect his qualification as a lawyer or to show moral delinquency, then he may be disciplined as a member of the bar on such grounds.

3. ID.; JUDGES; MAY NOT BE DISCIPLINED FOR ERROR OF JUDGMENT ABSENT PROOF THAT SUCH ERROR WAS MADE WITH A DELIBERATE INTENT TO CAUSE AN INJUSTICE.— Here, the respondent, being part of the quasi-judicial system of our government, performs official functions that are akin to those of judges. Accordingly, the present controversy may be approximated to administrative cases of judges whose decisions, including the manner of rendering the same, were made subject of administrative cases. As a matter of public policy, not every error or mistake of a judge in the performance of his official duties renders him liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity do not always constitute misconduct although the same acts may be erroneous. True, a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice.

4. ID.; ID.; GROSS IGNORANCE OF THE LAW; COMMITTED WHERE THERE IS LACK OF CONVERSANCE WITH A BASIC LEGAL PRINCIPLE.— While a judge may not always be held liable for ignorance of the law for every erroneous order that he renders, it is also axiomatic that when the legal principle involved is sufficiently basic, lack of conversance with it constitutes gross ignorance of the law. Indeed, even though a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives. When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it. Anything less would be constitutive of gross ignorance of the law.

5. ID.; ID.; ID.; COMMITTED IN CASE AT BAR.— In the case at bench, we find the respondent guilty of gross ignorance of the law. Acting on the motion for the issuance of a temporary restraining order and/or writ of preliminary injunction, the respondent issued the September 14, 2006 Order requiring the parties to maintain the status *quo ante* until the said motion had been resolved. It should be stressed, however, that at the time the said motion was filed, the 2005 Rules of Procedure of the National Labor Relations Commission (NLRC) is already in effect. Admittedly, under the 1990 Rules of Procedure of the NLRC, the labor arbiter has, in proper cases, the authority to issue writs of preliminary injunction and/or restraining orders. x x x Nevertheless, under the 2005 Rules of Procedure of the NLRC, the labor arbiters no longer has the authority to issue writs of preliminary injunction and/or temporary restraining orders. Under Section 1, Rule X of the 2005 Rules of Procedure of the NLRC, only the NLRC, through its Divisions, may issue writs of preliminary injunction and temporary restraining orders. x x x The role of the labor arbiters, with regard to the issuance of writs of preliminary injunctions and/or temporary restraining orders at present, is limited to reception of evidence as may be delegated by the NLRC.

6. ID.; ATTORNEYS; SHOULD OBEY THE LAWS AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.— What made matters worse is the unnecessary delay on the part of the respondent in resolving the motion for reconsideration of the September 14, 2006 Order. The unfounded insistence of the respondent on his supposed authority to issue writs of preliminary injunction and/or temporary restraining order, taken together with the delay in the resolution of the said motion for reconsideration, would clearly show that the respondent deliberately intended to cause prejudice to the complainants. x x x Indubitably, the respondent failed to live up to his duties as a lawyer in consonance with the strictures of the lawyer's oath and the Code of Professional Responsibility, thereby occasioning sanction from this Court. In stubbornly insisting that he has the authority to issue writs of preliminary injunction and/or temporary restraining order contrary to the clear import of the 2005 Rules of Procedure of the NLRC, the respondent violated Canon 1 of the Code of Professional Responsibility which mandates lawyers to "obey

the laws of the land and promote respect for law and legal processes".

7. ID.; JUDGES; GROSS IGNORANCE OF THE LAW; PENALTY.— Under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law is a serious charge, punishable by a fine of more than ₱20,000.00, but not exceeding ₱40,000.00, suspension from office without salary and other benefits for more than three but not exceeding six months, or dismissal from the service. x x x Here, the IBP Board of Governors recommended that the respondent be suspended from the practice of law for six months with a warning that a repetition of the same or similar incident would be dealt with more severe penalty. We adopt the foregoing recommendation.

8. ID.; ATTORNEYS; THE ETHICAL CONDUCT DEMANDED UPON LAWYERS IN THE GOVERNMENT SERVICE IS MORE EXACTING THAN THE STANDARDS FOR THOSE IN PRIVATE PRACTICE.— It cannot be gainsaid that since public office is a public trust, the ethical conduct demanded upon lawyers in the government service is more exacting than the standards for those in private practice. Lawyers in the government service are subject to constant public scrutiny under norms of public accountability. They also bear the heavy burden of having to put aside their private interest in favor of the interest of the public; their private activities should not interfere with the discharge of their official functions.

APPEARANCES OF COUNSEL

MR. Reyes & Associates for complainants.

R E S O L U T I O N

REYES, *J.*:

Before us is a verified complaint[1] filed by Martin Lahm III and James P. Concepcion (complainants) praying for the

[1] *Rollo*, pp. 1-7.

disbarment of Labor Arbiter Jovencio Ll. Mayor, Jr. (respondent) for alleged gross misconduct and violation of lawyer's oath.

On June 27, 2007, the respondent filed his Comment[2] to the complaint.

In a Resolution[3] dated July 18, 2007, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The antecedent facts, as summarized in the Report and Recommendation[4] dated September 19, 2008 of Commissioner Romualdo A. Din, Jr. of the IBP Commission on Bar Discipline, are as follows:

> On September 5, 2006 a certain David Edward Toze filed a complaint for illegal dismissal before the Labor Arbitration Branch of the National Labor Relations Commission against the members of the Board of Trustees of the International School, Manila. The same was docketed as NLRC-NCR Case No. 00-07381-06 and raffled to the *sala* of the respondent. Impleaded as among the party-respondents are the complainants in the instant case.
>
> On September 7, 2006, David Edward Toze filed a Verified Motion for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction Against the Respondents. The said Motion was set for hearing on September 12, 2006 at 10:00 in the morning. A day after, on September 8, 2006, the counsel for the complainants herein entered its appearance and asked for additional time to oppose and make a comment to the Verified Motion for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction Against the Respondents of David Edward Toze.
>
> Thereafter, the respondent issued an Order dated September 14, 2006 that directs the parties in the said case to maintain the *status quo ante*. The complainants herein sought the reconsideration of the Order dated September 14, 200[6] x x x.
>
> x x x x x x x x x

[2] *Id.* at 16-28.

[3] *Id.* at 95.

[4] *Id.* at 260-275.

On account of the Order dated September 14, 2006, David Edward Toze was immediately reinstated and assumed his former position as superintendent of the International School Manila.

The pending incidents with the above-mentioned illegal dismissal case were not resolved, however, the scheduled hearing for the issuance of a preliminary injunction on September 20, 2006 and September 27, 2006 was postponed.

On January 19, 2007, the co-respondents of the complainants herein in the said illegal dismissal case filed a motion for an early resolution of their motion to dismiss the said case, but the respondent instead issued an Order dated February 6, 2007 requiring the parties to appear in his Office on February 27, 2007 at 10:00 in the morning in order to thresh out David Edward Toze' claim of moral and exemplary damages.

x x x x x x x x x

The respondent on the other maintains that the Order dated September 14, 2006 was issued by him on account of [the] Verified Motion for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction Against the Respondents that was filed by David Edward Toze, and of the Entry of Appearance with Motion for Additional Time to File Comment that was thereafter filed by the counsel for the herein complainants in the illegal dismissal case pending before the respondent.

The respondent maintains that in order to prevent irreparable damage on the person of David Edward Toze, and on account of the urgency of [the] Verified Motion for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction Against the Respondents of David Edward Toze, and that the counsel for respondents in the illegal dismissal case have asked for a relatively long period of fifteen days for a resetting, he (respondent) found merit in issuing the Order dated September 14, 2006 that requires the parties to maintain the *status quo ante*.

x x x x x x x x x

The respondent argues that [the] instant case should be dismissed for being premature since the aforementioned illegal dismissal case is still pending before the Labor Arbitration Branch of the National Labor Relations Commission, that the instant case is a subterfuge in order to compel the respondent to inhibit himself in resolving

the said illegal dismissal case because the complainants did not assail the Order dated September 14, 2006 before the Court of Appeals under Rule 65 of the Rules of Court.[5]

Based on the foregoing, the Investigating Commissioner concluded that: (1) the grounds cited by the respondent to justify his issuance of the status *quo ante* order lacks factual basis and is speculative; (2) the respondent does not have the authority to issue a temporary restraining order and/or a preliminary injunction; and (3) the inordinate delay in the resolution of the motion for reconsideration directed against the September 14, 2006 Order showed an orchestrated effort to keep the status *quo ante* until the expiration of David Edward Toze's employment contract.

Accordingly, the Investigating Commissioner recommended that:

WHEREFORE, it is respectfully recommended that the respondent be SUSPENDED for a period of six (6) months with a warning that a repetition of the same or similar incident will be dealt with more severe penalty.[6]

On December 11, 2008, the IBP Board of Governors issued Resolution No. XVIII-2008-644[7] which adopted and approved the recommendation of the Investigating Commissioner. The said resolution further pointed out that the Board of Governors had previously recommended the respondent's suspension from the practice of law for three years in Administrative Case (A.C.) No. 7314 entitled "*Mary Ann T. Flores v. Atty. Jovencio Ll. Mayor, Jr.*."

The respondent sought to reconsider the foregoing disposition,[8] but it was denied by the IBP Board of Governors in its Resolution No. XIX-2011-476 dated June 26, 2011.

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[5] *Id.* at 261-265.

[6] *Id.* at 275.

[7] *Id.* at 258-259.

[8] *Id.* at 276-305.

The case is now before us for confirmation. We agree with the IBP Board of Governors that the respondent should be sanctioned.

Section 27, Rule 138 of the Rules of Court provides that a lawyer may be removed or suspended from the practice of law, *inter alia*, for gross misconduct and violation of the lawyer's oath. Thus:

> Section 27. Attorneys removed or suspended by Supreme Court on what grounds. – **A member of the bar may be removed or suspended from his office as attorney by the Supreme Court** for any deceit, malpractice, **or other gross misconduct in such office**, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (emphasis supplied)

A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor.[9] Gross misconduct is any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose.[10]

Intrinsically, the instant petition wants this Court to impose disciplinary sanction against the respondent as a member of the bar. However, the grounds asserted by the complainants in support of the administrative charges against the respondent are intrinsically

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[9] *Spouses Donato v. Atty. Asuncion*, 468 Phil. 329, 335 (2004), citing *Re Administrative Case Against Atty. Occeña*, 433 Phil. 138 (2002).

[10] *Office of the Court Administrator v. Liangco*, A.C. No. 5355, December 13, 2011.

connected with the discharge of the respondent's quasi-judicial functions.

Nonetheless, it cannot be discounted that the respondent, as a labor arbiter, is a public officer entrusted to resolve labor controversies. It is well settled that the Court may suspend or disbar a lawyer for any conduct on his part showing his unfitness for the confidence and trust which characterize the attorney and client relations, and the practice of law before the courts, or showing such a lack of personal honesty or of good moral character as to render him unworthy of public confidence.[11]

Thus, the fact that the charges against the respondent were based on his acts committed in the discharge of his functions as a labor arbiter would not hinder this Court from imposing disciplinary sanctions against him.

The Code of Professional Responsibility does not cease to apply to a lawyer simply because he has joined the government service. In fact, by the express provision of Canon 6 thereof, the rules governing the conduct of lawyers "shall apply to lawyers in government service in the discharge of their official tasks." Thus, where a lawyer's misconduct as a government official is of such nature as to affect his qualification as a lawyer or to show moral delinquency, then he may be disciplined as a member of the bar on such grounds.[12]

In *Atty. Vitriolo v. Atty. Dasig*,[13] we stressed that:

> Generally speaking, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official. **However, if said misconduct as a government official also constitutes a violation of his oath as a lawyer, then he may be disciplined by this Court as a member of the Bar**.

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[11] *Halili v. Court of Industrial Relations*, G.R. No. L-24864, April 30, 1985.

[12] *Ali v. Bubong*, 493 Phil. 172, 182 (2005), citing *Reyes v. Gaa*, 316 Phil. 97, 102 (1995).

[13] 448 Phil. 199 (2003).

In this case, the record shows that the respondent, on various occasions, during her tenure as OIC, Legal Services, CHED, attempted to extort from Betty C. Mangohon, Rosalie B. Dela Torre, Rocella G. Eje, and Jacqueline N. Ng sums of money as consideration for her favorable action on their pending applications or requests before her office. The evidence remains unrefuted, given the respondent's failure, despite the opportunities afforded her by this Court and the IBP Commission on Bar Discipline to comment on the charges. We find that respondent's misconduct as a lawyer of the CHED is of such a character as to affect her qualification as a member of the Bar, for as a lawyer, she ought to have known that it was patently unethical and illegal for her to demand sums of money as consideration for the approval of applications and requests awaiting action by her office.

x x x x x x x x x

A member of the Bar who assumes public office does not shed his professional obligations. Hence, the Code of Professional Responsibility, promulgated on June 21, 1988, was not meant to govern the conduct of private practitioners alone, but of all lawyers including those in government service. This is clear from Canon 6 of said Code. Lawyers in government are public servants who owe the utmost fidelity to the public service. Thus, they should be more sensitive in the performance of their professional obligations, as their conduct is subject to the ever-constant scrutiny of the public.

For a lawyer in public office is expected not only to refrain from any act or omission which might tend to lessen the trust and confidence of the citizenry in government, she must also uphold the dignity of the legal profession at all times and observe a high standard of honesty and fair dealing. **Otherwise said, a lawyer in government service is a keeper of the public faith and is burdened with high degree of social responsibility, perhaps higher than her brethren in private practice**.[14] (emphasis supplied and citations omitted)

In *Tadlip v. Atty. Borres, Jr.*,[15] we ruled that an administrative case against a lawyer for acts committed in his capacity as

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

[15] 511 Phil. 56 (2005).

provincial adjudicator of the Department of Agrarian Reform – Regional Arbitration Board may be likened to administrative cases against judges considering that he is part of the quasi-judicial system of our government.

This Court made a similar pronouncement in *Buehs v. Bacatan*[16] where the respondent-lawyer was suspended from the practice of law for acts he committed in his capacity as an accredited Voluntary Arbitrator of the National Conciliation and Mediation Board.

Here, the respondent, being part of the quasi-judicial system of our government, performs official functions that are akin to those of judges. Accordingly, the present controversy may be approximated to administrative cases of judges whose decisions, including the manner of rendering the same, were made subject of administrative cases.

As a matter of public policy, not every error or mistake of a judge in the performance of his official duties renders him liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity do not always constitute misconduct although the same acts may be erroneous. True, a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice.[17]

While a judge may not always be held liable for ignorance of the law for every erroneous order that he renders, it is also axiomatic that when the legal principle involved is sufficiently basic, lack of conversance with it constitutes gross ignorance of the law. Indeed, even though a judge may not always be subjected to disciplinary action for every erroneous order or decision he renders, that relative immunity is not a license to be negligent or abusive and arbitrary in performing his adjudicatory prerogatives.[18]

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[16] A.C. No. 6674, June 30, 2009, 591 SCRA 217.

[17] *Dipatuan v. Mangotara*, A.M. No. RTJ-09-2190, April 23, 2010, 619 SCRA 48, 55.

[18] *Id.* at 56.

When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it. Anything less would be constitutive of gross ignorance of the law.[19]

In the case at bench, we find the respondent guilty of gross ignorance of the law.

Acting on the motion for the issuance of a temporary restraining order and/or writ of preliminary injunction, the respondent issued the September 14, 2006 Order requiring the parties to maintain the status *quo ante* until the said motion had been resolved. It should be stressed, however, that at the time the said motion was filed, the 2005 Rules of Procedure of the National Labor Relations Commission (NLRC) is already in effect.

Admittedly, under the 1990 Rules of Procedure of the NLRC, the labor arbiter has, in proper cases, the authority to issue writs of preliminary injunction and/or restraining orders. Section 1, Rule XI of the 1990 Rules of Procedure of the NLRC provides that:

> Section 1. Injunction in Ordinary Labor Disputes. – A preliminary injunction or restraining order may be granted by the Commission through its Divisions pursuant to the provisions of paragraph (e) of Article 218 of the Labor Code, as amended, when it is established on the basis of the sworn allegations in the petition that the acts complained of involving or arising from any labor dispute before the Commission, which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party.
>
> If necessary, the Commission may require the petitioner to post a bond and writ of preliminary injunction or restraining order shall become effective only upon the approval of the bond which shall answer for any damage that may be suffered by the party enjoined, if it is finally determined that the petitioner is not entitled thereto.
>
> **The foregoing ancillary power may be exercised by the Labor Arbiters only as an incident to the cases pending before them**

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[19] *Cabili v. Judge Balindong*, A.M. No. RTJ-10-2225, September 6, 2011.

in order to preserve the rights of the parties during the pendency of the case, but excluding labor disputes involving strike or lockout. (emphasis supplied)

Nevertheless, under the 2005 Rules of Procedure of the NLRC, the labor arbiters no longer has the authority to issue writs of preliminary injunction and/or temporary restraining orders. Under Section 1, Rule X of the 2005 Rules of Procedure of the NLRC, only the NLRC, through its Divisions, may issue writs of preliminary injunction and temporary restraining orders. Thus:

Section 1. Injunction in Ordinary Labor Disputes. - **A preliminary injunction or restraining order may be granted by the Commission through its Divisions** pursuant to the provisions of paragraph (e) of Article 218 of the Labor Code, as amended, when it is established on the basis of the sworn allegations in the petition that the acts complained of involving or arising from any labor dispute before the Commission, which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party. (emphasis supplied)

The role of the labor arbiters, with regard to the issuance of writs of preliminary injunctions and/or temporary restraining orders, at present, is limited to reception of evidence as may be delegated by the NLRC. Thus, Section 4, Rule X of the 2005 Rules of Procedure of the NLRC provides that:

Section 4. Reception of Evidence; Delegation. - **The reception of evidence for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters** who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses, and shall thereafter submit his report and recommendation to the Commission within fifteen (15) days from such delegation. (emphasis supplied)

The foregoing rule is clear and leaves no room for interpretation. However, the respondent, in violation of the said rule, vehemently insist that he has the authority to issue writs of preliminary injunction and/or temporary restraining order. On this point, the Investigating Commissioner aptly ruled that:

The respondent should, in the first place, not entertained Edward Toze's Verified Motion for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction Against the Respondents. He should have denied it outright on the basis of Section 1, Rule X of the 2005 Revised Rules of Procedure of the National Labor Relations Commission.

x x x x x x x x x

The respondent, being a Labor Arbiter of the Arbitration Branch of the National Labor Relations Commission, should have been familiar with Sections 1 and 4 of the 2005 Revised Rules of procedure of the National Labor Relations Commission. The first, states that it is the Commission of the [NLRC] that may grant a preliminary injunction or restraining order. While the second, states [that] Labor Arbiters [may] conduct hearings on the application of preliminary injunction or restraining order only in a delegated capacity.[20]

What made matters worse is the unnecessary delay on the part of the respondent in resolving the motion for reconsideration of the September 14, 2006 Order. The unfounded insistence of the respondent on his supposed authority to issue writs of preliminary injunction and/or temporary restraining order, taken together with the delay in the resolution of the said motion for reconsideration, would clearly show that the respondent deliberately intended to cause prejudice to the complainants.

On this score, the Investigating Commissioner keenly observed that:

The Commission is very much disturbed with the effect of the Order dated September 14, 2006 and the delay in the resolution of the pending incidents in the illegal dismissal case before the respondent.

Conspicuously, Section 3 (Term of Contract) of the Employment Contract between David Edward Toze and International School Manila provides that David Edward Toze will render work as a superintendent for the school years August 2005-July 2006 and August 2006-July 2007.

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[20] *Rollo*, pp. 267-268; 271.

The Order dated September 14, 2006 in effect reinstates David Edward Toze as superintendent of International School of Manila until the resolution of the former's Verified Motion for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction Against the Respondents.

Since the Employment Contract between David Edward Toze and International School Manila is about to expire or end on August 2007, prudence dictates that the respondent expediently resolved [sic] the merits of David Edward Toze's Verified Motion for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction Against the Respondents because any delay in the resolution thereof would result to undue benefit in favor of David Edward Toze and unwarranted prejudice to International School Manila.

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At the time the respondent inhibited himself from resolving the illegal dismissal case before him, there are barely four (4) months left with the Employment Contract between David Edward Toze and International School Manila.

From the foregoing, there is an inordinate delay in the resolution of the reconsideration of the Order dated September 14, 2006 that does not escape the attention of this Commission. There appears an orchestrated effort to delay the resolution of the reconsideration of the Order dated September 14, 2006 and keep status *quo ante* until expiration of David Edward Toze's Employment Contract with International School Manila come August 2007, thereby rendering the illegal dismissal case moot and academic.

x x x x x x x x x

Furthermore, the procrastination exhibited by the respondent in the resolution of [the] assailed Order x x x should not be countenanced, specially, under the circumstance that is attendant with the term of the Employment Contract between David Edward Toze and International School Manila. The respondent's lackadaisical attitude in sitting over the pending incident before him for more than five (5) months only to thereafter inhibit himself therefrom, shows the respondent's disregard to settled rules and jurisprudence. Failure to decide a case or resolve a motion within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate x x x. The respondent, being a Labor Arbiter, is akin to judges, and enjoined

to decide a case with dispatch. Any delay, no matter how short, in the disposition of cases undermine the people's faith and confidence in the judiciary x x x. [21]

Indubitably, the respondent failed to live up to his duties as a lawyer in consonance with the strictures of the lawyer's oath and the Code of Professional Responsibility, thereby occasioning sanction from this Court.

In stubbornly insisting that he has the authority to issue writs of preliminary injunction and/or temporary restraining order contrary to the clear import of the 2005 Rules of Procedure of the NLRC, the respondent violated Canon 1 of the Code of Professional Responsibility which mandates lawyers to "obey the laws of the land and promote respect for law and legal processes."

All told, we find the respondent to have committed gross ignorance of the law, his acts as a labor arbiter in the case below being inexcusable thus unquestionably resulting into prejudice to the rights of the parties therein.

Having established the foregoing, we now proceed to determine the appropriate penalty to be imposed.

Under Rule 140[22] of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law is a serious charge,[23] punishable by a fine of more than ₱20,000.00, but not exceeding ₱40,000.00, suspension from office without salary and other benefits for more than three but not exceeding six months, or dismissal from the service.[24]

In *Tadlip v. Atty. Borres, Jr.*, the respondent-lawyer and provincial adjudicator, found guilty of gross ignorance of the

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[21] *Id.* at 267-272.

[22] Discipline of Judges of regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan.

[23] Section 8 (9), Rule 140 of the Rules of Court.

[24] Section 11 (A), Rule 140 of the Rules of Court.

law, was suspended from the practice of law for six months. Additionally, in parallel cases,[25] a judge found guilty of gross ignorance of the law was meted the penalty of suspension for six months.

Here, the IBP Board of Governors recommended that the respondent be suspended from the practice of law for six months with a warning that a repetition of the same or similar incident would be dealt with more severe penalty. We adopt the foregoing recommendation.

This Court notes that the IBP Board of Governors had previously recommended the respondent's suspension from the practice of law for three years in A.C. No. 7314, entitled "*Mary Ann T. Flores v. Atty. Jovencio Ll. Mayor, Jr.*". This case, however, is still pending.

It cannot be gainsaid that since public office is a public trust, the ethical conduct demanded upon lawyers in the government service is more exacting than the standards for those in private practice. Lawyers in the government service are subject to constant public scrutiny under norms of public accountability. They also bear the heavy burden of having to put aside their private interest in favor of the interest of the public; their private activities should not interfere with the discharge of their official functions.[26]

At this point, the respondent should be reminded of our exhortation in *Republic of the Philippines v. Judge Caguioa*,[27] thus:

Ignorance of the law is the mainspring of injustice. Judges are called upon to exhibit more than just a cursory acquaintance with

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[25] *Amante-Descallar v. Ramas*, A.M. No. RTJ-08-2142, March 20, 2009, 582 SCRA 23; *Baculi v. Belen*, A.M. No. RTJ-09-2176, April 20, 2009, 586 SCRA 69; *Ocampo v. Arcaya-Chua*, A.M. OCA IPI No. 07-2630-RTJ, A.M. Nos. RTJ-07-2049, RTJ-08-2141 and RTJ-07-2093, April 23, 2010, 619 SCRA 59.

[26] *Olazo v. Tinga*, A.M. No. 10-5-7-SC, December 7, 2010, 637 SCRA 1, 9.

[27] A.M. Nos. RTJ-07-2063, RTJ-07-2064 and RTJ-07-2066, June 26, 2009, 591 SCRA, 51.

statutes and procedural rules. Basic rules should be at the palm of their hands. Their inexcusable failure to observe basic laws and rules will render them administratively liable. Where the law involved is simple and elementary, lack of conversance with it constitutes gross ignorance of the law. "Verily, for transgressing the elementary jurisdictional limits of his court, respondent should be administratively liable for gross ignorance of the law."

"When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority."[28] (citations omitted)

WHEREFORE, finding respondent Atty. Jovencio Ll. Mayor, Jr. guilty of gross ignorance of the law in violation of his lawyer's oath and of the Code of Professional Responsibility, the Court resolved to **SUSPEND** respondent from the practice of law for a period of six (6) months, with a **WARNING** that commission of the same or similar offense in the future will result in the imposition of a more severe penalty.

Let copies of this Resolution be furnished the IBP, as well as the Office of the Bar Confidant and the Court Administrator who shall circulate it to all courts for their information and guidance and likewise be entered in the record of the respondent as attorney.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,* and *Sereno, JJ.,* concur.

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[28] *Id.* at 77.

[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1195 dated February 15, 2012.

SECOND DIVISION

[A.C. No. 8254. February 15, 2012]
(Formerly CBD Case No. 04-1310)

NESA ISENHARDT, *complainant, vs.* **ATTY. LEONARDO M. REAL,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSON WHO SIGNS IT IS THE SAME PERSON WHO EXECUTED IT, PERSONALLY APPEARING BEFORE HIM TO ATTEST TO THE CONTENTS AND THE TRUTH OF WHAT ARE STATED THEREIN.— It cannot be overemphasized that a notary public should not notarize a document unless the person who signs it is the same person who executed it, personally appearing before him to attest to the contents and the truth of what are stated therein. This is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act. Section 1, Public Act No. 2103, otherwise known as the Notarial Law states: "The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state." Such requirement of affiant's personal appearance was further emphasized in Section 2 (b) of Rule IV of the Rules on Notarial Practice of 2004 which provides that: "A person shall not perform a notarial act if the person involved as signatory to the instrument or document – (1) is not in the notary's presence personally at the time of the notarization; and (2) is not personally known to the notary public or otherwise identified

by the notary public through competent evidence of identity as defined by these Rules."

2. ID.; ATTORNEYS; INTEGRATED BAR OF THE PHILIPPINES; RULES OF PROCEDURE OF THE COMMISSION ON BAR DISCIPLINE; A COMPLAINT FOR DISBARMENT, SUSPENSION OR DISCIPLINE OF ATTORNEYS PRESCRIBES IN TWO YEARS FROM THE DATE OF DISCOVERY OF THE PROFESSIONAL CONDUCT.— Anent respondent's claim of prescription of the offense pursuant to Section 1, Rule VIII of the Rules of Procedure of the Commission on Bar Discipline, we agree with the Investigating Commissioner that the rule should be construed to mean two years from the date of discovery of the professional misconduct. To rule otherwise would cause injustice to parties who may have discovered the wrong committed to them only at a much later date. In this case, the complaint was filed more than three years after the commission of the act because it was only after the property was foreclosed that complainant discovered the SPA.

3. ID.; NOTARIES PUBLIC; MUST OBSERVE THE BASIC REQUIREMENTS IN NOTARIZING DOCUMENTS.— The duties of a notary public is dictated by public policy and impressed with public interest. It is not a meaningless ministerial act of acknowledging documents executed by parties who are willing to pay the fees for notarization. It is of no moment that the subject SPA was not utilized by the grantee for the purpose it was intended because the property was allegedly transferred from complainant to her brother by virtue of a deed of sale consummated between them. What is being penalized is respondent's act of notarizing a document despite the absence of one of the parties. By notarizing the questioned document, he engaged in unlawful, dishonest, immoral or deceitful conduct. A notarized document is by law entitled to full credit upon its face and it is for this reason that notaries public must observe the basic requirements in notarizing documents. Otherwise, the confidence of the public in notarized documents will be undermined. In a catena of cases, we ruled that a lawyer commissioned as notary public having thus failed to discharge his duties as a notary public, the revocation of his notarial commission, disqualification from being commissioned as a

notary public for a period of two years and suspension from the practice of law for one year, are in order.

APPEARANCES OF COUNSEL

Alquin Bugarin Manguera for complainant.

D E C I S I O N

PEREZ, *J.*:

This case stemmed from the verified complaint[1] filed with the Integrated Bar of the Philippines (IBP) on 9 September 2004 by Nesa G. Isenhardt (complainant), through her counsel Atty. Edgardo Golpeo, seeking the disbarment of respondent Atty. Leonardo M. Real (respondent) for allegedly notarizing a document even without the appearance of one of the parties.

The Antecedent Facts

Complainant alleged that on 14 September 2000 respondent notarized a Special Power Attorney (SPA)[2] supposedly executed by her. The SPA authorizes complainant's brother to mortgage her real property located in Antipolo City. Complainant averred that she never appeared before respondent. She maintained that it was impossible for her to subscribe to the questioned document in the presence of respondent on 14 September 2000 since she was in Germany at that time.

To support her contention, complainant presented a certified true copy of her German passport[3] and a Certification from the Bureau of Immigration and Deportation (BID)[4] indicating that she arrived in the Philippines on 22 June 2000 and left the country on 4 August 2000. The passport further indicated that she arrived again in the Philippines only on 1 July 2001.

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[1] *Rollo*, pp. 2-5.

[2] *Id.* at 6-7.

[3] *Id*. at 116-119.

[4] *Id.* at 120-121.

Complainant submitted that because of respondent's act, the property subject of the SPA was mortgaged and later foreclosed by the Rural Bank of Antipolo City.

In his answer,[5] respondent denied the allegations in the complaint. He narrated that sometime in the middle of year 2000, spouses Wilfredo and Lorena Gusi approached him to seek advice regarding the computer business they were planning to put up. During one of their meetings, the spouses allegedly introduced to him a woman by the name of Nesa G. Isenhardt, sister of Wilfredo, as the financier of their proposed business.

Respondent further narrated that on 14 September 2000, spouses Gusi, together with the woman purporting to be the complainant, went to his office to have the subject SPA notarized. He maintained that the parties all signed in his presence, exhibiting to him their respective Community Tax Certificates (CTCs). He added that the complainant even presented to him the original copy of the Transfer Certificate of Title (TCT)[6] of the property subject of the SPA evidencing her ownership of the property.

Respondent noted that spouses Gusi even engaged his services as counsel in a civil case filed before the Regional Trial Court (RTC) of Antipolo City. The expenses incurred for the case, which was predicated on the closure of their computer business for non-payment of rentals, was allegedly financed by complainant. The professional engagement with the spouses was, however, discontinued in view of differences of opinion between lawyer and clients, as well as, non-payment of respondent's professional fees.

Respondent concluded that complainant's cause of action had already prescribed. He argued that under the Rules of Procedure of the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines, a complaint for disbarment prescribes in two years from the date of professional misconduct.

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[5] *Id.* at 15-18.

[6] *Id.* at 32-35.

Since the document questioned was notarized in year 2000, the accusation of misconduct which was filed only in September 2004 had already prescribed. Moreover, respondent noted that the SPA in question authorizing the grantee Wilfredo Gusi to mortgage the property of complainant was not used for any transaction with a third person prejudicial to the latter. The annotation at the back of the TCT[7] would show that the property subject of the SPA was instead sold by complainant to her brother Wilfredo for ₱500,000.00 on 12 January 2001. Thus, he submits that the SPA did not cause grave injury to the complainant.

The IBP Report and Recommendation

On 8 September 2006, the IBP Board of Governors issued Resolution No. XVII-2006-405,[8] which adopted and approved the Report and Recommendation[9] of the Investigating Commissioner. IBP Commissioner Dennis A. B. Funa, after due proceeding, found respondent guilty of gross negligence as a notary public and recommended that he be suspended from the practice of law for one year and disqualified from reappointment as notary public for two (2) years.

Aggrieved, respondent on 13 November 2006 filed a Motion for Reconsideration[10] of the aforesaid Resolution. This was, however, denied by the IBP Board of Governors in a Resolution dated 11 December 2009.

Our Ruling

We sustain the findings and recommendation of the IBP. As stated by the IBP Board of Governors, the findings of the Investigating Commissioner are supported by evidence on record, as well as applicable laws and rules.

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[7] *Id.* at 112.

[8] *Id.* at 125.

[9] *Id.* at 126-130.

[10] *Id.* at 131-159.

Respondent violated his oath as a lawyer and the Code of Professional Responsibility[11] when he made it appear that complainant personally appeared before him and subscribed an SPA authorizing her brother to mortgage her property.

It cannot be overemphasized that a notary public should not notarize a document unless the person who signs it is the same person who executed it, personally appearing before him to attest to the contents and the truth of what are stated therein. This is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act.[12]

Section 1, Public Act No. 2103, otherwise known as the Notarial Law states:

> The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state.

Such requirement of affiant's personal appearance was further emphasized in Section 2 (b) of Rule IV of the Rules on Notarial Practice of 2004 which provides that:

> A person shall not perform a notarial act if the person involved as signatory to the instrument or document –
>
> (1) is not in the notary's presence personally at the time of the notarization; and

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[11] The Code of Professional Responsibility provides:

Canon 1. A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes.

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

[12] *Judge Lopena v. Atty. Cabatos*, 504 Phil. 1, 8 (2005).

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Respondent insists that complainant appeared before him and subscribed to the SPA subject of the instant case. His contention, however, cannot prevail over the documentary evidence presented by complainant that she was not in the Philippines on 14 September 2000, the day the SPA was allegedly notarized. Respondent may have indeed met complainant in person during the period the latter was allegedly introduced to him by Spouses Gusi but that did not change the fact established by evidence that complainant was not in the personal presence of respondent at the time of notarization. It is well settled that entries in official records made in the performance of a duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.[13] This principle aptly covers the Certification from the BID that complainant left the Philippines on 4 August 2000 and arrived back only on 1 July 2001.

Respondent's contention was further negated when he claimed that complainant presented to him the original TCT of the property subject of the SPA. A perusal of the TCT would reveal that ownership of the property was transferred to complainant only on 10 January 2001. Thus, it could not have been presented to respondent by complainant on 14 September 2000.

The allegation of respondent that there were other documents subscribed by complainant during the interim of 4 August 2000 and 1 July 2001 or the time that she was supposed to be in Germany deserves scant consideration. Such allegation was refuted during the hearing before the Investigating Commissioner when counsel for complainant informed Commissioner Funa that those documents are subjects of criminal and civil cases pending before the Regional Trial Courts of Pasig, Antipolo and Quezon City,[14]

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[13] *National Steel Corporation v. Court of Appeals*, G.R. No. 112287, 12 December 1997, 283 SCRA 45, 76.

[14] *Rollo*, p. 70.

where the documents are being contested for being spurious in character.

Anent respondent's claim of prescription of the offense pursuant to Section 1, Rule VIII of the Rules of Procedure[15] of the Commission on Bar Discipline, we agree with the Investigating Commissioner that the rule should be construed to mean two years from the date of discovery of the professional misconduct. To rule otherwise would cause injustice to parties who may have discovered the wrong committed to them only at a much later date. In this case, the complaint was filed more than three years after the commission of the act because it was only after the property was foreclosed that complainant discovered the SPA.

The duties of a notary public is dictated by public policy and impressed with public interest.[16] It is not a meaningless ministerial act of acknowledging documents executed by parties who are willing to pay the fees for notarization. It is of no moment that the subject SPA was not utilized by the grantee for the purpose it was intended because the property was allegedly transferred from complainant to her brother by virtue of a deed of sale consummated between them. What is being penalized is respondent's act of notarizing a document despite the absence of one of the parties. By notarizing the questioned document, he engaged in unlawful, dishonest, immoral or deceitful conduct.[17] A notarized document is by law entitled to full credit upon its face and it is for this reason that notaries public must observe the basic requirements in notarizing documents. Otherwise, the

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[15] Rule VIII of the Rules of Procedure of the Commission on Bar Discipline.

Section 1. **Prescription**. A complaint for disbarment, suspension or discipline of attorneys prescribes in two (2) years from the date of the professional misconduct.

[16] *Lanuzo v. Bongon*, A.C. No. 6737, 23 September 2008, 566 SCRA 214, 217.

[17] *Gonzales v. Atty. Ramos*, 499 Phil. 345, 351 (2005).

confidence of the public in notarized documents will be undermined.[18]

In a catena of cases,[19] we ruled that a lawyer commissioned as notary public having thus failed to discharge his duties as a notary public, the revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years and suspension from the practice of law for one year, are in order.

WHEREFORE, the notarial commission of respondent Atty. Leonardo M. Real is hereby **REVOKED**. He is **DISQUALIFIED** from reappointment as notary public for a period of two (2) years and **SUSPENDED** from the practice of law for a period of one (1) year, effective immediately. He is **WARNED** that a repetition of the same or similar offense in the future shall be dealt with more severely. He is directed to report the date of receipt of this Decision in order to determine the date of effectivity of his suspension.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and all courts in the country for their information and guidance. Let a copy of this Decision be attached to respondent's personal record as attorney.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Sereno,* and *Reyes, JJ.,* concur.

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[18] *Id.* at 347.

[19] *Judge Lopena v. Atty. Cabatos*, *supra* note 12; *Lanuzo v. Bongon*, *supra* note 16 at 218; *Bautista v. Atty. Bernabe*, 517 Phil. 236 (2006); *Tabas v. Atty. Mangibin*, 466 Phil. 297 (2004).

[*] Designated additional member per Special Order No. 1195 dated 15 February 2012.

FIRST DIVISION

[A.M. No. P-11-2951. February 15, 2012]
(Formerly A.M. No. 10-3544-P)

LEAVE DIVISION, OFFICE OF ADMINISTRATIVE SERVICES, OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **LEONCIO K. GUTIERREZ III, CLERK III, REGIONAL TRIAL COURT, BRANCH 116, PASAY CITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; DEFINED.— Dishonesty has been defined as "the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

2. ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; A PUBLIC SERVANT MUST EXHIBIT AT ALL TIMES THE HIGHEST SENSE OF HONESTY AND INTEGRITY.— Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution declares that a public office is a public trust, and all public officers and employees must at all times be accountable to the people, and serve them with utmost responsibility, integrity, loyalty and efficiency. These are not mere rhetorical words to be taken lightly as idealistic sentiments, but as working standards and attainable goals that should be matched with actual deeds.

3. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; PENALTY.— Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service. However, in several administrative cases, we refrained from imposing the actual penalties in the presence of mitigating

factors. There were several cases, particularly involving dishonesty, in which we meted a penalty lower than dismissal because of the existence of mitigating circumstances.

4. ID.; ID.; ID.; COURT PERSONNEL; FALSIFICATION OF OFFICIAL DOCUMENT AND DISHONESTY; PENALTY IN CASE AT BAR.— We note that Gutierrez readily admitted that he was not at the office on February 26, 2010 and the entries in his DTR for said date were falsified. This is also Gutierrez's first administrative case in his five years in government service. However, as correctly observed by the OCA, Gutierrez's subsequent filing of an application for leave for February 26, 2010 could not be considered in his favor for it was obviously a mere afterthought, an attempt to cover up his infraction after already being found out by Judge Abary-Vasquez. In consideration of the foregoing, we deem the imposition of a fine of ₱5,000.00 upon Gutierrez, as recommended by the OCA, as already sufficient.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us is an administrative complaint charging Leoncio K. Gutierrez III (Gutierrez), Clerk III of the Regional Trial Court (RTC), Branch 116 of Pasay City, with dishonesty for falsifying his Daily Time Records (DTRs)/bundy cards.

The case arose from the 1st Indorsement[1] dated April 7, 2010 of Presiding Judge Racquelen Abary-Vasquez (Abary-Vasquez) of RTC-Branch 116 of Pasay City to Executive Judge Pedro B. Corales (Corales) of RTC, Pasay City, as regards Gutierrez's DTR, which allegedly contained entries for February 26, 2010 despite Gutierrez's admission that he did not report for work on said date. Gutierrez denied knowing who caused the questionable entries for February 26, 2010 in his DTR.

In a 2nd Indorsement[2] dated April 26, 2010, Executive Judge Corales forwarded Judge Abary-Vasquez's 1st Indorsement to

[1] *Rollo*, p. 12.

[2] *Id.* at 13.

Atty. Caridad A. Pabello (Pabello), Office of the Court Administrator (OCA) Chief of Office, Office of Administrative Services (OAS).

Court Administrator Jose Midas P. Marquez (Marquez) issued a 3rd Indorsement[3] dated May 21, 2010 referring the two previous Indorsements regarding Gutierrez's February 2010 DTR to Atty. Wilhelmina D. Geronga (Geronga), OCA Chief of Office, Legal Office, OCA for appropriate action and disposition. Accordingly, Atty. Geronga requested from Atty. Pabello clearer copies of Gutierrez's DTR for February 2010 and application for leave for February 26, 2010. However, Atty. Pabello could only provide Atty. Geronga with a certified photocopy of Gutierrez's Bundy Card for February 2010, as Gutierrez did not file any application for leave for February 26, 2010.

In a letter dated August 23, 2010, Court Administrator Marquez required Gutierrez to explain his non-submission of an application for leave for February 26, 2010, otherwise, the OCA would be constrained to bring the matter to the Court for whatever action deemed appropriate.

Gutierrez wrote Court Administrator Marquez a letter dated September 24, 2010 reiterating that he was unaware of who punched his DTR on February 26, 2010. As a gesture of his good faith, Gutierrez subsequently filed his application for leave but the same was not acted upon because Judge Abary-Vasquez had already reported the matter to Executive Judge Corales. Gutierrez prayed that he be cleared of the matter.

In a 4th Indorsement[4] dated October 26, 2010, Atty. Pabello referred Gutierrez's letter of September 24, 2010 to Atty. Geronga for appropriate action and disposition.

On May 9, 2011, Deputy Court Administrator Nimfa C. Vilches, as Officer-in-Charge of the OCA, together with Assistant

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[3] *Id.* at 11.

[4] *Id.* at 1.

Court Administrator Thelma C. Bahia and Atty. Geronga, submitted to us a report with the following recommendations:

RECOMMENDATION: In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the following recommendations:

1. The instant administrative complaint against Leoncio K. Gutierrez III, Clerk III, Regional Trial Court, Branch 116, Pasay City, be **RE-DOCKTED** as a regular administrative matter;

2. Leoncio K. Gutierrez III be found **GUILTY of DISHONESTY** and **FINED** the amount of Five Thousand Pesos (**₱**5,000.00), with **STERN WARNING** that the commission of the same or similar offense in the future shall be dealt with more severely.[5]

In a Resolution[6] dated July 4, 2011, we re-docketed the administrative complaint against Gutierrez as a regular administrative matter and required the parties to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.

Gutierrez submitted his Manifestation[7] dated September 9, 2011 stating that he was submitting the case for decision/resolution on the basis of records/pleadings already filed.

It is undisputed that Gutierrez was absent on February 26, 2010. Gutierrez himself admitted such fact. Equally unchallenged is the fact that someone punched Gutierrez's DTR on February 26, 2010 making it appear that he was at work on said date from 8:00 a.m. to 12:00 noon and from 12:00 noon to 4:00 p.m. Involved herein is Gutierrez's DTR and the entries therein could be reasonably presumed to have been done by Gutierrez himself. Gutierrez's only defense was to deny that he was the one who punched his DTR on February 26, 2010 and to claim

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[5] *Id.* at 18.

[6] *Id.* at 19.

[7] *Id.* at 23.

that despite his diligent efforts, he failed to determine who actually punched his DTR on the date in question.

Rule 131, Section 1 of the Rules of Court[8] assigns the burden of proof upon the party who alleges the truth of his claim or defense or any fact in issue. In this case, we only have Gutierrez's bare denial and allegations. Gutierrez did not submit any evidence in support of his defense. There is no showing at all that Gutierrez's DTR could have been accessed by other people, or that he could not have previously known of the February 26, 2010 entries in his DTR, or that he immediately sought to correct said false entries in his DTR upon his discovery thereof. Given the total absence of evidence to the contrary, the presumption that Gutierrez himself punched his DTR to make it appear he was at the office on February 26, 2010 still prevails.

Also working against Gutierrez are the following facts: (1) Gutierrez affixed his signature on his February 2010 DTR without correcting the entries for February 26, 2010, which he could have easily done by simply erasing the entries and writing thereon that he was on sick leave, in the same way that he wrote in his DTR that he was on leave of absence on February 16, 17, and 18, 2010; and (2) Gutierrez belatedly filed his application for leave for February 26, 2010, only after being confronted by Judge Abary-Vasquez with the false entries in his DTR for the date in question. It appears that Gutierrez was willing to let the false entries for February 26, 2010 slip through except that these were discovered by Judge Abary-Vasquez, and only then, did Gutierrez act (by filing an application for leave) to supposedly "correct" the false entries.

Gutierrez's deliberate attempt to conceal or suppress his absence on February 26, 2010 by falsifying his DTR manifested his lack of integrity and responsibility. His act constitutes dishonesty.

Dishonesty has been defined as "the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack

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[8] Section 1. *Burden of Proof* – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[9]

It is well to remind Gutierrez that dishonesty is a malevolent act that has no place in the judiciary. Public service requires utmost integrity and discipline. A public servant must exhibit at all times the highest sense of honesty and integrity, for no less than the Constitution declares that a public office is a public trust, and all public officers and employees must at all times be accountable to the people, and serve them with utmost responsibility, integrity, loyalty and efficiency. These are not mere rhetorical words to be taken lightly as idealistic sentiments, but as working standards and attainable goals that should be matched with actual deeds.[10]

Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.[11]

However, in several administrative cases, we refrained from imposing the actual penalties in the presence of mitigating factors. There were several cases,[12] particularly involving dishonesty,

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[9] *Gillamac-Ortiz v. Almeida, Jr.*, A.M. No. P-07-2401, November 28, 2007, 539 SCRA 20, 25.

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

[11] *Office of the Court Administrator v. Magno*, 419 Phil. 593, 602 (2001); Sec. 22(a), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987), as amended by CSC Memorandum Circular No. 19, s. 1999.

[12] *Concerned Employee v. Valentin*, 498 Phil. 347, 352 (2005); *Dipolog v. Montealto*, A.M. No. P-04-190, November 23, 2004, 443 SCRA 465, 478; *Re: Alleged Tampering of the Daily Time Records (DTR) of Sherry B. Cervantes, Court Stenographer III, Branch 18, Regional Trial Court, Manila*, A.M. No. 03-8-463-RTC, May 20, 2004, 428 SCRA 572, 576; *Office of the Court Administrator v. Sirios*, 457 Phil. 42, 48-49 (2003); *Reyes-Domingo v. Morales*, 396 Phil. 150, 164 (2000).

in which we meted a penalty lower than dismissal because of the existence of mitigating circumstances.

In *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I & Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*,[13] we did not impose the severe penalty of dismissal because the respondents acknowledged their infractions, demonstrated remorse, and had dedicated long years of service to the judiciary. Instead, we imposed the penalty of suspension for six months on Ting, and the forfeiture of Esmerio's salary equivalent to six months on account of the latter's retirement.

We similarly imposed in *Re: Failure of Jose Dante E. Guerrero to Register his Time In and Out in the Chronolog Time Recorder Machine on Several Dates*[14] the penalty of six months suspension on an employee found guilty of dishonesty for falsifying his time record. We took into account as mitigating circumstances Guerrero's good performance rating, 13 years of satisfactory service in the judiciary, and his acknowledgment of and remorse for his infractions.

In *Reyes-Domingo v. Morales*,[15] the branch clerk of court who was found guilty of dishonesty in not reflecting the correct time in his DTR was merely imposed a penalty of fine of ₱5,000.00. In the said case, respondent did not indicate his absences on May 10 and 13, 1996, although he was at Katarungan Village interfering with the construction of the Sports Complex thereat and at the DENR-NCR, pursuing his personal business. In *Office of the Court Administrator v. Saa*,[16] the clerk of court of the Municipal Circuit Trial Court of Camarines Norte who made it appear in his DTR that he was present in the office on June 5 and 6, 1997, when all the while he was attending

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[13] 502 Phil. 264 (2005).

[14] 521 Phil. 482, 498 (2006).

[15] *Supra* note 12 at 165.

[16] 457 Phil. 25, 29-30 (2003).

hearings of his own case in Quezon City, was fined ₱5,000.00. In *In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio O. Morales, All of the Municipal Trial Court-OCC, Guagua, Pampanga*,[17] Clerk of Court Razon, who made it appear that she was in the office on September 7, 2004, when she was at the Supreme Court, was fined ₱2,000.00.

The compassion we extended in the aforementioned cases was not without legal basis. Rule IV, Section 53 of the Revised Uniform Rules on Administrative Cases in the Civil Service,[18] grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

We note that Gutierrez readily admitted that he was not at the office on February 26, 2010 and the entries in his DTR for said date were falsified. This is also Gutierrez's first administrative case in his five years in government service. However, as correctly observed by the OCA, Gutierrez's subsequent filing of an application for leave for February 26, 2010 could not be considered in his favor for it was obviously a mere afterthought, an attempt to cover up his infraction after already being found out by Judge Abary-Vasquez. In consideration of the foregoing, we deem the imposition of a fine of ₱5,000.00 upon Gutierrez, as recommended by the OCA, as already sufficient.

WHEREFORE, we find respondent Leoncio Gutierrez III **GUILTY** of falsification of official document and dishonesty and impose upon him the penalty of fine of **FIVE THOUSAND** PESOS (₱5,000.00), with a **STERN WARNING** that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

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[17] A. M. No. P-06-2243, September 26, 2006, 503 SCRA 52, 64.

[18] CSC Memorandum Circular No. 19, s. 1999.

FIRST DIVISION

[G.R. No. 152262. February 15, 2012]

FELIMON MANGUIOB, *petitioner, vs.* **JUDGE PAUL T. ARCANGEL, RTC, BRANCH 12, DAVAO CITY and ALEJANDRA VELASCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; SHALL NOT RAISE QUESTIONS OF FACT; CASE AT BAR.— The issue raised by Manguiob is clearly a question of fact, which not only requires a review of the evidence already presented, but a reception of new evidence as well. A perusal of the records of the case shows that no evidence was introduced or received for the purpose of ascertaining the actual status of the non-cash assets despite the parties' admission of their existence, and their conformity to the values assigned to them by their accountants. A proper resolution on the distribution of the non-cash assets obviously necessitates, *inter alia*, a determination of the proceeds or whereabouts of these non-cash assets. This issue, unfortunately, is factual matter, which is beyond the province of a Rule 45 petition, as expressed under the version of Section 1, Rule 45 in force at the time Manguiob filed this petition x x x. Thus, since this Court is required to review and evaluate the evidence on record, and even receive new evidence to decide the issue of whether the value of the non-cash assets should be deducted from what Manguiob was adjudged to pay Velasco, the issue then is definitely one of fact, and one that is impermissible, as this Court is not a trier of facts.

2. ID.; ID.; ID.; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— The distinction between a question of law and one of fact has long been settled. In *Binay v. Odeña* we said: "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. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact."

3. ID.; ID.; ID.; ISSUES NOT RAISED TIMELY IN THE PROCEEDINGS BEFORE THE TRIAL COURT CANNOT BE CONSIDERED ON APPEAL.— It is settled that issues not raised timely in the proceedings before the trial court cannot be considered on review or appeal as to do so would be to trample on the basic rules of fair play, justice, and due process.

APPEARANCES OF COUNSEL

Bernardo C. Cataluña for petitioner.
Marte Melchor S. Velasco for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari*[1] seeking to modify the August 31, 2001 Decision[2] and January 25, 2002 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 64147, which affirmed with modification the March 5, 1999 Decision[4] of the Regional Trial Court (RTC) of Davao City, Branch 12 in Civil Case No. 23,313-94.

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[1] Under Rule 45 of the 1997 Rules of Court.

[2] *Rollo*, pp. 50-62; penned by Associate Justice Romeo J. Callejo, Sr. with Associate Justices Renato C. Dacudao and Perlita J. Tria Tirona, concurring.

[3] *Id.* at 64.

[4] *Id.* at 40-49.

On May 3, 1994, Felimon Manguiob (Manguiob) and Alejandra Velasco (Velasco) entered into a partnership under the name of "Baculin Enterprises," for the purchase and sale of agricultural and forest products, and the operation of a general merchandise store at Baculin, Baganga, Davao Oriental.[5] Velasco provided the capital requirements of the partnership, including the warehouse and the store needed for the business, while Manguiob, being the industrial partner, managed the partnership's operations.[6]

On September 14, 1994, the partnership ceased to operate and was considered dissolved for all intents and purposes.[7]

On December 12, 1994, Velasco filed a Complaint[8] for Sum of Money, Accounting, and Damages against Manguiob, before the RTC, Branch 12 of Davao City. Velasco alleged that while Baculin Enterprises appeared to have flourished on record, the actual cash on hand, which was mostly with Manguiob, did not reflect such financial profitability. Thus, Velasco decided to dissolve the partnership, as allowed in their Articles of Partnership,[9] and had the records of the partnership audited. Velasco claimed that her fears were confirmed when the audit report showed that Baculin Enterprises made a net profit of at least ₱252,673.50 from May 1994 to September 14, 1994. According to Velasco, she was entitled to 60% of this, amounting to ₱151,604.10, while Manguiob was entitled to 40%, equivalent to ₱101,069.40. Velasco also asked that Manguiob return the amount of ₱203,156.30, representing the balance of her ₱320,000.00 capital investment, as Manguiob returned only the amount of ₱116,843.20 to her. Velasco averred that Manguiob not only refused to return the above amounts, but also refused to make an accounting of his management of Baculin Enterprises. Velasco

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[5] *Id.* at 79.

[6] *Id.* at 50.

[7] *Id.* at 79.

[8] *Id.* at 65-71.

[9] Records, pp. 84-85.

further alleged that Manguiob, in bad faith, had used the partnership funds to start his own buy and sell business even before their partnership was dissolved. Because of this, Velasco prayed for the trial court to direct Manguiob to do the following:

1. To pay plaintiff the amount of ₱354,760.00 as plaintiff's contribution and share in the profits of the partnership;
2. To pay plaintiff the amount of 10% a month of ₱354,760.00 as unrealized profit of the partnership;
3. To account for the money of the partnership used for the personal business of the defendant;
4. To pay plaintiff the amount of ₱25,000.00 as attorney's fees.[10]

Velasco likewise prayed for the trial court to grant her such other relief as may be warranted by the circumstances.[11]

Manguiob, in his Answer,[12] denied having received ₱320,000.00 from Velasco and alleged that she only infused the sum of ₱200,000.00 into their partnership. He contended that he did not have possession of the partnership's cash, and that it was Velasco who had received the proceeds of the deliveries he made to Interco Davao as shown by the various receipts[13] attached to his Answer. Manguiob also averred that if the records of Baculin Enterprises had already been audited, then that audit was not based on the records he had submitted to Velasco. Manguiob further claimed that it was not then known if the partnership had gained profit, that there was no basis for the return of Velasco's capital investment, and that the amount of ₱116,843.20 was not part of Velasco's capital investment but was the total amount of the remittances he made to Velasco from the proceeds of his deliveries. Manguiob said Velasco's monetary claim had

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[10] *Rollo*, p. 68.

[11] *Id.*

[12] *Id.* at 72-76.

[13] Records, pp. 20-33.

no basis especially since she was practically in control of the partnership's finances.[14]

On October 18, 1995, Velasco and Manguiob jointly submitted to the RTC a "Partial Stipulation of Facts and Statement of the Issues,"[15] with the pertinent section quoted as follows:

The Facts

1. That, the plaintiff and defendant established a Partnership on May 3, 1994 to engage in the Buy and Sell of Agricultural products and operation of a General Merchandise Store at Baculin, Baganga, Davao Oriental, and for which purpose the parties executed an Articles of Partnership, a copy of which is attached to the complaint as Annex "A" thereof;

2. That, the partnership has ceased to operate and [for] all intents and purposes considered dissolved as of September 14, 1994;

3. That, as per records submitted by the defendant, from May 8, 1994 to September 9, 1994 the amount of copra purchased is ₱1,261,418.45 as shown in the statement, a copy of which is hereto attached or Annex "A" hereof;

4. That, from May 31, 1994 up to September 10, 1994, the total copra sales amounted to ₱1,430,904.40, net of hauling expenses, as shown in the statement attached hereto and marked as Annex "B" hereof;

5. That, from May 1994 to September 14, 1994 the total sales of General Merchandise as per records of defendant is ₱930,640.50 as shown in the statement hereto attached as Annex "C" hereof;

The Issues

1. How much was the capital contribution of plaintiff in the Partnership?

2. How much of the proceeds from the sales of copra from May 31, 1994 to August 24, 1994 were returned by plaintiff to defendant[?]

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[14] *Rollo*, pp. 72-75.

[15] *Id.* at 79-80.

3. How much net profit, if any, was realized by the Partnership during its operation from May 1994 up to September 14, 1994[?]

4. Are the parties entitled to their respective claims for [damages][?]

On March 5, 1999, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay to the former the sum of ₱498,245.52, as the principal account; plus interest thereon at the rate of 12% per annum from September 15, 1994 until the full account is paid, the sum of ₱25,000.00 as attorney's fees and the costs of suit.

The other claims of the parties are hereby denied.[16]

The RTC found that the capital contributed by Velasco to the partnership was ₱400,000.00, as established by clear, convincing, and competent evidence.[17] Anent the second issue, the RTC averred that while Velasco may have received the proceeds of the sales of copra from May 31, 1994 to August 24, 1994, such proceeds were returned to Manguiob to be used in the purchase of more copra and other merchandise for their business, as evidenced by receipts[18] signed by Manguiob or his wife. Thus, the RTC said that "except for the proceeds of the sales of copra on September 10, 1994, in the amount of ₱116,954.40, all the proceeds of the sales of copra were either retained by, or returned to, [Manguiob]."[19] As for the net profit earned by the partnership, the RTC proclaimed that it was ₱191,999.98, as declared by Manguiob's own accountant. Thus, the RTC ruled that Velasco was entitled to the amount of ₱498,245.52 representing her capital contribution less the proceeds

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[16] *Id.* at 49.

[17] *Id.* at 45.

[18] Records, pp. 91-95.

[19] *Rollo,* p. 47.

from the copra sales made on September 10, 1994, which she retained, plus her 60% share in the net profit.[20]

Manguiob appealed this decision to the Court of Appeals, assigning the following errors:

I. THAT THE LOWER COURT GRAVELY ERRED IN ORDERING DEFENDANT TO PAY PLAINTIFF THE SUM OF ₱498,245.52 AS THE PROCEEDS OF COPRA SALES WHICH THE PLAINTIFF HAD TAKEN FROM DEFENDANT AMOUNTED TO ₱453,859.10 AND THAT THE NET INCOME OF THE PARTNERSHIP OF THE PLAINTIFF AND DEFENDANT AMOUNTED TO ₱191,999.88 TO WHICH PLAINTIFF'S SHARE IS 60% AND THE SHARE OF THE DEFENDANT FROM SAID NET INCOME IS 40% AND, FURTHERMORE, THE TOTAL ASSETS IN THE POSSESSION OF THE PLAINTIFF AT THE CLOSURE OF THE BUSINESS OF PLAINTIFF AND DEFENDANT, THE BACULIN MARKETING AS OF SEPTEMBER 14, 1994 AND AVAILABLE FOR DISTRIBUTION, AMOUNTED TO ₱215,559.06;

II. THAT THE LOWER COURT GRAVELY ERRED IN ORDERING DEFENDANT TO PAY PLAINTIFF THE INTEREST ON THE ALLEGED PRINCIPAL ACCOUNT OF ₱498,245.52 AT THE RATE OF 12% PER ANNUM FROM SEPTEMBER 15, 1994 UNTIL THE FULL ACCOUNT IS PAID, AS THERE IS NO WRITTEN STIPULATION AS TO THE PAYMENT OF INTEREST IN ACCORDANCE WITH ARTICLE 1956 OF THE NEW CIVIL CODE OF THE PHILIPPINES; AND

III. THAT THE LOWER COURT GRAVELY ERRED IN ORDERING DEFENDANT TO PAY PLAINTIFF THE [AMOUNT] OF ₱25,000.00 AS ATTORNEY'S FEES, AS NO RIGHT TO SUCH FEE ACCRUE IN THE CASE AT BAR IN ACCORDANCE WITH ART. 2208 OF THE NEW CIVIL CODE OF THE PHILIPPINES.[21]

On August 31, 2001, the Court of Appeals modified the RTC's decision with respect to the amount due Velasco, the rate of interest imposable, and the award of attorney's fees, *to wit*:

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[20] *Id.* at 46-49.

[21] CA *rollo*, pp. 23-24.

IN THE LIGHT OF ALL THE FOREGOING, the Decision appealed from is **AFFIRMED** with the following modifications:

(1) The Appellant is obliged to pay to Appellee the amount of ₱401,640.97 with interest thereon at the rate of 6% per annum computed from the time the Court ***a quo***'s Decision and, an interest at the rate of 12 per annum from the time of the finality of this Decision up to the time that the obligation of the Appellant to pay Appellee is paid in full:

(2) The award of attorney's fees is deleted.[22]

The Court of Appeals, after analyzing the records, concluded that while Velasco withheld the total net amount of ₱113,558.95, Manguiob received and retained a total of ₱432,067.05, inclusive of the ₱400,000.00 capital infused by Velasco. The Court of Appeals agreed with the findings of the RTC that the partnership generated a profit of ₱191,999.98, and from this, held that Velasco was entitled to 60% or ₱115,199.92, according to her agreement with Manguiob. The Court of Appeals said that since Velasco retained ₱113,558.95 out of the ₱115,199.92 due her, Manguiob should only remit to her the difference of ₱1,640.97, in addition to her ₱400,000.00 capital investment.[23]

On October 11, 2001, Manguiob moved[24] for the Court of Appeals to reconsider its Decision. This, however, was denied in a Resolution dated January 25, 2002, to wit:

After due consideration of the **"Motion for Reconsideration"** of the Appellant and the **"Comment"** thereon of the Appellee, We find said motion barren of merit and hereby deny the same.[25]

Manguiob is now positing the following assignment of errors:

(1)

THE HONORABLE 13TH DIVISION OF THE COURT OF APPEALS GRAVELY AND SERIOUSLY ERRED IN NOT

[22] *Rollo,* p. 62.

[23] *Id.* at 60.

[24] CA *rollo,* pp. 80-83.

[25] *Rollo,* p. 64.

CORRECTLY CONSIDERING IN THE ASSAILED DECISION, THE NON-CASH ASSETS OF BACULIN (MARKETING) ENTERPRISE AS OF SEPTEMBER 14, 1994 AND THE JOINT VALUATION IN THE AMOUNT OF ₱215,559.06 PLACED ON THE SAID NON-CASH ASSETS BY THE CERTIFIED PUBLIC ACCOUNTANTS OF THE PETITIONER AND THE PRIVATE RESPONDENT WHICH WERE DETERMINED BY BOTH ACCOUNTANTS IN COMPLIANCE WITH ORDERS OF THE HONORABLE COURT *A QUO*, THE REGIONAL TRIAL COURT, 11TH JUDICIAL REGION, BRANCH 12, DAVAO CITY.

(2)

THE HONORABLE 13TH DIVISION OF THE COURT OF APPEALS SERIOUSLY ERRED IN NOT CONSIDERING THE NON-CASH ASSETS OF BACULIN (MARKETING) ENTERPRISE VALUED AT ₱215,559.06 WHICH HAS BEEN IN THE CUSTODY AND CONTROL OF THE PRIVATE RESPONDENT SINCE SEPTEMBER 14, 1994 AS RETAINED BY THE PRIVATE RESPONDENT HERSELF.[26]

Manguiob says he does not wish to further challenge the Court of Appeals' computation, but asks that the value of the non-cash assets, as determined by the parties' accountants, pursuant to the RTC's orders,[27] be deducted from the amount he is obligated to return to Velasco, to wit:

Obligation of the petitioner per Court of Appeals Decision	₱ 401,640.97
Less: Non Cash assets in the custody and control of Alejandra Velasco	₱ 215,559.06
Obligations to be paid by the petitioner to private respondent as sought by this petition	₱ 86,081.91[28]

Velasco, in her Comment,[29] says that this petition is without merit and should be dismissed. She avers that while Manguiob

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[26] *Id.* at 24.

[27] *Id.* at 77-78.

[28] *Id.* at 23.

[29] *Id.* at 114-120.

claims that he is before us on a question of law, *i.e.*, the construction or interpretation of the documentary evidence submitted before the RTC, he is in fact referring to matters of fact, which he was unable to establish with competent proof during the trial of the case. Velasco further argues that the rulings of the lower courts are with respect to her capital contribution and no evidence was presented to prove the existence of any asset aside from the partnership's net income of ₱191,999.98.

Discussion

The crux of the present controversy boils down to the role of the value of the non-cash assets in the determination of how much Manguiob should return to Velasco.

Both the RTC and the Court of Appeals found that a partnership had indeed existed between Manguiob and Velasco, and that it was dissolved, upon Velasco's option, on September 14, 1994. The lower courts ordered Manguiob to return to Velasco her capital contribution of ₱400,000.00, as established during the trial and evidenced by receipts signed by Manguiob or his wife; and the amount of ₱115,199.92, representing her 60% share in the net profits, based on the income statement prepared by the parties' accountants, to wit:

BACULIN MARKETING
AMENDED INCOME STATEMENT
For the Period May 8, 1994 to
September 14, 1994

	Exh. "B"
Sales:	
Copra (Net of Hauling), Sch. 4	₱ 1,430,904.40
General Merchandise, Sch. 7	930,640.50
Charcoal –	–
T o t a l	₱ 2,361,544.90

Less: Cost of Sales:			
Purchases:			
Copra, Sch. 2	₱1,261,418.45		
Gen. Mdse., Sch. 5	880,243.08		
Charcoal	21,143.60		
Total Goods Available		2,162,805.13	
Less: Inventory, end			
Gen. Mdse.	₱ 41,120.71		
Charcoal	21,143.60	62,264.31	2,100,540.82
Gross Profit			₱ 261,004.08
Less: Operating Expenses: (see sch. 5)			
Subsistence	₱ 9,083.00		
Miscellaneous	13,503.50		
Truck repairs	21,894.20		
Freight & other expenses	7,332.50		
Salaries and wages	12,550.00		
Inauguration expenses	4,641.00	69,004.02	
Net Income, to capital			₱ 191,999.88[30]

Aside from the foregoing, the parties' accountants also submitted to the RTC a list of the non-cash assets of the partnership as of September 14, 1994, its date of dissolution:

BACULIN MARKETING
LIST OF NON-CASH ASSETS
(F. Manguiob's Report)

Sch. 8

Particulars	Amount
Accounts Receivable	₱ 88,340.50
Inventories:	

[30] *Id.* at 82.

General Mdse.	₱ 41,120.71	
Charcoal	21,143.60	62,264.31
Refundable deposit		30,265.00
Bodega equipment and facilities		34,689.25
Total		₱ 215,559.06[31]

Neither party questions the figures jointly prepared by their respective accountants. Manguiob, nonetheless, insists that the value of the non-cash assets, as determined by their accountants, should be deducted from the amount he was adjudged to pay Velasco. The lower courts, however, did not rule on how these non-cash assets should be distributed between Velasco and Manguiob.

The issue raised by Manguiob is clearly a question of fact, which not only requires a review of the evidence already presented, but a reception of new evidence as well. A perusal of the records of the case shows that no evidence was introduced or received for the purpose of ascertaining the actual status of the non-cash assets despite the parties' admission of their existence, and their conformity to the values assigned to them by their accountants. A proper resolution on the distribution of the non-cash assets obviously necessitates, *inter alia*, a determination of the proceeds or whereabouts of these non-cash assets.

This issue, unfortunately, is factual matter, which is beyond the province of a Rule 45 petition, as expressed under the version of Section 1, Rule 45 in force at the time Manguiob filed this petition to wit:

Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*.

[31] *Id.* at 91.

The petition shall raise only questions of law which must be distinctly set forth.[32]

The distinction between a question of law and one of fact has long been settled. In *Binay v. Odeña*[33] we said:

> 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. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[34]

Thus, since this Court is required to review and evaluate the evidence on record, and even receive new evidence to decide the issue of whether the value of the non-cash assets should be deducted from what Manguiob was adjudged to pay Velasco,

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[32] Although Section 1 of Rule 45 has been amended under A.M. No. 07-7-12-SC, effective December 4, 2007, the new text still requires that the petition shall only raise questions of law, *viz*:

> **Section 1.** *Filing of petition with Supreme Court.* - A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[33] G.R. No. 163683, June 8, 2007, 524 SCRA 248.

[34] *Id.* at 255-256.

the issue then is definitely one of fact,[35] and one that is impermissible, as this Court is not a trier of facts.

Furthermore, records show that this issue was not even submitted by the parties during the trial of the case despite their conflicting allegations on these assets' condition. In *Keng Hua Paper Products Co., Inc. v. Court of Appeals*[36] this Court held:

> [A]n issue raised for the first time on appeal and not raised timely in the proceedings in the lower court is barred by estoppel. Questions raised on appeal must be within the issues framed by the parties and, consequently, issues not raised in the trial court cannot be raised for the first time on appeal.[37]

It is settled that issues not raised timely in the proceedings before the trial court cannot be considered on review or appeal as to do so would be to trample on the basic rules of fair play, justice, and due process.[38]

However, this Court noticed that while both lower courts agreed on the values and figures the parties' accountants submitted to the RTC, they differed in the amount supposedly retained by Velasco, and thus eventually deducted from the capital investment Manguiob was ordered to return to her. This Court is inclined to agree with the RTC's computation, **except** for the total amount, which is erroneously higher by ₱100,000.00, to wit:

60% of ₱191,999.88	is	₱ 115,199.92
Capital Contribution	------	₱ 400,000.00
Total	------	₱ 515,199.92
Less Money in Plaintiff's hands for sale of copra on September 10, 1994	-----	₱ 116,954.40

[35] *Hko Ah Pao v. Ting*, G.R. No. 153476, September 27, 2006, 503 SCRA 551, 559.

[36] 349 Phil. 925 (1998).

[37] *Id.* at 937.

[38] *Cruz v. Fernando*, 513 Phil. 280, 291 (2005).

Net amount due to Plaintiff —— ₱ 498,245.52[39]

The above values and figures, save for the erroneous total, were amply supported by the evidence on record. Moreover, Velasco herself, on several occasions, admitted that she retained the amount of ₱116,954.40, contrary to the Court of Appeals' finding that she only withheld the amount of ₱113,558.95.[40]

Exhibit C, Velasco's own documentary evidence which she verified and signed, showed that she had retained the amount of ₱116,954.40.

There is likewise an admission in Velasco's memorandum submitted to the RTC that she had in her possession the amount of ₱116,954.40.

Thus, using **the same figures that were definitely determined during the trial**, the amount due Velasco, from her capital contribution and share in the net profits should be computed as follows:

	₱400,000.00	Velasco's capital contribution
+	₱115,199.92	Velasco's 60% share in the net income
-	₱116,954.40	the proceeds of the sales of copra on September 10, 1994, which Velasco retained (₱56,362.40 + ₱60,592.00)
=	**₱398,245.52**	**Amount due Velasco**

As for the unchallenged rulings of the Court of Appeals, including the deletion of the award of attorney's fees, we find no reason to disturb the same.

WHEREFORE, the Decision of the Court of Appeals in **CA-G.R. CV No. 64147** is hereby **AFFIRMED** *with the* **MODIFICATION** that petitioner is obliged to pay private respondent the amount of ₱398,245.52 representing the balance

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[39] Records, pp. 177-178.

[40] *See* TSN, February 12, 1996, pp. 27-29.

of the latter's capital contribution plus her 60% share in the net profits of Baculin Enterprises.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 157810. February 15, 2012]

ROLANDO SOFIO and RUFIO SOFIO, *petitioners, vs.* **ALBERTO I. VALENZUELA, GLORIA I. VALENZUELA, REMEDIOS I. VALENZUELA, and CESAR I. VALENZUELA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF FINALITY AND IMMUTABILITY OF JUDGMENTS; A JUDGMENT THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE AND MAY NO LONGER BE MODIFIED IN ANY RESPECT; EXCEPTIONS.— A decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is intended to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. This doctrine of finality and immutability of judgments is grounded on fundamental considerations of public policy and sound practice to the effect that, at the risk of occasional error, the judgments of the courts must become final at some definite date set by law. The reason is that litigations must end and terminate sometime and somewhere; and it is essential for the effective and efficient

administration of justice that once a judgment has become final the winning party should not be deprived of the fruits of the verdict. Given this doctrine, courts must guard against any scheme calculated to bring about that result, and must frown upon any attempt to prolong controversies. The only exceptions to the general rule are: (*a*) the correction of clerical errors; (*b*) the so-called *nunc pro tunc* entries that cause no prejudice to any party; (*c*) void judgments; and (*d*) whenever circumstances transpire after the finality of the judgments rendering execution unjust and inequitable.

2. ID.; ID.; ID.; JUDGMENT *NUNC PRO TUNC*; DEFINED.— [A] judgment *nunc pro tunc* has been defined and characterized thuswise: "The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is **one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was**, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been. (*Wilmerding vs. Corbin Banking Co.*, 28 South., 640, 641; 126 Ala., 268.)"

3. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; THE NEGLIGENCE OF THE COUNSEL BINDS THE CLIENT; EXCEPTION.— Although the petitioners' former counsel was blameworthy for the track their case had taken, there is no question that any act performed by the counsel within the scope of his general or implied authority is still regarded as an act of the client. In view of this, even the negligence of the former counsel should bind them as his clients. To hold otherwise would result to the untenable situation in which every defeated party, in order to salvage his cause, would simply claim neglect or mistake on the part of his counsel as a ground for reversing the adverse judgment. There would then be no end to litigation, for every shortcoming of the counsel could become the subject of challenge by his client through another counsel who, if he should also be found wanting, would similarly be disowned by the same client through yet another counsel, and so on *ad infinitum*. This chain of laying blame could render court proceedings indefinite, tentative and subject

to reopening at any time by the mere replacement of the counsel. Nonetheless, the gross negligence of counsel alone would not even warrant a deviation from the principle of finality of judgment, for the client must have to show that such negligence resulted in the denial of due process to the client. When the counsel's mistake is so great and so serious that the client is prejudiced and is denied his day in court, or when the counsel is guilty of gross negligence resulting in the client's deprivation of his property without due process of law, the client is not concluded by his counsel's mistakes and the case can be reopened in order to give the client another chance to present his case. As such, the test herein is whether their former counsel's negligence deprived the petitioners of due process of law.

4. ID.; ID.; SIMPLE NEGLIGENCE; FAILURE TO FILE APPELLEE'S BRIEF OR A MOTION FOR RECONSIDERATION, A CASE OF.— For one to properly claim gross negligence on the part of his counsel, he must show that the counsel was guilty of nothing short of a clear abandonment of the client's cause. Considering that the Court has held that the failure to file the appellant's brief can qualify as simple negligence but cannot amount to gross negligence that justifies the annulment of the proceedings, the failure to file an appellee's brief may be similarly treated. The Court has also held that the failure to file a motion for reconsideration only amounted to simple negligence. In *Pasiona v. Court of Appeals,* the Court declared that his counsel's failure to file a motion for reconsideration did not necessarily deny due process to a party who had the opportunity to be heard at some point of the proceedings.

APPEARANCES OF COUNSEL

Salvador T. Sabio for petitioners.
Alberto C.E. Valenzuela, Jr. for respondenrts.

D E C I S I O N

BERSAMIN, *J.*:

The Court will not override the finality and immutability of a judgment based only on the negligence of a party's counsel

in timely taking all the proper recourses from the judgment. To justify an override, the counsel's negligence must not only be gross but must also be shown to have deprived the party the right to due process.

We deny this appeal *via* petition for review on *certiorari* to assail the resolution promulgated on February 13, 2003,[1] whereby the Court of Appeals (CA) rejected the petitioners' motion to recall the entry of judgment.

Antecedents

Respondents Alberto, Gloria, Remedios, and Cesar, all surnamed Valenzuela, are brothers and sisters. They are the co-owners of a parcel of agricultural land designated as Lot No. 970-B and located in Barangay Ayungon, Valladolid, Negros Occidental, containing an aggregate area of 10.0959 hectares. Alberto had been planting sugarcane in the entire property, but poor drainage had led him to abandon his cultivation in 1978 of an .80-hectare portion of the property. Unknown to the respondents, petitioner Rolando Sofio,[2] a son of their tenant in another lot, had obtained permission to farm the abandoned area for free from Socorro Valenzuela, the respondents' mother who was then still managing the property. She had acceded to the request on condition that Rolando would return the portion once the owners needed it.[3] In succeeding years, Alberto had also left other portions of the property uncultivated because of the low price of sugar. Apparently, Rolando had also taken over the vacated portions to plant *palay*. He shared the cultivation with his brother, co-petitioner Rufio Sofio.[4]

In 1985, respondent Gloria learned for the first time that Rolando had been permitted by her mother to cultivate the .80 hectare portion without paying any rentals; and that the petitioners

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[1] *Rollo*, pp. 96-97.

[2] Sometimes spelled as "Sopio."

[3] *Rollo*, pp. 27-28.

[4] *Id.*, p. 28.

had actually expanded their cultivation to a total area of 1.8 hectares. After the petitioners refused her demand for the return of the 1.8 hectares, she lodged a complaint against Rolando with the Barangay Chairman of Ayungon, Valladolid, Negros Occidental, and the Municipal Agrarian Reform Officer (MARO). The parties did not reach an amicable settlement.[5]

On October 14, 1985, the petitioners, along with Wilma Sofio, their sister who had succeeded their father as the tenant of respondents' other property, informed Gloria that, being the identified tenants under Presidential Decree No. 27, they had already paid the rentals on the portions they were cultivating, and that they would be paying subsequent rentals to the Land Bank of the Philippines (LBP).[6]

Gloria replied that, except for the area that Wilma had been cultivating as tenant in lieu of her late father, the petitioners were not tenants of any portion of respondents' lands.[7]

On July 8, 1988, emancipation patents (EPs) were issued to Rolando and Rufio covering their respective areas of tillage.[8]

On October 5, 1990, the respondents brought in the Department of Agrarian Reform Adjudication Board (DARAB) a complaint against the petitioners,[9] seeking the cancellation of the EPs, recovery of possession, and damages, alleging that the petitioners' cultivation of their land had been illegal because they had not consented to it.[10]

On December 18, 1992, Hon. Gil A. Alegario, the Provincial Agrarian Reform Adjudicator (PARAD) of Negros Occidental, ordered the cancellation of petitioners' EPs, decreeing thus:

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[5] *Id.*, pp. 28-29.

[6] *Id.*, p. 29.

[7] *Id.*, pp. 29-30.

[8] *Id.*, p. 30.

[9] *Id.*, pp. 101-106.

[10] *Id.*, p. 30.

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

1. Declaring the Emancipation Patents issued in favor of Rolando Sofio and Rufio Sofio cancelled on account of failure to establish a valid tenancy relationship;

2. Ordering defendants, their agents, representatives and other persons working for and in their behalf to vacate all landholdings occupied by them belonging to the complainants particularly Lot Nos. 970-A and 970-B located at Hda. Lamgam, Brgy. Ayungon, Valladolid, Negros Occidental save for the .80 hectare portion of the landholding situated at Lot No. 970-A, formerly tenanted by Pedro Sopio but is now being occupied by Wilma Sopio;

3. Ordering the defendants to pay the complainants, jointly and severally, 2,880 cavans of *palay* representing rentals in arrears from crop year 1985 to the present or its cash equivalent computed based on the prevailing market price for each year plus 180 cavans of *palay* every harvest until complainants are fully restored to the possession of the landholding;

4. Ordering the defendants to pay the complainants, jointly and severally, the sum of ₱5,000.00 as Attorney's Fees and ₱4,000.00 as actual litigation expenses.

SO ORDERED.[11]

The petitioners appealed.

On September 18, 1996, the DARAB reversed the ruling of the PARAD, and held in favor of the petitioner, as follows:

WHEREFORE, premises considered, the appealed decision is hereby REVERSED and SET ASIDE, thus, Plaintiffs-Appellees are hereby ordered to maintain Defendants-Appellants in the peaceful cultivation and possession of the subject landholdings.

SO ORDERED.[12]

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[11] *Id.*, pp. 116-117.

[12] *Id.*, p. 143.

The DARAB concluded that a tenancy relationship existed between the parties, because the Rice and Corn Land Tenure Survey indicated that Rolando's tenurial right had been established in 1974; that this finding gave rise to a presumption of the existence of a tenancy relationship between the parties even with the absence of certificates of land transfer; that the respondents did not discharge the burden of proof to establish that Rolando had been merely allowed by the respondents' mother to temporarily cultivate the landholding; that there was no reason to cancel Rufio's EPs because none of the grounds for cancellation of EPs was present.[13]

The respondents elevated the DARAB's decision to the CA (C.A.-G.R. SP No. 42330).

On May 27, 1998, the CA granted the petition for review; set aside the DARAB decision; and reinstated the PARAD decision.[14]

The CA decreed that the petitioners did not adduce evidence to prove the existence of a tenancy relationship between them and the respondents; and that the DARAB's reliance on the Rice and Corn Land Tenure Survey was unfounded, to wit:

> xxx This Court however does not find the aforesaid Rice and Corn Land Tenure Survey enough basis to support a finding of landlord-tenant relationship between the parties, the said document being partial in favor of private respondents. As petitioners posit, a perusal of the said survey would reveal that the information contained therein was based solely on the declarations made by private respondent Rolando Sopio.
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> Furthermore, that the Rice and Corn Land Tenure Survey was accomplished only in 1985, *i.e.*, after petitioner Gloria I. Valenzuela had started to protest private respondents' possession of the subject landholdings, should have cautioned the DARAB against blindly

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[13] *Id.,* pp. 141-142.

[14] *Id.*, pp. 26-40 (penned by Associate Justice Fermin A. Martin, Jr., and concurred in by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice) and Associate Justice Teodoro P. Regino (now all retired).

accepting the veracity of the contents thereof. For if as claimed by private respondent Rolando Sopio in said survey that they have been tenants of petitioners' land since 1974, they should have accomplished the Rice and Corn Land Tenure Survey much earlier than November 15, 1985 and should have been issued a Certificate of Land Transfer (CLT) by the Department of Agrarian Reform (DAR) in accordance with PD 266.

The foregoing circumstances thus cannot create a presumption of the existence of a tenancy relationship, more so that no CLTs were issued to private respondents.[15]

The decision of May 27, 1998 became final and executory on October 27, 1998 after the petitioners neither moved for reconsideration nor appealed by *certiorari* to the Court.[16]

The respondents later filed an *ex parte* motion for execution,[17] which the PARAD granted on November 27, 2001. The writ of execution was issued on January 23, 2002.[18]

On February 6, 2002, the petitioners, represented by new counsel, filed in the PARAD a motion for relief from judgment, motion for reconsideration of the order dated November 27, 2001, and motion to recall writ of execution dated January 23, 2002.[19] They alleged therein that they had learned of the May 27, 1998 decision of the CA only on December 11, 2001 through their receipt of the November 27, 2001 order of the PARAD granting the respondents' *ex parte* motion for execution.

On March 19, 2002, the PARAD denied the motion for relief from judgment for lack of merit but deferred action on the other motions. The PARAD held that he had no authority to grant the motion for relief from judgment due to its subject matter being a judgment of the CA, a superior court.[20]

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[15] *Id.*, p. 39.

[16] *Id.*, p. 41.

[17] *Id.*, pp. 215-220.

[18] *Id.*, pp. 221-223.

[19] *Id.*, pp. 224-229.

[20] *Id.*, p. 232.

The petitioners then filed in the CA a motion to recall entry of judgment with motion for leave of court to file a motion for reconsideration.[21]

Finding the negligence of the petitioners' former counsel being matched by their own neglect (of not inquiring about the status of the case from their former counsel and not even taking any action against said counsel for neglecting their case), the CA denied on February 13, 2003 the motion to recall entry of judgment.[22]

The petitioners received a copy of this resolution of February 13, 2003 on March 14, 2003.

Hence, the petitioners appeal by petition for review on *certiorari*.

Issues

The petitioners insist that the CA's denial of their motion to recall entry of judgment denied them fair play, justice, and equity; that pursuant to *Ramos v. Court of Appeals*,[23] a final and executory judgment may be amended under compelling circumstances; and that a compelling circumstance applicable to them was that their former counsel, Atty. Romulo A. Deles, had been guilty of gross negligence for not filing their appellee's brief in the CA, and for not filing a motion for reconsideration against the May 27, 1998 decision of the CA.

In assailing the May 27, 1998 decision, the petitioners contend that: (*a*) the CA ignored the DARAB's findings that they had acquired tenurial rights in 1974 as borne out by the Rice and Corn Land Tenure Survey; and (*b*) the case had been rendered moot and academic by the cancellation of their EPs and their TCTs in favor of LBP. It appears that in 1991, the petitioners mortgaged their landholdings in favor of LBP; that in 1994,

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[21] *Id.*, pp. 45-53.

[22] *Id.*, pp. 96-97.

[23] G.R. No. 42108, May 10, 1995, 244 SCRA 72.

during the pendency of the case before the DARAB, LBP foreclosed the mortgage and purchased the land in the auction sale; that on November 21, 1996, ownership of the landholdings was consolidated in LBP,[24] and a year later, the TCTs in the names of the petitioners were cancelled, and new TCTs were issued in the name of LBP.[25]

The petitioners pray that the resolution of February 13, 2003 by the CA be set aside; that the decision the CA promulgated on May 27, 1998 be reversed; and that the decision of the DARAB be reinstated.

Ruling

The petition for review lacks merit.

I

The Court finds no cause to disturb the decision of the CA promulgated on May 27, 1998; and cannot undo the decision upon the grounds cited by the petitioners, especially as the decision had long become final and executory.

A decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is intended to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[26] This doctrine of finality and immutability of judgments is grounded on fundamental considerations of public policy and sound practice to the effect that, at the risk of occasional error, the judgments of the courts must become final at some definite date set by law.[27] The reason is that litigations must end and terminate

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[24] *Rollo*, pp. 118-125.

[25] *Id.*, pp. 126-133.

[26] *Peña v. Government Service Insurance System (GSIS)*, G.R. No. 159520, September 19, 2006, 502 SCRA 383, 403.

[27] *Bañares II v. Balising*, G.R. No. 132624, March 13, 2000, 328 SCRA 36, 49-50.

sometime and somewhere; and it is essential for the effective and efficient administration of justice that once a judgment has become final the winning party should not be deprived of the fruits of the verdict.

Given this doctrine, courts must guard against any scheme calculated to bring about that result, and must frown upon any attempt to prolong controversies. The only exceptions to the general rule are: (*a*) the correction of clerical errors; (*b*) the so-called *nunc pro tunc* entries that cause no prejudice to any party; (*c*) void judgments; and (*d*) whenever circumstances transpire after the finality of the judgments rendering execution unjust and inequitable.[28] None of the exceptions obtains here.

Ramos v. Court of Appeals,[29] which the petitioners cited to buttress their plea for the grant of their motion to recall entry of judgment, is not pertinent. There, the Court allowed a clarification through a *nunc pro tunc* amendment of what was actually affirmed through the assailed judgment "as a logical follow through of the express or intended operational terms" of the judgment.

In this regard, we stress that a judgment *nunc pro tunc* has been defined and characterized thuswise:

> The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is **one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was**, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been. (*Wilmerding vs. Corbin Banking Co.*, 28 South., 640, 641; 126 Ala., 268.)[30]

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[28] *Union Bank of the Philippines v. Pacific Equipment Corporation*, G.R. No. 172053, October 6, 2008, 567 SCRA 573, 581.

[29] G.R. No. 42108, May 10, 1995, 244 SCRA 72.

[30] *Briones-Vasquez v. Court of Appeals*, G.R. No. 144882, February 4, 2005, 450 SCRA 482, 492; citing *Lichauco v. Tan Pho*, 51 Phil. 862, 879-881 (1923).

Based on such definition and characterization, the petitioners' situation did not fall within the scope of a *nunc pro tunc* amendment, considering that what they were seeking was not mere clarification, but the complete reversal *in their favor* of the final judgment and the reinstatement of the DARAB decision.

II

The petitioners claim that their former counsel was guilty of gross negligence for letting the CA decision lapse into finality by not filing a motion for reconsideration or by not appealing in due course to the Court.

Although the petitioners' former counsel was blameworthy for the track their case had taken, there is no question that any act performed by the counsel within the scope of his general or implied authority is still regarded as an act of the client. In view of this, even the negligence of the former counsel should bind them as his clients.[31] To hold otherwise would result to the untenable situation in which every defeated party, in order to salvage his cause, would simply claim neglect or mistake on the part of his counsel as a ground for reversing the adverse judgment. There would then be no end to litigation, for every shortcoming of the counsel could become the subject of challenge by his client through another counsel who, if he should also be found wanting, would similarly be disowned by the same client through yet another counsel, and so on *ad infinitum*.[32] This chain of laying blame could render court proceedings indefinite, tentative and subject to reopening at any time by the mere replacement of the counsel.[33]

Nonetheless, the gross negligence of counsel alone would not even warrant a deviation from the principle of finality of

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[31] *Multi-Trans Agency Phils. Inc. v. Oriental Assurance Corp.*, G.R. No. 180817, June 23, 2009, 590 SCRA 675, 689-690.

[32] *Camitan v. Fidelity Investment Corporation*, G.R. No. 163684, April 16, 2008, 551 SCRA 540.

[33] *Juani v. Alarcon*, G.R. No. 166849, September 5, 2006, 501 SCRA 135, 154.

judgment, for the client must have to show that such negligence resulted in the denial of due process to the client.[34] When the counsel's mistake is so great and so serious that the client is prejudiced and is denied his day in court, or when the counsel is guilty of gross negligence resulting in the client's deprivation of his property without due process of law, the client is not concluded by his counsel's mistakes and the case can be reopened in order to give the client another chance to present his case.[35] As such, the test herein is whether their former counsel's negligence deprived the petitioners of due process of law.

For one to properly claim gross negligence on the part of his counsel, he must show that the counsel was guilty of nothing short of a clear abandonment of the client's cause. Considering that the Court has held that the failure to file the appellant's brief can qualify as simple negligence but cannot amount to gross negligence that justifies the annulment of the proceedings,[36] the failure to file an appellee's brief may be similarly treated.

The Court has also held that the failure to file a motion for reconsideration only amounted to simple negligence.[37] In *Pasiona v. Court of Appeals*,[38] the Court declared that his counsel's failure to file a motion for reconsideration did not necessarily deny due process to a party who had the opportunity to be heard at some point of the proceedings. The Court said:

> In a number of cases wherein the factual milieu confronted by the aggrieved party was much graver than the one being faced by herein petitioner, the Court struck down the argument that the aggrieved parties were denied due process of law because they had the opportunity to be heard at some point of the proceedings even

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[34] *Pasiona, Jr. v. Court of Appeals*, G.R. No. 165471, July 21, 2008, 559 SCRA 137, 147.

[35] *Juani v. Alarcon, supra*, note 33.

[36] *Redeña v. Court of Appeals*, G.R. No. 146611, February 6, 2007, 514 SCRA 389, 402.

[37] *Supra*, note 34.

[38] *Id*.

if they had not been able to fully exhaust all the remedies available by reason of their counsel's negligence or mistake. Thus, in *Dela Cruz v. Andres*, the Court held that "where a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the essence of due process." In the earlier case of *Producers Bank of the Philippines v. Court of Appeals,* the decision of the trial court attained finality by reason of counsel's failure to timely file a notice of appeal but the Court still ruled that such negligence did not deprive petitioner of due process of law. As elucidated by the Court in said case, to wit:

> "**The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense.** xxx *Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process*."
>
> Verily, **so long as a party is given the opportunity to advocate her cause or defend her interest in due course, it cannot be said that there was denial of due process**. x x x (Emphasis supplied)
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> Also, in *Victory Liner, Inc. v. Gammad*, the Court held that:
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> **The question is not whether petitioner succeeded in defending its rights and interests, but simply, whether it had the opportunity to present its side of the controversy.** Verily, as petitioner retained the services of counsel of its choice, it should, as far as this suit is concerned, bear the consequences of its choice of a faulty option. xxx (Emphasis supplied)

Here, the petitioners were able to participate in the proceedings before the PARAD and the DARAB, and, in fact, obtained a favorable judgment from the DARAB. They also had a similar opportunity to ventilate their cause in the CA. That they had not been able to avail themselves of all the remedies open to them did not give them the justification to complain of a denial of due process. They could not complain because they were given the opportunity to defend their interest in due course, for

it was such opportunity to be heard that was the essence of due process.[39]

Moreover, the petitioners themselves were guilty of being negligent for not monitoring the developments in their case. They learned about the adverse CA decision on December 11, 2001, more than two years after the decision had become final and executory. Had they vigilantly monitored their case, they themselves would have sooner discovered the adverse decision and avoided their plight. It was the petitioners' duty, as the clients, to have kept in constant touch with their former counsel if only to keep themselves abreast of the status and progress of their case. They could not idly sit back, relax and await the outcome of the case.[40] Such neglect on their part fortifies our stance that they should suffer the consequence of their former counsel's negligence. Indeed, every litigant is expected to act with prudence and diligence in prosecuting or defending his cause. Pleading a denial of due process will not earn for the negligent litigant the sympathy of the Court.

The other issues the petitioners raised relate to matters that the CA decision already settled. Considering and passing upon such issues again would undo the finality and immutability of the decision.

WHEREFORE, the Court **DENIES** the petition for review; and **AFFIRMS** the resolution promulgated on February 13, 2003.

The petitioners shall pay the costs of suit.

SO ORDERED.

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

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[39] *KLT Fruits Inc. v. WSR Fruits, Inc.*, G.R. No. 174219, November 23, 2007, 538 SCRA 713, 732.

[40] *GCP-Manny Transport Services, Inc. v. Principe*, G.R. No. 141484, November 11, 2005, 474 SCRA 555, 563-564.

FIRST DIVISION

[G.R. No. 161771. February 15, 2012]

BANK OF THE PHILIPPINE ISLANDS, as successor-in-interest of Far East Bank and Trust Company, *petitioner, vs.* **EDUARDO HONG, doing business under the name and style "SUPER LINE PRINTING PRESS" and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; THE STATUTE IN FORCE AT THE TIME OF THE COMMENCEMENT OF THE ACTION DETERMINES THE JURISDICTION OF THE COURT.— Jurisdiction is defined as the power and authority of a court to hear and decide a case. A court's jurisdiction over the subject matter of the action is conferred only by the Constitution or by statute. The nature of an action and the subject matter thereof, as well as which court or agency of the government has jurisdiction over the same, are determined by the material allegations of the complaint in relation to the law involved and the character of the reliefs prayed for, whether or not the complainant/plaintiff is entitled to any or all of such reliefs. And jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.

2. ID.; ID.; INJUNCTION; AN ACTION FOR INJUNCTION HAS AN INDEPENDENT EXISTENCE, AND IS DISTINCT FROM THE ANCILLARY REMEDY OF PRELIMINARY INJUNCTION.— An action for injunction is a suit which has for its purpose the enjoinment of the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his compulsion to continue performance of a particular act. It has an independent existence, and is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as a part or an incident of an independent action or proceeding. In an action for injunction, the auxiliary remedy of preliminary injunction, prohibitory or mandatory,

may issue. As a rule, actions for injunction and damages lie within the jurisdiction of the RTC pursuant to Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," as amended by Republic Act (R.A.) No. 7691.

3. MERCANTILE LAW; CORPORATION LAW; REPUBLIC ACT NO. 8799; TRANSFERRED TO THE APPROPRIATE REGIONAL TRIAL COURTS THE EXERCISE OF JURISDICTION OF CASES FORMERLY COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION.— Sec. 6 (a) of P.D. No. 902-A empowered the SEC to "issue preliminary or permanent injunctions, whether prohibitory or mandatory, in all cases in which it has jurisdiction." x x x Previously, under the Rules of Procedure on Corporate Recovery, the SEC upon termination of cases involving petitions for suspension of payments or rehabilitation may, *motu proprio*, or on motion by any interested party, or on the basis of the findings and recommendation of the Management Committee that the continuance in business of the debtor is no longer feasible or profitable, or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of the debtor and the liquidation of its remaining assets appointing a Liquidator for the purpose. The debtor's properties are then deemed to have been conveyed to the Liquidator in trust for the benefit of creditors, stockholders and other persons in interest. This notwithstanding, any lien or preference to any property shall be recognized by the Liquidator in favor of the security or lienholder, to the extent allowed by law, in the implementation of the liquidation plan. However, R.A. No. 8799, which took effect on August 8, 2000, transferred to the appropriate regional trial courts the SEC's jurisdiction over those cases enumerated in Sec. 5 of P.D. No. 902-A. x x x Upon the effectivity of R.A. No. 8799, SEC Case No. 09-97-5764 was no longer pending. The SEC finally disposed of said case when it rendered on September 14, 1999 the decision disapproving the petition for suspension of payments, terminating the proposed rehabilitation plan, and ordering the dissolution and liquidation of the petitioning corporation. With the enactment of the new law, jurisdiction over the liquidation proceedings ordered in SEC Case No. 09-97-5764 was transferred to the RTC branch

designated by the Supreme Court to exercise jurisdiction over cases formerly cognizable by the SEC.

4. REMEDIAL LAW; CIVIL PROCEDURE; INJUNCTION; THE JURISDICTION OVER THE INJUNCTION SUIT IS VALIDLY EXERCISED IN CASE AT BAR.— There is no showing in the records that SEC Case No. 09-97-5764 had been transferred to the appropriate RTC designated as Special Commercial Court at the time of the commencement of the injunction suit on December 18, 2000. Given the urgency of the situation and the proximity of the scheduled public auction of the mortgaged properties as per the Notice of Sheriff's Sale, respondent was constrained to seek relief from the same court having jurisdiction over the foreclosure proceedings – RTC of Valenzuela City. Respondent thus filed Civil Case No. 349-V-00 in the RTC of Valenzuela City on December 18, 2000 questioning the validity of and enjoining the extrajudicial foreclosure initiated by petitioner. Pursuant to its original jurisdiction over suits for injunction and damages, the RTC of Valenzuela City, Branch 75 properly took cognizance of the injunction case filed by the respondent. No reversible error was therefore committed by the CA when it ruled that the RTC of Valenzuela City, Branch 75 had jurisdiction to hear and decide respondent's complaint for injunction and damages.

APPEARANCES OF COUNSEL

Benedicto Versoza Gealogo & Burkley Law Offices for petitioner.

Noel Olivere E. Punzalan for private respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* under Rule 45 assails the Decision[1] dated September 27, 2002 and Resolution[2] dated

[1] *Rollo*, pp. 18-23. Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Elvi John S. Asuncion and Juan Q. Enriquez, Jr., concurring.

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

January 12, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 64166.

On September 16, 1997, the EYCO Group of Companies ("EYCO") filed a petition for suspension of payments and rehabilitation before the Securities and Exchange Commission (SEC), docketed as SEC Case No. 09-97-5764. A stay order was issued on September 19, 1997 enjoining the disposition in any manner except in the ordinary course of business and payment outside of legitimate business expenses during the pendency of the proceedings, and suspending all actions, claims and proceedings against EYCO until further orders from the SEC.[3] On December 18, 1998, the hearing panel approved the proposed rehabilitation plan prepared by EYCO despite the recommendation of the management committee for the adoption of the rehabilitation plan prepared and submitted by the steering committee of the Consortium of Creditor Banks which appealed the order to the Commission.[4] On September 14, 1999, the SEC rendered its decision disapproving the petition for suspension of payments, terminating EYCO's proposed rehabilitation plan and ordering the dissolution and liquidation of the petitioning corporation. The case was remanded to the hearing panel for liquidation proceedings.[5] On appeal by EYCO, (CA-G.R. SP No. 55208) the CA upheld the SEC ruling. EYCO then filed a petition for *certiorari* before this Court, docketed as G.R. No. 145977,which case was eventually dismissed under Resolution dated May 3, 2005 upon joint manifestation and motion to dismiss filed by the parties.[6] Said resolution had become final and executory on June 16, 2005.[7]

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[3] Records, Vol. I, pp. 2, 14-16; See also *Clarion Printing House, Inc. v. National Labor Relations Commission*, G.R. No. 148372, June 27, 2005, 461 SCRA 272, 276-278.

[4] *Id.* at 19-29, 34.

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

[6] *Rollo* (G.R. No. 145977), pp. 335-354.

[7] *Id.* at 366.

Sometime in November 2000 while the case was still pending with the CA, petitioner Bank of the Philippine Islands (BPI), filed with the Office of the Clerk of Court, Regional Trial Court of Valenzuela City, a petition for extra-judicial foreclosure of real properties mortgaged to it by Eyco Properties, Inc. and Blue Star Mahogany, Inc. Public auction of the mortgaged properties was scheduled on December 19, 2000.[8]

Claiming that the foreclosure proceedings initiated by petitioner was illegal, respondent Eduardo Hong, an unsecured creditor of Nikon Industrial Corporation, one of the companies of EYCO, filed an action for injunction and damages against the petitioner in the same court (RTC of Valenzuela City). On its principal cause of action, the complaint alleged that:

18. The *ex-officio* sheriff has no authority to sell the mortgaged properties. Upon his appointment as liquidator, Edgardo Tarriela was empowered by the SEC to receive and preserve all assets, and cause their valuation (SEC Rules on Corporate Recovery, Rule VI, Section 6-4). Therefore, the SEC retains jurisdiction over the mortgaged properties of EYCO Properties, Inc. To allow the *ex-officio* sheriff to take possession of the mortgaged properties and sell the same in a foreclosure sale would be in derogation of said jurisdiction.

19. All the assets of the EYCO Group should thus be surrendered for collation to the liquidator and all claims against the EYCO Group should be filed with the liquidator in the liquidation proceedings with the SEC. **The SEC, at which the liquidation is pending, has jurisdiction over the mortgaged properties to the exclusion of any other court.** Consequently, the *ex-officio* sheriff has absolutely no jurisdiction to issue the notice of sheriff's sale and to sell the mortgaged properties on 19 December 2000.

20. Moreover, the sale of the mortgaged properties on 19 December 2000 would give undue preference to defendant FEBTC to the detriment of other creditors, particularly plaintiff. This was specifically proscribed by the Supreme Court stating in the case of Bank of the Philippine Islands v. Court of Appeals that whenever a

[8] Records, Vol. I, pp. 72-74.

distressed corporation asks SEC for rehabilitation and suspension of payments, preferred creditors may no longer assert such preference, but shall stand on equal footing with other creditors. Consequently, **foreclosure should be disallowed so as not to prejudice other creditors or cause discrimination among them.**[9] (Emphasis supplied.)

After hearing, the trial court issued a temporary restraining order (TRO). Petitioner filed a motion to dismiss[10] arguing that by plaintiff's own allegations in the complaint, jurisdiction over the reliefs prayed for belongs to the SEC, and that plaintiff is actually resorting to forum shopping since he has filed a claim with the SEC and the designated Liquidator in the ongoing liquidation of the EYCO Group of Companies. In his Opposition,[11] plaintiff (respondent) asserted that the RTC has jurisdiction on the issue of propriety and validity of the foreclosure by petitioner, in accordance with Section 1, Rule 4 of the 1997 Rules of Civil Procedure, as amended, the suit being in the nature of a real action.

On January 17, 2001, the trial court denied the motion to dismiss.[12] Petitioner's motion for reconsideration was likewise denied.[13] Petitioner challenged the validity of the trial court's ruling before the CA *via* a petition for *certiorari* under Rule 65.

The CA affirmed the trial court's denial of petitioner's motion to dismiss. It held that questions relating to the validity or legality of the foreclosure proceedings, including an action to enjoin the same, must necessarily be cognizable by the RTC, notwithstanding that the SEC likewise possesses the power to issue injunction in all cases in which it has jurisdiction as provided in Sec. 6 (a) of Presidential Decree (P.D.) No. 902-A. Further, the CA stated that an action for foreclosure of mortgage and all

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

[10] *Id.* at 109-114.

[11] *Id.* at 116-119.

[12] *Id.* at 123.

[13] *Id.* at 135.

incidents relative thereto including its validity or invalidity is within the jurisdiction of the RTC and is not among those cases over which the SEC exercises exclusive and original jurisdiction under Sec. 5 of P.D. No. 902-A. Consequently, no grave abuse of discretion was committed by the trial court in issuing the assailed orders.

With the CA's denial of its motion for reconsideration, petitioner is now before this Court raising the sole issue of whether the RTC can take cognizance of the injunction suit despite the pendency of SEC Case No. 09-97-5764.

The petition has no merit.

Jurisdiction is defined as the power and authority of a court to hear and decide a case.[14] A court's jurisdiction over the subject matter of the action is conferred only by the Constitution or by statute.[15] The nature of an action and the subject matter thereof, as well as which court or agency of the government has jurisdiction over the same, are determined by the material allegations of the complaint in relation to the law involved and the character of the reliefs prayed for, whether or not the complainant/plaintiff is entitled to any or all of such reliefs.[16] And jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court.[17]

Perusal of the complaint reveals that respondent does not ask the trial court to rule on its interest or claim — as an unsecured creditor of two companies under EYCO — against the latter's

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[14] *Asia International Auctioneers, Inc. v. Parayno, Jr.*, G.R. No. 163445, December 18, 2007, 540 SCRA 536, 546.

[15] *Sevilleno v. Carilo*, G.R. No. 146454, September 14, 2007, 533 SCRA 385, 388.

[16] *Del Valle, Jr. v. Dy*, G.R. No. 170977, April 16, 2009, 585 SCRA 355, 364, citing *Villamaria, Jr. v. Court of Appeals*, G.R. No. 165881, April 19, 2006, 487 SCRA 571, 589.

[17] *Llamas v. Court of Appeals*, G.R. No. 149588, September 29, 2009, 601 SCRA 228, 233.

properties mortgaged to petitioner. The complaint principally seeks to enjoin the foreclosure proceedings initiated by petitioner over those properties on the ground that such properties are held in trust and placed under the jurisdiction of the appointed Liquidator in SEC Case No. 09-97-5764. Thus, Civil Case No. 349-V-00 is one for injunction with prayer for damages.

An action for injunction is a suit which has for its purpose the enjoinment of the defendant, perpetually or for a particular time, from the commission or continuance of a specific act, or his compulsion to continue performance of a particular act. It has an independent existence, and is distinct from the ancillary remedy of preliminary injunction which cannot exist except only as a part or an incident of an independent action or proceeding. In an action for injunction, the auxiliary remedy of preliminary injunction, prohibitory or mandatory, may issue.[18]

As a rule, actions for injunction and damages lie within the jurisdiction of the RTC pursuant to Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," as amended by Republic Act (R.A.) No. 7691.

Sec. 19. *Jurisdiction in civil cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigations is incapable of pecuniary estimation;

x x x x x x x x x

(6) *In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising x x x judicial or quasi-judicial functions*;

x x x x x x x x x

(8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds Three

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[18] *Subic Bay Metropolitan Authority v. Rodriguez*, G.R. No. 160270, April 23, 2010, 619 SCRA 176, 188, citing *Manila Banking Corporation v. Court of Appeals*, G.R. No. 45961, July 3, 1990, 187 SCRA 138, 144-145.

hundred thousand pesos (₱300,000.00) or, in such other cases in Metro Manila, where the demand exclusive of the above-mentioned items exceeds Four hundred thousand pesos (₱400,000.00). (Italics supplied.)

On the other hand, Sec. 6 (a) of P.D. No. 902-A empowered the SEC to "issue preliminary or permanent injunctions, whether prohibitory or mandatory, in all cases in which it has jurisdiction." Such cases in which the SEC exercises original and exclusive jurisdiction are the following:

(a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

(b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and

(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.[19]

Previously, under the Rules of Procedure on Corporate Recovery, the SEC upon termination of cases involving petitions for suspension of payments or rehabilitation may, *motu proprio*, or on motion by any interested party, or on the basis of the findings and recommendation of the Management Committee that the continuance in business of the debtor is no longer feasible or profitable, or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of the debtor and the liquidation of its remaining assets appointing a Liquidator for the purpose.[20] The

[19] Sec. 5, P.D. No. 902-A.

[20] Sec. 6-1, Rule VI.

debtor's properties are then deemed to have been conveyed to the Liquidator in trust for the benefit of creditors, stockholders and other persons in interest. This notwithstanding, any lien or preference to any property shall be recognized by the Liquidator in favor of the security or lienholder, to the extent allowed by law, in the implementation of the liquidation plan.[21]

However, R.A. No. 8799, which took effect on August 8, 2000, transferred to the appropriate regional trial courts the SEC's jurisdiction over those cases enumerated in Sec. 5 of P.D. No. 902-A. Section 5.2 of R.A. No. 8799 provides:

> SEC. 5.2 The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. **The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.** (Emphasis supplied.)

Upon the effectivity of R.A. No. 8799, SEC Case No. 09-97-5764 was no longer pending. The SEC finally disposed of said case when it rendered on September 14, 1999 the decision disapproving the petition for suspension of payments, terminating the proposed rehabilitation plan, and ordering the dissolution and liquidation of the petitioning corporation. With the enactment of the new law, jurisdiction over the liquidation proceedings ordered in SEC Case No. 09-97-5764 was transferred to the RTC branch designated by the Supreme Court to exercise jurisdiction over cases formerly cognizable by the SEC. As this Court held in *Consuelo Metal Corporation v. Planters Development Bank*:[22]

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[21] Sec. 6-2, *id.*

[22] G.R. No. 152580, June 26, 2008, 555 SCRA 465.

The SEC assumed jurisdiction over CMC's petition for suspension of payment and issued a suspension order on 2 April 1996 after it found CMC's petition to be sufficient in form and substance. While CMC's petition was still pending with the SEC as of 30 June 2000, it was finally disposed of on 29 November 2000 when the SEC issued its Omnibus Order directing the dissolution of CMC and the transfer of the liquidation proceedings before the appropriate trial court. **The SEC finally disposed of CMC's petition for suspension of payment when it determined that CMC could no longer be successfully rehabilitated.**

However, the SEC's jurisdiction does not extend to the liquidation of a corporation. **While the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts.** This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that "the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which this case shall be transferred." This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences.[23] (Emphasis supplied.)

There is no showing in the records that SEC Case No. 09-97-5764 had been transferred to the appropriate RTC designated as Special Commercial Court at the time of the commencement of the injunction suit on December 18, 2000. Given the urgency of the situation and the proximity of the scheduled public auction of the mortgaged properties as per the Notice of Sheriff's Sale, respondent was constrained to seek relief from the same court having jurisdiction over the foreclosure proceedings – RTC of Valenzuela City. Respondent thus filed Civil Case No. 349-V-00 in the RTC of Valenzuela City on December 18, 2000 questioning the validity of and enjoining the extrajudicial foreclosure initiated by petitioner. Pursuant to its original jurisdiction over

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[23] *Id.* at 473-474.

suits for injunction and damages, the RTC of Valenzuela City, Branch 75 properly took cognizance of the injunction case filed by the respondent. No reversible error was therefore committed by the CA when it ruled that the RTC of Valenzuela City, Branch 75 had jurisdiction to hear and decide respondent's complaint for injunction and damages.

Lastly, it may be mentioned that while the Consortium of Creditor Banks had agreed to end their opposition to the liquidation proceedings upon the execution of the Agreement[24] dated February 10, 2003, on the basis of which the parties moved for the dismissal of G.R. No. 145977, it is to be noted that petitioner is not a party to the said agreement. Thus, even assuming that the SEC retained jurisdiction over SEC Case No. 09-97-5764, petitioner was not bound by the terms and conditions of the Agreement relative to the foreclosure of those mortgaged properties belonging to EYCO and/or other accommodation mortgagors.

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated September 27, 2002 and Resolution dated January 12, 2004 of the Court of Appeals in CA-G.R. SP No. 64166 are **AFFIRMED**.

With costs against the petitioner.

SO ORDERED.

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

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[24] *Rollo* (G.R. No. 145977), pp. 338-349.

FIRST DIVISION

[G.R. No. 173128. February 15, 2012]

MARITIME INDUSTRY AUTHORITY (MARINA) and/or ATTY. OSCAR M. SEVILLA, *petitioners, vs.* **MARC PROPERTIES CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENTS, EXPLAINED; GENUINE ISSUE, DEFINED.— Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays where the pleadings on file show that there are no genuine issues of fact to be tried. A "genuine issue" is such issue of fact which require the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. There can be no summary judgment where questions of fact are in issue or where material allegations of the pleadings are in dispute. A party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant.

2. ID.; ID.; ID.; CANNOT TAKE THE PLACE OF TRIAL WHEN THE FACTS AS PLEADED BY THE PARTIES ARE DISPUTED OR CONTESTED; CASE AT BAR.— [T]rial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial. x x x [T]he burden of demonstrating clearly the absence of genuine issues of fact rests upon the movant, in this case the respondent, and not upon petitioners who opposed the motion for summary judgment. Any doubt as to the propriety of the rendition of a summary judgment must thus be resolved against the respondent. But here, the partial summary judgment was premised merely on the trial court's

> hasty conclusion that respondent is entitled to the reimbursement sought simply because petitioners failed to point out what particular works were not done or implemented not in accordance with MARINA's specifications after demands were made by respondent and the filing of the complaint in court. Precisely, a trial is conducted after the issues have been joined to enable herein respondent to prove, *first*, that repair/ renovation works were actually done and such were in accordance with MARINA's request, and *second*, that it actually advanced the cost thereof by paying the contractors; and more importantly, to provide opportunity for the petitioners to scrutinize respondent's evidence, cross-examine its witnesses and present rebuttal evidence. Moreover, the trial court should have been more circumspect in ruling on the motion for summary judgment, taking into account petitioners' concern for judicious expenditure of public funds in settling its liabilities to respondent.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Antonio R. Atienza for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 which seeks to reverse the Decision[1] dated June 2, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 80967. The CA dismissed petitioners' appeal questioning the summary judgment rendered by the trial court which ordered petitioner to reimburse the expenses incurred by the respondent for repair/renovation works on its building.

The factual antecedents:

On October 23, 2001, petitioner Maritime Industry Authority (MARINA), a government agency represented by then

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[1] *Rollo*, pp. 36-44. Penned by Associate Justice Andres B. Reyes, Jr. (now Presiding Justice) with Associate Justices Regalado E. Maambong and Monina Arevalo-Zenarosa, concurring.

Administrator and concurrently Vice-Chairman of the Board of Directors Oscar M. Sevilla, entered into a Contract of Lease[2] with respondent Marc Properties Corporation represented by its Executive Vice-President Ericson M. Marquez. It was agreed that the MARINA offices will be transferred from PPL Building, Taft Avenue, Manila to an eight-storey commercial building (MARC Building) and Condominium Unit 5 of MARC 2000 Tower which are both owned by respondent. The parties fixed the monthly rental at ₱1,263,607.74 (plus VAT) from January 1, 2002 up to December 31, 2002 and renewable for the same one-year period. The Contract of Lease also contained the following provisions:

Article II

x x x x x x x x x

Section 2.01 - The LESSEE, at its own expense, shall have the right and authority to alter, renovate and introduce in the leased premises such improvement as it may deem appropriate to render the place suitable for the purpose intended by the LESSEE, provided, that such alteration, renovation and construction of additional improvement will not cause any damage to the buildings and such improvements shall be in accordance with the LESSOR's House Rules & Regulations. The renovation of existing electrical, sanitary/ plumbing works, sprinkler systems, mechanical works, exhaust and ventilation systems, doors, will be referred to the Administration Office of the LESSOR and will be done only by the original contractors of the system and cost will be for the account of the LESSEE. Alternatively, the LESSEE may be allowed to use its own contractor but subject to close supervision and approval of all works done by the original contractors of the system and/or the Building Administration. This is to safeguard the original design intent of the Buildings.

Article IX

Section 9.00 - The LESSEE may pre-terminate the term of this Contract of Lease by notifying the LESSOR in writing at least ninety (90) days prior to LESSEE'S vacating the premises, provided further

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[2] Records, pp. 122-129.

that the LESSEE shall pay to the LESSOR a penalty equivalent to two (2) months rental.

Article XI

x x x x x x x x x

Section 11.13 - This Contract of Lease is subject to the approval of the Board of Directors of the Maritime Industry Authority and the Office of the President and shall become binding on both parties only after its approval by the above-mentioned government offices. The LESSEE shall provide the LESSOR the written approval of both offices.[3]

On December 14, 2001, respondent received a letter from Administrator Sevilla requesting for rescission of their Contract of Lease for the reason that the MARINA Board of Directors during its 158th Regular Meeting resolved to deny the proposed transfer of the MARINA office from its present address to respondent's building.[4] In its letter-reply dated December 17, 2001, respondent expressed disappointment and enumerated those facts and circumstances for which respondent believes that the Board's decision was unreasonable. Respondent asserted that if the Board will not reconsider its decision, MARINA must take responsibility for the cost already incurred by respondent as damages and lost rental opportunity. Thus, respondent said it can only accept the request for rescission upon reimbursement of ₱1,055,000.00 representing the amount advanced by respondent and paid to its Contractors and payment of penalty equivalent to 2 months rental or ₱2,527,215.48 in accordance with Art. IX, Sec. 9.00 of the Contract of Lease. With no immediate response from petitioners, respondent again wrote Administrator Sevilla reiterating its position on the matter.[5]

In their letter-reply dated January 23, 2002, petitioners asserted that MARINA is not liable to pay the penalty considering that

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[3] *Id.* at 123, 126 & 128.

[4] *Id.* at 130.

[5] *Id.* at 195-197.

the Contract of Lease clearly provides that it is subject to the approval of the Board and the Office of the President (OP) to become binding on the parties. As to the actual amount expended for "carpentry and electrical works" done on the building, petitioners requested to "be furnished with copies of the official receipts" so that it may be "properly guided in the disposition thereof." In compliance, respondent furnished petitioners with copies of the letter and accomplishment reports/official receipts submitted by its contractors. Respondent's counsel faulted Administrator Sevilla for not submitting the Contract of Lease to the Board of Directors notwithstanding the fact that respondent had filed a motion for reconsideration of the Board's decision, a clear breach of petitioners' contractual obligation which entitles respondent to the penalty and damages sought. Petitioners asserted that MARINA is not liable for penalty and damages since the Contract of Lease was not perfected; however, Administrator Sevilla reiterated MARINA's commitment "to pay actual expenses incurred for the works done on the premises based on [MARINA's] request." Petitioners likewise furnished respondent with copies of the Agenda of the 160th Regular Meeting of the MARINA Board of Directors held on June 28, 2002 and Secretary's Certificate dated July 1, 2002 stating the resolution of the MARINA Board not to approve/ratify the Contract of Lease.[6]

On July 10, 2002, respondent instituted Civil Case No. 02-104015 in the Regional Trial Court of Manila (Branch 42) against petitioners MARINA and/or Atty. Oscar M. Sevilla. The Complaint alleged the following:

x x x x x x x x x

2. In or about the first week of August 2001 the herein [defendant] Atty. Oscar M. Sevilla, as MARINA Administrator, represented to Mr. Ericson M. Marquez, Executive Vice-President of herein [plaintiff] MARC, that the MARINA has decided to terminate its lease on the 4th, 5th and 6th floors of the PPL Building and to transfer

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[6] *Id.* at 198-207, 212-222.

said principal office to a new location; to this end, he negotiated for the lease to MARINA of the entire 8-storey Marc Building, located at 1971 Taft Avenue, Malate, Manila, and Unit #5 of the adjacent Marc 2000 Tower, both of which belong to herein plaintiff MARC.

3. After about three (3) months of negotiations and after the terms and conditions of the lease of said properties of herein plaintiff were ironed out with the understanding that these were with the prior knowledge and consent of the MARINA, a Contract of Lease on said 8-storey MARC Building and Unit #5 of the Marc 2000 Tower was executed and signed x x x.

> 3.a. As a corollary to said contract, herein defendant Atty. Oscar M. Sevilla wrote a letter, dated October 30, 2001, addressed to Mr. Emilio C. Yap, informing the latter that "Pursuant to Section 4 of the Contract of Lease for the Fourth, Fifth and Sixth floors of the PPL Bldg., which floors we are presently occupying, we regret to inform you that MARINA is not renewing said Lease Contract beginning January 2002.

4. To prepare for the occupancy on January 1, 2002 of the leased properties, herein *defendants requested that alterations/ renovations be made on plaintiff's MARC Building for the account and at the expense of the MARINA, in accordance with plans prepared and provided by Mr. Roberto C. Arceo, Administrative and Finance Director of MARINA*; and, pursuant to said request *alterations/renovations started on December 5, 2001 and was done by the lowest bidders*, JTV Construction Group, Inc., for civil works/renovations, and NCC Communication Networks, for wiring and cable installation, *for which MARC advanced/paid the sum of ₱1,555,170.40*.

5. The said Contract of Lease of the MARINA with MARC stipulated in Sec. 11.13 of Article XI thereof that said contract "is subject to the approval of the Board of Directors of the MARINA and the Office of the President of the Philippines and shall become binding on both parties after its approval by the afore-mentioned government offices", which stipulation, therefore, *carries with it the obligation on the part of the MARINA Administrator, Atty. Oscar M. Sevilla, to submit the said contract to the said Board for approval or disapproval*; *however, in breach of said stipulation,* he did not do so.

5.a. On the contrary, in a letter addressed to Mr. Ericson Marquez, dated December 14, 2001, the MARINA Administrator, Atty. Oscar M. Sevilla, requested the rescission of the said Contract of Lease and, as justification, he falsely asserted, that "during yesterday's 158th Regular Meeting of the MARINA Board held at the MARINA Conference Room, the Board resolved to DENY the proposed transfer of the MARINA from its present address to your owned building," when in truth and in fact, *neither the said transfer nor the said Contract of Lease was included in the agenda or taken up during the said 158th Regular Meeting held on December 13, 2001*.

5.b. Neither was said Contract of Lease taken up in said Board's next regular meeting held on February 21, 2002 notwithstanding the fact that MARC filed a Motion for Reconsideration, dated February 14, 2002, which provided the MARINA Administrator with another opportunity to submit the said contract to the MARINA Board for its consideration; yet, he again did not do so.

6. The breach on the part of the defendants of the stipulation clearly provided in the said Contract of Lease, alleged in paragraph 5 hereof, resulted in damages to the plaintiff which may be compensated with the sum of ₱2,527,215.48 equivalent to two (2) months rental, — the measure of damages provided for in said contract.

x x x x x x x x x[7] (Italics supplied.)

Petitioners through the Solicitor General filed their Answer[8] specifically denying the foregoing allegations. Petitioners argued that respondent's demand for ₱2,527,215.48 is based solely on Art. V, Sec. 5.0 of the Contract of Lease, which provision presupposes the approval of the contract which is subject to the suspensive condition provided in Art. XI, Sec. 11.13. Petitioners contended that by claiming that there was no reason to reject the Contract of Lease considering the "clear advantages" of approving the same, respondent is effectively imposing its

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

[8] *Id.* at 40-52.

judgment on the Board of Directors and the OP; this simply cannot be done. Petitioners pointed out that the approval or rejection of the contract is a prerogative lodged solely on the said authorities and respondent is devoid of any authority to question the wisdom of the Board's rejection of the contract as obviously there were other considerations — to which respondent is not privy — factored in by the Board in its decision. Lastly, petitioners asserted that this being a suit against the State, it must be dismissed outright as there was no allegation in the complaint that the State had given its consent to be sued in this case.

Respondent filed a motion for summary judgment in its favor contending that there is no genuine issue in this case as to any material fact even as to the amount of damages. Petitioners filed their opposition alleging the existence of genuine factual issues which can only be resolved in a full-blown trial on the merits.

On March 5, 2003, the trial court issued an Order[9] granting in part the motion for summary judgment. Citing petitioners' admission in the Answer that Administrator Sevilla, "as an act of good faith", offered in behalf of MARINA to shoulder the actual expenses incurred for the works done on the premises based on their request, as well as the other proofs/official receipts submitted by respondent and the January 23, 2002, May 13, 2002 and July 1, 2002 letters of Administrator Sevilla who promised or at least gave the impression that respondent will be reimbursed by MARINA of the amount of ₱1,555,170.40, the trial court ruled that summary judgment for the said claim is proper. Accordingly, the trial court ordered:

> WHEREFORE, in view of all the foregoing, the motion for summary judgment is partly granted. The defendants are directed to jointly and severally pay the plaintiff the sum of ₱1,555,170.40 as reimbursement of the expenses it incurred in the repairs/renovations of the MARC Building with legal interest from the filing (July 10,

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[9] *Id.* at 250-252. Penned by Judge Guillermo G. Purganan.

2002) of the complaint. In so far as the other claims of plaintiff, the motion for summary judgment is denied.

SO ORDERED.[10]

Respondent then moved to set the case for pre-trial, which was granted. Meanwhile, petitioners filed a motion for reconsideration[11] of the March 5, 2003 Order arguing that while admittedly they had offered to pay the respondent reimbursement for the alterations/renovations made on its building as shown by the afore-mentioned letters of Administrator Sevilla, petitioners did not admit that such alterations/renovations which respondent claims to have been prosecuted on the MARC Building were actually made thereon and that such changes were in fact in accordance with the plans prepared and provided for by MARINA. Petitioners stressed that these factual matters are still to be determined which can only be done through a full-blown trial; the reimbursable amount being also subject to verification since petitioners have not yet been given the opportunity to independently confirm such amount. Further, it was contended that respondent's submission of accomplishment reports on the alterations/renovation works it claims to have been done and the amount it allegedly expended do not automatically establish petitioners' liability for the same. Petitioners subsequently requested that the scheduled pre-trial be cancelled pending resolution of their motion for reconsideration of the March 5, 2003 Order.[12]

In its Order[13] dated June 30, 2003, the trial court denied petitioners' motion for reconsideration, as follows:

As correctly observed by the plaintiff the answer raises issues which are sham or not genuine. In their answer[,] defendants did not specifically allege what were not done in plaintiff's MARC

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[10] *Id.* at 252.

[11] *Id.* at 260-268.

[12] *Id.* at 301-303.

[13] *Id.* at 312-313.

Building or what were done therein which were not in accordance with the plan. Neither did defendants specifically alleged in their answer what amount covered by the receipts of the contractors is not reimbursable.

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The defendants opted not to file opposing or counter affidavits. Thus, there is no proof what works were done in the MARC Building which was not in accordance with the plan submitted by MARINA. Neither is there proof that the amounts covered by the receipts of the contracts include amounts which were not for works done in said MARC Building.

Anent the alleged lack of opportunity for defendants to confirm the amount demanded by the plaintiff. From May 31, 2002 when defendants received copies of the receipts issued by the contractors up to the time they filed their Answer dated October 14, 2002, four and a half (4 ½) months elapsed, during which defendants have had full opportunity to verify the correctness of said receipts. Thereafter, another four (4) months elapsed up to the time plaintiff's motion for summary judgment was set for hearing on January 10, 2003. There were, therefore, a total of 8 ½ months during which defendants could have verified the correctness of the amounts covered by said receipts.

WHEREFORE, in view of all the foregoing, the motion for reconsideration is denied.

SO ORDERED.[14]

The Office of the Solicitor General received a copy of the above order on July 14, 2003. On July 18, 2003, the Solicitor General filed a notice of appeal. Said notice of appeal was later withdrawn upon manifestation by the Solicitor General that since the March 5, 2003 Order is a partial summary judgment, the same is interlocutory and not appealable, without prejudice to petitioner's availment of the appropriate remedy from the said ruling.[15]

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[14] *Id.* at 313.

[15] *Id.* at 317, 336-340, 346.

On the scheduled pre-trial hearing on July 3, 2003, counsel for petitioners appeared but without a special power of attorney as directed in the Notice of Pre-Trial. On motion of the respondent, the trial court declared petitioners as in default and allowed the respondent to present its evidence *ex-parte*.[16] Petitioners filed a motion for reconsideration claiming that the scheduled pre-trial was premature considering the pendency of their motion for reconsideration of the March 5, 2003 Order, and invoking the liberal policy on setting aside default orders. The trial court, however denied said motion for reconsideration.[17]

Petitioners sought relief from the CA by filing a petition for *certiorari* with prayer for issuance of TRO and/or writ of preliminary injunction (CA-G.R. SP No. 79343). Petitioners asked the appellate court to hold in abeyance the proceedings in Civil Case No. 02-104015. Apparently, however, petitioners' urgent motion for the issuance of TRO was not acted upon by the CA. After admission of the documentary exhibits identified by Ericson Marquez and formally offered in evidence, and there being no restraining order issued by the appellate court, the case was deemed submitted for decision.[18]

On December 1, 2003, the trial court rendered its Decision[19] upholding the March 5, 2003 order granting the prayer for reimbursement but denying the rest of respondent's claims. The dispositive portion thereof reads:

> WHEREFORE, premises considered, except for the amount of Php1,555,170.40 representing reimbursement of the renovations advanced by the plaintiff which this Court had already awarded in the Order dated March 5, 2003, the rest of the plaintiff's claims *vis-à-vis* unpaid rentals of Php 2,527,215.48 together with interest thereon at the legal rate as well as attorney's fees are hereby **dismissed** for lack of factual and legal basis.

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[16] *Id.* at 314.

[17] *Id.* at 323-329, 335.

[18] *Id.* at 353-357, 363-368.

[19] *Id.* at 376-382. Penned by Judge Guillermo G. Purganan.

No pronouncement as to costs.

SO ORDERED.[20]

Both parties appealed the trial court's decision (CA-G.R. CV No. 80967).[21] However, respondent's appeal was dismissed for non-payment of appellate docket and other legal fees. Respondent challenged the said dismissal before this Court in a petition for *certiorari* and *mandamus* (G.R. No. 165110). G.R. No. 165110 was likewise dismissed under Resolution dated October 6, 2004 of this Court's Third Division.[22]

By Decision dated June 2, 2006, the CA dismissed petitioners' appeal holding that the trial court's rendition of partial summary judgment was in accord with Section 1, Rule 35 of the 1997 Rules of Civil Procedure, as amended, as it was based on petitioners' admission in their Answer. In rejecting petitioners' argument that they raised a genuine factual issue as to the reimbursable amount for the renovation works, the CA stated:

> As to the contention that defendant-appellant is entitled to verify first the authenticity, genuineness and due execution of the documents (*e.g.*, receipts) relative to the renovation, suffice it to note that plaintiff-appellee had offered its evidence on 13 December 2002 or three (3) months prior to the issuance of the contested order. Yet, defendant-appellant has never lift its finger to challenge the authenticity, genuineness, and due execution of the said documents. For this failure, it is established beyond cavil that there is no genuine issue as to any material fact warranting thereby the issuance of a summary judgment.[23]

Hence, this petition raising the sole issue of whether the CA was correct in sustaining the trial court's order granting the motion for partial summary judgment thereby dispensing with a full trial on respondent's claim for reimbursement of

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[20] *Id.* at 382.

[21] *Id.* at 384-394.

[22] CA *rollo*, pp. 26, 52, 194-196.

[23] *Rollo*, pp. 43-44.

₱1,555,170.40, the amount allegedly advanced by respondent for the repair/renovation works on its building. With the previous dismissal by the CA of respondent's appeal and its petition for *certiorari* in this Court, the present petition is thus confined to the propriety of the trial court's partial summary judgment insofar as the aforesaid claim for reimbursement.

We find the petition meritorious.

Sections 1 and 3, Rule 35 of the 1997 Rules of Civil Procedure, as amended, provide:

SECTION 1. *Summary judgment for claimant.* – A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

SECTION 3. *Motion and proceedings thereon.*– The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the **pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law**. (Emphasis supplied.)

Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays where the pleadings on file show that there are no genuine issues of fact to be tried.[24] A "genuine issue" is such issue of fact which require the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim.[25] There can be no

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[24] *Solidbank Corporation v. Court of Appeals,* G.R. No. 120010, October 3, 2002, 390 SCRA 241, 249.

[25] *Id.*, citing *Evadel Realty and Development Corporation v. Soriano,* G.R. No. 144291, April 20, 2001, 357 SCRA 395, 401.

summary judgment where questions of fact are in issue or where material allegations of the pleadings are in dispute.[26] A party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant.[27]

Contrary to the findings of the trial court and CA, the Answer filed by petitioners contained a specific denial of absolute liability for the amount being claimed as actual expenses for repairs/ renovations works done on repondent's building after the execution of the Contract of Lease.

> 5. SPECIFICALLY DENY the allegation in paragraph 4 of the complaint that MARINA requested for alterations/renovations in accordance with the plans prepared by MARINA on the MARC building for the account of and at the expense of MARINA, the truth being those stated in the Special and Affirmative Defenses hereof. They likewise SPECIFICALLY DENY the rest of the allegations therein that said request alterations/renovations started on December 5, 2001 and was done by the lowest bidders, JTV Construction Group, Inc., for civil works/renovations and NCC Communication Networks, for wiring and cable installation, for whcih (sic) plaintiff allegedly advanced/paid the sum of ₱1,555,170.40 for lack of knowledge or information sufficient to form a belief as to the truth thereof.
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> x x x x x x x x x
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> 13. As an act of good faith, Atty. Sevilla, in behalf of MARINA, has offered to shoulder and pay the actual expenses incurred for the works done on the premises based on MARINA's request. Moreover, defendants cannot allow plaintiff to collect from them the additional sum of ₱2,527,215.48 which is equivalent to two (2) months rental as penalty simply because there is no justification therefor.
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> x x x x x x x x x[28]

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[26] *Manufacturers Hanover Trust Co. v. Guerrero*, G.R. No. 136804, February 19, 2003, 397 SCRA 709, 715.

[27] *Go v. Court of Appeals*, G.R. No. 120040, January 29, 1996, 252 SCRA 564, 569.

[28] Records, pp. 41-42, 49.

Furthermore, petitioners averred in their Opposition to Plaintiff's Motion for Summary Judgment in Favor of Plaintiff:

> With regard to the claim for reimbursement, plaintiff has yet to conclusively prove that the alterations/renovations it claims to have been made in its building were **actually** made and that the same were **actually** in accordance with the alleged request made by MARINA.
>
> The reply-letter dated January 23, 2002 of defendant Sevilla in response to the letters of Ericson Marquez dated December 17, 2001 and January 18, 2002, demanding reimbursements of the alterations/ renovation allegedly made upon its building, shows that it merely required Marquez to show proof or receipt of the expenses plaintiff alleges it had incurred.
>
> Likewise, the letter of defendant Sevilla dated July 1, 2002, this time in response to a similar demand letter made by plaintiff's counsel, Atty. Antonio Atienza, simply stated that defendants have committed themselves to pay the **actual expenses** incurred by plaintiff **as based on MARINA's request**. The same offer was reiterated by defendants in paragraph 13 of their answer to plaintiff's complaint. It must be noted, however, that said offer specifically pertains only to alterations/renovations which **were actually made on plaintiff's properties in accordance with MARINA's request**.
>
> Verily, defendants have yet to actually acquiesce to the veracity of the accomplishment reports, receipt, *etc*. submitted by plaintiff since the same are still subject to verification which can only be achieved through a full-blown trial.[29] (Emphasis and underscoring in the original.)

As can be gleaned, the fact that Administrator Sevilla sent respondent letters wherein MARINA offered to shoulder *actual* expenses for works done on the premises based on MARINA's request does not necessarily mean that petitioners had waived their right to question the amount being claimed by the respondent.[30]

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[29] *Id.* at 237-238.

[30] See *D.M. Consunji, Inc. v. Duvaz Corporation*, G.R. No. 155174, August 4, 2009, 595 SCRA 111, 123.

Since the factual basis of the claim for reimbursement was not admitted by the petitioners, it is clear that the resolution of the question of actual works done based on MARINA's request, as well as the correctness of the amount actually spent by respondent for the purpose, required a trial for the presentation of testimonial and documentary evidence to support such claim. The trial court therefore erred in granting summary judgment for the respondent. The averments in the answer and opposition clearly pose factual issues and hence rendition of summary judgment would be improper.

It must be stressed that trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.[31] As already stated, the burden of demonstrating clearly the absence of genuine issues of fact rests upon the movant, in this case the respondent, and not upon petitioners who opposed the motion for summary judgment. Any doubt as to the propriety of the rendition of a summary judgment must thus be resolved against the respondent. But here, the partial summary judgment was premised merely on the trial court's hasty conclusion that respondent is entitled to the reimbursement sought simply because petitioners failed to point out what particular works were not done or implemented not in accordance with MARINA's specifications after demands were made by respondent and the filing of the complaint in court. Precisely, a trial is conducted after the issues have been joined to enable herein respondent to prove, *first*, that repair/ renovation works were actually done and such were in accordance with MARINA's request, and *second*, that it actually advanced the cost thereof by paying the contractors; and more importantly, to provide opportunity for the petitioners to scrutinize respondent's evidence, cross-examine its witnesses and present

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[31] *Asian Construction and Development Corporation v. Philippine Commercial International Bank*, G.R. No. 153827, April 25, 2006, 488 SCRA 192, 203.

rebuttal evidence. Moreover, the trial court should have been more circumspect in ruling on the motion for summary judgment, taking into account petitioners' concern for judicious expenditure of public funds in settling its liabilities to respondent.

The partial summary judgment rendered under the trial court's Order dated March 5, 2003 being a nullity, the case should be remanded to said court for the conduct of trial on the issue of the reimbursement of expenses for repair/renovation works being claimed by the respondent. For this purpose, petitioners shall be afforded fair opportunity to scrutinize the respondent's evidence, cross-examine its witnesses and present controverting evidence. It is to be noted that the partial summary judgment was rendered before petitioners were declared non-suited. Petitioners had promptly challenged the validity of the default order and even sought an injunction against the *ex-parte* presentation of evidence by the respondent; however, the CA did not act on the matter until the rendition of the trial court's December 1, 2003 Decision. Substantial justice in this instance can best be served if a full opportunity is given to both parties to litigate their dispute and submit the merits of their respective positions.[32]

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated June 2, 2006 of the Court of Appeals in CA-G.R. CV No. 80967 is **REVERSED** and **SET ASIDE**. The Decision dated December 1, 2003 insofar only as it upheld the Order dated March 5, 2003 of the Regional Trial Court of Manila, Branch 42, is **SET ASIDE**. The case is hereby **REMANDED** to the said court for further proceedings.

No costs.

SO ORDERED.

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

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[32] *Bahia Shipping Services, Inc. v. Mosquera*, G.R. No. 153432, February 18, 2004, 423 SCRA 305, 308.

FIRST DIVISION

[G.R. No. 173882. February 15, 2012]

JULIE'S BAKESHOP and/or EDGAR REYES, *petitioners, vs.* **HENRY ARNAIZ, EDGAR NAPAL,[*] and JONATHAN TOLORES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DOCTRINE OF GREAT RESPECT AND FINALITY; INAPPLICABLE IN CASE AT BAR.— "[F]actual 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." It is a well-entrenched rule that findings of facts of the NLRC, affirming those of the Labor Arbiter, are accorded respect and due consideration when supported by substantial evidence. We, however, find that the doctrine of great respect and finality has no application to the case at bar. As stated, the Labor Arbiter dismissed respondents' complaints on mere technicality. The NLRC, upon appeal, then came up with three divergent rulings. At first, it remanded the case to the Labor Arbiter. However, in a subsequent resolution, it decided to resolve the case on the merits by ruling that respondents were constructively dismissed. But later on, it again reversed itself in its third and final resolution of the case and ruled in petitioners' favor. Therefore, contrary to Reyes's claim, the NLRC did not, on any occasion, affirm any factual findings of the Labor Arbiter. The CA is thus correct in reviewing the entire records of the case to determine which findings of the NLRC is sound and in accordance with law. Besides, the CA, at any rate, may still resolve factual issues by express mandate of the law despite the respect given to administrative findings of fact.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR STANDARDS; MANAGEMENT PREROGATIVES; THE EXERCISE THEREOF IS NOT ABSOLUTE AS IT MUST BE EXERCISED IN GOOD FAITH AND WITH DUE

[*] Also spelled as Naval in some parts of the records.

REGARD TO THE RIGHTS OF LABOR.— We have held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay off of workers and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; IN CONSTRUCTIVE DISMISSAL CASES, THE EMPLOYER HAS THE BURDEN OF PROVING THAT THE TRANSFER OF AN EMPLOYEE IS FOR JUST OR VALID GROUND.— In constructive dismissal cases, the employer has the burden of proving that the transfer of an employee is for just or valid ground, such as genuine business necessity. The employer must demonstrate that the transfer is not unreasonable, inconvenient, or prejudicial to the employee and that the transfer does not involve a demotion in rank or a diminution in salary and other benefits. "If the employer fails to overcome this burden of proof, the employee's transfer is tantamount to unlawful constructive dismissal."

4. ID.; ID.; ID.; ID.; WHEN PRESENT.— "[D]emotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary." When there is a demotion in rank and/or a diminution in pay; when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee; or when continued employment is rendered impossible, unreasonable or unlikely, the transfer of an employee may constitute constructive dismissal.

5. ID.; ID.; ID.; ID.; EXISTS WHEN THERE IS A DEMOTION IN TITULAR RANK; CASE AT BAR.— We agree with the CA in ruling that the transfer of respondents amounted to a demotion. Although there was no diminution in pay, there was undoubtedly a demotion in titular rank. One cannot deny the disparity between the duties and functions of a chief baker to that of a utility/security personnel tasked to clean and manage

the orderliness of the outside premises of the bakeshop. Respondents were even prohibited from entering the bakeshop. The change in the nature of their work undeniably resulted to a demeaning and humiliating work condition. x x x As the transfer proves unbearable to respondents as to foreclose any choice on their part except to forego continued employment, same amounts to constructive dismissal for which reinstatement without loss of seniority rights, full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time their compensation was withheld up to the time of their actual reinstatement, should be granted. The CA, therefore, did not err in awarding the reliefs prayed for by the respondents as they were, without a doubt, constructively dismissed.

6. ID.; ID.; ID.; JUST CAUSES; ABANDONMENT; A CHARGE OF ABANDONMENT IS INCONSISTENT WITH THE FILING OF A COMPLAINT FOR CONSTRUCTIVE DISMISSAL; CASE AT BAR.— Petitioners' claim that respondents abandoned their job stands on shallow grounds. Respondents cannot be faulted for refusing to report for work as they were compelled to quit their job due to a demotion without any just cause. Moreover, we have consistently held that a charge of abandonment is inconsistent with the filing of a complaint for constructive dismissal. Respondents' demand to maintain their positions as chief bakers by filing a case and asking for the relief of reinstatement belies abandonment.

APPEARANCES OF COUNSEL

Pacificador Law Office for petitioners.
Mariano R. Pefianco for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Management has a wide latitude to conduct its own affairs in accordance with the necessities of its business. This so-called management prerogative, however, should be exercised in accordance with justice and fair play.

By this Petition for Review on *Certiorari*,[1] petitioners Julie's Bakeshop and/or Edgar Reyes (Reyes) assail the September 23, 2005 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 86257, which reversed the Resolutions dated December 18, 2003[3] and April 19, 2004[4] of the National Labor Relations Commission (NLRC) and ordered petitioners to reinstate respondents Henry Arnaiz (Arnaiz), Edgar Napal (Napal) and Jonathan Tolores (Tolores) and to pay them their backwages for having been constructively dismissed, as well as their other monetary benefits.

Factual Antecedents

Reyes hired respondents as chief bakers in his three franchise branches of Julie's Bakeshop in Sibalom and San Jose, Antique. On January 26, 2000, respondents filed separate complaints against petitioners for underpayment of wages, payment of premium pay for holiday and rest day, service incentive leave pay, 13th month pay, cost of living allowance (COLA) and attorney's fees. These complaints were later on consolidated.

Subsequently, in a memorandum dated February 16, 2000, Reyes reassigned respondents as utility/security personnel tasked to clean the outside vicinity of his bakeshops and to maintain peace and order in the area. Upon service of the memo, respondents, however, refused to sign the same and likewise refused to perform their new assignments by not reporting for work.

In a letter-memorandum dated March 13, 2000, Reyes directed respondents to report back for work and to explain why they

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[1] *Rollo,* pp. 10-17.

[2] CA *rollo*, pp. 131-151; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Enrico A. Lanzanas.

[3] *Id.* at 51-53; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Edgardo M. Enerlan and Oscar S. Uy.

[4] *Id.* at 59.

failed to assume their duties as utility/security personnel. A second letter-memorandum of the same tenor dated March 28, 2000 was also sent to respondents. Respondents did not heed both memoranda.

Proceedings before the Labor Arbiter

Meanwhile, in the preliminary conference set on February 21, 2000, respondents with their counsel, Atty. Ronnie V. Delicana (Atty. Delicana), on one hand, and Reyes on the other, appeared before the Labor Arbiter to explore the possibility of an amicable settlement. It was agreed that the parties would enter into a compromise agreement on March 7, 2000. However, on February 29, 2000, respondents, who were then represented by a different counsel, Atty. Mariano R. Pefianco (Atty. Pefianco), amended their complaints by including in their causes of action illegal dismissal and a claim for reinstatement and backwages.

The supposed signing of the compromise agreement (which could have culminated in respondents receiving the total amount of ₱54,126.00 as payment for their 13th month pay and separation pay) was reset to March 28, 2000 because of respondents' non-appearance in the hearing of March 7, 2000. On March 28, 2000, Atty. Pefianco failed to appear despite due notice. On the next hearing scheduled on April 24, 2000, both Atty. Delicana and Atty. Pefianco appeared but the latter verbally manifested his withdrawal as counsel for respondents. Thus, respondents, through Atty. Delicana, and Reyes, continued to explore the possibility of settling the case amicably. Manifesting that they need to sleep on the proposed settlement, respondents requested for continuance of the hearing on April 26, 2000. Come said date, however, respondents did not appear.

Realizing the futility of further resetting the case to give way to a possible settlement, the Labor Arbiter ordered the parties to file their respective position papers.

Despite his earlier withdrawal as counsel, Atty. Pefianco filed a Joint Position Paper[5] on behalf of respondents alleging that

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

they were dismissed from employment on February 21, 2000 without valid cause. As for petitioners, they stated in their position paper[6] that respondents were never dismissed but that they abandoned their jobs after filing their complaints. Petitioners denied that Reyes is the employer of Arnaiz and Napal but admitted such fact insofar as Tolores is concerned.

In his Decision[7] dated August 25, 2000, the Labor Arbiter expressed dismay over respondents' lack of good faith in negotiating a settlement. The Labor Arbiter denounced the way respondents dealt with Atty. Delicana during their discussions for a possible settlement since respondents themselves later on informed the said tribunal that at the time of the said discussions, they no longer considered Atty. Delicana as their counsel. Despite this, the Labor Arbiter still required the parties to submit their respective position papers. And as respondents' position paper was filed late and no evidence was attached to prove the allegations therein, the Labor Arbiter resolved to dismiss the complaints, thus:

WHEREFORE, premises considered the above-entitled cases should be, as they are hereby dismissed without prejudice.

SO ORDERED.[8]

Proceedings before the National Labor Relations Commission

Respondents filed a joint appeal[9] with the NLRC. In a Decision[10] dated January 17, 2002, the NLRC overruled the Decision of the Labor Arbiter and held that the burden of proof lies on herein petitioners as Reyes admitted being the employer of Tolores. Hence, petitioners not Tolores, had the duty to advance

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

[7] *Id.* at 18-30; penned by Labor Arbiter Rodolfo G. Lagoc.

[8] *Id.* at 30.

[9] *Id.* at 31-34.

[10] *Id.* at 35-36; penned by Presiding Commissioner Irenea E. Ceniza and concurred in by Commissioners Edgardo M. Enerlan and Oscar S. Uy.

proof. With respect to Arnaiz and Napal, the NLRC noted that since their alleged employer was not impleaded, said respondents' cases should be remanded to the Labor Arbiter, and tried as new and separate cases. The dispositive portion of the NLRC's Decision reads:

> WHEREFORE, the case is REMANDED for purposes of identifying the real respondents, to be separated as discussed, if warranted, and for further proceedings to be conducted.
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> SO ORDERED.[11]

Respondents filed a Motion for Reconsideration,[12] alleging that the NLRC Decision violated their right to speedy disposition of their cases. They also insisted that Reyes is their employer as shown by his letter-memorandum dated March 13, 2000 which directed all of them to report back for work. In addition, the fact that Reyes was willing to pay all the respondents the amount of ₱54,126.00 as settlement only proves that there is an employer-employee relationship between them and Reyes.

In a Resolution[13] dated September 23, 2003, the NLRC found merit in respondents' Motion for Reconsideration. It held that Reyes failed to present concrete proof of his allegation that a certain Rodrigo Gandiongco is the employer of Arnaiz and Napal; hence, Reyes is still presumed to be their employer as franchise owner of the branches where these employees were assigned. The NLRC further ruled that respondents' demotion in rank from chief bakers to utility/security personnel is tantamount to constructive dismissal which entitles them to the reliefs available to illegally dismissed employees. As for the money claims, the NLRC granted respondents their salary differentials, premium pay for rest day, holiday pay, service incentive leave pay, 13th month pay and COLA. In awarding such monetary awards, the

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[11] *Id.* at 36.

[12] *Id.* at 37-40.

[13] *Id.* at 41-45; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Edgardo M. Enerlan and Oscar S. Uy.

NLRC ratiocinated that the employer bears the burden of proving that the employees received their wages and benefits. In this case, however, no proof of such payment was presented by the petitioners. The claim for overtime pay though was denied since proof of overtime work is necessary to warrant such award. Lastly, for Reyes' unjustified act done in bad faith, respondents were awarded 10% attorney's fees. The NLRC ruled as follows:

> WHEREFORE, Our previous Decision is VACATED and a new one rendered declaring complainants to have been illegally dismissed. Complainants are to be reinstated to their former positions without loss of seniority rights. Complainants are further awarded backwages reckoned from the time they were constructively dismissed up to the time of their actual reinstatement, whether physically or on payroll.
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> Complainants being underpaid are to be [paid] their salary differentials reckoned three (3) years backwards from the time they filed the instant complaints on January 26, 2000, premium pay for holiday, premium pay for rest day, holiday pay, service incentive leave pay, 13th month pay and COLA, if these have not been paid to them yet.
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> SO ORDERED.[14]

Petitioners sought to reconsider this ruling via a Motion for Reconsideration,[15] insisting that respondents were not illegally dismissed and that their reassignment or transfer as utility/security personnel was indispensable, made in good faith and in the exercise of a valid management prerogative. Hence, such reassignment does not amount to constructive dismissal. Reyes claimed that it would be likely for respondents, after filing complaints against him, to do something prejudicial to the business as chief bakers, like mixing harmful ingredients into the bread that they bake. This could be inimical to the health of the consuming public. Petitioners averred that respondents'

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[14] *Id.* at 45.

[15] *Id.* at 46-50.

reassignment as utility/security personnel is a preventive measure designed to protect the business and its customers. They likewise added that the transfer was meant to be only temporary and besides, same does not involve any diminution in pay, rights and privileges of the respondents. Petitioners also alleged that respondents' wage of ₱115.00 per day is in consonance with and is even higher than the mandated minimum wage of ₱105.00 under Wage Order No. RB6-09 for retail and service establishments employing not more than 10 workers as in his business.

The NLRC, in its Resolution[16] dated December 18, 2003, again reconsidered its own ruling and held that respondents were not dismissed, either actually or constructively, but instead willfully disobeyed the return to work order of their employer. The NLRC upheld petitioners' prerogative to transfer respondents if only to serve the greater interest, safety and well-being of the buying public by forestalling irregular acts of said employees. The NLRC then put the blame on respondents for disobeying the lawful orders of their employer, noting that it was the same attitude displayed by them in their dealings with their counsel, Atty. Delicana, in the proceedings before the Labor Arbiter. It also reversed its previous ruling that respondents were underpaid their wages and adjudged them to be even overpaid by ₱10.00 per Wage Order No. RB 6-09-A. Thus, respondents' complaints were dismissed except for their claims for premium pay for holiday, and rest day, service incentive leave pay, 13th month pay and COLA, which awards would stand only if no payment therefor has yet been made.

Respondents filed a Motion for Reconsideration[17] and sought for the execution of the NLRC Resolution dated September 23, 2003 due to the alleged finality of the ruling. According to them, petitioners' *pro forma* Motion for Reconsideration of the said resolution did not suspend the running of the period for taking

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[16] *Supra* note 3.

[17] CA *rollo*, pp. 54-58.

an appeal. This motion was, however, denied in the NLRC Resolution[18] dated April 19, 2004.

Proceedings before the Court of Appeals

Respondents appealed to the CA through a petition for *certiorari*,[19] wherein they imputed grave abuse of discretion on the part of the NLRC in not declaring them to have been illegally dismissed and entitled to salary differentials.

The CA, in its Decision[20] dated September 23, 2005, found merit in the petition, ruling that respondents were constructively dismissed since their designation from chief bakers to utility/ security personnel is undoubtedly a demotion in rank which involved "a drastic change in the nature of work resulting to a demeaning and humiliating work condition." It also held that petitioners' fear that respondents might introduce harmful foreign substances in baking bread is more imaginary than real. Further, respondents could not be held guilty of abandonment of work as this was negated by their immediate filing of complaints to specifically ask for reinstatement. Nevertheless, the CA denied the claim for salary differentials by totally agreeing with the NLRC's finding on the matter. Said court then resolved to award respondents the rest of their monetary claims for failure of petitioners to present proof of payment and 10% attorney's fees as respondents' dismissal was attended with bad faith which forced them to litigate, *viz*:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **SETTING ASIDE** and **REVERSING** the Resolutions dated December 18, 2003 and April 19, 2004 in NLRC Case No. V-000785-2000. The record of this case is hereby **REMANDED** to the Labor Arbiter for the computation of backwages, premium pay for holidays and rest days, holiday pay, service incentive leave pay, 13th month pay and attorney's fees due to the petitioners

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[18] *Supra* note 4.

[19] CA *rollo*, pp. 2-12.

[20] *Supra* note 2.

and, thereafter, for the payment thereof by the private respondent Reyes.[21]

Petitioners filed a Motion for Reconsideration[22] but the same was denied by the CA in a Resolution[23] dated May 25, 2006.

Issues

Hence, this present petition raising the following issues for the Court's consideration:

I. DID THE HONORABLE COURT OF APPEALS, IN DISTURBING THE FINDINGS OF FACTS OF THE LABOR ARBITER AS WELL AS THE NATIONAL LABOR [RELATIONS] COMMISSION WHO HAVE TRIED THE CASE, [COMMIT] GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION?

II. DID THE HONORABLE COURT OF APPEALS MANIFESTLY [OVERLOOK] RELEVANT FACTS NOT DISPUTED BY THE RESPONDENTS, WHICH, IF PROPERLY CONSIDERED COULD JUSTIFY A DIFFERENT CONCLUSION?

III. WAS THE TRANSFER/REASSIGNMENT OF RESPONDENTS TO ANOTHER POSITION WITHOUT DIMINUTION IN PAY AND OTHER PRIVILEGES TANTAMOUNT TO CONSTRUCTIVE DISMISSAL?[24]

Petitioners maintain that the NLRC, in its Resolution dated December 18, 2003, merely upheld the findings of the Labor Arbiter that there was no constructive dismissal because of the absence of any evidence to prove such allegation. As such, Reyes' supposition is that the CA erred in coming up with a contrary finding.

Petitioners insist that the order transferring or reassigning respondents from chief bakers to utility/security personnel is a

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[21] CA *rollo*, p. 151.

[22] *Id.* at 153-159.

[23] *Id.* at 171-172.

[24] *Rollo*, p. 122.

valid exercise of management prerogative for it does not involve any diminution in pay and privileges and that same is in accordance with the requirements of the business, *viz*: to protect its goodwill and reputation as well as the health and welfare of the consuming public.

Our Ruling

We find no merit in the petition.

The Court of Appeals is correct in reviewing the findings of the National Labor Relations Commission.

Petitioners claim that the CA should have accorded respect and finality to the factual findings rendered by the NLRC in its December 18, 2003 Resolution as the same merely affirmed the findings of the Labor Arbiter. Citing several jurisprudence on the matter, petitioners add that factual findings of labor officials who acquired expertise on matters within their jurisdiction have conclusive effect.

We reject this contention as none of the NLRC divergent rulings affirmed the findings of the Labor Arbiter. To recall, the Labor Arbiter dismissed respondents' complaints on a technicality, that is, on the ground that respondents' Joint Position Paper was filed late and that it did not contain any attachments to prove the allegations therein. Upon appeal, the NLRC rendered its first Decision on January 17, 2002 which remanded the case to the Labor Arbiter for purposes of identifying the real respondents and separating the consolidated cases if warranted, and for the conduct of further proceedings due to Reyes' allegation that Arnaiz and Napal have a different employer. The NLRC also disagreed with the Labor Arbiter's ratiocination that it behooved upon respondents to attach proof of their illegal dismissal. According to the NLRC, since Reyes admitted that he is Tolores' employer, the burden to prove that the termination is valid as well as the due payment of money claims falls upon petitioners. Upon petitioners' motion, however, the NLRC reconsidered this ruling and resolved the case on the merits. In

so doing, it found the respondents to have been constructively dismissed through its Resolution dated September 23, 2003. The NLRC, however, once again reversed itself in a Resolution dated December 18, 2003 upon Reyes' filing of a Motion for Reconsideration. This time, the NLRC held that respondents were not illegally dismissed but instead abandoned their jobs. It was at this point that respondents sought recourse from the CA.

Indeed, "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."[25] It is a well-entrenched rule that findings of facts of the NLRC, affirming those of the Labor Arbiter, are accorded respect and due consideration when supported by substantial evidence.[26] We, however, find that the doctrine of great respect and finality has no application to the case at bar. As stated, the Labor Arbiter dismissed respondents' complaints on mere technicality. The NLRC, upon appeal, then came up with three divergent rulings. At first, it remanded the case to the Labor Arbiter. However, in a subsequent resolution, it decided to resolve the case on the merits by ruling that respondents were constructively dismissed. But later on, it again reversed itself in its third and final resolution of the case and ruled in petitioners' favor. Therefore, contrary to Reyes' claim, the NLRC did not, on any occasion, affirm any factual findings of the Labor Arbiter. The CA is thus correct in reviewing the entire records of the case to determine which findings of the NLRC is sound and in accordance with law. Besides, the CA, at any rate, may still resolve factual issues by express mandate of the law despite the respect given to administrative findings of fact.[27]

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[25] *Alfaro v. Court of Appeals*, 416 Phil. 310, 318 (2001).

[26] *Master Shirt Co., Inc. v. National Labor Relations Commission*, 360 Phil. 837, 842 (1998).

[27] *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 588-589.

The transfer/reassignment of respondents constitutes constructive dismissal.

Petitioners contend that the order transferring or reassigning respondents from their position as chief bakers to utility/security personnel is within the ambit of management prerogative as employer. They harp on the fact that no evidence was presented by respondents to show that they were dismissed from employment.

We have held that management is free to regulate, according to its own discretion and judgment, all aspects of employment, including hiring, work assignments, working methods, time, place and manner of work, processes to be followed, supervision of workers, working regulations, transfer of employees, work supervision, lay off of workers and discipline, dismissal and recall of workers. The exercise of management prerogative, however, is not absolute as it must be exercised in good faith and with due regard to the rights of labor.[28]

In constructive dismissal cases, the employer has the burden of proving that the transfer of an employee is for just or valid ground, such as genuine business necessity. The employer must demonstrate that the transfer is not unreasonable, inconvenient, or prejudicial to the employee and that the transfer does not involve a demotion in rank or a diminution in salary and other benefits. "If the employer fails to overcome this burden of proof, the employee's transfer is tantamount to unlawful constructive dismissal."[29]

In this case, petitioners insist that the transfer of respondents was a measure of self-preservation and was prompted by a desire to protect the health of the buying public, claiming that respondents should be transferred to a position where they could not sabotage the business pending resolution of their cases.

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[28] *Unicorn Safety Glass, Inc. v. Basarte*, 486 Phil. 493, 505. (2004).

[29] *Merck Sharp and Dohme (Philippines) v. Robles*, G.R. No. 176506, November 25, 2009, 605 SCRA 488, 500.

According to petitioners, the possibility that respondents might introduce harmful substances to the bread while in the performance of their duties as chief bakers is not imaginary but real as borne out by what Tolores did in one of the bakeshops in Culasi, Antique where he was assigned as baker.

This postulation is not well-taken. On the contrary, petitioners failed to satisfy the burden of proving that the transfer was based on just or valid ground. Petitioners' bare assertions of imminent threat from the respondents are mere accusations which are not substantiated by any proof. This Court is proscribed from making conclusions based on mere presumptions or suppositions. An employee's fate cannot be justly hinged upon conjectures and surmises.[30] The act attributed against Tolores does not even convince us as he was merely a suspected culprit in the alleged sabotage for which no investigation took place to establish his guilt or culpability. Besides, Reyes still retained Tolores as an employee and chief baker when he could have dismissed him for cause if the allegations were indeed found true. In view of these, this Court finds no compelling reason to justify the transfer of respondents from chief bakers to utility/security personnel. What appears to this Court is that respondents' transfer was an act of retaliation on the part of petitioners due to the former's filing of complaints against them, and thus, was clearly made in bad faith. In fact, petitioner Reyes even admitted that he caused the reassignments due to the pending complaints filed against him. As the CA aptly held:

> In the case at bench, respondent Reyes failed to justify petitioners' transfer from the position of chief bakers to utility/security personnel. We find that the threat being alluded to by respondent Reyes — that the petitioners might introduce harmful foreign substances in baking bread — is imaginary and not real. We recall that what triggered the petitioners' reassignment was the filing of their complaints against private respondents in the NLRC. The petitioners were not even given an opportunity to refute the reason for the transfer. The drastic change

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[30] *Eastern Telecommunications Phils., Inc. v. Diamse*, 524 Phil. 549, 557 (2006).

in petitioners' nature of work unquestionably resulted in, as rightly perceived by them, a demeaning and humiliating work condition. The transfer was a demotion in rank, beyond doubt. There is demotion when an employee is transferred from a position of dignity to a servile or menial job. One does not need to stretch the imagination to distinguish the work of a chief baker to that of a security cum utility man.[31]

"[D]emotion involves a situation in which an employee is relegated to a subordinate or less important position constituting a reduction to a lower grade or rank, with a corresponding decrease in duties and responsibilities, and usually accompanied by a decrease in salary."[32] When there is a demotion in rank and/or a diminution in pay; when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee; or when continued employment is rendered impossible, unreasonable or unlikely, the transfer of an employee may constitute constructive dismissal.[33]

We agree with the CA in ruling that the transfer of respondents amounted to a demotion. Although there was no diminution in pay, there was undoubtedly a demotion in titular rank. One cannot deny the disparity between the duties and functions of a chief baker to that of a utility/security personnel tasked to clean and manage the orderliness of the outside premises of the bakeshop. Respondents were even prohibited from entering the bakeshop. The change in the nature of their work undeniably resulted to a demeaning and humiliating work condition.

In *Globe Telecom, Inc. v. Florendo-Flores*,[34] we held:

The managerial prerogative to transfer personnel must be exercised without grave abuse of discretion. It must always bear in mind the

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[31] CA *rollo*, p. 139.

[32] *Norkis Trading Co., Inc. v. Gnilo*, G.R. No. 159730, February 11, 2008, 544 SCRA 279, 291.

[33] *Benguet Electric Cooperative v. Fianza*, 468 Phil. 980, 992 (2004).

[34] 438 Phil. 756, 769 (2002).

basic elements of justice and fair play. Having the right must not be confused with the manner that right is exercised. Thus, it cannot be used as a subterfuge by the employer to rid himself of an undesirable worker.

Petitioners' claim that respondents abandoned their job stands on shallow grounds. Respondents cannot be faulted for refusing to report for work as they were compelled to quit their job due to a demotion without any just cause. Moreover, we have consistently held that a charge of abandonment is inconsistent with the filing of a complaint for constructive dismissal.[35] Respondents' demand to maintain their positions as chief bakers by filing a case and asking for the relief of reinstatement belies abandonment.[36]

As the transfer proves unbearable to respondents as to foreclose any choice on their part except to forego continued employment, same amounts to constructive dismissal for which reinstatement without loss of seniority rights, full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time their compensation was withheld up to the time of their actual reinstatement, should be granted.[37] The CA, therefore, did not err in awarding the reliefs prayed for by the respondents as they were, without a doubt, constructively dismissed.

WHEREFORE, the petition is **DENIED**. The September 23, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 86257 is **AFFIRMED**.

SO ORDERED.

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

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[35] *Unicorn Safety Glass, Inc. v. Basarte*, *supra* note 28 at 506.

[36] *Micro Sales Operation Network v. National Labor Relations Commission*, 509 Phil. 313, 322 (2005).

[37] *Westmont Pharmaceuticals, Inc. v. Samaniego*, 518 Phil. 41, 51-52 (2006).

FIRST DIVISION

[G.R. No. 174445. February 15, 2012]

SPOUSES WILLIAM GUIDANGEN and MARY GUIDANGEN, *petitioners, vs.* **DEVOTA B. WOODEN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; HE WHO ALLEGES A FACT HAS THE BURDEN OF PROVING IT.— Respondent does not dispute the fact that the old house was originally owned by petitioners. She, however, claims to have obtained her title over the same from petitioners through a sale sometime in 1994 and 1995. To substantiate this, respondent presented her testimony regarding the alleged sale transaction, her husband's SALN for the year 1996 allegedly prepared by Mary and which declared the old house as Nestor's property, and the testimonies of two former tenants that they paid their rentals to the Wooden spouses. Quite notably though respondent has not presented the alleged private document or any document evidencing the supposed sale. And while she insists that Mary took the receipt — the supposed single and crucial proof of sale — her assertions are mere accusations. Aside from her testimony, respondent presented no proof to corroborate her claim that, indeed, such document exists and that Mary took the same. The rule is well-settled that he who alleges a fact has the burden of proving it and a mere allegation is not evidence. Also, with Mary's outright denial of the sale coupled with the lack of documentary evidence to prove such payment, it behooves upon respondent to prove her case and convince the court that what she claims are true. However, respondent was unable to do this. Borrowing the words of the trial court, "instead of establishing that there was indeed a sale, plaintiff wanted to prove her case by a receipt when it should be the receipt that should further corroborate the existence of the sale."

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE; PERFECTED CONTRACT OF

SALE, NOT DULY ESTABLISHED IN CASE AT BAR.— Aside from respondent's failure to present the private document from which she derives her alleged rights over the subject house, it cannot also be concluded from the facts and circumstances surrounding this case that a contract of sale between the parties was indeed perfected. Respondent failed to establish that there was a meeting of the minds between the parties as to the consideration or purchase price certain in money of the old house. In fact, respondent's testimony pertaining to the payment of a total amount of ₱51,000.00 is quite unclear as to whether it already represents the total amount of the supposed agreed purchase price or the same is just part of the ₱60,000.00 she had to pay for the house as alleged in the complaint. Further, the due execution and authenticity of the said private document cannot be ascertained given that respondent was not present during its execution and neither does her signature or that of her husband appear thereon. The respondent did not likewise present any other witness who knew about and read the private document, much less saw it executed.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; SHOULD BE BASED ON FACTS.— A judgment has to be based on facts. Conjectures and surmises cannot substitute for the facts. "A conjecture is always a conjecture; it can never be admitted as evidence."

4. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP AND POSSESSION; ESTABLISHED BY A CERTIFICATE OF TITLE AND, IN ITS ABSENCE, BY A TAX DECLARATION.— [J]urisprudence is replete with cases where the Court has stated that ownership and possession are established by a Certificate of Title and, in its absence, by a Tax Declaration. Admittedly, it is well-settled that tax declarations and receipts are not conclusive evidence of ownership, or of the right to possess land, in the absence of any other strong evidence to support them. "The tax receipts and declarations are merely *indicia* of a claim of ownership." However, in the case before us where respondent is unable to produce any shred of document as evidence of her claim, the tax declaration becomes *prima facie* evidence of ownership in favor of petitioners. "Tax receipts and [tax] declarations are *prima facie* proof of ownership or possession of the property for which such taxes have been paid."

The established fact that the tax declaration was issued as early as 1988 in the name of Mary, and has not been transferred to anyone else since its issuance tilts the balance in favor of petitioners. Petitioners' payment of real property taxes only on August 11, 1997, or a month before the respondent filed her complaint in court, should have no bearing on the question of ownership over the old house. As clarified by the Municipal Assessor, it is a common occurrence that real property taxes are not paid religiously.

5. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; IN CIVIL CASES, THE BURDEN OF PROOF IS ON THE PLAINTIFF TO ESTABLISH HER CASE BY PREPONDERANCE OF EVIDENCE.— "[I]n civil cases, the burden of proof is on the plaintiff [herein respondent] to establish her case by preponderance of evidence. If [she] claims a right granted or created by law, [she] must prove [her] claim by competent evidence. [She] must rely on the strength of [her] own evidence and not on the weakness of that of [her] opponent." More so, having filed an action involving property, respondent has the burden of proving her case, relying on the strength of her own title and not on the alleged weakness of her opponents' claim. Indeed, to award ownership to respondent absent any shred of corroborative evidence of her claim over the old house opens doubts on the veracity of her naked assertions.

6. ID.; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY NOT DISTURBED ON APPEAL.— "It is a matter of judicial policy to accord the trial court's findings of facts with the highest respect and not to disturb the same on appeal unless there are strong and impelling reasons to do so. The reason for this is that trial courts have more opportunity and facilities to examine factual matters than appellate courts. They are in a better position to assess the credibility of witnesses, not only by the nature of their testimonies, but also by their demeanor on the stand." No clear specific contrary evidence was cited by the CA to justify the reversal of the trial court's findings. Thus, in this case, between the factual findings of the trial court and those of the CA, those of the trial court must prevail over those of the latter.

APPEARANCES OF COUNSEL

Romeo U. Habbiling for petitioners.
Basilio R. Rupisan for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"The plaintiff must rely on the strength of [her] own evidence and not upon the weakness of the defendant's."[1]

This Petition for Review on *Certiorari*[2] assails the June 15, 2006 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 83209 which ordered petitioners to execute the necessary document/s of sale of a house in favor of the respondent, the dispositive portion of which reads:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the judgment appealed from is hereby REVERSED and SET ASIDE. The appellees spouses Mary Guidangen and William Guidangen are hereby ordered to execute, within fifteen (15) days from the date of the finality of this decision, the necessary document/s of sale (preferably with the intervention of a notary public, whose fees will be footed by the appellant), covering the subject property in favor of appellant. Should the said appellees-spouses, for one reason or another, be unable or be unwilling to execute the necessary document/s of sale in favor of the appellant, the court *a quo* is hereby authorized, and directed, to execute the necessary document/s of sale within the period indicated, which document/s of sale shall have the same legal force and effect as if executed by the appellees-spouses themselves. Without costs in this instance.
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> SO ORDERED.[4]

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[1] *Heirs of the Deceased Carmen Cruz-Zamora v. Multiwood International, Inc.*, G.R. No. 146428, January 19, 2009, 576 SCRA 137, 148.

[2] *Rollo*, pp. 8-24.

[3] CA *rollo*, pp. 120-142; penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Hakim S. Abdulwahid and Monina Arevalo Zenarosa.

[4] *Id.* at 141.

This petition also assails the CA's September 1, 2006 Resolution[5] denying petitioners' Motion for Reconsideration.

Petitioners pray for the reversal of the assailed Decision and the reinstatement of the January 28, 2004 Decision[6] of the Regional Trial Court (RTC), Branch 14 of Lagawe, Ifugao in Civil Case No. 572 which declared them the owners of the subject house.

Factual Antecedents

On September 2, 1997, respondent Devota Wooden (respondent) filed a Complaint[7] with the RTC of Lagawe, Ifugao to compel petitioners William and Mary Guidangen (petitioners) to execute a registrable document of conveyance of a two-storey house (old house) located at the Philippine National Police (PNP) Barracks in Lagawe, Ifugao. She also sought to restrain the petitioners from entering and taking physical possession thereof.

Respondent alleged that sometime in 1994 to 1995, she and her husband, Nestor Wooden (Nestor), a member of the PNP, bought the old house from petitioners for the sum of ₱60,000.00 as evidenced by a private document. This private document, however, was allegedly taken by petitioner Mary Guidangen (Mary) along with some other documents when she processed the claims and benefits due from the PNP of Nestor who died in 1997.

In their Answer,[8] petitioners vehemently denied having sold the old house to Nestor and respondent (Wooden spouses) or having executed a private document relative to its sale. They alleged that they built the old house and lived there until 1988 after which they transferred to their new house along Rizal

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[5] *Id.* at 175.

[6] Records, pp. 179-199; penned by Judge Fernando F. Flor, Jr.

[7] *Id.* at 1-6; for Execution of Registrable Document of Conveyance of House and Damages with Petition for Injunction and Temporary Restraining Order.

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

Avenue, Poblacion West, Lagawe, Ifugao. Since 1983, their nephew Nestor, who was still single then, lived with them in the old house as well as in their new house. Petitioners treated Nestor as their own son and even allowed him and respondent to live in the old house free of rent in the latter part of 1995 after the couple got married. They also entrusted to the couple the collection of rents from tenants in the ground floor to defray the expenses for the maintenance of said house. In support of their claim of ownership, petitioners presented the tax declaration and clearance for payment of taxes of the old house in their name.

In reply, respondent maintained that petitioners sold the old house to her and Nestor. She denied that Nestor lived with petitioners or that she and her husband asked petitioners to allow them to stay in the old house. She also denied having sought permission from the petitioners to collect the rentals from tenants for minor repair works. Instead, they pointed out that what they undertook in the old house were not minor repairs but a major renovation. To further bolster her claim that the old house was already sold to them, respondent averred that Mary even prepared Nestor's Statement of Assets, Liabilities and Net Worth (SALN) for the year 1996 while the latter was hospitalized. The old house was declared therein as part of Nestor's assets, thereby proving that the same already belongs to the Wooden spouses.

On the witness stand, respondent stood by her claim of sale.[9] When cross-examined, however, she testified that she only saw and read the alleged private document evidencing the sale but was neither present when the same was executed and given to her husband nor was she or her husband a signatory thereto; that the document was signed only by Mary; and, that she was present only during the payment of the first installment of the purchase price. Further, respondent testified that she gave her house key to Mary for purposes of securing some documents

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[9] TSN, March 24, 1998, p. 3.

therefrom but she did not personally and actually see Mary enter the old house.[10]

Upon further questioning by the court, respondent stated that she and her husband paid the first installment of ₱16,000.00 or ₱16,500.00 on August 19 or 20, 1994.[11] The other installment amounting to about ₱35,000.00 was paid by Nestor sometime in December 1994 or 1995.[12] Thereafter, a private writing was executed by Mary as *receipt* of the payment for the house.[13] This was allegedly the only receipt that the Wooden spouses had as evidence of the sale but was supposedly taken by Mary.[14]

Respondent presented as witnesses the former tenants in the ground floor of the old house, PO3 Oscar Mamaclay and Policeman Jay Telan (Telan), who testified that they paid their rentals to the respondent.[15] Telan recounted that he initially paid rentals to Mary but was later advised by her to make the payments to respondent because she has already sold the house to the Wooden spouses.[16]

On the other hand, Mary testified that she and her husband constructed the old house in the latter part of 1981. They occupied the same in 1982 until 1988, after which they left and moved to their newly-built house. The old house was leased to tenants and in the latter part of 1995, they allowed the Wooden spouses to occupy the second floor thereof for free.[17]

Petitioners presented the following as proof of their ownership of the old house: (1) Tax Declaration No. 1645(R)[18] issued

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

[11] *Id.* at 21.

[12] *Id.* at 22.

[13] *Id.*

[14] *Id.*

[15] TSN, April 21, 1998, pp. 3-9 and April 28, 1998, pp. 2-7.

[16] TSN, April 28, 1998, pp. 6-7.

[17] TSN, February 28, 2003, pp. 2-21.

[18] Records, p. 20.

by the Municipal Assessor's Office in Mary's name; and (2) tax receipts dated August 11, 1997, February 10, 1998 and November 20, 2002; and, (3) the Tax Clearance also dated November 20, 2002. In addition, Mary stated that on September 7, 1981 she and her husband filed an application for electric services for the old house with the Ifugao Electric Company (IFELCO) as evidenced by the Membership Index Card and the Certification attesting to said membership issued by the manager of IFELCO dated October 8, 2002.[19]

During the course of her direct examination, Mary likewise testified on the real properties declared in her SALN for the years 1986 to 1992 and 1997 to 2002. While these SALN generally show that both the old and new houses were declared albeit there are lapses in the years of their acquisition, there were several instances where only one house was declared, or only the lot where the house was built on was declared.[20] When presented with the SALN of Nestor for the years 1994 to 1996 wherein the old house was declared as one of the assets acquired by purchase for the sum of ₱70,000.00 by the declarant, Mary this time reiterated that she and her husband never sold the old house to the Wooden spouses but only allowed them to stay there in the early part of 1995 upon the request of their nephew, Nestor.[21]

On cross-examination, Mary stated that the controversy involving the house only began when respondent filed the case in September 1997; that despite the case, she assessed her relationship with respondent, whom she considers and treats as her daughter-in-law, to be good; that she paid the real property taxes on the old house only on August 11, 1997 because she did not have enough money to pay the taxes before; and that at the time she paid the taxes she did not know that respondent was claiming ownership of the old house.[22] When asked about

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[19] TSN, February 28, 2003, pp. 11-13.

[20] *Id.* at 18-21.

[21] TSN, April 25, 2003, pp. 4-6.

[22] *Id.* at 8-14.

the SALN of Nestor, she claimed that she was not aware of it as the same was prepared by Nestor himself.[23] She also denied preparing or assisting in the preparation of Nestor's SALN for 1996 as their office has an administrative officer responsible for such task.[24] Further, Mary testified that she only found out that Nestor declared the old house as his own when the complaint was filed by the respondent.[25] When presented with a duplicate original copy of her own SALN purportedly for the year 1995 wherein only one house was declared as asset, Mary stated that what was declared was the old house.[26] The new house was not declared due to inadvertence.[27] When questioned further, Mary admitted that the house declared in her SALN for the year 1995 happens to be the *new* house and not the old house.[28] Later, however, Mary explained the discrepancies in the values pertaining to her properties as declared in her SALN and reiterated that the house declared in the questioned SALN was the *old* house.[29]

Witnesses for petitioners included Gloria Linda Guinawa (Guinawa), Erlinda Paraguas (Paraguas), Dolores Wooden (Dolores) and SPO4 Florencio Kimmayong (SPO4 Kimmayong). Guinawa, the Municipal Assessor of Lagawe, Ifugao, confirmed that as per official records of the Provincial Assessor's Office, the old house was first declared in Mary's name on August 9, 1988; that said house has not been declared in another person's name;[30] and, that there were instances where real property taxes

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[23] *Id.* at 15.

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

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

[26] *Id.* at 25.

[27] *Id.* at 26.

[28] *Id.* at 27.

[29] *Id.* at 31, 34.

[30] TSN, August 18, 1998, pp. 2-9; CA *rollo*, pp. 25-33; TSN, February 24, 1999, pp. 1-11.

are paid years after the assessment has been issued.[31] Respondent's neighbor, Paraguas, also narrated that she accompanied Mary to the old house after Nestor's death and that Mary did not take any documents from the house.[32] Dolores, the respondent's mother-in-law, testified that her son Nestor renovated the old house to make it "convenient" but denied that he purchased the same.[33] For his part, SPO4 Kimmayong, testified that as Administrative Officer of the Lagawe Police Station, he was responsible for preparing the 1996 SALN of Nestor.[34]

Ruling of the Regional Trial Court

In its January 28, 2004 Decision,[35] the RTC ruled that respondent was not able to prove the sale of the old house with preponderant evidence which would justify the court to compel petitioners to execute the documents of sale/conveyance. It dismissed the complaint, disposing as follows:

> WHEREFORE, premises considered and by preponderance of evidence, plaintiff failed to prove her case, thus it is hereby denied. It is the defendants, instead, by the same quantum of evidence, who proved their unquestioned possession and ownership of the house in question and should remain undisturbed.
>
> Plaintiff is therefore ordered to abandon all claims on the house in question by simply remaining in Santiago City, her birthplace and work place, as was the status quo since the inception of this case. Defendants, being the true owners, may now do as they please with their house.
>
> No pronouncement as to damages since no evidence was presented to this effect.
>
> SO ORDERED.[36]

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[31] TSN, December 8, 1999, pp. 11-12.

[32] *Id.* at 4-9.

[33] TSN, December 9, 1999, pp. 3-4.

[34] TSN, January 30, 2003, pp. 6-8.

[35] *Supra* note 6.

[36] Records, pp. 198-199.

Ruling of the Court of Appeals

On appeal, the CA reversed the RTC through its June 15, 2006 Decision and held that respondent "*was able to present other cogently strong proofs in amplification of her evidence which were entirely ignored by the court a quo to the effect* that the subject house was sold by appellees to them."[37] The appellate court held that respondent, by clear preponderance of evidence, has made out and established a thoroughly convincing case for the exercise of the right provided for in Article 1357[38] of the Civil Code of the Philippines.[39]

Petitioners moved for reconsideration[40] but their motion was denied by the CA for lack of merit.[41]

Issues

Petitioners come before this Court by way of a Petition for Review on *Certiorari* raising the following issues*:*

A.

WHETHER X X X THE HONORABLE COURT OF APPEALS COULD VALIDLY ORDER PETITIONERS TO EXECUTE A [REGISTRABLE] DOCUMENT DESPITE THE FAILURE OF RESPONDENT TO PROVE THE DUE EXECUTION AND EXISTENCE OF THE ALLEGED "PRIVATE DOCUMENT" EVIDENCING THE ALLEGED PURCHASE OF THE HOUSE IN DISPUTE;

B.

WHETHER X X X THE HONORABLE COURT OF APPEALS COULD VALIDLY IGNORE OR DISREGARD THE ASSESSMENT OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES;

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[37] CA *rollo*, pp. 136-137.

[38] Article 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract.

[39] CA *rollo*, pp. 140-141.

[40] *Id.* at 153-159.

[41] *Id.* at 175.

C.

WHETHER X X X THE FINDINGS OF FACTS BY THE HONORABLE COURT OF APPEALS ARE MANIFESTLY MISTAKEN, WITHOUT EVIDENTIARY BASIS AND CONTRADICTORY TO THE FINDINGS OF THE TRIAL COURT;

D.

WHETHER X X X THE ALLEGED SALE [MAY] BE CONSIDERED VALID DESPITE THE ABSENCE OF ANY EVIDENCE THAT WOULD SHOW THAT PETITIONER WILLIAM GUIDANGEN HAD GIVEN HIS CONSENT TO THE ALLEGED SALE MADE BY PETITIONER MARY GUIDANGEN IN FAVOR OF RESPONDENT AND HER LATE HUSBAND;

E.

WHETHER X X X THE HONORABLE COURT OF APPEALS ERRED IN NOT RECOGNIZING THE EVIDENTIARY VALUE OF PETITIONERS' TAX DECLARATION, PAYMENT OF REALTY TAX AS WELL AS THE ELECTRICAL CONNECTIONS OF THE HOUSE WHICH ARE IN THE NAME OF PETITIONERS.[42]

The abovementioned issues boil down to the basic question of whether there is a contract of sale between the parties, the determination of which will settle who the rightful owner of the disputed property is.

Our Ruling

We grant the petition.

It is a settled rule that the appellate court's findings of fact are binding and must be respected by this Court.[43] However, due to the conflicting factual findings of the trial court and the appellate court, we are constrained to delve into factual circumstances surrounding this case and weigh the same in the interest of justice.

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[42] *Rollo*, p. 98.

[43] *Borillo v. Court of Appeals*, G.R. No. 55691, May 21, 1992, 209 SCRA 130, 140; citing *Chan v. Court of Appeals*, 144 Phil. 678, 684 (1970).

Respondent has the burden of proving her case, relying on the strength of her own title and not on the alleged weakness of her opponents' claim.

Respondent does not dispute the fact that the old house was originally owned by petitioners. She, however, claims to have obtained her title over the same from petitioners through a sale sometime in 1994 and 1995. To substantiate this, respondent presented her testimony regarding the alleged sale transaction, her husband's SALN for the year 1996 allegedly prepared by Mary and which declared the old house as Nestor's property, and the testimonies of two former tenants that they paid their rentals to the Wooden spouses. Quite notably though respondent has not presented the alleged private document or any document evidencing the supposed sale. And while she insists that Mary took the receipt — the supposed single and crucial proof of sale — her assertions are mere accusations. Aside from her testimony, respondent presented no proof to corroborate her claim that, indeed, such document exists and that Mary took the same. The rule is well-settled that he who alleges a fact has the burden of proving it[44] and a mere allegation is not evidence. Also, with Mary's outright denial of the sale coupled with the lack of documentary evidence to prove such payment, it behooves upon respondent to prove her case and convince the court that what she claims are true. However, respondent was unable to do this. Borrowing the words of the trial court, "instead of establishing that there was indeed a sale, plaintiff wanted to prove her case by a receipt when it should be the receipt that should further corroborate the existence of the sale."[45]

Respondent failed to prove the existence of a perfected contract of sale between the parties.

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[44] *Fernandez v. Amagna*, G.R. No. 152614, September 30, 2009, 601 SCRA 330, 348.

[45] Records, p. 192.

Aside from respondent's failure to present the private document from which she derives her alleged rights over the subject house, it cannot also be concluded from the facts and circumstances surrounding this case that a contract of sale between the parties was indeed perfected. Respondent failed to establish that there was a meeting of the minds between the parties as to the consideration or purchase price certain in money of the old house.[46] In fact, respondent's testimony pertaining to the payment of a total amount of ₱51,000.00 is quite unclear as to whether it already represents the total amount of the supposed agreed purchase price or the same is just part of the ₱60,000.00 she had to pay for the house as alleged in the complaint.

Further, the due execution and authenticity of the said private document cannot be ascertained given that respondent was not present during its execution and neither does her signature or that of her husband appear thereon. The respondent did not likewise present any other witness who knew about and read the private document, much less saw it executed.

The "other cogently strong proofs" relied upon by the Court of Appeals in its assailed Decision are insufficient to establish respondent's right to compel petitioners to execute a document of conveyance in her favor.

The CA, in reversing the trial court's Decision, relied on *"other cogently strong proofs"* to determine the existence of a contract of sale between the parties. These cogently strong proofs are the fact that the Wooden spouses renovated the old house; that the Wooden spouses collected rental payments; and, the revealing contents of the SALN of both Mary and Nestor.

The CA opined that the fact that petitioners did not contradict the claim that the old house was fully renovated by the Wooden

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[46] CIVIL CODE, Article 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. x x x

spouses in 1995 and that rentals were being collected by them for a long time are indications of ownership on the part of the Wooden spouses.

The Court disagrees.

Petitioners have been challenging the claims of respondent from the very start. Mary explained that she and her husband only allowed the Wooden spouses to collect the rental payments so that the latter could use the money for the maintenance and minor repairs of the old house. As to the renovations made, same cannot be considered an act of ownership since what was renovated was only the second floor of the old house or the area occupied by the Wooden spouses. Respondent, in her testimony, did not mention renovating the ground floor of the said house which was rented out to tenants. With respect to the second floor, the Wooden spouses were able to cause the renovation of the same because, as earlier stated, they were given liberty by petitioners to make improvements on the old house. And as testified to by respondent's own mother-in-law, Dolores, the Wooden spouses undertook the renovation only on the area they were occupying to make it more convenient for them.

Also noteworthy is Dolores' statement that her son, Nestor, denied being the owner of the old house during one of her visits thereto. Refusing to give weight to the same, the CA surmised that "it would not be farfetched to assume that Nestor Wooden bought the house **after** his mother's visit, having realized that he already spent far too much for the improvement of the subject house."[47] The Court, however, finds this statement a mere assumption which cannot be used as basis in deciding a case or in granting relief. A judgment has to be based on facts. Conjectures and surmises cannot substitute for the facts.[48] "A conjecture is always a conjecture; it can never be admitted as evidence."[49] Moreover, even if such assumption is permitted,

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[47] CA *rollo*, p. 140.

[48] *Caoile v. Vivo*, 210 Phil. 67, 80 (1983).

[49] *Alsua-Betts v. Court of Appeals*, 180 Phil. 737, 768 (1979).

same still runs counter to respondent's claim that she and Nestor renovated the old house after they purchased it sometime in 1994 and 1995.

With respect to the SALN, Nestor's SALN for the year 1995 indicates the old house as part of his assets while Mary's SALN for 1995 did not declare the same as her asset. This and the alleged palpable prevarications made by Mary during her testimony with respect to the inconsistent contents of her SALN made the CA conclude in favor of respondent. According to the appellate court, the contents of the subject SALN strongly prove the Wooden spouses' ownership over the old house. Unfortunately, respondent did not offer in evidence the SALN of Mary to enable us to determine the veracity of the said conclusion.

We also take note of the CA's conclusion that since it was determined that Mary was the one who submitted the 1996 SALN of Nestor when the latter was hospitalized, and "the subject [SALN] mentioned and referred to only one (1) real property as belonging to Nestor Wooden, *i.e.* the house within the PNP barracks, the obvious and inexorable conclusion is that the appellee [Mary] had read the [SALN], and took no issue with it, because it was true."[50] Again, this is pure conjecture. Unless respondent has proven that Mary indeed read and knew about the contents of the SALN, the CA cannot assume that Mary was aware of the contents of the said document or that the asset declared therein refers to the very same property subject of this case. It is also immaterial that Nestor and Mary used to work in the same police station. Said fact does not automatically mean that each member knows the affairs, financial or otherwise, of the other member. It must be taken into consideration that although the particular document is confidential in nature, it cannot be assumed that a colleague, or even a relative, will always give in to the temptation of poking his or her nose in the affairs of others.

Further, granting for the sake of argument that Mary did browse through the SALN of Nestor, we note the relevant entries

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[50] CA *rollo*, p. 138.

thus: a house located at EM's Bario acquired in 1995 through purchase costing ₱70,000.00 and improved in the amount of ₱70,000.00.[51] Such description does not clearly identify the property as the old house owned by Mary. Therefore, the latter cannot be charged with acquiescence to Nestor's declaration of ownership over the said house. Again, even assuming that said declaration is given weight, same is still inconsistent with the adamant claim of respondent that they purchased the old house for ₱60,000.00 and improved the same to the tune of ₱175,000.00.

Moreover, the SALN cannot take precedence over the Tax Declaration issued in the name of Mary. As stated by the trial court, jurisprudence is replete with cases where the Court has stated that ownership and possession are established by a Certificate of Title and, in its absence, by a Tax Declaration. Admittedly, it is well-settled that tax declarations and receipts are not conclusive evidence of ownership, or of the right to possess land, in the absence of any other strong evidence to support them. "The tax receipts and declarations are merely *indicia* of a claim of ownership."[52] However, in the case before us where respondent is unable to produce any shred of document as evidence of her claim, the tax declaration becomes *prima facie* evidence of ownership in favor of petitioners. "Tax receipts and [tax] declarations are *prima facie* proof of ownership or possession of the property for which such taxes have been paid."[53] The established fact that the tax declaration was issued as early as 1988 in the name of Mary, and has not been transferred to anyone else since its issuance tilts the balance in favor of petitioners. Petitioners' payment of real property taxes only on August 11, 1997, or a month before the respondent filed her complaint in court, should have no bearing on the question of ownership over the old house. As clarified by the Municipal Assessor, it is a common occurrence that real property taxes are not paid religiously.

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[51] Records, p. 92.

[52] *Heirs of Brusas v. Court of Appeals*, 372 Phil. 47, 55 (1999).

[53] *De La Cruz v. Court of Appeals*, 458 Phil. 929, 941 (2003).

It must be stressed that "[i]n civil cases, the burden of proof is on the plaintiff [herein respondent] to establish her case by preponderance of evidence. If [she] claims a right granted or created by law, [she] must prove [her] claim by competent evidence. [She] must rely on the strength of [her] own evidence and not on the weakness of that of [her] opponent."[54] More so, having filed an action involving property, respondent has the burden of proving her case, relying on the strength of her own title and not on the alleged weakness of her opponents' claim.[55] Indeed, to award ownership to respondent absent any shred of corroborative evidence of her claim over the old house opens doubts on the veracity of her naked assertions.[56]

In view of the foregoing, we agree with the findings of the trial court and rule in favor of petitioners. "It is a matter of judicial policy to accord the trial court's findings of facts with the highest respect and not to disturb the same on appeal unless there are strong and impelling reasons to do so. The reason for this is that trial courts have more opportunity and facilities to examine factual matters than appellate courts. They are in a better position to assess the credibility of witnesses, not only by the nature of their testimonies, but also by their demeanor on the stand."[57] No clear specific contrary evidence was cited by the CA to justify the reversal of the trial court's findings. Thus, in this case, between the factual findings of the trial court and those of the CA, those of the trial court must prevail over those of the latter.[58]

WHEREFORE, the petition is **GRANTED**. The June 15, 2006 Decision and September 1, 2006 Resolution rendered by the

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[54] *Heirs of Spouses Dela Cruz v. Heirs of Quintos, Sr.*, 434 Phil. 708, 719 (2002); *Umpoc v. Mercado*, 490 Phil. 118, 135 (2005).

[55] *Ocampo v. Ocampo*, 471 Phil. 519, 539 (2004).

[56] *Spouses de la Cruz v. Ramiscal*, 491 Phil. 62, 75 (2005).

[57] *Borillo v. Court of Appeals*, *supra* note 43 at 147.

[58] *Claudel v. Court of Appeals*, G.R. No. 85240, July 12, 1991, 199 SCRA 113, 124.

Court of Appeals in CA-G.R. CV No. 83209 are **REVERSED and SET ASIDE**. The Decision of the Regional Trial Court, Branch 14, Lagawe, Ifugao in Civil Case No. 572 is **REINSTATED**. No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 175025. February 15, 2012]

ROGELIO J. JAKOSALEM and GODOFREDO B. DULFO, *petitioners, vs.* **ROBERTO S. BARANGAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; ACTION TO RECOVER; REQUISITES.— Article 434 of the Civil Code provides that "[i]n an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim." In other words, in order to recover possession, a person must prove (1) the identity of the land claimed, and (2) his title.

2. ID.; DAMAGES; ACTUAL DAMAGES, MORAL DAMAGES AND ATTORNEY'S FEES; AWARDED IN CASE AT BAR.— Since respondent Barangan was deprived of possession of the subject property, he is entitled to reasonable compensation in the amount of ₱3,000.00 per month from November 17, 1994, the date of judicial demand, up to the time petitioners vacate

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[*] Per raffle dated January 30, 2012.

the subject property. The legal interest of which shall be at the rate of 6% per annum from November 17, 1994 and at the rate of 12% per annum from the time the judgment of this Court becomes final and executory until the obligation is fully satisfied. x x x For the mental anguish, sleepless nights, and serious anxiety suffered by respondent Barangan, he is entitled to moral damages under Article 2217 of the Civil Code but in the reduced amount of ₱50,000.00, which is the amount prayed for in the complaint. Although not alleged in the complaint, we sustain the CA's award of ₱50,000.00 as attorney's fees because it is sanctioned by law, specifically, paragraphs 2 and 11 of Article 2208 of the Civil Code.

3. REMEDIAL LAW; ACTIONS; PRESCRIPTION AND LACHES; CANNOT APPLY TO REGISTERED LANDS COVERED BY THE TORRENS SYSTEM.— Jurisprudence consistently holds that "prescription and laches can not apply to registered land covered by the Torrens system" because "under the Property Registration Decree, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession."

APPEARANCES OF COUNSEL

Rogelio J. Jakosalem for petitioners.
Domingo A. Cristobal and *Abigail A. Portugal* for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This case exemplifies the age-old rule that the one who holds a Torrens title over a lot is the one entitled to its possession.[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the Decision[3] dated August 3, 2006

[1] *Esmaquel v. Coprada*, G.R. No. 152423, December 15, 2010, 638 SCRA 428, 438.

[2] *Rollo*, pp. 76-470 with Annexes "A" to "J" inclusive.

[3] *Id.* at 109-146; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin.

and the Resolution[4] dated October 4, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 79283.

Factual Antecedents

On August 13, 1966, respondent Col. Roberto S. Barangan (respondent Barangan) entered into a Land Purchase Agreement[5] with Ireneo S. Labsilica of Citadel Realty Corporation whereby respondent Barangan agreed to purchase on installment a 300 square meter parcel of land, covered by Transfer Certificate of Title (TCT) No. 165456,[6] located in Antipolo, Rizal.[7] Upon full payment of the purchase price, a Deed of Absolute Sale[8] was executed on August 31, 1976 in his favor.[9] Consequently, the old title, TCT No. 171453,[10] which was a transfer from TCT No. 165456,[11] was cancelled and a new one, TCT No. N-10772,[12] was issued in his name.[13] Since then, he has been dutifully paying real property taxes for the said property.[14] He was not, however, able to physically occupy the subject property because as a member of the Philippine Air Force, he was often assigned to various stations in the Philippines.[15]

On December 23, 1993, when he was about to retire from the government service, respondent Barangan went to visit his

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[4] *Id.* at 148-150.

[5] *Id.* at 249 (Land Purchase Agreement dated August 15, 1966).

[6] *Id.* at 382-383.

[7] *Id.* at 110.

[8] *Id.* at 379-380.

[9] *Id.* at 110-111.

[10] *Id.* at 252.

[11] *Id.* at 382-383.

[12] *Id.* at 268.

[13] *Id.* at 111.

[14] *Id.*

[15] *Id.*

property, where he was planning to build a retirement home. It was only then that he discovered that it was being occupied by petitioner Godofredo Dulfo (petitioner Dulfo) and his family.[16]

On February 4, 1994, respondent Barangan sent a letter[17] to petitioner Dulfo demanding that he and his family vacate the subject property within 30 days. In reply, petitioner Atty. Rogelio J. Jakosalem (petitioner Jakosalem), the son-in-law of petitioner Dulfo, sent a letter[18] claiming ownership over the subject property.

On February 19, 1994, respondent Barangan filed with *Barangay* San Luis, Antipolo, Rizal, a complaint for Violation of Presidential Decree No. 772 or the Anti-Squatting Law against petitioners.[19] No settlement was reached; hence, the complaint was filed before the Prosecutor's Office of Rizal.[20] The case, however, was dismissed because the issue of ownership must first be resolved in a civil action.[21]

On May 28, 1994, respondent Barangan commissioned Geodetic Engineer Lope C. Jonco (Engr. Jonco) of J. Surveying Services to conduct a relocation survey of the subject property based on the technical description appearing on respondent Barangan's TCT.[22] The relocation survey revealed that the property occupied by petitioner Dulfo and his family is the same property covered by respondent Barangan's title.[23]

On November 17, 1994, respondent Barangan filed a Complaint[24] for Recovery of Possession, docketed as Civil Case

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[16] *Id.*

[17] *Id.* at 258.

[18] *Id.* at 259.

[19] *Id.* at 111.

[20] *Id.*

[21] *Id.* at 283.

[22] *Id.* at 112.

[23] *Id.*

[24] *Id.* at 168-172.

No. 94-3423, against petitioners Dulfo and Jakosalem with the Regional Trial Court (RTC), Branch 73, Antipolo City. Respondent Barangan prayed that petitioners Dulfo and Jakosalem be ordered to vacate the subject property and pay a monthly rental of ₱3,000.00 for the use and occupancy of the subject property from May 1979 until the time the subject property is vacated, plus moral and exemplary damages and cost of suit.[25]

In their Answer with Counterclaim,[26] petitioners Dulfo and Jakosalem claimed that the subject property was assigned to petitioner Jakosalem by Mr. Nicanor Samson (Samson);[27] that they have been in possession of the subject property since May 8, 1979;[28] and that the property covered by respondent Barangan's title is not the property occupied by petitioner Dulfo and his family.[29]

During the trial, respondent Barangan testified for himself and presented three witnesses: (1) Gregorio Estardo (Estardo), the caretaker of Villa Editha Subdivision and Rodville Subdivision[30] employed by Citadel Realty Corporation, who stated under oath that petitioner Dulfo used to rent the lot owned by Dionisia Ordialez (Estardo's Aunt) and that when petitioner Dulfo could no longer pay the rent, he and his family squatted on the property of respondent Barangan;[31] (2) Candida Lawis, a representative of the Municipal Assessor of Antipolo, Rizal, who confirmed that respondent Barangan is included in the list of registered owners of lots in Villa Editha Subdivision III and Rodville Subdivision[32] and; (3) Engr. Jonco, who testified that the property

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[25] *Id.* at 170.

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

[27] *Id.* at 177.

[28] *Id.*

[29] *Id.* at 178.

[30] The subdivision where the property is located; *Id.* at 169.

[31] *Id.* at 119-120.

[32] *Id.* at 119.

occupied by petitioner Dulfo and his family and the property owned by respondent Barangan are one and the same.[33]

The defense moved for the dismissal of the case on demurrer to evidence but was denied by the RTC.[34] Thus, the defense presented petitioner Jakosalem who maintained that he acquired the subject property by assignment from its previous owner, Samson.[35] The defense likewise requested an ocular inspection of the subject property to show that it is not the property covered by respondent Barangan's title.[36] However, instead of granting the request, the RTC issued an Order[37] dated September 15, 2000 directing Engr. Romulo Unciano of the Department of Environment and Natural Resources (DENR) Antipolo City to conduct a resurvey or replotting of land based on the title of respondent Barangan and to submit a report within 15 days.[38] The resurvey, however, did not push through because the defense in an Omnibus Motion[39] dated September 20, 2000 abandoned its request for an ocular inspection claiming that it was no longer necessary.[40]

Ruling of the Regional Trial Court

On March 19, 2003, the RTC rendered a Decision[41] against respondent Barangan for failure to present sufficient evidence to prove his claim.[42] The RTC further said that even if the

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[33] *Id.* at 120-121.

[34] *Id.* at 125-126.

[35] *Id.* at 126-127.

[36] Records, p. 176.

[37] *Id.*

[38] *Id.*

[39] *Id.* at 177-178.

[40] *Id.* at 177.

[41] *Rollo*, pp. 181-185.

[42] *Id.* at 185.

subject property is owned by respondent Barangan, prescription and laches have already set in; thus, respondent Barangan may no longer recover the same.[43] The dispositive portion reads:

> WHEREFORE, premises considered, for insufficiency of evidence judgment is hereby rendered in favor of the defendant and against the plaintiff. By way of counterclaim, the plaintiff is hereby ordered to pay defendant Jakosalem the following amounts:
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> a. ₱100,000 for moral damages;
> b. ₱50,000 as actual damages;
> c. ₱25,000 as exemplary damages;
> d. ₱20,000 for litigation expenses; and
> e. Costs of suit.
>
> SO ORDERED.[44]

Ruling of the Court of Appeals

On appeal, the CA reversed the findings of the RTC. It found respondent Barangan entitled to recover possession of the subject property because he was able to sufficiently prove the identity of the subject property and that the same is owned by him, as evidenced by TCT No. N-10772.[45] And since respondent Barangan was deprived of possession of the subject property, the CA ruled that he is entitled to reasonable compensation for the use of the property with interest, as well as the payment of moral, temperate or moderate damages, and attorney's fees,[46] to wit:

> **WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision dated 19 March 2003 of the Regional Trial Court of Antipolo City, Branch 73 in Civil Case No. 94-3423 is hereby **REVERSED AND SET ASIDE** and a new one is rendered declaring, as follows:

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[43] *Id.* at 184-185; penned by Judge Mauricio M. Rivera.

[44] *Id.* at 185.

[45] *Id.* at 139.

[46] *Id.* at 142-143.

1. Appellant Roberto S. Barangan is entitled to the possession of the subject property-Lot 11, Block 5, of the subdivision plan (LRC) Psd-60846 situated in Rodville Subdivision, Barangay San Luis, Antipolo, Rizal, covered by Transfer Certificate of Title No. N-10772 of the Registry of Deeds for the Province of Rizal;

2. Appellees and all persons deriving rights under them who are occupants of the subject property are ordered to vacate the subject property and surrender peaceful possession thereof to appellant;

3. Appellees and all persons deriving rights under them who are occupants of the subject property are ordered to pay to appellant reasonable compensation for the use of the subject property in the amount of Php3,000.00 per month from 17 November 1994 until they vacate the subject property and turn over the possession to appellant, plus legal interest of 12% per annum, from the date of promulgation of this Decision until full payment of all said reasonable compensation; and

4. Appellees are ordered to pay to appellant the amount of Php100,000.00 as moral damages, Php50,000.00 as temperate or moderate damages, and Php50,000.00 as attorney's fees.

Cost against appellees.

SO ORDERED.[47]

Issues

Hence, the instant petition with the following issues:

1. WHETHER X X X [BARANGAN] WAS ABLE TO IDENTIFY THE EXACT LOCATION OF HIS PROPERTY DESCRIBED UNDER TCT NO. N-10772 [AND WHETHER] THE PROPERTY OCCUPIED BY DULFO [IS] THE SAME PROPERTY CLAIMED BY [BARANGAN];
2. WHETHER X X X [BARANGAN] HAS FULLY SATISFIED THE REQUIREMENTS OF ARTICLE 434 OF THE CIVIL CODE X X X;
3. WHETHER X X X THE AMOUNT OF PHP3,000.00 AS MONTHLY LEASE RENTAL OR COMPENSATION FOR THE USE OF THE PROPERTY IS REASONABLE;

[47] *Id.* at 143-144.

4. WHETHER X X X THE GRANT OF XXX MORAL, TEMPERATE OR MODERATE [DAMAGES] AND ATTORNEY'S FEES, X X X IS IN ACCORDANCE WITH EVIDENCE AND LAW;

5. WHETHER X X X LACHES AND PRESCRIPTION [HAVE] BARRED THE FILING OF THIS CASE.[48]

Petitioners' Arguments

Petitioners Dulfo and Jakosalem contend that the CA erred in reversing the findings of the RTC as respondent Barangan's property was not properly identified.[49] They claim that the relocation survey conducted by Engr. Jonco violated the agreement they made before the *Barangay* that the survey should be conducted in the presence of both parties.[50] They also claim that the title number stated in the Land Purchase Agreement is not the same number found in the Deed of Absolute Sale.[51] They likewise insist that laches and prescription barred respondent Barangan from filing the instant case.[52] Lastly, they contend that the damages ordered by the CA are exorbitant, excessive and without factual and legal bases.[53]

Respondent's Arguments

Respondent Barangan, on the other hand, argues that being the registered owner of the subject property, he is entitled to its possession.[54] He maintains that his Torrens title prevails over the Assignment of a Right[55] presented by petitioners.[56]

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[48] *Id.* at 593-594.

[49] *Id.* at 594-599.

[50] *Id.* at 589-590.

[51] *Id.* at 590.

[52] *Id.* at 603-604.

[53] *Id.* at 600-603.

[54] *Id.* at 553.

[55] *Id.* at 273.

[56] *Id.* at 553.

Moreover, laches and prescription do not apply against him as there was no delay on his part to assert his right to the property.[57]

Our Ruling

The petition lacks merit.

Respondent Barangan is entitled to recover the subject property

Article 434 of the Civil Code provides that "[i]n an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim." In other words, in order to recover possession, a person must prove (1) the identity of the land claimed, and (2) his title.[58]

In this case, respondent Barangan was able to prove the identity of the property and his title. To prove his title to the property, he presented in evidence the following documents: (1) Land Purchase Agreement;[59] (2) Deed of Absolute Sale;[60] (3) and a Torrens title registered under his name, TCT No. N-10772.[61] To prove the identity of the property, he offered the testimonies of Engr. Jonco, who conducted the relocation survey,[62] and Estardo, the caretaker of the subdivision, who showed respondent Barangan the exact location of the subject property.[63] He likewise submitted as evidence the Verification Survey Plan of Lot 11, Block 5, (LRC) Psd-60846, which was plotted based on the technical description appearing on respondent Barangan's title.[64]

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[57] *Id.* at 547-548.

[58] *Spouses Hutchison v. Buscas*, 498 Phil. 257, 262 (2005).

[59] *Rollo*, p. 249.

[60] *Id.* at 379-380.

[61] *Id.* at 268.

[62] *Id.* at 120-122.

[63] *Id.* at 119-120.

[64] *Id.* at 134.

Petitioners' contention that the relocation survey was done in violation of their agreement deserves scant consideration. Petitioners were informed[65] beforehand of the scheduled relocation survey on May 29, 1994 but they opted not to attend. In fact, as testified by respondent Barangan and Engr. Jonco, the relocation survey had to be postponed several times because petitioners refused to participate.[66] By refusing to attend and participate in the relocation survey, they are now estopped from questioning the results of the relocation survey.[67]

Records also show that during the trial, the RTC ordered the DENR to conduct a resurvey of the subject property; but petitioners moved that the same be abandoned claiming that the resurvey would only delay the proceedings.[68] To us, the persistent refusal of petitioners to participate in the relocation survey does not speak well of their claim that they are not occupying respondent Barangan's property. In fact, their unjustified refusal only shows either of two things: (1) that they know for a fact that the result would be detrimental to their case; or (2) that they have doubts that the result would be in their favor.

Neither is there any discrepancy between the title number stated in the Land Purchase Agreement and the Deed of Absolute Sale. As correctly found by the CA, TCT No. 171453, the title stated in the Deed of Absolute Sale, is a transfer from TCT No. 165456, the title stated in the Land Purchase Agreement.[69] Hence, both TCTs pertain to the same property.

Respondent Barangan is entitled to actual and moral damages as well as attorney's fees

Since respondent Barangan was deprived of possession of the subject property, he is entitled to reasonable compensation

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[65] *Id.* at 281.

[66] *Id.* at 116-121.

[67] *Director of Lands v. Court of Appeals*, G.R. No. L-45168, January 27, 1981, 102 SCRA 370, 443.

[68] *Rollo*, pp. 127-128.

[69] *Id.* at 133.

in the amount of ₱3,000.00[70] per month from November 17, 1994, the date of judicial demand, up to the time petitioners vacate the subject property. The legal interest of which shall be at the rate of 6% per annum from November 17, 1994 and at the rate of 12% per annum from the time the judgment of this Court becomes final and executory until the obligation is fully satisfied.[71]

The award of temperate damages in the amount of ₱50,000.00, representing the expenses for the relocation survey, however, must be deleted as these expenses were not alleged in the complaint.[72]

For the mental anguish, sleepless nights, and serious anxiety suffered by respondent Barangan, he is entitled to moral damages under Article 2217[73] of the Civil Code but in the reduced amount of ₱50,000.00, which is the amount prayed for in the complaint.[74]

Although not alleged in the complaint, we sustain the CA's award of ₱50,000.00 as attorney's fees because it is sanctioned by law, specifically, paragraphs 2 and 11 of Article 2208[75] of the Civil Code.[76]

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[70] The amount alleged in the complaint filed by respondent Barangan; *id* at 170.

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

[72] TSN dated November 8, 1996, Direct Examination of respondent Barangan, pp. 4-5.

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

[74] *Rollo*, p. 170.

[75] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(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;

Laches and prescription do not apply

Finally, as to the issue of laches and prescription, we agree with the CA that these do not apply in the instant case. Jurisprudence consistently holds that "prescription and laches can not apply to registered land covered by the Torrens system" because "under the Property Registration Decree, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession."[77]

WHEREFORE, the petition is hereby **DENIED**. The assailed Decision dated August 3, 2006 and the Resolution dated October 4, 2006 of the Court of Appeals in CA-G.R. CV No. 79283 are hereby **AFFIRMED with MODIFICATIONS**. The award of moral damages is **REDUCED** to ₱50,000.00 while the award of temperate damages is **DELETED**. The reasonable monthly rental of ₱3,000.00 shall earn legal interest of six percent (6%) per annum from November 17, 1994, and at the rate of twelve percent (12%) per annum from the finality of this judgment until the obligation is fully satisfied.

SO ORDERED.

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

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(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.

[76] *Micro Sales Operation Network v. National Labor Relations Commission*, 509 Phil. 313, 322 (2005).

[77] *Velez, Sr. v. Rev. Demetrio,* 436 Phil. 1, 9 (2002).

[*] Per raffle dated September 7, 2011.

[**] In lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1193 dated February 10, 2012.

THIRD DIVISION

[G.R. No. 175932. February 15, 2012]

WUERTH PHILIPPINES, INC., *petitioner, vs.* **RODANTE YNSON,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; DISEASE AS A GROUND FOR DISMISSAL; THE REQUIREMENT FOR A MEDICAL CERTIFICATE CANNOT BE DISPENSED WITH.— With regard to disease as a ground for termination, Article 284 of the Labor Code provides that an employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health, as well as to the health of his co-employees. x x x In *Triple Eight Integrated Services, Inc. v. NLRC,* the Court held that the requirement for a medical certificate under Article 284 of the Labor Code cannot be dispensed with; otherwise, it would sanction the unilateral and arbitrary determination by the employer of the gravity or extent of the employee's illness and, thus, defeat the public policy on the protection of labor. In the present case, there was no showing that prior to terminating respondent's employment, petitioner secured the required certification from a competent public health authority that the disease he suffered was of such nature or at such a stage that it cannot be cured within six months despite proper medical treatment, pursuant to Section 8, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code.

2. ID.; ID.; ID.; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; THE MERE EXISTENCE OF A BASIS FOR BELIEVING THAT A MANAGERIAL EMPLOYEE HAS BREACHED THE TRUST AND CONFIDENCE OF HIS EMPLOYER WOULD SUFFICE FOR HIS DISMISSAL.— It bears stressing that respondent was not an ordinary rank-and-file employee. With the nature of his position, he was reposed with managerial duties to oversee petitioner's business in his assigned area. As a managerial employee,

respondent was tasked to perform important and crucial functions and, thus, bound by more exacting work ethic. He should have realized that such sensitive position required the full trust and confidence of his employer in every exercise of managerial discretion insofar as the conduct of the latter's business is concerned. The power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business. The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. The worker's right to security of tenure is not an absolute right, for the law provides that he may be dismissed for cause. As a general rule, employers are allowed wide latitude of discretion in terminating the employment of managerial personnel. The mere existence of a basis for believing that such employee has breached the trust and confidence of his employer would suffice for his dismissal. Needless to say, an irresponsible employee like respondent does not deserve a place in the workplace, and it is petitioner's management prerogative to terminate his employment. To be sure, an employer cannot be compelled to continue with the employment of workers when continued employment will prove inimical to the employer's interest. To condone such conduct will certainly erode the discipline that an employer should uniformly apply so that it can expect compliance with the same rules and regulations by its other employees. Otherwise, the rules necessary and proper for the operation of its business would be gradually rendered ineffectual, ignored, and eventually become meaningless. As applied to the present case, it would be the height of unfairness and injustice if the employer would be left hanging in the dark as to when respondent could report to work or be available for the scheduled hearings, which becomes detrimental to the orderly daily operations of petitioner's business.

3. ID.; ID.; LABOR STANDARDS; WHERE THE EMPLOYEE'S FAILURE TO WORK WAS OCCASIONED NEITHER BY HIS ABANDONMENT NOR BY A TERMINATION, THE BURDEN OF ECONOMIC LOSS IS NOT RIGHTFULLY SHIFTED TO THE EMPLOYER; CASE AT BAR.— In *Leonardo v. National Labor Relations Commission,* We held that where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden

of economic loss is not rightfully shifted to the employer; each party must bear his own loss. In the same manner, respondent's inability to work from January 24 to June 4, 2003, was neither due to petitioner's fault nor due to his willful conduct, but because he suffered a stroke on January 24, 2003. Hence, each must bear the loss accordingly. Beginning June 5, 2003, respondent should have reported back to work, but he failed to do so. Consequently, he can only be entitled to compensation for the actual number of work days. It would be unfair to allow respondent to recover something he has not earned and count not have earned, since he could not discharge his work as NSM. Petitioner should be exempted from the burden of paying backwages. The age-old rule governing the relation between labor and capital, or management and employee, of "a fair day's wage for a fair day's labor" remains as the basic factor in determining employee's wages. If there is no work performed by the employee, there can be no wage or pay – unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed, or otherwise illegally prevented from working, a situation which is not prevailing in the present case.

4. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; TO BE RECOVERABLE, THE ACTUAL AMOUNT OF LOSS MUST BE PROVED WITH A REASONABLE DEGREE OF CERTAINTY.— In order to justify a grant of actual or compensatory damages, it is necessary to prove, with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss. One is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has adequately proved. Damages, to be recoverable, must not only be capable of proof, but must be actually proved with a reasonable degree of certainty. The Court cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages. Actual proof of expenses incurred for the purchase of medicines and other medical supplies necessary for his treatment and rehabilitation should have been presented by respondent, in the form of official receipts, to show the exact cost of his medication, and to prove that, indeed, he went through medication and rehabilitation. Aside from the letter of Dr. De la Paz, respondent

miserably failed to produce even a single receipt showing his alleged medical and rehabilitation expenses. By reason thereof, petitioner should not be held liable for the ₱94,000.00 medical expenses of respondent as actual or compensatory damages, for lack of basis. Verily, in the absence of official receipts or other competent evidence to prove the actual expenses incurred, the CA's award of medical expenses in favor of respondent should be negated.

5. ID.; ID.; TEMPERATE OR MODERATE DAMAGES; MAY BE RECOVERED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED, BUT THE AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY.— Under Article 2224 of the Civil Code, temperate or moderate damages are more than nominal but less than compensatory, and may be recovered when the court finds that some pecuniary loss has been suffered, but the amount cannot, from the nature of the case, be proved with certainty. The CA found that respondent paid for the doctor's professional fees and incurred other hospital expenses; however, the records failed to show that he presented proof of the actual amount of expenses therein, which served as the basis for the CA to award temperate damages in the amount of ₱100,000.00. However, We reduce the amount of temperate damages awarded by the CA, from ₱100,000.00 to ₱50,000.00, considering that the stroke suffered by respondent was not debilitating in nature and the records showed that his health condition remained stable. Moreover, there were no instances of subsequent or recurring ailment that necessitates prolonged medical attention.

6. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; 13TH MONTH PAY; THE RULES ON THE ENTITLEMENT AND COMPUTATION THEREOF CANNOT BE APPLIED TO MANAGERIAL EMPLOYEES; EXCEPTION; CASE AT BAR.— Anent the CA's ruling that respondent should be entitled to 13th month pay, We clarify that the 13th Month Pay Law, which provides the rules on the entitlement and computation of the 13th month pay, cannot be applied to him because he is a managerial employee, and the law applies only to rank-and-file employees. Be that as it may, although he is not covered by the said law, records showed that he is entitled to this benefit. However, the Court cannot make a proper determination as to the exact amount — either full or pro-rated amount — of the

13th month pay, if any, that he would be entitled to. Thus, reference should be made in consonance with the existing company policy on the payment of the 13th month pay *vis-á-vis* the number of days that he actually worked.

7. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARDED ONLY WHEN THE EMPLOYEE IS ILLEGALLY DISMISSED IN BAD FAITH, AND IS COMPELLED TO LITIGATE OR INCUR EXPENSES TO PROTECT HIS RIGHTS BY REASON OF THE UNJUSTIFIED ACTS OF HIS EMPLOYER.— On the matter of attorney's fees, We have ruled that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith, and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer. In view of Our findings that respondent was validly dismissed for unauthorized absences, amounting to gross dereliction of duties under Article 282 (e) of the Labor Code, reckoned from June 5, 2003 (*i.e.*, the day after he was declared fit to return to work, but failed to do so), and lack of evidence that his dismissal was tainted with bad faith, the grant of 10% of the total monetary award as attorney's fees cannot be sustained.

APPEARANCES OF COUNSEL

Riguera & Riguera Law Office for petitioner.
Leo Caubang for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for Review on C*ertiorari* under Rule 45 of the Rules of Court, seeking to set aside the Decision[1] dated July 13, 2006 and the Resolution[2] dated December 6,

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[1] Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Rodrigo. Lim, Jr. and Sixto C. Marella, Jr., concurring; *rollo*, pp. 31-46.

[2] *Id.* at 48-49.

2006 of the Court of Appeals (CA), in CA-G.R. SP No. 00845, which affirmed with modification the Resolutions of the National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro City, in NLRC CA No. M-008246-2004 (RAB 11-09-00949-03), dated July 29, 2005 and November 24, 2005.

The factual antecedents are as follows:

On August 15, 2001, petitioner Wuerth Philippines, Inc., a subsidiary of Wuerth Germany, hired respondent Rodante Ynson, as its National Sales Manager (NSM) for Automotive. As NSM, respondent was required to travel to different parts of the country so as to supervise the sales activities of the company's sales managers, make a schedule of activities geared towards increasing the sales of petitioner's products, and submit said schedule to Marlon Ricanor, Chief Executive Officer of petitioner company.

In an electronic mail (e-mail)[3] dated January 4, 2003 sent to Ricanor, respondent furnished the former with a copy of his sales targets for the year 2003 and coverage plan for the month of January 2003, and indicated that he intends to be on leave from January 23 to 24, 2003. However, respondent was not able to follow the said coverage plan starting January 26, 2003, as he failed to report to work since then. It turned out that on January 24, 2003, he suffered a stroke, and on the succeeding days, he was confined at the Davao Doctor's Hospital. He immediately informed petitioner about his ailment.

On March 27, 2003, Dr. Daniel de la Paz, a Neurologist-Electroencephalographer in Davao City, issued a Certification[4] stating that respondent has been under his care since January 24, 2003 and was confined in the hospital from January 24 to February 3, 2003 due to sudden weakness on the left side of his body. In another Medical Certificate[5] dated June 4, 2003,

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[3] Records, Vol. I, pp. 88-90.

[4] *Rollo*, p. 95.

[5] *Id.* at 96.

Dr. De la Paz certified that respondent may return to work, but advised him to continue with his rehabilitation regimen for another month and a half.

Dr. Bernard S. Chiew, a specialist on Adult Cardiology, also issued an undated Medical Certificate[6] stating that he examined respondent who was diagnosed with primary hypertension, diabetes mellitus II, S/P stroke on June 4, 2003, and recommended that the latter should continue with his physical rehabilitation until July 2003.

On June 9, 2003, respondent sent an e-mail[7] to Hans Sigrit of Wuerth Germany, informing the latter that he can return to work on June 19, 2003, but in view of the recommendation of doctors that he should continue with his rehabilitation until July, he requested that administrative work be given to him while in Davao City, until completion of his therapy. On June 10, 2003, Alexandra Knapp, Secretary of the Management Board of Wuerth Germany, forwarded the e-mail[8] to Ricanor.

Thereafter, Ricanor sent a letter[9] dated June 12, 2003 to respondent, directing him to appear before the former's office in Manila, on July 1, 2003 at 9:00 a.m., for an investigation, relative to the following violations which carry the penalty of suspension and/or dismissal, based on the following alleged violations: (1) absences without leave since January 24, 2003 to date, and (2) abandonment of work. In a letter[10] dated June 26, 2003, respondent replied that his attending physician advised him to refrain from traveling, in order not to disrupt his daily schedule for therapy and medication.

On June 18, 2003, Knapp sent an e-mail[11] to respondent, informing him that his request for detail in Davao was

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[6] Records, Vol. I, p. 93.

[7] *Id.* at 94.

[8] *Id.*

[9] *Id.* at 65.

[10] *Id.* at 62.

[11] *Id.* at 95.

disapproved, as petitioner did not have any branch in Davao and there was no available administrative work for him. Meanwhile, petitioner company bewailed that its sales suffered, as nobody was performing the duties of the NSM and the office space reserved for respondent remained vacant.

Later, Ricanor sent two letters,[12] dated July 4, 2003 and July 31, 2003, to respondent, resetting the investigation to July 25, 2003, at 9:00 a.m., and August 18, 2003, respectively. Both letters reiterated the contents of his first letter to respondent dated June 12, 2003, but included gross inefficiency as an additional ground for possible suspension or dismissal.

In his letters[13] dated July 21, 2003 and August 12, 2003, respondent reiterated the reasons for his inability to attend the investigation proceedings in Manila and, instead, suggested that Ricanor come to Davao and conduct the investigation there.

Finally, in a letter[14] dated August 27, 2003, Ricanor informed respondent of the decision of petitioner's management to terminate

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[12] *Id.* at 66, 67.

[13] *Id.* at 69, 70.

[14] The pertinent portion of the letter reads:

This is to inform you that the management of Wuerth Philippines, Inc. has decided to terminate your employment effective upon the date of your receipt of this letter. This decision is based on your continued absences from work since 24 January 2003 without having filed a leave of absence. This has caused serious, grave, and irreparable damage to the company considering that your position, national sales manager, carries with it enormous responsibilities vital to the company's profitability and viability.

The records show that you have been absent without leave since 24 January 2003. This constitutes a gross dereliction of your duties as an officer of the Company.

Your demeanor also constitutes abandonment of your duties and responsibilities to the grave prejudice of the Company.

x x x x x x x x x

Your continuous absence from work since 24 January 2003, without having filed a leave of absence, has resulted in your failure to attain work goals and amounts to gross dereliction of duty. You have not only been inefficient. You

his employment, effective upon date of receipt, on the ground of continued absences without filing a leave of absence.

Respondent's salary at the time of the termination of his employment was ₱175,000.00 per month.

On September 5, 2003, respondent filed a Complaint against petitioner and Ricanor, in his capacity as petitioner company's Chief Executive Officer, for illegal dismissal and non-payment of allowances, with claim for moral and exemplary damages and attorney's fees, in the NLRC, Regional Arbitration Branch No. XI in Davao City.

The parties submitted their respective Position Papers. Thereafter, Labor Arbiter Amado M. Solamo rendered a Decision[15] dated July 15, 2004, the dispositive portion thereof reads:

WHEREFORE, judgment is hereby rendered:

1. Finding respondents guilty of illegal dismissal;

2. Ordering respondents to reinstate complainant to his former position without loss of seniority rights and privileges immediately upon receipt hereof. In case of appeal, respondents are hereby ordered to reinstate complainant in the payroll;

3. Ordering respondents to pay complainant, the following:

a) Full backwages

(Aug. 29, 2003 to July 15, 2004)

(11 months x ₱175,000.00) ……..... ₱1,925,000.00

b) Medical benefits……..... 300,000.00

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have, in fact, neglected your duties for such a long time. In the meantime, your position is left vacant to the detriment of the Company.

It is in this light that the Company has deemed it proper to terminate your employment effective upon the date of your receipt of this letter for the aforementioned just causes. You are directed to return forthwith to the Company any of its properties or documents that may be in your possession. (*Rollo*, p. 103.)

[15] *Rollo*, pp. 131-140.

c) 13th month pay Y2003……..... 175,000.00

d) Moral and Exemplary Damages…..... 3,000,000.00

e) 10% of the total award as attorney's fees..... 540,000.00

TOTAL AMOUNT: ₱5,940,000.00

SO ORDERED.[16]

Petitioner and Ricanor appealed to the NLRC (Cagayan de Oro City), which affirmed with modification the Decision of the Labor Arbiter in a Resolution[17] dated July 29, 2005, reducing the total awards of moral and exemplary damages from ₱3,000,000.00 to ₱600,000.00 and ₱300,000.00, respectively, and the attorney's fees adjusted in an amount equivalent to ten (10%) percent of the total monetary award.

On August 26, 2005, petitioner and Ricanor filed their Motion for Reconsideration.[18]

In a Resolution[19] dated November 24, 2005, the NLRC modified its Decision, further reducing the awards of moral damages from ₱600,000.00 to ₱150,000.00, and exemplary damages from ₱300,000.00 to ₱50,000.00, respectively.

Aggrieved, petitioner and Ricanor filed before the CA a Petition for *Certiorari* with Application for the Issuance of a Temporary Restraining Order and Preliminary Injunction.

On July 13, 2006, the CA rendered a Decision,[20] finding the petition partly meritorious. It found that petitioner had the right to terminate the employment of respondent, and that it had observed due process in terminating his employment. While

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[16] *Id.* at 140.

[17] Per Presiding Commissioner Salic D. Dumarpa, with Commissioners Proculo T. Sarmen and Jovito C. Cagaanan, concurring; *id.* at 163-167.

[18] *Rollo*, pp. 168-181.

[19] *Id.* at 183-184.

[20] *Id.* at 31-46.

the CA deleted the awards of backwages and moral and exemplary damages, it nonetheless ordered petitioner to pay respondent the following amounts: ₱1,225,000.00 (representing his salary from February 2003 to August 29, 2003), medical expenses of ₱94,100.00, temperate damages of ₱100,000.00, 13th month pay of ₱175,000.00, and attorney's fees of 10% of the total monetary award.

Petitioner filed a Motion for Reconsideration, which the CA denied in a Resolution[21] dated December 6, 2006.

Petitioner filed this present Petition for Review on *Certiorari*, raising the following assignment of errors:

I.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED ₱1,225,000.00 REPRESENTING THE PRIVATE RESPONDENT'S MONTHLY SALARY OF ₱175,000.00 FROM FEBRUARY 2003 TO AUGUST 29, 2003.

II.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED MEDICAL EXPENSES OF ₱94,100.00 TO THE PRIVATE RESPONDENT.

III.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED TEMPERATE DAMAGES OF ₱100,000.00 IN FAVOR OF THE PRIVATE RESPONDENT.

IV.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED 13TH MONTH PAY OF ₱175,000.00 IN FAVOR OF THE PRIVATE RESPONDENT.

V.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT AWARDED ATTORNEY'S FEES IN FAVOR OF THE PRIVATE RESPONDENT.[22]

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[21] *Id.* at 48-49.

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

Petitioner insists that the ground for the dismissal of the respondent was his gross dereliction of duties as NSM.

The CA ruled that pursuant to Article 284 of the Labor Code, respondent's illness is considered an authorized cause to justify his termination from employment. The CA ruled that although petitioner did not comply with the medical certificate requirement before respondent's dismissal was effected, this was offset by respondent's absence for more than the six (6)-month period that the law allows an employee to be on leave in order to recover from an ailment.

We agree. With regard to disease as a ground for termination, Article 284 of the Labor Code provides that an employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health, as well as to the health of his co-employees.

In order to validly terminate employment on this ground, Section 8, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code requires that:

> Section 8. *Disease as a ground for dismissal.* — Where the employee suffers from a disease and his continued employment is prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by a competent public health authority that the disease is of such nature or at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health.

In *Triple Eight Integrated Services, Inc. v. NLRC*,[23] the Court held that the requirement for a medical certificate under

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[23] G.R. No. 129584, December 3, 1998, 299 SCRA 608, cited in *Sy v. CA*, G.R. No. 142293, February 27, 2003, 398 SCRA 301, 311.

Article 284 of the Labor Code cannot be dispensed with; otherwise, it would sanction the unilateral and arbitrary determination by the employer of the gravity or extent of the employee's illness and, thus, defeat the public policy on the protection of labor. In the present case, there was no showing that prior to terminating respondent's employment, petitioner secured the required certification from a competent public health authority that the disease he suffered was of such nature or at such a stage that it cannot be cured within six months despite proper medical treatment, pursuant to Section 8, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code.

The medical certificate, dated June 4, 2003, issued by the attending physician of respondent, shows the following:

DATE HOSPITALIZED and/or TREATED: January 24, 2003 to present.

DIAGNOSIS: Hypertension, Diabetes Mellitus (adult onset), Hypercholesterolemia, Status Post Stroke, Ischemic-RMCA

RECOMMENDATION: Though the patient is allowed to resume work, in view of his recovery with rehabilitation, he has been advised to continue with his present regimen for at least another month and a half.[24]

Thus, as of June 4, 2003, respondent would have been capable of returning to work. However, despite notices sent by the petitioner, *i.e.*, letter[25] dated June 12, 2003, requiring respondent to attend an investigation set on July 14, 2003; letter[26] dated July 4, 2003, requiring respondent to appear on July 25, 2003 for investigation; and letter[27] dated July 31, 2003, requiring respondent to appear for the hearing and investigation on August 18, 2003, respondent refused to report to his office, either to

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[24] *Rollo*, p. 96.

[25] *Id.* at 123.

[26] *Id.* at 124.

[27] *Id.* at 125.

resume work or attend the investigations set by the petitioner. Even considering the directive of respondent's doctor to continue with his present regimen for at least another month and a half, it could be safely deduced that, counted from June 4, 2003, respondent's rehabilitation regimen ended on July 19, 2003. Despite the completion of his treatment, respondent failed to attend the investigations set on July 25, 2003 and August 18, 2003. Thus, his unexplained absence in the proceedings should be construed as waiver of his right to be present therein in order to adduce evidence that would have justified his continued absence from work.

In an undated Certification, Dr. Melanie Theresa P. Herrera of the East Asia Orthopaedic and Rehabilitation Institute in Davao City stated that respondent had been undergoing physical rehabilitation, and recommended that he may resume work, but the nature of his work had to be modified so as to give time for his strengthening and maintenance program. Thus,

> This is to certify that Mr. Rodante N. Ynson is under my care and is currently undergoing physical rehabilitation.
>
> Diagnosis: S/P CVA, Acute Ischemic Infarction (L) Temporal Lobe (R) Frontal Lobe Reflex Sympathetic Dystrophy Hypertension Stage I LUE.
>
> Recommendation:
>
> 1) Continue physical rehabilitation at San Pedro Hospital.
>
> 2) He may resume work but has to modify it to give time for strengthening program – home program and maintenance program at the center in SPH, Davao City.[28]

Respondent alleged in his letters[29] dated July 21, 2003 and August 12, 2003 that he is not capable of returning to work, because he is still undergoing medications and therapy. However, apart from the clearance of respondent's doctors allowing him to return to work, he has failed to provide competent proof

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[28] *Id.* at 104.

[29] *Supra* note 13.

that he was actually undergoing therapy and medications. It is puzzling why despite respondent's submission that he was still undergoing treatment in July and August 2003, he failed to submit official receipts showing the medical expenses incurred and physician's professional fees paid by reason of such treatment. This casts serious doubt on the true condition of the respondent during the prolonged period he was absent from work and investigations, and as to whether he is still suffering from any form of illness from July to August 2003.

Being the NSM, respondent should have reported back to work or attended the investigations conducted by petitioner immediately upon being permitted to work by his doctors, knowing that his position remained vacant for a considerable length of time. During his absence, nobody was performing the duties of NSM, which included, among others, supervising and monitoring of respondent's sales area which is vital to the company's orderly operation and viability. He did not even show any sincere effort to return to work.

Clearly, since there is no more hindrance for him to return to work and attend the investigations set by petitioner, respondent's failure to do so was without any valid or justifiable reason. Respondent's conduct shows his indifference and utter disregard of his work and his employer's interest, and displays his clear, deliberate, and gross dereliction of duties.

It bears stressing that respondent was not an ordinary rank-and-file employee. With the nature of his position, he was reposed with managerial duties to oversee petitioner's business in his assigned area. As a managerial employee, respondent was tasked to perform important and crucial functions and, thus, bound by more exacting work ethic. He should have realized that such sensitive position required the full trust and confidence of his employer in every exercise of managerial discretion insofar as the conduct of the latter's business is concerned.[30] The power

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[30] *Alcazaren v. Univet Agricultural Products, Inc.*, 512 Phil. 281, 299 (2005).

to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business. The law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. The worker's right to security of tenure is not an absolute right, for the law provides that he may be dismissed for cause.[31] As a general rule, employers are allowed wide latitude of discretion in terminating the employment of managerial personnel. The mere existence of a basis for believing that such employee has breached the trust and confidence of his employer would suffice for his dismissal.[32] Needless to say, an irresponsible employee like respondent does not deserve a place in the workplace, and it is petitioner's management prerogative to terminate his employment. To be sure, an employer cannot be compelled to continue with the employment of workers when continued employment will prove inimical to the employer's interest.[33]

To condone such conduct will certainly erode the discipline that an employer should uniformly apply so that it can expect compliance with the same rules and regulations by its other employees. Otherwise, the rules necessary and proper for the operation of its business would be gradually rendered ineffectual, ignored, and eventually become meaningless.[34] As applied to the present case, it would be the height of unfairness and injustice if the employer would be left hanging in the dark as to when respondent could report to work or be available for the scheduled hearings, which becomes detrimental to the orderly daily operations of petitioner's business.

As regards the monetary awards, the CA ordered the petitioner to pay respondent the amount of ₱1,225,000.00, representing

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[31] *Ancheta v. Destiny Financial Plans, Inc.*, G.R. No. 179702, February 16, 2010, 612 SCRA 648, 663.

[32] *Molina v. Pacific Plans, Inc.*, G.R. No. 165476, March 10, 2006, 484 SCRA 498, 519-520.

[33] *Ancheta v. Destiny Financial Plans, Inc.*, *supra* note 31.

[34] *Soco v. Mercantile Corporation of Davao*, G.R. Nos. 53364-65, March 16, 1987, 148 SCRA 526, 532.

his salary from February 2003 to August 29, 2003, medical expenses of ₱94,100.00, temperate damages of ₱100,000.00, 13th month pay of ₱175,000.00, and attorney's fees of 10% of the total monetary award, but deleted the award of backwages and moral and exemplary damages.

We modify. In *Leonardo v. National Labor Relations Commission*,[35] We held that where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.[36] In the same manner, respondent's inability to work from January 24 to June 4, 2003, was neither due to petitioner's fault nor due to his willful conduct, but because he suffered a stroke on January 24, 2003. Hence, each must bear the loss accordingly.

Beginning June 5, 2003, respondent should have reported back to work, but he failed to do so. Consequently, he can only be entitled to compensation for the actual number of work days. It would be unfair to allow respondent to recover something he has not earned and count not have earned, since he could not discharge his work as NSM. Petitioner should be exempted from the burden of paying backwages. The age-old rule governing the relation between labor and capital, or management and employee, of "a fair day's wage for a fair day's labor" remains as the basic factor in determining employee's wages. If there is no work performed by the employee, there can be no wage or pay – unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed, or otherwise illegally prevented from working, a situation which is not prevailing in the present case.[37]

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[35] 389 Phil. 118 (2000), cited in *Exodus International Construction Corporation and Antonio P. Javalera v. Guillermo Biscocho, et al.*, G.R. No. 166109, February 23, 2011.

[36] *Id.* at 128.

[37] *Navarro v. P.V. Pajarillo Liner, Inc.*, G.R. No. 164681, April 24, 2009, 586 SCRA 489, 498.

Petitioner claims that assuming that respondent may be considered on sick leave for the duration that he did not report to work, the period should cover only up to June 2003.

We agree. Being entitled to sick leave pay during the time that respondent was incapable of working, the Court deems it best that the reckoning date should be from January 24, 2003[38] to June 4, 2003[39] (not from February 2003 to August 29, 2003 as ruled by the CA), he may be entitled to salary, chargeable against his accrued sick leave benefits and other similar leave benefits, if any, as may be provided by existing company policy of petitioner.

Petitioner next assails the CA's award of medical expenses to respondent in the amount of ₱94,100.00, merely on the basis of the Certification[40] dated March 27, 2003 of Dr. De la Paz, which states that respondent spent approximately ₱350.00 daily on medicines and that his continued rehabilitation would cost ₱250.00 per day. It contends that the bare statements made by Dr. De la Paz, without actual proof of receipts, cannot suffice to warrant the payment of medical expenses.

In order to justify a grant of actual or compensatory damages, it is necessary to prove, with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss. One is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has adequately proved. Damages, to be recoverable, must not only be capable of proof, but must be actually proved with a reasonable degree of certainty.[41] The

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[38] Per Certification dated March 27, 2003, Dr. Daniel de la Paz stated that respondent has been under his care since January 24, 2003 and that he was confined from January 24 to February 3, 2003 due to sudden weakness on the left side of his body. *Supra* note 4.

[39] Per Medical Certificate dated June 4, 2003, Dr. De la Paz stated that respondent may return to work, but advised him to continue with his rehabilitation regimen for another month and a half. *Supra* note 5.

[40] *Supra* note 4.

[41] *Coca Cola Bottlers, Phils., Inc. v. Roque*, G.R. No. 118985, June 14, 1999, 308 SCRA 215, 222-223.

Court cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages.[42] Actual proof of expenses incurred for the purchase of medicines and other medical supplies necessary for his treatment and rehabilitation should have been presented by respondent, in the form of official receipts, to show the exact cost of his medication, and to prove that, indeed, he went through medication and rehabilitation. Aside from the letter of Dr. De la Paz, respondent miserably failed to produce even a single receipt showing his alleged medical and rehabilitation expenses. By reason thereof, petitioner should not be held liable for the ₱94,000.00 medical expenses of respondent as actual or compensatory damages, for lack of basis. Verily, in the absence of official receipts or other competent evidence to prove the actual expenses incurred, the CA's award of medical expenses in favor of respondent should be negated.

Under Article 2224 of the Civil Code, temperate or moderate damages are more than nominal but less than compensatory, and may be recovered when the court finds that some pecuniary loss has been suffered, but the amount cannot, from the nature of the case, be proved with certainty. The CA found that respondent paid for the doctor's professional fees and incurred other hospital expenses; however, the records failed to show that he presented proof of the actual amount of expenses therein, which served as the basis for the CA to award temperate damages in the amount of ₱100,000.00.

However, We reduce the amount of temperate damages awarded by the CA, from ₱100,000.00 to ₱50,000.00, considering that the stroke suffered by respondent was not debilitating in nature and the records showed that his health condition remained stable. Moreover, there were no instances of subsequent or recurring ailment that necessitates prolonged medical attention.

Anent the CA's ruling that respondent should be entitled to 13th month pay, We clarify that the 13th Month Pay Law, which

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[42] *Dueñas v. Guce-Africa*, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 22.

provides the rules on the entitlement and computation of the 13th month pay, cannot be applied to him because he is a managerial employee, and the law applies only to rank-and-file employees.[43] Be that as it may, although he is not covered by the said law, records showed that he is entitled to this benefit.[44] However, the Court cannot make a proper determination as to the exact amount – either full or pro-rated amount – of the 13th month pay, if any, that he would be entitled to. Thus, reference should be made in consonance with the existing company policy on the payment of the 13th month pay *vis-á-vis* the number of days that he actually worked.

On the matter of attorney's fees, We have ruled that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith, and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer.[45] In view of Our findings that respondent was validly dismissed for unauthorized absences, amounting to gross dereliction of duties under Article 282 (e) of the Labor Code, reckoned from June 5, 2003 (*i.e.*, the day after he was declared fit to return to work, but failed to do so), and lack of evidence that his dismissal was tainted with bad faith, the grant of 10% of the total monetary award as attorney's fees cannot be sustained.

WHEREFORE, the petition is **PARTLY GRANTED**. The dispositions in the Decision dated July 13, 2006 and the Resolution dated December 6, 2006 of the Court of Appeals, in CA-G.R. SP No. 00845, which affirmed with modification the Resolutions of the National Labor Relations Commission, Fifth Division,

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[43] Memorandum Order No. 28, as implemented by the Revised Guidelines on the Implementation of the 13th Month Pay Law dated November 16, 1987, provides:

Section 1 of Presidential Decree No. 851 is hereby modified to the extent that all employers are hereby required to pay all their rank and file employees a 13th month pay not later than December 24 of every year.

[44] Records, Vol. I, pp. 83-84.

[45] *M+W Zander Philippines, Inc. v. Enriquez*, G.R. No. 169173, June 5, 2009, 588 SCRA 590, 610.

Cagayan de Oro City, in NLRC CA No. M-008246-2004 (RAB 11-09-00949-03), are **MODIFIED** as follows:

a. The award of salary of respondent Rodante Ynson from February 2003 to August 29, 2003, amounting to ₱1,225,000.00, is deleted; however, he is entitled to the payment of his salary, chargeable against his accrued sick leave benefits and other similar leave benefits, if any, from January 24 to June 4, 2003, as may be provided by existing company policy of petitioner Wuerth Philippines, Inc.;

b. The award of temperate damages, in the amount of ₱100,000.00, is reduced to ₱50,000.00;

c. While the award of 13th month pay, in the amount of ₱175,000.00 is deleted; however, respondent may still be entitled to the 13th month pay, either full or pro-rated amount, in consonance with existing company policy of petitioner; and

d. The award of medical expenses amounting to ₱94,100.00 and attorney's fees of 10% of the total monetary award are deleted.

The case is **REMANDED** to the National Labor Relations Commission, Fifth Division, Cagayan de Oro City, for proper computation of the awards that respondent may be entitled to, in accordance with this Decision, and shall report compliance thereon within thirty (30) days from notice of this Decision.

SO ORDERED.

Carpio,[*] *Abad, Perez,*[**] and *Mendoza, JJ.,* concur.

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[*] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1185 dated February 10, 2012.

[**] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1192 dated February 10, 2012.

FIRST DIVISION

[G.R. No. 175980. February 15, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ADRIANO CABRILLAS,** *accused.* **BENNY CABTALAN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THAT THE ATTACK COMES WITHOUT A WARNING AND IN A SWIFT, DELIBERATE AND UNEXPECTED MANNER, AFFORDING THE HAPLESS, UNARMED, AND UNSUSPECTING VICTIM NO CHANCE TO RESIST OR ESCAPE.— There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the victim might make. "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape."

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE MATERIALITY OF THE ASSAILANT'S EXACT POSITION DURING THE ATTACK ON THE VICTIM IS A TRIVIAL AND INSIGNIFICANT DETAIL WHICH CANNOT DEFEAT THE WITNESSES' POSITIVE IDENTIFICATION OF THE ACCUSED; CASE AT BAR.— The trial and appellate courts reached the same conclusion that the testimonies of eyewitnesses Wilfredo and Jonalyn deserve credence as both narrated in a straightforward manner the details of Benny and Adriano's attack upon Jesus. Benny, however, still disputes the credibility of these witnesses by pointing out that Wilfredo's testimony that he and Adriano took turns in stabbing Jesus differs from that of Jonalyn who stated that while the two assailants attacked Jesus in unison, it was only Benny who inflicted the mortal wounds. The Court, however, finds this inconsistency to pertain merely to the manner the fatal stab wounds were inflicted on Jesus. The

materiality of the assailants' exact position during their attack on the victim is a trivial and insignificant detail which cannot defeat the witnesses' positive identification of Benny as one of the assailants. Besides, "[i]t is perfectly natural for different witnesses testifying on the occurrence of a crime to give varying details as there may be some details which one witness may notice while the other may not observe or remember. In fact, jurisprudence even warns against a perfect dovetailing of narration by different witnesses as it could mean that their testimonies were [fabricated] and rehearsed."

3. ID.; ID.; ID.; NOT ADVERSELY AFFECTED BY THE DELAY OR RELUCTANCE IN REPORTING THE CRIME.— [D]eference or reluctance in reporting a crime does not destroy the truth of the charge nor is it an indication of deceit. Delay in reporting a crime or an unusual incident in a rural area is well-known. It is common for a witness to prefer momentary silence for fear of reprisal from the accused. The fact remains that Wilfredo fulfilled his duty as a good member of society by aiding the family of Jesus when they were seeking justice. In the absence of other circumstances that would show that the charge was a mere concoction and that Wilfredo was impelled by some evil motives, delay in testifying is insufficient to discredit his testimony.

4. ID.; ID.; ID.; RELATIONSHIP *PER SE* DOES NOT EVINCE ULTERIOR MOTIVE NOR DOES IT *IPSO FACTO* TARNISH THE CREDIBILITY OF WITNESSES.— The fact that Wilfredo and Jonalyn are related to the victim also does not diminish their credibility. While admittedly, Wilfredo is a relative of the husband of Julita, who is the daughter of Jesus, and Jonalyn is Jesus's granddaughter, relationship *per se* does not evince ulterior motive nor does it *ipso facto* tarnish the credibility of witnesses. "Mere relationship to a party cannot militate against the credibility of witnesses or be taken as destructive of the witnesses' credibility." What matters is that Wilfredo and Jonalyn positively identified Benny and Adriano as the assailants of Jesus and that they testified in a straightforward manner. These indicate that the two are telling the truth.

5. ID.; ID.; AFFIDAVITS; CONSIDERED INFERIOR TO TESTIMONY GIVEN IN COURT.— As to the inconsistencies

in Elena's testimony and in her affidavit as to who asked her father the identity of the assailants, the same deserves scant consideration. It is settled that "affidavits or statements taken *ex parte* are generally considered incomplete and inaccurate. Thus, by nature, they are inferior to testimony given in court, and whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight." The trial court therefore did not err in affording more credence to Elena's testimony given in open court despite her having previously executed an affidavit which was inconsistent with her testimony.

6. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS THEREON BY TRIAL COURTS ARE NOT DISTURBED ON APPEAL.— "[A]ppellate courts do not disturb the findings of the trial courts with regard to the assessment of credibility of witnesses. The reason for this is that trial courts have the unique opportunity to observe the witnesses first hand and note their demeanor, conduct, and attitude under grilling examination."

7. ID.; ID.; ALIBI; WHEN TO PROSPER AS A DEFENSE.— "Alibi is the weakest of all defenses since it is easy to concoct and difficult to disprove." For this defense to prosper, proof that the accused was in a different place at the time the crime was committed is insufficient. There must be evidence that it was physically impossible for him to be within the immediate vicinity of the crime during its commission. Here, Benny did not satisfactorily demonstrate that it was physically impossible for him to be at the *locus criminis* at the night of its commission. While he denies being at the scene of the crime when it happened, he claims to be within a reasonably near area which is his residence in *Barangay* Pilaon. The murder of Jesus occurred in *Barangay* Laygayon, which is more or less 3½ kilometers away from the place where Benny claimed he was in. Benny testified that the distance between these two *barangays* can be covered in an hour's walk. Thus, even if he traveled by foot to another *barangay*, it was still not too far away to render it physically impossible for him to be at the crime scene at the time of its commission. Furthermore, Benny's alibi is uncorroborated. "Courts may give credence to alibi only if there are credible eyewitnesses who can corroborate the alibi of accused." In contrast, alibi becomes weaker in the face of

the positive identification made by the witnesses for the prosecution, as in this case.

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime. Hence, the Court modifies the civil indemnity awarded by the CA from ₱50,000.00 to ₱75,000.00. We likewise increase the award for moral damages from ₱25,000.00 to ₱50,000.00 in accordance with the latest jurisprudence on the matter. Moral damages in the sum of ₱50,000.00 shall be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. "As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family." Moreover and with the finding of the qualifying circumstance of treachery, exemplary damages is correctly awarded but only in the amount of ₱30,000.00 in line with current jurisprudence.

9. ID.; ID.; TEMPERATE DAMAGES; GRANTED SO THAT A RIGHT WHICH HAS BEEN VIOLATED MAY BE RECOGNIZED OR VINDICATED, AND NOT FOR THE PURPOSE OF INDEMNIFICATION; CASE AT BAR.— As regards actual damages, Jesus's daughter Julita testified that they spent ₱18,500.00 for burial and funeral expenses, though she was unable to present receipts to substantiate her claim. Where the amount of actual damages for funeral expenses cannot be ascertained due to the absence of receipts to prove them, temperate damages in the sum of ₱25,000.00 may be granted, as it is hereby granted, in lieu thereof. "This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification."

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

Minor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses, as well as their positive identification of the accused as the perpetrators of the crime.

Factual Antecedents

For our review is the August 29, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00039 which affirmed with modifications the August 29, 2002 Decision[2] of the Regional Trial Court, Branch 33, Calbiga, Samar, in Criminal Case No. CC-2000-1310, finding appellant Benny Cabtalan (Benny) guilty beyond reasonable doubt of the crime of murder.

The Information[3] against Benny and his co-accused Adriano Cabrillas (Adriano) contains the following accusatory allegations:

> That on or about the 11th day of July 1999, at nighttime which was purposely sought, in Barangay Laygayon, Municipality of Pinabacdao, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill, with treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously, attack, assault, and stab one Jesus Cabujat with the use of long bolos (*sundang*), with which both accused have provided themselves for the purpose, thereby inflicting upon the victim multiple stab wounds, which wounds resulted to his instantaneous death.
>
> CONTRARY TO LAW.[4]

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[1] CA *rollo*, pp. 134-139; penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla.

[2] Records, pp. 104-118; penned by Presiding Judge Carmelita T. Cuares.

[3] *Id.* at 1-2.

[4] *Id.* at 1.

Two years after the incident, Benny was arrested in Las Piñas City[5] while to date, Adriano remains at large. During his arraignment, Benny entered a plea of "not guilty".[6] Trial thereafter ensued.

Version of the Prosecution

Prosecution witness Wilfredo Pacayra (Wilfredo) narrated that on July 11, 1999 at around 7:00 p.m., he went to the store of Susan Cabtalan (Susan) to buy salt. While thereat, Benny and Adriano asked him to join them in their drinking spree to which Wilfredo obliged. In the course of their drinking spree, Wilfredo noticed that Benny and Adriano had bolos, locally known as *sundang*, tucked on their waists. He also heard the two talking about their plan to assault someone that same night.[7] Sensing that something wrong would happen, Wilfredo left them and walked home.[8]

Upon reaching his house, Wilfredo soon noticed Benny and Adriano circling the house of Jesus Cabujat's (Jesus) daughter, Elena Raypan (Elena), which is just about two arms length away from his house.[9] Thereafter, the duo stood on a dark portion of the road.[10] Later on, he saw Jesus and his 9-year-old granddaughter Jonalyn C. Raypan (Jonalyn) walking towards the house of Jonalyn's mother, Elena. Jesus stopped and turned towards a grassy area to urinate when suddenly, Benny and Adriano emerged from their hiding place. They held Jesus by his shoulders and alternately stabbed him. At that moment, Jesus shouted "I am wounded, please help me because I was stabbed by Benny and Adriano."[11] Jesus then fell to the ground while Benny and Adriano immediately fled from the crime scene.[12]

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[5] *Id.* at 30.

[6] *Id.* at 38.

[7] TSN, October 10, 2001, pp. 5-6.

[8] *Id.* at 6.

[9] *Id.* at 8.

[10] *Id.* at 9.

[11] *Id.* at 13.

[12] *Id.* at 14.

For her part, prosecution witness Jonalyn narrated that on the night of the incident, she fetched her grandfather Jesus from her Ate Susan's house.[13] She and her grandfather walked side by side in going back to their house.[14] However, upon reaching the vicinity of their house, her grandfather went across the street to urinate. It was then that she saw Benny and Adriano on the same street.[15] She knew the two because Benny and her father are cousins while Adriano and her mother are also cousins.[16] She saw the two men take hold of her grandfather's arms, after which Benny stabbed her grandfather with a long bolo. She heard her grandfather say "Donie, help me, I am wounded."[17] After that, Jonalyn saw Benny go home.[18]

Elena also testified that when she heard her father shouting for help, she immediately went outside the house and saw Benny releasing her father. As she got nearer to Jesus, Benny and Adriano ran away.[19] When Elena asked her father as to who stabbed him, the latter replied that it was Benny and Adriano.[20]

Jesus was rushed to a hospital where he was pronounced dead due to multiple stab wounds.[21] His family spent ₱18,500.00 for his wake and burial. At the time of his death, Jesus was earning ₱1,000.00 a week as a farmer.

A case for murder was accordingly filed against Benny and Adriano and a warrant was issued for their arrest which was, however, returned unserved since they could no longer be located.

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[13] TSN dated November 15, 2001, p. 10

[14] *Id.* at 12.

[15] *Id.*

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

[17] *Id.* at 14.

[18] *Id.* at 16.

[19] TSN dated December 12, 2001, pp. 9-10

[20] *Id.* at 11.

[21] Records, p. 10.

It appears that on July 13, 1999, at around noontime, Benny and Adriano escaped by ferryboat to Catbalogan, Samar.[22] Two years later, or on July 31, 2001, Benny was arrested in Las Piñas City by virtue of an *alias* warrant of arrest.[23]

Version of the Defense

Benny testified that he was in his mother's house in the morning of July 11, 1999 until lunchtime. He then proceeded to the store of Susan in *Barangay* Laygayon and saw Adriano and a certain Manuel Cabigayan drinking *tuba*. He accepted their invitation to join in their drinking spree and stayed there until 6:00 p.m. Thereafter, he went home to *Barangay* Pilaon which was about three kilometers away. He reached his destination after walking for nearly an hour and no longer went out. He learned from his neighbors of the death of Jesus only the following day.[24]

In the succeeding days, Benny went to Parañaque City after receiving a letter from his brother informing him of a job opportunity in the city as gardener.[25]

Benny's mother, Gertrudes, testified that on July 11, 1999, she was in her farm in *Barangay* Laygayon, Pinabacdao, Samar, together with her husband and Adriano's mother, Pacita Ocenar. At around 9:00 p.m., Adriano arrived and confided to her that he attacked and injured a person in said *barangay*. The following day Adriano departed and was never seen again.[26]

Ruling of the Regional Trial Court

On August 29, 2002, the trial court rendered a Decision[27] convicting Benny of the crime of murder. Discarding minor

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[22] TSN, June 11, 2002, pp. 4-9.

[23] *Id.* at 30.

[24] TSN, May 20, 2002, pp. 3-9.

[25] *Id.* at 5.

[26] TSN, May 13, 2002, pp. 4-6.

[27] *Supra* note 2.

inconsistencies, relationship, and delay in testifying in court, it gave more credence to the testimonies of the prosecution's two eyewitnesses since their positive declarations that Benny and Adriano stabbed the helpless Jesus were never refuted. Besides, the *ad mortem* statement of Jesus that the two stabbed him "would serve to cleanse any doubt on their responsibility."[28] Also telling is the fact that Benny and Adriano immediately fled to Catbalogan, Samar after the incident.

The trial court appreciated the presence of the qualifying circumstance of treachery since the attack upon Jesus who was unarmed and unsuspecting was without any warning. It also found the existence of the aggravating circumstance of abuse of superior strength as both Benny and Adriano held, subdued and attacked the 69-year-old defenseless Jesus. The trial court further held that conspiracy was evident since Benny and Adriano had common criminal intent and were united in its execution.[29]

The dispositive portion of the trial court's Decision reads:

> WHEREFORE, the prosecution [having] clearly established the guilt of the accused, BENNY CABTALAN beyond reasonable doubt, he is found guilty of the crime of Murder, and is sentenced to suffer the penalty of Death by lethal injection, to pay the heirs of Jesus Cabujat the amount[s] of Php75,000.00 as civil liability; Php15,000.00 as exemplary damages, and Php10,000.00 in moral damages, to reimburse the amount of Php5,000.00 spent for the coffin; Php5,000.00 for the wake, although no receipts were presented for these last two expenses yet these are legitimate and reasonable amounts under the circumstances.
>
> Let the case against co-accused Adriano Cabrillas be sent to the archives without prejudice, and issue another *alias* order for his arrest as soon as possible.
>
> The Samar Provincial Jail Warden is ordered to proceed accordingly in so far as the continued detention of the herein accused and his eventual transfer to the National Penitentiary, and to inform this court in writing on the matter as soon as possible.

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[28] Records, p. 115.

[29] *Id.* at 115-116.

The Acting Branch Clerk of court is advised to proceed accordingly.

[SO ORDERED.][30]

The case was forwarded to this Court for automatic review, but same was later referred to the CA in accordance with the ruling in *People v. Mateo*.[31]

Ruling of the Court of Appeals

The CA affirmed the trial court's judgment of conviction through its August 29, 2006 Decision.[32] However, it did not anymore consider the aggravating circumstance of abuse of superior strength as the qualifying circumstance of treachery already absorbed it.[33] Thus, the CA modified the penalty imposed upon Benny by reducing it from death to *reclusion perpetua*. Likewise modified were the amounts of damages granted to the heirs of Jesus. It disposed of the case in the following manner:

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court is hereby AFFIRMED with the modification that the penalty is *Reclusion Perpetua*, accused-appellant is ordered to pay the heirs of Jesus Cabujat Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages and to suffer accessory penalties attached to the offense committed.

SO ORDERED.[34]

Assignment of Errors

Benny attempts to secure his acquittal by assigning the following errors:

I. THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF

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[30] *Id.* at 118.

[31] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[32] *Supra* note 1.

[33] CA *rollo*, p. 137

[34] *Id.* at 138.

THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.

II. ASSUMING *ARGUENDO* THAT THE ACCUSED-APPELLANT IS ACCOUNTABLE FOR THE DEATH OF THE VICTIM, THE LOWER COURT ERRED IN HOLDING THAT TREACHERY QUALIFIED THE KILLING INTO MURDER.

x x x x x x x x x[35]

Benny insists that the evidence adduced to establish his culpability is not sufficient and credible. He posits that Wilfredo is not a credible witness because it took him three years to come out and reveal the identities of the alleged perpetrators without any adequate explanation for the delay. He likewise impugns the credibility of the prosecution witnesses since Wilfredo is a relative of the victim's son-in-law while Jonalyn is a grandchild. In addition, Benny asserts that the prosecution's evidence is glaring with inconsistencies. According to him, Wilfredo's testimony that he and Adriano took turns in stabbing Jesus is diametrically opposed to Jonalyn's declaration that only he stabbed Jesus. Furthermore, the testimony of Elena that she inquired from Jesus who his assailants were is inconsistent with her own affidavit and that of her sister, Julita, as the affidavits indicated that it was Julita and not Elena who asked their father about the identity of his assailants.

Benny therefore concludes that the prosecution's evidence is weak and cannot prevail over his defense of alibi. Moreover, he asserts that the prosecution failed to prove that he killed Jesus in a treacherous manner, hence, he should not be held guilty of murder.

Our Ruling

The appeal lacks merit.

Treachery attended the killing of Jesus, hence, the crime committed is murder.

Murder is the unlawful killing by the accused of a person, which is not parricide or infanticide, committed with any of the

[35] *Id.* at 59.

attendant circumstances enumerated in Article 248[36] of the Revised Penal Code, among which is treachery.

There is no dispute that the killing of the victim in this case is neither parricide nor infanticide. The issue that must therefore be resolved is whether treachery attended the killing as to qualify the crime to murder.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the victim might make.[37] "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape."[38]

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[36] Art. 248. *Murder*. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

2. In consideration of a price, reward, or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[37] REVISED PENAL CODE, Article 14(16).

[38] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747; *People v. Amazan*, 402 Phil. 247, 264 (2001).

Based on the account of the prosecution's eyewitnesses, there is no doubt that treachery was present. It was established that Benny and Adriano were in the crime scene prior to the incident. They hid in a dark portion of the road and assaulted Jesus with their bolos while he was urinating with his back to them. They even held him by his shoulders to render him defenseless and unable to resist the attack on him by his assailants. Wilfredo testified *viz*:

Q. What else did you observe while the dogs were barking?
A. While the dogs were barking, I saw two (2) persons who were [circling] the house of Elena Raypan, they were walking back and forth in front of the house of Elena Raypan.

Q. Were you able to recognize these two (2) persons walking back and forth near the house of Elena Raypan?
A. Yes, sir.

Q. Who were they?
A. Benny Cabtalan and Adriano Cabrillas.

Q. How did you recognize them?
A. Because the house was lighted.

Q. After they were going back and forth in front of the house of Elena Raypan, where did these persons go?
A. They went to the dark portion of the road.

x x x x x x x x x

Q. After they went to the dark portion of the road, what did you observe next?
A. They just stood by [there].

Q. After that what happened next?
A. I saw Jesus Cabujat walking towards the house of Elena Raypan.

Q. Was he alone?
A. He was accompanied by a child.

x x x x x x x x x

Q. When you saw Jesus Cabujat walking towards the house of Elena Raypan, what did Jesus Cabujat do before going to the house of Elena Raypan?

A. When Jesus Cabujat reached the place where the two persons Benny [Cabtalan] and Adriano Cabrillas were standing, Jesus Cabujat urinated.

x x x x x x x x x

Q. To what direction was he facing?
A. He was facing towards the grassy area.

Q. What happened while Jesus Cabujat was urinating as you said?
A. That's the time when Jesus Cabujat was held on his shoulder.

x x x x x x x x x

Q. Who held the left shoulder of Jesus Cabujat?
A. Benny Cabtalan.

x x x x x x x x x

Q. [H]ow about Adriano Cabrillas, what did he do?

x x x x x x x x x

A. He also stabbed the victim.

Q. Were you able to see the weapon used by Benny Cabtalan?
A. Yes, sir.

Q. What was the weapon used?

INTERPRETER:

The witness demonstrated that it was more or less 14 ½ inches.

Q. That includes the handle?
A. Yes, sir.

x x x x x x x x x

Q. How many times did Benny Cabtalan stab the victim?
A. Three (3) times.

Q. How about Adriano Cabrillas?
A. Three (3) times also.

Q. From the first blow of Benny Cabtalan to the first blow of Adriano Cabrillas, how long did it take?
A. It just happened so quickly; as the first one delivered his stab blow the other one also delivered his stab blow, alternately stabbing the victim.

Q. So, what happened to Jesus Cabujat?
A. He asked for help and said: "I am wounded, please help me because (I) was stabbed by Benny Cabtalan and Adriano Cabrillas."

Q. After he shouted what happened to him.
A. After that he fell down.

Q. How about Benny Cabtalan and Adriano Cabrillas, what did they do when Jesus Cabujat fell down?
A. When Jesus Cabujat shouted for help, that was the time the two (2) culprits [fled].

Q. To what direction?
A. To the route going to a farm.[39]

Jonalyn corroborated the testimony of Wilfredo on relevant details as follows:

Q. When you x x x [reached] your house, what did your *lolo* do?
A. He went across the street and urinated there and saw Benny also on the street.

Q. Was Benny alone?
A. [There] were two (2) of them.

Q. Do you recognize the other one?
A. Yes, sir.

Q. Who?
A. It was Adriano.

Q. Do you know the surname of Benny?
A. Cabtalan.

Q. How about Adriano, do you know the surname of Adriano?
A. I cannot remember.

Q. Why do you know the surname of Benny Cabtalan?
A. Because my father and his father are cousins. Benny and my father are cousins.

x x x x x x x x x

[39] TSN, October 10, 2001, pp. 9-14.

Q. You saw them also in the street while your *lolo* was urinating so, what did Benny and Adriano do at that time?
A. They held both arms of my grandfather.

x x x x x x x x x

Q. And after holding x x x your grandfather, what did Benny do if any?
A. They suddenly stabbed my *lolo*.

Q. With what?
A. It was a long bolo.[40]

All told, Jesus was unaware of the imminent peril to his life and was rendered incapable of defending himself. From the suddenness of the attack upon Jesus and the manner it was committed, there is no doubt that treachery indeed attended his killing.

The trial court's assessment of the credibility of witnesses usually remains undisturbed.

The trial and appellate courts reached the same conclusion that the testimonies of eyewitnesses Wilfredo and Jonalyn deserve credence as both narrated in a straightforward manner the details of Benny and Adriano's attack upon Jesus. Benny, however, still disputes the credibility of these witnesses by pointing out that Wilfredo's testimony that he and Adriano took turns in stabbing Jesus differs from that of Jonalyn who stated that while the two assailants attacked Jesus in unison, it was only Benny who inflicted the mortal wounds. The Court, however, finds this inconsistency to pertain merely to the manner the fatal stab wounds were inflicted on Jesus. The materiality of the assailants' exact position during their attack on the victim is a trivial and insignificant detail which cannot defeat the witnesses' positive identification of Benny as one of the assailants. Besides, "[i]t is perfectly natural for different witnesses testifying on the occurrence of a crime to give varying details as there may be

[40] TSN, November 15, 2001, pp. 12-14.

some details which one witness may notice while the other may not observe or remember. In fact, jurisprudence even warns against a perfect dovetailing of narration by different witnesses as it could mean that their testimonies were [fabricated] and rehearsed."[41]

Benny's assertion that Wilfredo is not a credible witness since he surfaced three years after the incident to testify for the prosecution also fails to impress. It is worthy to mention that the proceedings in this case was suspended for two years because Benny and Adriano left Pinabacdao, Samar and the warrant for their arrest could not be served on them. Also, deference or reluctance in reporting a crime does not destroy the truth of the charge nor is it an indication of deceit. Delay in reporting a crime or an unusual incident in a rural area is well-known.[42] It is common for a witness to prefer momentary silence for fear of reprisal from the accused.[43] The fact remains that Wilfredo fulfilled his duty as a good member of society by aiding the family of Jesus when they were seeking justice. In the absence of other circumstances that would show that the charge was a mere concoction and that Wilfredo was impelled by some evil motives, delay in testifying is insufficient to discredit his testimony.

The fact that Wilfredo and Jonalyn are related to the victim also does not diminish their credibility. While admittedly, Wilfredo is a relative of the husband of Julita, who is the daughter of Jesus, and Jonalyn is Jesus' granddaughter, relationship *per se* does not evince ulterior motive nor does it *ipso facto* tarnish the credibility of witnesses.[44] "Mere relationship to a party cannot militate against the credibility of witnesses or be taken as destructive of the witnesses' credibility."[45] What matters is that

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[41] *People v. Lacbayan*, 393 Phil. 800, 807 (2000).

[42] *Gorospe v. People*, 466 Phil. 206, 215 (2004) citing *People v. Belon*, G.R. No. 87759, February 26, 1991, 194 SCRA 447, 457.

[43] *Id.*, citing *People v. Catubig*, G.R. No. 89732, January 31, 1992, 205 SCRA 643, 655.

[44] *People v. Vicente*, 423 Phil. 1065, 1075 (2001).

[45] *People v. Salazar*, G.R. No. 84391, April 7, 1993, 221 SCRA 170, 177.

Wilfredo and Jonalyn positively identified Benny and Adriano as the assailants of Jesus and that they testified in a straightforward manner. These indicate that the two are telling the truth.

As to the inconsistencies in Elena's testimony and in her affidavit as to who asked her father the identity of the assailants, the same deserves scant consideration. It is settled that "affidavits or statements taken *ex parte* are generally considered incomplete and inaccurate. Thus, by nature, they are inferior to testimony given in court, and whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight."[46] The trial court therefore did not err in affording more credence to Elena's testimony given in open court despite her having previously executed an affidavit which was inconsistent with her testimony. To stress, "appellate courts do not disturb the findings of the trial courts with regard to the assessment of credibility of witnesses. The reason for this is that trial courts have the unique opportunity to observe the witnesses first hand and note their demeanor, conduct, and attitude under grilling examination."[47]

Benny's defense of alibi was properly rejected.

"Alibi is the weakest of all defenses since it is easy to concoct and difficult to disprove."[48] For this defense to prosper, proof that the accused was in a different place at the time the crime was committed is insufficient. There must be evidence that it was physically impossible for him to be within the immediate vicinity of the crime during its commission.[49]

Here, Benny did not satisfactorily demonstrate that it was physically impossible for him to be at the *locus criminis* at the

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[46] *People v. Antonio*, 390 Phil. 989, 1007. (2000).

[47] *People v. Cias*, G.R. No. 194379, June 1, 2011.

[48] *People v. De Guzman*, G.R. No. 173477, February 4, 2009, 578 SCRA 54, 64-65.

[49] *Id*.

night of its commission. While he denies being at the scene of the crime when it happened, he claims to be within a reasonably near area which is his residence in *Barangay* Pilaon.[50] The murder of Jesus occurred in *Barangay* Laygayon, which is more or less 3½ kilometers away from the place where Benny claimed he was in.[51] Benny testified that the distance between these two *barangays* can be covered in an hour's walk.[52] Thus, even if he traveled by foot to another *barangay*, it was still not too far away to render it physically impossible for him to be at the crime scene at the time of its commission. Furthermore, Benny's alibi is uncorroborated. "Courts may give credence to alibi only if there are credible eyewitnesses who can corroborate the alibi of accused."[53] In contrast, alibi becomes weaker in the face of the positive identification made by the witnesses for the prosecution, as in this case.[54]

Benny cannot escape liability by imputing the crime to Adriano.

Benny's assertion that Adriano was solely responsible for the murder of Jesus is likewise undeserving of consideration. Such a claim is common among conspirators in their veiled attempt to escape complicity. It is a desperate strategy to compensate for a weak defense. We are not readily influenced by such a proposition since its obvious motive is to distort the truth and frustrate the ends of justice.[55]

Besides, it is the victim himself who pointed to Benny as one of his assailants. Such statement of Jesus before his death is a dying declaration that is admissible in evidence against

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[50] TSN, May 20, 2002, pp. 6-9.

[51] *Id.* at 8.

[52] *Id.*

[53] *People v. Sumalinog, Jr.*, 466 Phil. 637, 650 (2004).

[54] *People v. Bonifacio*, 426 Phil. 511, 521 (2002).

[55] *People v. Macaliag*, 392 Phil. 284, 299 (2000).

Benny.[56] "A dying declaration is an evidence of the highest order; it is entitled to the utmost credence on the premise that no x x x person who knows of his impending death would make a careless and false accusation. At the brink of death, all thoughts on concocting lies disappear."[57]

All told, the Court finds no reason to depart from the judgment of conviction rendered against Benny by the trial court and affirmed by the CA.

The Penalty and Award of Damages

"When the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter."[58] Hence, the trial court should have no longer considered the aggravating circumstance of abuse of superior strength. And there being no aggravating or mitigating circumstance in this case, the proper penalty therefore is *reclusion perpetua*, it being the lesser penalty between the two indivisible penalties for the crime of murder which is *reclusion perpetua* to death.[59] Hence, we agree with the CA when it imposed upon Benny the penalty of *reclusion*

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[56] RULES OF COURT, Rule 130, Section 37 provides:

Sec. 37. *Dying declaration.* – The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

[57] *People v. Sanchez*, G.R. No. 188610, June 29, 2010, 622 SCRA 548, 561.

[58] *People v. Rebucan*, G.R. No. 182551, July 27, 2011.

[59] Art. 63. *Rules for the application of indivisible penalties.* – x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x x x x x x x

perpetua. In addition, Section 3 of Republic Act No. 9346[60] provides:

> Section 3. Persons convicted of offenses punishable with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4103 otherwise known as the Indeterminate Sentence Law, as amended.

Pursuant to the above provision, Benny is therefore not eligible for parole.

As to the award of damages, the heirs are entitled to the following awards when death occurs due to a crime: "(1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and, (5) temperate damages."[61]

Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime.[62] Hence, the Court modifies the civil indemnity awarded by the CA from ₱50,000.00 to ₱75,000.00. We likewise increase the award for moral damages from ₱25,000.00 to ₱50,000.00 in accordance with the latest jurisprudence on the matter. Moral damages in the sum of ₱50,000.00 shall be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs.[63] "As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family."[64] Moreover and with the finding of the qualifying circumstance of treachery, exemplary damages is correctly

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[60] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Took effect on June 24, 2006.

[61] *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 530.

[62] *Id.*

[63] *Id.*

[64] *Id.* at 530-531.

awarded but only in the amount of ₱30,000.00 in line with current jurisprudence.[65]

As regards actual damages, Jesus' daughter Julita testified that they spent ₱18,500.00 for burial and funeral expenses, though she was unable to present receipts to substantiate her claim. Where the amount of actual damages for funeral expenses cannot be ascertained due to the absence of receipts to prove them, temperate damages in the sum of ₱25,000.00 may be granted, as it is hereby granted, in lieu thereof.[66] "This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification."[67]

The trial court and the appellate court are unanimous in not awarding loss of earning capacity to the heirs of Jesus for lack of basis. There was no error on their part since there was no documentary evidence to substantiate this claim. The testimony that Jesus earned ₱1,000.00 a week can be used as basis for granting such an award only if he is either "(1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in [his] line of work no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws."[68] Here, the prosecution did not offer proof that would determine whether Jesus was self-employed or a daily-wage earner. Thus, the exceptions to the rule cannot be applied in this case.[69]

The heirs of Jesus are also entitled to an interest on all the awards of damages at the legal rate of 6% per annum from the finality of this judgment until fully paid.[70]

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[65] *People v. Abaño*, G.R. No. 188323, February 21, 2011.

[66] *People v. Asis*, *supra* note 61 at 531.

[67] *People v. Beduya*, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 289.

[68] *People v. Asis*, *supra* note 61 at 532, citing *People v. Mallari*, 452 Phil. 210, 225. (2003).

[69] *Id*.

[70] *Id*.

WHEREFORE, the Decision dated August 29, 2006 of the Court of Appeals in CA-G.R. CR-HC No. 00039 that affirmed with modifications the Decision of the Regional Trial Court of Calbiga, Samar, Branch 33, is **AFFIRMED with further modifications**. Appellant Benny Cabtalan is found **GUILTY** beyond reasonable doubt of the crime of Murder and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is ordered to indemnify the heirs of Jesus Cabujat the following: (1) ₱75,000.00 as civil indemnity; (2) ₱50,000.00 as moral damages; (3) ₱ 30,000.00 as exemplary damages; (4) ₱ 25,000.00 as temperate damages; and (5) interest on all damages awarded at the legal rate of 6% per annum from the finality of this judgment until fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 178593. February 15, 2012]

REPUBLIC OF THE PHILIPPINES, represented by the PRIVATIZATION AND MANAGEMENT OFFICE (PMO), *petitioner, vs.* **PANTRANCO NORTH EXPRESS, INC. (PNEI), PANTRANCO EMPLOYEES ASSOCIATION (PEA-PTGWO), EUSEBIO RAMOSO, CIRIACO M. MAGSINO, A. CACHUELA, A. CAMUS, M. CALAHI, R. CANO, B.T. LANTANO, L. BERSAMINA, A. ALFARO and 495 OTHERS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS AN INDISPENSABLE CONDITION BEFORE AN AGGRIEVED PARTY CAN RESORT TO THE SPECIAL CIVIL ACTION FOR *CERTIORARI*.— The well-established rule is that a motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended. A motion for reconsideration of the order, resolution or decision of the NLRC should be seasonably filed as a precondition for pursuing any further or subsequent recourse; otherwise, the order, resolution or decision would become final and executory after ten calendar days from receipt thereof. The rationale for the rule is that the law intends to afford the NLRC an opportunity to rectify such errors or mistakes it may have committed before resort to courts of justice can be had.

2. ID.; ID.; ID.; ID.; EXCEPTIONS.— [T]he rule is not absolute and jurisprudence has laid down exceptions when the filing of a petition for *certiorari* is proper notwithstanding the failure to file a motion for reconsideration. Thus, resort to the courts under Rule 65 is allowed even without a motion for reconsideration first having been filed: "(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings 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; (c) 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 petition is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding was *ex parte* or in which the petitioner had no

opportunity to object; and, (i) where the issue raised is one purely of law or public interest is involved."

3. ID.; ID.; ID.; ID.; IT IS NOT FOR PETITIONER TO DETERMINE WHETHER THE FILING OF A MOTION FOR RECONSIDERATION SHOULD BE DISPENSED WITH; CASE AT BAR.— [P]etitioner failed to show that this case falls under any of the exceptions. Here, except for its bare allegation, petitioner failed to present any plausible justification for dispensing with the requirement of a prior motion for reconsideration. Notably, the petition filed before the CA did not state any reason for its failure to file a motion for reconsideration from the NLRC resolution. It was only in its motion for reconsideration of the CA resolution dismissing the petition and in the present petition that petitioner justified its non-filing of a motion for reconsideration. According to petitioner, a motion for reconsideration would be inadequate and useless since the labor agency is bent on immediately proceeding with the execution, levy and sale on execution of the subject properties. But it is not for petitioner to determine whether the filing of a motion for reconsideration should be dispensed with. x x x It must be emphasized that the filing of a motion for reconsideration and filing it on time are not mere technicalities of procedure. These are jurisdictional and mandatory requirements which must be strictly complied with. Thus, failure to file a motion for reconsideration with the NLRC before availing oneself of the special civil action for *certiorari* is a fatal infirmity.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Office of the Government Corporate Counsel for Pantranco North Express, Inc.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the

January 8, 2007[1] and June 26, 2007[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 97348. The CA dismissed the petition for *certiorari* filed by petitioner Privatization and Management Office (PMO) to set aside the September 27, 2006 Resolution[3] of the National Labor Relations Commission (NLRC). The CA ruled that the petition was premature since petitioner did not seek reconsideration of the assailed NLRC resolution.

The facts of the case follow:

On May 27, 1993, the Labor Arbiter rendered a Decision[4] in the consolidated complaints[5] for illegal retrenchment filed by Pantranco Employees Association, *et al.*, against respondent Pantranco North Express, Inc. (PNEI). The Labor Arbiter ordered PNEI to pay each of the 345 illegally retrenched employees four months back wages in the total amount of ₱11,134,954 plus attorney's fees equivalent to 10% of the monetary award. The NLRC affirmed the decision, and the decision became executory on November 3, 1993.[6]

The judgment was partially satisfied in the amount of ₱895,000, leaving a balance of ₱10,239,954 plus ₱1,113,495 as attorney's fees or a total of ₱11,353,449.[7] Several *alias* writs of execution were issued but were returned unsatisfied. On September 6, 2001, a 5th *Alias* Writ of Execution was issued.[8]

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[1] *Rollo*, pp. 45-46. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Jose C. Mendoza (now a member of this Court) and Ramon M. Bato, Jr., concurring.

[2] *Id.* at 47-49.

[3] *Id.* at 82-88.

[4] Records, Vol. 1, pp. 19-31.

[5] Docketed as NLRC NCR Case Nos. 00-12-07242-92, 00-01-00706-93, 00-01-00032-93 and 00-01-00076-93.

[6] Records, Vol. I, p. 33.

[7] *Id.*

[8] *Id.* at 32-34.

On the strength of a 5th *Alias* Writ of Execution, a Notice of Levy/Sale on Execution of Personal Property[9] was issued. Certain properties consisting of machinery, equipment tools, spare parts, dilapidated buses and unserviceable motor vehicles formerly belonging to PNEI and located at Pantranco Compound, Himlayan Road, Barangay Pasong Tamo, Tandang Sora, Quezon City, were levied upon and scheduled for auction sale on September 18, 2001 at 11:00 a.m.

On September 17, 2001, petitioner filed a Notice of Third-Party Claim[10] over the levied properties and attached to said notice an Affidavit of Third-Party Claim.[11] Petitioner asserted that the properties are mortgaged to the National Government through its trustee, the Asset Privatization Trust (now Privatization and Management Office or PMO). Petitioner argued that the National Government has a superior lien over the properties and that the claims/receivables of the National Government must be satisfied first before the judgment in favor of the retrenched employees.

In their Opposition to the Third-Party Claim with Motion to Dismiss, respondent employees argued that PMO has no legal right to appropriate the PNEI's assets and that PMO's takeover of PNEI's assets is only for the purpose of privatization and disposition to pay the claims of PNEI's creditor-employees.[12]

In reply, petitioner changed its stance and no longer asserted that the National Government has a mortgage lien over the subject properties but instead owned them. Petitioner averred that its ownership over the subject properties arose because PNEI obtained various loan accommodations and other credit facilities from the National Investment and Development Corporation (NIDC), a subsidiary arm of PNB, and executed mortgages

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[9] *Rollo,* pp. 89-90.

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

[11] *Id.* at 93-94.

[12] *Id.* at 102.

over its real and personal properties, including the properties subject of this case. Upon the dissolution of NIDC, all of NIDC's accounts were transferred to PNB which continued to extend financial and credit accommodations to PNEI. On July 28, 1983, PNEI restructured its loan obligations to PNB and executed in favor of PNB a *Dacion en Pago* conveying certain properties. In 1993, PNEI closed shop. Then, on March 28, 1994, pursuant to Proclamation No. 50,[13] as amended by Proclamation No. 50-A[14] and Administrative Order No. 14[15] dated February 3, 1987, PNB assigned, transferred and conveyed to the Asset Privatization Trust (now PMO) in trust for the National Government, all of its rights, title and interest on its non-performing assets, including the credit and mortgage account of PNEI. Later, PNEI's assets, including the subject properties, were foreclosed and transferred to APT in trust for the Republic of the Philippines.[16]

Hence, as PNEI no longer owned the subject properties, petitioner argued that said properties cannot be made to satisfy the 1993 judgment in favor of respondent PNEI employees.

In an Order[17] dated October 22, 2001, the Labor Arbiter denied petitioner's third-party claim for want of merit and directed the sheriff to proceed with the execution process. The Labor Arbiter noted that the Notice of Third-Party Claim filed by the

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[13] PROCLAIMING AND LAUNCHING A PROGRAM FOR THE EXPEDITIOUS DISPOSITION AND PRIVATIZATION OF CERTAIN GOVERNMENT CORPORATIONS AND/OR THE ASSETS THEREOF, AND CREATING THE COMMITTEE ON PRIVATIZATION AND THE ASSET PRIVATIZATION TRUST.

[14] MODIFYING PROCLAMATION NO. 50.

[15] APPROVING THE IDENTIFICATION OF AND TRANSFER TO THE NATIONAL GOVERNMENT OF CERTAIN ASSETS AND LIABILITIES OF THE DEVELOPMENT BANK OF THE PHILIPPINES AND THE PHILIPPINE NATIONAL BANK.

[16] CA *rollo*, pp. 49-51.

[17] *Rollo*, pp. 101-107.

Asset Privatization Trust had been denied in an Order dated July 6, 1994 and no appeal was timely filed. Moreover, the Labor Arbiter noted that petitioner PMO failed to introduce documents which would show that said junk buses, scrap equipment, other motor pool scrap and spare parts were indeed mortgaged.

On September 27, 2006, the NLRC issued a Resolution[18] affirming the October 22, 2001 Order of the Labor Arbiter. The NLRC also ordered that the records of the case be remanded to the Arbitration Branch for immediate appropriate proceedings.

Without filing a motion for reconsideration, petitioner filed a petition for *certiorari* before the CA.

On January 8, 2007, the CA issued a Resolution[19] which denied due course and dismissed the petition for being premature. The CA held that petitioner's failure to file a motion for reconsideration of the NLRC resolution was a fatal procedural defect.

On June 26, 2007, the CA also denied petitioner's motion for reconsideration. Hence, this petition.

Petitioner alleges that

I

THE COURT OF APPEALS ERRED WHEN IT DISMISSED PETITIONER'S PETITION ON THE GROUND THAT NO PRIOR MOTION FOR RECONSIDERATION WAS FILED BEFORE THE NATIONAL LABOR RELATIONS COMMISSION.

II

THE COURT OF APPEALS ERRED WHEN IT FAILED TO GIVE DUE COURSE TO PETITIONER'S MOTION FOR RECONSIDERATION OF THE RESOLUTION DATED JANUARY 8, 2007.[20]

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[18] *Id.* at 82-88.

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

[20] *Id.* at 22.

Essentially, the issue for our resolution is, did the CA err in dismissing petitioner's Rule 65 petition?

Petitioner argues that its petition should have been given due course notwithstanding its failure to file a motion for reconsideration of the September 27, 2006 NLRC Resolution. Petitioner cites the following grounds: (a) the filing of such motion for reconsideration would have been useless; (b) the matter is one of extreme urgency; (c) the question raised is purely of law; (d) public interest is involved; (e) the application of the rule would cause great and irreparable damage to petitioner; and (f) judicial intervention is urgently necessary.

Petitioner claims that the filing of a motion for reconsideration would be inadequate and entirely useless because the NLRC is bent on immediately proceeding with execution. Petitioner adds that the matter is one of extreme urgency which calls for direct, urgent and immediate judicial intervention. It involves public interest since the subject properties already belong to the State; hence, beyond the long arm of the labor agency to award in favor of the retrenched employees.

The petition is bereft of merit.

The well-established rule is that a motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended.[21] A motion for reconsideration of the order, resolution or decision of the NLRC should be seasonably filed as a precondition for pursuing any further or subsequent recourse; otherwise, the order, resolution or decision would become final and executory after ten calendar days from receipt thereof.[22] The rationale for the rule is that the law intends to afford the NLRC an opportunity to rectify

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[21] *Audi AG v. Mejia*, G.R. No. 167533, July 27, 2007, 528 SCRA 378, 383.

[22] *Biogenerics Marketing and Research Corporation v. NLRC*, G.R. No. 122725, September 8, 1999, 313 SCRA 748, 754.

such errors or mistakes it may have committed before resort to courts of justice can be had.[23]

Of course, the rule is not absolute and jurisprudence has laid down exceptions when the filing of a petition for *certiorari* is proper notwithstanding the failure to file a motion for reconsideration. Thus, resort to the courts under Rule 65 is allowed even without a motion for reconsideration first having been filed:

(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

(b) where the questions raised in the *certiorari* proceedings 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;

(c) 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 petition is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and,

(i) where the issue raised is one purely of law or public interest is involved.[24]

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[23] *Id.*

[24] *Sim v. National Labor Relations Commission*, G.R. No. 157376, October 2, 2007, 534 SCRA 515, 521-522.

However, petitioner failed to show that this case falls under any of the exceptions. Here, except for its bare allegation, petitioner failed to present any plausible justification for dispensing with the requirement of a prior motion for reconsideration. Notably, the petition filed before the CA did not state any reason for its failure to file a motion for reconsideration from the NLRC resolution. It was only in its motion for reconsideration of the CA resolution dismissing the petition and in the present petition that petitioner justified its non-filing of a motion for reconsideration. According to petitioner, a motion for reconsideration would be inadequate and useless since the labor agency is bent on immediately proceeding with the execution, levy and sale on execution of the subject properties. But it is not for petitioner to determine whether the filing of a motion for reconsideration should be dispensed with. As enunciated in the case of *Sim v. National Labor Relations Commission*:[25]

> It must be emphasized that a writ of *certiorari* is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of *certiorari* must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do. Thus, the Court of Appeals correctly dismissed the petition.

It must be emphasized that the filing of a motion for reconsideration and filing it on time are not mere technicalities of procedure.[26] These are jurisdictional and mandatory requirements which must be strictly complied with.[27] Thus, failure

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[25] *Id.* at 522-523, citing *Cervantes v. Court of Appeals*, G.R. No. 166755, November 18, 2005, 475 SCRA 562, 570.

[26] *Lopez Dela Rosa Development Corporation v. Court of Appeals*, G.R. No. 148470, April 29, 2005, 457 SCRA 614, 628.

[27] *Id.*

to file a motion for reconsideration with the NLRC before availing oneself of the special civil action for *certiorari* is a fatal infirmity.

Be that as it may, even if we set aside the procedural infirmity, the CA could still not be faulted for not giving due course to the petition since petitioner failed to show any error or grave abuse of discretion on the part of the Labor Arbiter and the NLRC in denying its third-party claim. Both the Labor Arbiter and the NLRC are in accord that petitioner PMO as the successor entity of APT can no longer question the Notice of Levy and/or Sale on Execution of the Personal Assets/Properties of PNEI. As early as July 6, 1994, an order had been issued by the Labor Arbiter which denied the Third-Party Claim of PMO's predecessor-in-interest, APT, to stop the execution of the levied buses owned by PNEI. There being no appeal interposed by the Office of the Government Corporate Counsel from such order, it became final and executory. PMO cannot now be allowed to raise the same ground invoked by APT to again delay the execution in satisfaction of the 1993 judgment of the Labor Arbiter in favor of respondent PNEI employees. We find no cogent reason in this case to deviate from the rulings of both labor offices whose findings are based on established facts.

Furthermore, the records are bereft of any concrete proof that the subject properties of PNEI were among those included in the list of accounts that were transferred to the National Government and which were subsequently transferred to APT/PMO. We quote with approval the Labor Arbiter's pertinent findings on this matter, to wit:

> x x x PMO failed to introduce documentary evidence showing that the personal properties levied were indeed subjected to a chattel mortgage to NIDC and/or PNB. It is to be noted that the "*Dacion en Pago*" covered a general statement on Pantranco's assets. There is no single piece of evidence that said junk buses, scrap equipments, and other motorpool scrap and spare parts were indeed mortgaged (chattel).[28]

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[28] *Rollo,* p. 106.

But even assuming that the levied properties were included in those transferred to the National Government, this Court's pronouncement in the related case of *Republic v. National Labor Relations Commission*[29] as to the claim of ownership of APT (PMO) over the PNEI properties entrusted to it pursuant to Presidential Proclamation No. 50, is enlightening. The Court said,

> x x x A matter that must not be overlooked is the fact that the inclusion of APT as a respondent in the monetary claims against PNEI is merely the consequence of its being a conservator of assets, a role that APT normally plays in, or the relationship that ordinarily it maintains with, corporations identified for and while under privatization. The liability of APT under this particular arrangement, nothing else having been shown, should be co-extensive with the amount of assets taken over from the privatized firm. PNEI's assets obviously remain to be subject to execution by judgment creditors of PNEI. **Accordingly, the levy and auction sale of the property of PNEI to satisfy the monetary judgment rendered in favor of PNEI employees can be sustained since such assets are to be deemed subject to all valid claims against PNEI.**[30] [Emphasis ours.]

In sum, the CA did not err in dismissing the petition.

WHEREFORE, the petition is **DENIED**. The January 8, 2007 and June 26, 2007 Resolutions of the Court of Appeals in CA-G.R. SP No. 97348 are hereby **AFFIRMED**.

No costs.

SO ORDERED.

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

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[29] G.R. No. 120385, October 17, 1996, 263 SCRA 290.

[30] *Id.* at 301-302.

SECOND DIVISION

[G.R. No. 179469. February 15, 2012]

C.F. SHARP & CO., INC. and JOHN J. ROCHA, *petitioners, vs.* **PIONEER INSURANCE & SURETY CORPORATION, WILFREDO C. AGUSTIN and HERNANDO G. MINIMO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE NATURE OF THE ISSUE IN THE CASE CANNOT BE CHANGED ON APPEAL.— It is doctrinal that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; STAGES.— [C]ontracts undergo three distinct stages, to wit: negotiation; perfection or birth; and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. Perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.

3. ID.; ID.; ID.; PERFECTED BY MERE CONSENT.— Under Article 1315 of the Civil Code, a contract is perfected by mere consent and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.

4. ID.; ID.; ID.; EMPLOYMENT CONTRACT; 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.

5. ID.; ID.; ID.; ID.; PERFECTED IN CASE AT BAR.— By the contract, C.F. Sharp, on behalf of its principal, International Shipping Management, Inc., hired respondents as Sandblaster/ Painter for a 3-month contract, with a basic monthly salary of US$450.00. Thus, the object of the contract is the service to be rendered by respondents on board the vessel while the cause of the contract is the monthly compensation they expect to receive. These terms were embodied in the Contract of Employment which was executed by the parties. The agreement upon the terms of the contract was manifested by the consent freely given by both parties through their signatures in the contract. Neither parties disavow the consent they both voluntarily gave. Thus, there is a perfected contract of employment.

6. ID.; ID.; ID.; ID.; PERFECTION OF EMPLOYMENT CONTRACT AND COMMENCEMENT OF EMPLOYER-EMPLOYEE RELATIONSHIP, DISTINGUISHED.— The commencement of an employer-employee relationship must be treated separately from the perfection of an employment contract. *Santiago v. CF Sharp Crew Management, Inc.*, which was promulgated on 10 July 2007, is an instructive precedent on this point. In said case, petitioner was hired by respondent on board "MSV Seaspread" for US$515.00 per month for nine (9) months, plus overtime pay. Respondent failed to deploy petitioner from the port of Manila to Canada. We made a distinction between the perfection of the employment contract and the commencement of the employer-employee relationship, thus: "The perfection of the contract, which in this case coincided with the date of execution thereof, occurred when petitioner and respondent agreed on the object and the cause, as well as the rest of the terms and conditions therein. The commencement of the employer-employee relationship x x x would have taken place had petitioner been actually deployed from the point of hire. Thus, even before the start of any employer-employee

relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party." Despite the fact that the employer-employee relationship has not commenced due to the failure to deploy respondents in this case, respondents are entitled to rights arising from the perfected Contract of Employment, such as the right to demand performance by C.F. Sharp of its obligation under the contract. The right to demand performance was a categorical pronouncement in *Santiago* which ruled that failure to deploy constitutes breach of contract, thereby entitling the seafarer to damages x x x.

7. ID.; DAMAGES; MORAL DAMAGES; AWARDED IN CASE AT BAR.— We respect the lower courts' findings that C.F. Sharp unjustifiably refused to return the documents submitted by respondent. The finding was that C.F. Sharp would only release the documents if respondent would sign a quitclaim. On this point, the trial court was affirmed by the Court of Appeals. As a consequence, the award by the trial court of moral damages must likewise be affirmed. Moral damages may be recovered under Article 2219 of the Civil Code in relation to Article 21. x x x We agree with the appellate court that C.F. Sharp committed an actionable wrong when it unreasonably withheld documents, thus preventing respondents from seeking lucrative employment elsewhere. That C.F. Sharp arbitrarily imposed a condition that the documents would only be released upon signing of a quitclaim is tantamount to bad faith because it effectively deprived respondents of resort to legal remedies.

8. ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; GRANTED IN CASE AT BAR.— Exemplary damages may be awarded when a wrongful act is accompanied by bad faith or when the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner which would justify an award of exemplary damages under Article 2232 of the Civil Code. Since the award of exemplary damages is proper in this case, attorney's fees and cost of the suit may also be recovered as provided under Article 2208 of the Civil Code.

APPEARANCES OF COUNSEL

Martinez Vergara Gonzalez and Serrano Law Office for petitioners.

Anselmo A. Marqueda for Wilfredo Agustin and Hernando Minimo.

Vincenzo Nonato M. Taggueg for Pioneer Insurance & Surety Corp.

D E C I S I O N

PEREZ, *J.*:

Whether a local private employment agency may be held liable for breach of contract for failure to deploy a seafarer, is the bone of contention in this case.

Assailed in this petition for review are the Decision[1] dated 30 October 2003 and the 29 August 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 53336 finding petitioners C.F. Sharp Co. Inc. (C.F. Sharp) and John J. Rocha (Rocha) liable for damages.

Responding to a newspaper advertisement of a job opening for sandblasters and painters in Libya, respondents Wilfredo C. Agustin and Hernando G. Minimo applied with C.F. Sharp sometime in August 1990. After passing the interview, they were required to submit their passports, seaman's book, National Bureau of Investigation clearance, employment certificates, certificates of seminars attended, and results of medical examination. Upon submission of the requirements, a Contract of Employment was executed between respondents and C.F. Sharp. Thereafter, respondents were required to attend various seminars, open a bank account with the corresponding allotment slips, and attend a pre-departure orientation. They were then

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[1] Penned by Associate Justice Noel G. Tijam with Associate Justices Ruben T. Reyes (retired Supreme Court Justice) and Edgardo P. Cruz, concurring. *Rollo*, pp. 29-43.

advised to prepare for immediate deployment and to report to C.F. Sharp to ascertain the schedule of their deployment.

After a month, respondents were yet to be deployed prompting them to request for the release of the documents they had submitted to C.F. Sharp. C.F. Sharp allegedly refused to surrender the documents which led to the filing of a complaint by respondents before the Philippine Overseas Employment Administration (POEA) on 21 January 1991.

On 30 October 1991, POEA issued an Order finding C.F. Sharp guilty of violation of Article 34(k) of the Labor Code, which makes it unlawful for any entity "to withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under this Code and its implementing rules and regulations." Consequently, C.F. Sharp's license was suspended until the return of the disputed documents to respondents. POEA likewise declared that it has no jurisdiction to adjudicate the monetary claims of respondents.

On 10 March 1995, respondents filed a Complaint for breach of contract and damages against C.F. Sharp and its surety, Pioneer Insurance and Surety Corporation (Pioneer Insurance), before the Regional Trial Court (RTC) of Pasay City. Respondents claimed that C.F. Sharp falsely assured them of deployment and that its refusal to release the disputed documents on the ground that they were already bound by reason of the Contract of Employment, denied respondents of employment opportunities abroad and a guaranteed income. Respondents also prayed for damages. Pioneer Insurance filed a cross claim against C.F. Sharp and John J. Rocha, the executive vice-president of C.F. Sharp, based on an Indemnity Agreement which substantially provides that the duo shall jointly and severally indemnify Pioneer Insurance for damages, losses, and costs which the latter may incur as surety. The RTC rendered judgment on 27 June 1996 favoring respondents, to wit:

WHEREFORE, plaintiffs' causes of action having been proved with a preponderance of evidence, judgment is hereby ordered as follows:

a. Declaring the non-deployment of plaintiffs and the refusal to release documents as breach of contract;

b. By way of compensatory damages, awarding $450 per month and $439 overtime per month, which should have been received by plaintiffs from other employers, making a joint and solidary obligation on the part of the two defendants – C.F. Sharp and Pioneer for the period covered by the employment contracts;

c. Ordering each defendant to pay each plaintiff ₱50,000.00 as moral damages and another ₱50,000.00 each as exemplary damages;

d. Ordering defendants to share in the payment to plaintiffs of ₱50,000.00 attorney's fees;

e. Defendants to pay litigation expenses and costs of suit.[2]

The trial court ruled that there was a violation of the contract when C.F. Sharp failed to deploy and release the papers and documents of respondents, hence, they are entitled to damages. The trial court likewise upheld the cause of action of respondents against Pioneer Insurance, the former being the actual beneficiaries of the surety bond.

On appeal, C.F. Sharp and Rocha raise a jurisdictional issue — that the RTC has no jurisdiction over the instant case pursuant to Section 4(a) of Executive Order No. 797 which vests upon the POEA the jurisdiction over all cases, including money claims, arising out of or by virtue of any contract involving workers for overseas employment. C.F. Sharp and Rocha refuted the findings of the trial court and maintained that the perfection and effectivity of the Contract of Employment depend upon the actual deployment of respondents.

The Court of Appeals upheld the jurisdiction of the trial court by ruling that petitioners are now estopped from raising such

[2] *Id.* at 197.

question because they have actively participated in the proceedings before the trial court. The Court of Appeals further held that since there is no perfected employment contract between the parties, it is the RTC and not the POEA, whose jurisdiction pertains only to claims arising from contracts involving Filipino seamen, which has jurisdiction over the instant case.

Despite the finding that no contract was perfected between the parties, the Court of Appeals adjudged C.F. Sharp and Rocha liable for damages, to wit:

> WHEREFORE, the Appeal of C.F. Sharp Co Inc. and John J. Rocha is PARTIALLY GRANTED only insofar as We declare that there is no breach of contract because no contract of employment was perfected. However, We find appellants C.F. Sharp Co. Inc. and John J. Rocha liable to plaintiff-appellees for damages pursuant to Article 21 of the Civil Code and award each plaintiff-appellees temperate damages amounting to ₱100,000.00, and moral damages in the increased amount of ₱100,000.00. The award of exemplary damages and attorney's fees amounting to ₱50,000.00, respectively, is hereby affirmed.[3]

The Court of Appeals limited the liability of Pioneer Insurance to the amount of ₱150,000.00 pursuant to the Contract of Suretyship between C.F. Sharp and Pioneer Insurance.

Rocha filed the instant petition on the submission that there is no basis to hold him liable for damages under Article 21 of the Civil Code because C.F. Sharp has signified its intention to return the documents and had in fact informed respondents that they may, at any time of the business day, withdraw their documents. Further, respondents failed to establish the basis for which they are entitled to moral damages. Rocha refuted the award of exemplary damages because the act of requiring respondents to sign a quitclaim prior to the release of their documents could not be considered bad faith. Rocha also questions the award of temperate damages on the ground that the act of withholding respondents' documents could not be considered "chronic and continuing."[4]

[3] *Id.* at 42.

[4] *Id.* at 23.

Right off, insofar as Pioneer Insurance is concerned, the petition should be dismissed against it because the ruling of the Court of Appeals limited its liability to ₱150,000.00 was not assailed by Rocha, hence the same has now attained finality.

Before us, respondents maintain that they are entitled to damages under Article 21 of the Civil Code for C.F. Sharp's unjustified refusal to release the documents to them and for requiring them to sign a quitclaim which would effectively bar them from seeking redress against petitioners. Respondents justify the award of other damages as they suffered pecuniary losses attributable to petitioner's malice and bad faith.

In his Reply, Rocha introduced a new argument, *i.e.*, that he should not be held jointly liable with C.F. Sharp considering that the company has a separate personality. Rocha argues that there is no showing in the Complaint that he had participated in the malicious act complained. He adds that his liability only stems from the Indemnity Agreement with Pioneer Insurance and does not extend to respondents.

Records disclose that Rocha was first impleaded in the case by Pioneer Insurance. Pioneer Insurance, as surety, was sued by respondents together with C.F. Sharp. Pioneer Insurance in turn filed a third party complaint against Rocha on the basis of an Indemnity Agreement whereby he bound himself to indemnify and hold harmless Pioneer Insurance from and against any and all damages which the latter may incur in consequence of having become a surety.[5] The third party complaint partakes the nature of a cross-claim.

C.F. Sharp, as defendant-appellant and Rocha, as third-party defendant-appellant, filed only one brief before the Court of Appeals essentially questioning the declaration of the trial court that non-deployment is tantamount to breach of contract and the award of damages. The Court of Appeals found them both liable for damages. Both C.F. Sharp and Rocha sought recourse before this Court via a Motion for Extension of Time (To File

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[5] Records, p. 51.

a Petition for Review) on 19 September 2007.[6] In the Petition for Review, however, C.F. Sharp was noticeably dropped as petitioner. Rocha maintains essentially the same argument that he and C.F. Sharp were wrongfully adjudged liable for damages.

It was only in its Reply dated 25 March 2008 that Rocha, through a new representation, suddenly forwarded the argument that he should not be held liable as an officer of C.F. Sharp. It is too late in the day for Rocha to change his theory. It is doctrinal that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.[7] More so in this case, where Rocha introduced a new theory at the Reply stage. Disingenuousness may even be indicated by the sudden exclusion of the name of C.F. Sharp from the main petition even as Rocha posited arguments not just for himself and also in behalf of C.F. Sharp.

The core issue pertains to damages.

The bases of the lower courts' award of damages differ. In upholding the perfection of contract between respondents and C.F. Sharp, the trial court stated that the unjustified failure to deploy and subsequently release the documents of respondents entitled them to compensatory damages, among others. Differently, the appellate court found that no contract was perfected between the parties that will give rise to a breach of contract. Thus, the appellate court deleted the award of actual damages. However, it adjudged other damages against C.F. Sharp for its unlawful withholding of documents from respondents.

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[6] *Rollo,* pp. 3-4.

[7] *Penera v. Commission on Election (COMELEC),* G.R. No. 181613, 11 September 2009, 599 SCRA 609, 649; *Philippine Ports Authority v. City of Iloilo*, G.R. No. 109791, 14 July 2003, 406 SCRA 88, 93; *Bank of the Philippine Islands v. Leobrera*, G.R. Nos. 137147-48, 18 November 2003, 416 SCRA 15, 19.

We sustain the trial court's ruling.

On the issue of whether respondents are entitled to relief for failure to deploy them, the RTC ruled in this wise:

> The contract of employment entered into by the plaintiffs and the defendant C.F. Sharp is an actionable document, the same contract having the essential requisites for its validity. It is worthy to note that there are three stages of a contract: (1) preparation, conception, or generation which is the period of negotiation and bargaining ending at the moment of agreement of the parties. (2) Perfection or birth of the contract, which is the moment when the parties come to agree on the terms of the contract. (3) Consummation or death, which is the fulfillment or performance of the terms agreed upon in the contract.
>
> Hence, it is imperative to know the stage reached by the contract entered into by the plaintiffs and C.F. sharp. Based on the testimonies of the witnesses presented in this Court, there was already a perfected contract between plaintiffs and defendant C.F. Sharp. Under Article 1315 of the New Civil Code of the Philippines, it states that:
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> x x x x x x x x x
>
> Thus, when plaintiffs signed the contract of employment with C.F. Sharp (as agent of the principal WB Slough) consequently, the latter is under obligation to deploy the plaintiffs, which is the natural effect and consequence of the contract agreed by them.[8]

We agree.

As correctly ruled at the trial, contracts undergo three distinct stages, to wit: negotiation; perfection or birth; and consummation. Negotiation begins from the time the prospective contracting parties manifest their interest in the contract and ends at the moment of agreement of the parties. Perfection or birth of the contract takes place when the parties agree upon the essential elements of the contract. Consummation occurs when the parties fulfill or perform the terms agreed upon in the contract, culminating in the extinguishment thereof.[9]

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[8] *Rollo*, p. 238.

[9] *Spouses Tongson v. Emergency Pawnshop Bula, Inc.*, G.R. No. 167874, 15 January 2010, 610 SCRA 150, 161 citing *Swedish Match, AB v. Court of Appeals*, 483 Phil. 735, 750-751 (2004) citing further *Bugatti v. Court of Appeals*, 397 Phil. 376, 388-389 (2000).

Under Article 1315 of the Civil Code, a contract is perfected by mere consent and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.[10]

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.[11]

We have scoured through the Contract of Employment and we hold that it is a perfected contract of employment. We reproduce below the terms of the Contract of Employment for easy reference:

WITNESSETH

That the Seafarer shall be employed on board under the following terms and conditions:

1.1 Duration of Contract: 3 month/s
1.2 Position: SANDBLASTER/PAINTER
1.3 Basic Monthly Salary: $450.00 per month
1.4 Living Allowances: $0.00 per month
1.5 Hours of Work: 48 per week
1.6 Overtime Rate: $439.00 per month
1.7 Vacation Leave with Pay: 30.00 day/s per month on board

The terms and conditions of the Revised Employment Contract for seafarers governing the employment of all Filipino seafarers approved by the POEA/DOLE on July 14, 1989 under Memorandum Circular No. 41 series of 1989 and amending circulars relative thereto shall be strictly and faithfully observed.

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[10] *Famanila v. Court of Appeals*, G.R. No. 150429, 29 August 2006, 500 SCRA 76, 85.

[11] *OSM Shipping Phil., Inc. v. National Labor Relations Commission*, 446 Phil. 793, 805 (2003) citing *Limketkai Sons Milling, Inc. v. Court of Appeals*, G.R. No. 118509, 1 December 1995, 250 SCRA 523, 535.

Any alterations or changes, in any part of this Contract shall be evaluated, verified, processed and approved by the Philippine Overseas Employment Administration (POEA). Upon approval, the same shall be deemed an integral part of the Standard Employment Contract (SEC) for seafarers.

All claims, complaints or controversies relative to the implementation and interpretation of this overseas employment contract shall be exclusively resolved through the established Grievance Machinery in the Revised Employment Contract for seafarers, the adjudication procedures of the Philippine Overseas Employment Administration and the Philippine Courts of Justice, in that order.

Violations of the terms and conditions of this Contract with its approved addendum shall warrant the imposition of appropriate disciplinary or administrative sanctions against the erring party.

The Employee hereby certifies that he had received, read or has had explained to him and fully understood this contract as well as the POEA revised Employment Contract of 1989 and the Collective Bargaining Agreement (CBA) and/or company terms and conditions of employment covering this vessel and that he is fully aware of and has head or has had explained to him the terms and conditions including those in the POEA Employment Contract, the CBA and this contract which constitute his entire agreement with the employer.

The Employee also confirms that no verbal or other written promises other than the terms and conditions of this Contract as well as the POEA Revised Employment Contract, the CBA and/or company terms and conditions had been given to the Employee. Therefore, the Employee cannot claim any additional benefits or wages of any kind except those which have been provided in this Contract Agreement.[12]

By the contract, C.F. Sharp, on behalf of its principal, International Shipping Management, Inc., hired respondents as Sandblaster/Painter for a 3-month contract, with a basic monthly salary of US$450.00. Thus, the object of the contract is the service to be rendered by respondents on board the vessel while

[12] *Rollo*, p. 68.

the cause of the contract is the monthly compensation they expect to receive. These terms were embodied in the Contract of Employment which was executed by the parties. The agreement upon the terms of the contract was manifested by the consent freely given by both parties through their signatures in the contract. Neither parties disavow the consent they both voluntarily gave. Thus, there is a perfected contract of employment.

The Court of Appeals agreed with the submission of C.F. Sharp that the perfection and effectivity of the Contract of Employment depend upon the actual deployment of respondents. It based its conclusion that there was no perfected contract based on the following *rationale*:

> The commencement of the employer-employee relationship between plaintiffs-appellees and the foreign employer, as correctly represented by C.F. Sharp requires that conditions under Sec. D be met. The Contract of Employment was duly "Verified and approved by the POEA." Regrettably, We have painfully scrutinized the Records and find no evidence that plaintiffs-appellees were cleared for travel and departure to their port of embarkation overseas by government authorities. Consequently, non-fulfillment of this condition negates the commencement and existence of employer-employee relationship between the plaintiffs-appellees and C.F. Sharp. Accordingly, no contract between them was perfected that will give rise to plaintiffs-appellees' right of action. There can be no breach of contract when in the first place, there is no effective contract to speak of. For the same reason, and finding that the award of actual damages has no basis, the same is hereby deleted.[13]

The Court of Appeals erred.

The commencement of an employer-employee relationship must be treated separately from the perfection of an employment contract. *Santiago v. CF Sharp Crew Management, Inc.*,[14] which was promulgated on 10 July 2007, is an instructive precedent on this point. In said case, petitioner was hired by respondent

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[13] *Id.* at 38.

[14] G.R. No. 162419, 10 July 2007, 527 SCRA 165.

on board "MSV Seaspread" for US$515.00 per month for nine (9) months, plus overtime pay. Respondent failed to deploy petitioner from the port of Manila to Canada. We made a distinction between the perfection of the employment contract and the commencement of the employer-employee relationship, thus:

> The perfection of the contract, which in this case coincided with the date of execution thereof, occurred when petitioner and respondent agreed on the object and the cause, as well as the rest of the terms and conditions therein. The commencement of the employer-employee relationship, as earlier discussed, would have taken place had petitioner been actually deployed from the point of hire. Thus, even before the start of any employer-employee relationship, contemporaneous with the perfection of the employment contract was the birth of certain rights and obligations, the breach of which may give rise to a cause of action against the erring party.[15]

Despite the fact that the employer-employee relationship has not commenced due to the failure to deploy respondents in this case, respondents are entitled to rights arising from the perfected Contract of Employment, such as the right to demand performance by C.F. Sharp of its obligation under the contract.

The right to demand performance was a categorical pronouncement in *Santiago* which ruled that failure to deploy constitutes breach of contract, thereby entitling the seafarer to damages:

> Respondent's act of preventing petitioner from departing the port of Manila and boarding "MSV Seaspread" constitutes a breach of contract, giving rise to petitioner's cause of action. Respondent unilaterally and unreasonably reneged on its obligation to deploy petitioner and must therefore answer for the actual damages he suffered.
>
> We take exception to the Court of Appeals' conclusion that damages are not recoverable by a worker who was not deployed by his agency. The fact that the POEA Rules are silent as to the payment of damages to the affected seafarer does not mean that the seafarer is precluded

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[15] *Id.* at 176.

from claiming the same. The sanctions provided for non-deployment do not end with the suspension or cancellation of license or fine and the return of all documents at no cost to the worker. They do not forfend a seafarer from instituting an action for damages against the employer or agency which has failed to deploy him.[16]

The appellate court could not be faulted for its failure to adhere to *Santiago* considering that the Court of Appeals Decision was promulgated way back in 2003 while *Santiago* was decided in 2007. We now reiterate *Santiago* and, accordingly, decide the case at hand.

We respect the lower courts' findings that C.F. Sharp unjustifiably refused to return the documents submitted by respondent. The finding was that C.F. Sharp would only release the documents if respondent would sign a quitclaim. On this point, the trial court was affirmed by the Court of Appeals. As a consequence, the award by the trial court of moral damages must likewise be affirmed.

Moral damages may be recovered under Article 2219 of the Civil Code in relation to Article 21. The pertinent provisions read:

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

x x x x x x x x x

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

x x x x x x x x x

Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

We agree with the appellate court that C.F. Sharp committed an actionable wrong when it unreasonably withheld documents, thus preventing respondents from seeking lucrative employment

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[16] *Id.* at 176-177.

elsewhere. That C.F. Sharp arbitrarily imposed a condition that the documents would only be released upon signing of a quitclaim is tantamount to bad faith because it effectively deprived respondents of resort to legal remedies.

Furthermore, we affirm the award of exemplary damages and attorney's fees. Exemplary damages may be awarded when a wrongful act is accompanied by bad faith or when the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner which would justify an award of exemplary damages under Article 2232 of the Civil Code. Since the award of exemplary damages is proper in this case, attorney's fees and cost of the suit may also be recovered as provided under Article 2208 of the Civil Code.[17]

WHEREFORE, the petition is **DENIED**. The Decision dated 27 June 1996 of the Regional Trial Court of Pasay City is **REINSTATED**. Accordingly, the Decision dated 30 October 2003 of the Court of Appeals is **MODIFIED**.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Sereno,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 180784. February 15, 2012]

INSURANCE COMPANY OF NORTH AMERICA, *petitioner, vs.* **ASIAN TERMINALS, INC.,** *respondent.*

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[17] *Sunbanun v. Go*, G.R. No. 163280, 2 February 2010, 611 SCRA 320, 327-328.

[*] Per Special Order No. 1195.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI*; LIMITED TO REVIEWING QUESTIONS OF LAW; EXCEPTIONS.— Under Section 1, Rule 45, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth. The Court may resolve questions of fact only when the case falls under the following exceptions: "(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; **(4) when the judgment is based on a misapprehension of facts;** (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record."

2. MERCANTILE LAW; TRANSPORTATION LAW; MARITIME COMMERCE; CARRIAGE OF GOODS BY SEA ACT; APPLICABLE TO ALL CONTRACTS FOR THE CARRIAGE OF GOODS BY SEA TO AND FROM PHILIPPINE PORTS IN FOREIGN TRADE.— The Carriage of Goods by Sea Act (COGSA), Public Act No. 521 of the 74th US Congress, was accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by virtue of CA No. 65.

3. ID.; ID.; ID.; ID.; DOES NOT COVER THE PERIOD OF TIME WHEN THE GOODS HAVE BEEN DISCHARGED FROM THE SHIP AND GIVEN TO THE CUSTODY OF THE ARRASTRE OPERATOR.— Section 1, Title I of CA No. 65 defines the relevant terms in Carriage of Goods by Sea x x x. It is noted that the term "carriage of goods" covers the period from the time when the goods are loaded to the time when they are discharged from the ship; thus, it can be inferred that

the period of time when the goods have been discharged from the ship and given to the custody of the arrastre operator is not covered by the COGSA.

4. ID.; ID.; ID.; ID.; THE ONE-YEAR PRESCRIPTIVE PERIOD FOR FILING AN ACTION FOR THE LOSS OR DAMAGE OF GOODS MAY NOT BE INVOKED BY AN ARRASTRE OPERATOR.— The prescriptive period for filing an action for the loss or damage of the goods under the COGSA is found in paragraph (6), Section 3 x x x. [T]he carrier and the ship may put up the defense of prescription if the action for damages is not brought within one year after the delivery of the goods or the date when the goods should have been delivered. It has been held that not only the shipper, but also the consignee or legal holder of the bill may invoke the prescriptive period. However, the COGSA does not mention that an arrastre operator may invoke the prescriptive period of one year; hence, it does not cover the arrastre operator.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT FOR CARGO HANDLING SERVICES; PROVIDES FOR THE ARRASTRE OPERATOR'S RESPONSIBILITY AND LIABILITY FOR LOSSES AND DAMAGES IN CASE AT BAR.— Respondent arrastre operator's responsibility and liability for losses and damages are set forth in Section 7.01 of the Contract for Cargo Handling Services executed between the Philippine Ports Authority and Marina Ports Services, Inc. (now Asian Terminals, Inc.) x x x. Based on the Contract x x x, the consignee has a period of thirty (30) days from the date of delivery of the package to the consignee within which to request a certificate of loss from the arrastre operator. From the date of the request for a certificate of loss, the arrastre operator has a period of fifteen (15) days within which to issue a certificate of non-delivery/loss either actually or constructively. Moreover, from the date of issuance of a certificate of non-delivery/loss, the consignee has fifteen (15) days within which to file a formal claim covering the loss, injury, damage or non-delivery of such goods with all accompanying documentation against the arrastre operator.

6. ID.; ID.; ID.; LACK OF STRICT COMPLIANCE WITH THE 15-DAY LIMITATION FOR THE FILING OF CLAIMS DID NOT PREJUDICE THE ARRASTRE OPERATOR IN CASE

AT BAR.— In this case, the records show that the goods were deposited with the arrastre operator on November 21, 2002. The goods were withdrawn from the arrastre operator on November 22, 23 and 29, 2002. Prior to the withdrawal on November 29, 2002, the broker of the importer, Marzan, requested for a bad order survey in the presence of a Customs representative and other parties concerned. The joint inspection of cargo was conducted and it was found that an additional five (5) packages were found in bad order as evidenced by the document entitled Request for Bad Order Survey dated November 29, 2002, which document also contained the examination report, signed by the Custom's representative, Supervisor/Superintendent, consignee's representative, and the ATI Inspector. Thus, as early as November 29, 2002, the date of the last withdrawal of the goods from the arrastre operator, respondent ATI was able to verify that five (5) packages of the shipment were in bad order while in its custody. The certificate of non-delivery referred to in the Contract is similar to or identical with the examination report on the request for bad order survey. **Like in the case of *New Zealand Insurance Company Ltd. v. Navarro*, the verification and ascertainment of liability by respondent ATI had been accomplished within thirty (30) days from the date of delivery of the package to the consignee and within fifteen (15) days from the date of issuance by the Contractor (respondent ATI) of the examination report on the request for bad order survey.** Although the formal claim was filed beyond the 15-day period from the issuance of the examination report on the request for bad order survey, the purpose of the time limitations for the filing of claims had already been fully satisfied by the request of the consignee's broker for a bad order survey and by the examination report of the arrastre operator on the result thereof, as the arrastre operator had become aware of and had verified the facts giving rise to its liability. Hence, the arrastre operator suffered no prejudice by the lack of strict compliance with the 15-day limitation to file the formal complaint.

7. ID.; DAMAGES; ACTUAL DAMAGES; AWARDED IN CASE AT BAR.— As regards the four (4) skids that were damaged in the custody of the arrastre operator, petitioner is still entitled to recover from respondent. The Court has ruled that the Request

> for Bad Order Survey and the examination report on the said request satisfied the purpose of a formal claim, as respondent was made aware of and was able to verify that five (5) skids were damaged or in bad order while in its custody before the last withdrawal of the shipment on November 29, 2002. Hence, even if the formal claim was filed beyond the 15-day period stipulated in the Contract, respondent was not prejudiced thereby, since it already knew of the number of skids damaged in its possession per the examination report on the request for bad order survey. Remand of the case to the trial court for the determination of the liability of respondent to petitioner is not necessary as the Court can resolve the same based on the records before it. The Court notes that petitioner, who filed this action for damages for the **five (5) skids** that were damaged while in the custody of respondent, was not forthright in its claim, as it knew that the damages it sought in the amount of ₱431,592.14, which was based on the Evaluation Report of its adjuster/surveyor, BA McLarens Phils., Inc., covered **nine (9) skids**. Based on the same Evaluation Report, **only four of the nine skids were damaged in the custody of respondent**. Petitioner should have been straightforward about its exact claim, which is borne out by the evidence on record, as petitioner can be granted only the amount of damages that is due to it. x x x In view of the foregoing, petitioner is entitled to actual damages in the amount of ₱164,428.76 for the four (4) skids damaged while in the custody of respondent.

APPEARANCES OF COUNSEL

Astorga and Repol Law Office for petitioner.
Montilla Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision of the Regional Trial Court (RTC) of Makati City, Branch 138

[1] Under Rule 45 of the Rules of Court.

(trial court) in Civil Case No. 05-809 and its Order dated December 4, 2007 on the ground that the trial court committed reversible error of law.

The trial court dismissed petitioner's complaint for actual damages on the ground of prescription under the Carriage of Goods by Sea Act (COGSA).

The facts are as follows:

On November 9, 2002, Macro-Lite Korea Corporation shipped to San Miguel Corporation, through M/V "DIMI P" vessel, one hundred eighty-five (185) packages (231,000 sheets) of electrolytic tin free steel, complete and in good order condition and covered by Bill of Lading No. POBUPOHMAN20638.[2] The shipment had a declared value of US$169,850.35[3] and was insured with petitioner Insurance Company of North America against all risks under Marine Policy No. MOPA-06310.[4]

The carrying vessel arrived at the port of Manila on November 19, 2002, and when the shipment was discharged therefrom, it was noted that seven (7) packages thereof were damaged and in bad order.[5] The shipment was then turned over to the custody of respondent Asian Terminals, Inc. (ATI) on November 21, 2002 for storage and safekeeping pending its withdrawal by the consignee's authorized customs broker, R.V. Marzan Brokerage Corp. (Marzan).

On November 22, 23 and 29, 2002, the subject shipment was withdrawn by Marzan from the custody of respondent. On November 29, 2002, prior to the last withdrawal of the shipment, a joint inspection of the said cargo was conducted per the Request for Bad Order Survey[6] dated November 29, 2002, and the

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[2] Annex "D", records, p. 108.

[3] Annex "B", *id.* at 106.

[4] Annex "A" of Complaint, *id.* at 68.

[5] Bad Order Cargo Receipts, Annexes "G" to "G-2", *id.* at 111-113.

[6] Request for Bad Order Survey No. 56422, Annex "1", *id.* at 153.

examination report, which was written on the same request, showed that an additional five (5) packages were found to be damaged and in bad order.

On January 6, 2003, the consignee, San Miguel Corporation, filed separate claims[7] against respondent and petitioner for the damage to 11,200 sheets of electrolytic tin free steel.

Petitioner engaged the services of an independent adjuster/ surveyor, BA McLarens Phils., Inc., to conduct an investigation and evaluation on the claim and to prepare the necessary report.[8] BA McLarens Phils., Inc. submitted to petitioner a Survey Report[9] dated January 22, 2003 and another report[10] dated May 5, 2003 regarding the damaged shipment. It noted that out of the reported twelve (12) damaged skids, nine (9) of them were rejected and three (3) skids were accepted by the consignee's representative as good order. BA McLarens Phils., Inc. evaluated the total cost of damage to the nine (9) rejected skids (11,200 sheets of electrolytic tin free steel) to be ₱431,592.14.

The petitioner, as insurer of the said cargo, paid the consignee the amount of ₱431,592.14 for the damage caused to the shipment, as evidenced by the Subrogation Receipt dated January 8, 2004. Thereafter, petitioner, formally demanded reparation against respondent. As respondent failed to satisfy its demand, petitioner filed an action for damages with the RTC of Makati City.

The trial court found, thus:

> The Court finds that the subject shipment indeed suffered additional damages. The Request for Bad Order Survey No. 56422 shows that prior to the turn over of the shipment from the custody of ATI to the consignee, aside from the seven (7) packages which were already damaged upon arrival at the port of Manila, five (5) more packages

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[7] Annexes "C" and "J", *id.* at 107 and 118, respectively.

[8] Affidavit of Mr. Armel Santos, *id.* at 62, 64.

[9] Records, p. 125.

[10] *Id.* at 129.

were found with "dent, cut and crumple" while in the custody of ATI. This document was issued by ATI and was jointly executed by the representatives of ATI, consignee and customs, and the Shed Supervisor. Thus, ATI is now estopped from claiming that there was no additional damage suffered by the shipment. It is, therefore, only logical to conclude that the damage was caused solely by the negligence of defendant ATI. This evidence of the plaintiff was refuted by the defendant by merely alleging that "the damage to the 5 Tin Plates is only in its external packaging." However, the fact remains that the consignee has rejected the same as total loss for not being suitable for their intended purpose. In addition, the photographs presented by the plaintiff show that the shipment also suffered severe dents and some packages were even critically crumpled.[11]

As to the extent of liability, ATI invoked the Contract for Cargo Handling Services executed between the Philippine Ports Authority and Marina Ports Services, Inc. (now Asian Terminals, Inc.). Under the said contract, ATI's liability for damage to cargoes in its custody is limited to ₱5,000.00 for each package, unless the value of the cargo shipment is otherwise specified or manifested or communicated in writing, together with the declared Bill of Lading value and supported by a certified packing list to the contractor by the interested party or parties before the discharge or lading unto vessel of the goods.

The trial court found that there was compliance by the shipper and consignee with the above requirement. The Bill of Lading, together with the corresponding invoice and packing list, was shown to ATI prior to the discharge of the goods from the vessel. Since the shipment was released from the custody of ATI, the trial court found that the same was declared for tax purposes as well as for the assessment of arrastre charges and other fees. For the purpose, the presentation of the invoice, packing list and other shipping documents to ATI for the proper assessment of the arrastre charges and other fees satisfied the condition of declaration of the actual invoices of the value of the goods to overcome the limitation of liability of the arrastre operator.[12]

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[11] *Rollo*, p. 30.

[12] RTC Decision, *rollo*, p. 31, citing *E. Razon, Inc. v. CA*, G.R. No. 50242, May 21, 1988, 161 SCRA 356.

Further, the trial court found that there was a valid subrogation between the petitioner and the assured/consignee San Miguel Corporation. The respondent admitted the existence of Global Marine Policy No. MOPA-06310 with San Miguel Corporation and Marine Risk Note No. 3445,[13] which showed that the cargo was indeed insured with petitioner. The trial court held that petitioner's claim is compensable because the Subrogation Receipt,[16] which was admitted as to its existence by respondent, was sufficient to establish not only the relationship of the insurer and the assured, but also the amount paid to settle the insurance claim.[14]

However, the trial court dismissed the complaint on the ground that the petitioner's claim was already barred by the statute of limitations. It held that COGSA, embodied in Commonwealth Act (CA) No. 65, applies to this case, since the goods were shipped from a foreign port to the Philippines. The trial court stated that under the said law, particularly paragraph 4, Section 3 (6)[15] thereof, the shipper has the right to bring a suit within one year after the delivery of the goods or the date when the goods should have been delivered, in respect of loss or damage thereto.

The trial court held:

In the case at bar, the records show that the shipment was delivered to the consignee on 22, 23 and 29 of November 2002. The plaintiff took almost a year to approve and pay the claim of its assured, San Miguel, despite the fact that it had initially received the latter's claim

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[13] Annex "B", records, p. 106.

[14] RTC Decision, *rollo*, p. 31, citing *Delsan Transport Lines, Inc. v. Court of Appeals*, G.R. No. 127897, November 15, 2001, 369 SCRA 24.

[15] COGSA, Section 3 (6) paragraph 4: In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, that, if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit with one year after the delivery of the goods or the date when the goods should have been delivered. (Emphasis supplied)

as well as the inspection report and survey report of McLarens as early as January 2003. The assured/consignee had only until November of 2003 within which to file a suit against the defendant. However, the instant case was filed only on September 7, 2005 or almost three (3) years from the date the subject shipment was delivered to the consignee. The plaintiff, as insurer of the shipment which has paid the claim of the insured, is subrogated to all the rights of the said insured in relation to the reimbursement of such claim. As such, the plaintiff cannot acquire better rights than that of the insured. Thus, the plaintiff has no one but itself to blame for having acted lackadaisically on San Miguel's claim.

WHEREFORE, the complaint and counterclaim are hereby DISMISSED.[16]

Petitioner's motion for reconsideration was denied by the trial court in the Order[17] dated December 4, 2007.

Petitioner filed this petition under Rule 45 of the Rules of Court directly before this Court, alleging that it is raising a pure question of law:

THE TRIAL COURT COMMITTED A PURE AND SERIOUS ERROR OF LAW IN APPLYING THE ONE-YEAR PRESCRIPTIVE PERIOD FOR FILING A SUIT UNDER THE CARRIAGE OF GOODS BY SEA ACT (COGSA) TO AN ARRASTRE OPERATOR.[18]

Petitioner states that while it is in full accord with the trial court in finding respondent liable for the damaged shipment, it submits that the trial court's dismissal of the complaint on the ground of prescription under the COGSA is legally erroneous. It contends that the one-year limitation period for bringing a suit in court under the COGSA is not applicable to this case, because the prescriptive period applies only to the carrier and the ship. It argues that respondent, which is engaged in warehousing, arrastre and stevedoring business, is not a carrier

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[16] *Rollo*, p. 32.

[17] *Id.* at 334.

[18] *Id.* at 14.

as defined by the COGSA, because it is not engaged in the business of transportation of goods by sea in international trade as a common carrier. Petitioner asserts that since the complaint was filed against respondent arrastre operator only, without impleading the carrier, the prescriptive period under the COGSA is not applicable to this case.

Moreover, petitioner contends that the term "carriage of goods" in the COGSA covers the period from the time the goods are loaded to the vessel to the time they are discharged therefrom. It points out that it sued respondent only for the additional five (5) packages of the subject shipment that were found damaged while in respondent's custody, long after the shipment was discharged from the vessel. The said damage was confirmed by the trial court and proved by the Request for Bad Order Survey No. 56422.[19]

Petitioner prays that the decision of the trial court be reversed and set aside and a new judgment be promulgated granting its prayer for actual damages.

The main issues are: (1) whether or not the one-year prescriptive period for filing a suit under the COGSA applies to this action for damages against respondent arrastre operator; and (2) whether or not petitioner is entitled to recover actual damages in the amount of ₱431,592.14 from respondent.

To reiterate, petitioner came straight to this Court to appeal from the decision of the trial court under Rule 45 of the Rules of Court on the ground that it is raising only a question of law.

Microsoft Corporation v. Maxicorp, Inc.[20] explains the difference between questions of law and questions of fact, thus:

> The distinction between questions of law and questions of fact is settled. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact exists if the doubt centers on the truth or falsity of the alleged

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[19] Annex "F", records, p. 16.

[20] G.R. No. 140946, September 13, 2004, 438 SCRA 224.

facts. Though this delineation seems simple, determining the true nature and extent of the distinction is sometimes problematic. For example, it is incorrect to presume that all cases where the facts are not in dispute automatically involve purely questions of law.

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. 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. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. x x x[21]

In this case, although petitioner alleged that it is merely raising a question of law, that is, whether or not the prescriptive period under the COGSA applies to an action for damages against respondent arrastre operator, yet petitioner prays for the reversal of the decision of the trial court and that it be granted the relief sought, which is the award of actual damages in the amount of ₱431,592.14. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the litigants or any of them.[22] However, to resolve the issue of whether or not petitioner is entitled to recover actual damages from respondent requires the Court to evaluate the evidence on record; hence, petitioner is also raising a question of fact.

Under Section 1, Rule 45, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth.[23] The Court may resolve questions of fact only when the case falls under the following exceptions:

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[21] *Id.* at 230-231.

[22] *Id.* at 232.

[23] *Tayco v. Heirs of Concepcion Tayco-Flores*, G.R. No. 168692, December 13, 2010, 637 SCRA 742, 747, citing *Fangonil-Herrera v. Fangonil*, G.R. No. 169356, August 28, 2007, 531 SCRA 486, 503.

(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; **(4) when the judgment is based on a misapprehension of facts;** (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[24]

In this case, the fourth exception cited above applies, as the trial court rendered judgment based on a misapprehension of facts.

We first resolve the issue on whether or not the one-year prescriptive period for filing a suit under the COGSA applies to respondent arrastre operator.

The Carriage of Goods by Sea Act (COGSA), Public Act No. 521 of the 74th US Congress, was accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by virtue of CA No. 65.

Section 1 of CA No. 65 states:

Section 1. That the provisions of Public Act Numbered Five hundred and twenty-one of the Seventy-fourth Congress of the United States, approved on April sixteenth, nineteen hundred and thirty-six, be accepted, as it is hereby accepted to be **made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade**: *Provided*, That nothing in the Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force, or as limiting its application.

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[24] *Id.*

Section 1, Title I of CA No. 65 defines the relevant terms in Carriage of Goods by Sea, thus:

Section 1. When used in this Act -

(*a*) The term "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

(*b)* The term "contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, insofar as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

(*c*) The term "goods" includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(*d*) The term "ship" means any vessel used for the carriage of goods by sea.

(*e*) **The term "carriage of goods" covers the period from the time when the goods are loaded to the time when they are discharged from the ship**.[25]

It is noted that the term "carriage of goods" covers the period from the time when the goods are loaded to the time when they are discharged from the ship; thus, it can be inferred that the period of time when the goods have been discharged from the ship and given to the custody of the arrastre operator is not covered by the COGSA.

The prescriptive period for filing an action for the loss or damage of the goods under the COGSA is found in paragraph (6), Section 3, thus:

6) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent

[25] Emphasis supplied.

at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three days of the delivery.

Said notice of loss or damage maybe endorsed upon the receipt for the goods given by the person taking delivery thereof.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the *carrier and the ship* shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered.[26]

From the provision above, the carrier and the ship may put up the defense of prescription if the action for damages is not brought within one year after the delivery of the goods or the date when the goods should have been delivered. It has been held that not only the shipper, but also the consignee or legal holder of the bill may invoke the prescriptive period.[27] However, the COGSA does not mention that an arrastre operator may invoke the prescriptive period of one year; hence, it does not cover the arrastre operator.

Respondent arrastre operator's responsibility and liability for losses and damages are set forth in Section 7.01 of the Contract for Cargo Handling Services executed between the Philippine Ports Authority and Marina Ports Services, Inc. (now Asian Terminals, Inc.), thus:

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[26] Emphasis supplied.

[27] *Belgian Overseas Chartering and Shipping, N.V. v. Philippine First Insurance Co., Inc.*, G.R. No. 143133, June 5, 2002, 383 SCRA 23.

Section 7.01 Responsibility and Liability for Losses and Damages; Exceptions - The CONTRACTOR shall, at its own expense, handle all merchandise in all work undertaken by it hereunder, diligently and in a skillful, workman-like and efficient manner**. The CONTRACTOR shall be solely responsible as an independent contractor, and hereby agrees to accept liability and to pay to the shipping company, consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes in its custody and control to the extent of the actual invoice value of each package which in no case shall be more than FIVE THOUSAND PESOS (₱5,000.00) each, unless the value of the cargo shipment is otherwise specified or manifested or communicated in writing together with the declared Bill of Lading value and supported by a certified packing list to the CONTRACTOR by the interested party or parties before the discharge or loading unto vessel of the goods**. This amount of Five Thousand Pesos (₱5,000.00) per package may be reviewed and adjusted by the AUTHORITY from time to time. The CONTRACTOR shall not be responsible for the condition or the contents of any package received, nor for the weight nor for any loss, injury or damage to the said cargo before or while the goods are being received or remains in the piers, sheds, warehouses or facility, if the loss, injury or damage is caused by *force majeure* or other causes beyond the CONTRACTOR's control or capacity to prevent or remedy; **PROVIDED, that a formal claim together with the necessary copies of Bill of Lading, Invoice, Certified Packing List and Computation arrived at covering the loss, injury or damage or non-delivery of such goods shall have been filed with the CONTRACTOR within fifteen (15) days from day of issuance by the CONTRACTOR of a certificate of non-delivery**; **PROVIDED, however, that if said CONTRACTOR fails to issue such certification within fifteen (15) days from receipt of a written request by the shipper/consignee or his duly authorized representative or any interested party, said certification shall be deemed to have been issued, and thereafter, the fifteen (15) day period within which to file the claim commences; PROVIDED, finally, that the request for certification of loss shall be made within thirty (30) days from the date of delivery of the package to the consignee**.[28]

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[28] Records, pp. 168-169. (Emphasis and underscoring supplied)

Based on the Contract above, the consignee has a period of thirty (30) days from the date of delivery of the package to the consignee within which to request a certificate of loss from the arrastre operator. From the date of the request for a certificate of loss, the arrastre operator has a period of fifteen (15) days within which to issue a certificate of non-delivery/loss either actually or constructively. Moreover, from the date of issuance of a certificate of non-delivery/loss, the consignee has fifteen (15) days within which to file a formal claim covering the loss, injury, damage or non-delivery of such goods with all accompanying documentation against the arrastre operator.

Petitioner clarified that it sued respondent only for the additional five (5) packages of the subject shipment that were found damaged while in respondent's custody, which fact of damage was sustained by the trial court and proved by the Request for Bad Order Survey No. 56422.[29]

Petitioner pointed out the importance of the Request for Bad Order Survey by citing ***New Zealand Insurance Company Limited v. Navarro***.[30] In the said case, the Court ruled that the *request for, and the result of, the bad order examination*, which were filed and done within fifteen days from the haulage of the goods from the vessel, served the *purpose* of a claim, which is to afford the carrier or depositary reasonable opportunity and facilities to check the validity of the claims while facts are still fresh in the minds of the persons who took part in the transaction and documents are still available. Hence, even if the consignee therein filed a formal claim beyond the stipulated period of 15 days, the arrastre operator was not relieved of liability as the purpose of a formal claim had already been satisfied by the consignee's timely request for the bad order examination of the goods shipped and the result of the said bad order examination.

To elaborate, ***New Zealand Insurance Company, Ltd. v. Navarro*** held:

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[29] Annex "F", *id.* at 16.

[30] G.R. No. L-48686, October 4, 1989, 178 SCRA 287.

We took special note of the above pronouncement six (6) years later in ***Fireman's Fund Insurance Co. v. Manila Port Service Co., et al***. There, fifteen (15) cases of nylon merchandise had been discharged from the carrying vessel and received by defendant Manila Port Service Co., the arrastre operator, on *7 July 1961*. Out of those fifteen (15) cases, however, only twelve (12) had been delivered to the consignee in good condition. Consequently, on *20 July 1961*, the consignee's broker requested a bad order examination of the shipment, which was later certified by defendant's own inspector to be short of three (3) cases. On *15 August 1961*, a formal claim for indemnity was then filed by the consignee, who was later replaced in the action by plaintiff Fireman's Fund Insurance Co., the insurer of the goods. Defendant, however, refused to honor the claim, arguing that the same had not been filed within fifteen (15) days from the date of discharge of the shipment from the carrying vessel, as required under the arrastre Management Contract then in force between itself and the Bureau of Customs. The trial court upheld this argument and hence dismissed the complaint. On appeal by the consignee, this Court, speaking through Mr. Justice J.B.L. Reyes, reversed the trial court and found the defendant arrastre operator liable for the value of the lost cargo, explaining as follows:

"However, ***the trial court has overlooked the significance of the request for, and the result of, the bad order examination, which were filed and done within fifteen days from the haulage of the goods from the vessel. Said request and result, in effect, served the purpose of a claim***, **which is -**

> **'to afford the carrier or depositary reasonable opportunity and facilities to check the validity of the claims while facts are still fresh in the minds of the persons who took part in the transaction and documents are still available.' (*Consunji vs. Manila Port Service*, L-15551, 29 November 1960)**

Indeed, the examination undertaken by the defendant's own inspector not only gave the defendant an opportunity to check the goods but is itself a verification of its own liability x x x.

In other words, what the Court considered as the crucial factor in declaring the defendant arrastre operator liable for the loss occasioned, in the ***Fireman's Fund*** case, was the fact that defendant, by virtue of the consignee's request for a bad order examination, had been able formally to verify the existence and extent of its liability

within fifteen (15) days from the date of discharge of the shipment from the carrying vessel — *i.e., within the same period stipulated under the Management Contract for the consignee to file a formal claim*. **That a formal claim had been filed by the consignee beyond the stipulated period of fifteen (15) days neither relieved defendant of liability nor excused payment thereof, the purpose of a formal claim, as contemplated in Consunji, having already been fully served and satisfied by the consignee's timely request for, and the eventual result of, the bad order examination of the nylon merchandise shipped**.

Relating the doctrine of *Fireman's Fund* to the case at bar, the record shows that delivery to the warehouse of consignee Monterey Farms Corporation of the 5,974 bags of soybean meal, had been completed by respondent Razon (arrastre operator) on 9 July 1974. *On that same day,* a bad order examination of the goods delivered was requested by the consignee and was, in fact, conducted by respondent Razon's own inspector, in the presence of representatives of both the Bureau of Customs and the consignee. The ensuing bad order examination report — what the trial court considered a "certificate of loss" — confirmed that out of the 5,974 bags of soybean meal loaded on board the M/S "Zamboanga" and shipped to Manila, 173 bags had been damaged *in transitu* while an additional 111 bags had been damaged after the entire shipment had been discharged from the vessel and placed in the custody of respondent Razon. **Hence, as early as *9 July 1974 (the date of last delivery to the consignee's warehouse),* respondent Razon had been able to verify and ascertain for itself not only the existence of its liability to the consignee but, more significantly, the exact amount thereof -** *i.e.,* ₱5,746.61, representing the value of 111 bags of soybean meal. We note further that **such verification and ascertainment of liability on the part of respondent Razon, had been accomplished "within thirty (30) days from the date of delivery of last package to the consignee, broker or importer" as well as "within fifteen (15) days from the date of issuance by the Contractor [respondent Razon] of a certificate of loss, damage or injury or certificate of non-delivery**" — the periods prescribed under Article VI, Section 1 of the Management Contract here involved, within which a request for certificate of loss and a formal claim, respectively, must be filed by the consignee or his

agent. Evidently, therefore, the rule laid down by the Court in *Fireman's Fund* finds appropriate application in the case at bar.[31]

In this case, the records show that the goods were deposited with the arrastre operator on November 21, 2002. The goods were withdrawn from the arrastre operator on November 22, 23 and 29, 2002. Prior to the withdrawal on November 29, 2002, the broker of the importer, Marzan, requested for a bad order survey in the presence of a Customs representative and other parties concerned. The joint inspection of cargo was conducted and it was found that an additional five (5) packages were found in bad order as evidenced by the document entitled Request for Bad Order Survey[32] dated November 29, 2002, which document also contained the examination report, signed by the Custom's representative, Supervisor/Superintendent, consignee's representative, and the ATI Inspector.

Thus, as early as November 29, 2002, the date of the last withdrawal of the goods from the arrastre operator, respondent ATI was able to verify that five (5) packages of the shipment were in bad order while in its custody. The certificate of non-delivery referred to in the Contract is similar to or identical with the examination report on the request for bad order survey.[33] **Like in the case of *New Zealand Insurance Company Ltd. v. Navarro*, the verification and ascertainment of liability by respondent ATI had been accomplished within thirty (30) days from the date of delivery of the package to the consignee and within fifteen (15) days from the date of issuance by the Contractor (respondent ATI) of the examination report on the request for bad order survey.** Although the formal claim was filed beyond the 15-day period from the issuance of the examination report on the request for bad order survey, the purpose of the time limitations for the filing of claims had already been fully satisfied by the request of the consignee's broker for

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[31] *Id.* at 294-296. (Emphasis supplied.)

[32] Annex "1", records, p. 153.

[33] See *New Zealand Insurance Company, Ltd. v. Navarro, supra* note 30.

a bad order survey and by the examination report of the arrastre operator on the result thereof, as the arrastre operator had become aware of and had verified the facts giving rise to its liability.[34] Hence, the arrastre operator suffered no prejudice by the lack of strict compliance with the 15-day limitation to file the formal complaint.[35]

The next factual issue is whether or not petitioner is entitled to actual damages in the amount of ₱431,592.14. The payment of the said amount by petitioner to the assured/consignee was based on the Evaluation Report[36] of BA McLarens Phils., Inc., thus:

x x x x x x x x x

CIRCUMSTANCES OF LOSS

As reported, the shipment consisting of 185 packages (344.982 MT) Electrolytic Tin Free Steel, JISG 3315SPTFS, MRT-4CA, Matte Finish arrived Manila *via* Ocean Vessel, M/V "DIMI P" V-075 on November 9, 2002 and subsequently docked alongside Pier No. 9, South Harbor, Manila. **The cargo of Electrolyic Tin Free Steel was discharged ex-vessel complete with seven (7) skids noted in bad order condition by the vessel'[s] representative**. **These skids were identified as nos. 2HD804211, 2HD804460, SHD804251, SHD803784, 2HD803763, 2HD803765 and 2HD803783** and covered with Bad Order Tally Receipts No. 3709, 3707, 3703 and 3704. Thereafter, the same were stored inside the warehouse of Pier No. 9, South Harbor, Manila, pending delivery to the consignee's warehouse.

On November 22, 23 and 29, 2002, the subject cargo was withdrawn from the Pier by the consignee authorized broker, R. V. Marzan Brokerage Corp. and the same was delivered to the consignee's final warehouse located at Silangan, Canlubang, Laguna complete with twelve (12) skids in bad order condition.

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[34] *Id.* at 297.

[35] *Id.*

[36] Records, pp. 129-133.

VISUAL INSPECTION

We conducted an ocular inspection on the reported damaged Electrolytic Tin Free Steel, Matte Finish at the consignee's warehouse located at Brgy. Silangan, Canlubang, Laguna and noted that **out of the reported twelve (12) damaged skids, nine (9) of them were rejected and three (3) skids were accepted by the consignee's representative as complete and without exceptions**.

x x x x x x x x x

EVALUATION OF INDEMNITY

We evaluated the loss/damage sustained by the subject shipments and arrived as follows:

PRODUCT NOS.	PRODUCTS NAMED	NO. OF SHEETS	NET WT. PER PACKING LIST
2HD803763	Electrolytic Tin Free Steel JISG3315	1,200	1,908
2HD803783	-do-	1,200	1,908
2HD803784	-do-	1,200	1,908
2HD804460	-do-	1,400	1,698
2HD803765	-do-	1,200	1,908
2HD804522	-do-	1,200	1,987
2HD804461	-do-	1,400	1,698
2HD804540	-do-	1,200	1,987
2HD804549	-do-	1,200	1,987
9 SKIDS	TOTAL	11,200	16,989 kgs.

$$\frac{₱9,878,547.58}{231,000} = 42.7643 \times 11,200$$

₱478,959.88

Less: Deductible 0.50% based on sum insured	49,392.74
Total	₱429,567.14
Add: Surveyor's Fee	2,025.00
Sub-Total	**₱431,592.14**

Note: Above evaluation is Assured's tentative liability as the salvage proceeds on the damaged stocks has yet to be determined.

RECOVERY ASPECT

Prospect of **recovery** would be **feasible against the shipping company and the Arrastre operator considering the copies of *Bad Order Tally Receipts* and *Bad Order Certificate* issued by the subject parties**.[37]

To clarify, based on the Evaluation Report, **seven (7) skids** were damaged upon arrival of the vessel per the Bad Order Cargo Receipts[38] issued by the shipping company, and an **additional five (5) skids** were damaged in the custody of the arrastre operator per the Bad Order Certificate/Examination Report[39] issued by the arrastre contractor. The Evaluation Report states that out of the reported **twelve** damaged skids, only **nine were rejected**, and **three were accepted** as good order by the consignee's representative. **Out of the nine skids that were rejected**, **five skids were damaged upon arrival of the vessel** as shown by the product numbers in the Evaluation Report, which product numbers matched those in the Bad Order Cargo Receipts[40] issued by the shipping company. It can then be safely inferred that the **four remaining rejected skids were damaged in the custody of the arrastre operator**, as the Bad Order Certificate/Examination Report did not indicate the product numbers thereof.

Hence, it should be pointed out that the Evaluation Report shows that **the claim for actual damages in the amount of ₱431,592.14 covers five (5)[41] out of the seven (7) skids that were found to be damaged upon arrival of the vessel** and covered by Bad Order Cargo Receipt Nos. 3704, 3706, 3707 and 3709,[42] which claim should have been filed with the shipping

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[37] *Id.* at 130-132. (Emphasis and underscoring supplied.)

[38] Annexes "G", "G-1", "G-2", records, pp. 111-113.

[39] Annex "1," *id.* at 153.

[40] Annexes "G", "G-1", "G-2", *id.* at 111-113.

[41] Packages Nos. 2HD804460, SHD803784, 2HD803763, 2HD803765 and 2HD803783.

[42] Annexes "G", "G-1", "G-2", records, pp. 111-113.

company. Petitioner must have realized that the claim for the said five (5) skids was already barred under COGSA; hence, petitioner filed the claim for actual damages only against respondent arrastre operator.

As regards the four (4) skids that were damaged in the custody of the arrastre operator, petitioner is still entitled to recover from respondent. The Court has ruled that the Request for Bad Order Survey and the examination report on the said request satisfied the purpose of a formal claim, as respondent was made aware of and was able to verify that five (5) skids were damaged or in bad order while in its custody before the last withdrawal of the shipment on November 29, 2002. Hence, even if the formal claim was filed beyond the 15-day period stipulated in the Contract, respondent was not prejudiced thereby, since it already knew of the number of skids damaged in its possession per the examination report on the request for bad order survey.

Remand of the case to the trial court for the determination of the liability of respondent to petitioner is not necessary as the Court can resolve the same based on the records before it.[43] The Court notes that petitioner, who filed this action for damages for the **five (5) skids** that were damaged while in the custody of respondent, was not forthright in its claim, as it knew that the damages it sought in the amount of ₱431,592.14, which was based on the Evaluation Report of its adjuster/surveyor, BA McLarens Phils., Inc., covered **nine (9) skids**. Based on the same Evaluation Report, **only four of the nine skids were damaged in the custody of respondent**. Petitioner should have been straightforward about its exact claim, which is borne out by the evidence on record, as petitioner can be granted only the amount of damages that is due to it.

Based on the Evaluation Report[44] of BA McLarens Phils., Inc., dated May 5, 2003, the four (4) skids damaged while in

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[43] See *Caltex Phils., Inc. v. Intermediate Appellate Court*, G.R. No. 74730, August 25, 1989, 176 SCRA 741.

[44] Records, pp. 129-133.

the custody of the arrastre operator and the amount of actual damages therefore are as follows:

PRODUCT NOS.	PRODUCTS NAMED	NO. OF SHEETS	NET WT. PER PACKING LIST
2HD804522	Electrolytic Tin Free Steel JISG3315	1,200	1,987
2HD804461	-do-	1,400	1,698
2HD804540	-do-	1,200	1,987
2HD804549	-do-	1,200	1,987
4 SKIDS	TOTAL	5,000	
₱9,878,547.58 (Insured value)[45]			₱213,821.50
----------	= 42.7643 x 5,000		
231,000 (Total number of sheets)			
Less: Deductible 0.50% based on sum insured[46]			49,392.74
Total			**₱164,428.76**

In view of the foregoing, petitioner is entitled to actual damages in the amount of ₱164,428.76 for the four (4) skids damaged while in the custody of respondent.

WHEREFORE, the petition is **GRANTED**. The Decision of the Regional Trial Court of Makati City, Branch 138, dated October 17, 2006, in Civil Case No. 05-809, and its Order dated December 4, 2007, are hereby **REVERSED** and **SET ASIDE**. Respondent Asian Terminals, Inc. is **ORDERED** to pay petitioner Insurance Company of North America actual damages in the amount of One Hundred Sixty-Four Thousand Four Hundred Twenty-Eight Pesos and Seventy-Six Centavos (₱164,428.76). Twelve percent (12%) interest per annum shall be imposed on the amount of actual damages from the date the award becomes final and executory until its full satisfaction.

Costs against petitioner.

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[45] Marine Risk Note No. 3445, Annex "B," *id.* at 106.

[46] *Id.*

SO ORDERED.

Carpio,[*] *Abad, Perez,*[**] and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 181485. February 15, 2012]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **GATEWAY PROPERTY HOLDINGS, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; *LITIS PENDENTIA*; REQUISITES.— As a ground for a motion to dismiss a complaint or any other pleading asserting a claim, *litis pendentia* is provided for under Section 1(e), Rule 16 of the Rules of Court x x x. As we held in *Dotmatrix Trading v. Legaspi*, "[*l*]*itis 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." We further emphasized in *Guevara v. BPI Securities Corporation* that "[t]here is *litis pendentia* or another action *pendente lite* if the following requisites are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded

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[*] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1185 dated February 10, 2012.

[**] Designated as an additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1192 dated February 10, 2012.

on the same facts; and (c) 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."

2. ID.; ID.; ID.; ID.; IDENTITY OF PARTIES; SUBSTANTIAL IDENTITY OF PARTIES IS SUFFICIENT.— The Court has clarified in *Villarica Pawnshop, Inc. v. Gernale* that "identity of parties does not mean total identity of parties in both cases. It is enough that there is substantial identity of parties. The inclusion of new parties in the second action does not remove the case from the operation of the rule of *litis pendentia*."

3. ID.; ID.; CAUSE OF ACTION; RULES.— Section 2, Rule 2 of the Rules of Court defines a cause of action as "the act or omission by which a party violates a right of another." Section 3 of Rule 2 provides that "[a] party may not institute more than one suit for a single cause of action." Anent the act of splitting a single cause of action, Section 4 of Rule 2 explicitly states that "[i]f two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others."

4. ID.; ID.; ID.; A PARTY CANNOT, BY VARYING THE FORM OF ACTION, OR ADOPTING A DIFFERENT METHOD OF PRESENTING HIS CASE, ESCAPE THE OPERATION OF THE PRINCIPLE THAT ONE AND THE SAME CAUSE OF ACTION SHALL NOT BE TWICE LITIGATED; CASE AT BAR.— [I]n essence, the cause of action of GPHI in both cases is the alleged act of PNB of reneging on a prior agreement or understanding with GEC and GPHI *vis-à-vis* the constitution, purpose and consequences of the real estate mortgage over the properties of GPHI. While the reliefs sought in Civil Case Nos. TM-1022 (Annulment of the Real Estate Mortgage) and TM-1108 (Annulment of the Foreclosure Sale) are seemingly different, the ultimate question that the trial court would have to resolve in both cases is whether the real estate mortgage over the properties of GPHI was actually intended to secure the loan obligations of GEC to PNB so much so that PNB can legally foreclose on the mortgaged properties should GEC fail to settle its loan obligations. In this regard, GPHI made reference to the letter of PNB dated August 13, 1997 and the

Amendment to the Credit Agreement between GEC, GPHI and PNB as the primary documents upon which GPHI based its arguments regarding the supposed intention of the parties in both Civil Case Nos. TM-1022 (Annulment of the Real Estate Mortgage) and TM-1108 (Annulment of the Foreclosure Sale). Thus, the same documentary evidence would necessarily sustain both cases. That GPHI put forward additional grounds in Civil Case No. TM-1108 (Annulment of the Foreclosure Sale), *i.e.*, that the auction sale was not conducted at a public place in contravention of the requirement of Section 4 of Act No. 3135 and that the foreclosure was prematurely resorted to given that GPHI cannot yet be considered in default, does not alter the fact that there exists an identity of causes of action in the two cases. In *Asia United Bank v. Goodland Company, Inc.*, the Court held that "[t]he well-entrenched rule is that 'a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.'"

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Bernaldo Mirador & Directo Law Offices for respondent.

D E C I S I O N

LEONARDO–DE CASTRO, *J.*:

Submitted for our consideration is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, which seeks the reversal of the Decision[2] dated September 28, 2007 and the Resolution[3] dated January 24, 2008 of the Court of Appeals in CA-G.R. CV No. 75108. The appellate court's decision set

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[1] *Rollo*, pp. 22-41.

[2] *Id.* at 43-49; penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca de Guia-Salvador and Magdangal M. de Leon, concurring.

[3] *Id.* at 51.

aside the Order[4] dated December 20, 2001 of the Regional Trial Court (RTC) of Trece Martires City, Branch 23, in Civil Case No. TM-1108; while the appellate court's resolution denied the motion for reconsideration of said court's September 28, 2007 decision.

The antecedents of the case are as follows:

Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage)

On July 27, 2000, herein respondent Gateway Property Holdings, Inc. (GPHI) filed a Complaint with Application for the Issuance of a Writ of Preliminary Injunction[5] against herein petitioner Philippine National Bank (PNB). The case was docketed as **Civil Case No. TM-1022** in the RTC of Trece Martires City, Branch 23.

According to the complaint, GPHI was a subsidiary company of Gateway Electronics Company (GEC). In 1995 and 1996, GEC obtained long term loans from the Land Bank of the Philippines (LBP) in the amount of ₱600,000,000.00. The loans were secured by mortgages executed by GEC over its various properties. Subsequently, LBP offered to provide additional funds to GEC by inviting other banking institutions to lend money therefor. LBP allegedly agreed to submit the properties mortgaged to it by GEC as part of the latter's assets that will be covered by a Mortgage Trust Indenture (MTI), ensuring that "all participating banks in the loan syndicate will have equal security position."[6] Before the formal execution of an MTI, LBP and a consortium of banks entered into a Memorandum of Understanding (MOU), whereby LBP agreed to release the mortgaged properties to the consortium of banks on the basis of an MTI. Relying on the said undertaking, the participating banks released funds in favor of GEC. PNB later became part of this consortium of creditor banks.[7]

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[4] *Id.* at 52-54; penned by Executive Judge Aurelio G. Icasiano, Jr.

[5] CA *rollo*, pp. 45-55.

[6] *Rollo*, pp. 60-61.

[7] *Id.* at 61-62.

Thereafter, GEC allegedly encountered difficulties in paying its obligations to the banks, including those owed to PNB. GEC then requested PNB to convert its long-term loans into a Convertible Omnibus Credit Line. In a letter[8] dated August 13, 1997 addressed to Israel F. Maducdoc, the Senior Vice President of GEC, PNB approved such a conversion subject to certain conditions. As part of the requirements of PNB, GPHI was made a co-borrower in the agreement and was obligated to execute in favor of PNB a real estate mortgage over two parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-636816 and T-636817.[9] The letter likewise provided that PNB shall hold physical possession of the said titles until GPHI shall have made the assignment of the sales proceeds of the aforementioned real properties, up to a minimum of ₱112 million, to be applied towards the repayment of GEC's outstanding obligations with PNB. Furthermore, the letter stated that the real estate mortgage "shall be registered with the Registry of Deeds in an event of default."[10]

In March 1998, LBP allegedly refused to abide by its undertaking to share the mortgaged properties of GEC with the consortium of creditor banks. GEC, thus, filed a complaint for specific performance against LBP, which was docketed as Civil Case No. 98-782.

On or about June 19, 2000, PNB purportedly demanded from GEC the full payment of the latter's obligations. Thereafter, GPHI learned of PNB's supposedly underhanded registration of the real estate mortgage with intent to foreclose the same.

GPHI principally alleged in its complaint that "[t]he understanding between GEC and PNB is that the GPHI properties would stand merely as a 'temporary security' pending the outcome of Civil Case No. 98-782 which was filed by GEC against LBP.

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[8] Records, pp. 37-38.

[9] *Id.* at 14-17.

[10] *Id.* at 37.

The GPHI Property was never contemplated at any time as a collateral for GEC's loan obligations to PNB."[11] Also, GPHI argued that "[t]he execution of a Real Estate Mortgage in favor of [PNB] over the GPHI Property did not reflect the true intention of the parties thereto, GEC and PNB. The documents attached as Annexes to [the complaint] clearly show the interim or temporary nature of the mortgage arrangement."[12] GPHI contended that PNB had no legal right to effect the foreclosure of the mortgaged properties.

GPHI, thus, prayed that upon receipt of the complaint by the trial court, a temporary restraining order (TRO) be issued to enjoin PNB from foreclosing on the properties of GPHI covered by TCT Nos. T-636816 and T-636817, as well as from registering the fact of foreclosure or performing any act that would deprive GPHI of its ownership of the said properties. GPHI likewise prayed that, after trial on the merits, judgment be issued declaring that: (1) the real estate mortgage involving the properties of GPHI and executed in favor of PNB is null and void; (2) PNB be enjoined from foreclosing on the aforementioned properties of GPHI and from registering the same; and (3) PNB be ordered to pay to GPHI the amount of ₱500,000.00 as attorney's fees and litigation expenses.[13]

It appears that the RTC did not issue a TRO in favor of GPHI in the above case such that, on May 3, 2001, PNB initiated extrajudicial foreclosure proceedings on the properties covered by TCT Nos. T-636816 and T-636817.[14] The properties were sold at a public auction on June 20, 2001. According to the Minutes of Public Auction Sale[15] executed by the RTC Deputy Sheriff of Cavite, PNB was the sole bidder and it thereby acquired the properties for a sale bid price of ₱168,000,000.00.

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[11] CA *rollo*, p. 50.

[12] *Id.*

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

[14] Records, pp. 18-21.

[15] *Id.* at 23.

Civil Case No. TM-1108 (Annulment of the Foreclosure Sale)

On August 14, 2001, GPHI filed a Petition for Annulment of Foreclosure of Mortgage with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.[16] Docketed as **Civil Case No. TM-1108**, the petition was also raffled in Branch 23 of the RTC of Trece Martires City.

GPHI argued that, in conducting the foreclosure proceedings, the sheriff failed to observe the requirement of Section 4 of Act No. 3135 that the "sale shall be made at public auction." The entries in the minutes of the foreclosure sale allegedly did not indicate that a valid public auction was carried out in keeping with the requirements of the law. More importantly, among its causes of action, GPHI contended that:

17. [PNB] should not have proceeded in registering as well as in foreclosing [GPHI's] mortgaged assets since the latter cannot yet be considered in default in accordance with the Amendment to Credit Agreement executed by [GEC], petitioner GPHI and respondent PNB on November 28, 1997. Moreover, [PNB] knows all along that the subject real properties was never intended to be used as permanent collateral for GEC, but one which was simply used as an unregistered security until [GPHI] incurs in default if sold and the proceeds of which should be used in payment for the obligation of GEC.

Section 5.(5.01) of said Amendment to Credit Agreement states that:

> "5.01. Undertaking to Sell and Assignment. The borrowers hereby undertake to sell the Mortgaged Properties to third parties and apply the proceeds thereof to the payment of the Seven-Year Term Loan up to the extent of PESOS: ONE HUNDRED TWELVE MILLION (₱112,000,000.00). Any shortfall in such amount shall be funded by GEC. For this purpose, the Borrowers hereby assign, transfer and convey unto and in favor of the Bank the said amount of ₱112,000,000.00 out of the proceeds of the sale of the Mortgaged Properties.

[16] *Id.* at 1-13.

> The Borrowers' failure to remit to the Bank the amount of ₱112,000,000.00 within three (3) banking days reckoned from the sale of the Mortgaged Properties shall be considered an Event of Default (as such term is hereinafter defined) and shall be subject to the consequences herein provided."
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> x x x x x x x x x

19. Moreover, it was clearly provided in [PNB's] letter dated August 13, 1997 that the [real estate mortgage] shall be unregistered and will be registered with the Registry of Deeds only "in an event of default." It is also clear in the said letter that [PNB] shall only hold physical possession of said TCT Nos. 636817 and 636816 x x x until the condition of assigning the sales proceeds of the mentioned real properties up to a minimum of US$ equivalent of PhP112,000,000.00 to [PNB] is complied with.[17]

GPHI, thereafter, sought for a judgment: (1) perpetually prohibiting PNB from divesting GPHI of its possession and ownership of the mortgaged properties, as well as taking possession, administration and ownership thereof; (2) declaring the foreclosure sale conducted on June 20, 2001 as null and void; (3) ordering PNB to pay GPHI ₱2,000,000.00 as moral damages, ₱1,000,000.00 as exemplary damages, ₱500,000.00 as attorney's fees and costs of suit.

On September 11, 2001, PNB filed a Motion to Dismiss[18] the above petition, and contended that there was another action pending between the same parties for the same cause of action. Essentially, PNB argued that GPHI resorted to a splitting of a cause of action by first filing a complaint for the annulment of the contract of real estate mortgage and then filing a petition for the annulment of the subsequent foreclosure of the mortgage. PNB further alleged that the subsequent petition of GPHI failed to state a cause of action.

On December 20, 2001, the RTC ordered the dismissal of Civil Case No. TM-1108. The trial court elucidated thus:

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

[18] *Id.* at 40-47.

Prior to the filing of the above-entitled case, [GPHI] filed against [PNB] an action for annulment of Mortgage with Application for Temporary Restraining Order and Writ of Preliminary Injunction docketed as Civil Case No. TM-1022. While the first action was filed on July 27, 2001, above-entitled case was filed on August 14, 2001 because there was no Temporary Restraining Order or Writ of Preliminary Injunction issued in the first case, the foreclosure sale of the [mortgage] sought to be enjoined by [GPHI] as against [PNB] from this Court, proceeded in the ordinary course of law and a certificate of sale was issued in favor of the bank. Not obtaining the relief desired, [GPHI] endeavored the remedy of filing this case; Annulment of Foreclosure of Mortgage with Application for the issuance of a Temporary Restraining Order [and/or] writ of Preliminary Injunction thinking it to be the right resources instead of pursuing to attack [PNB] in the first case thus filed.

Both cases, Civil Case No. TM-1022 and TM-1108 practically involved the same parties, substantially identical causes of action and reliefs prayed for, the reliefs being founded on the same facts. Ironically, these cases are now both filed in this Court.

Considering the foregoing circumstances where a single cause of action has been split and pursuant to Rule 16, Section 1(e) of the 1997 Rules on Civil Procedure, the Motion to Dismiss filed by [PNB] through counsel, on the ground that there is another action pending between the same parties for the same cause, or [*litis pendentia*], is proper.

Suffice to state that the Court deemed no longer necessary to discuss the second ground relied upon in [PNB's] pleading.

ACCORDINGLY, this case is DISMISSED.[19] (Emphasis ours.)

GPHI filed a Motion for Reconsideration[20] of the above ruling, but the trial court denied the motion in an Order[21] dated March 14, 2002. GPHI, thus, filed a Notice of Appeal,[22] which was given due course by the trial court.[23]

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[19] *Id.* at 69-70.

[20] *Id.* at 71-80.

[21] *Id.* at 88.

[22] *Id.* at 93-94.

[23] *Id.* at 97.

In the interregnum, after the parties presented their respective evidence in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage), GPHI filed a Motion for Leave to Amend Complaint to Conform to the Evidence[24] on November 24, 2006. In the Amended Complaint[25] attached therein, GPHI made mention of the foreclosure sale conducted on June 20, 2001 and the fact that the mortgaged properties were sold to PNB for ₱168 million. Since GPHI's liability was allegedly limited only to ₱112 million in accordance with the letter of PNB dated August 13, 1997 and the Amendment to the Credit Agreement between GEC, GPHI and PNB, GPHI claimed that it should be refunded the amount of ₱56 million. GPHI then prayed for a judgment declaring the real estate mortgage, the foreclosure and the sale of the mortgaged properties null and void; or, alternatively, for a judgment ordering PNB to return to GPHI the amount of ₱56 million, plus interest.[26]

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[24] *Rollo*, pp. 55-58.

[25] *Id.* at 59-72.

[26] On March 14, 2008, the RTC rendered a Decision in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage) the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, this Court hereby orders the **annulment of the Real Estate Mortgage.** The parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.

GEC is hereby ordered to fulfill its loan obligation with PNB and the latter to exhaust the properties of GEC until full satisfaction of the loan.

The foreclosure sale as well as the Certificate of Sale be declared null and void.

The Transfer Certificate of Title Nos. 1016921 and 1016920 issued in the name of PNB be cancelled and the Transfer of Certificate of Title Nos. 636817 and 636816 which [were] originally issued in the name of GPHI be reinstated. (*Rollo*, p. 150.)

PNB moved for a reconsideration of the above judgment, but the same was denied in an Order dated July 30, 2008. (*Id.* at 152-156.) GPHI thereafter filed an appeal to the Court of Appeals. (*Id.* at 177) The records of this case do not indicate whether or not the case has already been decided by the appellate court.

The Judgment of the Court of Appeals

GPHI's appeal in Civil Case No. TM-1108 (Annulment of the Foreclosure Sale) was docketed in the Court of Appeals as CA-G.R. CV No. 75108. GPHI primarily argued that the causes of action in the two cases filed before the RTC were separate and distinct such that a decision in one case would not necessarily be determinative of the issue in the other case.

On September 28, 2007, the Court of Appeals rendered the assailed decision granting the appeal of GPHI. The relevant portions of the appellate court's ruling stated:

> For *litis pendentia* to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res adjudicata* to the other.
>
> **While it is true that there is an identity of parties and subject matter, the third requisite of *litis pendentia* is not present**. x x x
>
> The former suit is for the annulment of the real estate mortgage while the present case is one for the annulment of the foreclosure of the mortgage. It may be conceded that if the final judgment in the former action is for the annulment of the mortgage, such an adjudication will deny the right of the bank to foreclose on the properties. Following the above doctrine, the immediate question would thus be: Will a decree holding the mortgage contract valid prevent a party from challenging the propriety of the foreclosure and the conduct of its proceedings?
>
> **Verily, an adjudication holding the real estate mortgage valid does not preclude an action predicated on or involving an issue questioning the validity of the foreclosure**. **In this respect, the test of identity fails. The answer being in the negative, the judgment in *Civil Case No. TM-1022* would not be a bar to the prosecution of the present action.**
>
> **WHEREFORE**, the appeal is **GRANTED** and the assailed order is hereby **REVERSED** and **SET ASIDE**. The case is ordered

REMANDED to the court *a quo* for further proceedings.[27] (Emphases ours.)

PNB moved for the reconsideration[28] of the above decision but the Court of Appeals denied the same in the assailed Resolution dated January 24, 2008.

PNB, thus, instituted the instant petition.

The Ruling of the Court

In its Memorandum before this Court, PNB averred that "[t]he central issue in this case is whether or not the requisites of *litis pendentia* exist to warrant the dismissal of Civil Case No. TM-1108 [Annulment of the Foreclosure Sale]. Stated otherwise, the primary issue is whether or not there is an identity of parties and causes of action in the two subject cases, such that judgment that may be rendered in one would amount to *res judicata* to the other."[29]

PNB asserts that the validity of the extra-judicial foreclosure proceedings and the incidents thereto were primary issues tried in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage). PNB points out that GPHI even filed a Motion for Leave to Amend Complaint to Conform to the Evidence[30] dated November 23, 2006 to incorporate the issue of the validity of the foreclosure proceedings. Also, one of the reliefs prayed for in the amended complaint of GPHI in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage) is for the declaration of the nullity of the foreclosure sale. PNB insists that the validity of the foreclosure sale was squarely put in issue during the trial of Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage) wherein GPHI prayed for the nullity of both the real

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

[28] CA *rollo*, pp. 133-138A.

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

[30] *Id.* at 55-58.

estate mortgage and the subsequent foreclosure sale and the certificate of sale issued in favor of PNB.

For its part, GPHI counters that the causes of action in the two cases filed before the court *a quo* are not the same. GPHI explains that it filed Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage) inasmuch as the real estate mortgage executed in favor of PNB did not reflect the true intention of the parties thereto. GPHI reiterates that the properties covered by TCT Nos. T-636816 and T-636817 merely served as temporary securities for the loan of GEC from PNB. On the other hand, GPHI maintains that it filed Civil Case No. TM-1108 (Annulment of the Foreclosure Sale) in view of the failure of the sheriff to comply with the requirement of Section 4 of Act No. 3135 that foreclosure proceedings shall be conducted through a public auction.

GPHI further elaborates that should the RTC grant the prayer in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage), it would follow that the subsequent foreclosure proceedings involving the mortgaged properties will likewise be rendered null and void. Even so, GPHI opines that if the trial court declares the validity of the real estate mortgage in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage), the same will not automatically render valid the ensuing foreclosure proceedings.

We grant the petition of PNB.

As a ground for a motion to dismiss a complaint or any other pleading asserting a claim, *litis pendentia* is provided for under Section 1(e), Rule 16 of the Rules of Court, which reads:

> Section 1. *Grounds*. - Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> x x x x x x x x x
>
> (e) That there is another action pending between the same parties for the same cause.

As we held in *Dotmatrix Trading v. Legaspi*,[31] "[*l*]*itis 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."[32]

We further emphasized in *Guevara v. BPI Securities Corporation*[33] that "[t]here is *litis pendentia* or another action *pendente lite* if the following requisites are present: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) 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."[34]

With respect to the first requirement of *litis pendentia*, the same is undisputedly present in this case. GPHI is the plaintiff in both Civil Case Nos. TM-1022 and TM-1108, while PNB is the party against whom GPHI is asserting a claim. That the Registry of Deeds for the Province of Cavite was named as an additional respondent in Civil Case No. TM-1108 (Annulment of the Foreclosure Sale) bears little significance. The Court has clarified in *Villarica Pawnshop, Inc. v. Gernale*[35] that "identity of parties does not mean total identity of parties in both cases. It is enough that there is substantial identity of parties. The inclusion of new parties in the second action does not remove the case from the operation of the rule of *litis pendentia*."[36]

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[31] G.R. No. 155622, October 26, 2009, 604 SCRA 431.

[32] *Id.* at 436.

[33] G.R. No. 159786, August 15, 2006, 498 SCRA 613.

[34] *Id.* at 629-630.

[35] G.R. No. 163344, March 20, 2009, 582 SCRA 67.

[36] *Id.* at 79.

The crux of the controversy in the instant case is whether there is an identity of causes of action in Civil Case Nos. TM-1022 and TM-1108.

Section 2, Rule 2 of the Rules of Court defines a cause of action as "the act or omission by which a party violates a right of another." Section 3 of Rule 2 provides that "[a] party may not institute more than one suit for a single cause of action." Anent the act of splitting a single cause of action, Section 4 of Rule 2 explicitly states that "[i]f two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others."

Apropos, *Carlet v. Court of Appeals*[37] states that:

> As regards identity of causes of action, the test often used in determining whether causes of action are identical is to ascertain whether the same evidence which is necessary to sustain the second action would have been sufficient to authorize a recovery in the first, even if the forms or nature of the two actions be different. If the same facts or evidence would sustain both actions, the two 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.[38]

In the case at bar, a perusal of the allegations in Civil Case Nos. TM-1022 (Annulment of the Real Estate Mortgage) and TM-1108 (Annulment of the Foreclosure Sale) reveal that the said cases invoke the same fundamental issue, *i.e.*, the temporary nature of the security that was to be provided by the mortgaged properties of GPHI.

To repeat, in the original complaint in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage), GPHI's main argument was that the agreement between GEC and PNB was that the mortgaged properties of GPHI would merely stand as temporary securities pending the outcome of Civil Case No. 98-782, the

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[37] 341 Phil. 99 (1997).

[38] *Id.* at 110.

case filed by GEC against LBP. The mortgaged properties were never contemplated to stand as bona fide collateral for the loan obligations of GEC to PNB. Also, GPHI claimed that the execution of the real estate mortgage over the properties of GPHI did not reflect the true intention of GEC and PNB. As such, GPHI concluded that PNB had no legal right to pursue the remedy of foreclosure of the mortgaged properties in light of the inability of GEC to pay its loan obligations to PNB.

On the other hand, in its petition in Civil Case No. TM-1108 (Annulment of the Foreclosure Sale), GPHI asserted that PNB knew that the mortgaged properties were "never intended to be used as permanent collateral for GEC, but one which was simply used as an unregistered security until [GPHI] incurs in default if sold and the proceeds of which should be used in payment for the obligation of GEC."[39] In addition, GPHI argued that the letter of PNB dated August 13, 1997 was clear in that the real estate mortgage was to remain unregistered until an "event of default" occurs and PNB shall possess the titles covering the properties "until the condition of assigning the sales proceeds of the mentioned real properties up to a minimum of US$ equivalent of PhP112,000,000.00 to [PNB] is complied with."[40]

Therefore, in essence, the cause of action of GPHI in both cases is the alleged act of PNB of reneging on a prior agreement or understanding with GEC and GPHI *vis-à-vis* the constitution, purpose and consequences of the real estate mortgage over the properties of GPHI. While the reliefs sought in Civil Case Nos. TM-1022 (Annulment of the Real Estate Mortgage) and TM-1108 (Annulment of the Foreclosure Sale) are seemingly different, the ultimate question that the trial court would have to resolve in both cases is whether the real estate mortgage over the properties of GPHI was actually intended to secure the loan obligations of GEC to PNB so much so that PNB can legally foreclose on the mortgaged properties should GEC fail

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[39] Records, p. 5.

[40] *Id*. at 6.

to settle its loan obligations. In this regard, GPHI made reference to the letter of PNB dated August 13, 1997 and the Amendment to the Credit Agreement between GEC, GPHI and PNB as the primary documents upon which GPHI based its arguments regarding the supposed intention of the parties in both Civil Case Nos. TM-1022 (Annulment of the Real Estate Mortgage) and TM-1108 (Annulment of the Foreclosure Sale).[41] Thus, the same documentary evidence would necessarily sustain both cases.

That GPHI put forward additional grounds in Civil Case No. TM-1108 (Annulment of the Foreclosure Sale), *i.e.*, that the auction sale was not conducted at a public place in contravention of the requirement of Section 4 of Act No. 3135 and that the foreclosure was prematurely resorted to given that GPHI cannot yet be considered in default, does not alter the fact that there exists an identity of causes of action in the two cases. In *Asia United Bank v. Goodland Company, Inc.*,[42] the Court held that "[t]he well-entrenched rule is that 'a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.'"[43]

Be that as it may, while the appeal of the dismissal of Civil Case No. TM-1108 (Annulment of the Foreclosure Sale) was still pending with the Court of Appeals, GPHI filed on November 23, 2006 a Motion for Leave to Amend Complaint to Conform to the Evidence in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage). GPHI stated therein that after the parties presented their evidence, the fact of foreclosure and the acquisition of the mortgaged properties by PNB were duly established.[44] In the accompanying Amended Complaint in Civil Case

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[41] CA *rollo*, p. 48; records, pp. 5-6.

[42] G.R. No. 191388, March 9, 2011, 645 SCRA 205.

[43] *Id.* at 217.

[44] *Rollo*, p. 55.

No. TM-1022 (Annulment of the Real Estate Mortgage), GPHI prayed, *inter alia*, for the declaration of the nullity of the foreclosure and auction sale of the mortgaged properties. As a consequence of such an action, the two cases that GPHI filed before the court *a quo* henceforth contained an identity of rights asserted and reliefs prayed for, the relief being founded on the same factual allegations. Thus, any doubt as to the act of GPHI of splitting its cause of action has since been removed.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 28, 2007 and the Resolution dated January 24, 2008 of the Court of Appeals in CA-G.R. CV No. 75108 are hereby **REVERSED** and **SET ASIDE**. The Order dated December 20, 2001 of the Regional Trial Court of Trece Martires City, Branch 23, in Civil Case No. TM-1108 is hereby **REINSTATED**. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184851. February 15, 2012]

VALIENTE C. VILLEGAS, *petitioner, vs.* **THE HONORABLE VICTOR C. FERNANDEZ, DEPUTY OMBUDSMAN FOR LUZON, CONRADO S. ANCIADO, JR., ROLLY P. DANILA, ANDREI S. ARABIT and JAIME M. BARON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED BY THE PARTIES AND PASSED UPON BY THE SUPREME COURT.— It is

a well-settled rule that in a petition for review under Rule 45, only questions of law may be raised by the parties and passed upon by this Court. It is the burden of the party seeking review of a decision of the CA or other lower tribunals to distinctly set forth in his petition for review, not only the existence of questions of law fairly and logically arising therefrom, but also questions substantial enough to merit consideration, or show that there are special and important reasons warranting the review that he seeks.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF THE OMBUDSMAN ARE GENERALLY CONCLUSIVE AND ACCORDED DUE RESPECT AND WEIGHT.— Elementary is the rule that the findings of fact of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the CA. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.

APPEARANCES OF COUNSEL

Gonzalez Batiller Bilog Reyes & Associates 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 Valiente C. Villegas (petitioner) assailing the Decision[1] dated August 8, 2008

[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Celia C. Librea-Leagogo and Mariflor P. Punzalan-Castillo, concurring; *rollo*, pp. 336-346.

and Resolution[2] dated October 7, 2008 issued by the Court of Appeals (CA) in CA-G.R. SP No. 92771.

On May 6, 2003, the petitioner requested then Mandaluyong City Mayor Benjamin Abalos, Jr. to allow him to improve the sidewalk and driveway fronting his house at Dr. Fernandez Avenue.[3] The improvement consists of planting trees and excavation of a concrete driveway and sidewalk. Thereupon, a building permit[4] was issued by Engineer Conrado S. Anciado, Jr. (Anciado) – the Head of Mandaluyong City Engineering Department.

After the said improvement works had been completed, the city government, in March 2004, implemented a road widening project along Dr. Fernandez Avenue. The residents therein agreed to demolish portions of their respective houses which encroached on the sidewalk and canals. Nevertheless, some of the residents therein complained to the Mayor that a portion of the petitioner's house likewise encroached on the sidewalk but the latter did not demolish the same.[5]

After conducting an inspection on Dr. Fernandez Avenue, Anciado notified the petitioner of the said encroachment.[6] However, the petitioner disputed Anciado's finding and asserted that, based on a prior survey of his property conducted after he had finished the said improvement works, the perimeter fence of his house was still within his property line. Nevertheless, the road widening works along Dr. Fernandez Avenue continued.

In December 2004, Anciado told the petitioner that the road widening of Dr. Fernandez Avenue was already complete except for the drainage and concreting of the portion of the road fronting the latter's house. Further, Anciado told the petitioner that he

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[2] *Id.* at 374.

[3] *Id.* at 55.

[4] *Id.* at 57-58.

[5] *Id.* at 101-102.

[6] *Id.* at 62.

would assign a geodetic engineer to re-survey the site to determine whether the perimeter fence of the latter's house encroached on the sidewalk.[7] The petitioner refused Anciado's offer of re-survey and insisted on the immediate completion of the drainage and other works fronting his house.[8]

Nevertheless, Anciado proceeded with the re-survey of the site and found that the perimeter fence of the petitioner's house had encroached on the sidewalk. Thereupon, Anciado filed a complaint with the Mandaluyong City Council against the petitioner for the encroachment of the sidewalk fronting the petitioner's house.

In turn, the petitioner sought assistance from the Public Assistance Bureau of the Office of the Ombudsman (Ombudsman) in a letter[9] dated December 14, 2004. Consequently, a conference between the parties was held before the Ombudsman where it was agreed upon that Anciado would finish the drainage and other works fronting the house of the petitioner. The petitioner claimed that Anciado failed to do the works that were agreed upon during the said conference before the Ombudsman.

Meanwhile, on April 5, 2005, the Mandaluyong City Council sent the petitioner a letter[10] inviting him to a hearing scheduled on April 20, 2005 with respect to the said complaint filed by Anciado.

Thus, on April 18, 2005, the petitioner formally filed a complaint[11] for neglect of duty against Anciado together with Mandaluyong City Engineering Office employees Rolly P. Danila and Jaime M. Baron and Mandaluyong City Building Inspector Andrei S. Arabit.

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[7] *Id.* at 63.

[8] *Id.* at 64.

[9] *Id.* at 91.

[10] *Id.* at 115.

[11] *Id.* at 65-73.

On June 23, 2005, Anciado and the other respondents in the case before the Ombudsman filed their Joint Counter Affidavit asserting that they could not proceed with the concreting of the pavement fronting the house of the petitioner in view of the pendency of the complaint against the petitioner for encroachment of the sidewalk.

On July 6, 2005, the Ombudsman issued an Order[12] dismissing the said complaint filed by the petitioner. The Ombudsman stated that:

> However, as the records of the case will show, the purported failure to complete the project in question was totally beyond the control of the respondents, as the complainant has refused to cooperate in the intended re-survey of his property to determine whether the improvements he made have encroached upon a portion of the sidewalk. With this, the respondents can not be expected to pursue the project to its conclusion as they are hampered by the issue of the encroachment. The administrative charge of Neglect of Duty therefore is apparently without basis in fact and in law.
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> But be that as it may, it has also been shown that, even before the filing of the present case on April 18, 2005, the matter of the encroachment by the complainant became the subject of appropriate proceedings before the City Council of Mandaluyong City, Committee on Engineering, as of April 5, 2005. Thus, it is incumbent that the said proceedings be allowed to continue until its conclusion. This is necessary since the issue in the present case, that is, whether the respondents indeed committed neglect of duty, becomes part and parcel of the issues in the said proceedings before the City Council.[13] (citations omitted)

The petitioner sought for a reconsideration[14] of the July 6, 2005 Order but it was denied by the Ombudsman in its Order[15] dated October 5, 2005.

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[12] *Id.* at 151-162.

[13] *Id.* at 159-161.

[14] *Id.* at 163-172.

[15] *Id.* at 191-198.

Subsequently, the petitioner filed a petition for *certiorari* and *mandamus*[16] with the CA alleging that the Ombudsman gravely abused his discretion in dismissing the complaint for neglect of duty against Anciado and the other employees of Mandaluyong City Engineering Office.

On August 8, 2008, the CA rendered the herein assailed Decision[17] dismissing the petition for *certiorari* and *mandamus* filed by the petitioner. In disposing of the said petition, the CA held that the Ombudsman did not act arbitrarily or without substantial evidence in administratively exonerating the respondents. In contrast, the CA pointed out that there is substantial evidence underlying the finding of the Ombudsman that the respondents are not administratively remiss in leaving uncompleted the works in front of the property of the petitioner.

With respect to the petitioner's prayer for the issuance of a writ of *mandamus*, the CA held that:

> We hold that *mandamus* is not proper in this – *firstly*, the petitioner has failed to prove a ministerial duty on the part of the respondents to pave and fix the drainage of the sidewalk up to the edge of his fence irrespective of whether it is on the property line or not, x x x, and *secondly*, even assuming that *mandamus* is available against the respondents, the action should not be directly filed with Us, but with the RTC which has jurisdiction over the area in which the dispute arises, under the principle of *hierarchy of courts* which serves as a general determinant of the forum for petitions for extraordinary writs. x x x[18]

The petitioner sought for a reconsideration of the said August 8, 2008 Decision, but it was denied by the CA in its Resolution[19] dated October 7, 2008.

Undaunted, the petitioner instituted the instant petition for review on *certiorari* before this Court alleging that the CA

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[16] *Id.* at 204-232.

[17] *Supra* note 1.

[18] *Rollo*, pp. 344-345.

[19] *Supra* note 2.

erred in dismissing his petition for *certiorari* and *mandamus* thereby affirming the July 6, 2005 and October 5, 2005 Orders of the Ombudsman.

The petition is denied.

A perusal of the allegations, issues and arguments set forth by the petitioner would readily show that the CA did not commit any reversible error as to warrant the exercise of the Court's appellate jurisdiction.

Verily, an analysis of the various arguments raised by the petitioner in his petition would reveal that the same are geared towards discrediting the factual findings of the Ombudsman.

It is a well-settled rule that in a petition for review under Rule 45, only questions of law may be raised by the parties and passed upon by this Court.[20] It is the burden of the party seeking review of a decision of the CA or other lower tribunals to distinctly set forth in his petition for review, not only the existence of questions of law fairly and logically arising therefrom, but also questions substantial enough to merit consideration, or show that there are special and important reasons warranting the review that he seeks.[21]

Elementary is the rule that the findings of fact of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the CA. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence

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[20] *Republic of the Philippines v. De Guzman,* G.R. No. 175021, June 15, 2011.

[21] *Sps. Pengson v. Ocampo, Jr.*, 412 Phil. 860, 865-866 (2001).

all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.[22]

We find no reason to depart from the foregoing rule.

The main issue in the administrative complaint for neglect of duty before the Ombudsman is whether Anciado and the other respondents therein committed neglect of duty in completing the road widening project along Dr. Fernandez Avenue. In resolving this issue, the Ombudsman held that:

> The crux of the complaint appertains to the alleged neglect by the respondents in completing the project along Dr. Fernandez [Avenue].
>
> However, as the records of the case will show, the purported failure to complete the project in question was totally beyond the control of the respondents, as the complainant has refused to cooperate in the intended re-survey of his property to determine whether the improvements he made have encroached upon a portion of the sidewalk. With this, the respondents can not be expected to pursue the project to its conclusion as they are hampered by the issue of the encroachment. The administrative charge of Neglect of Duty therefore is apparently without basis in fact and in law.
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> Needless to state, the matter of refusal of the complainant to cooperate with the respondents has been shown by several pieces of evidence, and the complainant can not be allowed to pass the buck onto the respondents.
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> But be that as it may, it has also been shown that, even before the filing of the present case on April 18, 2005, the matter of the encroachment by the complainant became the subject of appropriate proceedings before the City Council of Mandaluyong City, Committee on Engineering, as of April 5, 2008. Thus, it is incumbent that the said proceedings be allowed to continue until its conclusion. This is necessary since the issue in the present case, that is, whether the respondents indeed committed neglect of duty, becomes part and parcel of the issues in the said proceedings before the City Council.[23] (citations omitted)

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[22] *Tolentino v. Loyola*, G.R. No. 153809, July 27, 2011.

[23] *Rollo*, pp. 159-161.

As aptly found by the Ombudsman, which finding was affirmed by the CA, the delay in the completion of the drainage and other works on Dr. Fernandez Avenue, specifically the portion fronting the petitioner's house, was not attributable to Anciado and the other employees of the Mandaluyong City Engineering Department. Moreover, this matter was clearly and sufficiently addressed by the respondent-employees of Mandaluyong City Engineering Department in their Joint Counter Affidavit[24] before the Ombudsman. Thus:

> 3.4 However, we could not proceed with the concreting of the pavement in front of the complainant's property since this will entail removing the temporary drainage pipe underneath that we installed to prevent flooding in the area. This temporary drainage pipe is connected to the newly installed big culvert pipe and the old lined canal is located inside the encroached area of the complainant x x x. Also, this temporary drainage pipe is to be replaced by a big culvert pipe after the issue on complainant's encroachment shall have been resolved. Thus, if we proceeded with the concreting of said pavement, the City Government would have only incurred additional expenses because later on the same would be demolished to give way to the replacement of said temporary drainage pipe by a big culvert pipe.[25]

All told, we find that the petitioner failed to show any grave abuse of discretion or any reversible error on the part of the Ombudsman in issuing the July 6, 2005 and October 5, 2005 Orders, the same having been subsequently affirmed by the CA, which would impel this Court to rule otherwise.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED**. The assailed Decision dated August 8, 2008 and Resolution dated October 7, 2008 issued by the Court of Appeals in CA-G.R. SP No. 92771 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,* and *Sereno, JJ.,* concur.

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[24] *Id.* at 93-97.

[25] *Id.* at 94.

[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1195 dated February 15, 2012.

SECOND DIVISION

[G.R. No. 185053. February 15, 2012]

EUSTAQUIO CANDARI, JR., RENE ESPULGAR, EDITHA DACIA, GONZALO PALMA, JR., ANDRES DE LEON, ARNOLD BAJAR, PETER BAYBAYAN, EUGENIO TABURNO, MATEO ALOJADO, ANSELMO LIGTAS, FLORITA BULANGIS, ADELAIDA PENIG, ATTY. LEVI SALIGUMBA, EDITHA JIMENA, CYNTHIA BELARMA and ANTONIA BANTING, *petitioners, vs.* **ROLAND DONASCO, LIDIO VILLA, RENE GAID, PEPITO GUMBAN, OSCAR ANDRADA, ROMEO CASTONES, ROSEMARY CORDOVA, GLORIA MATULLANO, PONCIANO ABALOS, RESTITUTO BATIANCILLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT CASE; A CASE BECOMES MOOT AND ACADEMIC WHEN ITS PURPOSE HAS BECOME STALE.— In *Joya v. Presidential Commission on Good Government*, we said: For a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. A case becomes moot and academic when its purpose has become stale, such as the case before us.

2. COMMERCIAL LAW; COOPERATIVE CODE; THE GENERAL ASSEMBLY (GA) IS THE HIGHEST POLICY-MAKING BODY OF THE COOPERATIVE.— Sec. 34 of the Cooperative Code states that the highest policy-making body of the cooperative is the GA, to wit: The general assembly shall be the highest policy-making body of the cooperative and shall exercise such powers as are stated in this Code, in the articles of cooperation and in the by-laws of the cooperative. The general assembly shall have the following exclusive powers

which cannot be delegated: (1) To determine and approve amendments to the articles of cooperation and by-laws; (2) To elect or appoint the members of the board of directors, and to remove them for cause; (3) To approve developmental plans of the cooperative; and (4) Such other matters requiring a two-thirds (2/3) vote of all members of the general assembly, as provided in this Code.

3. ID.; ID.; ID.; THE REPLACEMENT OF THE RESPONDENTS WITH OTHER MEMBERS OF THE BOARD WAS WILLED BY THE GENERAL ASSEMBLY WHICH DECLARED THE CONTESTED POSITIONS VACANT AND ELECTED A NEW SET OF OFFICERS; CASE AT BAR RENDERED MOOT.— In the present case, the GA has clearly expressed its intentions through the subsequent amendment of DARBCI's Articles of Cooperation and By-Laws and through the election of new officers. In *Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilihang Bayan ng Muntinlupa, Inc. (KBMBPM) v. Dominguez,* we denied the Petition on the ground that the issue had become moot and academic considering that the GA of KBMPM already elected a new set of officers, even if it was found that the right to due process of petitioners therein were clearly violated. x x x In the present case, the replacement of respondents with other members of the board was willed by the GA. It is also important to note that respondents were only occupying their positions in a holdover capacity when they filed the case with the RTC, as their terms had ended on 12 July 2000. Undoubtedly, it would be a futile attempt and a waste of resources to remand the case to the trial court. There would be nothing left for the trial court to execute, should respondents be successful in their Petition. It is clear from the Omnibus Order of the RTC that it dismissed the Amended Complaint because the supervening events had rendered the case moot through the voluntary act of the GA – as the highest policy-making body of the cooperative – to declare the contested positions vacant and to elect a new set of officers. As a consequence, respondents no longer had the personality or the cause of action to maintain the case against petitioners herein. Thus, the RTC committed no error when it dismissed the case.

APPEARANCES OF COUNSEL

Law Firm of Largo Bernales-Largo Balucos Tumanda Rubiato and Hernandez for petitioners.

Acharon Aconera and Associates for respondents.

D E C I S I O N

SERENO, *J.*:

Respondents were members of the board of directors of Dolefil Agrarian Reform Beneficiaries Cooperative, Incorporated (DARBCI). They were elected into office on 12 July 1998 and their terms should have ended on 12 July 2000. However, they continued to occupy their positions in a holdover capacity until the controversy in this case arose.

On 23 November 2005, respondents instituted Civil Case No. 471-05 at Branch 39 of the Regional Trial Court (RTC) of Polomolok, South Cotabato to enjoin petitioners from holding a special general assembly (GA) and an election of officers. Respondents alleged that the process by which the GA had been called was not in accordance with Sec. 35 of Republic Act No. 6938, otherwise known as the Cooperative Code of the Philippines.

On 24 November 2005, the RTC issued a 72-hour Temporary Restraining Order (TRO) to restrain petitioners from holding the GA.[1]

Despite the TRO, but without the participation of petitioners, 5,910 members – or 78.68% of the total membership of the cooperative – went through with the GA on 26 November 2005 and elected petitioners *in absentia* as new members of the board.

On 1 December 2005, the TRO was extended to its full term of twenty (20) days from issuance.[2]

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[1] *Rollo,* pp. 116-121.

[2] *Id.* at 122-124.

The trial court considered the evidence adduced during the hearing on the application for a writ of preliminary injunction. In addition, it considered the supervening events that occurred since the issuance of the TRO. These events were the holding of the GA on 26 November 2005 and the election of new officers. Thus, on 8 December 2005, the RTC, finding the provisional remedy of preliminary injunction to be moot, issued a Resolution[3] denying respondents' prayer for the issuance of a writ of preliminary injunction and quashing the TRO previously issued.

Thereafter, respondents filed an Amended Complaint[4] seeking to enjoin petitioners from assuming office and exercising the powers conferred on directors of DARBCI.

On 29 November 2006, the RTC issued an Omnibus Order[5] dismissing the Amended Complaint, ruling as follows:

> Gauging from these allegations that plaintiffs were incumbent BOD members of DARBCI and did not consent or sanctioned (sic) the 26 November 2005 BOD election, which was conducted despite the existing TRO, do not confer a right unto them that ought to be respected by defendants (sic); neither the Tripartite Agreement among Board I, II, and III help their cause. **The supervening factors, *i.e.* the General Assembly Meeting and the Election of Officers by the overriding majority members of DARBCI then occurring** (sic) **rendered these averments insignificant. Resultantly**, **no delict or wrong can be imputed to the latter owing to said factors which were duly established during the hearings and found by the Honorable Court.**
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> In sum, the Amended Complaint and the evidence thus far adduced disclose that plaintiffs have neither legal right nor the requisite personality to file an action for nullification of the assailed DARBCI General Assembly and Election. Hence, their aforesaid Complaint is doomed for dismissal for failing to state a cause of action. The

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[3] *Id.* at 125-129.

[4] *Id.* at 130-139.

[5] *Id.* at 207-212.

Court must hold, as it holds now, that the present action cannot pass muster on sheer dictates of law and equity. (Emphasis supplied.)

Respondents thereafter filed a Petition for *Certiorari*[6] with the Court of Appeals (CA) docketed as CA-G.R. SP No. 01851. They contended that the trial court committed grave abuse of discretion when it considered the evidence adduced in the hearing for the issuance of a writ of preliminary injunction. They further alleged that the Amended Complaint clearly stated a cause of action based on their rights as the then incumbent officers of DARBCI.

The CA rendered the assailed Decision,[7] which remanded the case to the RTC for further proceedings. In allowing the Petition, the appellate court stated that the "lingering organization and leadership crisis in the DARBCI undermines the cooperative's viability to pursue its objectives." It considered the case to be one that might become an impediment to the State's land reform program in Polomolok. Thus, it took cognizance of the case in the interest of public welfare and the advancement of public policy.

The CA found that respondents' Amended Complaint contained sufficient allegations that constituted a cause of action against herein petitioners. Thus, it held that the RTC gravely abused its discretion when the latter dismissed the case for lack of cause of action.

Petitioners moved for reconsideration, but this motion was subsequently denied.[8]

Petitioners now come before this Court, alleging that the CA erred in allowing respondents' Petition for *Certiorari* despite being the wrong remedy. They also insist that the CA erred in

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[6] *Id.* at 93-115.

[7] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Edgardo A. Camello and Edgardo T. Lloren, concurring; *id.* at 51-61.

[8] *Id.* at 63-64.

ruling that a cause of action existed despite the fact that the issue had become moot. They allege that the trial court was not limited to the allegations of the Complaint, but it may also consider the evidence presented during the hearing for the issuance of the writ of preliminary injunction. Finally, they contend that the CA misappreciated the facts of the case in stating that the issue was with regard to the implementation of the agrarian reform program, when it was merely the legality of the elections of the new board of directors.

Respondents, in their Comment,[9] assert that their Amended Complaint stated a cause of action, and that the trial court should have conducted a trial on the merits instead of dismissing the Amended Complaint, especially when petitioners failed to present proof that a GA and an election of officers were held on 26 November 2005. Finally, respondents contend that the RTC's act of dismissing the case was in grave abuse of discretion, reviewable via their Petition for *Certiorari*.

On 8 July 2009, petitioners filed a Reply to respondents' Comment.[10] They informed this Court that two more GA meetings had been held.

During the 20 December 2008 meeting, the GA ratified the Amended Articles of Cooperation and the Amended By-Laws of the cooperative. A Certificate of Registration to that effect was issued by Cooperative Development Authority (CDA) on 9 February 2009.[11]

Article X, Sec. 1 of the Amended By-Laws provides:

> The incumbent members of the Board of Directors and various committees who were elected into office during the November 25, 2005 special elections shall continue to serve the cooperative until their successors have been elected and qualified into office. They shall be deemed to have served for one term only;

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[9] *Id.* at 607-619.

[10] *Id.* at 628-635.

[11] *Id.* at 636.

The Court notes that the 25 November 2005 GA meeting referred to by the by-laws was actually held on 26 November 2005. However, considering the clear language and intent of the provision, the Court deems the date contained in the Amended By-laws to be a mere typographical error.

On 29 March 2009, the second meeting was held whereby a new set of officers was elected by the GA.

In *Joya v. Presidential Commission on Good Government*,[12] we said:

> For a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. A case becomes moot and academic when its purpose has become stale, such as the case before us.

Sec. 34 of the Cooperative Code states that the highest policy-making body of the cooperative is the GA, to wit:

> The general assembly shall be the highest policy-making body of the cooperative and shall exercise such powers as are stated in this Code, in the articles of cooperation and in the by-laws of the cooperative. The general assembly shall have the following exclusive powers which cannot be delegated:
>
> (1) To determine and approve amendments to the articles of cooperation and by-laws;
>
> (2) To elect or appoint the members of the board of directors, and to remove them for cause;
>
> (3) To approve developmental plans of the cooperative; and
>
> (4) Such other matters requiring a two-thirds (2/3) vote of all members of the general assembly, as provided in this Code.

In the present case, the GA has clearly expressed its intentions through the subsequent amendment of DARBCI's Articles of Cooperation and By-Laws and through the election of new officers.

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[12] G.R. No. 96541, 24 August 1993, 225 SCRA 568, 579.

In *Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilihang Bayan ng Muntinlupa, Inc. (KBMBPM) v. Dominguez*,[13] we denied the Petition on the ground that the issue had become moot and academic considering that the GA of KBMPM already elected a new set of officers, even if it was found that the right to due process of petitioners therein were clearly violated, to wit:

> In the instant case, there was no notice of a hearing on the alleged petition of the general membership of the KBMBPM; there was, as well, not even a semblance of a hearing. The Order was based solely on an alleged petition by the general membership of the KBMBPM. There was then a clear denial of due process. It is most unfortunate that it was done after democracy was restored through the peaceful people revolt at EDSA and the overwhelming ratification of a new Constitution thereafter, which preserves for the generations to come the gains of that historic struggle which earned for this Republic universal admiration.
>
> If there were genuine grievances against petitioners, the affected members should have timely raise (sic) these issues in the annual general assembly or in a special general assembly. Or, if such a remedy would be futile for some reason or another, judicial recourse was available.
>
> **Be that as it may, petitioners cannot, however, be restored to their positions. Their terms expired in 1989, thereby rendering their prayer for reinstatement moot and academic. Pursuant to Section 13 of the by-laws, during the election at the first annual general assembly after registration, one-half plus one (4) of the directors obtaining the highest number of votes shall serve for two years, and the remaining directors (3) for one year; thereafter, all shall be elected for a term of two years. Hence, in 1988, when the board was disbanded, there was a number of directors whose terms would have expired the next year (1989) and a number whose terms would have expired two years after (1990). Reversion to the *status quo* preceding October 1988 would not be feasible in view of this turn of events. Besides, elections were held in 1990 and 1991.**

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[13] G.R. Nos. 85439 and 91927, 13 January 1992, 205 SCRA 92, 114-115.

The affairs of the cooperative are presently being managed by a new board of directors duly elected in accordance with the cooperative's by-laws.

In the present case, the replacement of respondents with other members of the board was willed by the GA. It is also important to note that respondents were only occupying their positions in a holdover capacity when they filed the case with the RTC, as their terms had ended on 12 July 2000. Undoubtedly, it would be a futile attempt and a waste of resources to remand the case to the trial court. There would be nothing left for the trial court to execute, should respondents be successful in their Petition.

It is clear from the Omnibus Order of the RTC that it dismissed the Amended Complaint because the supervening events had rendered the case moot through the voluntary act of the GA – as the highest policy-making body of the cooperative – to declare the contested positions vacant and to elect a new set of officers. As a consequence, respondents no longer had the personality or the cause of action to maintain the case against petitioners herein. Thus, the RTC committed no error when it dismissed the case.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The assailed Court of Appeals Decision in CA-G.R. SP No. 01851 dated 6 August 2008 and the Resolution dated 14 October 2008 are hereby **REVERSED** and **SET ASIDE**. The Order dated 29 November 2006 issued by Branch 39 of the Regional Trial Court of Polomolok, South Cotabato is hereby **AFFIRMED** and **REINSTATED**.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,* and *Reyes, JJ.,* concur.

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[*] Designated as Acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1195 dated 15 February 2012.

THIRD DIVISION

[G.R. No. 185212. February 15, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MARITESS ALOLOD, EFREN DEOCAMPO, ELMER DEOCAMPO and EDWIN DEOCAMPO,** *accused.* **EFREN DEOCAMPO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE, WHEN SUFFICIENT TO CONVICT.— The rule of evidence that applies when no witness saw the commission of the crime provides: SEC. 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The circumstances must constitute an unbroken chain that inexorably leads to one fair conclusion: the accused committed the crime to the exclusion of all others.

2. CRIMINAL LAW; MURDER; PROPER PENALTY OF *RECLUSION PERPETUA* AND PECUNIARY DAMAGES.— The CA x x x correctly reduced the imposable penalty from death to *reclusion perpetua*, not only because the information failed to allege the aggravating circumstances of dwelling and the victims' age but likewise, because of Republic Act 9346 that now prohibits the imposition of the death penalty. Consistent with recent jurisprudence the Court is awarding ₱75,000.00 as civil indemnity, ₱25,000.00 as temperate damages, another ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, for a total of ₱205,000.00 in each case. But these amounts should only apply to Efren and not to the rest of the accused who withdrew their appeals. Here, the RTC ordered Maritess, Edwin and Elmer to pay only ₱50,000.00 as civil indemnity in each case or a total of ₱100,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

ABAD, *J.*:

This case is about when circumstantial evidence may be considered sufficient to support a finding of guilt in a murder case.

The Facts and the Case

The Provincial Prosecutor of Sultan Kudarat charged the accused Maritess Alolod, Efren Deocampo, Edwin Deocampo, and Elmer Deocampo with double murder before the Regional Trial Court (RTC) of Isulan, Sultan Kudarat, Branch 19, in Criminal Cases 2531 and 2532.

The prosecution evidence shows that Melanio and Lucena Alolod adopted accused Maritess and took her into their home in *Barangay* Poblacion, Lebak, Sultan Kudarat. Maritess had two children with her lover, Efren Deocampo, who was never allowed to set foot on her parents' house since they loathed him. In May 1998, the old couple, Melanio and Lucena, suddenly went missing.

Neighbors and relatives testified last seeing the old couple on May 27, 1998. A neighbor, Magdalena Ato, recalled that the two were in good health. In fact, Melanio even went to market early in the day. At around 8:30 that evening, as he was making his rounds, a security guard at Salaman Institute, Demetrio Nebit, saw two men standing near the fence that separated the school from the Alolod house. On seeing Nebit, the two hurried into a nearby toilet but the security guard followed and told them to come out. Nebit identified one of the two to be Efren Deocampo, a former classmate, and his brother Edwin.

At about 2:00 a.m. on the following day, May 28, Victor Ato, Magdalena's husband, awakened to strange sounds coming from the Alolod house just five to six meters away. Victor heard a woman sobbing and what sounded like a pig being butchered. He looked out through the window but, seeing no one, he just went back to bed. When Victor woke up at 5:30 a.m., he saw Efren at the kitchen of the Alolod house.

Later that day, Magdalena had the chance to ask Maritess about the sounds coming from their house during the night. Maritess explained that Melanio was ill and she was having a difficult time giving him medicine. Maritess added that her parents had left for Cotabato City early that morning. Meantime, on inspection that morning, the school security guard noticed that the cyclone wire of the fence where he saw Efren and Edwin standing the night before had been cut. He reported the incident to the school principal.

Annaliza Relles, the grandniece of the Alolods, noticed the absence of the old couple when she came over that morning to cook for them. Only Maritess and her two children were there. Maritess told Annaliza that her parents had left for a vacation. Annaliza tried to use one of the toilets in the house but it was padlocked. Maritess told her to just use the other toilet.

On May 29 Generita Caspillo, Maritess' relative and close friend, stayed at the Alolod residence to keep them company because according to Maritess, her father suffered a stroke and had to be brought to Cotabato for medical treatment. While Generita was there, she noticed a pile of red soil near the well at the garden.

On May 30 Annaliza and Generita saw Efren's younger brothers Edwin and Elmer at the Alolod residence. The next day, during their town fiesta, friends and relatives came by to visit the old couple but Maritess told them that they had gone to Davao City and would not return until August 16 or 17. By June the couple's grandchildren who would stay at their house for school began arriving. They observed the frequent presence of the Deocampo brothers in the house. Sometime in August, Generita

and her mother, Lucena's sister, came to pay a visit. They saw Efren wearing Melanio's wristwatch. Maritess insisted that her parents were still in Davao for medical check-up.

In August, Maritess and her children, together with the Deocampo brothers, left the Alolod house to live at Sitio Gilagila, *Barangay* Kuya, South Upi, Maguindanao. When the Alolod spouses did not return to their home, their relatives started looking for them. They found out that the missing couple did not go to either Davao or Cotabato or to their relatives in Iloilo. Their clothes and other personal effects were still in the house. The last entry on the recovered diary of Melanio was on May 27. Suspecting that something was amiss, the couple's relatives, Francisco Estaris and Joel Relles, searched the house for clues. They even dug up elevated and depressed soil formation around the place but for naught.

Finally, on October 9, 1998 Francisco noticed a portion of the land planted with *camote*. Francisco found the place unlikely for *camote* since it was shaded from the sun. Those who boarded at the house said that it was Maritess and Efren who planted them. With the help of others, Francisco dug up the suspected spot. There they found the decomposing bodies of Melanio and Lucena. Based on the post-mortem report, Melanio was strangled with a wire; Lucena was stabbed.

On May 10, 2001 the RTC found the four accused guilty of murder of Lucena, with Efren and Edwin as principals and Maritess and Elmer as accessories, in Criminal Case 2531 and of the murder of Melanio in Criminal Case 2532. In each case, the RTC sentenced Efren and Edwin to suffer the penalty of death, while Maritess and Elmer were sentenced to suffer the penalty of imprisonment for 4 years and 2 months of *prision correccional*, as minimum to 10 years of *prision mayor*, as maximum. The RTC also ordered the accused to pay ₱50,000.00 to the heirs of Lucena and another ₱50,000.00 to the heirs of Melanio, and to pay the costs.

While the case was on appeal, the Court of Appeals (CA) granted the request of Maritess and Elmer to withdraw their

appeals, leaving only those of Efren and Edwin for its consideration. On August 30, 2007 the CA rendered judgment in CA-G.R. CR-HC 00419, affirming with modification the RTC decision. The CA reduced the penalty imposed on Efren to *reclusion perpetua* and on Edwin who was a minor to 10 years and 1 day of *prision mayor*, as minimum to 15 years and 1 day of *reclusion temporal*, as maximum. In addition to the ₱50,000.00 granted by the RTC as civil indemnity in each of the cases, the CA further ordered the additional payment of ₱25,000.00 as exemplary damages and another ₱25,000.00 as temperate damages for a total of ₱100,000.00 in each case, with the principals severally liable for ₱60,000.00 and the accessories for ₱40,000.00 of this amount. Efren and Edwin appealed to this Court. Edwin, however, on a letter to the Office of the Solicitor General dated December 7, 2008, manifested his intention to withdraw his appeal. On August 26, 2009 the Court granted Edwin's withdrawal, leaving Efren as the sole accused-appellant in this case.

The Issue Presented

The sole issue presented in this case is whether or not the CA erred in affirming the RTC's finding that accused Efren was responsible for the murder of the Alolod couple based on circumstantial evidence.

The Ruling of the Court

The rule of evidence that applies when no witness saw the commission of the crime[1] provides:

SEC. 4. *Circumstantial evidence, when sufficient.* – Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

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[1] RULES OF COURT, Rule 133, Sec. 4.

The circumstances must constitute an unbroken chain that inexorably leads to one fair conclusion: the accused committed the crime to the exclusion of all others.[2]

Here, those circumstances abound.

1. Efren had always been banned from the old couple's house because they strongly disapproved his relationship with Maritess, their adopted daughter so he had no business being around that house.

2. The old couple were enjoying good health before the evening of May 27, 1998.

3. On May 28 they were suddenly gone from the house, meaning that they were killed on the night of May 27 or early morning of May 28.

4. On the night of May 27 the security guard at Salaman Institute saw Efren and Edwin standing on the school side of the fence next to the old couple's house. They even tried to conceal themselves in the school toilet. The next day, the guard discovered that the fence wire had been cut.

5. At about 2:00 a.m. of May 28 a neighbor heard the sound of a woman sobbing and what seemed like the butchering of a pig.

6. At break of dawn, a witness saw Efren in the Alolod kitchen.

7. From then on Efren and his brothers frequented the old couple's house, with Efren wearing the old man's watch.

8. Maritess definitely lied about her adoptive parents going to Cotabato City and subsequently to Davao City for medical treatment when people started looking for them. They were of course buried in the garden.

9. A witness heard Efren instructing Maritess to plant more *camote* on a pile of red soil beside the house.

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[2] *People v. Dela Cruz*, G.R. No. 174658, February 24, 2009, 580 SCRA 212, 221.

10. The bodies of the old couple were found underneath those plants.

The alibi of Efren that he was in Maguindanao at about the time the old couple was killed does not encourage belief. The security guard saw him with his brother at 8:30 p.m. of May 27 near the couple's house where they had no business being there. A neighbor saw Efren at the kitchen of that house on the morning following the slaying of the couple. And it was not physically impossible for the accused to be at the crime scene when it happened.[3] Sitio Gila-gila, South Upi, Maguindao was merely 15 kilometers from Lebak, Sultan Kudarat.

The CA, however, correctly reduced the imposable penalty from death to *reclusion perpetua*, not only because the information failed to allege the aggravating circumstances of dwelling and the victims' age but likewise, because of Republic Act 9346[4] that now prohibits the imposition of the death penalty.

Consistent with recent jurisprudence the Court is awarding ₱75,000.00 as civil indemnity,[5] ₱25,000.00 as temperate damages,[6] another ₱75,000.00 as moral damages,[7] and ₱30,000.00 as exemplary damages,[8] for a total of ₱205,000.00 in each case. But these amounts should only apply to Efren and not to the rest of the accused who withdrew their appeals.[9]

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[3] *People v. Tamolon*, G.R. No. 180169, February 27, 2009, 580 SCRA 384, 395.

[4] Entitled AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES, June 24, 2006.

[5] *People v Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255.

[6] *People v. Dolorido*, G.R. No. 191721, January 12, 2011, 639 SCRA 496, 508.

[7] *Supra* note 5.

[8] *People v. Satonero*, G.R. No. 186233, October 2, 2009, 602 SCRA 769, 783.

[9] Revised Rules of Criminal Procedure, Rule 122, Sec. 11.

Here, the RTC ordered Maritess, Edwin and Elmer to pay only ₱50,000.00 as civil indemnity in each case or a total of ₱100,000.00.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals in CA-G.R. CR-HC 00419 dated August 30, 2007 with **MODIFICATION** ordering accused Efren Deocampo to indemnify the heirs of Melanio and Lucena Alolod in the amounts of ₱75,000.00 as civil indemnity, ₱25,000.00 as temperate damages, another ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages, or a total of ₱205,000.00 in each case, and to pay the costs.

SO ORDERED.

Carpio,[*] *Peralta (Acting Chairperson), Perez,*[**] and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 186269. February 15, 2012]

SPOUSES ROMAN A. PASCUAL and MERCEDITA R. PASCUAL, FRANCISCO A. PASCUAL, MARGARITA CORAZON D. MARIANO, EDWIN D. MARIANO and DANNY R. MARIANO, *petitioners, vs.* **SPOUSES ANTONIO BALLESTEROS and LORENZA MELCHOR-BALLESTEROS,** *respondents.*

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[*] Designated as additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order 1185 dated February 10, 2012.

[**] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order 1192 dated February 10, 2012.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ALLOWED; DISTINGUISHED FROM QUESTIONS OF FACT.— 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. x x x [I]n the absence of any exceptional circumstances to warrant the contrary, this Court must abide by the prevailing rule that findings of fact of the trial court, more so when affirmed by the CA, are binding and conclusive upon it.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; EXTINGUISHMENT OF SALE; LEGAL REDEMPTION; WRITTEN NOTICE MANDATORY FOR THE COMMENCEMENT OF THE 30-DAY PERIOD WITHIN WHICH TO EXERCISE THE RIGHT OF REDEMPTION.— [T]he 30-day period given to the respondents within which to exercise their right of redemption has not commenced in view of the absence of a written notice. Verily, despite the respondents' actual knowledge of the sale to the respondents, a written notice is still mandatory and indispensable for purposes of the commencement of the 30-day period within which to exercise the right of redemption. Article 1623 of the Civil Code succinctly provides that: Article 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days **from the notice in writing by the prospective vendor, or by the vendor**, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners. The right of redemption of co-owners excludes that of adjoining owners. The indispensability of the "written notice requirement" for

purposes of the exercise of the right of redemption was explained by this Court in *Barcellano v. Bañas* x x x.

APPEARANCES OF COUNSEL

Gilbert U. Medrano for petitioners.
Melchor B. Guillen 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 the spouses Roman A. Pascual and Mercedita R. Pascual (Spouses Pascual), Francisco A. Pascual (Francisco), Margarita Corazon D. Mariano (Margarita), Edwin D. Mariano and Danny R. Mariano (petitioners) assailing the Decision[1] dated July 29, 2008 and Resolution[2] dated January 30, 2009 issued by the Court of Appeals (CA) in CA-G.R. CV No. 89111.

The instant case involves a 1,539 square meter parcel of land (subject property) situated in *Barangay* Sta. Maria, Laoag City and covered by Transfer Certificate of Title (TCT) No. T-30375[3] of the Laoag City registry. The subject property is owned by the following persons, with the extent of their respective shares over the same: (1) the spouses Albino and Margarita Corazon Mariano, 330 square meters; (2) Angela Melchor (Angela), 466.5 square meters; and (3) the spouses Melecio and Victoria Melchor (Spouses Melchor), 796.5 square meters.

Upon the death of the Spouses Melchor, their share in the subject property was inherited by their daughter Lorenza Melchor

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[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring; *rollo*, pp. 41-54.

[2] *Id.* at 55-58.

[3] *Id.* at 67-69.

Ballesteros (Lorenza). Subsequently, Lorenza and her husband Antonio Ballesteros (respondents) acquired the share of Angela in the subject property by virtue of an Affidavit of Extrajudicial Settlement with Absolute Sale[4] dated October 1, 1986.

On August 11, 2000, Margarita, then already widowed, together with her children, sold their share in the subject property to Spouses Pascual and Francisco.[5] Subsequently, Spouses Pascual and Francisco caused the cancellation of TCT No. 30375 and, thus, TCT No. T-32522[6] was then issued in their names together with Angela and Spouses Melchor.

Consequently, the respondents, claiming that they did not receive any written notice of the said sale in favor of Spouses Pascual and Francisco, filed with the Regional Trial Court (RTC) of Laoag City a Complaint[7] for legal redemption against the petitioners. The respondents claimed that they are entitled to redeem the portion of the subject property sold to Spouses Pascual and Francisco being co-owners of the same.

For their part, the petitioners claimed that there was no co-ownership over the subject property considering that the shares of the registered owners thereof had been particularized, specified and subdivided and, hence, the respondents has no right to redeem the portion of the subject property that was sold to them.[8]

On January 31, 2007, the RTC rendered a decision[9] dismissing the complaint for legal redemption filed by the respondents. In disposing of the said complaint, the RTC summed up the issues raised therein as follows: (1) whether the respondents herein

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[4] *Id.* at 80-81.

[5] *Id.* at 71-72.

[6] *Id.* at 65-66.

[7] *Id.* at 73-79.

[8] *Id.* at 83.

[9] *Id.* at 59-64.

and the predecessors-in-interest of the petitioners are co-owners of the subject property who have the right of redemption under Article 1620 of the Civil Code; and (2) if so, whether that right was seasonably exercised by the respondents within the 30-day redemption period under Article 1623 of the Civil Code.

On the first issue, the RTC held that the respondents and the predecessors-in-interest of the petitioners are co-owners of the subject property considering that the petitioners failed to adduce any evidence showing that the respective shares of each of the registered owners thereof were indeed particularized, specified and subdivided.

On the second issue, the RTC ruled that the respondents failed to seasonably exercise their right of redemption within the 30-day period pursuant to Article 1623 of the Civil Code. Notwithstanding the lack of a written notice of the sale of a portion of the subject property to Spouses Pascual and Francisco, the RTC asserted that the respondents had actual notice of the said sale. Failing to exercise their right of redemption within 30 days from actual notice of the said sale, the RTC opined that the respondents can no longer seek for the redemption of the property as against the petitioners.

Thereupon, the respondents appealed from the January 31, 2007 decision of the RTC of Laoag City with the CA. On July 29, 2008, the CA rendered the herein assailed Decision[10] the decretal portion of which reads:

> WHEREFORE, the appeal is **GRANTED** and the appealed January 31, 2007 Decision is, accordingly, **REVERSED** and **SET ASIDE.** In lieu thereof, another is entered approving [respondents'] legal redemption of the portion in litigation. The rest of their monetary claims are, however, **DENIED** for lack of factual and/or legal bases.
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> SO ORDERED.[11]

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[10] *Supra* note 1.

[11] *Rollo*, p. 53.

In allowing the respondents to exercise their right of redemption, the CA held that the 30-day period within which to exercise the said right had not yet lapsed considering the absence of a written notice of the said sale. Thus, the CA stated that "[t]he mandatory nature of the 'written notice requirement' is such that, notwithstanding the actual knowledge of the sale, written notice from the seller is still necessary in order to remove all uncertainties about the sale, its terms and conditions, as well as its efficacy and status."[12]

The petitioners sought for a reconsideration of the said July 29, 2008 Decision, but it was denied by the CA in its Resolution[13] dated January 30, 2009.

Undaunted, the petitioners instituted the instant petition for review on *certiorari* before this Court essentially asserting the following arguments: (1) their predecessors-in-interest and the respondents are not co-owners of the subject property since their respective shares therein had already been particularized, specified and subdivided; and (2) even if such co-ownership exists, the respondents could no longer exercise their right of redemption having failed to exercise the same within 30 days from actual knowledge of the said sale.

The petition is denied.

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

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[12] *Id.* at 51.

[13] *Supra* note 2.

it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[14]

The *first issue* raised by the petitioners is a factual question as it entails a determination of whether the subject property was indeed co-owned by the respondents and the predecessors-in-interest of the petitioners. Such determination would inevitably necessitate a review of the probative value of the evidence adduced in the case below.

In any case, it ought to be stressed that both the RTC and the CA found that the subject property was indeed co-owned by the respondents and the predecessors-in-interest of the petitioners. Thus, in the absence of any exceptional circumstances to warrant the contrary, this Court must abide by the prevailing rule that findings of fact of the trial court, more so when affirmed by the CA, are binding and conclusive upon it.[15]

Anent the *second issue* asserted by the petitioners, we find no reversible error on the part of the CA in ruling that the 30-day period given to the respondents within which to exercise their right of redemption has not commenced in view of the absence of a written notice. Verily, despite the respondents' actual knowledge of the sale to the respondents, a written notice is still mandatory and indispensable for purposes of the commencement of the 30-day period within which to exercise the right of redemption.

Article 1623 of the Civil Code succinctly provides that:

> Article 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days **from the notice in writing by the prospective vendor, or by the vendor**, as the case may be. The deed of sale shall not be recorded in the Registry of Property,

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

[15] *Bormaheco, Inc. v. Malayan Insurance Co. Inc.*, G.R. No. 156599, July 26, 2010, 625 SCRA 309, 318-319.

unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners. (emphasis supplied)

The indispensability of the "written notice requirement" for purposes of the exercise of the right of redemption was explained by this Court in *Barcellano v. Bañas*,[16] thus:

Nothing in the records and pleadings submitted by the parties shows that there was a written notice sent to the respondents. Without a written notice, the period of thirty days within which the right of legal pre-emption may be exercised, does not start.

The indispensability of a written notice had long been discussed in the early case of *Conejero v. Court of Appeals*, penned by Justice J.B.L. Reyes:

> With regard to the written notice, we agree with petitioners that such notice is indispensable, and that, in view of the terms in which Article of the Philippine Civil Code is couched, mere knowledge of the sale, acquired in some other manner by the redemptioner, does not satisfy the statute. The written notice was obviously exacted by the Code to remove all uncertainty as to the sale, its terms and its validity, and to quiet any doubts that the alienation is not definitive. The statute not having provided for any alternative, the method of notification prescribed remains exclusive.

This is the same ruling in *Verdad v. Court of Appeals*:

The written notice of sale is mandatory. This Court has long established the rule that notwithstanding actual knowledge of a co-owner, the latter is still entitled to a written notice from the selling co-owner in order to remove all uncertainties about the sale, its terms and conditions, as well as its efficacy and status.

Lately, in *Gosiengfiao Guillen v. The Court of Appeals*, this Court again emphasized the mandatory character of a written notice in legal redemption:

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[16] G.R. No. 165287, September 14, 2011.

> From these premises, we ruled that *"[P]etitioner-heirs have not lost their right to redeem, for in the absence of a written notification of the sale by the vendors, the 30-day period has not even begun to run."* These premises and conclusion leave no doubt about the thrust of *Mariano*: **The right of the petitioner-heirs to exercise their right of legal redemption exists, and the running of the period for its exercise has not even been triggered because they have not been notified in writing of the fact of sale.**
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> x x x x x x x x x

Justice Edgardo Paras, referring to the origins of the requirement, would explain in his commentaries on the New Civil Code that despite actual knowledge, the person having the right to redeem is **STILL** entitled to the written notice. Both the letter and the spirit of the New Civil Code argue against any attempt to widen the scope of the "written notice" by including therein any other kind of notice such as an oral one, or by registration. If the intent of the law has been to include verbal notice or any other means of information as sufficient to give the effect of this notice, there would have been no necessity or reason to specify in the article that said notice be in writing, for under the old law, a verbal notice or mere information was already deemed sufficient.

Time and time again, it has been repeatedly declared by this Court that where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation should be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice. x x x (citations omitted)

Here, it is undisputed that the respondents did not receive a written notice of the sale in favor of the petitioners. Accordingly, the 30-day period stated under Article 1623 of the Civil Code within which to exercise their right of redemption has not begun to run. Consequently, the respondents may still redeem from the petitioners the portion of the subject property that was sold to the latter.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED**. The assailed Decision dated July 29, 2008 and Resolution dated January 30, 2009 issued by the Court of Appeals in CA-G.R. CV No. 89111 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,* and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 187157. February 15, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNEL CLARITE *y* SALAZAR,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— [F]indings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court, save only for certain compelling reasons.

2. ID.; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES; PREVAILS AS AGAINST ALLEGATION OF FRAME-UP AND EXTORTION WITHOUT SUFFICIENT EVIDENCE.— In cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers on the ground that they are presumed to have performed their duties in a regular manner. The exception is when there is evidence

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[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1195 dated February 15, 2012.

to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties. In the case at bar, accused-appellant's only evidence of ill motive on the part of the NBI operatives is his own testimony of frame-up and extortion, a very common defense in dangerous drugs cases. We have held that such defense is viewed with disfavor, for it can be easily concocted. To substantiate such a defense, therefore, the evidence must be clear and convincing.

3. CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF DRUGS; ELEMENTS.— Jurisprudence holds that the elements of the crime of illegal sale of drugs are the following: (1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and payment therefor.

4. ID.; ID.; ID.; THAT THERE COULD BE SALE OF *SHABU* IN A CROWDED PLACE, ACKNOWLEDGED.— As for accused-appellant's argument that he would not have sold *shabu* in a crowded place, we find the same unconvincing. We have already held in *Ching v. People* that: "This Court observed in many cases that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, in private as well as in public places, even in the daytime. Indeed, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law. Hence, what matters is not the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs."

5. ID.; ID.; BUY-BUST OPERATION; PRIOR AUTHORITY OF THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA); ABSENCE THEREOF DOES NOT MAKE THE ARREST MADE ILLEGAL OR THE EVIDENCE OBTAINED INADMISSIBLE.— Accused-appellant also claims that the alleged buy-bust operation was conducted without the authorization of or coordination with the Philippine Drug Enforcement Agency (PDEA), in violation of Section 86 of Republic Act No. 9165, which provides: x x x Accused-appellant's assertion has no merit. This Court has already held that the silence of the foregoing provision as to the consequences of the failure on the part of the law enforcers to seek the prior authority of the PDEA cannot be interpreted

as a legislative intent to make an arrest without such PDEA participation illegal or evidence obtained pursuant to such an arrest inadmissible.

6. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; PENALTY OF LIFE IMPRISONMENT WITH PENALTY OF ₱500,000.00 MADE PROPER.— The trial court imposed the penalty of life imprisonment upon accused-appellant. While this penalty is within the period provided for in Section 5 of Republic Act No. 9165, the same omitted the fine that should likewise be imposed: x x x Thus, the Court of Appeals correctly modified the penalty by including therein a fine in the sum of ₱500,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00932 dated May 9, 2008, affirming with modification the conviction of accused-appellant Arnel Clarite *y* Salazar for violation of Section 5, Article II of Republic Act No. 9165.

The Amended Information, dated July 25, 2002, reads:

That on or about 11 July 2002, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully and feloniously sell, dispense, deliver and/or distribute four (4) plastic sachets containing white crystalline substance, tested and found out to be Methamphetamine Hydrochloride or '*shabu*', a regulated drug weighing 45.8712 grams to NBI poseur-buyer, for

[1] *Rollo*, pp. 3-13; penned by Associate Justice Edgardo P. Cruz with Associate Justices Rosmari D. Carandang and Apolinario D. Bruselas, Jr., concurring.

and in consideration of ₱50,000, a marked money bill, Philippine currency.[2]

The evidence of the prosecution, which included the testimonies of National Bureau of Investigation (NBI) special investigators Alfredo Romano, Jr. (Romano), Felipe Jessie Jimenez (Jimenez) and Rommel Dizon (Dizon), as well as P/Insp. Josephine Macura Clemen (Clemen) and Alejandro Cedeño (Cedeño), tended to establish the following:

On July 8, 2002, Romano received information from his "asset," Cedeño, that a certain Arnel, a supplier of illegal drugs from Cavite, is looking for a buyer of *shabu*.[3] Romano directed Cedeño to negotiate the sale.[4]

Cedeño communicated with accused-appellant, and the latter agreed that he would be arriving in Naga City in the morning of July 11, 2002. Accused-appellant would be carrying 50 grams of *shabu*, which will be sold to Cedeño's "financier" for ₱45,000.00.[5] With the authority of Atty. Jose Doloiras, the immediate superior of Romano, the NBI special investigators devised a plan to entrap said Arnel. Romano and Jimenez prepared what they called "*budol* [boodle] money," counterfeit notes made out of photocopied ₱1000 and ₱500 bills. The counterfeit bills, representing a total value of ₱50,000.00, were dusted with fluorescent powder at the Philippine National Police (PNP) Regional Crime Laboratory, Camp Simeon Ola, Legaspi City. On July 10, 2002, Romano was able to confirm with Cedeño that said "Arnel" was definitely arriving the following day at 8:00 a.m. at the Central Business District (CBD) terminal, Naga City.[6]

On July 11, 2002, Romano again confirmed with Cedeño that said "Arnel" would be coming at 8:00 a.m. At around 6:00

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[2] Records, p. 23.

[3] TSN, October 1, 2002.

[4] TSN, April 11, 2003, p. 6.

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

[6] TSN, October 1, 2002.

a.m., Romano, Jimenez and Dizon were at the NBI Office. It was at this time that Dizon was informed of the operation. Before 8:00 a.m., Romano, Jimenez, Dizon and Cedeño proceeded to the CBD terminal where they posted themselves in strategic locations. Dizon was posted at a parking space, while Romano and Jimenez were near each other, close to a Dunkin Donut shop housed inside the building at the terminal.[7]

While Romano and Cedeño were talking to each other in front of the Dunkin Donut shop, accused-appellant arrived, carrying a small bag.[8] The informant introduced Romano to accused-appellant. Romano asked for the *shabu*. When said *shabu* was handed to Romano, accused-appellant asked for the money. This was when accused-appellant noticed that the money was fake. Romano then removed his sunglasses to signal the completion of the transaction to Jimenez and Dizon.[9]

The NBI investigators arrested and handcuffed accused-appellant, and thereafter brought the latter to the NBI Office in Naga City. Therein, accused-appellant was booked, fingerprinted and photographed. Accused-appellant was then brought to the PNP Regional Crime Laboratory at Camp Simeon Ola, Legaspi City. P/Insp. Clemen examined the dorsal and palmar areas of accused-appellant's hands, as well as the plastic sachets handed by him to Romano. Both hands of accused-appellant were found positive for the presence of bright orange ultraviolet fluorescent powder. The plastic sachets, which had a total weight of 45.8712 grams, were positive for methamphetamine hydrochloride or *shabu*.[10]

Only accused-appellant was able to testify for the defense. He narrated that on July 10, 2002, at around 6:00 p.m., he was

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[7] TSN, December 10, 2002, pp. 6-8; TSN, November 13, 2002, pp. 8-9; TSN, October 1, 2002, p. 53.

[8] TSN, October 1, 2002, p. 29.

[9] *Id.* at 16-18.

[10] TSN, January 7, 2003, pp. 2-16.

sent by Mrs. Fely Gutierrez, his employer, to go to Naga City to deliver 100 grams of *shabu* to a certain Ching Lo. He was told that Ching Lo lived near the Sky Cable office and the Naga City Civic Center. On that day, he also wanted to fetch his mother-in-law from Ponong, Magarao, Camarines Sur in order that the latter may help her wife in taking care of her two children.[11]

Accused-appellant testified that per his employer's strict instruction, someone would approach him at the Naga City Civic Center. He was supposed to give the *shabu* to said person in exchange for ₱110,000.00. He stressed that he was then carrying 100 grams of *shabu*, not 45.87 grams as reported by the prosecution witnesses.[12]

Accused-appellant denied that the buy-bust operation took place. Instead, he narrated that he was aboard a tricycle at 6:00 a.m. on July 11, 2002, on his way to the Civic Center, when Romano and Jimenez apprehended him, forced him into their car and blindfolded him. While still blindfolded, Romano and Jimenez brought him to a hotel. He was told to contact his employer through a cellular phone and inform her of his arrest and that the arresting officers needed money to pay for their hotel bills. The NBI operatives were extorting money equivalent to the value of 50% of the 100 grams of *shabu*. After the accused-appellant was able to speak briefly with his employer, the latter turned off her phone and cannot be contacted again. The NBI operatives, showing him the marked money, threatened that a drug case would be filed against him. The NBI operatives told him to hold the marked money, but he refused and was not able to hold it. Accused-appellant was brought to the NBI Office in Naga City, then to Camp Ola in Legaspi City, where he was subjected to a paraffin test. Accused-appellant was later brought back to the NBI Office when someone told him that his employer was sending money to settle his case. Accused-appellant admitted that since October 2001, he accompanied his employer around

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[11] TSN, January 14, 2004, pp. 4-5.

[12] *Id.* at 21-22.

five or six times to deliver *shabu* to the aforementioned Ching Lo.[13]

On March 18, 2004, the Regional Trial Court (RTC) of Naga City rendered its Decision[14] finding accused-appellant guilty. The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing disquisition, judgment is hereby rendered finding accused, ARNEL CLARITE *y* Salazar, guilty beyond reasonable doubt of the offense of violation of Sec. 5, Article II of RA 9165, and hereby sentences him to suffer the penalty of life imprisonment.
>
> Considering that the accused has been undergoing preventive detention during the pendency of the trial in this case, let the same be credited in the service of his sentence.[15]

On May 9, 2008, the Court of Appeals rendered its Decision affirming with modification the RTC Decision:

> WHEREFORE, the appealed decision of the Regional Trial Court of Naga City (Branch 25) is AFFIRMED with MODIFICATION in that in addition to the penalty of life imprisonment imposed on accused-appellant, he is sentenced to pay a fine in the sum of ₱500,000.00.[16]

Hence, this appeal, where accused-appellant adopts the same lone assignment of error it raised before the Court of Appeals:

> THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 11, ARTICLE II, R.A. NO. 9165 DESPITE THE INADMISSIBILITY OF THE EVIDENCE OBTAINED THROUGH AN UNLAWFUL SEARCH.[17]

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[13] *Id.* at 6-19.

[14] CA *rollo*, pp. 57-62.

[15] *Id.* at 62.

[16] *Rollo*, p. 12.

[17] CA *rollo*, p. 43.

Accused-appellant's main contention is that he was arrested while he was riding a tricycle and not while he was supposedly selling *shabu*. Thus, since he was not caught *in flagrante delicto*, he can only be arrested with a warrant. Consequently, according to accused-appellant, the search conducted upon him cannot be deemed to have been incidental to a lawful arrest, thus, making the evidence obtained therefrom inadmissible. In making such argument, accused-appellant challenges the findings of fact of the trial court and the Court of Appeals which both accepted the version of the prosecution.

The present appeal must fail.

Unfortunately for accused-appellant, findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court,[18] save only for certain compelling reasons.[19] We perused the records of the case at bar and found no reason to disturb the findings of the courts *a quo*.

In cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers on the ground that they are presumed to have performed their duties in a regular manner. The exception is when there is evidence to the contrary suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties.[20] In the case at bar, accused-appellant's only evidence of ill motive on the part of the NBI operatives is his own testimony of frame-up and extortion, a very common defense in dangerous drugs cases. We have held that such defense is viewed with disfavor, for it can be easily concocted. To substantiate such a defense, therefore, the evidence must be clear and convincing.[21]

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[18] *People v. Lolos*, G.R. No. 189092, August 9, 2010, 627 SCRA 509, 516.

[19] *Espinosa v. People*, G.R. No. 181071, March 15, 2010, 615 SCRA 446, 454.

[20] *People v. Tion*, G.R. No. 172092, December 16, 2009, 608 SCRA 299, 316-317.

[21] *Zalameda v. People*, G.R. No. 183656, September 4, 2009, 598 SCRA 537, 556.

The trial court, which had the opportunity to observe the demeanor and conduct of Romano, Jimenez and Dizon, on one hand, and that of accused-appellant, on the other, was thoroughly convinced of the version of the prosecution in this matter. Furthermore, accused-appellant's admission in open court of being a drug courier for his employer, though not conclusive evidence of the specific act of selling *shabu* on the date and under the circumstances specified in the complaint, nevertheless constitutes circumstantial evidence of the same. By admitting the previous sales of *shabu*, accused-appellant in effect attested to his own proclivity to do such an act, as well as the accessibility to him of the object of his alleged illegal trade.

Jurisprudence holds that the elements of the crime of illegal sale of drugs are the following: (1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and payment therefor.[22]

The testimonies of Romano, corroborated by his fellow NBI investigators Jimenez and Dizon and informant Cedeño established the sale and delivery by accused-appellant Clarite to Romano of what was initially believed to be 50 grams of *shabu* in four plastic sachets, in exchange for what Clarite thought was ₱50,000.00. Romano positively identified accused-appellant Clarite as the person who sold the plastic sachets of *shabu* to him. As for the sale itself, Romano's account was simple and clear:

PROS. SAEZ:

Q As has been admitted by the defense, you stated in your affidavit that you were able to successfully have a transaction with Arnel Clarite at CBD terminal on July 11, 2002, in the morning, using boodle money in the amount of ₱50,000.00. Now, can you tell the Court how did you introduce yourself to Mr. Clarite that morning?

A I was introduced by my informant, sir, my asset.

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[22] *People v. Araneta*, G.R. No. 191064, October 20, 2010, 634 SCRA 475, 482.

PROS. SAEZ:

Q Where?

A In front of the terminal. I don't know exactly the place. It was in front of the terminal in Dunkin Donuts.

Q So, when you were introduced by your asset, where was Mr. Clarite then?

A He was in front of us, sir.

Q By the way, if Mr. Clarite is in court, can you point to him?

A Yes, sir, the one wearing yellow t-shirt, sir.

PROS. SAEZ:

Will the defense admit that the one wearing a yellow shirt is Mr. Clarite?

ATTY. BOTOR:

Yes, your honor.

PROS. SAEZ:

Q Now, when you were introduced by your asset to Mr. Clarite, what transpired next?

A After the introduction, we went on [with] the transaction. I asked for the *shabu* and he asked for the money, sir.

Q Now, which transpired first, who gave first?

A The *shabu*, sir.

Q He gave first the *shabu*?

A Then, I gave the money. Upon handing him the money, he noticed that it was boodle. But, it was too late, I already gave the signal to my companions who were still there.

Q How can you say that Mr, Clarite was able to notice that what you gave him was boodle money?

A He told me, "What is this?" Because it was obvious by merely looking at the bundle of money, you can detect that it was boodle. But, I admit that since the government has no fund, we used in our buy-bust operations the show money or the

money to be used in the purchasing of illegal drugs, we used our initiative to reproduce or use boodle money in every buy-bust operation.[23]

The trial court was very careful in considering the testimony of Romano and even asked very inquisitive questions apparently designed to test his credibility. Romano, however, remained steadfast:

COURT: The Court has still few questions to ask.

Q By the way, you testified awhile ago upon question by the Court that it was your team which arrived first at the meeting place, how long did your team wait for the accused?

A Several minutes, your honor.

Q Around?

A Before 8:00 o'clock, sir, around, let's say 15 minutes.

Q What time did the team go to the CBD for the purpose of waiting?

A 7:30, your honor.

Q And you waited for around 15 minutes?

A Yes, sir.

Q Now, being a poseur-buyer, what did you and the accused talk about after he was introduced to you by the informant?

A I asked him to show me the sachets of *shabu* and he asked for the money.

Q Did you and the accused agree regarding the quantity of the sachets of *shabu* you were to buy from the accused?

A Beforehand, your honor, we already agreed that we are going to buy 50 grams of *shabu* worth ₱50,000.00.

COURT:

Q Now, did you ask from the accused whether he already had that 50 grams of *shabu*?

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[23] TSN, October 1, 2002, pp. 15-17.

A Yes, your honor, I asked him and he showed it to me. He took it from his small bag.

Q And, did the accused also ask for the money?

A Yes, your honor, I handed him the boodle money.

Q You said awhile ago that it was with accused who handed first to you the four sachets of *shabu* and after which, you also handed to him the boodle money. Now, did the accused not ascertain first for himself to show him first the money before parting away the four sachets?

A Yes, your honor, after I showed it to him, I knew that he would notice that it was boodle, I already handed it to him.

Q But that was not the point which this Court would want to get from you, what this Court wants to know from you is whether the accused gave to you the *shabu* whether he first ascertained from you whether you have already the money with you?

A He did not, your honor.

Q Meaning, the accused did not ask from you, "show to me first the money before I give you the *shabu*?"

A He did not, your honor, I asked him to show me the *shabu* because I was introduced by my informant as a good buyer. That is why he gave me first the *shabu*.[24]

It was likewise clear from the evidence on record that P/Insp. Clemen examined the contents of the plastic sachets sold to Romano, and confirmed that they contained methamphetamine hydrochloride (*shabu*), even though the total weight was only 45.8712 grams. P/Insp. Clemen was also able to verify that both hands of accused-appellant were positive for the presence of bright orange ultraviolet fluorescent powder, thus, corroborating the testimonies of the NBI investigators that he received the counterfeit money which were dusted with such powder. This also belies the testimony of accused-appellant that he never held the marked money.[25]

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[24] *Id.* at 53-55.

[25] See TSN, January 14, 2004, p. 10.

As for accused-appellant's argument that he would not have sold *shabu* in a crowded place, we find the same unconvincing. We have already held in *Ching v. People*[26] that:

> This Court observed in many cases that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, in private as well as in public places, even in the daytime. Indeed, drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law. Hence, what matters is not the time and venue of the sale, but the fact of agreement and the acts constituting sale and delivery of the prohibited drugs.[27]

Accused-appellant also claims that the alleged buy-bust operation was conducted without the authorization of or coordination with the Philippine Drug Enforcement Agency (PDEA), in violation of Section 86 of Republic Act No. 9165, which provides:

> Section 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions*. — The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: *Provided*, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.
>
> The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen

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[26] G.R. No. 177237, October 17, 2008, 569 SCRA 711.

[27] *Id.* at 734.

(18) months from the effectivity of this Act: *Provided*, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided, however*, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, **That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters**. (Emphasis supplied.)

Accused-appellant's assertion has no merit. This Court has already held that the silence of the foregoing provision as to the consequences of the failure on the part of the law enforcers to seek the prior authority of the PDEA cannot be interpreted as a legislative intent to make an arrest without such PDEA participation illegal or evidence obtained pursuant to such an arrest inadmissible.[28]

The trial court imposed the penalty of life imprisonment upon accused-appellant. While this penalty is within the period provided for in Section 5 of Republic Act No. 9165, the same omitted the fine that should likewise be imposed:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death **and** a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. (Emphasis added.)

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[28] *People v. Berdadero*, G.R. No. 179710, June 29, 2010, 622 SCRA 196, 207.

Thus, the Court of Appeals correctly modified the penalty by including therein a fine in the sum of ₱500,000.00.

WHEREFORE, the Petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00932 dated May 9, 2008 is hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 187567. February 15, 2012]

THE REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **NORA FE SAGUN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTION OF LAW ALLOWED; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT.— [I]t is necessary to stress that a direct recourse to this Court from the decisions, final resolutions and orders of the RTC may be taken where only questions of law are raised or involved. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct or not, is a question of law.

2. POLITICAL LAW; PHILIPPINE CITIZENSHIP; THERE IS NO PROCEEDING FOR THE JUDICIAL DECLARATION OF THE CITIZENSHIP OF AN INDIVIDUAL.— [T]his Court has consistently ruled that there is no proceeding established by law, or the Rules for the judicial declaration of the citizenship of an individual. There is no specific legislation authorizing the institution of a judicial proceeding to declare that a given person is part of our citizenry. This was our ruling in *Yung Uan Chu v. Republic* citing the early case of *Tan v. Republic of the Philippines*, where we clearly stated: "Under our laws, there can be no action or proceeding for the judicial declaration of the citizenship of an individual. Courts of justice exist for settlement of justiciable controversies, which imply a given right, legally demandable and enforceable, an act or omission violative of said right, and a remedy, granted or sanctioned by law, for said breach of right. As an incident only of the adjudication of the rights of the parties to a controversy, the court may pass upon, and make a pronouncement relative to their status. Otherwise, such a pronouncement is beyond judicial power. x x x." Clearly, it was erroneous for the trial court to make a specific declaration of respondent's Filipino citizenship as such pronouncement was not within the court's competence. x x x The special proceeding provided under Section 2, Rule 108 of the Rules of Court on *Cancellation or Correction of Entries in the Civil Registry*, merely allows any interested party to file an action for cancellation or correction of entry in the civil registry, *i.e.*, election, loss and recovery of citizenship, which is not the relief prayed for by the respondent. x x x As to the propriety of respondent's petition seeking a judicial declaration of election of Philippine citizenship, it is imperative that we determine whether respondent is required under the law to make an election and if so, whether she has complied with the procedural requirements in the election of Philippine citizenship.

3. ID.; ID.; CONSTITUTIONAL PROVISIONS ON CITIZENSHIP, DISCUSSED; APPLICATION IN CASE AT BAR.— When respondent was born on August 8, 1959, the governing charter was the 1935 Constitution, which declares as citizens of the Philippines those whose mothers are citizens of the Philippines and elect Philippine citizenship upon reaching the age of majority. Sec. 1, Art. IV of the 1935 Constitution reads: x x x

Under Article IV, Section 1(4) of the 1935 Constitution, the citizenship of a legitimate child born of a Filipino mother and an alien father followed the citizenship of the father, unless, upon reaching the age of majority, the child elected Philippine citizenship. The right to elect Philippine citizenship was recognized in the 1973 Constitution when it provided that "[t]hose who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five" are citizens of the Philippines. Likewise, this recognition by the 1973 Constitution was carried over to the 1987 Constitution which states that "[t]hose born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority" are Philippine citizens. It should be noted, however, that the 1973 and 1987 Constitutional provisions on the election of Philippine citizenship should not be understood as having a curative effect on any irregularity in the acquisition of citizenship for those covered by the 1935 Constitution. If the citizenship of a person was subject to challenge under the old charter, it remains subject to challenge under the new charter even if the judicial challenge had not been commenced before the effectivity of the new Constitution. Being a legitimate child, respondent's citizenship followed that of her father who is Chinese, unless upon reaching the age of majority, she elects Philippine citizenship. It is a settled rule that only legitimate children follow the citizenship of the father and that illegitimate children are under the parental authority of the mother and follow her nationality. An illegitimate child of Filipina need not perform any act to confer upon him all the rights and privileges attached to citizens of the Philippines; he automatically becomes a citizen himself. But in the case of respondent, for her to be considered a Filipino citizen, she must have validly elected Philippine citizenship upon reaching the age of majority.

4. ID.; ID.; COMMONWEALTH ACT NO. 625 ON THE PROCEDURE THAT SHOULD BE FOLLOWED TO MAKE A VALID ELECTION OF PHILIPPINE CITIZENSHIP.— Commonwealth Act (C.A.) No. 625, enacted pursuant to Section 1(4), Article IV of the 1935 Constitution, prescribes the procedure that should be followed in order to make a valid election of Philippine citizenship, to wit: x x x Based on the foregoing, the statutory formalities of electing Philippine citizenship are:

(1) a statement of election under oath; (2) an oath of allegiance to the Constitution and Government of the Philippines; and (3) registration of the statement of election and of the oath with the nearest civil registry. Furthermore, no election of Philippine citizenship shall be accepted for registration under C.A. No. 625 unless the party exercising the right of election has complied with the requirements of the Alien Registration Act of 1950. In other words, he should first be required to register as an alien. Pertinently, the person electing Philippine citizenship is required to file a petition with the Commission of Immigration and Deportation (now Bureau of Immigration) for the cancellation of his alien certificate of registration based on his aforesaid election of Philippine citizenship and said Office will initially decide, based on the evidence presented the validity or invalidity of said election. Afterwards, the same is elevated to the Ministry (now Department) of Justice for final determination and review.

5. ID.; ID.; NON-COMPLIANCE THEREWITH CONSTITUTES FAILURE TO VALIDLY ELECT PHILIPPINE CITIZENSHIP.— [R]espondent failed to comply with the legal requirements for a valid election. Specifically, respondent had not executed a sworn statement of her election of Philippine citizenship. The only documentary evidence submitted by respondent in support of her claim of alleged election was her oath of allegiance, executed 12 years after she reached the age of majority, which was unregistered. As aptly pointed out by the petitioner, even assuming *arguendo* that respondent's oath of allegiance suffices, its execution was not within a reasonable time after respondent attained the age of majority and was not registered with the nearest civil registry as required under Section 1 of C.A. No. 625. The phrase "reasonable time" has been interpreted to mean that the election should be made generally within three (3) years from reaching the age of majority. Moreover, there was no satisfactory explanation proffered by respondent for the delay and the failure to register with the nearest local civil registry. x x x Respondent cannot assert that the exercise of suffrage and the participation in election exercises constitutes a positive act of election of Philippine citizenship since the law specifically lays down the requirements for acquisition of citizenship by election. The mere exercise of suffrage, continuous and uninterrupted stay

in the Philippines, and other similar acts showing exercise of Philippine citizenship cannot take the place of election of Philippine citizenship. Hence, respondent cannot now be allowed to seek the intervention of the court to confer upon her Philippine citizenship when clearly she has failed to validly elect Philippine citizenship.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Geronimo R. Evangelista, Jr. for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* filed by the Solicitor General on behalf of the Republic of the Philippines, seeking the reversal of the April 3, 2009 Decision[1] of the Regional Trial Court (RTC), Branch 3, of Baguio City in Spcl. Pro. Case No. 17-R. The RTC granted the petition[2] filed by respondent Nora Fe Sagun entitled *"In re: Judicial Declaration of Election of Filipino Citizenship, Nora Fe Sagun v. The Local Civil Registrar of Baguio City."*

The facts follow:

Respondent is the legitimate child of Albert S. Chan, a Chinese national, and Marta Borromeo, a Filipino citizen. She was born on August 8, 1959 in Baguio City[3] and did not elect Philippine citizenship upon reaching the age of majority. In 1992, at the age of 33 and after getting married to Alex Sagun, she executed an Oath of Allegiance[4] to the Republic of the Philippines. Said

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[1] *Rollo*, pp. 27-32. Penned by Presiding Judge Fernando Vil Pamintuan.

[2] Records, pp. 1- 4.

[3] *Id.* at 60.

[4] *Id.* at 7.

document was notarized by Atty. Cristeta Leung on December 17, 1992, but was not recorded and registered with the Local Civil Registrar of Baguio City.

Sometime in September 2005, respondent applied for a Philippine passport. Her application was denied due to the citizenship of her father and there being no annotation on her birth certificate that she has elected Philippine citizenship. Consequently, she sought a judicial declaration of her election of Philippine citizenship and prayed that the Local Civil Registrar of Baguio City be ordered to annotate the same on her birth certificate.

In her petition, respondent averred that she was raised as a Filipino, speaks Ilocano and Tagalog fluently and attended local schools in Baguio City, including Holy Family Academy and the Saint Louis University. Respondent claimed that despite her part-Chinese ancestry, she always thought of herself as a Filipino. She is a registered voter of Precinct No. 0419A of Barangay Manuel A. Roxas in Baguio City and had voted in local and national elections as shown in the Voter Certification[5] issued by Atty. Maribelle Uminga of the Commission on Elections of Baguio City.

She asserted that by virtue of her positive acts, she has effectively elected Philippine citizenship and such fact should be annotated on her record of birth so as to entitle her to the issuance of a Philippine passport.

On August 7, 2007, the Office of the Solicitor General (OSG) entered its appearance as counsel for the Republic of the Philippines and authorized the City Prosecutor of Baguio City to appear in the above mentioned case.[6] However, no comment was filed by the City Prosecutor.

After conducting a hearing, the trial court rendered the assailed Decision on April 3, 2009 granting the petition and declaring respondent a Filipino citizen. The *fallo* of the decision reads:

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[5] *Id.* at 8.

[6] *Id.* at 28.

WHEREFORE, the instant petition is hereby GRANTED. Petitioner Nora Fe Sagun *y* Chan is hereby DECLARED [a] FILIPINO CITIZEN, having chosen or elected Filipino citizenship.

Upon payment of the required fees, the Local Civil Registrar of Baguio City is hereby directed to annotate [on] her birth certificate, this judicial declaration of Filipino citizenship of said petitioner.

IT IS SO ORDERED.[7]

Contending that the lower court erred in so ruling, petitioner, through the OSG, directly filed the instant recourse *via* a petition for review on *certiorari* before us. Petitioner raises the following issues:

I

Whether or not an action or proceeding for judicial declaration of Philippine citizenship is procedurally and jurisdictionally permissible; and,

II

Whether or not an election of Philippine citizenship, made twelve (12) years after reaching the age of majority, is considered to have been made "within a reasonable time" as interpreted by jurisprudence.[8]

Petitioner argues that respondent's petition before the RTC was improper on two counts: for one, law and jurisprudence clearly contemplate no judicial action or proceeding for the declaration of Philippine citizenship; and for another, the pleaded registration of the oath of allegiance with the local civil registry and its annotation on respondent's birth certificate are the ministerial duties of the registrar; hence, they require no court order. Petitioner asserts that respondent's petition before the trial court seeking a judicial declaration of her election of Philippine citizenship undeniably entails a determination and consequent declaration of her status as a Filipino citizen which is not allowed under our legal system. Petitioner also argues that if respondent's

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[7] *Rollo*, p. 32.

[8] *Id.* at 59.

intention in filing the petition is ultimately to have her oath of allegiance registered with the local civil registry and annotated on her birth certificate, then she does not have to resort to court proceedings.

Petitioner further argues that even assuming that respondent's action is sanctioned, the trial court erred in finding respondent as having duly elected Philippine citizenship since her purported election was not in accordance with the procedure prescribed by law and was not made within a "reasonable time." Petitioner points out that while respondent executed an oath of allegiance before a notary public, there was no affidavit of her election of Philippine citizenship. Additionally, her oath of allegiance which was not registered with the nearest local civil registry was executed when she was already 33 years old or 12 years after she reached the age of majority. Accordingly, it was made beyond the period allowed by law.

In her Comment,[9] respondent avers that notwithstanding her failure to formally elect Filipino citizenship upon reaching the age of majority, she has in fact effectively elected Filipino citizenship by her performance of positive acts, among which is the exercise of the right of suffrage. She claims that she had voted and participated in all local and national elections from the time she was of legal age. She also insists that she is a Filipino citizen despite the fact that her "election" of Philippine citizenship was delayed and unregistered.

In reply,[10] petitioner argues that the special circumstances invoked by respondent, like her continuous and uninterrupted stay in the Philippines, her having been educated in schools in the country, her choice of staying here despite the naturalization of her parents as American citizens, and her being a registered voter, cannot confer on her Philippine citizenship as the law specifically provides the requirements for acquisition of Philippine citizenship by election.

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[9] *Id.* at 43-44.

[10] *Id.* at 48-49.

Essentially, the issues for our resolution are: (1) whether respondent's petition for declaration of election of Philippine citizenship is sanctioned by the Rules of Court and jurisprudence; (2) whether respondent has effectively elected Philippine citizenship in accordance with the procedure prescribed by law.

The petition is meritorious.

At the outset, it is necessary to stress that a direct recourse to this Court from the decisions, final resolutions and orders of the RTC may be taken where only questions of law are raised or involved. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct or not, is a question of law.[11]

In the present case, petitioner assails the propriety of the decision of the trial court declaring respondent a Filipino citizen after finding that respondent was able to substantiate her election of Filipino citizenship. Petitioner contends that respondent's petition for judicial declaration of election of Philippine citizenship is procedurally and jurisdictionally impermissible. Verily, petitioner has raised questions of law as the resolution of these issues rest solely on what the law provides given the attendant circumstances.

In granting the petition, the trial court stated:

> This Court believes that petitioner was able to fully substantiate her petition regarding her election of Filipino citizenship, and the Local Civil Registrar of Baguio City should be ordered to annotate in her birth certificate her election of Filipino citizenship. This Court adds that the petitioner's election of Filipino citizenship should

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[11] *Sarsaba v. Vda. de Te*, G.R. No. 175910, July 30, 2009, 594 SCRA 410, 420.

be welcomed by this country and people because the petitioner has the choice to elect citizenship of powerful countries like the United States of America and China, however, petitioner has chosen Filipino citizenship because she grew up in this country, and has learned to love the Philippines. Her choice of electing Filipino citizenship is, in fact, a testimony that many of our people still wish to live in the Philippines, and are very proud of our country.

WHEREFORE, the instant petition is hereby GRANTED. Petitioner Nora Fe Sagun *y* Chan is hereby DECLARED as FILIPINO CITIZEN, having chosen or elected Filipino citizenship.[12]

For sure, this Court has consistently ruled that there is no proceeding established by law, or the Rules for the judicial declaration of the citizenship of an individual.[13] There is no specific legislation authorizing the institution of a judicial proceeding to declare that a given person is part of our citizenry.[14] This was our ruling in *Yung Uan Chu v. Republic*[15] citing the early case of *Tan v. Republic of the Philippines*,[16] where we clearly stated:

Under our laws, there can be no action or proceeding for the judicial declaration of the citizenship of an individual. Courts of justice exist for settlement of justiciable controversies, which imply a given right, legally demandable and enforceable, an act or omission violative of said right, and a remedy, granted or sanctioned by law, for said breach of right. As an incident only of the adjudication of the rights of the parties to a controversy, the court may pass upon, and make a pronouncement relative to their status. Otherwise, such a pronouncement is beyond judicial power. x x x

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[12] *Rollo*, pp. 31-32.

[13] *Yung Uan Chu v. Republic*, No. L-34973, April 14, 1988, 159 SCRA 593, 597; *Board of Commissioners v. Domingo*, No. L-21274, July 31, 1963, 8 SCRA 661, 664.

[14] *Id.* at 598; *Tan v. Republic of the Philippines*, 107 Phil. 632, 634 (1960).

[15] *Id.* at 597.

[16] *Supra* note 14 at 633; *Republic v. Maddela*, Nos. L-21664 and L- 21665, March 28, 1969, 27 SCRA 702, 705.

Clearly, it was erroneous for the trial court to make a specific declaration of respondent's Filipino citizenship as such pronouncement was not within the court's competence.

As to the propriety of respondent's petition seeking a judicial declaration of election of Philippine citizenship, it is imperative that we determine whether respondent is required under the law to make an election and if so, whether she has complied with the procedural requirements in the election of Philippine citizenship.

When respondent was born on August 8, 1959, the governing charter was the 1935 Constitution, which declares as citizens of the Philippines those whose mothers are citizens of the Philippines and elect Philippine citizenship upon reaching the age of majority. Sec. 1, Art. IV of the 1935 Constitution reads:

> Section 1. The following are citizens of the Philippines:
>
> x x x x x x x x x
>
> (4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

Under Article IV, Section 1(4) of the 1935 Constitution, the citizenship of a legitimate child born of a Filipino mother and an alien father followed the citizenship of the father, unless, upon reaching the age of majority, the child elected Philippine citizenship. The right to elect Philippine citizenship was recognized in the 1973 Constitution when it provided that "[t]hose who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five" are citizens of the Philippines.[17] Likewise, this recognition by the 1973 Constitution was carried over to the 1987 Constitution which states that "[t]hose born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority" are Philippine citizens.[18] It should be noted, however,

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[17] Sec. 1(3), Art. III, 1973 Constitution.

[18] Sec. 1(3), Art. IV, 1987 Constitution.

that the 1973 and 1987 Constitutional provisions on the election of Philippine citizenship should not be understood as having a curative effect on any irregularity in the acquisition of citizenship for those covered by the 1935 Constitution. If the citizenship of a person was subject to challenge under the old charter, it remains subject to challenge under the new charter even if the judicial challenge had not been commenced before the effectivity of the new Constitution.[19]

Being a legitimate child, respondent's citizenship followed that of her father who is Chinese, unless upon reaching the age of majority, she elects Philippine citizenship. It is a settled rule that only legitimate children follow the citizenship of the father and that illegitimate children are under the parental authority of the mother and follow her nationality.[20] An illegitimate child of Filipina need not perform any act to confer upon him all the rights and privileges attached to citizens of the Philippines; he automatically becomes a citizen himself.[21] But in the case of respondent, for her to be considered a Filipino citizen, she must have validly elected Philippine citizenship upon reaching the age of majority.

Commonwealth Act (C.A.) No. 625,[22] enacted pursuant to Section 1(4), Article IV of the 1935 Constitution, prescribes the procedure that should be followed in order to make a valid election of Philippine citizenship, to wit:

> Section 1. The option to elect Philippine citizenship in accordance with subsection (4), [S]ection 1, Article IV, of the Constitution shall

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[19] *Re: Application For Admission to the Philippine Bar. Vicente D. Ching*, Bar Matter No. 914, October 1, 1999, 316 SCRA 1, 7-8.

[20] *Go, Sr. v. Ramos*, G.R. Nos. 167569-70 and 171946, September 4, 2009, 598 SCRA 266, 294-295.

[21] *Id.* at 295.

[22] AN ACT PROVIDING FOR THE MANNER IN WHICH THE OPTION TO ELECT PHILIPPINE CITIZENSHIP SHALL BE DECLARED BY PERSON WHOSE MOTHER IS A FILIPINO CITIZEN, approved on June 7, 1941.

be expressed in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines.

Based on the foregoing, the statutory formalities of electing Philippine citizenship are: (1) a statement of election under oath; (2) an oath of allegiance to the Constitution and Government of the Philippines; and (3) registration of the statement of election and of the oath with the nearest civil registry.[23]

Furthermore, no election of Philippine citizenship shall be accepted for registration under C.A. No. 625 unless the party exercising the right of election has complied with the requirements of the Alien Registration Act of 1950. In other words, he should first be required to register as an alien.[24] Pertinently, the person electing Philippine citizenship is required to file a petition with the Commission of Immigration and Deportation (now Bureau of Immigration) for the cancellation of his alien certificate of registration based on his aforesaid election of Philippine citizenship and said Office will initially decide, based on the evidence presented the validity or invalidity of said election.[25] Afterwards, the same is elevated to the Ministry (now Department) of Justice for final determination and review.[26]

It should be stressed that there is no specific statutory or procedural rule which authorizes the direct filing of a petition for declaration of election of Philippine citizenship before the courts. The special proceeding provided under Section 2, Rule 108 of the Rules of Court on *Cancellation or Correction of Entries*

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[23] *Ma v. Fernandez, Jr.*, G.R. No. 183133, July 26, 2010, 625 SCRA 566, 577.

[24] Ronaldo P. Ledesma, *AN OUTLINE OF PHILIPPINE IMMIGRATION AND CITIZENSHIP LAWS*, Vol. I, 2006 ed., p. 526.

[25] *Id.* at 527, citing Memorandum Order dated August 18, 1956 of the CID.

[26] *Id.*, citing DOJ Opinion No. 182 dated August 19, 1982.

in the Civil Registry, merely allows any interested party to file an action for cancellation or correction of entry in the civil registry, *i.e.*, election, loss and recovery of citizenship, which is not the relief prayed for by the respondent.

Be that as it may, even if we set aside this procedural infirmity, still the trial court's conclusion that respondent duly elected Philippine citizenship is erroneous since the records undisputably show that respondent failed to comply with the legal requirements for a valid election. Specifically, respondent had not executed a sworn statement of her election of Philippine citizenship. The only documentary evidence submitted by respondent in support of her claim of alleged election was her oath of allegiance, executed 12 years after she reached the age of majority, which was unregistered. As aptly pointed out by the petitioner, even assuming *arguendo* that respondent's oath of allegiance suffices, its execution was not within a reasonable time after respondent attained the age of majority and was not registered with the nearest civil registry as required under Section 1 of C.A. No. 625. The phrase "reasonable time" has been interpreted to mean that the election should be made generally within three (3) years from reaching the age of majority.[27] Moreover, there was no satisfactory explanation proffered by respondent for the delay and the failure to register with the nearest local civil registry.

Based on the foregoing circumstances, respondent clearly failed to comply with the procedural requirements for a valid and effective election of Philippine citizenship. Respondent cannot assert that the exercise of suffrage and the participation in election exercises constitutes a positive act of election of Philippine citizenship since the law specifically lays down the requirements for acquisition of citizenship by election. The mere exercise of suffrage, continuous and uninterrupted stay in the Philippines,

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[27] *Re: Application For Admission to the Philippine Bar. Vicente D. Ching, supra* note 19 at 9; *Ma v. Fernandez, Jr., supra* note 23 at 578.

cannot take the place of election of Philippine citizenship. Hence, respondent cannot now be allowed to seek the intervention of the court to confer upon her Philippine citizenship when clearly she has failed to validly elect Philippine citizenship. As we held in *Ching*,[28] the prescribed procedure in electing Philippine citizenship is certainly not a tedious and painstaking process. All that is required of the elector is to execute an affidavit of election of Philippine citizenship and, thereafter, file the same with the nearest civil registry. Having failed to comply with the foregoing requirements, respondent's petition before the trial court must be denied.

WHEREFORE, the petition is **GRANTED**. The Decision dated April 3, 2009 of the Regional Trial Court, Branch 3 of Baguio City in Spcl. Pro. Case No. 17-R is **REVERSED and SET ASIDE**. The petition for judicial declaration of election of Philippine citizenship filed by respondent Nora Fe Sagun is hereby **DISMISSED** for lack of merit.

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187926. February 15, 2012]

DR. EMMANUEL JARCIA, JR. and DR. MARILOU BASTAN, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[28] *Id.* at 12.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DOCTRINE OF *RES IPSA LOQUITUR*, ELUCIDATED.— This doctrine of *res ipsa loquitur* means "Where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care." The *Black's Law Dictionary* defines the said doctrine. Thus: "The thing speaks for itself. Rebuttable presumption or inference that defendant was negligent, which arises upon proof that the instrumentality causing injury was in defendant's exclusive control, and that the accident was one which ordinarily does not happen in absence of negligence. *Res ipsa loquitur* is a rule of evidence whereby negligence of the alleged wrongdoer may be inferred from the mere fact that the accident happened provided the character of the accident and circumstances attending it lead reasonably to belief that in the absence of negligence it would not have occurred and that thing which caused injury is shown to have been under the management and control of the alleged wrongdoer. Under this doctrine, the happening of an injury permits an inference of negligence where plaintiff produces substantial evidence that the injury was caused by an agency or instrumentality under the exclusive control and management of defendant, and that the occurrence was such that in the ordinary course of things would not happen if reasonable care had been used."

2. ID.; ID.; ID.; MADE PROPER TO THE LAW OF NEGLIGENCE ONLY WHEN UNDER THE CIRCUMSTANCES INVOLVED, DIRECT EVIDENCE IS ABSENT AND NOT READILY AVAILABLE.— The doctrine of *res ipsa loquitur* as a rule of evidence is unusual to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence. The doctrine, however, is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience. The rule, when applicable to the facts and circumstances of a given case, is not meant to and does not dispense with the requirement of

proof of culpable negligence on the party charged. It merely determines and regulates what shall be *prima facie* evidence thereof and helps the plaintiff in proving a breach of the duty. The doctrine can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available.

3. ID.; ID.; ID.; REQUISITES.— The requisites for the application of the doctrine of *res ipsa loquitur* are: ***(1)*** the accident was of a kind which does not ordinarily occur unless someone is negligent; ***(2)*** the instrumentality or agency which caused the injury was under the exclusive control of the person in charge; and ***(3)*** the injury suffered must not have been due to any voluntary action or contribution of the person injured.

4. CRIMINAL LAW; NEGLIGENCE AND RECKLESS IMPRUDENCE.— Negligence is defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. Reckless imprudence consists of voluntarily doing or failing to do, without malice, an act from which material damage results by reason of an *inexcusable lack of precaution* on the part of the person performing or failing to perform such act.

5. ID.; SIMPLE NEGLIGENCE; ELEMENTS.— The elements of simple negligence are: (1) that there is lack of precaution on the part of the offender, and (2) that the damage impending to be caused is not immediate or the danger is not clearly manifest.

6. ID.; APPEALS; ISSUES RAISED FOR THE FIRST TIME ON APPEAL, NOT APPRECIATED.— This Court cannot x x x stamp its imprimatur on the petitioners' contention that no physician-patient relationship existed between them and patient Roy Jr., since they were not his attending physicians at that time. x x x [T]his issue was never raised during the trial at the RTC or even before the CA. The petitioners, therefore, raise the want of doctor-patient relationship for the first time on appeal with this Court. It has been settled that "issues raised for the first time on appeal cannot be considered because a party is not permitted to change his theory on appeal. To allow him to do so is unfair to the other party and offensive to the rules of fair play, justice and due process." Stated differently, basic

considerations of due process dictate that theories, issues and arguments not brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court.

7. REMEDIAL LAW; EVIDENCE; PHYSICIAN-PATIENT RELATIONSHIP; ELUCIDATED.— In the case of *Lucas v. Tuaño*, the Court wrote that "[w]hen a patient engages the services of a physician, a physician-patient relationship is generated. And in accepting a case, the physician, for all intents and purposes, represents that he has the needed training and skill possessed by physicians and surgeons practicing in the same field; and that he will employ such training, care, and skill in the treatment of the patient. Thus, in treating his patient, a physician is under a ***duty*** to exercise that degree of care, skill and diligence which physicians in the same general neighborhood and in the same general line of practice ordinarily possess and exercise in like cases. Stated otherwise, the physician has the obligation to use at least the same level of care that any other reasonably competent physician would use to treat the condition under similar circumstances." Indubitably, a physician-patient relationship exists between the petitioners and patient Roy Jr. Notably, the latter and his mother went to the ER for an immediate medical attention. The petitioners allegedly passed by and were requested to attend to the victim. x x x They obliged and examined the victim, and later assured the mother that everything was fine and that they could go home. Clearly, a physician-patient relationship was established between the petitioners and the patient Roy Jr. Article II, Section 1 of the Code of Medical Ethics of the Medical Profession in the Philippines states: "A physician should attend to his patients faithfully and conscientiously. He should secure for them all possible benefits that may depend upon his professional skill and care. As the sole tribunal to adjudge the physician's failure to fulfill his obligation to his patients is, in most cases, his own conscience, violation of this rule on his part is discreditable and inexcusable." Established medical procedures and practices, though in constant instability, are devised for the purpose of preventing complications.

8. CIVIL LAW; DAMAGES; MADE PROPER WITH THE FAILURE OF PETITIONER-DOCTORS TO ADMINISTER THE NECESSARY MEDICAL ATTENTION TO THEIR

PATIENT.— While no criminal negligence was found in the petitioners' failure to administer the necessary medical attention to Roy Jr., the Court holds them civilly liable for the resulting damages to their patient. While it was the taxi driver who ran over the foot or leg of Roy Jr., their negligence was doubtless contributory. It appears undisputed that the amount of ₱3,850.00, as expenses incurred by patient Roy Jr., was adequately supported by receipts. The Court, therefore, finds the petitioners liable to pay this amount by way of actual damages. The Court is aware that no amount of compassion can suffice to ease the sorrow felt by the family of the child at that time. Certainly, the award of moral and exemplary damages in favor of Roy Jr. in the amount of ₱100,000.00 and ₱50,000.00, respectively, is proper in this case. It is settled that moral damages are not punitive in nature, but are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly inflicted on a person. Intended for the restoration of the psychological or emotional *status quo ante*, the award of moral damages is designed to compensate emotional injury suffered, not to impose a penalty on the wrongdoer. The Court, likewise, finds the petitioners also liable for exemplary damages in the said amount. Article 2229 of the Civil Code provides that exemplary damages may be imposed by way of example or correction for the public good.

APPEARANCES OF COUNSEL

Teresita R. Sanchez, M.D. for petitioners.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

Even early on, patients have consigned their lives to the skill of their doctors. Time and again, it can be said that the most important goal of the medical profession is the preservation of life and health of the people. Corollarily, when a physician departs from his sacred duty and endangers instead the life of

his patient, he must be made liable for the resulting injury. This Court, as this case would show, cannot and will not let the act go unpunished.[1]

This is a petition for review under Rule 45 of the Rules of Court challenging the August 29, 2008 Decision[2] of the Court of Appeals *(CA)*, and its May 19, 2009 Resolution[3] in CA-G.R. CR No. 29559, dismissing the appeal and affirming *in toto* the June 14, 2005 Decision[4] of the Regional Trial Court, Branch 43, Manila *(RTC)*, finding the accused guilty beyond reasonable doubt of simple imprudence resulting to serious physical injuries.

THE FACTS

Belinda Santiago *(Mrs. Santiago)* lodged a complaint with the National Bureau of Investigation *(NBI)* against the petitioners, Dr. Emmanuel Jarcia, Jr. *(Dr. Jarcia)* and Dr. Marilou Bastan *(Dr. Bastan)*, for their alleged neglect of professional duty which caused her son, Roy Alfonso Santiago *(Roy Jr.)*, to suffer serious physical injuries. Upon investigation, the NBI found that Roy Jr. was hit by a taxicab; that he was rushed to the Manila Doctors Hospital for an emergency medical treatment; that an X-ray of the victim's ankle was ordered; that the X-ray result showed no fracture as read by Dr. Jarcia; that Dr. Bastan entered the emergency room *(ER)* and, after conducting her own examination of the victim, informed Mrs. Santiago that since it was only the ankle that was hit, there was no need to examine the upper leg; that eleven (11) days later, Roy Jr. developed fever, swelling of the right leg and misalignment of the right foot; that Mrs. Santiago brought him back to the hospital; and that the X-ray revealed a right mid-tibial fracture and a linear hairline fracture in the shaft of the bone.

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[1] See the case of *Dr. Batiquin v. Court of Appeals*, 327 Phil. 965 (1996).

[2] *Rollo*, pp. 50-65. Penned by Associate Justice Isaias Dicdican, with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Marlene Gonzales-Sison, concurring.

[3] *Id.* at 67-68.

[4] *Id.* at 70-79.

The NBI indorsed the matter to the Office of the City Prosecutor of Manila for preliminary investigation. Probable cause was found and a criminal case for reckless imprudence resulting to serious physical injuries, was filed against Dr. Jarcia, Dr. Bastan and Dr. Pamittan,[5] before the RTC, docketed as Criminal Case No. 01-196646.

On June 14, 2005, the RTC found the petitioners guilty beyond reasonable doubt of the crime of *Simple Imprudence Resulting to Serious Physical Injuries*. The decretal portion of the RTC decision reads:

> WHEREFORE, premises considered, the Court finds accused **DR. EMMANUEL JARCIA, JR.** and **DR. MARILOU BASTAN** GUILTY beyond reasonable doubt of the crime of SIMPLE IMPRUDENCE RESULTING TO SERIOUS PHYSICAL INJURIES and are hereby sentenced to suffer the penalty of **ONE (1) MONTH and ONE (1) DAY to TWO (2) MONTHS** and to indemnify MRS. BELINDA SANTIAGO the amount of ₱3,850.00 representing medical expenses without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> It appearing that Dr. Pamittan has not been apprehended nor voluntarily surrendered despite warrant issued for her arrest, let warrant be issued for her arrest and the case against her be ARCHIVED, to be reinstated upon her apprehension.
>
> SO ORDERED.[6]

The RTC explained:

> After a thorough and in depth evaluation of the evidence adduced by the prosecution and the defense, this court finds that the evidence of the prosecution is the more credible, concrete and sufficient to create that moral certainty in the mind of the Court that accused herein [are] criminally responsible. The Court believes that accused are negligent when both failed to exercise the necessary and reasonable prudence in ascertaining the extent of injury of Alfonso Santiago, Jr.

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[5] No first name on record.

[6] *Rollo*, p. 79.

However, the negligence exhibited by the two doctors does not approximate negligence of a reckless nature but merely amounts to simple imprudence. Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not the immediate nor the danger clearly manifest. The elements of simple imprudence are as follows.

1. that there is lack of precaution on the part of the offender; and
2. that the damage impending to be caused is not immediate of the danger is not clearly manifest.

Considering all the evidence on record, The Court finds the accused guilty for simple imprudence resulting to physical injuries. Under Article 365 of the Revised Penal Code, the penalty provided for is *arresto mayor* in its minimum period.[7]

Dissatisfied, the petitioners appealed to the CA.

As earlier stated, the CA affirmed the RTC decision *in toto*. The August 29, 2008 Decision of the CA pertinently reads:

This Court holds concurrently and finds the foregoing circumstances sufficient to sustain a judgment of conviction against the accused-appellants for the crime of simple imprudence resulting in serious physical injuries. The elements of imprudence are: (1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time and place.

Whether or not Dr. Jarcia and Dr. Bastan had committed an "inexcusable lack of precaution" in the treatment of their patient is to be determined according to the standard of care observed by other members of the profession in good standing under similar circumstances, bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science. In

[7] *Id.* at 78.

the case of *Leonila Garcia-Rueda v. Pascasio*, the Supreme Court stated that, in accepting a case, a doctor in effect represents that, having the needed training and skill possessed by physicians and surgeons practicing in the same field, he will employ such training, care and skill in the treatment of his patients. He therefore has a duty to use at least the same level of care that any other reasonably competent doctor would use to treat a condition under the same circumstances.

In litigations involving medical negligence, the plaintiff has the burden of establishing accused-appellants' negligence, and for a reasonable conclusion of negligence, there must be proof of breach of duty on the part of the physician as well as a causal connection of such breach and the resulting injury of his patient. The connection between the negligence and the injury must be a direct and natural sequence of events, unbroken by intervening efficient causes. In other words, the negligence must be the proximate cause of the injury. Negligence, no matter in what it consists, cannot create a right of action unless it is the proximate cause of the injury complained of. The proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.

In the case at bench, the accused-appellants questioned the imputation against them and argued that there is no causal connection between their failure to diagnose the fracture and the injury sustained by Roy.

We are not convinced.

The prosecution is however after the cause which prolonged the pain and suffering of Roy and not on the failure of the accused-appellants to correctly diagnose the extent of the injury sustained by Roy.

For a more logical presentation of the discussion, we shall first consider the applicability of the doctrine of *res ipsa loquitur* to the instant case. *Res ipsa loquitur* is a Latin phrase which literally means "the thing or the transaction speaks for itself. The doctrine of *res ipsa loquitur* is simply a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing

the injury in the absence of some explanation by the accused-appellant who is charged with negligence. It is grounded in the superior logic of ordinary human experience and, on the basis of such experience or common knowledge, negligence may be deduced from the mere occurrence of the accident itself. Hence, *res ipsa loquitur* is applied in conjunction with the doctrine of common knowledge.

The specific acts of negligence was narrated by Mrs. Santiago who accompanied her son during the latter's ordeal at the hospital. She testified as follows:

Fiscal Formoso:

Q: Now, he is an intern did you not consult the doctors, Dr. Jarcia or Dra. Pamittan to confirm whether you should go home or not?
A: Dra. Pamittan was inside the cubicle of the nurses and I asked her, you let us go home and you don't even clean the wounds of my son.

Q: And what did she [tell] you?
A: They told me they will call a resident doctor, sir.

x x x x x x x x x

Q: Was there a resident doctor [who] came?
A: Yes, Sir. Dra. Bastan arrived.

Q: Did you tell her what you want on you to be done?
A: Yes, sir.

Q: What did you [tell] her?
A: I told her, sir, while she was cleaning the wounds of my son, are you not going to x-ray up to the knee because my son was complaining pain from his ankle up to the middle part of the right leg.

Q: And what did she tell you?
A: According to Dra. Bastan, there is no need to x-ray because it was the ankle part that was run over.

Q: What did you do or tell her?
A: I told her, sir, why is it that they did not examine[x] the whole leg. They just lifted the pants of my son.

Q: So you mean to say there was no treatment made at all?
A: None, sir.

x x x x x x x x x

A: I just listened to them, sir. And I just asked if I will still return my son.

x x x x x x x x x

Q: And you were present when they were called?
A: Yes, sir.

Q: And what was discussed then by Sis. Retoria?
A: When they were there they admitted that they have mistakes, sir.

Still, before resort to the doctrine may be allowed, the following requisites must be satisfactorily shown:

1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;

2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and

3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.

In the above requisites, the fundamental element is the "control of the instrumentality" which caused the damage. Such element of control must be shown to be within the dominion of the accused-appellants. In order to have the benefit of the rule, a plaintiff, in addition to proving injury or damage, must show a situation where it is applicable and must establish that the essential elements of the doctrine were present in a particular incident. The early treatment of the leg of Roy would have lessen his suffering if not entirely relieve him from the fracture. A boy of tender age whose leg was hit by a vehicle would engender a well-founded belief that his condition may worsen without proper medical attention. As junior residents who only practice general surgery and without specialization with the case consulted before them, they should have referred the matter to a specialist. This omission alone constitutes simple imprudence on their part. When Mrs. Santiago insisted on having another x-ray of her child on the upper part of his leg, they refused to do so. The mother would not have asked them if they had no exclusive control or prerogative to request an x-ray test. Such is a fact because a radiologist would only conduct the x-ray test upon request of a physician.

The testimony of Mrs. Santiago was corroborated by a bone specialist Dr. Tacata. He further testified based on his personal knowledge, and not as an expert, as he examined himself the child Roy. He testified as follows:

Fiscal Macapagal:

Q: And was that the correct respon[se] to the medical problem that was presented to Dr. Jarcia and Dra. Bastan?

A: I would say at that stage, yes. Because they have presented the patient and the history. "*At sabi nila, nadaanan lang po ito*." And then, considering their year of residency they are still junior residents, and they are not also orthopedic residents but general surgery residents, it's entirely different thing. Because if you are an orthopedic resident, I am not trying to say…but if I were an orthopedic resident, there would be more precise and accurate decision compare to a general surgery resident in so far as involved.

Q: You mean to say there is no supervisor attending the emergency room?

A: At the emergency room, at the Manila Doctor's Hospital, the supervisor there is a consultant that usually comes from a family medicine. They see where a certain patient have to go and then if they cannot manage it, they refer it to the consultant on duty. Now at that time, I don't [know] why they don't….Because at that time, I think, it is the decision. Since the x-rays….

Ordinarily, only physicians and surgeons of skill and experience are competent to testify as to whether a patient has been treated or operated upon with a reasonable degree of skill and care. However, testimony as to the statements and acts of physicians, external appearances, and manifest conditions which are observable by any one may be given by non-expert witnesses. Hence, in cases where the *res ipsa loquitur* is applicable, the court is permitted to find a physician negligent upon proper proof of injury to the patient, without the aid of expert testimony, where the court from its fund of common knowledge can determine the proper standard of care. Where common knowledge and experience teach that a resulting injury would not have occurred to the patient if due care had been exercised, an inference of negligence may be drawn giving rise to an application of the doctrine of *res ipsa loquitur* without medical evidence, which

is ordinarily required to show not only what occurred but how and why it occurred. In the case at bench, we give credence to the testimony of Mrs. Santiago by applying the doctrine of *res ipsa loquitur*.

Res ipsa loquitur is not a rigid or ordinary doctrine to be perfunctorily used but a rule to be cautiously applied, depending upon the circumstances of each case. It is generally restricted to situations in malpractice cases where a layman is able to say, as a matter of common knowledge and observation, that the consequences of professional care were not as such as would ordinarily have followed if due care had been exercised. A distinction must be made between the failure to secure results and the occurrence of something more unusual and not ordinarily found if the service or treatment rendered followed the usual procedure of those skilled in that particular practice. The latter circumstance is the primordial issue that confronted this Court and we find application of the doctrine of *res ipsa loquitur* to be in order.

WHEREFORE, in view of the foregoing, the appeal in this case is hereby **DISMISSED** and the assailed decision of the trial court finding accused-appellants guilty beyond reasonable doubt of simple imprudence resulting in serious physical injuries is hereby **AFFIRMED** *in toto*.

SO ORDERED.[8]

The petitioners filed a motion for reconsideration, but it was denied by the CA in its May 19, 2009 Resolution.

Hence, this petition.

The petitioners pray for the reversal of the decision of both the RTC and the CA anchored on the following

GROUNDS-

1. IN AFFIRMING ACCUSED-PETITIONERS' CONVICTION, THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE ACTUAL, DIRECT, IMMEDIATE, AND PROXIMATE CAUSE OF THE PHYSICAL INJURY OF THE

[8] *Id.* at 58-65.

PATIENT (FRACTURE OF THE LEG BONE OR TIBIA), WHICH REQUIRED MEDICAL ATTENDANCE FOR MORE THAN THIRTY (30) DAYS AND INCAPACITATED HIM FROM PERFORMING HIS CUSTOMARY DUTY DURING THE SAME PERIOD OF TIME, WAS THE VEHICULAR ACCIDENT WHERE THE PATIENT'S RIGHT LEG WAS HIT BY A TAXI, NOT THE FAILURE OF THE ACCUSED-PETITIONERS TO SUBJECT THE PATIENT'S WHOLE LEG TO AN X-RAY EXAMINATION.

2. THE COURT OF APPEALS ERRED IN DISREGARDING ESTABLISHED FACTS CLEARLY NEGATING PETITIONERS' ALLEGED NEGLIGENCE OR IMPRUDENCE. SIGNIFICANTLY, THE COURT OF APPEALS UNJUSTIFIABLY DISREGARDED THE OPINION OF THE PROSECUTION'S EXPERT WITNESS, DR. CIRILO TACATA, THAT PETITIONERS WERE NOT GUILTY OF NEGLIGENCE OR IMPRUDENCE COMPLAINED OF.

3. THE COURT OF APPEALS ERRED IN HOLDING THAT THE FAILURE OF PETITIONERS TO SUBJECT THE PATIENT'S WHOLE LEG TO AN X-RAY EXAMINATION PROLONGED THE PAIN AND SUFFERING OF THE PATIENT, SUCH CONCLUSION BEING UNSUPPORTED BY, AND EVEN CONTRARY TO, THE EVIDENCE ON RECORD.

4. ASSUMING *ARGUENDO* THAT THE PATIENT EXPERIENCED PROLONGED PAIN AND SUFFERING, THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE ALLEGED PAIN AND SUFFERING WERE DUE TO THE UNJUSTIFIED FAILURE OF THE PATIENT'S MOTHER, A NURSE HERSELF, TO IMMEDIATELY BRING THE PATIENT BACK TO THE HOSPITAL, AS ADVISED BY THE PETITIONERS, AFTER HE COMPLAINED OF SEVERE PAIN IN HIS RIGHT LEG WHEN HE REACHED HOME AFTER HE WAS SEEN BY PETITIONERS AT THE HOSPITAL. THUS, THE PATIENT'S ALLEGED INJURY (PROLONGED PAIN AND

SUFFERING) WAS DUE TO HIS OWN MOTHER'S ACT OR OMISSION.

5. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT NO PHYSICIAN-PATIENT RELATIONSHIP EXISTED BETWEEN PETITIONERS AND PATIENT ALFONSO SANTIAGO, JR., PETITIONERS NOT BEING THE LATTER'S ATTENDING PHYSICIAN AS THEY WERE MERELY REQUESTED BY THE EMERGENCY ROOM (ER) NURSE TO SEE THE PATIENT WHILE THEY WERE PASSING BY THE ER FOR THEIR LUNCH.

6. THE COURT OF APPEALS GRAVELY ERRED IN NOT ACQUITTING ACCUSED-PETITIONERS OF THE CRIME CHARGED."[9]

The foregoing can be synthesized into two basic issues: [1] whether or not the doctrine of *res ipsa loquitur* is applicable in this case; and [2] whether or not the petitioners are liable for criminal negligence.

THE COURT'S RULING

The CA is correct in finding that there was negligence on the part of the petitioners. After a perusal of the records, however, the Court is not convinced that the petitioners are guilty of criminal negligence complained of. The Court is also of the view that the CA erred in applying the doctrine of *res ipsa loquitur* in this particular case.

As to the Application of The Doctrine of Res Ipsa Loquitur

This doctrine of *res ipsa loquitur* means "Where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from

[9] *Id.* at 20-22.

want of care." The *Black's Law Dictionary* defines the said doctrine. Thus:

> The thing speaks for itself. Rebuttable presumption or inference that defendant was negligent, which arises upon proof that the instrumentality causing injury was in defendant's exclusive control, and that the accident was one which ordinarily does not happen in absence of negligence. *Res ipsa loquitur* is a rule of evidence whereby negligence of the alleged wrongdoer may be inferred from the mere fact that the accident happened provided the character of the accident and circumstances attending it lead reasonably to belief that in the absence of negligence it would not have occurred and that thing which caused injury is shown to have been under the management and control of the alleged wrongdoer. Under this doctrine, the happening of an injury permits an inference of negligence where plaintiff produces substantial evidence that the injury was caused by an agency or instrumentality under the exclusive control and management of defendant, and that the occurrence was such that in the ordinary course of things would not happen if reasonable care had been used.[10]

The doctrine of *res ipsa loquitur* as a rule of evidence is unusual to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence. The doctrine, however, is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience. The rule, when applicable to the facts and circumstances of a given case, is not meant to and does not dispense with the requirement of proof of culpable negligence on the party charged. It merely determines and regulates what shall be *prima facie* evidence thereof and helps the plaintiff in proving a breach of the duty. The doctrine can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available.[11]

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[10] Also quoted in the case of *Layugan v. Intermediate Appellate Court*, 249 Phil. 363, 377 (1988).

[11] *Dr. Batiquin v. CA, supra* note 1, at 979-980.

The requisites for the application of the doctrine of *res ipsa loquitur* are: ***(1)*** the accident was of a kind which does not ordinarily occur unless someone is negligent; ***(2)*** the instrumentality or agency which caused the injury was under the exclusive control of the person in charge; and ***(3)*** the injury suffered must not have been due to any voluntary action or contribution of the person injured.[12]

In this case, the circumstances that caused patient Roy Jr.'s injury and the series of tests that were supposed to be undergone by him to determine the extent of the injury suffered were **not** under the exclusive control of Drs. Jarcia and Bastan. It was established that they are mere residents of the Manila Doctors Hospital at that time who attended to the victim at the emergency room.[13] While it may be true that the circumstances pointed out by the courts below seem doubtless to constitute reckless imprudence on the part of the petitioners, this conclusion is still best achieved, not through the scholarly assumptions of a layman like the patient's mother, but by the unquestionable knowledge of expert witness/es. As to whether the petitioners have exercised the requisite degree of skill and care in treating patient Roy, Jr. is generally a matter of expert opinion.

As to Dr. Jarcia and Dr. Bastan's negligence

The totality of the evidence on record clearly points to the negligence of the petitioners. At the risk of being repetitious, the Court, however, is not satisfied that Dr. Jarcia and Dr. Bastan are criminally negligent in this case.

Negligence is defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[14]

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[12] *Reyes v. Sisters of Mercy Hospital*, 396 Phil. 87, 98 (2000).

[13] TSN, September 20, 2004, p. 13.

[14] *Gaid v. People*, G.R. No. 171636, April 7, 2009, 584 SCRA 489, 497.

Reckless imprudence consists of voluntarily doing or failing to do, without malice, an act from which material damage results by reason of an *inexcusable lack of precaution* on the part of the person performing or failing to perform such act.[15]

The elements of simple negligence are: (1) that there is lack of precaution on the part of the offender, and (2) that the damage impending to be caused is not immediate or the danger is not clearly manifest.[16]

In this case, the Court is not convinced with moral certainty that the petitioners are guilty of reckless imprudence or simple negligence. The elements thereof were not proved by the prosecution beyond reasonable doubt.

The testimony of Dr. Cirilo R. Tacata *(Dr. Tacata)*, a specialist in pediatric orthopedic, although pointing to some medical procedures that could have been done by Dr. Jarcia and Dr. Bastan, as physicians on duty, was not clear as to whether the injuries suffered by patient Roy Jr. were indeed aggravated by the petitioners' judgment call and their diagnosis or appreciation of the condition of the victim at the time they assessed him. Thus:

Q: Will you please tell us, for the record, doctor, what is your specialization?
A: At present I am the chairman department of orthopedic in UP-PGH and I had special training in pediatric orthopedic for two (2) years.

Q: In June 1998, doctor, what was your position and what was your specialization at that time?
A: Since 1980, I have been specialist in pediatric orthopedic.

Q: When Alfonso Santiago, Jr. was brought to you by his mother, what did you do by way of physicians as first step?
A: As usual, I examined the patient physically and, at that time as I have said, the patient could not walk so I [began] to

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[15] *Id.* at 495.

[16] *Id.* at 497.

suspect that probably he sustained a fracture as a result of a vehicular accident. So I examined the patient at that time, the involved leg, I don't know if that is left or right, the involved leg then was swollen and the patient could not walk, so I requested for the x-ray of [the] lower leg.

Q: What part of the leg, doctor, did you request to be examined?
A: If we refer for an x-ray, usually, we suspect a fracture whether in approximal, middle or lebistal tinial, we usually x-ray the entire extremity.

Q: And what was the result?
A: Well, I can say that it was a spiral fracture of the mid-tibial, it is the bigger bone of the leg.

Q: And when you say spiral, doctor, how long was this fracture?
A: When we say spiral, it is a sort of letter S, the length was about six (6) to eight (8) centimeters.

Q: Mid-tibial, will you please point to us, doctor, where the tibial is?
(Witness pointing to his lower leg)
A: The tibial is here, there are two bones here, the bigger one is the tibial and the smaller one is the fibula. The bigger one is the one that get fractured.

Q: And in the course of your examination of Alfonso Santiago, Jr. did you ask for the history of such injury?
A: Yes, actually, that was a routine part of our examination that once a patient comes in, before we actually examine the patient, we request for a detailed history. If it is an accident, then, we request for the exact mechanism of injuries.

Q: And as far as you can recall, Doctor, what was the history of that injury that was told to you?
A: The patient was sideswiped, I don't know if it is a car, but it is a vehicular accident.

Q: Who did you interview?
A: The mother.

Q: How about the child himself, Alfonso Santiago, Jr.?
A: Normally, we do not interview the child because, usually, at his age, the answers are not accurate. So, it was the mother that I interviewed.

Q: And were you informed also of his early medication that was administered on Alfonso Santiago, Jr.?

A: No, not actually medication. I was informed that this patient was seen initially at the emergency room by the two (2) physicians that you just mentioned, Dr. Jarcia and Dra. Bastan, that time who happened to be my residents who were [on] duty at the emergency room.

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A: At the emergency room, at the Manila Doctor's Hospital, the supervisor there is a consultant that usually comes from a family medicine. They see where a certain patient have to go and then if they cannot manage it, they refer it to the consultant on duty. Now at that time, I don't why they don't … Because at that time, I think, it is the decision. Since the x-rays…

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Q: You also said, Doctor, that Dr. Jarcia and Dra. Bastan are not even an orthopedic specialist.

A: **They are general surgeon residents. You have to man[x] the emergency room, including neurology, orthopedic, general surgery, they see everything at the emergency room**.

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Q: **But if initially, Alfonso Santiago, Jr. and his case was presented to you at the emergency room, you would have subjected the entire foot to x-ray even if the history that was given to Dr. Jarcia and Dra. Bastan is the same?**

A: **I could not directly say yes, because it would still depend on my examination, we cannot subject the whole body for x-ray if we think that the damaged was only the leg**.

Q: **Not the entire body but the entire leg?**

A: **I think, if my examination requires it, I would.**

Q: **So, you would conduct first an examination?**

A: **Yes, sir.**

Q: **And do you think that with that examination that you would have conducted you would discover the necessity subjecting the entire foot for x-ray?**

A: **It is also possible but according to them, the foot and the ankle were swollen and not the leg, which sometimes normally happens that the actual fractured bone do not get swollen**.

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Q: **Doctor, if you know that the patient sustained a fracture on the ankle and on the foot and the history that was told to you is the region that was hit is the region of the foot, will the doctor subject the entire leg for x-ray?**

A: **I am an orthopedic surgeon, you have to subject an x-ray of the leg. Because you have to consider the kind of fracture that the patient sustained would you say the exact mechanism of injury. For example spiral, "*paikot yung bale nya*," so it was possible that the leg was run over, the patient fell, and it got twisted. That's why the leg seems to be fractured.**[17] [Emphases supplied]

It can be gleaned from the testimony of Dr. Tacata that a thorough examination was not performed on Roy Jr. As residents on duty at the emergency room, Dr. Jarcia and Dr. Bastan were expected to know the medical protocol in treating leg fractures and in attending to victims of car accidents. There was, however, no precise evidence and scientific explanation pointing to the fact that the delay in the application of the cast to the patient's fractured leg because of failure to immediately diagnose the specific injury of the patient, prolonged the pain of the child or aggravated his condition or even caused further complications. Any person may opine that had patient Roy Jr. been treated properly and given the extensive X-ray examination, the extent and severity of the injury, spiral fracture of the mid-tibial part or the bigger bone of the leg, could have been detected early on and the prolonged pain and suffering of Roy Jr. could have

[17] TSN, September 20, 2004, pp. 9-24.

been prevented. But still, that opinion, even how logical it may seem would not, and could not, be enough basis to hold one criminally liable; thus, a reasonable doubt as to the petitioners' guilt.

Although the Court sympathizes with the plight of the mother and the child in this case, the Court is bound by the dictates of justice which hold inviolable the right of the accused to be presumed innocent until proven guilty beyond reasonable doubt. The Court, nevertheless, finds the petitioners *civilly* liable for their failure to sufficiently attend to Roy Jr.'s medical needs when the latter was rushed to the ER, for while a criminal conviction requires proof beyond reasonable doubt, only a preponderance of evidence is required to establish civil liability. Taken into account also was the fact that there was no bad faith on their part.

Dr. Jarcia and Dr. Bastan cannot pass on the liability to the taxi driver who hit the victim. It may be true that the actual, direct, immediate, and proximate cause of the injury (fracture of the leg bone or tibia) of Roy Jr. was the vehicular accident when he was hit by a taxi. The petitioners, however, cannot simply invoke such fact alone to excuse themselves from any liability. If this would be so, doctors would have a ready defense should they fail to do their job in attending to victims of hit-and-run, maltreatment, and other crimes of violence in which the actual, direct, immediate, and proximate cause of the injury is indubitably the act of the perpetrator/s.

In failing to perform an extensive medical examination to determine the extent of Roy Jr.'s injuries, Dr. Jarcia and Dr. Bastan were remiss of their duties as members of the medical profession. Assuming for the sake of argument that they did not have the capacity to make such thorough evaluation at that stage, they should have referred the patient to another doctor with sufficient training and experience instead of assuring him and his mother that everything was all right.

This Court cannot also stamp its imprimatur on the petitioners' contention that no physician-patient relationship existed between

them and patient Roy Jr., since they were not his attending physicians at that time. They claim that they were merely requested by the ER nurse to see the patient while they were passing by the ER for their lunch. *Firstly*, this issue was never raised during the trial at the RTC or even before the CA. The petitioners, therefore, raise the want of doctor-patient relationship for the first time on appeal with this Court. It has been settled that "issues raised for the first time on appeal cannot be considered because a party is not permitted to change his theory on appeal. To allow him to do so is unfair to the other party and offensive to the rules of fair play, justice and due process."[18] Stated differently, basic considerations of due process dictate that theories, issues and arguments not brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court.[19]

Assuming again for the sake of argument that the petitioners may still raise this issue of "no physician–patient relationship," the Court finds and so holds that there was a "physician–patient" relationship in this case.

In the case of *Lucas v. Tuaño*,[20] the Court wrote that "[w]hen a patient engages the services of a physician, a physician-patient relationship is generated. And in accepting a case, the physician, for all intents and purposes, represents that he has the needed training and skill possessed by physicians and surgeons practicing in the same field; and that he will employ such training, care, and skill in the treatment of the patient. Thus, in treating his patient, a physician is under a ***duty*** to exercise that degree of care, skill and diligence which physicians in the same general neighborhood and in the same general line of practice ordinarily possess and exercise in like cases. Stated otherwise, the physician has the obligation to use at least the same level of care that any

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[18] *Balitaosan v. The Secretary of Education*, 457 Phil. 300, 304 (2003).

[19] *Del Rosario v. Bonga*, 402 Phil. 949, 957-958 (2001).

[20] G.R. No. 178763, April 21, 2009, 586 SCRA 173, 200.

other reasonably competent physician would use to treat the condition under similar circumstances."

Indubitably, a physician-patient relationship exists between the petitioners and patient Roy Jr. Notably, the latter and his mother went to the ER for an immediate medical attention. The petitioners allegedly passed by and were requested to attend to the victim *(contrary to the testimony of Dr. Tacata that they were, at that time, residents on duty at the ER)*.[21] They obliged and examined the victim, and later assured the mother that everything was fine and that they could go home. Clearly, a physician-patient relationship was established between the petitioners and the patient Roy Jr.

To repeat for clarity and emphasis, if these doctors knew from the start that they were not in the position to attend to Roy Jr., a vehicular accident victim, with the degree of diligence and commitment expected of every doctor in a case like this, they should have not made a baseless assurance that everything was all right. By doing so, they deprived Roy Jr. of adequate medical attention that placed him in a more dangerous situation than he was already in. What petitioners should have done, and could have done, was to refer Roy Jr. to another doctor who could competently and thoroughly examine his injuries.

All told, the petitioners were, indeed, negligent but only civilly, and not criminally, liable as the facts show.

Article II, Section 1 of the Code of Medical Ethics of the Medical Profession in the Philippines states:

> A physician should attend to his patients faithfully and conscientiously. He should secure for them all possible benefits that may depend upon his professional skill and care. As the sole tribunal to adjudge the physician's failure to fulfill his obligation to his patients is, in most cases, his own conscience, violation of this rule on his part is discreditable and inexcusable.[22]

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[21] TSN, September 20, 2004, p. 13.

[22] As quoted in the case of *Ruñez, Jr. v. Jurado*, 513 Phil. 101, 106 (2005).

Established medical procedures and practices, though in constant instability, are devised for the purpose of preventing complications. In this case, the petitioners failed to observe the most prudent medical procedure under the circumstances to prevent the complications suffered by a child of tender age.

As to the Award of Damages

While no criminal negligence was found in the petitioners' failure to administer the necessary medical attention to Roy Jr., the Court holds them civilly liable for the resulting damages to their patient. While it was the taxi driver who ran over the foot or leg of Roy Jr., their negligence was doubtless contributory.

It appears undisputed that the amount of ₱3,850.00, as expenses incurred by patient Roy Jr., was adequately supported by receipts. The Court, therefore, finds the petitioners liable to pay this amount by way of actual damages.

The Court is aware that no amount of compassion can suffice to ease the sorrow felt by the family of the child at that time. Certainly, the award of moral and exemplary damages in favor of Roy Jr. in the amount of ₱100,000.00 and ₱50,000.00, respectively, is proper in this case.

It is settled that moral damages are not punitive in nature, but are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury unjustly inflicted on a person. Intended for the restoration of the psychological or emotional *status quo ante*, the award of moral damages is designed to compensate emotional injury suffered, not to impose a penalty on the wrongdoer.[23]

The Court, likewise, finds the petitioners also liable for exemplary damages in the said amount. Article 2229 of the

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[23] *Quezon City Govt. v. Dacara*, 499 Phil. 228, 243 (2005).

Civil Code provides that exemplary damages may be imposed by way of example or correction for the public good.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision of the Court of Appeals dated August 29, 2008 is **REVERSED and SET ASIDE**. A new judgment is entered **ACQUITTING** Dr. Emmanuel Jarcia, Jr. and Dr. Marilou Bastan of the crime of reckless imprudence resulting to serious physical injuries but declaring them civilly liable in the amounts of:

(1) ₱3,850.00 as actual damages;

(2) ₱100,000.00 as moral damages;

(3) ₱50,000.00 as exemplary damages; and

(4) Costs of the suit.

with interest at the rate of 6% *per annum* from the date of the filing of the Information. The rate shall be 12% interest *per annum* from the finality of judgment until fully paid.

SO ORDERED.

Carpio,[*] *Peralta (Acting Chairperson),*[**] *Abad,* and *Perez,*[***] *JJ.,* concur.

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[*] Designated as additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1185 dated February 10, 2012.

[**] Designated as Acting Chairperson, per Special Order No. 1184 dated February 10, 2012.

[***] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1192 dated February 10, 2012.

SECOND DIVISION

[G.R. No. 190022. February 15, 2012]

PHILIPPINE NATIONAL RAILWAYS CORPORATION, JAPHET ESTRANAS and BEN SAGA, *petitioners, vs.* **PURIFICACION VIZCARA, MARIVIC VIZCARA, CRESENCIA A. NATIVIDAD, HECTOR VIZCARA, JOEL VIZCARA and DOMINADOR ANTONIO,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT.— Article 2176 of the New Civil Code prescribes a civil liability for damages caused by a person's act or omission constituting fault or negligence. It states: Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there was no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this chapter.

2. ID.; ID.; ID.; ID.; NEGLIGENCE; ELUCIDATED.— In *Layugan v. Intermediate Appellate Court*, negligence was defined as the omission to do something which a reasonable man, guided by considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do. It is the failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. To determine the existence of negligence, the time-honored test was: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal

judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

3. ID.; ID.; ID.; ID.; ID.; PRESENT IN CASE AT BAR WHERE THE PNRC FAILED TO INSTALL AND MAINTAIN SAFETY RAILROAD DEVICES TO FORESTALL ANY UNTOWARD INCIDENT.— [P]etitioners fell short of the diligence expected of it, taking into consideration the nature of its business, to forestall any untoward incident. In particular, the petitioners failed to install safety railroad bars to prevent motorists from crossing the tracks in order to give way to an approaching train. Aside from the absence of a crossing bar, the "Stop, Look and Listen" signage installed in the area was poorly maintained, hence, inadequate to alert the public of the impending danger. A reliable signaling device in good condition, not just a dilapidated "Stop, Look and Listen" signage, is needed to give notice to the public. It is the responsibility of the railroad company to use reasonable care to keep the signal devices in working order. Failure to do so would be an indication of negligence. Having established the fact of negligence on the part of the petitioners, they were rightfully held liable for damages. x x x The maintenance of safety equipment and warning signals at railroad crossings is equally important as their installation since poorly maintained safety warning devices court as much danger as when none was installed at all. The presence of safety warning signals at railroad crossing carries with it the presumption that they are in good working condition and that the public may depend on them for assistance. If they happen to be neglected and inoperative, the public may be misled into relying on the impression of safety they normally convey and eventually bring injury to themselves in doing so.

4. ID.; ID.; FINDINGS OF APPELLATE COURT AFFIRMING THAT OF THE TRIAL COURT, RESPECTED.— It is a well-established rule that factual findings by the CA are conclusive on the parties and are not reviewable by this Court. They are entitled to great weight and respect, even finality, especially when, as in this case, the CA affirmed the factual findings arrived at by the trial court. x x x Certainly, the finding of negligence by the RTC, which was affirmed by the CA, is a question of fact which this Court cannot pass upon as this would entail

going into the factual matters on which the negligence was based. Moreover, it was not shown that the present case falls under any of the recognized exceptions to the oft repeated principle according great weight and respect to the factual findings of the trial court and the CA.

5. ID.; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED; DISTINGUISHED FROM QUESTION OF FACT.— [I]n petitions for review on *certiorari*, only questions of law may be put into issue. Questions of fact cannot be entertained. To distinguish one from the other, a *question of law* exists when the doubt or difference centers on what the law is on a certain state of facts. A *question of fact*, on the other hand, exists if the doubt centers on the truth or falsity of the alleged facts.

6. CIVIL LAW; SPECIAL CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICT; CONTRIBUTORY NEGLIGENCE.— Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard which he is required to conform for his own protection. It is an act or omission amounting to want of ordinary care on the part of the person injured which, concurring with the defendant's negligence, is the proximate cause of the injury.

7. ID.; ID.; ID.; ID.; DOCTRINE OF LAST CLEAR CHANCE.— The doctrine of last clear chance provides that where both parties are negligent but the negligent act of one is appreciably later in point of time than that of the other, or where it is impossible to determine whose fault or negligence brought about the occurrence of the incident, the one who had the last clear opportunity to avoid the impending harm but failed to do so, is chargeable with the consequences arising therefrom. Stated differently, the rule is that the antecedent negligence of a person does not preclude recovery of damages caused by the supervening negligence of the latter, who had the last fair chance to prevent the impending harm by the exercise of due diligence.

APPEARANCES OF COUNSEL

Javier Estrada Radjaie Marzan for petitioners.
Edgardo Villarin for respondents.

D E C I S I O N

REYES, *J.*:

Nature of the Petition

Before this Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, seeking to annul and set aside the Decision[1] dated July 21, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 90021, which affirmed with modification the Decision[2] dated March 20, 2007 of the Regional Trial Court (RTC), Branch 40, Palayan City, and Resolution[3] dated October 26, 2009, which denied the petitioners' motion for reconsideration.

The Antecedent Facts

On May 14, 2004, at about three o'clock in the morning, Reynaldo Vizcara (Reynaldo) was driving a passenger jeepney headed towards Bicol to deliver onion crops, with his companions, namely, Cresencio Vizcara (Cresencio), Crispin Natividad (Crispin), Samuel Natividad (Samuel), Dominador Antonio (Dominador) and Joel Vizcara (Joel). While crossing the railroad track in Tiaong, Quezon, a Philippine National Railways (PNR) train, then being operated by respondent Japhet Estranas (Estranas), suddenly turned up and rammed the passenger jeepney. The collision resulted to the instantaneous death of Reynaldo, Cresencio, Crispin, and Samuel. On the other hand, Dominador and Joel, sustained serious physical injuries.[4]

At the time of the accident, there was no level crossing installed at the railroad crossing. Additionally, the "Stop, Look and Listen"

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Portia Aliño-Hormachuelos and Magdangal De Leon, concurring; *rollo*, pp. 31-46.

[2] *Id.* at 81-97.

[3] *Id.* at 52-54.

[4] *Id.* at 82.

signage was poorly maintained. The "Stop" signage was already faded while the "Listen" signage was partly blocked by another signboard.[5]

On September 15, 2004, the survivors of the mishap, Joel and Dominador, together with the heirs of the deceased victims, namely, Purificacion Vizcara, Marivic Vizcara, Cresencia Natividad and Hector Vizcara, filed an action for damages against PNR, Estranas and Ben Saga, the alternate driver of the train, before the RTC of Palayan City. The case was raffled to Branch 40 and was docketed as Civil Case No. 0365-P. In their complaint, the respondents alleged that the proximate cause of the fatalities and serious physical injuries sustained by the victims of the accident was the petitioners' gross negligence in not providing adequate safety measures to prevent injury to persons and properties. They pointed out that in the railroad track of Tiaong, Quezon where the accident happened, there was no level crossing bar, lighting equipment or bell installed to warn motorists of the existence of the track and of the approaching train. They concluded their complaint with a prayer for actual, moral and compensatory damages, as well as attorney's fees.[6]

For their part, the petitioners claimed that they exercised due diligence in operating the train and monitoring its roadworthiness. They asseverate that right before the collision, Estranas was driving the train at a moderate speed. Four hundred (400) meters away from the railroad crossing, he started blowing his horn to warn motorists of the approaching train. When the train was only fifty (50) meters away from the intersection, respondent Estranas noticed that all vehicles on both sides of the track were already at a full stop. Thus, he carefully proceeded at a speed of twenty-five (25) kilometers per hour, still blowing the train's horn. However, when the train was already ten (10) meters away from the intersection, the passenger jeepney being driven by Reynaldo suddenly crossed the tracks. Estranas

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[5] *Id.* at 38-39.

[6] *Id.* at 81-83.

immediately stepped on the brakes to avoid hitting the jeepney but due to the sheer weight of the train, it did not instantly come to a complete stop until the jeepney was dragged 20 to 30 meters away from the point of collision.[7]

The Ruling of the Trial Court

After trial on the merits, the RTC rendered its Decision[8] dated March 20, 2007, ruling in favor of the respondents, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants Philippine National Railways Corporation (PNR), Japhet Estranas and Ben Saga to, jointly and severally pay the following amounts to:

1. a) PURIFICACION VIZCARA:

   1) ₱50,000.00, as indemnity for the death of Reynaldo Vizcara;
   2) ₱35,000.00, for funeral expenses;
   3) ₱5,000.00 for re-embalming expenses;
   4) ₱40,000.00 for wake/interment expenses;
   5) ₱300,000.00 as reimbursement for the value of the jeepney with license plate no. DTW-387;
   6) ₱200,000.00 as moral damages;
   7) ₱100,000.00 as exemplary damages; and
   8) ₱20,000.00 for Attorney's fees.

   b) MARIVIC VIZCARA:

   1) ₱50,000.00, as indemnity for the death of Cresencio Vizcara;
   2) ₱200,000.00 as moral damages;
   3) ₱100,000.00 as exemplary damages; and
   4) ₱20,000.00 for Attorney's fees.

   c) HECTOR VIZCARA:

   1) ₱50,000.00 as indemnity for the death of Samuel Vizcara;
   2) ₱200,000.00 as moral damages;
   3) ₱100,000.00 as exemplary damages; and
   4) ₱20,000.00 for Attorney's fees.

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

[8] *Supra* note 2.

d) CRESENCIA NATIVIDAD:

1) ₱50,000.00 as indemnity for the death of Crispin Natividad;
2) ₱200,000.00 as moral damages;
3) ₱100,000.00 as exemplary damages; and
4) ₱20,000.00 for Attorney's fees.

e) JOEL VIZCARA

1) ₱9,870.00 as reimbursement for his actual expenses;
2) ₱50,000.00 as moral damages;
3) ₱25,000.00 as exemplary damages; and
4) ₱10,000.00 for Attorney's fees.

f) DOMINADOR ANTONIO

1) ₱63,427.00 as reimbursement for his actual expenses;
2) ₱50,000.00 as moral damages;
3) ₱25,000.00 as exemplary damages; and
4) ₱10,000.00 for Attorney's fees.

and

2. Costs of suit.

SO ORDERED.[9]

The Ruling of the CA

Unyielding, the petitioners appealed the RTC decision to the CA. Subsequently, on July 21, 2009, the CA rendered the assailed decision, affirming the RTC decision with modification with respect to the amount of damages awarded to the respondents. The CA disposed, thus:

WHEREFORE, instant appeal is **PARTIALLY GRANTED**. The assailed Decision is **AFFIRMED WITH MODIFICATION**, as follows:

(1) The award of ₱5,000.00 for re-embalming expenses and ₱40,000.00 for wake/interment expenses to PURIFICACION VIZCARA is deleted. In lieu thereof, **₱25,000.00 as temperate damages is awarded**;

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

(2) The **award of moral damages** to PURIFICACION VIZCARA, MARIVIC VIZCARA, HECTOR VIZCARA and CRESENCIA NATIVIDAD is hereby **reduced** from ₱200,000.00 to **₱100,000.00** each while moral damages awarded to JOEL VIZCARA and DOMINADOR ANTONIO are likewise **reduced** from ₱50,000.00 to **₱25,000.00**;

(3) The **award of exemplary damages** to PURIFICACION VIZCARA, MARIVIC VIZCARA, HECTOR VIZCARA and CRESENCIA NATIVIDAD is hereby reduced from ₱100,000.00 to **₱50,000.00** each while exemplary damages awarded to JOEL VIZCARA and DOMINADOR ANTONIO are likewise **reduced** from ₱25,000.00 to **₱12,500.00**; and

(4) The award for attorney's fees in favor of the Appellees as well as the award of ₱300,000.00 to Appellee PURIFICACION as reimbursement for the value of the jeepney is **DELETED**.

SO ORDERED.[10]

In the assailed decision, the CA affirmed the RTC's finding of negligence on the part of the petitioners. It concurred with the trial court's conclusion that petitioner PNR's failure to install sufficient safety devices in the area, such as flagbars or safety railroad bars and signage, was the proximate cause of the accident. Nonetheless, in order to conform with established jurisprudence, it modified the monetary awards to the victims and the heirs of those who perished due to the collision.

The petitioners filed a Motion for Reconsideration[11] of the decision of the CA. However, in a Resolution[12] dated October 26, 2009, the CA denied the same.

Aggrieved, the petitioners filed the present petition for review on *certiorari*, raising the following grounds:

I

THE CA ERRED IN FINDING THAT THE PROXIMATE CAUSE OF THE ACCIDENT WAS THE NEGLIGENCE OF THE PETITIONERS;

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

[11] *Id.* at 47-51.

[12] *Supra* note 3.

II

THE CA ERRED IN HOLDING THAT THE DOCTRINE OF LAST CLEAR CHANCE FINDS NO APPLICATION IN THE INSTANT CASE;

III

THE CA ERRED IN FINDING NEGLIGENCE ON THE PART OF THE PETITIONERS OR ERRED IN NOT FINDING AT THE LEAST, CONTRIBUTORY NEGLIGENCE ON THE PART OF THE RESPONDENTS.[13]

The petitioners maintain that the proximate cause of the collision was the negligence and recklessness of the driver of the jeepney. They argue that as a professional driver, Reynaldo is presumed to be familiar with traffic rules and regulations, including the right of way accorded to trains at railroad crossing and the precautionary measures to observe in traversing the same. However, in utter disregard of the right of way enjoyed by PNR trains, he failed to bring his jeepney to a full stop before crossing the railroad track and thoughtlessly followed the ten-wheeler truck ahead of them. His failure to maintain a safe distance between the jeepney he was driving and the truck ahead of the same prevented him from seeing the PNR signage displayed along the crossing.[14]

In their Comment,[15] the respondents reiterate the findings of the RTC and the CA that the petitioners' negligence in maintaining adequate and necessary public safety devices in the area of the accident was the proximate cause of the mishap. They asseverate that if there was only a level crossing bar, warning light or sound, or flagman in the intersection, the accident would not have happened. Thus, there is no other party to blame but the petitioners for their failure to ensure that adequate warning devices are installed along the railroad crossing.[16]

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[13] *Id.* at 12.

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

[15] *Id.* at 68-80.

[16] *Id.* at 79.

This Court's Ruling

The petition lacks merit.

The petitioners' negligence was the proximate cause of the accident.

Article 2176 of the New Civil Code prescribes a civil liability for damages caused by a person's act or omission constituting fault or negligence. It states:

> Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there was no pre-existing contractual relation between the parties, is called quasi-delict and is governed by the provisions of this chapter.

In *Layugan v. Intermediate Appellate Court*,[17] negligence was defined as the omission to do something which a reasonable man, guided by considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do. It is the failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.[18] To determine the existence of negligence, the time-honored test was: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless,

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[17] 249 Phil. 363 (1988).

[18] *Id.* at 373, citing Blacks Law Dictionary, Fifth Edition, 930; Cooley on Torts, Fourth Edition, Vol. 3, 265.

blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.[19]

In the instant petition, this Court is called upon to determine whose negligence occasioned the ill-fated incident. The records however reveal that this issue had been rigorously discussed by both the RTC and the CA. To emphasize, the RTC ruled that it was the petitioners' failure to install adequate safety devices at the railroad crossing which proximately caused the collision. This finding was affirmed by the CA in its July 21, 2009 Decision. It is a well-established rule that factual findings by the CA are conclusive on the parties and are not reviewable by this Court. They are entitled to great weight and respect, even finality, especially when, as in this case, the CA affirmed the factual findings arrived at by the trial court.[20]

Furthermore, in petitions for review on *certiorari*, only questions of law may be put into issue. Questions of fact cannot be entertained.[21] To distinguish one from the other, a *question of law* exists when the doubt or difference centers on what the law is on a certain state of facts. A *question of fact*, on the other hand, exists if the doubt centers on the truth or falsity of the alleged facts.[22] Certainly, the finding of negligence by the RTC, which was affirmed by the CA, is a question of fact which this Court cannot pass upon as this would entail going into the factual matters on which the negligence was based.[23]

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[19] *Picart v. Smith*, 37 Phil. 809, 813 (1918).

[20] *Cebu Shipyard & Eng'g Works, Inc. v. William Lines, Inc.*, 366 Phil. 439, 451 (1999), citing *Meneses v. Court of Appeals*, 316 Phil. 210, 222 (1995); *Tay Chun Suy v. Court of Appeals*, G.R. No. 93640, January 7, 1994, 229 SCRA 151, 156; *First Philippine International Bank v. CA*, 322 Phil. 280, 319 (1996); *Fortune Motors (Phils.) Corp. v. CA*, 335 Phil. 315, 330 (1997).

[21] *Id.* at 452.

[22] *Westmont Investment Corporation v. Francia, Jr.*, G.R. No. 194128, December 7, 2011, citing *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550, 561 (2004).

[23] *Philippine National Railways v. Brunty*, G.R. No. 169891, November 2, 2006, 506 SCRA 685, 697, citing *Estacion v. Bernardo*, 518 Phil. 388, 398 (2006); *Lambert v. Heirs of Ray Castillon*, 492 Phil. 384, 389 (2005); *Pestaño v. Sps. Sumayang*, 400 Phil. 740, 748 (2000).

Moreover, it was not shown that the present case falls under any of the recognized exceptions[24] to the oft repeated principle according great weight and respect to the factual findings of the trial court and the CA.

At any rate, the records bear out that the factual circumstances of the case were meticulously scrutinized by both the RTC and the CA before arriving at the same finding of negligence on the part of the petitioners, and we found no compelling reason to disturb the same. Both courts ruled that the petitioners fell short of the diligence expected of it, taking into consideration the nature of its business, to forestall any untoward incident. In particular, the petitioners failed to install safety railroad bars to prevent motorists from crossing the tracks in order to give way to an approaching train. Aside from the absence of a crossing bar, the "Stop, Look and Listen" signage installed in the area was poorly maintained, hence, inadequate to alert the public of the impending danger. A reliable signaling device in good condition, not just a dilapidated "Stop, Look and Listen" signage, is needed to give notice to the public. It is the responsibility of the railroad company to use reasonable care to keep the signal devices in working order. Failure to do so would be an indication of

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[24] Instances when the findings of fact of the trial court and/or Court of Appeals may be reviewed by the Supreme Court are: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) the finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (*Misa v. Court of Appeals*, G.R. No. 97291, August 5, 1992, 212 SCRA 217, 221-222)

negligence.[25] Having established the fact of negligence on the part of the petitioners, they were rightfully held liable for damages.

There was no contributory negligence on the part of the respondents.

As to whether there was contributory negligence on the part of the respondents, this court rule in the negative. Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard which he is required to conform for his own protection. It is an act or omission amounting to want of ordinary care on the part of the person injured which, concurring with the defendant's negligence, is the proximate cause of the injury.[26] Here, we cannot see how the respondents could have contributed to their injury when they were not even aware of the forthcoming danger. It was established during the trial that the jeepney carrying the respondents was following a ten-wheeler truck which was only about three to five meters ahead. When the truck proceeded to traverse the railroad track, Reynaldo, the driver of the jeepney, simply followed through. He did so under the impression that it was safe to proceed. It bears noting that the prevailing circumstances immediately before the collision did not manifest even the slightest indication of an imminent harm. To begin with, the truck they were trailing was able to safely cross the track. Likewise, there was no crossing bar to prevent them from proceeding or, at least, a stoplight or signage to forewarn them of the approaching peril. Thus, relying on his faculties of sight and hearing, Reynaldo had no reason to anticipate the impending danger.[27] He proceeded to cross the track and, all of

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[25] *Philippine National Railways v. Court of Appeals*, G.R. No. 157658, October 15, 2007, 536 SCRA 147, 155.

[26] See *National Power Corporation v. Heirs of Noble Casionan*, G.R. No. 165969, November 27, 2008, 572 SCRA 71, 81-82, citing *Estacion v. Bernardo*, 518 Phil. 388, 401 (2006); *Ma-ao Sugar Central Co., Inc. v. Court of Appeals*, G.R. No. 83491, August 27, 1990, 189 SCRA 88, 93.

[27] See *Cusi v. Philippine National Railways*, 179 Phil. 284, 294 (1979).

a sudden, his jeepney was rammed by the train being operated by the petitioners. Even then, the circumstances before the collision negate the imputation of contributory negligence on the part of the respondents. What clearly appears is that the accident would not have happened had the petitioners installed reliable and adequate safety devices along the crossing to ensure the safety of all those who may utilize the same.

At this age of modern transportation, it behooves the PNR to exert serious efforts to catch up with the trend, including the contemporary standards in railroad safety. As an institution established to alleviate public transportation, it is the duty of the PNR to promote the safety and security of the general riding public and provide for their convenience, which to a considerable degree may be accomplished by the installation of precautionary warning devices. Every railroad crossing must be installed with barriers on each side of the track to block the full width of the road until after the train runs past the crossing. To even draw closer attention, the railroad crossing may be equipped with a device which rings a bell or turns on a signal light to signify the danger or risk of crossing. It is similarly beneficial to mount advance warning signs at the railroad crossing, such as a reflectorized crossbuck sign to inform motorists of the existence of the track, and a stop, look and listen signage to prompt the public to take caution. These warning signs must be erected in a place where they will have ample lighting and unobstructed visibility both day and night. If only these safety devices were installed at the Tiaong railroad crossing and the accident nevertheless occurred, we could have reached a different disposition in the extent of the petitioner's liability.

The exacting nature of the responsibility of railroad companies to secure public safety by the installation of warning devices was emphasized in *Philippine National Railways v. Court of Appeals*,[28] thus:

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[28] *Philippine National Railways v. Court of Appeals*, G.R. No. 157658, October 15, 2007, 536 SCRA 147.

[I]t may broadly be stated that railroad companies owe to the public a duty of exercising a reasonable degree of care to avoid injury to persons and property at railroad crossings, which duties pertain both to the operation of trains and to the maintenance of the crossings. Moreover, every corporation constructing or operating a railway shall make and construct at all points where such railway crosses any public road, good, sufficient, and safe crossings, and erect at such points, at sufficient elevation from such road as to admit a free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railway, and warn persons of the necessity of looking out for trains. The failure of the PNR to put a cross bar, or signal light, flagman or switchman, or semaphore is evidence of negligence and disregard of the safety of the public, even if there is no law or ordinance requiring it, because public safety demands that said device or equipment be installed.[29]

The responsibility of the PNR to secure public safety does not end with the installation of safety equipment and signages but, with equal measure of accountability, with the upkeep and repair of the same. Thus, in *Cusi v. Philippine National Railways*,[30] we held:

Jurisprudence recognizes that if warning devices are installed in railroad crossings, the travelling public has the right to rely on such warning devices to put them on their guard and take the necessary precautions before crossing the tracks. A need, therefore, exists for the railroad company to use reasonable care to keep such devices in good condition and in working order, or to give notice that they are not operating, since if such a signal is misunderstood it is a menace. Thus, it has been held that if a railroad company maintains a signalling device at a crossing to give warning of the approach of a train, the failure of the device to operate is generally held to be evidence of negligence, which maybe considered with all the circumstances of the case in determining whether the railroad company was negligent as a matter of fact.[31]

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[29] *Id.* at 155-156, citing *Philippine National Railway v. Brunty*, G.R. No. 169891, November 2, 2006, 506 SCRA 685, 699.

[30] *Cusi v. Philippine National Railways*, 179 Phil. 284, 294 (1979).

[31] *Id.* at 292, citing 74 C.J.S., 1347, 1348 and 44 Am Jur. 766, pp. 8-9.

The maintenance of safety equipment and warning signals at railroad crossings is equally important as their installation since poorly maintained safety warning devices court as much danger as when none was installed at all. The presence of safety warning signals at railroad crossing carries with it the presumption that they are in good working condition and that the public may depend on them for assistance. If they happen to be neglected and inoperative, the public may be misled into relying on the impression of safety they normally convey and eventually bring injury to themselves in doing so.

The doctrine of last clear chance is not applicable.

Finally, the CA correctly ruled that the doctrine of last clear chance is not applicable in the instant case. The doctrine of last clear chance provides that where both parties are negligent but the negligent act of one is appreciably later in point of time than that of the other, or where it is impossible to determine whose fault or negligence brought about the occurrence of the incident, the one who had the last clear opportunity to avoid the impending harm but failed to do so, is chargeable with the consequences arising therefrom. Stated differently, the rule is that the antecedent negligence of a person does not preclude recovery of damages caused by the supervening negligence of the latter, who had the last fair chance to prevent the impending harm by the exercise of due diligence.[32] To reiterate, the proximate cause of the collision was the petitioners' negligence in ensuring that motorists and pedestrians alike may safely cross the railroad track. The unsuspecting driver and passengers of the jeepney did not have any participation in the occurrence of the unfortunate incident which befell them. Likewise, they did not exhibit any

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[32] *Canlas v. Court of Appeals*, 383 Phil. 315, 324 (2000), citing *Philippine Bank of Commerce v. CA*, 336 Phil. 667, 680 (1997), citing *LBC Air Cargo, Inc. v. CA*, 311 Phil. 715, 722-724 (1995); *Picart v. Smith*, 37 Phil. 809, 814 (1915); *Pantranco North Express, Inc. v. Baesa*, 258-A Phil. 975, 980 (1989); *Glan People's Lumber and Hardware v. Intermediate Appellate Court*, 255 Phil. 447 (1989).

overt act manifesting disregard for their own safety. Thus, absent preceding negligence on the part of the respondents, the doctrine of last clear chance cannot be applied.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision of the Court of Appeals dated July 21, 2009 in CA-G.R. CV No. 90021 is hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez* and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 192558. February 15, 2012]

BITOY JAVIER (DANILO P. JAVIER), *petitioner, vs.* **FLY ACE CORPORATION/FLORDELYN CASTILLO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF FACT; MADE APPROPRIATE IN CASE OF CONFLICT IN THE FINDINGS OF THE LABOR ARBITER, THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE COURT OF APPEALS.— Javier's alleged illegal dismissal is anchored on the existence of an employer-employee relationship between him and Fly Ace. This is essentially a question of fact. Generally, the Court does not review errors that raise factual questions. However, when there is conflict among the factual findings of the

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[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1195 dated February 15, 2012.

antecedent deciding bodies like the LA, the NLRC and the CA, "it is proper, in the exercise of Our equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings."

2. LABOR LAWS; NEW RULES OF PROCEDURE OF THE NLRC; LIBERAL APPLICATION THEREOF NOTWITHSTANDING, SUBSTANTIAL EVIDENCE REQUIRED TO PROVE CLAIM OF EMPLOYMENT.— As the records bear out, the LA and the CA found Javier's claim of employment with Fly Ace as wanting and deficient. The Court is constrained to agree. Although Section 10, Rule VII of the New Rules of Procedure of the NLRC allows a relaxation of the rules of procedure and evidence in labor cases, this rule of liberality does not mean a complete dispensation of proof. x x x "No particular form of evidence is required to prove the existence of such employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted. Hence, while no particular form of evidence is required, a finding that such relationship exists must still rest on some substantial evidence. Moreover, the substantiality of the evidence depends on its quantitative as well as its *qualitative* aspects." x x x circumstances of the instant case demand that something more should have been proffered. Had there been other proofs of employment, such as x x x inclusion in petitioner's payroll, or a clear exercise of control, the Court would have affirmed the finding of employer-employee relationship."

3. ID.; EMPLOYMENT; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.— The Court is of the considerable view that on Javier lies the burden to pass the well-settled tests to determine the existence of an employer-employee relationship, *viz*: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct. Of these elements, the most important criterion is whether the employer controls or has reserved the right to control the employee not only as to the result of the work but also as to the means and methods by which the result is to be accomplished.

4. ID.; ID.; PAYMENT ON "*PAKYAW*" BASIS; RECEIPTS THEREOF MERELY ALLEGED AS FORGED, NOT

APPRECIATED.— Fly Ace does not dispute having contracted Javier and paid him on a "per trip" rate as a stevedore, albeit on a *pakyaw* basis. The Court cannot fail to note that Fly Ace presented documentary proof that Javier was indeed paid on a *pakyaw* basis per the acknowledgment receipts admitted as competent evidence by the LA. Unfortunately for Javier, his mere denial of the signatures affixed therein cannot automatically sway us to ignore the documents because "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."

5. ID.; ID.; PAYMENT BY PIECE DOES NOT NEGATE EMPLOYMENT BUT FACT OF EMPLOYMENT MUST BE ESTABLISHED.— Payment on a piece-rate basis does not negate regular employment. x x x Payment by the piece is just a method of compensation and does not define the essence of the relations. x x x However, in determining whether the relationship is that of employer and employee or one of an independent contractor, each case must be determined on its own facts and all the features of the relationship are to be considered."

6. POLITICAL LAW; CONSTITUTIONAL LAW; POLICY OF SOCIAL JUSTICE AND PROTECTION OF THE WORKING CLASS DOES NOT MEAN AUTOMATIC INCLINATION TO LABOR.— While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its rights which are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for the less privileged in life, the Court has inclined, more often than not, toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Ronald M. Castaneda for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition under Rule 45 of the Rules of Civil Procedure assailing the March 18, 2010 Decision[1] of the Court of Appeals *(CA)* and its June 7, 2010 Resolution,[2] in CA-G.R. SP No. 109975, which reversed the May 28, 2009 Decision[3] of the National Labor Relations Commission *(NLRC)* in the case entitled *Bitoy Javier v. Fly Ace/Flordelyn Castillo*,[4] holding that petitioner Bitoy Javier *(Javier)* was illegally dismissed from employment and ordering Fly Ace Corporation *(Fly Ace)* to pay backwages and separation pay in lieu of reinstatement.

Antecedent Facts

On May 23, 2008, Javier filed a complaint before the NLRC for underpayment of salaries and other labor standard benefits. He alleged that he was an employee of Fly Ace since September 2007, performing various tasks at the respondent's warehouse such as cleaning and arranging the canned items before their delivery to certain locations, except in instances when he would be ordered to accompany the company's delivery vehicles, as *pahinante*; that he reported for work from Monday to Saturday from 7:00 o'clock in the morning to 5:00 o'clock in the afternoon; that during his employment, he was not issued an identification card and payslips by the company; that on May 6, 2008, he reported for work but he was no longer allowed to enter the company premises by the security guard upon the instruction of Ruben Ong *(Mr. Ong)*, his superior;[5] that after several minutes

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[1] *Rollo*, pp. 33-46. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justice Bienvenido L. Reyes (now a member of this Court) and Associate Justice Stephen C. Cruz.

[2] *Id.* at 30-31.

[3] *Id.* at 77-86.

[4] Docketed as NLRC LAC No. 02-000346-09(8) and NLRC NCR CN. 05-07424-08.

[5] *Rollo*, p. 78.

of begging to the guard to allow him to enter, he saw Ong whom he approached and asked why he was being barred from entering the premises; that Ong replied by saying, "*Tanungin mo anak mov*;"[6] that he then went home and discussed the matter with his family; that he discovered that Ong had been courting his daughter Annalyn after the two met at a fiesta celebration in Malabon City; that Annalyn tried to talk to Ong and convince him to spare her father from trouble but he refused to accede; that thereafter, Javier was terminated from his employment without notice; and that he was neither given the opportunity to refute the cause/s of his dismissal from work.

To support his allegations, Javier presented an affidavit of one Bengie Valenzuela who alleged that Javier was a stevedore or *pahinante* of Fly Ace from September 2007 to January 2008. The said affidavit was subscribed before the Labor Arbiter *(LA)*.[7]

For its part, Fly Ace averred that it was engaged in the business of importation and sales of groceries. Sometime in December 2007, Javier was contracted by its employee, Mr. Ong, as extra helper on a *pakyaw* basis at an agreed rate of ₱300.00 per trip, which was later increased to ₱325.00 in January 2008. Mr. Ong contracted Javier roughly 5 to 6 times only in a month whenever the vehicle of its contracted hauler, Milmar Hauling Services, was not available. On April 30, 2008, Fly Ace no longer needed the services of Javier. Denying that he was their employee, Fly Ace insisted that there was no illegal dismissal.[8] Fly Ace submitted a copy of its agreement with Milmar Hauling Services and copies of acknowledgment receipts evidencing payment to Javier for his contracted services bearing the words, "daily manpower *(pakyaw/piece rate pay)*" and the latter's signatures/initials.

Ruling of the Labor Arbiter

On November 28, 2008, the LA dismissed the complaint for lack of merit on the ground that Javier failed to present proof that he was a regular employee of Fly Ace. He wrote:

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[6] Decision of LA, *id.* at 88.

[7] *Id.* at 87.

[8] *Id.* at 78.

Complainant has no employee ID showing his employment with the Respondent nor any document showing that he received the benefits accorded to regular employees of the Respondents. His contention that Respondent failed to give him said ID and payslips implies that indeed he was not a regular employee of Fly Ace considering that complainant was a helper and that Respondent company has contracted a regular trucking for the delivery of its products.

Respondent Fly Ace is not engaged in trucking business but in the importation and sales of groceries. Since there is a regular hauler to deliver its products, we give credence to Respondents' claim that complainant was contracted on "*pakiao*" basis.

As to the claim for underpayment of salaries, the payroll presented by the Respondents showing salaries of workers on "*pakiao*" basis has evidentiary weight because although the signature of the complainant appearing thereon are not uniform, they appeared to be his true signature.

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Hence, as complainant received the rightful salary as shown by the above described payrolls, Respondents are not liable for salary differentials.[9]

Ruling of the NLRC

On appeal with the NLRC, Javier was favored. It ruled that the LA skirted the argument of Javier and immediately concluded that he was not a regular employee simply because he failed to present proof. It was of the view that a *pakyaw*-basis arrangement did not preclude the existence of employer-employee relationship. "Payment by result x x x is a method of compensation and does not define the essence of the relation. It is a mere method of computing compensation, not a basis for determining the existence or absence of an employer-employee relationship."[10] The NLRC further averred that it did not follow that a worker was a job contractor and not an employee, just because the work he was doing was not directly related to the employer's trade or business

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

[10] *Id.* at 80.

or the work may be considered as "extra" helper as in this case; and that the relationship of an employer and an employee was determined by law and the same would prevail whatever the parties may call it. In this case, the NLRC held that substantial evidence was sufficient basis for judgment on the existence of the employer-employee relationship. Javier was a regular employee of Fly Ace because there was reasonable connection between the particular activity performed by the employee *(as a "pahinante")* in relation to the usual business or trade of the employer (importation, sales and delivery of groceries). He may not be considered as an independent contractor because he could not exercise any judgment in the delivery of company products. He was only engaged as a "helper."

Finding Javier to be a regular employee, the NLRC ruled that he was entitled to a security of tenure. For failing to present proof of a valid cause for his termination, Fly Ace was found to be liable for illegal dismissal of Javier who was likewise entitled to backwages and separation pay in lieu of reinstatement. The NLRC thus ordered:

WHEREFORE, premises considered, complainant's appeal is partially GRANTED. The assailed Decision of the labor arbiter is VACATED and a new one is hereby entered holding respondent FLY ACE CORPORATION guilty of illegal dismissal and non-payment of 13th month pay. Consequently, it is hereby ordered to pay complainant DANILO "Bitoy" JAVIER the following:

1. Backwages	- ₱45,770.83
2. Separation pay, in lieu of reinstatement	- 8,450.00
3. Unpaid 13th month pay (proportionate)	- 5,633.33
TOTAL	- ₱59,854.16

All other claims are dismissed for lack of merit.

SO ORDERED.[11]

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[11] *Id.* at 86.

Ruling of the Court of Appeals

On March 18, 2010, the CA annulled the NLRC findings that Javier was indeed a former employee of Fly Ace and reinstated the dismissal of Javier's complaint as ordered by the LA. The CA exercised its authority to make its own factual determination anent the issue of the existence of an employer-employee relationship between the parties. According to the CA:

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In an illegal dismissal case the *onus probandi* rests on the employer to prove that its dismissal was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. x x x it is incumbent upon private respondent to prove the employee-employer relationship by substantial evidence.

x x x x x x x x x

It is incumbent upon private respondent to prove, by substantial evidence, that he is an employee of petitioners, but he failed to discharge his burden. The non-issuance of a company-issued identification card to private respondent supports petitioners' contention that private respondent was not its employee.[12]

The CA likewise added that Javier's failure to present salary vouchers, payslips, or other pieces of evidence to bolster his contention, pointed to the inescapable conclusion that he was not an employee of Fly Ace. Further, it found that Javier's work was not necessary and desirable to the business or trade of the company, as it was only when there were scheduled deliveries, which a regular hauling service could not deliver, that Fly Ace would contract the services of Javier as an extra helper. Lastly, the CA declared that the facts alleged by Javier did not pass the "control test."

He contracted work outside the company premises; he was not required to observe definite hours of work; he was not

[12] *Id.* at 42.

required to report daily; and he was free to accept other work elsewhere as there was no exclusivity of his contracted service to the company, the same being co-terminous with the trip only.[13] Since no substantial evidence was presented to establish an employer-employee relationship, the case for illegal dismissal could not prosper.

The petitioners moved for reconsideration, but to no avail.

Hence, this appeal anchored on the following grounds:

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONER WAS NOT A REGULAR EMPLOYEE OF FLY ACE.

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONER IS NOT ENTITLED TO HIS MONETARY CLAIMS.[14]

The petitioner contends that other than its bare allegations and self-serving affidavits of the other employees, Fly Ace has nothing to substantiate its claim that Javier was engaged on a *pakyaw* basis. Assuming that Javier was indeed hired on a *pakyaw* basis, it does not preclude his regular employment with the company. Even the acknowledgment receipts bearing his signature and the confirming receipt of his salaries will not show the true nature of his employment as they do not reflect the necessary details of the commissioned task. Besides, Javier's tasks as *pahinante* are related, necessary and desirable to the line of business by Fly Ace which is engaged in the importation and sale of grocery items. "On days when there were no scheduled deliveries, he worked in petitioners' warehouse, arranging and cleaning the stored cans for delivery to clients."[15] More

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[13] *Id.* at 44.

[14] *Id.* at 16.

[15] *Id.* at 20.

importantly, Javier was subject to the control and supervision of the company, as he was made to report to the office from Monday to Saturday, from 7:00 o'clock in the morning until 5:00 o'clock in the afternoon. The list of deliverable goods, together with the corresponding clients and their respective purchases and addresses, would necessarily have been prepared by Fly Ace. Clearly, he was subjected to compliance with company rules and regulations as regards working hours, delivery schedule and output, and his other duties in the warehouse.[16]

The petitioner chiefly relied on *Chavez v. NLRC*,[17] where the Court ruled that payment to a worker on a per trip basis is not significant because "this is merely a method of computing compensation and not a basis for determining the existence of employer-employee relationship." Javier likewise invokes the rule that, "in controversies between a laborer and his master, x x x doubts reasonably arising from the evidence should be resolved in the former's favour. The policy is reflected is no less than the Constitution, Labor Code and Civil Code."[18]

Claiming to be an employee of Fly Ace, petitioner asserts that he was illegally dismissed by the latter's failure to observe substantive and procedural due process. Since his dismissal was not based on any of the causes recognized by law, and was implemented without notice, Javier is entitled to separation pay and backwages.

In its Comment,[19] Fly Ace insists that there was no substantial evidence to prove employer-employee relationship. Having a service contract with Milmar Hauling Services for the purpose of transporting and delivering company products to customers, Fly Ace contracted Javier as an extra helper or *pahinante* on a mere "per trip basis." Javier, who was actually a loiterer in the

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[16] *Id*.

[17] 489 Phil. 44 (2005).

[18] *Dealco Farms v. NLRC*, G.R. No. 153192, January 30, 2009, 577 SCRA 280.

[19] *Rollo*, pp. 207-220.

area, only accompanied and assisted the company driver when Milmar could not deliver or when the exigency of extra deliveries arises for roughly five to six times a month. Before making a delivery, Fly Ace would turn over to the driver and Javier the delivery vehicle with its loaded company products. With the vehicle and products in their custody, the driver and Javier "would leave the company premises using their own means, method, best judgment and discretion on how to deliver, time to deliver, where and [when] to start, and manner of delivering the products."[20]

Fly Ace dismisses Javier's claims of employment as baseless assertions. Aside from his bare allegations, he presented nothing to substantiate his status as an employee. "It is a basic rule of evidence that each party must prove his affirmative allegation. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of his opponent."[21] Invoking the case of *Lopez v. Bodega City*,[22] Fly Ace insists that in an illegal dismissal case, the burden of proof is upon the complainant who claims to be an employee. It is essential that an employer-employee relationship be proved by substantial evidence. Thus, it cites:

> In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.

Fly Ace points out that Javier merely offers factual assertions that he was an employee of Fly Ace, "which are unfortunately not supported by proof, documentary or otherwise."[23] Javier simply assumed that he was an employee of Fly Ace, absent

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[20] *Id.* at 209.

[21] *Id.* at 211.

[22] G.R. No. 155731, September 3, 2007, 532 SCRA 56.

[23] Respondent's Comment, *rollo*, p. 212.

any competent or relevant evidence to support it. "He performed his contracted work outside the premises of the respondent; he was not even required to report to work at regular hours; he was not made to register his time in and time out every time he was contracted to work; he was not subjected to any disciplinary sanction imposed to other employees for company violations; he was not issued a company I.D.; he was not accorded the same benefits given to other employees; he was not registered with the Social Security System *(SSS)* as petitioner's employee; and, he was free to leave, accept and engage in other means of livelihood as there is no exclusivity of his contracted services with the petitioner, his services being co-terminus with the trip only. All these lead to the conclusion that petitioner is not an employee of the respondents."[24]

Moreover, Fly Ace claims that it had "no right to control the result, means, manner and methods by which Javier would perform his work or by which the same is to be accomplished."[25] In other words, Javier and the company driver were given a free hand as to how they would perform their contracted services and neither were they subjected to definite hours or condition of work.

Fly Ace likewise claims that Javier's function as a *pahinante* was not directly related or necessary to its principal business of importation and sales of groceries. Even without Javier, the business could operate its usual course as it did not involve the business of inland transportation. Lastly, the acknowledgment receipts bearing Javier's signature and words "*pakiao* rate," referring to his earned salaries on a per trip basis, have evidentiary weight that the LA correctly considered in arriving at the conclusion that Javier was not an employee of the company.

The Court affirms the assailed CA decision.

It must be noted that the issue of Javier's alleged illegal dismissal is anchored on the existence of an employer-employee relationship

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[24] *Id.* at 215-216.

[25] *Id.* at 216.

between him and Fly Ace. This is essentially a question of fact. Generally, the Court does not review errors that raise factual questions. However, when there is conflict among the factual findings of the antecedent deciding bodies like the LA, the NLRC and the CA, "it is proper, in the exercise of Our equity jurisdiction, to review and re-evaluate the factual issues and to look into the records of the case and re-examine the questioned findings."[26] In dealing with factual issues in labor cases, "substantial evidence – that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion – is sufficient."[27]

As the records bear out, the LA and the CA found Javier's claim of employment with Fly Ace as wanting and deficient. The Court is constrained to agree. Although Section 10, Rule VII of the New Rules of Procedure of the NLRC[28] allows a relaxation of the rules of procedure and evidence in labor cases, this rule of liberality does not mean a complete dispensation of proof. Labor officials are enjoined to use reasonable means to ascertain the facts speedily and objectively with little regard to technicalities or formalities but nowhere in the rules are they provided a license to completely discount evidence, or the lack of it. The quantum of proof required, however, must still be satisfied. Hence, "when confronted with conflicting versions on factual matters, it is for them in the exercise of discretion to determine which party deserves credence on the basis of evidence received, subject only to the requirement that their decision must be supported by substantial evidence."[29] Accordingly, the petitioner

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[26] *Masing and Sons Development Corporation and Crispin Chan v. Gregorio P. Rogelio*, G.R. No. 161787, April 27, 2011.

[27] *Id.*, citing *Opulencia Ice Plant and Storage v. NLRC*, G.R. No. 98368, December 15, 1993, 228 SCRA 473, 478.

[28] "The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process."

[29] *Salvador Lacorte v. Hon. Amado G. Inciong*, 248 Phil. 232 (1988), citing *Gelmart Industries [Phil.] Inc. v. Leogardo, Jr.*, 239 Phil. 386 (1987).

needs to show by substantial evidence that he was indeed an employee of the company against which he claims illegal dismissal.

Expectedly, opposing parties would stand poles apart and proffer allegations as different as chalk and cheese. It is, therefore, incumbent upon the Court to determine whether the party on whom the burden to prove lies was able to hurdle the same. "No particular form of evidence is required to prove the existence of such employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted. Hence, while no particular form of evidence is required, a finding that such relationship exists must still rest on some substantial evidence. Moreover, the substantiality of the evidence depends on its quantitative as well as its *qualitative* aspects."[30] Although substantial evidence is not a function of quantity but rather of quality, the x x x circumstances of the instant case demand that something more should have been proffered. Had there been other proofs of employment, such as x x x inclusion in petitioner's payroll, or a clear exercise of control, the Court would have affirmed the finding of employer-employee relationship."[31]

In sum, the rule of thumb remains: the *onus probandi* falls on petitioner to establish or substantiate such claim by the requisite quantum of evidence.[32] "Whoever claims entitlement to the benefits provided by law should establish his or her right thereto x x x."[33] Sadly, Javier failed to adduce substantial evidence as basis for the grant of relief.

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[30] *People's Broadcasting (Bombo Radyo Phils., Inc.) v. The Secretary of the Department of Labor and Employment*, G.R. No. 179652, May 8, 2009, 587 SCRA 724, citing *Opulencia Ice Plant and Storage v. NLRC*, G.R. No. 98368, December 15, 1993, 228 SCRA 473 and *Insular Life Assurance Co., Ltd. Employees Association-Natu v. Insular Life Assurance Co., Ltd.*, 166 Phil. 505 (1977).

[31] *Id.*

[32] *Jebsens Maritime Inc., represented by Ms. Arlene Asuncion and/or Alliance Marine Services, Ltd. v. Enrique Undag*, G.R. No. 191491, December 14, 2011.

[33] *Alex C. Cootauco v. MMS Phil. Maritime Services, Inc., Ms. Mary C. Maquilan and/or MMS Co. Ltd.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 544-545.

In this case, the LA and the CA both concluded that Javier failed to establish his employment with Fly Ace. By way of evidence on this point, all that Javier presented were his self-serving statements purportedly showing his activities as an employee of Fly Ace. Clearly, Javier failed to pass the substantiality requirement to support his claim. Hence, the Court sees no reason to depart from the findings of the CA.

While Javier remains firm in his position that as an employed stevedore of Fly Ace, he was made to work in the company premises during weekdays arranging and cleaning grocery items for delivery to clients, no other proof was submitted to fortify his claim. The lone affidavit executed by one Bengie Valenzuela was unsuccessful in strengthening Javier's cause. In said document, all Valenzuela attested to was that he would frequently see Javier at the workplace where the latter was also hired as stevedore.[34] Certainly, in gauging the evidence presented by Javier, the Court cannot ignore the inescapable conclusion that his mere presence at the workplace falls short in proving employment therein. The supporting affidavit could have, to an extent, bolstered Javier's claim of being tasked to clean grocery items when there were no scheduled delivery trips, but no information was offered in this subject simply because the witness had no personal knowledge of Javier's employment status in the company. Verily, the Court cannot accept Javier's statements, hook, line and sinker.

The Court is of the considerable view that on Javier lies the burden to pass the well-settled tests to determine the existence of an employer-employee relationship, *viz*: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct. Of these elements, the most important criterion is whether the employer controls or has reserved the right to control the employee not only as to the result of the

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[34] *Rollo*, p. 126.

work but also as to the means and methods by which the result is to be accomplished.[35]

In this case, Javier was not able to persuade the Court that the above elements exist in his case. He could not submit competent proof that Fly Ace engaged his services as a regular employee; that Fly Ace paid his wages as an employee, or that Fly Ace could dictate what his conduct should be while at work. In other words, Javier's allegations did not establish that his relationship with Fly Ace had the attributes of an employer-employee relationship on the basis of the above-mentioned four-fold test. Worse, Javier was not able to refute Fly Ace's assertion that it had an agreement with a hauling company to undertake the delivery of its goods. It was also baffling to realize that Javier did not dispute Fly Ace's denial of his services' exclusivity to the company. In short, all that Javier laid down were bare allegations without corroborative proof.

Fly Ace does not dispute having contracted Javier and paid him on a "per trip" rate as a stevedore, albeit on a *pakyaw* basis. The Court cannot fail to note that Fly Ace presented documentary proof that Javier was indeed paid on a *pakyaw* basis per the acknowledgment receipts admitted as competent evidence by the LA. Unfortunately for Javier, his mere denial of the signatures affixed therein cannot automatically sway us to ignore the documents because "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."[36]

Considering the above findings, the Court does not see the necessity to resolve the second issue presented.

One final note. The Court's decision does not contradict the settled rule that "payment by the piece is just a method of

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[35] *Avelino Lambo and Vicente Belocura v. NLRC and J.C. Tailor Shop and/or Johnny Co*., 375 Phil. 855 (1999), citing *Makati Haberdashery, Inc. v. NLRC*, 259 Phil. 52 (1989).

[36] *Dionisio C. Ladignon v. Court of Appeals and Luzviminda C. Dimaun*, 390 Phil. 1161 (2000), citing *Heirs of Gregorio v. Court of Appeals*, 360 Phil. 753 (1998).

compensation and does not define the essence of the relation."[37] Payment on a piece-rate basis does not negate regular employment. "The term 'wage' is broadly defined in Article 97 of the Labor Code as remuneration or earnings, capable of being expressed in terms of money whether fixed or ascertained on a time, task, piece or commission basis. Payment by the piece is just a method of compensation and does not define the essence of the relations. Nor does the fact that the petitioner is not covered by the SSS affect the employer-employee relationship. However, in determining whether the relationship is that of employer and employee or one of an independent contractor, each case must be determined on its own facts and all the features of the relationship are to be considered."[38] Unfortunately for Javier, the attendant facts and circumstances of the instant case do not provide the Court with sufficient reason to uphold his claimed status as employee of Fly Ace.

While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. Management also has its rights which are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for the less privileged in life, the Court has inclined, more often than not, toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and the applicable law and doctrine.[39]

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[37] *Elias Villuga v. NLRC*, G.R. No. 75038, August 23, 1993, 225 SCRA 537, citing *Dy Keh Beng v. International Labor and Marine Union of the Philippines*, 179 Phil. 131 (1979).

[38] *Avelino Lambo and Vicente Belocura v. NLRC and J.C. Tailor Shop and/or Johnny Co.*, *supra* note 35, citing *Elias Villuga v. NLRC*, G.R. No. 75038, August 23, 1993, 225 SCRA 537.

[39] *Philippine Rural Reconstruction Movement (PRRM) v. Virgilio E. Pulgar*, G.R. No. 169227, July 5, 2010, 623 SCRA 244, 257.

WHEREFORE, the petition is **DENIED**. The March 18, 2010 Decision of the Court of Appeals and its June 7, 2010 Resolution, in CA-G.R. SP No. 109975, are hereby **AFFIRMED**.

SO ORDERED.

Carpio,[*] *Peralta (Acting Chairperson),*[**] *Abad* and *Perez,*[***] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 186961. February 20, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **EAST SILVERLANE REALTY DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF FACT, NOT PROPER; EXCEPTIONS.— [T]he issue of whether the respondent had presented sufficient proof of the required possession under a *bona fide* claim of ownership raises a question of fact, considering that it invites an evaluation of the evidentiary record. However, that x x x this Court is not a trier of facts and bound by the factual findings of the CA are not without exceptions. Among these exceptions,

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[*] Designated as additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1185 dated February 10, 2012.

[**] Designated as Acting Chairperson, per Special Order No. 1184 dated February 10, 2012.

[***] Designated as additional member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1192 dated February 10, 2012.

which obtain in this case, are: (a) when the judgment of the CA is based on a misapprehension of facts or (b) when its findings are not sustained by the evidence on record.

2. POLITICAL LAW; PUBLIC LAND ACT; PROVISIONS ON THE CLASSIFICATION AND DISPOSITION OF LANDS OF THE PUBLIC DOMAIN.— The PLA governs the classification and disposition of lands of the public domain. Under Section 11 thereof, one of the modes of disposing public lands suitable for agricultural purposes is by "confirmation of imperfect or incomplete titles". On the other hand, Section 48 provides the grant to the qualified possessor of an alienable and disposable public land. x x x Notably, the first PLA, or Act No. 926, required a possession and occupation for a period of ten (10) years prior to the effectivity of Act No. 2096 on July 26, 1904 or on July 26, 1894. This was adopted in the PLA until it was amended by Republic Act No. 1942 on June 22, 1957, which provided for a period of thirty (30) years. It was only with the enactment of P.D. No. 1073 on January 25, 1977 that it was required that possession and occupation should commence on June 12, 1945.

3. ID.; PROPERTY REGISTRATION DECREE (PD NO. 1529); ALIENABLE AND DISPOSABLE LAND DISTINGUISHED FROM PRIVATE PROPERTY BY INAPPLICABILITY OF PRESCRIPTION TO THE FORMER.— P.D. No. 1529, which was enacted on June 11, 1978, codified all the laws relative to the registration of property. x x x Section 14 (1) [thereof] covers "alienable and disposable land" while Section 14 (2) covers "private property". As this Court categorically stated in *Heirs of Malabanan v. Republic of the Philippines*, the distinction between the two provisions lies with the inapplicability of prescription to alienable and disposable lands. x x x Property is either part of the public domain or privately owned. Article 420 of the Civil Code, [enumerates the properties of public domain.] x x x All other properties of the State, which is not of the character mentioned in Article 420 is patrimonial property, hence, susceptible to acquisitive prescription.

4. ID.; ID.; ID.; ALIENABLE AND DISPOSABLE LAND CONVERTED TO PRIVATE PROPERTY THRU PRESCRIPTION REQUIRES EXPRESS DECLARATION THAT THE PROPERTY IS NO LONGER INTENDED FOR

PUBLIC SERVICE OR DEVELOPMENT OF NATIONAL WEALTH.— In *Heirs of Malabanan*, this Court ruled that possession and occupation of an alienable and disposable public land for the periods provided under the Civil Code do not automatically convert said property into private property or release it from the public domain. There must be an express declaration that the property is no longer intended for public service or development of national wealth. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the State, and thus, may not be acquired by prescription.

5. ID.; ID.; ID.; ID.; ACQUISITIVE PRESCRIPTION THEREOF; POSSESSION BEFORE PROPERTY WAS CLASSIFIED AS PATRIMONIAL, NOT INCLUDED.— For one to invoke the provisions of Section 14 (2) and set up acquisitive prescription against the State, it is primordial that the status of the property as patrimonial be first established. Furthermore, the period of possession preceding the classification of the property as patrimonial cannot be considered in determining the completion of the prescriptive period.

6. ID.; ID.; ID.; ID.; ID.; ID.; POSSESSION AND OCCUPATION REQUIRED TO ACQUIRE PUBLIC LAND DISTINGUISHED FROM POSSESSION FOR PURPOSES OF PRESCRIPTION.— It is explicit under Section 14 (1) that the possession and occupation required to acquire an imperfect title over an alienable and disposable public land must be "open, continuous, exclusive and notorious" in character. In *Republic of the Philippines v. Alconaba*, this Court explained that the intent behind the use of "possession" in conjunction with "occupation" is to emphasize the need for actual and not just constructive or fictional possession. x x x On the other hand, Section 14 (2) is silent as to the required nature of possession and occupation, thus, requiring a reference to the relevant provisions of the Civil Code on prescription. And under Article 1118 thereof, possession for purposes of prescription must be "in the concept of an owner, public, peaceful and uninterrupted".

7. ID.; ID.; ID.; ID.; ID.; ID.; TAX DECLARATIONS MUST BE SUPPORTED WITH OTHER EVIDENCE TO QUALIFY AS COMPETENT PROOF OF ACTUAL POSSESSION AND

OCCUPATION.— Tax Declaration x x x for a claimed possession of and for more than forty-six (46) years (1948-1994) do not qualify as competent evidence of actual possession and occupation. x x x The phrase "adverse, continuous, open, public, and in concept of owner," by which the respondent describes its possession and that of its predecessors-in-interest is a conclusion of law. x x x A person who seeks the registration of title to a piece of land on the basis of possession by himself and his predecessors-in-interest must prove his claim by clear and convincing evidence, *i.e.*, he must prove his title and should not rely on the absence or weakness of the evidence of the oppositors. x x x In *Cequeña v. Bolante*, this Court ruled that it is only when these tax declarations are coupled with proof of actual [public and adverse] possession of the property that they may become the basis of a claim of ownership.

8. ID.; ID.; APPLICATION FOR REGISTRATION OF LAND FILED AFTER ONLY FOUR YEARS FROM THE TIME THE SUBJECT PROPERTY MAY BE CONSIDERED PATRIMONIAL BY REASON OF DAR'S OCTOBER 26, 1990 ORDER SHOWS LACK OF POSSESSION FOR THE PRESCRIPTIVE PERIOD.— The respondent's application was filed after only four years from the time the subject property may be considered patrimonial by reason of the DAR's October 26, 1990 Order shows lack of possession whether for ordinary or extraordinary prescriptive period. The principle enunciated in *Heirs of Malabanan* [applies:] x x x the thirty (30)-year period of prescription for purposes of acquiring ownership and registration of public land under Section 14 (2) of P.D. No. 1529 only begins from the moment the State expressly declares that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jaime Y. Sindiong for respondent.

D E C I S I O N

REYES, *J.*:

This Court is urged to review and set aside the July 31, 2008 Decision[1] and February 20, 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 00143. In its July 31, 2008 Decision, the CA affirmed the August 27, 2004 Decision of the Regional Trial Court (RTC), Branch 40 of Cagayan De Oro City. The dispositive portion thereof states:

> **WHEREFORE**, premises foregoing, the instant appeal is hereby **DISMISSED** for lack of merit. The assailed Decision dated August 27, 2004 is hereby **AFFIRMED *in toto***.
>
> **SO ORDERED**.[3]

In its February 20, 2009 Resolution, the CA denied the petitioner's August 29, 2008 Motion for Reconsideration.[4]

The Factual Antecedents

The respondent filed with the RTC an application for land registration, covering a parcel of land identified as Lot 9039 of Cagayan Cadastre, situated in El Salvador, Misamis Oriental and with an area of 9,794 square meters. The respondent purchased the portion of the subject property consisting of 4,708 square meters (Area A) from Francisca Oco pursuant to a Deed of Absolute Sale dated November 27, 1990 and the remaining portion consisting of 5,086 square meters (Area B) from Rosario U. Tan Lim, Nemesia Tan and Mariano U. Tan pursuant to a Deed of Partial Partition with Deed of Absolute Sale dated April 11, 1991. It was claimed that the respondent's predecessors-in-interest had

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[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Michael P. Elbinias and Ruben C. Ayson, concurring; *rollo*, pp. 43-54.

[2] *Id.* at 56.

[3] *Id.* at 54.

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

been in open, notorious, continuous and exclusive possession of the subject property since June 12, 1945.

After hearing the same on the merits, the RTC issued on August 27, 2004 a Decision, granting the respondent's petition for registration of the land in question, thus:

> ACCORDINGLY, finding the application meritorious, and pursuant to applicable law and jurisprudence on the matter, particularly the provisions of P.D. 1529, judgment is hereby rendered granting the instant application. The Land Registration Authority is hereby ordered to issue a decree in the name of the applicant EAST SILVERLANE REALTY DEVELOPMENT CORPORATION covering the parcel of land, Lot 9039, Cad 237, having an area of 9,794 square meters covered by the two (2) tax declarations subject of this petition. Based on the decree, the Register of Deeds for the Province of Misamis Oriental is hereby directed to issue an original certificate of title in the name of the applicant covering the land subject matter of this application.[5]

On appeal by the petitioner, the CA affirmed the RTC's August 27, 2004 Decision. In its July 31, 2008 Decision,[6] the CA found no merit in the petitioner's appeal, holding that:

> It is a settled rule that an application for land registration must conform to three requisites: (1) the land is alienable public land; (2) the applicant's open, continuous, exclusive and notorious possession and occupation thereof must be since June 12, 1945, or earlier; and (3) it is a *bona fide* claim of ownership.
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> In the case at bench, petitioner-appellee has met all the requirements. Anent the first requirement, both the report and certification issued by the Department of Environment and Natural Resources (DENR) shows that the subject land was within the alienable and disposable zone classified under BF Project [N]o. 8 Blk. I, L.C. Map [N]o. 585 and was released and certified as such on December 31, 1925.
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> Indubitably, both the DENR certification and report constitute a positive government act, an administrative action, validly classifying

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

[6] *Supra* note 1.

the land in question. It is a settled rule that the classification or re-classification of public lands into alienable or disposable, mineral or forest land is now a prerogative of the Executive Department of the government. Accordingly, the certification enjoys a presumption of regularity in the absence of contradictory evidence. As it is, the said certification remains uncontested and even oppositor-appellant Republic itself did not present any evidence to refute the contents of the said certification. Thus, the alienable and disposable character of the subject land certified as such as early as December 31, 1925 has been clearly established by the evidence of the petitioner-appellee.

Anent the second and third requirements, the applicant is required to prove his open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership either since time immemorial or since June 12, 1945.

x x x x x x x x x

In the case at bench, ESRDC tacked its possession and occupation over the subject land to that of its predecessors-in-interest. Copies of the tax declarations and real property historical ownership pertaining thereto were presented in court. A perusal of the records shows that in 1948, a portion of the subject land was declared under the name of Agapito Claudel. Subsequently, in 1957 until 1991 the same was declared under the name of Francisca Oco. Thereafter, the same was declared under the name of ESRDC. A certification was likewise issued by the Provincial Assessor of Misamis Oriental that previous tax declarations pertaining to the said portion under the name of Agapita Claudel could no longer be located as the files were deemed lost or destroyed before World War II.

On the other hand, the remaining portion of the said land was previously declared in 1948 under the name of Jacinto Tan Lay Cho. Subsequently, in 1969 until 1990, the same was declared under the name of Jacinto Tan. Thereafter, the same was declared under the name of ESRDC. A certification was likewise issued by the Provincial Assessor that the files of previous tax declarations under the name of Jacinto Tan Lay Cho were deemed lost or destroyed again before World War II.

In 1991 or upon ESRDC's acquisition of the subject property, the latter took possession thereto. Albeit it has presently leased the said land to Asia Brewery, Inc., where the latter built its brewery

plant, nonetheless, ESRDC has its branch office located at the plant compound of Asia Brewery, Inc.

Corollarily, oppositor-appellant's contentions that the court *a quo* erred in considering the tax declarations as evidence of ESRDC's possession of the subject land as the latter's predecessors-in-interest declared the same sporadically, is untenable.

It is a settled rule that albeit tax declarations and realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of the possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.

Finally, it bears stressing that the pieces of evidence submitted by petitioner-appellee are incontrovertible. Not one, not even oppositor-appellant Republic, presented any countervailing evidence to contradict the claims of the petitioners that they are in possession of the subject property and their possession of the same is open, continuous and exclusive in the concept of an owner for over 30 years.

Verily, from 1948 when the subject land was declared for taxation purposes until ESRDC filed an application for land registration in 1995, ESRDC have been in possession over the subject land in the concept of an owner tacking its possession to that its predecessors-in-interest for forty seven (47) years already. Thus, ESRDC was able to prove sufficiently that it has been in possession of the subject property for more than 30 years, which possession is characterized as open, continuous, exclusive, and notorious in the concept of an owner.[7] (citations omitted)

The petitioner assails the foregoing, alleging that the respondent failed to prove that its predecessors-in-interest possessed the

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[7] *Rollo,* pp. 48-54.

subject property in the manner and for the length of time required under Section 48 (b) of Commonwealth Act No. 141, otherwise known as the "Public Land Act" (PLA), and Section 14 of Presidential Decree No. 1529, otherwise known as the "Property Registration Decree" (P.D. No. 1529). According to the petitioner, the respondent did not present a credible and competent witness to testify on the specific acts of ownership performed by its predecessors-in-interest on the subject property. The respondent's sole witness, Vicente Oco, can hardly be considered a credible and competent witness as he is the respondent's liaison officer and he is not related in any way to the respondent's predecessors-in-interest. That coconut trees were planted on the subject property only shows casual or occasional cultivation and does not qualify as possession under a claim of ownership.

Issue

This Court is confronted with the sole issue of whether the respondent has proven itself entitled to the benefits of the PLA and P.D. No. 1529 on confirmation of imperfect or incomplete titles.

Our Ruling

This Court resolves to **GRANT** the petition.

Preliminarily, with respect to the infirmity suffered by this petition from the standpoint of Rule 45, this Court agrees with the respondent that the issue of whether the respondent had presented sufficient proof of the required possession under a *bona fide* claim of ownership raises a question of fact, considering that it invites an evaluation of the evidentiary record.[8] However, that a petition for review should be confined to questions of law and that this Court is not a trier of facts and bound by the factual findings of the CA are not without exceptions. Among these exceptions, which obtain in this case, are: (a) when the judgment of the CA is based on a misapprehension of facts or (b) when its findings are not sustained by the evidence on record.

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[8] *Republic of the Philippines v. Manna Properties, Inc.*, 490 Phil. 654, 665 (2005).

This Court's review of the records of this case reveals that the evidence submitted by the respondent fell short of proving that it has acquired an imperfect title over the subject property under Section 48 (b) of the PLA. The respondent cannot register the subject property in its name on the basis of either Section 14 (1) or Section 14 (2) of P.D. No. 1529. It was not established by the required quantum of evidence that the respondent and its predecessors-in-interest had been in open, continuous, exclusive and notorious possession of the subject property for the prescribed statutory period.

The PLA governs the classification and disposition of lands of the public domain. Under Section 11 thereof, one of the modes of disposing public lands suitable for agricultural purposes is by "confirmation of imperfect or incomplete titles."[9] On the other hand, Section 48 provides the grant to the qualified possessor of an alienable and disposable public land. Thus:

SEC. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

(a) Those who prior to the transfer of sovereignty from Spain to the United States have applied for the purchase, composition or other form of grant of lands of the public domain under the laws and royal decrees then in force and have instituted and prosecuted the proceedings in connection therewith, but have with or without default upon their

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[9] Sec. 11. Public lands suitable for agricultural purposes can be disposed of only as follows, and not otherwise:

(1) For homestead settlement;

(2) By sale;

(3) By lease;

(4) By confirmation of imperfect or incomplete titles;

(a) By judicial legalization;

(b) By administrative legalization (free patent).

part, or for any other cause, not received title therefor, if such applicants or grantees and their heirs have occupied and cultivated said lands continuously since the filing of their applications.

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of the public domain suitable to agriculture, whether disposable or not, under a bona fide claim of ownership for at least 30 years shall be entitled to the rights granted in sub-section (b) hereof.

Presidential Decree No. 1073 (P.D. No. 1073), which was issued on January 25, 1977, deleted subsection (a) and amended subsection (b) as follows:

SECTION 4. The provisions of Section 48 (b) and Section 48 (c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant thru himself or thru his predecessor-in-interest under a bona fide claim of ownership since June 12, 1945.

Notably, the first PLA, or Act No. 926, required a possession and occupation for a period of ten (10) years prior to the effectivity of Act No. 2096 on July 26, 1904 or on July 26, 1894. This was adopted in the PLA until it was amended by Republic Act No. 1942 on June 22, 1957, which provided for a period of thirty (30) years. It was only with the enactment of P.D. No. 1073 on January 25, 1977 that it was required that possession and occupation should commence on June 12, 1945.

P.D. No. 1529, which was enacted on June 11, 1978, codified all the laws relative to the registration of property. Section 14 thereof partially provides:

> **Section 14.** *Who may apply*. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law.

Section 14 (1) and Section 14 (2) are clearly different. Section 14 (1) covers "alienable and disposable land" while Section 14 (2) covers "private property." As this Court categorically stated in *Heirs of Malabanan v. Republic of the Philippines*,[10] the distinction between the two provisions lies with the inapplicability of prescription to alienable and disposable lands. Specifically:

> At the same time, Section 14 (2) puts into operation the entire regime of prescription under the Civil Code, a fact which does not hold true with respect to Section 14 (1).[11]

Property is either part of the public domain or privately owned.[12] Under Article 420 of the Civil Code, the following properties are of public dominion:

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[10] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

[11] *Id.* at 201.

[12] Article 419, Civil Code.

(a) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads and others of similar character;

(b) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

All other properties of the State, which is not of the character mentioned in Article 420 is patrimonial property,[13] hence, susceptible to acquisitive prescription.[14]

In *Heirs of Malabanan*, this Court ruled that possession and occupation of an alienable and disposable public land for the periods provided under the Civil Code do not automatically convert said property into private property or release it from the public domain. There must be an express declaration that the property is no longer intended for public service or development of national wealth. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the State, and thus, may not be acquired by prescription.

Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription. After all, Article 420 (2) makes clear that those property "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. **For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when it is "intended for some public service or for the development of the national wealth."** (emphasis supplied)

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for

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[13] Article 421, Civil Code.

[14] *Supra* note 10, at 202.

public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[15]

In other words, for one to invoke the provisions of Section 14 (2) and set up acquisitive prescription against the State, it is primordial that the status of the property as patrimonial be first established. Furthermore, the period of possession preceding the classification of the property as patrimonial cannot be considered in determining the completion of the prescriptive period.

To prove that its predecessors-in-interest were in possession of the subject property on or prior to June 12, 1945 or had completed the prescriptive period of thirty (30) years, the respondent submitted the following tax declarations:

a) Tax Declaration in the name of Agapita Claudel for the year 1948;

b) Tax Declarations in the name of Francisca Oco for the years 1957, 1963, 1969, 1973, 1974, 1980, 1987, 1989 and 1991;

c) Tax Declarations in the respondent's name for the years 1991, 1992 and 1994;

d) Tax Declarations in the name of Jacinto Tan Lay Cho for the years 1948 and 1952;

e) Tax Declarations in the name of Jacinto Tan for the years 1969, 1973, 1974, 1980, 1989 and 1990; and

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[15] *Id.* at 203.

f) Tax Declarations in the respondent's name for the years 1991, 1992 and 1994.

Pursuant to Agapita Claudel's 1948 Tax Declaration, there were nineteen (19) coconut and ten (10) banana trees planted on Area A. The coconut trees were supposedly four years old, hence, the reasonable presumption that she had been in possession even before June 12, 1945.[16]

The respondent also offered the following testimony of Vicente Oco:

"Q – Mr. Witness, If you know about what period your predecessor has started to possess this land subject matter of this application?

A – Per my personal knowledge, it was before the second world war but the Municipality of El Salvador was created on June 15, 1948 by virtue of RA 268 and it's started to officially function only on August 2, 1948[.]

Q – From whom did you acquire this information?

A – From the seller and the adjoining lot owners."[17]

To prove that its predecessors-in-interest exercised acts of dominion over the subject property, the respondent claimed that per Francisca Oco's Tax Declarations, the following improvements were introduced in Area A: nineteen (19) coconut and ten (10) banana trees in Area A in 1957 and 1963; thirty-three (33) coconut trees in 1969 and 1973; thirty-three (33) coconut trees, one (1) mango tree and three (3) seguidillas vines in 1974; thirty-three (33) coconut trees in 1980; eighty-seven (87) coconut trees in 1987; and fifteen (15) coconut trees in 1989. Per Jacinto Tan's Tax Declarations, there were fifty-seven (57) coconut trees in Area B in 1973, 1974, 1980, 1989 and 1990.[18]

A reading of the CA's July 31, 2008 Decision shows that it affirmed the grant of the respondent's application given its

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[16] *Rollo,* p. 102.

[17] *Id.* at 102-103.

[18] *Id.* at 99-101.

supposed compliance with Section 14 (2) of P.D. No. 1529. It ruled that based on the evidence submitted, the respondent is not qualified to register the subject property in its name under Section 14 (1) as the possession and occupation of its predecessors-in-interest commenced after June 12, 1945. Nonetheless, as the CA ruled, the respondent acquired title to the subject property by prescription as its predecessors-in-interest had possessed the subject property for more than thirty (30) years. Citing *Buenaventura v. Republic of the Philippines*,[19] the CA held that even if possession commenced after June 12, 1945, registration is still possible under Section 14 (2) and possession in the concept of an owner effectively converts an alienable and disposable public land into private property.

This Court, however, disagrees on the conclusion arrived at by the CA. On the premise that the application for registration, which was filed in 1995, is based on Section 14 (2), it was not proven that the respondent and its predecessors-in-interest had been in possession of the subject property in the manner prescribed by law and for the period necessary before acquisitive prescription may apply.

While the subject land was supposedly declared alienable and disposable on December 31, 1925 per the April 18, 1997 Certification and July 1, 1997 Report of the Community Environment and Natural Resources Office (CENRO),[20] the Department of Agrarian Reform (DAR) converted the same from agricultural to industrial only on October 16, 1990.[21] Also, it was only in 2000 that the Municipality of El Salvador passed a Zoning Ordinance, including the subject property in the industrial zone.[22] Therefore, it was only in 1990 that the subject property had been declared patrimonial and it is only then that the prescriptive period began to run. The respondent cannot benefit

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[19] G.R. No. 166865, March 2, 2007, 517 SCRA 271.

[20] *Rollo*, p. 142.

[21] *Id.* at 84, 133.

[22] *Id.* at 89-90, 138-140.

from the alleged possession of its predecessors-in-interest because prior to the withdrawal of the subject property from the public domain, it may not be acquired by prescription.

On the premise that the application of the respondent is predicated on Section 14 (1), the same would likewise not prosper. As shown by the tax declarations of the respondent's predecessors-in-interest, the earliest that the respondent can trace back the possession of its predecessors-in-interest is in 1948. That there were four-year old coconut trees in Area A as stated in Agapita Claudel's 1948 Tax Declaration cannot be considered a "well-nigh controvertible evidence" that she was in possession prior to June 12, 1945 without any evidence that she planted and cultivated them. In the case of Jacinto Tan Lay Cho, the earliest tax declaration in his name is dated 1948 and there is no evidence that he occupied and possessed Area B on or prior to June 12, 1945. Furthermore, the testimony of the respondent's lone witness that the respondent's predecessors-in-interest were already in possession of the subject property as of June 12, 1945 lacks probative value for being hearsay.

It is explicit under Section 14 (1) that the possession and occupation required to acquire an imperfect title over an alienable and disposable public land must be "open, continuous, exclusive and notorious" in character. In *Republic of the Philippines v. Alconaba*,[23] this Court explained that the intent behind the use of "possession" in conjunction with "occupation" is to emphasize the need for actual and not just constructive or fictional possession.

> The law speaks of *possession and occupation*. Since these words are separated by the conjunction *and*, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word *occupation* serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a

[23] 471 Phil. 607 (2004).

land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.[24] (citations omitted)

On the other hand, Section 14 (2) is silent as to the required nature of possession and occupation, thus, requiring a reference to the relevant provisions of the Civil Code on prescription. And under Article 1118 thereof, possession for purposes of prescription must be "in the concept of an owner, public, peaceful and uninterrupted." In *Heirs of Marcelina Arzadon-Crisologo v. Rañon*,[25] this Court expounded on the nature of possession required for purposes of prescription:

> It is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted and adverse. Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood. The party who asserts ownership by adverse possession must prove the presence of the essential elements of acquisitive prescription.[26] (citations omitted)

This Court is not satisfied with the evidence presented by the respondent to prove compliance with the possession required either under Section 14 (1) or Section 14 (2).

First, the twelve (12) Tax Declarations covering Area A and the eleven (11) Tax Declarations covering Area B for a claimed possession of more than forty-six (46) years (1948-1994) do not qualify as competent evidence of actual possession and occupation. As this Court ruled in *Wee v. Republic of the Philippines*:[27]

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[24] *Id.* at 620.

[25] G.R. No. 171068, September 5, 2007, 532 SCRA 391.

[26] *Id.* at 404.

[27] G.R. No. 177384, December 8, 2009, 608 SCRA 72.

It bears stressing that petitioner presented only five tax declarations (for the years 1957, 1961, 1967, 1980 and 1985) for a claimed possession and occupation of more than 45 years (1945-1993). **This type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation.** In any event, in the absence of other competent evidence, tax declarations do not conclusively establish either possession or declarant's right to registration of title.[28] (emphasis supplied and citation omitted)

The phrase "adverse, continuous, open, public, and in concept of owner," by which the respondent describes its possession and that of its predecessors-in-interest is a conclusion of law. The burden of proof is on the respondent to prove by clear, positive and convincing evidence that the alleged possession of its predecessors-in-interest was of the nature and duration required by law.[29] It is therefore inconsequential if the petitioner failed to present evidence that would controvert the allegations of the respondent. A person who seeks the registration of title to a piece of land on the basis of possession by himself and his predecessors-in-interest must prove his claim by clear and convincing evidence, *i.e.*, he must prove his title and should not rely on the absence or weakness of the evidence of the oppositors.[30]

The respondent's claim of ownership will not prosper on the basis of the tax declarations alone. In *Cequeña v. Bolante*,[31] this Court ruled that it is only when these tax declarations are coupled with proof of actual possession of the property that they may become the basis of a claim of ownership.[32] In the

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[28] *Id.* at 83.

[29] See *The Director, Lands Mgt. Bureau v. Court of Appeals*, 381 Phil. 761, 772 (2000).

[30] *Arbias v. Republic of the Philippines*, G.R. No. 173808, September 17, 2008, 565 SCRA 582, 597.

[31] 386 Phil. 419 (2000).

[32] *Id.* at 430.

absence of actual public and adverse possession, the declaration of the land for tax purposes does not prove ownership.[33]

Second, that the nineteen (19) coconut trees supposedly found on Area A were four years old at the time Agapita Claudel filed a Tax Declaration in 1948 will not suffice as evidence that her possession commenced prior to June 12, 1945, in the absence of evidence that she planted and cultivated them. Alternatively, assuming that Agapita Claudel planted and maintained these trees, such can only be considered "casual cultivation" considering the size of Area A. On the other hand, that Jacinto Tan Lay Cho possessed Area B in the concept of an owner on or prior to June 12, 1945 cannot be assumed from his 1948 Tax Declaration.

Third, that plants were on the subject property without any evidence that it was the respondent's predecessors-in-interest who planted them and that actual cultivation or harvesting was made does not constitute "well-nigh incontrovertible evidence" of actual possession and occupation. As this Court ruled in *Wee*:

> We are, therefore, constrained to conclude that the mere existence of an unspecified number of coffee plants, *sans* any evidence as to who planted them, when they were planted, whether cultivation or harvesting was made or what other acts of occupation and ownership were undertaken, is not sufficient to demonstrate petitioner's right to the registration of title in her favor.[34]

Fourth, Vicente Oco's testimony deserves scant consideration and will not supplement the inherent inadequacy of the tax declarations. Apart from being self-serving, it is undoubtedly hearsay. Vicente Oco lacks personal knowledge as to when the predecessors-in-interest of the respondent started to occupy the subject property and admitted that his testimony was based on what he allegedly gathered from the respondent's predecessors-

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[33] *Id.* at 431.

[34] *Supra* note 27, at 84.

in-interest and the owners of adjoining lot. Moreover, Vicente Oco did not testify as to what specific acts of dominion or ownership were performed by the respondent's predecessors-in-interest and if indeed they did. He merely made a general claim that they came into possession before World War II, which is a mere conclusion of law and not factual proof of possession, and therefore unavailing and cannot suffice.[35] Evidence of this nature should have been received with suspicion, if not dismissed as tenuous and unreliable.

Finally, that the respondent's application was filed after only four years from the time the subject property may be considered patrimonial by reason of the DAR's October 26, 1990 Order shows lack of possession whether for ordinary or extraordinary prescriptive period. The principle enunciated in *Heirs of Malabanan* cited above was reiterated and applied in *Republic of the Philippines v. Rizalvo*:[36]

> On this basis, respondent would have been eligible for application for registration because his claim of ownership and possession over the subject property even exceeds thirty (30) years. However, it is jurisprudentially clear that the thirty (30)-year period of prescription for purposes of acquiring ownership and registration of public land under Section 14 (2) of P.D. No. 1529 only begins from the moment the State expressly declares that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial.[37]

WHEREFORE, premises considered, the instant petition is **GRANTED**. The July 31, 2008 Decision and February 20, 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 00143 are **REVERSED and SET ASIDE** and the respondent's application for registration of title over Lot 9039 of Cagayan Cadastre is hereby **DENIED** for lack of merit.

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[35] *Supra* note 29, at 770.

[36] G.R. No. 172011, March 7, 2011.

[37] *Id.*

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,* and *Sereno, JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-11-2298. February 22, 2012]

ATTY. RENE O. MEDINA and ATTY. CLARITO SERVILLAS, *complainants, vs.* **JUDGE VICTOR A. CANOY, Regional Trial Court, Branch 29, Surigao City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; ADMINISTRATIVE CASE PROPER EVEN IF COMPLAINANT HAS NO CAUSE OF ACTION AGAINST RESPONDENT JUDGE.— In its evaluation, the OCA preliminarily states that in administrative proceedings it is immaterial whether or not the complainant himself or herself has a cause of action against the respondent. x x x To settle the issue on complainant's cause of action, the OCA correctly observed that complainants may file the present administrative complaint against respondent judge. As the Court held in *LBC Bank Vigan Branch v. Guzman,* the objective in administrative cases is the preservation of the integrity and competence of the Judiciary by policing its ranks and enforcing discipline among its erring employees.

2. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW; PRESENT WHEN JUDGE GRANTED INJUNCTION IN CASE AT BAR

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[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1195 dated February 15, 2012.

WHERE LEGAL TITLE WAS IN DISPUTE, DISREGARDING THEREIN AN ESTABLISHED DOCTRINE.— Well-settled is the rule that an injunction cannot be issued to transfer possession or control of a property to another when the legal title is in dispute between the parties and the legal title has not been clearly established. In this case, respondent judge evidently disregarded this established doctrine applied in numerous cases when it granted the preliminary injunction in favor of Pagels whose legal title is disputed. When the law involved is simple and elementary, lack of conversance with it constitutes gross ignorance of the law. Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. Respondent judge should have been more cautious in issuing writs of preliminary injunctions because as consistently held these writs are strong arms of equity which must be issued with great deliberation." x x x A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.

3. ID.; ID.; ID.; ID.; MAGNIFIED WITH THE DELAY IN RESOLVING THE MOTION FOR RECONSIDERATION IN VIOLATION OF THE RULES.— The error is magnified by respondent judge's delay in resolving the Motion for Reconsideration through the following subsequent acts: (1) he set the hearing of the Motion for Reconsideration dated 1 September 2009 on 5 October 2009 contrary to the rule providing that the "hearing x x x must not be later than 10 days after the filing of the motion"; (2) on 18 November 2009, respondent judge reset the hearing from 16 November 2009 to 12 March 2010; and (3) he failed to resolve the said Motion despite the non-filing of a responsive pleading to the Opposition on the Motion for Reconsideration considering that it is not an indispensable pleading for resolution and the rules provide that "a motion for reconsideration shall be resolved within thirty days from the time it is submitted for resolution." Indeed, when the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.

4. ID.; ID.; ID.; CODE OF JUDICIAL CONDUCT; ALLEGATION OF PARTIALITY NOT APPRECIATED WHEN JUDGE PROPOUNDED QUESTIONS TO ELICIT RELEVANT FACTS FROM THE WITNESS.— On the charge of violation of Canon 1 of the Code of Judicial Conduct, we find the same bereft of merit. A judge may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time and clarify obscure and incomplete details in the course of the testimony of the witness. In *City of Cebu v. Gako,* the Court finds nothing irregular when respondent judge unduly arrogated unto himself the duty of a counsel by calling a witness to the stand and conducting the latter's direct testimony even if the respective counsels were not interested or did not intend to present said person as their witness. Here, the records show that respondent judge merely propounded questions to elicit relevant facts from the witness respondents. The Transcript of Stenographic Notes, by itself, was not sufficient to show bias or partiality. It has been held that the Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial.

5. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; COMPLAINANT HAS THE BURDEN OF PROOF, BY SUBSTANTIAL EVIDENCE.— In administrative proceedings, complainants have the burden of proving by substantial evidence the allegations in their complaints. Mere accusations or surmises will not suffice. In the absence of contrary evidence, what will prevail is the presumption that the respondent judge has regularly performed his duties.

6. ID.; ID.; JUDGES; GROSS INEFFICIENCY; FAILURE TO RESOLVE MOTION TO DISMISS WITHIN THE REGLEMENTARY PERIOD OF NINETY (90) DAYS WARRANTS ADMINISTRATIVE SANCTION.— On the charge of undue delay in resolving the Motion to Dismiss, we adopt the recommendation of the OCA that respondent judge is guilty of the charge and should be fined ₱5,000. Respondent judge resolved the said Motion after more than a year and only after the filing of the instant complaint. Failure to decide cases and other matters within the reglementary period of ninety (90) days constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring

magistrate. This is not only a blatant transgression of the Constitution but also of the Code of Judicial Conduct, which enshrines the significant duty of magistrates to decide cases promptly. Canon 6, Section 5 of the Code provides that "judges shall perform all judicial duties including the delivery of reserved decisions efficiently, fairly and with reasonable promptness."

7. ID.; ID.; ID.; GROSS IGNORANCE OF THE LAW; PENALTY.— Under Rule 140 of the Revised Rules of Court, as amended, gross ignorance of the law is a serious charge punishable by either: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporation; or (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000 but not exceeding ₱40,000 while undue delay in rendering a decision or order is a less serious charge punishable by either (1) suspension from office without salary and other benefits for not less than one nor more than three months; or (2) a fine of more than ₱10,000 but not exceeding ₱20,000. Accordingly, we impose a fine of ₱25,000 for the charge of gross ignorance of the law, taking into account that in a previous case respondent judge had been sanctioned.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative complaint filed by Atty. Rene O. Medina and Atty. Clarito Servillas (complainants) against Judge Victor A. Canoy (respondent judge), Presiding Judge of the Regional Trial Court (RTC) of Surigao City, Branch 29, for Gross Ignorance of the Law and Procedure, Undue Interference and Gross Inefficiency, relative to Civil Case No. 7077 entitled "*Zenia A. Pagels v. Spouses Reynaldo dela Cruz*"; Spec. Proc. No. 7101 entitled "*Noel P.E.M. Schellekens v. P/S, Supt. David Y. Ombao, et al.*"; and Civil Case No. 7065 entitled "*Heirs of*

Matilde Chato Alcaraz v. Philex-Lascogon Mining Corporation, et al."

The Facts

The undisputed facts, as culled from the records, are as follows:

In Civil Case No. 7077

On 30 June 2009, petitioner Zenia Pagels (Pagels) filed a Petition for Injunction with prayer for issuance of Preliminary Injunction, Temporary Restraining Order (TRO), Accounting, Damages and Attorney's Fees against respondents Spouses Reynaldo and Racquel dela Cruz (respondent spouses). The case was raffled to Branch 30, where respondent judge was the acting presiding judge. After serving respondent spouses with the Summons, copy of the Petition and Notice of hearing, respondent judge conducted the hearing and granted the TRO on 2 July 2009. On 3 July 2009, the TRO was implemented resulting in the transfer of possession of the duly-licensed primary and elementary school and church from respondent spouses to Pagels. On 13 July 2009, respondent spouses filed their Answer with Affirmative Defenses and Counterclaim. During the 14 July 2009 hearing for preliminary injunction, the parties agreed to submit position papers. Pagels filed her position paper but respondent spouses filed a Motion to Hear their Affirmative Defenses instead.

On 11 August 2009, respondent judge granted the preliminary injunction without need of a bond pending the hearing of respondent spouses' Motion to Hear Affirmative Defenses. On 1 September 2009, respondent spouses filed a Motion for Reconsideration, which respondent judge set for hearing on 5 October 2009. Subsequently, respondent judge reset the hearing to 16 November 2009 and then to 12 March 2010. Upon assumption as the new presiding judge of Branch 30 sometime in February 2010, Judge Evangeline Yuipco-Bayana issued an Order revoking the preliminary injunction earlier issued by respondent judge.

In their Complaint dated 13 September 2010, complainants contend that respondent judge should be charged with gross ignorance of the law and procedure: (1) for disregarding the basic and elementary principle that TRO and preliminary injunction are improper remedies to transfer possession of one property to another whose title has not been clearly established; and (2) for failure to decide the Motion for Reconsideration within a period of 30 days as required by the rules and jurisprudence.

In Spec. Proc. No. 7101

Petitioner Noel P.E.M. Schellekens (petitioner Noel) filed a Petition for Writ of Habeas Corpus on 19 August 2009. The next day, respondents Aris Caesar B. Servillas, P/S, Supt. David Y. Ombao, Denelito G. Glico, Alexis E. Espojona, and Rosemarie Catelo testified during the hearing. On 21 August 2009, which was a holiday, respondent judge issued an Order for the release of petitioner Noel upon finding that the latter was unlawfully arrested. The Order was implemented on the same day.

Relative to this case, complainants charge respondent judge of: (1) gross ignorance of procedure and undue interference in the administrative functions of the Bureau of Immigration by ordering the release of the expired passport of petitioner Noel, and by preparing the said Order outside of the court's premises because it was not single-spaced and did not have a stamp by the Clerk of Court as received; and (2) violating Canon 1 of the Code of Judicial Conduct due to his friendly greeting to petitioner Noel and for acting as counsel for the latter by propounding questions on the respondents during their testimonies.

In Civil Case No. 7065

On 3 August 2009, defendant Philex-Lascogon Mining Corporation filed a Motion to Dismiss the Amended Complaint filed by plaintiffs Heirs of Alcaraz on the ground of lack of jurisdiction.The plaintiffs Heirs of Alcaraz submitted their Opposition dated 17 August 2009 and their 2nd Amended Complaint dated 26 August 2009. However, it was only on 20 September 2010 that respondent Judge issued an Order denying the Motion

to Dismiss. Accordingly, complainants claim that respondent judge should be held guilty of gross inefficiency and of violating the Code of Judicial Conduct for his undue delay in resolving a simple Motion to Dismiss.

As their final charge, complainants aver that respondent judge is guilty of tardiness and inefficiency in trying cases before his branch. Complainants state that respondent judge usually starts the hearing between 9:45 a.m. and 10:00 a.m. in violation of the Supreme Court Circular.

In his Comment with Counter-Charge dated 5 November 2010, respondent judge preliminarily states that complainant Atty. Medina is neither a counsel nor a party litigant in Spec. Proc. No. 7101 and Civil Case No. 7065; thus, he has no interest to question perceived irregularities relative to these cases. With respect to Atty. Servillas, he is neither a counsel nor a party-in-interest in any of the cases mentioned in the complaint.

Relative to Civil Case No. 7077, respondent judge claims that he issued the TRO and preliminary injunction judiciously and without bad faith or irregularity. He argues that he resolved cases based on the merits of the case and if there was indeed error, it merely constitutes an error of judgment. Respondent judge further states that the alleged error was already aptly corrected by Judge Bayana's reversal. Regarding the alleged delay in the resolution of the Motion for Reconsideration, respondent judge defends himself by explaining that the Motion was not submitted for resolution. Respondent judge argues that respondent spouses' lawyer (complainant Atty. Medina) failed to file a responsive pleading to the Opposition to Motion for Reconsideration and that the hearing of the Motion was further reset to 12 March 2010.

As for Spec. Proc. No. 7101, respondent judge argues that it is already subject of an earlier complaint filed by Cristita C. *Vda. de* Tolibas against him. With respect to Civil Case No. 7065, respondent judge states that the Motion to Dismiss was already resolved.

On the charge of tardiness and inefficiency, respondent judge attached the: (1) 21 October 2010 Joint Affidavit of Prosecutor Maureen Chua and Atty. Jose Begil, Jr.; and (2) 21 October 2010 affidavit of Court Legal Researcher Peter John Tremedal explaining the reasons for the delay of the hearing. In Tremedal's Affidavit, he states that respondent judge instructed him to convene the counsels first, and to ensure their attendance before respondent judge starts the hearing. In conclusion, respondent judge asserts that the malicious filing of the baseless complaint was conduct unbecoming officers of the court for which complainants must be held accountable.

In their Rejoinder and Answer to Counter-Charge dated 1 December 2010, complainants reiterate their arguments in the Complaint. In the first case, they emphasize that respondent judge deliberately failed to resolve the Motion for Reconsideration. On the second, complainants argue that the pendency of the Tolibas administrative complaint cannot divest the Supreme Court of its jurisdiction to review the actions of respondent judge, more so in the light of new allegations supported by judicial records. As for respondent Judge's alleged tardiness and inefficiency, complainants point out that the joint affidavit of Prosecutor Chua and Atty. Bejil, Jr. merely pertained to one particular day. As answer to respondent judge's Counter-Charge, complainants denied the allegation for lack of factual and legal basis.

The OCA's Report and Recommendation

In its Report dated 18 July 2011, the Office of the Court Administrator (OCA) found respondent judge guilty of undue delay in rendering an order but dismissed the charges of gross ignorance of the law and gross misconduct for being judicial in nature and for lack of merit.

In its evaluation, the OCA preliminarily states that in administrative proceedings it is immaterial whether or not the complainant himself or herself has a cause of action against the respondent.

On the charge of gross ignorance of the law, the OCA held that respondent judge committed an error of judgment for which he may not be administratively held liable in the absence of bad faith, malice or corrupt purpose. As to the issue of undue delay in resolving the Motion for Reconsideration, the OCA likewise held it unmeritorious because the motion was not submitted for resolution in view of the resetting of its hearing.

As for the charges relating to Spec. Proc. No. 7101, the OCA found that the issues raised by complainant may be best resolved in another pending case against respondent judge (OCA IPI No. 09-3254-TRJ) except the alleged violation of the Code of Judicial Conduct for acting as counsel for the petitioner. The OCA also found the charges of tardiness and inefficiency bereft of merit because Tremedal's Affidavit explained the reason for the late hearing.

On the other hand, the OCA held that respondent judge is guilty of undue delay in resolving the Motion to Dismiss in violation of the 1987 Constitution. Since it was respondent judge's first administrative offense, the OCA considered it as a mitigating circumstance. The OCA recommended a fine of ₱5,000 with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

This Court, in a Resolution dated 5 October 2011, re-docketed administrative complaint OCA-IPI No. 10-3514-RTJ as regular administrative matter A.M. No. RTJ-11-2298.

The Court's Ruling

We are partially in accord with the OCA's findings and recommendation.

To settle the issue on complainant's cause of action, the OCA correctly observed that complainants may file the present administrative complaint against respondent judge. As the Court held in *LBC Bank Vigan Branch v. Guzman*,[1] the objective in

[1] A.M. No. P-06-2270, 6 December 2006, 510 SCRA 28.

administrative cases is the preservation of the integrity and competence of the Judiciary by policing its ranks and enforcing discipline among its erring employees.

However, on the charge of gross ignorance of the law, we find respondent judge guilty of the charge.

Well-settled is the rule that an injunction cannot be issued to transfer possession or control of a property to another when the legal title is in dispute between the parties and the legal title has not been clearly established.[2] In this case, respondent judge evidently disregarded this established doctrine applied in numerous cases when it granted the preliminary injunction in favor of Pagels whose legal title is disputed. When the law involved is simple and elementary, lack of conversance with it constitutes gross ignorance of the law.[3] Gross ignorance of the law is the disregard of basic rules and settled jurisprudence.[4]

Respondent judge should have been more cautious in issuing writs of preliminary injunctions because as consistently held these writs are strong arms of equity which must be issued with great deliberation."[5] In *Fortune Life Insurance Co., Inc. v.*

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[2] *Cortez-Estrada v. Heirs of Samut*, 491 Phil. 458 (2005); *Borbajo v. Hidden View Homeowners, Inc.*, 490 Phil. 724 (2005); *Almeida v. Court of Appeals*, 489 Phil. 648 (2005); *Acting Registrars of Land Titles and Deeds v. Judge Velez*, 263 Phil. 568 (1990) *citing Philippine National Bank v. Adil*, 203 Phil. 492 (1982); *Mara, Inc. v. Judge Estrella*, 160 Phil. 490 (1975); *Pio v. Marcos*, Nos. L-27849 and 34432, 30 April 1970, 56 SCRA 726; *Coronado v. Court of First Instance of Rizal*, 96 Phil. 729 (1955); *Villadores v. Encarnacion*, 95 Phil. 913 (1954); *Wagan v. Sideco*, 60 Phil. 685 (1934); *Santos v. De Leon*, 60 Phil. 573 (1934); *Rustia v. Franco*, 41 Phil. 280 (1920); *Liongson. v. Martinez*, 36 Phil. 948 (1917); *Golding v. Balatbat*, 36 Phil. 941 (1917); *Asombra v. Dorado*, 36 Phil. 883 (1917).

[3] *Republic v. Judge Caguioa*, A.M. No. RTJ-07-2063, 26 June 2009, 591 SCRA 51.

[4] *Zuño v. Cabredo*, 450 Phil. 89 (2003).

[5] *Rualo v. Pitargue*, G.R. No. 140284, 21 January 2005, 449 SCRA 121 *citing Manila Int'l. Airport Authority v. Court of Appeals*, G.R. No. 118249, 14 February 2003, 397 SCRA 348.

Luczon,[6] the Court held the judge guilty of gross ignorance of the law when he failed to conduct a hearing prior to issuance of an injunction in violation of the Rules of Court. It was further emphasized in *Zuño v. Cabredo*,[7] where it was held that the act of respondent in issuing the TRO to enjoin the Bureau of Customs and its officials from detaining the subject shipment amounted to gross ignorance of the law.

A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.[8] In the present case, the following compounded circumstances manifest bad faith on the part of respondent judge: (1) in his Comment with Counter-Charge, respondent judge states that he decided after the parties submitted their position papers, but his Order dated 11 August 2009 indicates that respondent spouses did not file their position paper and the hearing of the Affirmative Defense was still set on 18 August 2009; (2) respondent judge's Order patently shows facts not entitling Pagels to the preliminary injunction but respondent judge still issued it; and (3) respondent judge did not require petitioner Pagels to put up a bond without sufficient justification or showing of exemption.

The error is magnified by respondent judge's delay in resolving the Motion for Reconsideration through the following subsequent acts: (1) he set the hearing of the Motion for Reconsideration dated 1 September 2009 on 5 October 2009 contrary to the rule providing that the "hearing x x x must not be later than 10 days after the filing of the motion";[9] (2) on 18 November 2009, respondent judge reset the hearing from 16 November 2009 to 12 March 2010; and (3) he failed to resolve the said Motion despite the non-filing of a responsive pleading to the Opposition

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[6] A.M. No. RTJ-05-1901, 30 November 2006, 509 SCRA 65.

[7] *Supra*.

[8] *Judge Cabatingan, Sr. v. Judge Arcueno*, 436 Phil. 341 (2002).

[9] *RULES OF COURT*, Rule 15, Section 5.

on the Motion for Reconsideration considering that it is not an indispensable pleading for resolution and the rules provide that "a motion for reconsideration shall be resolved within thirty days from the time it is submitted for resolution."[10]

Indeed, when the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.[11]

Relative to Spec. Proc. No 7101, respondent judge filed a Manifestation dated 2 September 2011 annexing this Court's Resolution dated 13 June 2011 dismissing the case against respondent judge filed by Cristita Conjurado *Vda. De* Tolibas. In the Resolution, we adopted the OCA's evaluation, to wit: (1) respondent judge validly issued the writ of *habeas corpus* on a holiday, in accord with the Section 2, Rule 102 of the Rules of Court; and (2) the assailed Order was not issued to assist petitioner Noel in evading the crime of parricide. It is because the said Resolution did not address the issues in this Complaint that we modify the findings of the OCA and rule upon the allegations of complainants.

On the charge of violation of Canon 1 of the Code of Judicial Conduct, we find the same bereft of merit. A judge may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time and clarify obscure and incomplete details in the course of the testimony of the witness.[12] In *City of Cebu v. Gako*,[13] the Court finds nothing irregular when respondent judge unduly arrogated unto himself the duty of a counsel by calling a witness to the stand and conducting the

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[10] *Id.*, Rule 37, Sec. 4.

[11] *Republic v. Judge Caguioa, supra* note 3.

[12] *Dela Cruz v. Judge Carretas*, A.M. No. RTJ-07-2043, 5 September 2007, 532 SCRA 218.

[13] A.M. No. RTJ-08-2111, 7 May 2008, 554 SCRA 15.

latter's direct testimony even if the respective counsels were not interested or did not intend to present said person as their witness. Here, the records show that respondent judge merely propounded questions to elicit relevant facts from the witness respondents. The Transcript of Stenographic Notes, by itself, was not sufficient to show bias or partiality. It has been held that the Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased and partial.[14]

On the charge of gross ignorance of procedure and undue interference in the administrative functions of the Bureau of Immigration, complainants failed to prove the charge with substantial evidence. In administrative proceedings, complainants have the burden of proving by substantial evidence the allegations in their complaints.[15] Mere accusations or surmises will not suffice. In the absence of contrary evidence, what will prevail is the presumption that the respondent judge has regularly performed his duties.[16]

On the charge of tardiness and inefficiency, we find the same likewise without merit. Without evidence as to their truthfulness or veracity, the allegations in the Complaint filed by complainants remain mere allegations and do not rise to the dignity of proof.

On the charge of undue delay in resolving the Motion to Dismiss, we adopt the recommendation of the OCA that respondent judge is guilty of the charge and should be fined ₱5,000. Respondent judge resolved the said Motion after more than a year and only after the filing of the instant complaint. Failure to decide cases and other matters within the reglementary period of ninety (90) days constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring

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[14] *Monticalbo v. Maraya, Jr.*, A.M. No. RTJ-09-2197, 13 April 2011, 648 SCRA 573 *citing Balsamo v. Judge Suan* A.M. No. RTJ-01-1656, 17 September 2003, 411 SCRA 189.

[15] *Araos v. Judge Luna-Pison*, 428 Phil. 290 (2002).

[16] *Id.*

magistrate.[17] This is not only a blatant transgression of the Constitution but also of the Code of Judicial Conduct, which enshrines the significant duty of magistrates to decide cases promptly. Canon 6, Section 5 of the Code provides that "judges shall perform all judicial duties including the delivery of reserved decisions efficiently, fairly and with reasonable promptness."

Under Rule 140 of the Revised Rules of Court, as amended, gross ignorance of the law is a serious charge punishable by either: (1) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned and controlled corporation; or (2) suspension from office without salary and other benefits for more than three but not exceeding six months; or (3) a fine of more than ₱20,000 but not exceeding ₱40,000 while undue delay in rendering a decision or order is a less serious charge punishable by either (1) suspension from office without salary and other benefits for not less than one nor more than three months; or (2) a fine of more than ₱10,000 but not exceeding ₱20,000.

Accordingly, we impose a fine of ₱25,000 for the charge of gross ignorance of the law, taking into account that in a previous case respondent judge had been sanctioned.[18]

WHEREFORE, we find respondent Judge Victor A. Canoy **GUILTY** of **GROSS IGNORANCE OF THE LAW** and ***UNDUE DELAY*** in rendering a decision and accordingly fine him Thirty Thousand Pesos (₱30,000**)**. He is **STERNLY WARNED** that a repetition of similar or analogous infractions in the future shall be dealt with more severely. The other charges are hereby dismissed.

SO ORDERED.

Villarama, Jr.,[*] *Perez, Sereno,* and *Reyes, JJ.,* concur.

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[17] *Visbal v. Busban*, 443 Phil. 705 (2003).

[18] *Pantillo III v. Canoy,* A.M. No. RTJ-11-2262, 9 February 2011, 642 SCRA 301.

[*] Designated Acting Member per Special Order No. 1195 dated 15 February 2012.

SECOND DIVISION

[G.R. No. 165413. February 22, 2012]

PHILAM INSURANCE COMPANY, INC. and AMERICAN HOME INSURANCE CO., *petitioners, vs.* **COURT OF APPEALS, and D.M. CONSUNJI, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF LOWER COURTS, GENERALLY RESPECTED; EXCEPTIONS; CONFLICTING LEGAL CONCLUSIONS OF THE RTC AND THE CA.— While this Court is not a trier of facts, and hesitates to review the factual findings of the lower courts, in this occasion, it would do so considering the conflicting legal conclusions of the RTC and the CA.

2. COMMERCIAL LAW; INSURANCE; RIGHT OF SUBROGATION; FOR PETITIONERS INSURANCE COMPANIES TO RECOVER THE VALUE OF THE INSURED'S DAMAGED GENERATOR SET AGAINST RESPONDENT DMCI, ALLEGED NEGLIGENCE OF DMCI MUST BE ESTABLISHED, AS THE PROXIMATE CAUSE OF THE DAMAGE.— [P]etitioners demand for the recovery of the value of the insured's generator set (genset) against private respondent D.M. Consunji Incorporated (DMCI) whose alleged negligence damaged the said equipment. x x x For DMCI to be liable for damages, negligence on its part must be established. Additionally, that finding must be the proximate cause of the damage to the genset. x x x Absent any finding of negligence, we sustain the CA's findings that DMCI exercised due diligence; that the event is an accident; and that consequently Philam cannot claim damages for the damaged genset.

3. ID.; ID.; ID.; ID.; NEGLIGENCE; ELUCIDATED.— Negligence is the want of care required by the circumstances. It is a **conduct that involves an unreasonably great risk of causing damage;** or, more fully, a conduct that falls below the standard established by law for the protection of others against unreasonably great risk of harm. x x x Not all omissions can be considered as

negligent. The test of negligence is as follows: Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist.

4. REMEDIAL LAW; EVIDENCE; AFFIDAVITS; WHERE WITNESS MADE TWO CONTRADICTING STATEMENTS, BOTH ARE NOT ACCEPTABLE AS EVIDENCE.— It is only when a witness makes two sworn statements, and these two statements incur the gravest contradictions, that the court cannot accept both statements as proof.

5. ID.; ID.; CONJECTURES AND ASSUMPTIONS; NOT APPRECIATED.— We cannot give credence to mere conjectures and assumptions on the condition of the crane to prove negligence. In *Picart v. Smith*, the Court stressed that abstract speculations cannot be of much value: The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculations cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger.

6. ID.; ID.; *RES IPSA LOQUITUR*; NOT APPLICABLE IN THE PRESENCE OF DIRECT EVIDENCE IN CASE AT BAR.— In this case, *res ipsa loquitur* is not applicable, since there is direct evidence on the issue of diligence or lack thereof pertaining to the lifting of the genset. The doctrine is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience. In any event, *res ipsa loquitur* merely provides a rebuttable presumption of negligence. On this, we have already pointed out that the evidence does not prove negligence on the part of DMCI, and that due diligence on its part has been established. Hence, it has generally been held that the presumption arising from the doctrine cannot be availed

of, or is overcome when the plaintiff has knowledge and testifies or presents evidence as to the specific act of negligence that caused the injury complained of; or when there is direct evidence as to the precise cause of the accident, and with all the attendant facts clearly present. Finally, neither the presumption nor the doctrine would apply when the circumstances have been so completely elucidated that no inference of the defendant's liability can reasonably be made, whatever the source of the evidence.

APPEARANCES OF COUNSEL

Zapa Law Office for petitioners.
Mario R. Irabangaon for respondents.

D E C I S I O N

SERENO, *J.*:

In this Petition for Review on *Certiorari* under Rule 45, petitioners Philam Insurance Company, Incorporated (Philam) and American Home Insurance Company (AHIC) seek the reversal of the Decision of the Court of Appeals (CA) in CA-G.R. CV No. 60098 dated 28 June 2004 and its Resolution dated 24 September 2004. The CA Decision reversed and set aside that of the Regional Trial Court (RTC) of Makati City in Civil Case No. 95-540 dated 28 April 1998.

The CA ruled against petitioners' demand for the recovery of the value of the insured's generator set (genset) against private respondent D.M. Consunji Incorporated (DMCI), whose alleged negligence damaged the said equipment.

The antecedent facts are as follows:

Four gensets from the United States of America were ordered by Citibank, N.A. (Citibank). Petitioner AHIC insured these gensets under Certificate No. 60221 for USD 851,500 covering various risks.[1] The insurance policy provided that the claim

[1] CA Decision penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Elvi John S. Asuncion and Mariano C. del Castillo, concurring, p. 1; *rollo*, p. 17.

may be paid in the Philippines by Philam Insurance Co., Inc, AHIC's local settling agent.[2]

Citibank's broker-forwarder, Melicia International Services (MIS),[3] transported the gensets in separate container vans. It was instructed by Citibank to deliver and haul one genset to Makati City,[4] where the latter's office was being constructed by the building contractor, DMCI.

MIS was further instructed to place the 13-ton genset[5] at the top of Citibank's building. The broker-forwarder declined, since it had no power cranes.[6] Thus, Citibank assigned the job to private respondent DMCI, which accepted the task.[7]

On 16 October 1993, DMCI lifted the genset with a crane (Unic-K-2000) that had a hydraulic telescopic boom and a loading capacity of 20 tons.[8] During the lifting process, both the crane's boom and the genset fell and got damaged.[9]

The events leading to the fall, based mainly on the signed statement[10] of DMCI's crane operator, Mr. Ariel Del Pilar, transpired as follows:

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[2] Citibank's Letter dated 27 October 1993, Exhibit A; RTC records, p. 252.

[3] Survey Certificate of Manila Adjusters & Surveyors Co., Exhibit O-2; RTC records, p. 276.

[4] Citibank's Letter dated 14 October 1993, Exhibit 1; RTC records, p. 347.

[5] Survey Certificate of Manila Adjusters & Surveyors Co., *supra* note 3.

[6] Affidavit of Edilberto C. Palisoc, DMCI's Area Manager, dated 7 October 1997, Annex Det-1; RTC records, p. 342.

[7] *Id*.

[8] Survey Certificate of Manila Adjusters & Surveyors Co., Exhibit 4-b; RTC records, p. 278.

[9] Statement of Ariel del Pilar, DMCI's crane operator, dated 21 October 1993; RTC records, p. 285.

[10] *Id*.

The genset was lifted clear out of the open top container by the crane. After clearing the container van, the crane operator, Mr. Ariel del Pilar, had to position the genset over the vicinity of the storage area. To do this, the boom of the crane carrying the generator set had to be turned (swing) to face right and stopped when it loomed over the storage area. The genset was swinging as it came to a stop following the right turn. The crane operator waited for the genset to stop swinging for him to perform the next maneuver. The boom had to be raised three (3) degrees more from its position at 75 degrees, up to 78 degrees. At 78 degrees the genset could be lowered straight down to the delivery storage area.

The genset stopped swinging. The crane operator proceeded to raise the boom to 78 degrees. While so doing, the crane operator felt a sudden upward movement of the boom. The genset began to swing in and out, towards the crane operator, then outward and away. The body of the crane lifted off the ground, the boom fell from an approximate height of 9 feet, first hitting a Meralco line, then falling to the ground.[11]

After two days, DMCI's surveyor, Manila Adjusters & Surveyors Co. (MASC) assessed the condition of the crane and the genset.[12] According to its Survey Certificate, the genset was already deformed.[13]

Citibank demanded from DMCI the full value of the damaged genset, including the cost, insurance and freight amounting to USD 212,850.[14] Private respondent refused to pay, asserting that the damage was caused by an accident.[15]

Thereafter, Citibank filed an insurance claim with Philam, AHIC's local settling agent, for the value of the genset. Philam paid the claim for PhP 5,866,146.[16]

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[11] Petitioners' Petition for Review, pp. 3-4; *rollo*, pp. 5-6.

[12] Survey Certificate of Manila Adjusters & Surveyors Co., Exhibit 4-c; RTC records, p. 278.

[13] Citibank's Letter dated 21 October 1993, Exhibit 2; RTC records, p. 348.

[14] DMCI's Letter dated 22 October 1993, Exhibit 3; RTC records, p. 350.

[15] Citibank's Letter, *supra* note 2; RTC records, p. 252.

[16] Subrogation Receipt dated 6 April 1994, Exhibit T; RTC records, p. 305.

Claiming the right of subrogation, Philam demanded the reimbursement of the genset's value from DMCI, which denied liability.[17] Thus, on 19 April 1994, Philam filed a Complaint with the RTC to recover the value of the insured genset.[18]

At the trial court, petitioner Philam did not invoke *res ipsa loquitur*. Rather, during the pre-trial conference, the parties agreed on this sole issue: "Whether or not the damage was the fault of the defendant or within their area of supervision at the time the cause of damage occurred."[19]

The RTC ruled in favor of Philam and ordered as follows:

> WHEREFORE PREMISES CONSIDERED, judgment is hereby rendered in favor of plaintiff as against defendant ordering the latter to pay plaintiff as follows:
>
> 1. the amount of PhP 5,866,146.00 as actual damages with interest at 6% per annum from the date of filing of this Complaint until the sum is fully paid.
>
> 2. the amount equivalent to 25% of the sum recoverable as attorney's fees;
>
> 3. cost of suit.
>
> SO ORDERED.[20]

The trial court ruled that the loss or damage to the genset was due to the negligent operation of the crane:

> This Court finds that the loss or damage brought about by the falling of the genset was caused by negligence in the operation of the crane in lifting the genset to as high as 9 feet causing the boom to fall [sic], hitting the Meralco line to ground, sustaining heavy damage, which negligence was attributable to the crane operator.[21]

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[17] CA Decision, *supra* note 1, p. 2; *rollo*, p. 18.

[18] Philam's Complaint dated 18 April, 1994; RTC records, p. 1.

[19] RTC Order dated 10 October 1995; RTC records, p. 184.

[20] RTC Decision penned by Judge Fernando V. Gorospe Jr., p. 2; CA *rollo*, p. 37.

[21] *Id.*

DMCI appealed to the CA, which reversed and set aside the RTC's Decision. The appellate court ruled that the falling of the genset was a clear case of accident and, hence, DMCI could not be held responsible.

> In this case, plaintiffs-appellees failed to discharge the burden of proving negligence on the part of the defendant-appellant's crane operator and other employees assisting in unloading the genset.
>
> x x x x x x x x x
>
> The falling of the genset to the ground was a clear case of accident xxx. xxx [D]efendant-appellant cannot be held responsible for the event which could not be foreseen, or which though foreseen, was inevitable.[22]

Accordingly, the dispositive portion reads:

> **WHEREFORE**, there being merit in the appeal, the assailed Decision dated April 28, 1998 of the Regional Trial Court, Branch 61 of Makati City in Civil Case no. 95-1450, is **REVERSED** and **SET ASIDE**, and the complaint dismissed.
>
> **SO ORDERED**.[23]

Hence, the pertinent issue in this Petition is whether petitioners have sufficiently established the negligence of DMCI for the former to recover the value of the damaged genset. While this Court is not a trier of facts, and hesitates to review the factual findings of the lower courts, in this occasion, it would do so considering the conflicting legal conclusions of the RTC and the CA.

For DMCI to be liable for damages, negligence on its part must be established.[24] Additionally, that finding must be the proximate cause of the damage to the genset.[25] We agree with the CA that Philam failed to establish DMCI's negligence.

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[22] CA Decision, *supra* note 1, p. 8; *rollo*, p. 24.

[23] *Id.* at 25.

[24] *Brown v. Manila Electric Road and Light Co.*, 20 Phil. 406 (1911).

[25] *American Express International v. Cordero*, 509 Phil 619 (2005).

Negligence is the want of care required by the circumstances.[26] It is a **conduct that involves an unreasonably great risk of causing damage;** or, more fully, a conduct that falls below the standard established by law for the protection of others against unreasonably great risk of harm.[27]

Philam blames the conduct of DMCI's crane operator for the genset's fall. Essentially, it points out the following errors in operating the crane:

First, Del Pilar did not give any reason for his act of raising the boom from 75 to 78 degrees at the stage when the genset was already set for lowering to the ground.[28]

Second, Del Pilar's revving of the motor of the boom "triggered the chain of events – starting with the jerk, then followed by the swinging of the genset which was obviously violent as it caused the body of the crane to tilt upward, and ultimately, caused the boom with the genset to fall."[29]

It would be a long stretch to construe these as acts of negligence. Not all omissions can be considered as negligent. The test of negligence is as follows:

> Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist.[30]

Applying the test, the circumstances would show that the acts of the crane operator were rational and justified.

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[26] *Picart v. Smith*, 37 Phil. 809 (1918).

[27] *Id.*

[28] Petitioners' Petition for Review, *supra* note 11, p. 6; *rollo*, p. 8.

[29] Petitioners' Memorandum, p. 11; *rollo*, p. 68.

[30] *Picart v. Smith*, *supra* note 26.

Addressing Philam's first submission, this Court finds that the records are replete with explanations for why the boom of the crane had to be raised from 75 to 78 degrees. Although the boom is already in the general area of the genset's storage place, still, it had to be raised three (3) degrees in order to put it exactly in the proper designation. At 78 degrees, the genset could be lowered straight down to the delivery/storage area.[31] DMCI's crane operation team determined accordingly that there was a need to raise the boom in order to put the genset in the exact location. Indeed, the heavy equipment must be secured in its proper place.

Proceeding to the more contentious claim, Philam emphasized the apparent inconsistencies in Del Pilar's narration. In his signed statement, executed 15 days after the incident, Del Pilar stated that when he raised the boom from 75 to 78 degrees, he revved the motor, upon which he felt the sudden upward movement (jerk) of the boom followed by the swinging of the genset.[32]

But in his affidavit, executed already during the trial, Del Pilar mentioned that he moved the boom slowly when he raised it to 78 degrees.[33] Philam deems this narration questionable since the "slow movement" was never mentioned in Del Pilar's earlier signed statement.[34]

Examining the signed statement and the affidavit of Del Pilar, petitioner Philam inaccurately portrayed his narration.

In his signed statement, Del Pilar already mentioned that he slowly moved the genset, and when it swayed, he waited for the swinging to stop before he lifted the equipment:

"*Itinuloy ko na ang pag-angat ng genset at pagkatapos ng malagpas na sa open top van container,* ***dahan-dahan na ako nagpihit***

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[31] Affidavit of Ariel del Pilar, DMCI's crane operator, dated 29 April 1997; RTC records, p. 371.

[32] Statement of Ariel del Pilar dated 21 October 1993, *supra* note 9.

[33] Affidavit of Ariel del Pilar dated 29 April 1997, *supra* note 31.

[34] Petitioners' Petition for Review, *supra* note 11, p. 7; *rollo*, p. 9.

o swing papunta sa kanan at pagkatapos ng nasa direksyon na ako ng paglalagyan, itinigil ko ang pagpihit o pag swing pagkatapos hinintay ko ang genset sa paggalaw at ng huminto na ang genset sa paggalaw, nagboom up ako mula 75° hanggang 78°, sa tantya ko at noong mag boom up, nag-rebolution (sic) ako at naramdaman ko na biglang gumalaw paangat (paboom-up) ang boom ng Crane No. CR-81 at nag-swing na naman patungo sa akin ang genset. *At nang ito ay umindayog papalayo sa crane ay doon ko naramdaman na iyong body ng Crane No. CR-81 ay umangat at nakita kong tumumba ang boom ng Crane CR-81 at bumagsak ang genset sa loob ng Citibank (sic) Parking Area. Noon ika-16 ng Octubre 1993 ng oras na alas 4:55 ng umaga*." (Emphasis supplied.)

In his affidavit, Del Pilar's statements concentrated on the manner of lifting of the genset. At this point, he recalled that the boom was raised slowly:[35]

T: *Papaano mo naitaas ang "boom" ng "crane" mula 75 digri hanggang 78 digri?*

S: ***Dahan-dahan lang po.***

T: ***Pagkatapos mong maitaas ang boom ng crane sa 78 digri, iyong inumpisahan ibinaba ang "generator set" sa lupa subalit ito ay nagumpisang umugoy-ugoy o dumuyan-duyan palabas at papasok ang karga na "generator set" patungo sa akin. Ito ba ay tutuo?***

S: ***Opo.*** [36] (Emphasis supplied.)

The affidavit, which the CA used as the main basis for its Decision, pertained exactly to how the crane's boom had been raised. It is only when a witness makes two sworn statements, and these two statements incur the gravest contradictions, that the court cannot accept both statements as proof.[37]

Logically, in order to raise the crane's boom, the operator must step on the pedal; else, the 13-ton genset would not be

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[35] Affidavit of Ariel del Pilar, dated 29 April 1997, *supra* note 31.

[36] *Id*.

[37] *Mondragon v. CA*, 158 Phil. 1135 (1974).

brought down. Philam did not even present expert evidence to challenge the need of increasing the power supply to move the boom.

Donato F. Solis, DMCI's electrical engineer assigned to supervise and coordinate the crane's operations, corroborated Del Pilar's description. He gave an eyewitness account of the incident, and his statements thereon were taken by the surveyor, MASC. Solis said:

> Q: What happened when the genset was already lifted out and at the above proposed storage area?
>
> A: After it was already at above the designated area, the genset was still swinging during the time (at about 4:50 a.m., October 16, 1993) and when the genset stopped swinging I noticed that it was being lowered slowly to the ground and until approx. 6 feet above the ground. I noticed that it was not being lowered because it was moving diagonally toward us. When it was moving toward us we ran to avoid being hit by the genset.[38]

Even if Del Pilar failed to mention the slow manner of raising the boom in his earlier signed statement, the reverse is not necessarily established. Persons are easily liable to commit errors in the recollection of minute details of an important occurrence.[39]

Alternatively, Philam asserts that if care was exercised in operating the crane, and yet the genset was damaged, then it must have been the very crane itself that was defective.[40]

We cannot give credence to mere conjectures and assumptions on the condition of the crane to prove negligence. In *Picart v. Smith*, the Court stressed that abstract speculations cannot be of much value:

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[38] Statement of Donato F. Solis, DMCI's Electrical Engineer, dated 21 October 1993; RTC records, p. 288.

[39] *People v. Resayaga*, G.R. No. L-23234, 26 December 1973, 159 SCRA 426.

[40] Petitioners' Petition for Review, *supra* note 34.

The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculations cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger.[41]

The speculative assertion of Philam should be supported by specific evidence of the crane's defects. Instead, Philam utterly failed to contradict the findings of MASC which made an actual site inspection to observe the crane used in lifting the genset. In its Survey Certificate, it stated that: **"[U]pon close examination, the crane was observed in actual operation and found to be in satisfactory working condition."**[42] (Emphasis supplied.)

Since Philam failed to convince us of actions that would lay the blame on DMCI, this Court agrees with the CA that DMCI exercised the necessary care and precaution in lifting the genset.

Firstly, a whole team was involved in transferring the genset. Petitioners did not even the question the acts of the other team members involved in the crane operations. Del Pilar stated thus:

T: *Ikaw lang ba mag-isa ang magbababa ng nasabing "generator set"?*

S: *Hindi po, ako po ay tinulungan ng isang katrabahong "rigger" na ang pangalan ay si G. MARCELINO ROMERO, ng aming Foreman na si G. FERNANDO DELA ROSA ng Motor Pool, isang mekaniko, at ni DONATO SOLIS, isang ehenyero.*

T: *Anu-ano tulong o ayuda ang naibigay sa iyo ng bawat isa sa mga taong iyong nabanggit?*

S: *Si G. MARCELINO ROMERO na isang "rigger" ay tumulong sa akin upang maitali ang "generator set" sa*

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[41] *Picart v. Smith, supra* note 26, at 813.

[42] Survey Certificate of Manila Adjusters & Surveyors Co., *supra* note 3; RTC records, p. 279.

> *kable ng "crane" at sa pagbibigay ng senyas sa akin kung kailan itataas ang pagbuhat ng "generator set", kung kailan magaalalay sa pagtaas at mga iba pang bagay-bagay na may kinalaman sa pagpapatakbo ng "crane". Ang motor pool foreman ay nandoon naman upang tingnan at subaybayan na lahat ng bagay pangkaligtasan sa pagbubuhat ng crane sa "generator set" upang ito'y maibaba ng maayos. Si Ehenyero DONATO SOLIS ay ang pangkalahatang nangangasiwa sa pagbubuhat o paglalapag ng nasabing "generator set". Ang mekaniko naman na hindi ko na matandaan ang kanyang pangalan ay nandoon upang tumulong kung sakaling magkakaroon ng suliranin pang-mekanikal ang "crane".*[43]

Secondly, as found by the CA,[44] Del Pilar exercised reasonable care and caution when he tested the crane four times right **before** actual operations to make sure that it could lift the genset. He stated further:

> T: *Maari (sic) mo bang isalaysay ang buong pangyayari tungkol sa pagbuhat at pagdiskarga ng genset mula sa open top van container na nasa trailer ng ibabaw ng Marzan Trucking?*
>
> S: *Nang matalian po namin (ako at ang nasabing rigger man) ang genset, pumunta na po ako sa operating cab ng Crane No. CR-81 pagkatapos pinaandar ko ang Crane CR-81 para umpisahan iangat ang genset mula sa open top container pagkatapos sinubukan ko ng buhatin ang genset at nang mabuhat ng isa o dalawang dangkal, ibinaba ko ito muli sa dating pwesto ng maka-apat na beses.*
>
> T: *Bakit mo ibinaba ng apat na beses ang genset mula ng ito ay iangat mo?*
>
> S: *Sinisigurado ko ho na kaya ng Crane No. 81 ang bigat ng genset[.]*[45]

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[43] Affidavit of Ariel del Pilar dated 29 April 1997, *supra* note 31.

[44] CA Decision, *supra* note 1, p. 7; *rollo*, p. 23.

[45] Statement of Ariel del Pilar dated 21 October 1993, *supra* note 9; RTC records, p. 283.

The testing of the crane during actual operations was corroborated by Solis when he stated as follows:

Q: What did you observe during the lifting operation?

A: During the lifting operation, I noticed that it took awhile (approx. 30 minutes) in lifting the genset, because the Crane Operator, Mr. Ariel del Pilar was testing the lifting capability of Crane No. CR-81. I saw the genset, which was several times lifted about 1 foot high from the flooring of the open top van container.[46]

Thirdly, as can be gleaned from the statements above, Del Pilar stopped turning the controls, and it was only when the swinging stopped that he performed the next maneuver. All of these acts, as proven by the evidence, showed due diligence in operating the crane.

In their final effort to reverse the appellate court, petitioners invoked *res ipsa loquitur*, even if they never had raised this doctrine before the trial court.

According to petitioners, the requisites of *res ipsa loquitur* are present in this case.[47] Had the principle been applied, the burden of proof in establishing due diligence in operating the crane would have shifted to DMCI.[48]

In this case, *res ipsa loquitur* is not applicable, since there is direct evidence[49] on the issue of diligence or lack thereof pertaining to the lifting of the genset. The doctrine is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience.[50]

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[46] Statement of Donato F. Solis, *supra* note 38; RTC records, p. 287.

[47] Petitioners' Petition for Review, *supra* note 11, p. 9; *rollo*, p. 11.

[48] *Id*.

[49] *Ludo and Luym Development Corporation v. Barreto*, 508 Phil. 285 (2005).

[50] *Layugan v. IAC*, 249 Phil. 369 (1988), citing Corpus Juris Secundum, Vol. 65A, 529.

In any event, *res ipsa loquitur* merely provides a rebuttable presumption of negligence. On this, we have already pointed out that the evidence does not prove negligence on the part of DMCI, and that due diligence on its part has been established.

Hence, it has generally been held that the presumption arising from the doctrine cannot be availed of, or is overcome when the plaintiff has knowledge and testifies or presents evidence as to the specific act of negligence that caused the injury complained of; or when there is direct evidence as to the precise cause of the accident, and with all the attendant facts clearly present.[51] Finally, neither the presumption nor the doctrine would apply when the circumstances have been so completely elucidated that no inference of the defendant's liability can reasonably be made, whatever the source of the evidence.[52]

Absent any finding of negligence, we sustain the CA's findings that DMCI exercised due diligence; that the event is an accident; and that consequently Philam cannot claim damages for the damaged genset.[53]

IN VIEW THEREOF, the assailed 28 June 2004 Decision of the Court of Appeals and its 24 September 2004 Resolution are **AFFIRMED**. The 11 October 2004 Petition for Review filed by Philam Insurance Company, Inc. and American Home Insurance Corporation is hereby **DENIED** for lack of merit.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,* and *Reyes, JJ.,* concur.

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[51] *Id.* at 544.

[52] *Id.* at 545-548.

[53] *Brown v. Manila Electric Road and Light Company, supra* note 24.

[*] Designated as Acting member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1195 dated 15 February 2012.

FIRST DIVISION

[G.R. No. 169055. February 22, 2012]

SPOUSES JOSE and MILAGROS VILLACERAN and FAR EAST BANK & TRUST COMPANY, *petitioners, vs.* **JOSEPHINE DE GUZMAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS & CONTRACTS; CONTRACTS; REQUISITES; CONSENT; SIMULATION OF CONTRACT MAY BE ABSOLUTE OR RELATIVE; ELUCIDATED.— Article 1345 of the Civil Code provides that the simulation of a contract may either be absolute or relative. In absolute simulation, there is a colorable contract but it has no substance as the parties have no intention to be bound by it. The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties. As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract. However, if the parties state a false cause in the contract to conceal their real agreement, the contract is only relatively simulated and the parties are still bound by their real agreement. Hence, where the essential requisites of a contract are present and the simulation refers only to the content or terms of the contract, the agreement is absolutely binding and enforceable between the parties and their successors in interest. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE APPELLATE COURT, RESPECTED.— The issue of the genuineness of a deed of sale is essentially a question of

fact. It is settled that this Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case. Factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal. The Court has time and again ruled that conclusions and findings of fact of the trial court are entitled to great weight and should not be disturbed on appeal, unless strong and cogent reasons dictate otherwise. This is because the trial court is in a better position to examine the real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.

APPEARANCES OF COUNSEL

Artemio R. Villaluz, Jr. for petitioners.
Wilfredo P. Ambrosio for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* assailing the November 26, 2004 Decision[1] and June 29, 2005 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 71831. The CA had affirmed with modification the Decision[3] of the Regional Trial Court (RTC), Branch 24, of Echague, Isabela, in Civil Case No. 24-0495 entitled "*Josephine De Guzman vs. Spouses Jose and Milagros Villaceran, et al.*"

The antecedent facts follow:

Josephine De Guzman filed a Complaint[4] with the RTC of Echague, Isabela against the spouses Jose and Milagros Villaceran

[1] *Rollo*, pp. 27-36. Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta, concurring.

[2] *Id.* at 37.

[3] *Id.* at 74-78. Penned by Judge Bonifacio T. Ong.

[4] Records, pp. 1-6.

and Far East Bank & Trust Company (FEBTC), Santiago City Branch, for declaration of nullity of sale, reconveyance, redemption of mortgage and damages with preliminary injunction. The complaint was later amended to include annulment of foreclosure and Sheriff's Certificate of Sale.

In her Amended Complaint,[5] De Guzman alleged that she is the registered owner of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-236168,[6] located in Echague, Isabela, having an area of 971 square meters and described as Lot 8412-B of the Subdivision Plan Psd-93948. On April 17, 1995, she mortgaged the lot to the Philippine National Bank (PNB) of Santiago City to secure a loan of ₱600,000. In order to secure a bigger loan to finance a business venture, De Guzman asked Milagros Villaceran to obtain an additional loan on her behalf. She executed a Special Power of Attorney in favor of Milagros. Considering De Guzman's unsatisfactory loan record with the PNB, Milagros suggested that the title of the property be transferred to her and Jose Villaceran and they would obtain a bigger loan as they have a credit line of up to ₱5,000,000 with the bank.

On June 19, 1996, De Guzman executed a simulated Deed of Absolute Sale[7] in favor of the spouses Villaceran. On the same day, they went to the PNB and paid the amount of ₱721,891.67 using the money of the spouses Villaceran. The spouses Villaceran registered the Deed of Sale and secured TCT No. T-257416[8] in their names. Thereafter, they mortgaged the property with FEBTC Santiago City to secure a loan of ₱1,485,000. However, the spouses Villaceran concealed the loan release from De Guzman. Later, when De Guzman learned of the loan release, she asked for the loan proceeds less the amount advanced by the spouses Villaceran to pay the PNB

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[5] *Id.* at 69-74.

[6] *Id.* at 123.

[7] *Id.* at 125.

[8] *Id.* at 126.

loan. However, the spouses Villaceran refused to give the money stating that they are already the registered owners of the property and that they would reconvey the property to De Guzman once she returns the ₱721,891.67 they paid to PNB.[9]

De Guzman offered to pay ₱350,000 provided that the spouses Villaceran would execute a deed of reconveyance of the property. In view of the simulated character of their transaction, the spouses Villaceran executed a Deed of Absolute Sale[10] dated September 6, 1996 in favor of De Guzman. They also promised to pay their mortgage debt with FEBTC to avoid exposing the property to possible foreclosure and auction sale. However, the spouses Villaceran failed to settle the loan and subsequently the property was extrajudicially foreclosed. A Sheriff's Certificate of Sale was issued in favor of FEBTC for the amount of ₱3,594,000. De Guzman asserted that the spouses Villaceran should be compelled to redeem their mortgage so as not to prejudice her as the real owner of the property.[11]

On the other hand, the spouses Villaceran and FEBTC, in their Amended Answer,[12] averred that in 1996 De Guzman was introduced to Milagros by a certain Digna Maranan. Not long afterwards, De Guzman requested Milagros to help her relative who had a loan obligation with the PNB in the amount of ₱300,000. As a consideration for the accommodation, De Guzman would convey her property located at Maligaya, Echague, Isabela which was then being held in trust by her cousin, Raul Sison. Because of this agreement, Milagros paid De Guzman's obligation with the PNB in the amount of ₱300,000.

When Milagros asked for the title of the lot, De Guzman explained that her cousin would not part with the property unless he is reimbursed the amount of ₱200,000 representing the amount

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[9] *Id.* at 70.

[10] *Id.* at 127.

[11] *Id.* at 70-71.

[12] *Id.* at 81-89.

he spent tilling the land. Milagros advanced the amount of ₱200,000 but De Guzman's cousin still refused to reconvey the property. In order for De Guzman to settle her obligation, she offered to sell her house and lot in Echague, Isabela. At first, Milagros signified her non-interest in acquiring the same because she knew that it was mortgaged with the PNB Santiago for ₱600,000. De Guzman proposed that they will just secure a bigger loan from another bank using her house and lot as security. The additional amount will be used in settling De Guzman's obligation with PNB. Later, De Guzman proposed that she borrow an additional amount from Milagros which she will use to settle her loan with PNB. To this request, Milagros acceded. Hence, they went to the PNB and paid in full De Guzman's outstanding obligation with PNB which already reached ₱880,000.[13]

Since De Guzman's total obligation already reached ₱1,380,000, the spouses Villaceran requested her to execute a deed of absolute sale over the subject property in their favor. Thus, the Deed of Absolute Sale is supported by a valuable consideration, and the spouses Villaceran became the lawful owners of the property as evidenced by TCT No. 257416 issued by the Office of the Register of Deeds of Isabela. Later, they mortgaged the property to FEBTC for ₱1,485,000.

The spouses Villaceran denied having executed a deed of conveyance in favor of De Guzman relative to the subject property and asserted that the signatures appearing on the September 6, 1996 Deed of Sale, which purported to sell the subject property back to De Guzman, are not genuine but mere forgeries.[14]

After due proceedings, the trial court rendered its decision on September 27, 2000.

The RTC ruled that the Deed of Sale dated June 19, 1996 executed by De Guzman in favor of the spouses Villaceran

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[13] *Id.* at 84-86.

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

covering the property located in Echague, Isabela was valid and binding on the parties. The RTC ruled that the said contract was a relatively simulated contract, simulated only as to the purchase price, but nonetheless binding upon the parties insofar as their true agreement is concerned. The RTC ruled that De Guzman executed the Deed of Absolute Sale dated June 19, 1996 so that the spouses Villaceran may use the property located in Echague, Isabela as collateral for a loan in view of De Guzman's need for additional capital to finance her business venture. The true consideration for the sale, according to the RTC, was the ₱300,000 the spouses Villaceran gave to De Guzman plus the ₱721,891.67 they paid to PNB in order that the title to the subject property may be released and used to secure a bigger loan in another bank.

The RTC also found that although the spouses Villaceran had already mortgaged the subject property with FEBTC and the title was already in the possession of FEBTC — which facts were known to De Guzman who even knew that the loan proceeds amounting to ₱1,485,000 had been released — the spouses Villaceran were nonetheless still able to convince De Guzman that they could still reconvey the subject property to her if she pays the amount they had paid to PNB. The RTC found that the Deed of Sale dated September 6, 1996 was actually signed by the spouses Villaceran although De Guzman was able to pay only ₱350,000, which amount was stated in said deed of sale as the purchase price. The RTC additionally said that the spouses Villaceran deceived De Guzman when the spouses Villaceran mortgaged the subject property with the understanding that the proceeds would go to De Guzman less the amounts the spouses had paid to PNB. Hence, according to the RTC, the spouses Villaceran should return to De Guzman (1) the ₱350,000 which she paid to them in consideration of the September 6, 1996 Deed of Sale, which sale did not materialize because the title was in the possession of FEBTC; and (2) the amount of ₱763,108.33 which is the net proceeds of the loan after deducting the ₱721,891.67 that the spouses paid to PNB. Thus, the decretal portion of the RTC decision reads:

WHEREFORE, judgment is hereby rendered as follows:

a) declaring the Deed of Sale, dated June 1996 (Exhibit "B") as valid and binding;

b) ordering defendants Villaceran to pay to plaintiff the amount of ₱763,108.33 and ₱350,000.00 or the total amount of ₱1,113,108.33 plus the legal rate of interest starting from the date of the filing of this case;

c) declaring the Extrajudicial Foreclosure and the Certificate of Sale as valid;

d) ordering defendants Villaceran to pay attorney's fees in the amount of ₱20,000.00 and to pay the costs of suit.

SO ORDERED.[15]

Aggrieved, the spouses Villaceran appealed to the CA arguing that the trial court erred in declaring the June 19, 1996 Deed of Sale as a simulated contract and ordering them to pay De Guzman ₱1,113,108.33 plus legal rate of interest and attorney's fees.[16]

On November 26, 2004, the CA rendered its Decision, the dispositive portion of which reads as follows:

IN VIEW OF ALL THE FOREGOING, the judgment appealed from is hereby **AFFIRMED with MODIFICATION**, to read as follows:

WHEREFORE, judgment is hereby rendered as follows:

1. Declaring the Deed of Sale dated June 16, 1996 *(Exh. "B")* and September 6, 1996, as not reflective of the true intention of the parties, as the same were merely executed for the purpose of the loan accommodation in favor of the plaintiff-appellee by the defendants-appellants;

2. Ordering defendants-appellants Villaceran to pay plaintiff-appellee the difference between the *FEBTC* loan of ₱1,485,000.00 less ₱721,891.67 (used to redeem the *PNB* loan), plus legal interest thereon starting from the date of the filing of this case;

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[15] *Rollo*, p. 78.

[16] *Id.* at 80-93.

3. Declaring the extrajudicial foreclosure and certificate of sale in favor of *FEBTC*, as valid; and

4. For the appellants to pay the costs of the suit.

SO ORDERED.[17]

The CA ruled that the RTC was correct in declaring that there was relative simulation of contract because the deeds of sale did not reflect the true intention of the parties. It found that the evidence established that the documents were executed for the purpose of an agency to secure a higher loan whereby the spouses Villaceran only accommodated De Guzman. However, the CA did not find any evidence to prove that De Guzman actually parted away with the ₱350,000 as consideration of the reconveyance of the property. Thus, it held the trial court erred in ordering the spouses Villaceran to return the ₱350,000 to De Guzman.

Furthermore, the CA observed that the spouses Villaceran were the ones who redeemed the property from the mortgage with PNB by paying ₱721,891.67 so that De Guzman's title could be released. Once registered in their name, the spouses Villaceran mortgaged the property with FEBTC for ₱1,485,000. With the loan proceeds of ₱1,485,000, there was no need for the spouses Villaceran to demand for the return of the ₱721,891.67 they paid in releasing the PNB loan before the property is reconveyed to De Guzman. All they had to do was to deduct the amount of ₱721,891.67 from the ₱1,485,000 FEBTC loan proceeds. Hence, the CA ruled that only the balance of the ₱1,485,000 loan proceeds from FEBTC minus the ₱721,891.67 used to redeem the PNB loan should be paid by the spouses Villaceran to De Guzman. The CA also deleted the grant of attorney's fees for lack of factual, legal or equitable justification.

On December 22, 2004, the spouses Villaceran filed a motion for reconsideration of the foregoing decision. Said motion, however, was denied for lack of merit by the CA in its Resolution dated June 29, 2005. Hence, this appeal.

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[17] *Id.* at 35.

In their petition for review on *certiorari*, the spouses Villaceran allege that:

1. THE RESPONDENT COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN DECLARING THE DEED OF SALE DATED JUNE 19, 1996 AS SIMULATED AND THAT THE SAME WAS MERELY EXECUTED FOR THE PURPOSE OF THE LOAN ACCOMODATION OF PETITIONERS VILLACERAN IN FAVOR OF THE RESPONDENT DE GUZMAN INSTEAD OF DECLARING SAID DEED AS A VALID DEED OF ABSOLUTE SALE, THE CONTENTS OF WHICH ARE CLEARLY REFLECTIVE OF THEIR TRUE INTENTION TO ENTER INTO A CONTRACT OF SALE AND NOT OTHERWISE, IN DIRECT CONTRAVENTION OF THE RULES ON EVIDENCE AND OF THE ADMISSIONS OF THE PARTIES AND THE HONORABLE COURT'S RULINGS OR JURISPRUDENCE ON THE MATTER; AND

2. THE RESPONDENT COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN ORDERING PETITIONERS VILLACERAN TO PAY RESPONDENT DE GUZMAN THE DIFFERENCE BETWEEN THE FAR EAST BANK AND TRUST COMPANY (FEBTC) LOAN OF PHP1,485,000.00 LESS ₱721,891.67 (USED TO PAY THE PHILIPPINE NATIONAL BANK [PNB] LOAN) PLUS LEGAL INTEREST THEREON AND TO PAY THE COSTS OF SUIT.[18]

Essentially, the issue for our resolution is whether the CA erred in ruling that the Deed of Sale dated June 19, 1996 is a simulated contract and not a true sale of the subject property.

Petitioners contend that the previous loans they extended to De Guzman in the amounts of ₱300,000, ₱600,000 and ₱200,000 should have been considered by the CA. When added to the ₱721,891.67 used to settle the PNB loan, De Guzman's total loan obtained from them would amount to ₱1,821,891.67. Thus, it would clearly show that the Deed of Sale dated June 19, 1996, being supported by a valuable consideration, is not a simulated contract.

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[18] *Id.* at 14.

We do not agree.

Article 1345[19] of the Civil Code provides that the simulation of a contract may either be absolute or relative. In absolute simulation, there is a colorable contract but it has no substance as the parties have no intention to be bound by it. The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties.[20] As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract. However, if the parties state a false cause in the contract to conceal their real agreement, the contract is only relatively simulated and the parties are still bound by their real agreement. Hence, where the essential requisites of a contract are present and the simulation refers only to the content or terms of the contract, the agreement is absolutely binding and enforceable between the parties and their successors in interest.[21]

The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[22] In the case at bar, there is a relative simulation of contract as the Deed of Absolute Sale dated June 19, 1996 executed by De

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[19] Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.

[20] *Loyola v. Court of Appeals*, G.R. No. 115734, February 23, 2000, 326 SCRA 285, 293.

[21] *Lopez v. Lopez*, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 367, citing *Valerio v. Refresca*, G.R. No. 163687, March 28, 2006, 485 SCRA 494, 500-501; *Heirs of the Late Spouses Aurelio and Esperanza Balite v. Lim*, G.R. No. 152168, December 10, 2004, 446 SCRA 56, 68.

[22] *Ramos v. Heirs of Honorio Ramos, Sr.*, G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601.

Guzman in favor of petitioners did not reflect the true intention of the parties.

It is worthy to note that both the RTC and the CA found that the evidence established that the aforesaid document of sale was executed only to enable petitioners to use the property as collateral for a bigger loan, by way of accommodating De Guzman. Thus, the parties have agreed to transfer title over the property in the name of petitioners who had a good credit line with the bank. The CA found it inconceivable for De Guzman to sell the property for ₱75,000 as stated in the June 19, 1996 Deed of Sale when petitioners were able to mortgage the property with FEBTC for ₱1,485,000. Another indication of the lack of intention to sell the property is when a few months later, on September 6, 1996, the same property, this time already registered in the name of petitioners, was reconveyed to De Guzman allegedly for ₱350,000.

As regards petitioners' assertion that De Guzman's previous loans should have been considered to prove that there was an actual sale, the Court finds the same to be without merit. Petitioners failed to present any evidence to prove that they indeed extended loans to De Guzman in the amounts of ₱300,000, ₱600,000 and ₱200,000. We note that petitioners tried to explain that on account of their close friendship and trust, they did not ask for any promissory note, receipts or documents to evidence the loan. But in view of the substantial amounts of the loans, they should have been duly covered by receipts or any document evidencing the transaction. Consequently, no error was committed by the CA in holding that the June 19, 1996 Deed of Absolute Sale was a simulated contract.

The issue of the genuineness of a deed of sale is essentially a question of fact. It is settled that this Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case. Factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal.[23]

[23] *Pascual v. Coronel*, G.R. No. 159292, July 12, 2007, 527 SCRA 474, 483.

The Court has time and again ruled that conclusions and findings of fact of the trial court are entitled to great weight and should not be disturbed on appeal, unless strong and cogent reasons dictate otherwise. This is because the trial court is in a better position to examine the real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.[24] In sum, the Court finds that there exists no reason to disturb the findings of the CA.

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated November 26, 2004 and Resolution dated June 29, 2005 of the Court of Appeals in CA-G.R. CV No. 71831 are **AFFIRMED**.

With costs against the petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172448. February 22, 2012]

THE BOARD OF REGENTS OF THE MINDANAO STATE UNIVERSITY represented by its Chairman, *petitioner, vs.* **ABEDIN LIMPAO OSOP,** *respondent.*

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[24] *Spouses Lopez v. Court of Appeals*, 379 Phil. 743, 752 (2000).

[*] Designated additional member per Special Order No. 1203 dated February 17, 2012.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; ELUCIDATED.— In *Alfelor v. Halasan*, the Court held that: Under this Rule, intervention shall be allowed when a person has (1) a legal interest in the matter in litigation; (2) or in the success of any of the parties; (3) or an interest against the parties; (4) or when he is so situated as to be adversely affected by a distribution or disposition of property in the custody of the court or an officer thereof. Jurisprudence describes intervention as "a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings." "The right to intervene is not an absolute right; it may only be permitted by the court when the movant establishes facts which satisfy the requirements of the law authorizing it."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Acharon Alconera Merced and Associates for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for Review under Rule 45 of the Rules of Court assails the Decision[1] dated March 14, 2006 of the Court of Appeals in CA-G.R. SP No. 82052. The Court of Appeals dismissed the Petition for *Certiorari* filed by therein petitioner Dr. Macapado A. Muslim (Muslim) and declared the Motion for Intervention of the Board of Regents of the Mindanao State University (MSU) as a stray pleading proscribed by Rule 19, Section 2 of the Rules of Court.

The instant controversy arose from the following factual background:

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[1] *Rollo*, pp. 54-65; penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Ramon R. Garcia, concurring.

Herein respondent Abedin Limpao Osop (Osop) is the former Chancellor of the Mindanao State University-General Santos City (MSU-GSC) campus. Osop retired in 1987 under the Early Retirement Law, but several years after his retirement, he was appointed by Moner M. Bajunaid, then MSU-GSC Chancellor, as a substitute for another professor of the Electrical Engineering Department, College of Engineering, of MSU-GSC, who was on study leave. Osop's appointment took effect on July 1, 1994.[2]

In 1997, Muslim, the succeeding Chancellor of MSU-GSC, renewed Osop's appointment as Assistant Professor IV, effective January 1, 1997 until December 31, 1997. His appointment was duly noted by the MSU Board of Regents during its 166th Meeting held at DECS Conference Room, U.L. Complex, Meralco Avenue, Pasig City, on February 19, 1997.[3]

Muslim allowed Osop to continue teaching at MSU-GSC even after December 31, 1997. On April 17, 1998, Muslim issued Special Order No. 144-98C designating Osop as Chairperson of the Electrical Engineering Department, College of Engineering, of MSU-GSC, with a term of office from April 18, 1998 to April 17, 1999, unless revoked or amended by competent authority.[4]

However, on July 15, 1998, Muslim caused to be served upon the College of Engineering and other offices of MSU-GSC a letter[5] dated July 14, 1998 addressed to Osop that reads in full:

Dear Prof. Osop:

In view of the return to the campus of Prof. Danilo Dadula for whom you have been serving as substitute since July 1, 1994, and considering the expiration of your temporary appointment last

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[2] Records, Vol. 1, p. 49.

[3] *Id.* at 21-56.

[4] *Id.* at 56.

[5] *Id.* at 61.

December 31, 1997, I regret to inform you that your services with the university will have to end. And since I am not renewing your appointment, you are hereby advised to cease from reporting to duty effective immediately. Moreover, you should clear yourself from monetary and other official accountabilities with the university.

On behalf of MSU-GSC, we thank you for your services.

Very truly yours,

(signed)
MACAPADO A. MUSLIM, Ph. D.
Chancellor

Muslim also issued Memorandum Order No. 010-98C[6] dated July 14, 1998, addressed to Virgilio Ramos (Ramos), Dean of the College of Engineering of MSU-GSC, concerning the expiration and non-renewal of Osop's appointment and directing Ramos to already distribute Osop's teaching load to the remaining faculty members of the College. In the same Memorandum Order, Muslim asked Ramos to explain the latter's failure to include Osop in the list of substitute faculty members which he submitted to the Office of the Chancellor before the start of the 1st semester of 1998.

In compliance with Memorandum Order No. 010-98C, Ramos explained in his letter dated July 16, 1998 that there was no request for the appointment of a substitute for Prof. Danilo Dadula (Dadula) when the latter went on a study leave. He explained:

Basing on our records, there was no request for substitute of Engr. Danilo P. Dadula when he went on study leave in June 1994.

On 17 June 1994, Engr. Noel S. Gunay, then the Chairman of the Electrical Engineering Department, recommended the hiring of Prof. Abedin Limpao Osop in view of the study leave of Julito G. Fuerzas, PEE. Chancellor Moner M. Bajunaid, in his letter dated 30 June 1994, informed Dean Carlos B. Cuanan of the approval of the higher

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[6] *Id.* at 62.

management to hire Prof. Abedin Limpao Osop as substitute of Engr. Julito G. Fuerzas effective 1 July 1994. After more than a semester, Engr. Fuerzas stopped schooling but did not return to this campus. Since then, Prof. Abedin Limpao Osop went on teaching with the College of Engineering and his appointment was renewable yearly as those on probationary status.

Per DBM Plantilla of Personnel, page 336 of 444 pages, Prof. Abedin Limpao Osop has an item. For this, I presumed Prof. A.L. Osop was not a contractual or substitute faculty of the college.

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Regarding the distribution of Prof. A. L. Osop's teaching load to appropriate faculty members at this time poses some problems. He is handling major courses in electrical engineering and the electrical engineers have excessive overload.

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It has been noted and experienced that real excessive overload is more on the number of preparations than on overload teaching units. *For the interest of our students and with much concern on the efficient delivery of instruction, the faculty of the Electrical Engineering Department could not absorb the load of Prof. A. L. Osop. Since his load are major EE courses, the same could not be handled by any of the faculty in the other departments.*

In view thereof, may we request for the reconsideration of your decision to terminate the services of Prof. Abedin Limpao Osop.[7]

Muslim responded by issuing handwritten Memorandum Order No. 012-98C[8] dated July 17, 1998, in which he reiterated his earlier order to Ramos to already distribute Osop's teaching load.

On July 21, 1998, Osop filed before the Regional Trial Court (RTC) of General Santos City, Branch 22, a Complaint for Injunction with Prayer for Writ of Preliminary Injunction/ Temporary Restraining Order (TRO), Damages and Attorney's

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[7] *Id.* at 64-65.

[8] *Id.* at 63.

Fees against Muslim and Ramos. The Complaint was docketed as Civil Case No. 6381.[9]

Osop filed two days later, on July 23, 1998, an Urgent Motion for Writ of Preliminary Mandatory Injunction and/or Temporary Restraining Order. At the hearing held the very next day, on July 24, 1998, the RTC issued an Order in which it noted the absence of Muslim, and to give chance for the possibility of an amicable settlement, it reset the hearing for the issuance of a TRO to July 27, 1998. Nevertheless, in the same Order, the RTC already directed Osop to submit a bond of ₱20,000.00 to answer for damages that Muslim and Ramos might suffer if it turns out that Osop was not entitled to an injunction/TRO. Osop filed his injunction/TRO bond on July 27, 1998.

At the hearing of Osop's application for the issuance of a TRO on July 27, 1998, the RTC issued an Order,[10] whereby, in consideration of the principle of exhaustion of administrative remedies, it suggested that Osop first write Muslim to seek reconsideration of Muslim's letter and Memorandum Order No. 010-98C both dated July 14, 1998. Osop accordingly wrote Muslim such a letter dated July 27, 1998.[11]

Muslim endorsed Osop's letter dated July 27, 1998 to Emily Marohombsar (Marohombsar), then MSU President. In a letter[12] dated August 7, 1998, Marohombsar wrote:

> Based on the meticulous study made, the management is not legally nor morally under obligation to retain Prof. Osop in the service or liable for the non-renewal of his appointment the nature of which was temporary and contingent on the return of Prof. Danilo Dadula. With the return of Prof. Dadula, the renewal of the appointment of Prof. Osop would have been an unjustifiable superfluity.
>
> This Office, concurring with the opinion of Director Imam, upholds your position on the case of Prof. Osop.

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[9] *Id.* at 5-14.

[10] *Id.* at 110.

[11] *Id.* at 119.

[12] *Rollo,* p. 81.

Marohombsar's aforequoted decision was based on the Brief from the MSU Human Resources Development Office dated August 6, 1998, signed by Director Lomala O. Imam, stating that "[t]he issue is not one of termination or dismissal but an expiration of an appointment which is not permanent in nature" and that "[t]he renewal or non-renewal of a temporary or probationary appointment is a management prerogative."[13]

On August 6, 1998, Muslim and Ramos filed before the RTC a Motion to Dismiss Civil Case No. 6381 citing the following grounds: (1) lack of cause of action due to non-exhaustion of administrative remedies and non-inclusion of indispensable parties; (2) appointment in a temporary character; (3) presumption of regularity; and (4) forum shopping.[14]

The RTC issued an Omnibus Order on September 10, 1998, dismissing Civil Case No. 6381, for the following reasons:

> The complaint is essentially one for illegal dismissal filed by [herein respondent] Abedin Limpao Osop, a faculty member of the Mindanao State University (MSU), against defendant Macapagal A. Muslim, Chancellor of the MSU, and Virgilio Ramos, Dean of the College of Engineering of the same university. A party aggrieved by a decision, ruling, order or action of an agency of the government involving termination of services may appeal to the Civil Service Commission. Regional Trial Courts have no jurisdiction to entertain cases involving dismissal of officers and employees covered by the Civil Service Law. (Mateo v. C.A., 247 SCRA 284). The Civil Service Commission is the sole arbiter of all controversies pertaining to the Civil Service. (Dario v. Mison, 176 SCRA 84).[15]

Thus, the RTC decreed:

> WHEREFORE, in view of the foregoing, the instant complaint is hereby DISMISSED for lack of jurisdiction. Accordingly, [Osop's] application for preliminary injunction, being merely ancillary to the

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[13] *Id.* at 82.

[14] Records, Vol. I, p. 201.

[15] *Id.* at 264.

principal action is also hereby dismissed without prejudice. The injunction bond is cancelled *ipso facto*.[16]

The RTC denied Osop's Motion for Reconsideration in an Order[17] dated September 25, 1998, prompting him to file with the Court of Appeals a Petition for *Certiorari* and *Mandamus*,[18] under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 49966, in which he argued, *inter alia*, that:

> 2) The issue of removal from office of [Osop], who is faculty member of a state university, is beyond the jurisdiction of the Civil Service Commission;
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> x x x x x x x x x
>
> 4) In Civil Case No. 6381 [Osop] is suing [Muslim and Ramos] also for damages, a subject matter that is beyond the jurisdiction of the Civil Service Commission.[19]

In the meantime, concerned students of MSU-GSC filed before the Civil Service Commission (CSC) Regional Office No. 11 a Complaint for the illegal termination of Osop by Muslim. CSC Regional Office No. 11 issued an Order dated November 27, 1998 finding that Osop's termination was in order given that his appointment as a substitute was good only until the return of the person being substituted.[20]

Eventually, on June 7, 1999, the Court of Appeals rendered a Decision[21] in CA-G.R. SP No. 49966, granting Osop's Petition for *Certiorari*, based on the following ratiocination:

> Anent the order of the Civil Service Commission Regional Office dated November 27, 1998 holding the termination of [Osop] as legal,

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[16] *Id.* at 265.

[17] *Id.* at 343-344.

[18] *Id.* at 347-370.

[19] *Id.* at 356-357.

[20] *Id.* at 418-420.

[21] *Id.* at 426-434.

we agree with [Osop] that this finding should not be legally binding upon him because he is not a party to the complaint apparently initiated by alleged concerned students of MSU-GSC.

Secondly, [Osop's] side of the issue was never heard because only Muslim was allowed to adduce evidence hence a denial of due process on the part of [Osop].

Coming now to the issue of whether or not [Osop's] complaint was correctly dismissed by the trial court for having failed to exhaust administrative remedies and that consequently this case falls with the Civil Service Commission, we answer in the negative.

[Osop] cites Sections 4, 5 and 6(e)(h) of the MSU charter R.A. 1387 as amended by R.A. Nos. 1893, 3791, 3868, to wit:

> Sec. 4. The government of said University is vested in a board of regents to be known as the Board of Regents of the Mindanao State University. (R.A. 1893)
>
> Sec. 5. The Mindanao State University shall have the general powers set out in Section thirteen of Act Numbered Fourteen hundred and fifty-nine and the administration of said university and the exercise of its corporate powers are hereby vested exclusively in the Board of Regents and in the President of the University, insofar as authorized by said Board.
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> Sec. 6. The Board of Regents shall have the following powers of administration and the exercise of the powers of the corporation.
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> x x x x x x x x x
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> (e) To appoint, on the recommendation of the President of the University, professors, instructors, lecturers, and other employees of the University; to fix their compensation, hours of service, and such other duties and conditions as it may deem proper; to grant to them in its discretion leave of absence under such regulations as it may promulgate, any provisions of law to the contrary notwithstanding, and to remove them for cause after an investigation and hearing shall have been had; and to extend with their consent the tenure of faculty members of the University beyond the age of sixty-five, any other provision of law to the contrary notwithstanding, on recommendation of the President of the University, whenever in his opinion

their services are specially needed; Provided, however, that no extension of service shall be made beyond the age of seventy.

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(h) To prescribe rules for its own government, and to enact for the government of the University such general ordinances and regulations, not contrary to law, as are consistent with the purposes of the University as defined in Section 2 of this Act.

Moreover, Article 152 of the Code of MSU provides:

Art. 152. Terms and Conditions of Appointment. – The precise terms and conditions of every appointment shall be stated in writing. In case of a non-renewal of a probationary appointment the person so concerned shall be so informed in writing at least sixty days before the termination date.

Proceeding from all the foregoing, it appears clearly that the authority to remove is vested in the Board of Regents and only after an investigation and hearing.

Due process was clearly not observed in the removal of [Osop]. First of all, only the Board of Regents have the power of removal which must be for cause and after an investigation and hearing shall have been had. Secondly, even a mere probationary appointment requires that in case of non-renewal the person so concerned shall be informed in writing at least sixty (60) days before termination date. These basic requisites were not at all observed in the termination of [Osop].

Therefore, we agree with [Osop] that his non-referral of the matter of his removal to the Board of Regents before he resorted to court action is accepted as an exception to the doctrine of exhaustion of administrative remedies.

The doctrine of exhaustion of administrative remedies admits of several exception[s], to wit:

1. When there is a violation of due process.

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On another point, the two grounds relied upon by Muslim for terminating [Osop] to wit: (1) that Prof. Danilo Dadula for whom [Osop] has been serving as substitute since July 1, 1997 had already

returned to MSU, and: (2) [Osop's] temporary appointment expired on December 31, 1997, clearly appears to be without basis.

[Osop] contends and respondent Muslim does not deny that the notation "vice Danilo Dadula on study grant" contained in [Osop's] appointment is erroneous because [Osop] was recruited as a substitute for Engineer Julito Fuerzas.

Assuming that [Osop] merely substituted for Dadula, [Muslim] does not deny that Danilo Dadula returned to MSU General Santos from his study grant in June 1996 and has taught in the Department of Mechanical Engineering of the College of Engineering since then up to April 1998. During the said period, [Osop] was also teaching in the said University and before the letter of July 15, 1998 advising [Osop] of his termination, he was teaching at the same time as Dadula for which he was never asked to leave contrary to Muslim's claim that [Osop] merely acted as a substitute of Dadula. Meanwhile Dadula has filed a leave of absence and has not reported for duty for the first semester of SY 1998-1999. To repeat, from June 1996 up to April 1998, Dadula and [Osop] taught together in the College of Engineering of MSU. Hence, if [Osop] was merely a substitute for Dadula, he should have been required to leave as early as June 1996, upon Dadula's return.

Further, contradicting Muslim's claim that [Osop] is a mere substitute of Dadula on April 17, 1998, Muslim issued Special Order 144-98C designating [Osop] as Chairperson of the Electrical Engineering Department of the College of Engineering with a term of office from April 18, 1998 up to April 17, 1999. Clearly, therefore, when [Osop] continued teaching up to July 15, 1998 and even his appointment as Chairperson of the Electrical Engineering Department until April 17, 1999 by Muslim himself, his appointment has ceased to be probationary in character.[22]

In the end, the Court of Appeals decreed:

WHEREFORE, premises considered, the petition for *certiorari* is GRANTED. The Omnibus Order of the RTC of General Santos City, Branch 22 dated September 10, 1998 is hereby SET ASIDE. The RTC is directed to hear and try Civil Case No. 6381 with utmost dispatch.[23]

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[22] *Id.* at 429-434.

[23] *Id.* at 434.

The Motion for Reconsideration of Muslim and Ramos was denied by the Court of Appeal in its Resolution dated November 11, 1999.[24]

Muslim then appealed the foregoing judgment of the Court of Appeals in CA-G.R. SP No. 49966 by way of a Petition for Review before this Court, docketed as G.R. No. 141276. However, in a Resolution dated July 3, 2000, the Court denied Muslim's Petition for Review; and in a Resolution dated April 4, 2001, the Court likewise denied Muslim's Motion for Reconsideration.[25]

On June 26, 2001, Osop filed an Amended Complaint[26] before the RTC impleading MSU as a defendant in Civil Case No. 6381. Despite the opposition of Muslim and Ramos, the RTC admitted the Amended Complaint in its Order[27] dated July 11, 2001, which reads:

> Considering that no responsive pleading has yet been filed by [Muslim and Ramos], the amended complaint is hereby ADMITTED.
>
> WHEREFORE, the defendants Macapado Muslim and Virgilio Ramos are ordered to file their answers within ten (10) days from today, and as prayed for by the counsel of [Osop], issue the corresponding summons to newly impleaded defendant Mindanao State University (MSU) at its main office in Marawi City. The summons to defendant MSU, Marawi City shall be sent via registered mail to the Clerk of Court of Marawi City who is requested to serve the same and thereafter to make a return to this court.
>
> The Solicitor General is hereby ordered to enter his appearance as counsel for defendant Macapado A. Muslim and Virgilio Ramos, who were both sued in their official and personal capacities and defendant MSU.

Muslim and Ramos, through counsel, Atty. Emmanuel C. Fontanilla, filed their Answer to Amended Complaint on July 20, 2001.[28]

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[24] *Id.* at 478.

[25] *Id.* at 507.

[26] *Id.* at 508-517.

[27] *Id.* at 589.

[28] *Id.* at 632-642.

On July 27, 2001, RTC Clerk of Court Asuncion de Leon Omila served summons upon MSU at its main campus in Marawi City which required the university to enter its appearance in Civil Case No. 6381 and to answer Osop's Amended Complaint within 15 days after service of said summons.[29]

The Office of the Solicitor General (OSG) entered its appearance before the RTC in Civil Case No. 6381 on September 14, 2001 as counsel for Muslim, Ramos, and MSU (Muslim, *et al*.). The OSG requested that it be furnished with a copy of the Amended Complaint and that the period to file the answer be suspended until receipt of said Amended Complaint.[30] In its Order[31] dated September 26, 2001, the RTC granted the OSG a period of 15 days from receipt of a copy of the Amended Complaint from Osop within which to file a responsive pleading.

For failure of MSU to file an answer to the Amended Complaint within the given period, Osop filed a Motion to Declare Defendant MSU in Default.[32] Osop's Motion was denied by the RTC in its Order[33] dated February 1, 2002 since there was no proof as to when the OSG received a copy of the Amended Complaint from Osop.

The OSG filed a Manifestation on February 14, 2002 which stated that upon verification with its Record Section, it discovered that Atty. Fontanilla, counsel for Muslim and Ramos, was actually deputized by the OSG to handle Civil Case No. 6381; and that MSU is adopting the Answer to the Amended Complaint already filed by Ramos and Muslim, as all the defendants in said case were in the same position.[34]

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[29] *Id.* at 660.

[30] *Id.* at 664-668.

[31] *Id.* at 670.

[32] *Id.* at 751.

[33] Records, Vol. II, p. 23.

[34] *Id.* at 46-48.

Osop filed a Motion for Reconsideration of the RTC Order dated February 1, 2002 denying his Motion to Declare Defendant MSU in Default. In another Order[35] dated June 21, 2002, the RTC denied Osop's Motion for Reconsideration for being moot and academic in light of the Manifestation of the OSG that MSU was adopting the Answer to the Amended Complaint of Muslim and Ramos.

Meanwhile, Osop filed on January 11, 2002 a Motion for Summary Judgment[36] in Civil Case No. 6381, to which Muslim and Ramos filed on January 16, 2002 an Opposition.[37]

In an Order[38] dated October 21, 2002, Judge Antonio Lubao of RTC-Branch 22 voluntarily inhibited himself from further hearing Civil Case No. 6381 to avoid conflict of interest considering that he was a faculty member at the MSU College of Law. Thus, the case was re-raffled to RTC-Branch 37, presided over by Judge Eddie R. Rojas.

After an exchange of pleadings among the parties, the RTC issued an Order[39] dated March 20, 2003, which granted Osop's Motion for Summary Judgment in Civil Case No. 6381 pursuant to Rule 35, Section 1 of the Rules of Court. The RTC explicated that:

> The law itself determines when a summary judgment is proper. Under the rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. Even if on their face the pleading appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the rules must ensure as a matter of law. What is crucial for determination, therefore, is the presence of a genuine issue as to any material fact.

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[35] *Id.* at 101.

[36] Records, Vol. I, pp. 759-782.

[37] Records, Vol. II, pp. 1-7.

[38] *Id.* at 111-112.

[39] *Id.* at 121-123.

A "genuine issue" is an issue of fact which require (sic) the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue of trial.

Applying these (sic) principle to the present case, it can be said that [Osop] has clearly demonstrate (sic) the absence of any genuine issue of fact, as well as the issue posed by [Muslim, *et al*.] that [Osop] is a contractual employee is patently unsubstantial so as not to constitute a genuine issue for a full-blown trial.

From the decision rendered by the Seventeenth Division Court of Appeals concerning the petition for *Certiorari* and *Mandamus* filed by [Osop], in this case it ruled that the appointment of [Osop] by [Muslim] ceases to be probationary in character when the former was allowed to continue teaching up to July 15, 1998 (sic) and even appointed as Chairperson of the Electrical Engineering Department. The issue raised by [Muslim, *et al*.] in their answer that [Osop] is a contractual employee is indeed patently unsubstantial as to constitute a genuine issue in this case for trial. Once and for all, such an issue has already been settled by the honorable Court of Appeals whose decision has become final and executory. Thus, there was no more genuine issue that was left to be tried except the amount of damages and attorney's fees.

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After having been taken into account the foregoing premises and pleadings of the parties in support of their respective stand on the matter under consideration as well as from the implied admissions arising from the failure of [Muslim, *et al*.] to set forth reasons why [they] could not truthfully either admit or deny those matters alleged in the amended complaint, and having concluded from the attendant circumstances that [Osop] is entitled to judgment as a matter of law for such amount as may be found to be due him in damages.

Consequently, the RTC disposed:

WHEREFORE, a summary judgment is hereby rendered in favor of [Osop] by ordering [Muslim and Ramos] or their successors, and

defendant Mindanao State University to give teaching loads to [Osop] and to pay such amount as may be found to be due him in damages.

For the meantime, let this case be called for trial to resolve the sole issue of damages that may be awarded in favor of [Osop] on May 30, 2003, at 2:00 o'clock in the afternoon.[40]

Muslim, *et al*. filed a Motion for Reconsideration of the aforementioned Order on April 1, 2003, which Osop opposed.

Osop, for his part, filed a Motion for Execution Pending Appeal, and Muslim, *et al*. filed a Comment thereon.

In an Order[41] dated August 21, 2003, the RTC denied the Motion for Reconsideration of the Order dated March 20, 2003 filed by Muslim, *et al.*, thus:

In resolving [Muslim, *et al.*'s] Motion for Reconsideration, the Court casts doubt on the veracity of [Muslim, *et al.*'s] claim that the findings of the Court of Appeals as to the appointment of [Osop] was a mere opinion and that there could be no final determination on the matters not principally raised before it. It was emphasized in the ruling of the Honorable Supreme Court in the case of *Padua vs. Robles*, G.R. No. 127930, December 15, 2000**,** which lays down the rules in construing judgments. It was held that the sufficiency and efficacy of a judgment must be tested by its substance rather than its form. In construing a judgment, its legal effects including such effects that necessarily follows because of legal implications, rather than the language used, govern. Also, its meaning, operations, and consequences must be ascertained like any other written instrument. If the record shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself. Reasons for the rule are that a judgment is an adjudication on all the matters which are essential to support it, and that every proposition assumed or decided by the court leading up to the final conclusions and upon which such conclusion is based is as effectually passed upon as the

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[40] *Id.* at 123.

[41] *Id.* at 241-243.

ultimate question which is solved. Thus a judgment rest on the intent of the court as gathered from every part thereof, including the situation to which it applies and attendant circumstances.

[Muslim, *et al.*] lost sight of the fact that the court gave due course to [Osop's] Motion for Summary Judgment only after finding that the issue raised by them in their answer was patently unsubstantial as to constitute a genuine issue. Inasmuch as [Muslim, *et al.*] failed to show a plausible ground of defense something fairly arguable and of substantial character, they cannot therefore further insist that they have a genuine issue to warrant this Court to hear and try the above-entitled case.

Hence, in the present recourse, [Muslim, *et al.*'s] Motion for Reconsideration is hereby denied due course for bereft of any merit.

In the same Order, the RTC granted Osop's Motion for Execution Pending Appeal, to wit:

Anent [Osop's] Motion for Execution Pending Appeal, it alleged that [Osop] has been unemployed for almost five (5) years and if [Muslim, *et al.*'s] appeal on the resolution of this Court, it will be just for the purpose of delaying the termination of the case and to cause further misery to [Osop].

Section 2, Rule 39 of the 1997 Rules of Civil Procedure, lays down the rule for execution pending appeal, categorized as discretionary execution. It is evident from the said provision that a primary consideration for allowing execution pending appeal would be the existence of good reasons. In turn, "good reasons" has been held to consist of compelling circumstances justifying the immediate execution lest judgment becomes illusory. Such reason must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the resolution issued by this Court.

After weighing the reasons presented, the Court deemed it wise to give due course to [Osop's] Motion for Execution Pending Appeal. The effective and efficient administration of justice requires that the prevailing party should not be deprived of the fruits of the verdict rendered in his favor. The system of judicial review should not be misused and abused to evade the decision/order from attaining finality.

With the foregoing reasons, [Osop's] Motion for Execution Pending Appeal is hereby given due course, but insofar as to the giving of teaching loads to [Osop] only inasmuch as no amount of damages could be ascertained at this moment.

Let therefore a Writ of Execution Pending Appeal be issued in this case directing [Muslim and Ramos] or their successors and defendant Mindanao State University to give teaching loads to [Osop] with a bond fix at Five Thousand (₱5,000.00) Pesos.[42]

Muslim, *et al*., filed a Motion for Reconsideration[43] of the Order dated August 21, 2003, which Osop again opposed.[44]

On October 1, 2003, Osop filed a Motion for Partial Execution (Based on a Final Executory Judgment) praying that a writ of execution be issued ordering Muslim, *et al*. to give him teaching loads.[45]

Two days after, on October 3, 2003, Muslim, *et al*. filed a Second Motion for Reconsideration and Supplement to the Opposition (also Reply to Motion for Partial Execution).[46]

In an Order[47] dated October 9, 2003 the RTC denied Muslim, *et al.*'s Second Motion for Reconsideration and Supplement to the Opposition (also Reply to Motion for Partial Execution) for being a *pro forma* motzion.

Subsequently, the RTC issued an Order[48] dated November 10, 2003 granting Osop's Motion for Partial Execution and ordering the issuance of a writ for the partial execution of the Order dated March 20, 2003, particularly, for its directive that Muslim, *et al*. give Osop teaching load.

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[42] *Id.* at 242-243.

[43] *Id.* at 263-266.

[44] *Id.* at 280-281.

[45] *Id.* at 290-291.

[46] *Id.* at 309-314.

[47] *Id.* at 328.

[48] *Id.* at 366-372.

RTC Clerk of Court Fulgar issued the Writ of Execution[49] the next day, November 11, 2003. As shown in the Sheriff's Return[50] dated November 17, 2003, original copies of RTC Order dated November 10, 2003 and Writ of Execution dated November 11, 2003 were duly served upon Muslim, *et al.* on November 12, 2003.

Aggrieved, Muslim, in his personal capacity,[51] filed on January 12, 2004, with the Court of Appeals, a Petition for *Certiorari* and Prohibition with Prayer for a Writ of Preliminary and Instant Issuance of Temporary Restraining Order, which was docketed as CA-G.R. SP No. 82052.[52] Muslim averred that in issuing the Order dated November 10, 2003, the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction as it:

1. Consider[ed] the Decision of the Court of Appeals in a *Certiorari* as a judgment on the merit.
2. Plac[ed] the action in the lower court within the purview of summary procedure.
3. Grant[ed] partial execution.
4. Consider[ed] the order of finding no genuine issue as a final order.[53]

After the parties filed their respective Memorandum, the Court of Appeals issued a Resolution dated October 6, 2004 considering the case submitted for decision.[54]

On January 14, 2005, MSU, through the OSG, filed before the Court of Appeals a Motion to Intervene (with Motion to

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[49] *Id.* at 382-383.

[50] *Id.* at 384.

[51] In the Amended Complaint, Muslim was sued not only in his official capacity but also in his personal capacity.

[52] Records, Vol. II, pp. 418-438.

[53] *Id.* at 430.

[54] *Id.* at 669.

Admit Memorandum) in CA-G.R. SP No. 82052.[55] Osop opposed the intervention of MSU.[56]

The Court of Appeals rendered its Decision in CA-G.R. SP No. 82052 on March 14, 2006, dismissing Muslim's Petition for *Certiorari* and Prohibition.[57] It held that:

> In the instant case, it is indubitably shown that the main issue that needs to be resolved is whether or not [Osop] was a probationary employee. In CA-G.R. SP No. 49966, the appellate court, despite the fact that the issue brought therein was whether or not public respondent gravely abused his discretion in dismissing the case for lack of jurisdiction, nevertheless ruled that the appointment of [Osop] ceased to be probationary in character. Respondent judge merely took judicial notice of the appellate court's findings that [Osop] had indeed ceased to be a probationary employee. To Our assessment, what respondent judge may have had on his mind was that even if he decided otherwise, the case would still be appealed to the Court of Appeals which, as adverted to, already made a finding that [Osop] was a permanent employee. Moreover, the appellate court's decision was also binding between the parties; it was deemed to be the "law of the case," hence, it was only proper for public respondent to conform to this Court's decision.
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> x x x x x x x x x
>
> A trial court which has jurisdiction over the person and subject matter of the case, can grant a motion for summary judgment, and such is within its power or authority in law to perform. Its propriety rests on its sound exercise of discretion and judgment. In the event that it errs in finding that there is no genuine issue to thus call for the rendition of a summary judgment, the resulting decision may not be set aside either directly or indirectly by petition for *certiorari*, but may only be corrected on appeal or other direct review. The court *a quo* categorically stated that its March 20, 2003 [Order] had become final and executory as quoted hereunder:
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> > "A review of the records of the case will show that the [Muslim, *et al*.] received the Order dated [20] March 2003,

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[55] *Id.* at 681-718.

[56] *Id.* at 944-946.

[57] Muslim's Motion for Reconsideration is still pending in court.

granting the summary judgment, on March 25, 2003. On that date, the fifteen (15) days prescriptive period within which to file an appeal began to run. Instead of preparing an appeal, [Muslim, *et al.*] filed their Motion for Reconsideration on April 1, 2003. The filing of the said Motion interrupted the reglementary period to appeal. By that time, however, eight (8) days had already lapsed; thus, from their receipt of the Order dated August 21, 2003, denying their Motion for Reconsideration, on September 2, 2003, they had only seven (7) days left or until September 9, 2003 within which to file a notice of appeal. However, on said date, [Muslim, *et al*.] filed another Motion for Reconsideration praying that the order for execution pending appeal be recalled. On October 9, 2003, an Order had been issued denying [Muslim, *et al*.'s] Motion for Reconsideration, copy of which was received by [Muslim, *et al*.] on that same day.

Again, carefully going over the records, the Court finds that the Orders issued were already final and executory. [Muslim, *et al*.] received the Order granting the summary judgment of [Osop] dated March 20, 2003. Hence, they had until September 9, 2003 within which to file its appeal. [Muslim, *et al*.] filed a Motion for Reconsideration and the Court on its Order dated August 21, 2003 denied the same. [Muslim, *et al*.] received a copy of the denial of its Motion for Reconsideration, which was considered pro-forma, was likewise denied on October 9, 2003, [Muslim, *et al*.] received copy of the order of denial on that very same day. Such second motion for reconsideration filed by [Muslim, *et al*.], being a pro-forma, does (sic) not toll the running of the period to perfect an appeal or any remedy provided by law. Thus, it can be concluded that the subject orders issued by this Court are now final and executory. Now, once a judgment attains finality it becomes the ministerial duty of the trial court to order its execution."

Indeed, it bears stressing that the right to appeal is not a natural right or a part of due process. It is a procedural remedy of statutory origin and, as such, may be exercised only in the manner and within the time frame provided by the provisions of law authorizing its exercise. Failure of a party to perfect an appeal within the period fixed by law renders the decision sought to be appealed final and executory. After a decision is declared final and executory, vested

rights are acquired by the winning party who has the right to enjoy the finality of the case.

To determine whether a judgment or order is final or interlocutory, the test is: *Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory, if it does not, it is final.* A final judgment is one that disposes of a case in a manner that leaves nothing more to be done by the court in respect thereto. A summary judgment is one which is final as it already adjudicated the issues and determined the rights of the parties. It is only interlocutory when the court denies a motion for summary judgment or renders a partial summary judgment as there would still be issues left to be determined by the court. In the instant case, the March 20, 2003 Order was unequivocal, other than setting a hearing to determine the amount of damages, but had, on the other hand, already disposed of the case. As such, the issuance of the November 10, 2003 Order granting the motion for partial execution was proper as the summary judgment already became final and executory as adverted to.

In a petition for *certiorari*, even if, in the greater interest of substantial justice, *certiorari* may be availed of, it must be shown that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, that is, that the trial court exercised its powers in an arbitrary or despotic manner by reason of passion or personal hostilities, so patent and gross as to amount to an evasion or virtual refusal to perform the duty enjoined or to act in contemplation of law." We find that such abuse is not extant in the instant case.[58]

Muslim filed a Motion for Reconsideration of the foregoing judgment on May 9, 2006[59] and a Supplemental Motion for Reconsideration on June 23, 2006.[60]

On July 11, 2006, the Court of Appeals issued a Resolution stating that it received on June 8, 2006 a copy of the instant Petition (G.R. No. 172448) filed by MSU; and since said Petition

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[58] *Rollo,* pp. 60-65.

[59] CA *rollo,* pp. 575-586.

[60] *Id.* at 886-904.

assails its Decision dated March 14, 2006 in CA-G.R. SP No. 82052, it was constrained to await the ruling of the Supreme Court in G.R. No. 172448. Hence, the Court of Appeals opted to hold in abeyance the resolution of Muslim's Motion for Reconsideration and Supplemental Motion for Reconsideration of the Decision dated March 14, 2006 in CA-G.R. SP No. 82052.

The issue relevant to the Petition at bar insofar as MSU is concerned arises from the pronouncement of the Court of Appeals in the same Decision dated March 14, 2006 in CA-G.R. SP No. 82052 quoted hereunder:

> At the outset this case was deemed submitted for decision on October 6, 2004. On January 10, 2005, this Court received a Motion to Intervene (with Motion to Admit Memorandum) filed by Mindanao State University (MSU) through the Office of the Solicitor General (OSG). However, Section 2, Rule 19 of the Rules of Court, allows intervention only at any time before rendition of judgment by the trial court, and We hold the motion to intervene is a stray pleading and is deemed not filed.[61]

The instant Petition of MSU presented the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER'S MOTION FOR INTERVENTION WAS IMPROVIDENTLY FILED.

II

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT RESPONDENT'S MOTION FOR SUMMARY JUDGMENT WAS PROPER ALTHOUGH PETITIONER PRESENTED DEFENSES IN THEIR ANSWER TO AMENDED COMPLAINT TENDERING FACTUAL ISSUES WHICH REQUIRE TRIAL ON THE MERITS.

III

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT RESPONDENT ACQUIRED PERMANENT STATUS.

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[61] Records, Vol. II, pp. 951-952.

IV

THE COURT OF APPEALS GRAVELY ERRED UPHOLDING THE TRIAL COURT'S ORDER GRANTING RESPONDENT MOTION FOR ISSUANCE OF PARTIAL WRIT OF EXECUTION.[62]

MSU anchors its right to intervene on Rule 19, Section 1 of the Rules of Court. MSU stresses that it has a legal interest in the controversy considering that, ultimately, it will be the one liable for the relief Osop prays for, particularly, Osop's reinstatement at MSU-GSC.

Rule 19, Section 1 of the Rules of Court provides:

> Section 1. *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

In *Alfelor v. Halasan*,[63] the Court held that:

> Under this Rule, intervention shall be allowed when a person has (1) a legal interest in the matter in litigation; (2) or in the success of any of the parties; (3) or an interest against the parties; (4) or when he is so situated as to be adversely affected by a distribution or disposition of property in the custody of the court or an officer thereof.[64]

Jurisprudence describes intervention as "a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings."[65]

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[62] *Rollo*, pp. 24-25.

[63] G.R. No. 165987, March 31, 2006, 486 SCRA 451.

[64] *Id.* at 460.

[65] *Asia's Emerging Dragon Corporation v. Department of Transportation and Communications*, G.R. No. 169914, March 24, 2008, 549 SCRA 44, 48.

"The right to intervene is not an absolute right; it may only be permitted by the court when the movant establishes facts which satisfy the requirements of the law authorizing it."[66]

While undoubtedly, MSU has a legal interest in the outcome of the case, it may not avail itself of the remedy of intervention in CA-G.R. SP No. 82052 simply because MSU is not a third party in the proceedings herein.

In Osop's Amended Complaint before the RTC, MSU was already impleaded as one of the defendants in Civil Case No. 6381. MSU came under the jurisdiction of the RTC when it was served with summons. It participated in Civil Case No. 6381, where it was represented by Atty. Fontanilla, counsel for Muslim and Ramos, who was deputized by the OSG as counsel for MSU. MSU adopted the Answer to the Amended Complaint of its co-defendants, Muslim and Ramos, and also joined Muslim and Ramos in subsequent pleadings filed before the RTC in Civil Case No. 6381. Evidently, the rights and interests of MSU were duly presented before the RTC in Civil Case No. 6381. Unfortunately, the RTC issued the Orders dated March 20, 2003 and August 21, 2003 in Civil Case No. 6381 adverse to MSU and its co-defendants, Muslim and Ramos.

The Orders dated March 20, 2003 and August 21, 2003 of the RTC in Civil Case No. 6381 granted summary judgment in Osop's favor. Muslim filed his Petition for *Certiorari* and Prohibition in CA-G.R. SP No. 82052 which is still pending before the Court of Appeals (which has yet to resolve Muslim's Motion for Reconsideration and Supplemental Motion for Reconsideration). Consequently, we are careful not to make any declarations herein that will prematurely judge the merits of CA-G.R. SP No. 82052.

MSU, on its part, neither filed an appeal nor a Petition for *Certiorari* before the Court of Appeals to challenge the adverse RTC Orders. MSU sat on its rights. Despite receiving on **September 2, 2003**[67] a copy of the RTC Order dated August 21,

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[66] *Id.* at 51.

[67] Records, Vol. II, p. 368.

2003 (denying the Motion for Reconsideration of the RTC Order dated March 20, 2003 filed by MSU, together with Muslim and Ramos) in Civil Case No. 6381, MSU did not act until it filed its Motion for Intervention on **January 14, 2005**[68] in CA-G.R. SP No. 82052, after an interval of **16 months**. Evidently, it was already way beyond the reglementary period for MSU to file an appeal (15 days)[69] or a Petition for *Certiorari* (60 days).[70] The RTC Orders dated March 20, 2003 and August 21, 2003 had already become final and executory as to MSU. It cannot now circumvent the finality of the RTC Orders by seeking to intervene in CA-G.R. SP No. 82052 and thereby, to unduly benefit from the timely action taken by Muslim, who alone, filed the Petition in CA-G.R. SP No. 82052.

In view of the foregoing, the Court finds no further need to address the other assignment of errors of MSU. Given that the Court of Appeals did not allow MSU to intervene in CA-G.R. SP No. 82052, it has no personality to question the judgment of the appellate court in this case.

WHEREFORE, the instant Petition for Review is hereby **DENIED**.

SO ORDERED.

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

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[68] *Id.* at 681-718.

[69] Rules of Court, Rule 41, Sec. 3.

[70] *Id.*, Rule 65, Sec. 4.

[*] Per Special Order No. 1203 dated February 17, 2012.

THIRD DIVISION

[G.R. No. 173008. February 22, 2012]

NENITA GONZALES, SPOUSES GENEROSA GONZALES AND RODOLFO FERRER, SPOUSES FELIPE GONZALES AND CAROLINA SANTIAGO, SPOUSES LOLITA GONZALES AND GERMOGENES GARLITOS, SPOUSES DOLORES GONZALES AND FRANCISCO COSTIN, SPOUSES CONCHITA GONZALES AND JONATHAN CLAVE, and SPOUSES BEATRIZ GONZALES AND ROMY CORTEZ, represented by their attorney-in-fact and co-petitioner NENITA GONZALES, *petitioners, vs.* **MARIANO BUGAAY and LUCY BUGAAY, SPOUSES ALICIA BUGAAY AND FELIPE BARCELONA, CONEY "CONIE" BUGAAY, JOEY GATAN, LYDIA BUGAAY, SPOUSES LUZVIMINDA BUGAAY AND REY PAGATPATAN, and BELEN BUGAAY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DEMURRER TO EVIDENCE; ELUCIDATED.— Section 1, Rule 33 of the Rules of Court provides: "SECTION 1. Demurrer to evidence. - After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal was reversed he shall be deemed to have waived the right to present evidence." The Court has previously explained the nature of a demurrer to evidence in the case of *Celino v. Heirs of Alejo and Teresa Santiago* as follows: "A demurrer to evidence is a *motion to dismiss* on the ground of insufficiency of evidence and is presented *after the plaintiff rests his case.* It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out

a case or sustain the issue. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case."

2. ID.; ID.; ID.; DEMURRER TO EVIDENCE FILED *AFTER* A DECISION HAD BEEN RENDERED, NOT PROPER.— The RTC Orders assailed before the CA basically involved the propriety of filing a demurrer to evidence *after* a Decision had been rendered in the case. x x x In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the judgment. Being considered a motion to dismiss, thus, a demurrer to evidence must clearly be filed *before* the court renders its judgment. In this case, respondents demurred to petitioners' evidence *after* the RTC promulgated its Decision. While respondents' motion for reconsideration and/or new trial was granted, it was for the sole purpose of receiving and offering for admission the documents not presented at the trial. As respondents never complied with the directive but instead filed a demurrer to evidence, their motion should be deemed abandoned. Consequently, the RTC's original Decision stands. Accordingly, the CA committed reversible error in granting the demurrer and dismissing the Amended Complaint *a quo* for insufficiency of evidence. The demurrer to evidence was clearly no longer an available remedy to respondents and should not have been granted, as the RTC had correctly done.

APPEARANCES OF COUNSEL

Calilung Jimenez Law Office for petitioners.
Tagle-Chua & Aquino for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this Petition for Review on *Certiorari* under Rule 45 is the Decision[1] of the Court of Appeals (CA) dated March

[1] Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Jose L. Sabio, Jr. and Noel G. Tijam; *Rollo*, pp. 29-42.

23, 2006 in CA-G.R. SP No. 91381 as well as the Resolution[2] dated June 2, 2006 dismissing petitioners' motion for reconsideration. The CA reversed and set aside the assailed Orders[3] of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 39, dated April 13, 2005 and August 8, 2005, respectively, in Civil Case No. 16815, denying the demurrer to evidence filed by herein respondents and instead dismissed petitioners' complaint.

The Facts

The deceased spouses Bartolome Ayad and Marcelina Tejada ("Spouses Ayad") had five (5) children: Enrico, Encarnacion, Consolacion, Maximiano and Mariano. The latter, who was single, predeceased his parents on December 4, 1943. Marcelina died in September 1950 followed by Bartolome much later on February 17, 1964.

Enrico has remained single. Encarnacion died on April 8, 1966 and is survived by her children, Nenita Gonzales, Generosa Gonzales, Felipe Gonzales, Lolita Gonzales, Dolores Gonzales, Conchita Gonzales and Beatriz Gonzales, the petitioners in this case. Consolacion, meanwhile, was married to the late Imigdio Bugaay. Their children are Mariano Bugaay, Alicia Bugaay, Amelita Bugaay, Rodolfo Bugaay, Letecia Bugaay, Lydia Bugaay, Luzviminda Bugaay and Belen Bugaay, respondents herein. Maximiano died single and without issue on August 20, 1986. The spouses of petitioners, except Nenita, a widow, and those of the respondents, except Lydia and Belen, were joined as parties in this case.

In their Amended Complaint[4] for Partition and Annulment of Documents with Damages dated February 5, 1991 against Enrico, Consolacion and the respondents, petitioners alleged, *inter alia*, that the only surviving children of the Spouses Ayad

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[2] *Rollo*, pp. 44-49.

[3] *Id.*, pp. 82-83.

[4] *Id.*, pp. 52-67.

are Enrico and Consolacion, and that during the Spouses Ayad's lifetime, they owned several agricultural as well as residential properties.

Petitioners averred that in 1987, Enrico executed fraudulent documents covering all the properties owned by the Spouses Ayad in favor of Consolacion and respondents, completely disregarding their rights. Thus, they prayed, among others, for the partition of the Spouses Ayad's estate, the nullification of the documents executed by Enrico, and the award of actual, moral and exemplary damages, as well as attorney's fees.

As affirmative defenses,[5] Enrico, Consolacion and respondents claimed that petitioners had long obtained their advance inheritance from the estate of the Spouses Ayad, and that the properties sought to be partitioned are now individually titled in respondents' names.

After due proceedings, the RTC rendered a Decision[6] dated November 24, 1995, awarding one-fourth (¼) *pro-indiviso* share of the estate each to Enrico, Maximiano, Encarnacion and Consolacion as the heirs of the Spouses Ayad, excluding Mariano who predeceased them. It likewise declared the Deed of Extrajudicial Settlement and Partition executed by Enrico and respondents, as well as all other documents and muniments of title in their names, as null and void. It also directed the parties to submit a project of partition within 30 days from finality of the Decision.

On December, 13, 1995,[7] respondents filed a motion for reconsideration and/or new trial from the said Decision. On November 7, 1996, the RTC, through Judge Eugenio Ramos, issued an Order which reads: "in the event that within a period of one (1) month from today, they have not yet settled the case, it is understood that the motion for reconsideration and/

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[5] *Id.*, pp. 69-70.

[6] *Id.*, pp. 72-79.

[7] CA *rollo*, pp. 65-66.

or new trial is submitted for resolution without any further hearing."[8]

Without resolving the foregoing motion, the RTC, noting the failure of the parties to submit a project of partition, issued a writ of execution[9] on February 17, 2003 giving them a period of 15 days within which to submit their nominees for commissioner, who will partition the subject estate.

Subsequently, the RTC, through then Acting Presiding Judge Emilio V. Angeles, discovered the pendency of the motion for reconsideration and/or new trial and set the same for hearing. In the Order[10] dated August 29, 2003, Judge Angeles granted respondents' motion for reconsideration and/or new trial for the specific "purpose of receiving and offering for admission the documents referred to by the [respondents]."[11]

However, instead of presenting the documents adverted to, consisting of the documents sought to be annulled, respondents demurred[12] to petitioners' evidence on December 6, 2004 which the RTC, this time through Presiding Judge Dionisio C. Sison, denied in the Order[13] dated April 13, 2005 as well as respondents' motion for reconsideration in the August 8, 2005 Order.[14]

Aggrieved, respondents elevated their case to the CA through a petition for *certiorari*, imputing grave abuse of discretion on the part of the RTC in denying their demurrer notwithstanding petitioners' failure to present the documents sought to be annulled. On March 23, 2006, the CA rendered the assailed Decision reversing and setting aside the Orders of the RTC disposing as follows:

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[8] *Supra* note 1, at p. 34, last paragraph.

[9] *Rollo*, pp. 80-81.

[10] CA *rollo*, Order dated August 29, 2003, pp. 79-80.

[11] *Supra* note 1, at p. 35, 3rd paragraph.

[12] CA *rollo*, pp. 81-82.

[13] *Rollo*, p. 82.

[14] *Id.*, p. 83.

"WHEREFORE, the instant petition is hereby **GRANTED**. Accordingly, the assailed Orders of the trial court dated April 13, 2006 and August 8, 2005 are hereby both **SET ASIDE** and in lieu thereof, another Order is hereby issued **DISMISSING** the Complaint, as amended.

No pronouncement as to costs.

SO ORDERED."[15]

In dismissing the Amended Complaint, the appellate court ratiocinated in the following manner:

"In the light of the foregoing where no sufficient evidence was presented to grant the reliefs being prayed for in the complaint, more particularly the absence of the documents sought to be annulled as well as the properties sought to be partitioned, common sense dictates that the case should have been dismissed outright by the trial court to avoid unnecessary waste of time, money and efforts."[16]

Subsequently, the CA denied petitioners' motion for reconsideration in its Resolution[17] dated June 2, 2006.

The Issues

In this petition for review, petitioners question whether the CA's dismissal of the Amended Complaint was in accordance with law, rules of procedure and jurisprudence.

The Ruling of the Court

The RTC Orders assailed before the CA basically involved the propriety of filing a demurrer to evidence *after* a Decision had been rendered in the case.

Section 1, Rule 33 of the Rules of Court provides:

"SECTION 1. Demurrer to evidence. - After the plaintiff has completed the presentation of his evidence, the defendant may move

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[15] *Supra* note 1, at p. 42.

[16] *Id.*, p. 41.

[17] *Supra* note 2.

for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal was reversed he shall be deemed to have waived the right to present evidence."

The Court has previously explained the nature of a demurrer to evidence in the case of *Celino v. Heirs of Alejo and Teresa Santiago*[18] as follows:

"A demurrer to evidence is a *motion to dismiss* on the ground of insufficiency of evidence and is presented *after the plaintiff rests his case*. It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case."

In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the judgment.[19] Being considered a motion to dismiss, thus, a demurrer to evidence must clearly be filed *before* the court renders its judgment.

In this case, respondents demurred to petitioners' evidence *after* the RTC promulgated its Decision. While respondents' motion for reconsideration and/or new trial was granted, it was for the sole purpose of receiving and offering for admission the documents not presented at the trial. As respondents never complied with the directive but instead filed a demurrer to evidence, their motion should be deemed abandoned. Consequently, the RTC's original Decision stands.

Accordingly, the CA committed reversible error in granting the demurrer and dismissing the Amended Complaint *a quo* for insufficiency of evidence. The demurrer to evidence was clearly

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[18] G.R. No. 161817, July 30, 2004, 435 SCRA 690, 693, italics ours.

[19] *Choa v. Choa*, G.R. No. 143376, November 26, 2002, 392 SCRA 641, 648.

no longer an available remedy to respondents and should not have been granted, as the RTC had correctly done.

WHEREFORE, the petition is **GRANTED**. The assailed Decision and Resolution of the CA are **SET ASIDE** and the Orders of the RTC denying respondents' demurrer are **REINSTATED**. The Decision of the RTC dated November 24, 1995 **STANDS**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 173476. February 22, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODRIGO SALAFRANCA *y* BELLO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; HEARSAY RULE; EXCEPTIONS; ANTE-MORTEM DECLARATION MAY BE ADMITTED AS DYING DECLARATION AND/OR PART OF *RES GESTAE*; CASE AT BAR.— An ante-mortem declaration of a victim of murder, homicide, or parricide that meets the conditions of admissibility under the *Rules of Court* and pertinent jurisprudence is admissible either as a dying declaration or as a part of the *res gestae*, or both. x x x It appears from the x x x testimony that Bolanon had gone to the residence of Estaño, his uncle, to seek help right after being stabbed by Salafranca; that Estaño had hurriedly dressed up to bring his nephew to the Philippine General Hospital by taxicab; that on the way to the hospital,

Estaño had asked Bolanon who had stabbed him, and the latter had told Estaño that his assailant had been Salafranca; that at the time of the utterance Bolanon had seemed to be having a hard time breathing, causing Estaño to advise him not to talk anymore; and that about ten minutes after his admission at the emergency ward of the hospital, Bolanon had expired and had been pronounced dead. Such circumstances qualified the utterance of Bolanon as both a dying declaration and as part of the *res gestae*, considering that the Court has recognized that the statement of the victim an hour before his death and right after the hacking incident bore all the earmarks either of a dying declaration or part of the *res gestae* either of which was an exception to the hearsay rule.

2. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— Discrediting Mendoza and Estaño as witnesses against Salafranca would be unwarranted. The RTC and the CA correctly concluded that Mendoza and Estaño were credible and reliable. The determination of the competence and credibility of witnesses at trial rested primarily with the RTC as the trial court due to its unique and unequalled position of observing their deportment during testimony, and of assessing their credibility and appreciating their truthfulness, honesty and candor. Absent a substantial reason to justify the reversal of the assessment made and conclusions reached by the RTC, the CA as the reviewing court was bound by such assessment and conclusions, considering that the CA as the appellate court could neither substitute its assessment nor draw different conclusions without a persuasive showing that the RTC misappreciated the circumstances or omitted significant evidentiary matters that would alter the result. Salafranca did not persuasively show a misappreciation or omission by the RTC. Hence, the Court, in this appeal, is in no position to undo or to contradict the findings of the RTC and the CA, which were entitled to great weight and respect.

3. ID.; ID.; DENIAL AND ALIBI; WEAK DEFENSE AS AGAINST POSITIVE IDENTIFICATION OF ACCUSED MADE WITHOUT ILL MOTIVE.— Salafranca's denial and *alibi* were worthless in the face of his positive identification by Mendoza as the assailant of Bolanon. The lower courts properly accorded

full faith to such incrimination by Mendoza considering that Salafranca did not even project any ill motive that could have impelled Mendoza to testify against him unless it was upon the truth.

4. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN PRESENT.— The method and means Salafranca employed constituted a surprise deadly attack against Bolanon from behind and included an aggressive physical control of the latter's movements that ensured the success of the attack without any retaliation or defense on the part of Bolanon. According to the *Revised Penal Code*, treachery is present when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

5. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; HEARSAY RULE; EXCEPTIONS; DYING DECLARATION; REQUISITES; ALL PRESENT IN CASE AT BAR.— A dying declaration, although generally inadmissible as evidence due to its hearsay character, may nonetheless be admitted when the following requisites concur, namely: (*a*) that the declaration must concern the cause and surrounding circumstances of the declarant's death; (*b*) that at the time the declaration is made, the declarant is under a consciousness of an impending death; (*c*) that the declarant is competent as a witness; and (*d*) that the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is a victim. All the requisites were met herein. Bolanon communicated his ante-mortem statement to Estaño, identifying Salafranca as the person who had stabbed him. At the time of his statement, Bolanon was conscious of his impending death, having sustained a stab wound in the chest and, according to Estaño, was then experiencing great difficulty in breathing. Bolanon succumbed in the hospital emergency room a few minutes from admission, which occurred under three hours after the stabbing. There is ample authority for the view that the declarant's belief in the imminence of his death can be shown by the declarant's own statements or from circumstantial evidence, such as the nature of his wounds, statements made in his presence, or by the opinion of his physician. Bolanon

would have been competent to testify on the subject of the declaration had he survived. Lastly, the dying declaration was offered in this criminal prosecution for murder in which Bolanon was the victim.

6. ID.; ID.; ID.; ID.; ID.; PART OF *RES GESTAE*; REQUISITES; ALL PRESENT IN CASE AT BAR.— A declaration or an utterance is deemed as part of the *res gestae* and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur, to wit: (*a*) the principal act, the *res gestae*, is a startling occurrence; (*b*) the statements are made before the declarant had time to contrive or devise; and (*c*) the statements must concern the occurrence in question and its immediately attending circumstances. The requisites for admissibility of a declaration as part of the *res gestae* concur herein. Surely, when he gave the identity of the assailant to Estaño, Bolanon was referring to a startling occurrence, *i.e.*, his stabbing by Salafranca. Bolanon was then on board the taxicab that would bring him to the hospital, and thus had no time to contrive his identification of Salafranca as the assailant. His utterance about Salafranca having stabbed him was made in spontaneity and only in reaction to the startling occurrence. The statement was relevant because it identified Salafranca as the perpetrator.

7. ID.; ID.; ID.; ID.; ID.; ID.; ELUCIDATED.— The term *res gestae* has been defined as "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act." In a general way, *res gestae* refers to the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication. The rule on *res gestae* encompasses the exclamations and statements made by either the participants, *victims*, or spectators to a crime immediately before, during, or immediately after the commission of the crime when the circumstances are such that the statements were made as a *spontaneous* reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement. The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation is so intimately interwoven or connected with

the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony.

8. CRIMINAL LAW; MURDER; PROPER CIVIL DAMAGES.— We modify the limiting of civil damages by the CA and the RTC to only the death indemnity of ₱50,000.00. We declare that the surviving heirs of Bolanon were entitled by law to more than such indemnity, because the damages to be awarded when death occurs due to a crime may include: (*a*) civil indemnity *ex delicto* for the death of the victim (which was granted herein); (*b*) actual or compensatory damages; (*c*) moral damages; (*d*) exemplary damages; and (*e*) temperate damages. We hold that the CA and the RTC should have further granted moral damages which were different from the death indemnity. The death indemnity compensated the loss of life due to crime, but appropriate and reasonable moral damages would justly assuage the mental anguish and emotional sufferings of the surviving family of the victim. Although mental anguish and emotional sufferings of the surviving heirs were not quantifiable with mathematical precision, the Court must nonetheless strive to set an amount that would restore the heirs of Bolanon to their moral *status quo ante*. Given the circumstances, the amount of ₱50,000.00 is reasonable as moral damages, which, pursuant to prevailing jurisprudence, we are bound to award despite the absence of any allegation and proof of the heirs' mental anguish and emotional suffering. x x x It is already settled that when actual damages for burial and related expenses are not substantiated by receipts, temperate damages of at least ₱25,000.00 are warranted, for it would certainly be unfair to the surviving heirs of the victim to deny them compensation by way of actual damages. Moreover, the *Civil Code* provides that exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances." The *Civil Code* permits such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Conformably with such legal provisions, the CA and the RTC should have recognized the entitlement of the heirs of the victim to exemplary damages because of the attendance of treachery. It

was of no moment that treachery was an attendant circumstance in murder, and, as such, inseparable and absorbed in murder. The Court explained so in *People v. Catubig*: x x x For the purpose of fixing the exemplary damages, the sum of ₱30,000.00 is deemed reasonable and proper, because we think that a lesser amount could not result in genuine exemplarity.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BERSAMIN, *J.*:

An ante-mortem declaration of a victim of murder, homicide, or parricide that meets the conditions of admissibility under the *Rules of Court* and pertinent jurisprudence is admissible either as a dying declaration or as a part of the *res gestae*, or both.

Rodrigo Salafranca *y* Bello was charged with and tried for murder for the fatal stabbing of Johnny Bolanon, and was ultimately found guilty of the felony by the Regional Trial Court, Branch 18, in Manila on September 23, 2004. On appeal, his conviction was affirmed by the Court of Appeals (CA) through its decision promulgated on November 24, 2005.[1]

Salafranca has come to the Court on a final appeal, continuing to challenge the credibility of the witnesses who had incriminated him.

The established facts show that past midnight on July 31, 1993 Bolanon was stabbed near the Del Pan Sports Complex in Binondo, Manila; that after stabbing Bolanon, his assailant ran away; that Bolanon was still able to walk to the house of his

[1] *Rollo*, pp. 2-11; penned by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice, now retired), with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Vicente Q. Roxas, concurring.

uncle Rodolfo B. Estaño in order to seek help; that his uncle rushed him to the Philippine General Hospital by taxicab; that on their way to the hospital Bolanon told Estaño that it was Salafranca who had stabbed him; that Bolanon eventually succumbed at the hospital at 2:30 am despite receiving medical attention; and that the stabbing of Bolanon was personally witnessed by Augusto Mendoza, then still a minor of 13 years, who was in the complex at the time.[2]

As stated, Salafranca fled after stabbing Bolanon. He evaded arrest for a long period, despite the warrant for his arrest being issued. He was finally arrested on April 23, 2003, and detained at the Manila City Jail.

After trial, the RTC convicted Salafranca, stating:

> The evidence is clear that it was Rodrigo Salafranca who delivered two (2) stabbing blows to the victim while holding Johnny Bolanon with his left arm encircled around Bolanon's neck stabbing the latter with the use of his right hand at the right sub costal area which caused Bolanon's death. Not only because it was testified to by Augusto Mendoza but corroborated by Rodolfo Estaño, the victim's uncle who brought Bolanon to the hospital and who relayed to the court that when he aided Bolanon and even on their way to the hospital while the latter was suffering from hard breathing, victim Bolanon was able to say that it was Rodrigo Salafranca who stabbed him.[3]

The RTC appreciated treachery based on the testimony of Prosecution witness Mendoza on how Salafranca had effected his attack against Bolanon, observing that by "encircling his (accused) left arm, while behind the victim on the latter's neck and stabbing the victim with the use of his right hand," Salafranca did not give Bolanon "any opportunity to defend himself."[4] The RTC noted inconsistencies in Salafranca's and his witness' testimonies, as well as the fact that he had fled from his residence the day after the incident and had stayed away in Bataan for

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[2] *Id.,* pp. 3-4.

[3] CA *rollo,* p. 36.

[4] *Id.,* p. 38.

eight years until his arrest. The RTC opined that had he not been hiding, there would be no reason for him to immediately leave his residence, especially because he was also working near the area.[5]

The RTC disposed thus:

> With the above observations and findings, accused Rodrigo Salafranca is hereby found guilty of the crime of Murder defined and punished under Article 248 as amended by Republic Act No. 7659 in relation to Article 63 of the Revised Penal Code with the presence of the qualifying aggravating circumstance of treachery (248 par. 1 as amended) without any mitigating nor other aggravating circumstance attendant to its commission, Rodrigo Salafranca is hereby sentenced to suffer the penalty of *reclusion perpetua*.
>
> He shall be credited with the full extent of his preventive imprisonment under Article 29 of the Revised Penal Code.
>
> His body is hereby committed to the custody of the Director of the Bureau of Correction, National Penitentiary, Muntinlupa City thru the City Jail Warden of Manila.
>
> He is hereby ordered to indemnify the heirs of the victim the sum of ₱50,000.00 representing death indemnity.
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> There being no claim of other damages, no pronouncement is hereby made.
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> SO ORDERED.[6]

On appeal, the CA affirmed the findings and conclusions of the RTC,[7] citing the dying declaration made to his uncle pointing to Salafranca as his assailant,[8] and Salafranca's positive identification as the culprit by Mendoza.[9] It stressed that Salafranca's denial and his *alibi* of being in his home during

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[5] *Id.*, pp. 36-38.

[6] *Id.*, p. 39.

[7] *Supra*, at note 1.

[8] *Id.* at p. 6.

[9] *Id.* at p. 9.

the incident did not overcome the positive identification, especially as his unexplained flight after the stabbing, leaving his home and employment, constituted a circumstance highly indicative of his guilt.[10]

Presently, Salafranca reiterates his defenses, and insists that the State did not prove his guilt beyond reasonable doubt.

The appeal lacks merit.

Discrediting Mendoza and Estaño as witnesses against Salafranca would be unwarranted. The RTC and the CA correctly concluded that Mendoza and Estaño were credible and reliable. The determination of the competence and credibility of witnesses at trial rested primarily with the RTC as the trial court due to its unique and unequalled position of observing their deportment during testimony, and of assessing their credibility and appreciating their truthfulness, honesty and candor. Absent a substantial reason to justify the reversal of the assessment made and conclusions reached by the RTC, the CA as the reviewing court was bound by such assessment and conclusions,[11] considering that the CA as the appellate court could neither substitute its assessment nor draw different conclusions without a persuasive showing that the RTC misappreciated the circumstances or omitted significant evidentiary matters that would alter the result.[12] Salafranca did not persuasively show a misappreciation or omission by the RTC. Hence, the Court, in this appeal, is in no position to undo or to contradict the findings of the RTC and the CA, which were entitled to great weight and respect.[13]

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[10] CA *rollo*, p. 110.

[11] *People v. Resuma*, G.R. No. 179189, February 26, 2008, 546 SCRA 728, 737.

[12] *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Bricenio v. People*, G.R. No. 157804, June 20, 2006, 491 SCRA 489, 496.

[13] *People v. De Guzman*, G.R. No. 177569, November 28, 2007, 539 SCRA 306, 314; *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547, *People v. Taan*, G.R. No. 169432, October 30, 2006, 506 SCRA 219, 230; *Perez v. People*, G.R. No. 150443, January 20, 2006,

Salafranca's denial and *alibi* were worthless in the face of his positive identification by Mendoza as the assailant of Bolanon. The lower courts properly accorded full faith to such incrimination by Mendoza considering that Salafranca did not even project any ill motive that could have impelled Mendoza to testify against him unless it was upon the truth.[14]

Based on Mendoza's account, Salafranca had attacked Bolanon from behind and had "encircled his left arm over the neck (of Bolanon) and delivered the stabbing blow using the right(hand) and coming from wnnt (*sic*) up right sideways and another one encircling the blow towards below the left nipple."[15] Relying on Mendoza's recollection of how Salafranca had attacked Bolanon, the RTC found treachery to be attendant in the killing. This finding the CA concurred with. We join the CA's concurrence because Mendoza's *eyewitness* account of the manner of attack remained uncontested by Salafranca who merely insisted on his *alibi*. The method and means Salafranca employed constituted a surprise deadly attack against Bolanon from behind and included an aggressive physical control of the latter's movements that ensured the success of the attack without any retaliation or defense on the part of Bolanon. According to the *Revised Penal Code*,[16] treachery is present when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

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479 SCRA 209, 219; *People v. Tonog, Jr.*, G.R. No. 144497, June 29, 2004, 433 SCRA 139, 153-154; *People v. Genita, Jr.*, G.R. No. 126171, March 11, 2004, 425 SCRA 343, 349; *People v. Pacheco*, G.R. No. 142887, March 2, 2004, 424 SCRA 164, 174; *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260, 265-266; *People v. Santiago*, G.R. No. 137542-43, January 20, 2004, 420 SCRA 248, 256.

[14] *Domingo v. People*, G.R. No. 186101, October 12, 2009, 603 SCRA 488, 508.

[15] TSN, September 1, 2003, pp. 3-4.

[16] Article 14, paragraph 16, *Revised Penal Code*.

The Court further notes Estaño's testimony on the utterance by Bolanon of statements identifying Salafranca as his assailant right after the stabbing incident. The testimony follows:

Q Can you tell what happened on the said date?

A My nephew arrived in our house with a stab wound on his left chest.

Q What time was that?

A 12:50 a.m.

Q When you saw your nephew with a stab wound, what did he say?

A "*Tito dalhin mo ako sa* Hospital *sinaksak ako*."

Q What did you do?

A I immediately dressed up and brought him to PGH.

Q On the way to the PGH what transpired?

A While traveling toward PGH I asked my nephew who stabbed him?, and he answered, Rod Salafranca.

Q Do you know this Rod Salafranca?

A Yes, Sir.

Q How long have you known him?

A "*Matagal na ho kasi mag-neighbor kami*."

Q If you see him inside the courtroom will you be able to identify him?

A Yes, Sir.

Q Will you look around and point him to us?

A (Witness pointing to a man who answered by the name of Rod Salafranca.)

COURT

When he told you the name of his assailant what was his condition?

A He was suffering from hard breathing so I told him not to talk anymore because he will just suffer more.

Q What happened when you told him that?

A He kept silent.

Q What time did you arrive at the PGH?

A I cannot remember the time because I was already confused at that time.

Q When you arrived at the PGH what happened?

A He was brought to Emergency Room.

Q When he was brought to the emergency room what happened?

A He was pronounced dead.[17]

It appears from the foregoing testimony that Bolanon had gone to the residence of Estaño, his uncle, to seek help right after being stabbed by Salafranca; that Estaño had hurriedly dressed up to bring his nephew to the Philippine General Hospital by taxicab; that on the way to the hospital, Estaño had asked Bolanon who had stabbed him, and the latter had told Estaño that his assailant had been Salafranca; that at the time of the utterance Bolanon had seemed to be having a hard time breathing, causing Estaño to advise him not to talk anymore; and that about ten minutes after his admission at the emergency ward of the hospital, Bolanon had expired and had been pronounced dead. Such circumstances qualified the utterance of Bolanon as both a dying declaration and as part of the *res gestae*, considering that the Court has recognized that the statement of the victim an hour before his death and right after the hacking incident bore all the earmarks either of a dying declaration or part of the *res gestae* either of which was an exception to the hearsay rule.[18]

A dying declaration, although generally inadmissible as evidence due to its hearsay character, may nonetheless be admitted when

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[17] TSN, March 18, 2003, pp. 3-4.

[18] *People v. Loste*, G.R. No. 94785, July 1, 1992, 210 SCRA 614, 621, citing *People v. Mision*, G.R. No. 63480, February 26, 1991, 194 SCRA 432, 339-340.

the following requisites concur, namely: (*a*) that the declaration must concern the cause and surrounding circumstances of the declarant's death; (*b*) that at the time the declaration is made, the declarant is under a consciousness of an impending death; (*c*) that the declarant is competent as a witness; and (*d*) that the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is a victim.[19]

All the requisites were met herein. Bolanon communicated his ante-mortem statement to Estaño, identifying Salafranca as the person who had stabbed him. At the time of his statement, Bolanon was conscious of his impending death, having sustained a stab wound in the chest and, according to Estaño, was then experiencing great difficulty in breathing. Bolanon succumbed in the hospital emergency room a few minutes from admission, which occurred under three hours after the stabbing. There is ample authority for the view that the declarant's belief in the imminence of his death can be shown by the declarant's own statements or from circumstantial evidence, such as the nature of his wounds, statements made in his presence, or by the opinion of his physician.[20] Bolanon would have been competent to testify on the subject of the declaration had he survived. Lastly, the dying declaration was offered in this criminal prosecution for murder in which Bolanon was the victim.

A declaration or an utterance is deemed as part of the *res gestae* and thus admissible in evidence as an exception to the

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[19] *People v. Labagala*, G.R. No. 184603, August 2, 2010, 626 SCRA 267, 278; see also *People v. Garma*, G.R. No. 110872, April 18, 1997, 271 SCRA 517, 522; *People v. Elizaga*, No. 78794, November 21, 1988, 167 SCRA 516, 520; *People v. Lanza*, No. L-31782, December 14, 1979, 94 SCRA 613, 625; *People v. Saliling*, No. L-27874, February 27, 1976, 69 SCRA 427, 438.

[20] M. Graham, *Federal Practice and Procedure: Evidence* § 7074, Interim Edition, Vol. 30B, 2000, West Group, St. Paul, Minnesota; citing *Shepard v. United States*, 290 US 96, 100; *Mattox v. United States*, 146 US 140, 151 (sense of impending death may be made to appear "from the nature and extent of the wounds inflicted, being obviously such that he must have felt or known that he could not survive."); *Webb v. Lane*, 922 F.2d 390, 395-396 (7th Cir. 1991); *United States v. Mobley*, 491 F.2d 345 (5th Cir. 1970).

hearsay rule when the following requisites concur, to wit: (*a*) the principal act, the *res gestae*, is a startling occurrence; (*b*) the statements are made before the declarant had time to contrive or devise; and (*c*) the statements must concern the occurrence in question and its immediately attending circumstances.[21]

The requisites for admissibility of a declaration as part of the *res gestae* concur herein. Surely, when he gave the identity of the assailant to Estaño, Bolanon was referring to a startling occurrence, *i.e.*, his stabbing by Salafranca. Bolanon was then on board the taxicab that would bring him to the hospital, and thus had no time to contrive his identification of Salafranca as the assailant. His utterance about Salafranca having stabbed him was made in spontaneity and only in reaction to the startling occurrence. The statement was relevant because it identified Salafranca as the perpetrator.

The term *res gestae* has been defined as "those circumstances which are the undesigned incidents of a particular litigated act and which are admissible when illustrative of such act."[22] In a general way, *res gestae* refers to the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication.[23] The rule on *res gestae* encompasses the exclamations and statements made by either the participants, *victims*, or spectators to a crime immediately before, during, or immediately after the commission of the crime when the circumstances are such that the statements were made as a *spontaneous* reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a

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[21] *People v. Peralta*, G.R. No. 94570, September 28, 1994, 237 SCRA 218, 224; *People v. Maguikay*, G.R. Nos. 103226-28, October 14, 1994, 237 SCRA 587, 600.

[22] *Alhambra Bldg. & Loan Ass'n v. DeCelle*, 118 P. 2d 19, 47 C.A. 2d 409; *Reilly Tar & Chemical Corp. v. Lewis*, 61 N.E. 2d 297, 326 Ill. App. 117.

[23] *Kaiko v. Dolinger*, 440 A. 2d 198, 184 Conn. 509; *Southern Surety Co. v. Weaver*, Com. App. 273 S.W. 838.

false statement.[24] The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negatives any premeditation or purpose to manufacture testimony.[25]

We modify the limiting of civil damages by the CA and the RTC to only the death indemnity of ₱50,000.00. We declare that the surviving heirs of Bolanon were entitled by law to more than such indemnity, because the damages to be awarded when death occurs due to a crime may include: (*a*) civil indemnity *ex delicto* for the death of the victim (which was granted herein); (*b*) actual or compensatory damages; (*c*) moral damages; (*d*) exemplary damages; and (*e*) temperate damages.[26]

We hold that the CA and the RTC should have further granted moral damages which were different from the death indemnity.[27] The death indemnity compensated the loss of life due to crime, but appropriate and reasonable moral damages would justly assuage the mental anguish and emotional sufferings of the surviving family of the victim.[28] Although mental anguish and emotional sufferings of the surviving heirs were not quantifiable with mathematical precision, the Court must nonetheless strive to set an amount that would restore the heirs of Bolanon to their moral *status quo ante*. Given the circumstances, the amount of ₱50,000.00 is reasonable as moral damages, which, pursuant

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[24] *People v. Sanchez*, G.R. No. 74740, August 28, 1992, 213 SCRA 70, 79.

[25] *Molloy v. Chicago Rapid Transit Co.*, 166 N.E. 530, 335 Ill. 164; *Campbell v. Gladden*, 118 A. 2d 133, 383 Pa. 144, 53 A.L.R. 2d 1222.

[26] *People v. Fontanilla*, G.R. No. 177743, January 25, 2012; *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 455.

[27] *Heirs of Raymundo Castro v. Bustos*, L-25913, February 28, 1969, 27 SCRA 327, 333.

[28] Article 2206, (3), in relation to Article 2217 and Article 2219, *Civil Code*, and Article 107, *Revised Penal Code.*

to prevailing jurisprudence,[29] we are bound to award despite the absence of any allegation and proof of the heirs' mental anguish and emotional suffering. The rationale for doing so rested on human nature and experience having shown that:

> x x x a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them.[30]

The CA and the RTC committed another omission consisting in their non-recognition of the right of the heirs of Bolanon to temperate damages. It is already settled that when actual damages for burial and related expenses are not substantiated by receipts, temperate damages of at least ₱25,000.00 are warranted, for it would certainly be unfair to the surviving heirs of the victim to deny them compensation by way of actual damages.[31]

Moreover, the *Civil Code* provides that exemplary damages may be imposed in criminal cases as part of the civil liability "when the crime was committed with one or more aggravating circumstances."[32] The *Civil Code* permits such damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."[33] Conformably with such legal provisions, the CA

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[29] *People v. Salva*, G.R. No. 132351, January 10, 2002, 373 SCRA 55, 69; *People v. Osianas*, G.R. No. 182548, September 30, 2008, 567 SCRA 319, 340; *People v. Buduhan*, G.R. No. 178196, August 6, 2008, 561 SCRA 337, 367-368; *People v. Berondo, Jr.*, G.R. No. 177827, March 30, 2009, 582 SCRA 547.

[30] *People v. Panado*, G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

[31] *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 804-805.

[32] Article 2230, *Civil Code.*

[33] Article 2229, *Civil Code*.

and the RTC should have recognized the entitlement of the heirs of the victim to exemplary damages because of the attendance of treachery. It was of no moment that treachery was an attendant circumstance in murder, and, as such, inseparable and absorbed in murder. The Court explained so in *People v. Catubig*:[34]

> The term "aggravating circumstances" used by the *Civil Code*, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. **Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.**

For the purpose of fixing the exemplary damages, the sum of ₱30,000.00 is deemed reasonable and proper,[35] because we think that a lesser amount could not result in genuine exemplarity.

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[34] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

[35] See *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 752, *People v. Del Rosario*, G.R. No. 189580, February 9, 2011, 642 SCRA 625, 637-638.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals promulgated on November 24, 2005, but **MODIFIES** the awards of civil damages by adding to the amount of ₱50,000.00 awarded as death indemnity the amounts of ₱50,000.00 as moral damages; ₱25,000.00 as temperate damages; and ₱30,000.00 as exemplary damages, all of which awards shall bear interest of 6% *per annum* from the finality of this decision.

The accused shall further pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 177320. February 22, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CESAR BAUTISTA *y* SANTOS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF *SHABU*; ELEMENTS.— Section 5 and Section 11 of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) pertinently provide as follows: x x x Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* x x x Section 11.

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[*] Vice Associate Justice Mariano C. Del Castillo, who is on sick leave, per Special Order No. 1203 dated February 17, 2012.

Possession of Dangerous Drugs. x x x To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (*a*) the identities of the buyer and the seller, the object of the sale, and the consideration; and (*b*) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— For illegal possession of a dangerous drug, like *shabu*, the elements are: (*a*) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (*b*) such possession is not authorized by law; and (*c*) the accused freely and consciously possessed the drug.

3. ID.; ID.; ID.; ID.; ESTABLISHED WITH THE FRISKING OF ACCUSED, THE SAME AS SEARCH INCIDENT TO LAWFUL ARREST.— The elements of illegal possession of a dangerous drug were x x x competently and convincingly established by the Prosecution. SPO1 Ybañez stated that upon seeing the pre-arranged signal given by PO2 Tayag, he and the other members of the team proceeded to arrest Bautista; and that he frisked Bautista and then recovered six other plastic sachets from Bautista's pocket. Undoubtedly, the frisking was legally authorized as a search incidental to the lawful arrest of Bautista for evidence in the commission of illegal drug pushing. Forensic Chemist Arturo certified that each of the sachets contained different *shabu* of different weights.

4. ID.; ID.; THE DANGEROUS DRUG AS THE *CORPUS DELICTI* MUST BE ESTABLISHED; NOT SATISFIED WHERE THE DRUG IS MISSING AND SUBSTANTIAL GAPS OCCUR IN THE CHAIN OF CUSTODY OF THE SEIZED DRUGS.— In drug-related prosecutions, the State bears the burden not only of proving the elements of the offenses of sale and possession of *shabu* under Republic Act No. 9165, but also of proving the *corpus delicti*, the body of the crime. "*Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. As applied to a particular offense, it means *the actual commission by someone of the particular crime charged*. The *corpus delicti* is a compound fact made

up of two (2) things, *viz*: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result." The dangerous drug is itself the very *corpus delicti* of the violation of the law prohibiting the possession of the dangerous drug. Consequently, the State does not comply with the indispensable requirement of proving *corpus delicti* when the drug is missing, and when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented in court.

5. ID.; ID.; CHAIN OF CUSTODY; THAT THE BUY-BUST TEAM DID NOT MARK THE SACHETS UNTIL AFTER REACHING THE POLICE STATION; NOT CRUCIAL AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED ITEMS ARE PRESERVED; CASE AT BAR.— To ensure that the chain of custody is established, Section 21 of Republic Act No. 9165 relevantly provides: Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* x x x The complementary Implementing Rules and Regulations (IRR) of Republic Act No. 9165 instructs the apprehending officer or team on the custody and control of the confiscated drugs in the following manner: x x x The rule on chain of custody under the foregoing enactments expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. In this regard, Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defines the chain of custody rule as follows: x x x Here, the buy-bust team did not mark the sachets until after reaching the police station. Even so, the omission did not destroy the integrity and the evidentiary value of the confiscated items. x x x We have held that a non-compliance with the regulations is not necessarily fatal as to render an accused's arrest illegal or the items confiscated from him inadmissible as evidence of his guilt, for what is of the utmost importance is the preservation of the integrity and the evidentiary value of the confiscated

items that will be utilized in the determination of his guilt or innocence.

6. REMEDIAL LAW; EVIDENCE; DENIAL AND FRAME-UP; NOT APPRECIATED ESPECIALLY AS ACCUSED FAILED TO CHARGE THE POLICEMEN.— As if confirming the arresting officers' observance of the rule on chain of custody, Bautista did not assail the integrity of the confiscated *shabu* except by insisting on being framed up by the policemen. His insistence did not deflect guilt from him, however, considering that his failure to charge the policemen with frame-up and extortion could only be regarded as his tacit admission that such evidence had not been tampered or meddled with but preserved and intact. x x x Bautista's denial and defense of frame-up were given no consideration due to their being self-serving and uncorroborated. x x x As the Court sees it, he was not even sincere in claiming frame-up, for he did not formally charge the policemen for the supposed frame-up and extortion committed against him. Verily, defenses of frame-up and extortion are not looked upon with favor due to their being conveniently concocted and usually asserted by culprits arrested for violations of Republic Act No. 9165.

7. ID.; ID.; TESTIMONIES; INCONSISTENCIES THAT HAD NOTHING TO DO WITH THE ELEMENTS OF THE CRIME, NOT MATERIAL.— Bautista argues that the arresting policemen incurred inconsistencies because they could not be sure on who of them had actually received the report of the informant on the illegal drug pushing of Bautista. The argument has no merit. There is no dispute that the matter of who among the policemen actually received the report from the informant did not relate to the essential elements of the crimes charged. Nor did such matter refer to the actual buy-bust itself – that crucial moment when Bautista was caught red-handed selling and possessing *shabu* in question. As such, it was insignificant in this adjudication. We deem to be basic enough that an inconsistency that had nothing to do with the elements of the crime could not be a basis for acquittal.

8. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL POSSESSION OF LESS THAN FIVE GRAMS OF *SHABU*; PROPER PENALTY APPLYING THE INDETERMINATE SENTENCE LAW.—

Section 11 (3) of Republic Act No. 9165 provides that the illegal possession of less than five grams of *shabu* is penalized with imprisonment of 12 years and one day to 20 years, and a fine ranging from ₱300,000.00 to ₱400,000.00. Bautista was guilty of illegal possession of *shabu* weighing 0.41 gram. The RTC and the CA imposed on him an indeterminate sentence of 12 years, eight months and one day, as minimum, to 17 years and eight months, as maximum, and a fine of ₱300,000.00. Although the penalty thus imposed is within the range of the penalty imposable under Republic Act No. 9165, the increment of one day as part of the minimum of the indeterminate sentence is deleted despite its being within the parameters of the *Indeterminate Sentence Law*. The one-day increment to the minimum of the indeterminate sentence was surplusage that may occasion a slight degree of inconvenience when it will be time for the penal administrators concerned to pass upon and determine whether or not Bautista is already qualified to enjoy the benefits under the *Indeterminate Sentence Law* and other relevant legal provisions. Accordingly, the penalty should be an indeterminate sentence of 12 years and eight months, as minimum, to 17 years and eight months, as maximum, and a fine of ₱300,000.00.

9. ID.; ID.; ILLEGAL SALE OF *SHABU*; PROPER PENALTY.— Under Section 5 of Republic Act No. 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. The RTC and the CA were correct in prescribing life imprisonment and fine of ₱500,000.00 due to the absence of any aggravating circumstance. It is relevant to observe that the higher penalty of death might no longer be possibly prescribed in view of the intervening enactment of Republic Act No. 9346, a law that prohibits the imposition of the death penalty.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

BERSAMIN, *J.*:

Under review is the conviction of the accused for illegal sale and illegal possession of *shabu* respectively punished under Section 5 and Section 11 (3) of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*). He had been tried for and found guilty of the offenses by the Regional Trial Court (RTC), Branch 127, Caloocan City, and the Court of Appeals (CA) had affirmed the convictions through the decision promulgated on February 15, 2007.[1]

Antecedents

On April 28, 2003, the Office of the City Prosecutor of Caloocan City filed in the RTC two separate informations charging Cesar Bautista *y* Santos with a violation of Section 5 and a violation of Section 11 (3) of RA 9165, alleging thus:

Criminal Case No. C-67993

That on or about the 25th day of April 2003 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control six (6) pieces of plastic sachets containing METHYLAMPHETAMINE HYDROCHLORIDE (*Shabu*) weighing 0.05 gram, 0.09 gram, 0.05 gram, 0.09 gram, 0.07 gram & 0.06 gram knowing the same to be dangerous drug under the provisions of the above-cited law.

CONTRARY TO LAW.[2]

Criminal Case No. C-67994

That on or about the 25th day of April 2003 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court,

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[1] CA *rollo*, pp. 114-130; penned by Associate Justice Mariano C. Del Castillo (now a Member of this Court), with Associate Justice Ruben T. Reyes (later Presiding Justice and a Member of the Court, but already retired) and Associate Justice Arcangelita Romilla Lontok (retired), concurring.

[2] Records, p. 2.

the above-named accused without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO2 AMADEO TAYAG who posed, as buyer METHAMPHETAMINE HYDROCHLORIDE (*SHABU*) weighing 0.05 gram, a dangerous drug, without the corresponding license or prescription therefore, knowing the same to be such.

CONTRARY TO LAW.[3]

Evidence of the Prosecution

In the afternoon of April 25, 2003, an informant went to the Station Drug Enforcement Unit of the Caloocan Police Station to report the peddling of illegal drugs by Bautista on Kasama Street, Barangay 28, Caloocan City. Forthwith, Police Insp. Cesar Cruz formed a team consisting of SPO1 Rommel Ybañez, PO3 Rizalino Rangel, PO2 Jessie Caragdag, PO2 Juanito Rivera, and PO2 Amadeo L. Tayag to conduct a buy-bust operation against Bautista. PO2 Tayag, designated as the poseur-buyer, was given a ₱100.00 bill as buy-bust money, on which he placed his initials ALT. The rest of the buy-bust team would serve as back up for PO2 Tayag. The team proceeded to the target area with the informant.[4]

Upon arriving at the target area, the informant pointed out Bautista to the team. Bautista was then standing in front of a house. PO2 Tayag and the informant then approached Bautista even as the rest of the team took up positions nearby. The informant introduced PO2 Tayag to Bautista as *biyahero ng shabu,* after which the informant left PO2 Tayag and Bautista alone to themselves. PO2 Tayag told Bautista: *Cesar, pakuha ng piso.* Bautista drew a plastic sachet from his pocket and handed it to PO2 Tayag, who in turn handed the ₱100.00 bill buy-bust money to Bautista. PO2 Tayag then turned his cap backwards as the pre-arranged signal to the back-up members. The latter rushed forward and arrested Bautista. Upon informing

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[3] *Id.,* p. 8.

[4] TSN, August 27, 2003, pp. 3-5.

Bautista of his constitutional rights, SPO1 Ybañez frisked him and found in his pocket six other plastic sachets, while PO2 Caragdag seized the buy-bust money from Bautista's hand. The team brought Bautista and the seized plastic sachets back to the police station.[5]

In the police station, the team recorded the buy-bust bill in the police blotter and turned over the plastic sachets to PO2 Hector Castillo, the investigator on duty.[6] PO2 Castillo marked the sachet handed by Bautista to PO2 Tayag as "CBS (Bautista's initials) Buy-bust," and the other six sachets recovered by SPO1 Ybañez from appellant's possession as "CBS-1", "CBS-2", "CBS-3", "CBS-4", "CBS-5", and "CBS-6".[7]

Based on the written request of Insp. Cruz, Forensic Chemist Albert S. Arturo conducted a laboratory examination on the contents of the marked sachets,[8] and stated in his Physical Science Report that the marked sachets contained methamphetamine hydrochloride or *shabu*, a dangerous substance. The Physical Science Report enumerated the marked sachets examined and gave the weight of the *shabu* in each as follows: "CBS (Bautista's initials) Buy-bust" – 0.05 gram; "CBS-1" – 0.05 gram; "CBS-2" – 0.09 gram; "CBS-3" – 0.05 gram; "CBS-4" – 0.09 gram; "CBS-5" – 0.07 gram; and "CBS-6" – 0.06 gram.[9]

Evidence of the Accused

Bautista denied the charge. He claimed that on April 25, 2003, at around 6:00 p.m., he and his wife, Rosario, were in their house cutting cloth to be made into door mats when PO2 Tayag and two others barged in; that when he asked what they wanted, they told him that it was none of his business; that the

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[5] *Id.*, pp. 6-10.

[6] *Id.*, pp. 10-11.

[7] TSN, September 10, 2003, pp. 2-6.

[8] Records, pp. 5-6.

[9] *Id.*

three introduced themselves as policemen and ordered him to go with them; that they forced him to go with them, with PO2 Tayag hitting him on the nape; that as they were walking on the road, they demanded money from him, but he told them that he had none; and that he was brought to and detained at the Caloocan City Jail.[10]

Decision of the RTC

After trial, the RTC found Bautista guilty as charged through its joint decision dated September 5, 2005,[11] disposing:

> WHEREFORE, premises considered and the prosecution having established to a moral certainty the guilt of Accused CESAR BAUTISTA *y* SANTOS @ CESAR TAGILID, this Court hereby renders judgment as follows:
>
> 1. In Criminal Case No. C-67993 for Violation of Sec. 11, Art. II of RA 9165, this Court in the absence of any aggravating circumstance hereby sentences same Accused to a prison term of twelve (12) years, eight (8) months and one day to seventeen (17) years and eight (8) months and to pay the fine of Three hundred thousand pesos (₱300,000.00) with subsidiary imprisonment in case of insolvency; and
>
> 2. In Crim. Case No. C-67994 for Violation of Section 5, Art. II of R.A. 9165, this Court in the absence of any aggravating circumstance hereby sentences said Accused to LIFE IMPRISONMENT, and to pay the fine of Five hundred thousand pesos (₱500,000.00) with subsidiary imprisonment in case of insolvency.
>
> Subject drug in both cases are declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.
>
> SO ORDERED.

Decision of the CA

On February 15, 2007, the CA affirmed the RTC judgment, pertinently holding:[12]

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[10] TSN, May 31, 2005, pp. 2-9.

[11] Records, pp. 148-164.

[12] *Supra*, note 1.

In sum, the prosecution was able to establish the guilt of herein appellant beyond reasonable doubt. The actual sale of prohibited or regulated drugs coupled with their presentation in court has been sufficiently proven by the testimonies of the prosecution witnesses. Their recount of the incident complement each other, giving a complete picture on how the illegal sale of *shabu* transpired and how the sale led to the apprehension of appellant *in flagrante delicto*. Their testimonies likewise established beyond doubt that appellant was found in actual possession of six (6) additional pieces of heat-sealed sachets containing white crystalline substance (*shabu*) when he was arrested.

Appellant's claim, therefore, that in convicting him, the trial court merely relied on the presumption that official duty has been regularly performed is without merit. Appellant's conviction was based on established facts and evidence on record.

WHEREFORE, in view of the foregoing, the Joint Decision of the Regional Trial Court of Caloocan City, Branch 127 in Criminal Cases Nos. C-67993 and C-67994 is AFFIRMED *in toto*.

SO ORDERED.

Issues

Hence, this appeal, in which Bautista contends that the CA erred in affirming his conviction because: (*a*) there were inconsistencies in the testimonies of Prosecution witnesses as to who of them had actually received the tip from the informant; (*b*) PO2 Tayag's testimony that Bautista had handed him a sachet of *shabu* without inquiring about the former's identity ran counter to human experience; (*c*) the back-up members of the buy-bust team did not actually witness the transaction between PO2 Tayag and Bautista; and (*d*) the plastic sachets were not immediately marked after their seizure from Bautista.[13]

Ruling

The appeal lacks merit.

I

Illegal sale and illegal possession of *shabu* were established beyond reasonable doubt

[13] CA *rollo*, pp. 59-64.

Section 5 and Section 11 of Republic Act No. 9165 pertinently provide as follows:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless, authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch, in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any such transactions.

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Section 11. *Possession of Dangerous Drugs*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

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Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

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(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine, or cocaine hydrochloride marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstacy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

To secure a conviction for illegal sale of *shabu*, the following essential elements must be established: (*a*) the identities of the buyer and the seller, the object of the sale, and the consideration;

and (*b*) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[14]

The requisites for illegal sale of *shabu* were competently and convincingly proven by the Prosecution. PO2 Tayag, as the poseur-buyer, attested that Bautista sold *shabu* to him during a legitimate buy-bust operation.[15] According to Forensic Chemist Arturo, the substance subject of the transaction, which weighed 0.05 gram, was examined and found to be methamphetamine hydrochloride or *shabu*, a dangerous drug.[16] PO2 Caragdag declared that he recovered the buy-bust money from Bautista's hand right after the sale.[17] Further, the Prosecution later presented as evidence both the sachet of *shabu* subject of the sale and the buy-bust money used in the buy-bust operation.[18] Thereby, the Prosecution directly incriminated Bautista.

For illegal possession of a dangerous drug, like *shabu*, the elements are: (*a*) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (*b*) such possession is not authorized by law; and (*c*) the accused freely and consciously possessed the drug.[19]

The elements of illegal possession of a dangerous drug were similarly competently and convincingly established by the Prosecution. SPO1 Ybañez stated that upon seeing the pre-

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[14] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 449; *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 637-638; *People v. Santiago*, G.R. No. 175326, November 28, 2007, 539 SCRA 198, 212.

[15] TSN, August 27, 2003, p. 7.

[16] *Supra*, note 8.

[17] TSN, August 11, 2003, p. 6.

[18] Records, p. 94.

[19] *People v. Naquita*, *supra* note 14, p. 451.

arranged signal given by PO2 Tayag, he and the other members of the team proceeded to arrest Bautista; and that he frisked Bautista and then recovered six other plastic sachets from Bautista's pocket.[20] Undoubtedly, the frisking was legally authorized as a search incidental to the lawful arrest of Bautista for evidence in the commission of illegal drug pushing.[21] Forensic Chemist Arturo certified that each of the sachets contained different *shabu* of different weights.[22]

The lower courts justifiably accorded credence to the eyewitness testimonies of PO2 Tayag, PO2 Caragdag, and SPO1 Ybañez. Their testimonial accounts were consistent with the documentary and object evidence of the Prosecution. It was significant that no ill motive was imputed to them to falsely testify against Bautista, with Bautista himself admitting not being aware of any reason why they would wrongly incriminate him.[23]

In drug-related prosecutions, the State bears the burden not only of proving the elements of the offenses of sale and possession of *shabu* under Republic Act No. 9165, but also of proving the *corpus delicti*, the body of the crime. "*Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. As applied to a particular offense, it means *the actual commission by someone of the particular crime charged*. The *corpus delicti* is a compound fact made up of two (2) things, *viz*: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result."[24] The dangerous drug is itself the very *corpus delicti*

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[20] TSN, September 15, 2003, p. 6.

[21] Rule 126, *Rules of Court*, provides:

Section 13. *Search incident to lawful arrest.* – A person lawfully arrested may be searched for dangerous weapons or **anything which may have been used or constitute proof in the commission of an offense** without a search warrant. (12a)

[22] *Supra*, note 8.

[23] TSN, May 31, 2005, p. 9.

[24] *People v. Roluna*, G.R. No. 101797, March 24, 1994, 231 SCRA 446, 452; citing 23 C.J.S. 623-624 (italicized portions are found in the original text).

of the violation of the law prohibiting the possession of the dangerous drug.[25] Consequently, the State does not comply with the indispensable requirement of proving *corpus delicti* when the drug is missing, and when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented in court.[26]

To ensure that the chain of custody is established, Section 21 of Republic Act No. 9165 relevantly provides:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*
>
> x x x x x x x x x
>
> (1) The apprehending team having initial custody and control of drugs shall, immediately after seizure and confiscation, physical inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
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> x x x x x x x x x

The complementary Implementing Rules and Regulations (IRR) of Republic Act No. 9165 instructs the apprehending officer or team on the custody and control of the confiscated drugs in the following manner:

> x x x x x x x x x
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated

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[25] *People v. Kimura*, G.R. No. 130805, April 27, 2004, 428 SCRA 51, 61.

[26] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356-357.

and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

The rule on chain of custody under the foregoing enactments expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. In this regard, Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defines the chain of custody rule as follows:

b. "Chain of Custody" means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, **from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody [was] of the seized item, the date and time when such transfer of custody made in the course of safekeeping and use in court as evidence, and the final disposition[.]

Here, the buy-bust team did not mark the sachets until after reaching the police station. Even so, the omission did not destroy the integrity and the evidentiary value of the confiscated items. We are satisfied that PO2 Tayag and SPO1 Ybañez brought the confiscated sachets of *shabu* to the police station immediately after the buy-bust operation, and turned them over to the duty

investigator, PO2 Castillo, for marking;[27] that in their presence, PO2 Castillo marked the sachet of *shabu* sold by Bautista to PO2 Tayag as "CBS (Bautista's initials) Buy-bust," and the six sachets of *shabu* recovered by SPO1 Ybañez from Bautista's possession as "CBS-1", "CBS-2", "CBS-3", "CBS-4", "CBS-5", and "CBS-6";[28] that PO2 Castillo then delivered the marked sachets to Insp. Cruz who in turn caused their transmittal to the Crime Laboratory Office, Northern Police District (NPD), in Caloocan City, for appropriate laboratory examination;[29] that upon the instruction of Insp. Cruz, SPO1 Ybañez handcarried the written request and the marked sachets to the NPD Crime Laboratory Office for laboratory examination, where one PO2 Bonifacio received them;[30] and that thereafter, Forensic Chemist Arturo certified in the Physical Science Report prepared following his qualitative examination that the contents of the marked sachets were positive for methamphetamine hydrochloride or *shabu*, and enumerated the marked sachets examined and rendered the weights of the *shabu* they contained, as follows: "CBS (Bautista's initials) Buy-bust" – 0.05 gram; "CBS-1" — 0.05 gram; "CBS-2" - 0.09 gram; "CBS-3" – 0.05 gram; "CBS-4" – 0.09 gram; "CBS-5" – 0.07 gram; and "CBS-6" – 0.06 gram.[31]

We have held that a non-compliance with the regulations is not necessarily fatal as to render an accused's arrest illegal or the items confiscated from him inadmissible as evidence of his guilt, for what is of the utmost importance is the preservation of the integrity and the evidentiary value of the confiscated items that will be utilized in the determination of his guilt or innocence.[32]

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[27] TSN, August 27, 2003, pp. 10-11; September 15, 2003, p. 6; September 10, 2003, p. 5.

[28] *Supra*, note 7.

[29] *Supra*, note 8.

[30] *Id*.

[31] *Id*.

[32] *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 595; *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843; *People v. Del Monte*, *supra*, note 14, p. 636.

That was done herein. PO2 Tayag firmly identified the sachet of *shabu* marked as "CBS (Bautista's initials) Buy bust" as the one he had bought from Bautista in the buy-bust operation.[33] In the same manner, SPO1 Ybañez identified the sachets of *shabu* marked "CBS-1", "CBS-2", "CBS-3", "CBS-4", "CBS-5", and "CBS-6" presented in court as those he had recovered from Bautista's possession right after the buy-bust operation.[34] Finally, Forensic Chemist Arturo properly stated that the same exhibits were the very specimens he had subjected to chemical analysis upon the formal request of Insp. Cruz.[35] Without question, then, the quantities of *shabu* recovered from Bautista were duly preserved within the context of the rule on chain of custody.

As if confirming the arresting officers' observance of the rule on chain of custody, Bautista did not assail the integrity of the confiscated *shabu* except by insisting on being framed up by the policemen. His insistence did not deflect guilt from him, however, considering that his failure to charge the policemen with frame-up and extortion could only be regarded as his tacit admission that such evidence had not been tampered or meddled with but preserved and intact.[36]

II

Denial and frame-up not established

Bautista's denial and defense of frame-up were given no consideration due to their being self-serving and uncorroborated. We declare such treatment warranted. He did not present Rosario, his wife, to corroborate his claim of being framed up although she was supposed to have been around at the time of his arrest. He did not also adduce evidence to substantiate his story of being falsely incriminated in a frame-up by competent evidence.

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[33] TSN, August 27, 2003, pp. 11-12.

[34] TSN, September 15, 2003, p. 6.

[35] TSN, July 29, 2003, pp. 9-10.

[36] *People v. Miranda*, G.R. No. 174773, October 2, 2007, 534 SCRA 552, 568-569.

His claim thereon did not prevail over the positive identification of him by PO2 Tayag as the drug pusher he had transacted with. As the Court sees it, he was not even sincere in claiming frame-up, for he did not formally charge the policemen for the supposed frame-up and extortion committed against him. Verily, defenses of frame-up and extortion are not looked upon with favor due to their being conveniently concocted and usually asserted by culprits arrested for violations of Republic Act No. 9165.[37]

III

Inconsistencies in testimony are inconsequential

Bautista argues that the arresting policemen incurred inconsistencies because they could not be sure on who of them had actually received the report of the informant on the illegal drug pushing of Bautista.

The argument has no merit. There is no dispute that the matter of who among the policemen actually received the report from the informant did not relate to the essential elements of the crimes charged. Nor did such matter refer to the actual buy-bust itself – that crucial moment when Bautista was caught red-handed selling and possessing *shabu* in question. As such, it was insignificant in this adjudication. We deem to be basic enough that an inconsistency that had nothing to do with the elements of the crime could not be a basis for acquittal.[38]

Bautista's insistence that it was impossible for him to sell *shabu* to PO2 Tayag due to the latter being unknown to him merits no attention. Based on our collective experience as judges, we know that drug pushing has been committed with so much casualness even between total strangers. It was credible enough, then, that PO2 Tayag categorically declared that the informant

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[37] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 443.

[38] *People v. Santiago*, *supra*, note 14, pp. 217-218.

had first introduced him to Bautista as *biyahero ng shabu* before PO2 Tayag and Bautista started transacting with each other.[39]

Bautista posits that the back-up members did not visually see the sale between him and PO2 Tayag. That position is unfounded for three reasons. The first is that PO2 Tayag testified that Bautista had sold *shabu* to him during the buy-bust operation. The second is that the back-up members themselves did actually witness the transaction between Bautista and PO2 Tayag, with PO2 Caragdag specifically saying that he had seen their transaction from seven meters away from them;[40] and with SPO1 Ybañez, despite admitting not actually seeing the exchange between Bautista and PO2 Tayag, still seeing PO2 Tayag giving the pre-arranged signal to communicate the consummation of the sale of *shabu*.[41] And, thirdly, the giving of the pre-arranged signal rendered a full ocular view of the exchange between Bautista and PO2 Tayag superfluous. Worthy of noting is that the giving of the pre-arranged signal in a buy-bust operation has been an accepted form of communicating the consummation of the exchange between the drug pusher and the poseur buyer.

IV

Penalties

Section 11 (3) of Republic Act No. 9165 provides that the illegal possession of less than five grams of *shabu* is penalized with imprisonment of 12 years and one day to 20 years, and a fine ranging from ₱300,000.00 to ₱400,000.00. Bautista was guilty of illegal possession of *shabu* weighing 0.41 gram. The RTC and the CA imposed on him an indeterminate sentence of 12 years, eight months and one day, as minimum, to 17 years and eight months, as maximum, and a fine of ₱300,000.00.

Although the penalty thus imposed is within the range of the penalty imposable under Republic Act No. 9165, the increment

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[39] TSN, October 14, 2003, p. 6.

[40] TSN, August 11, 2003, p. 6.

[41] TSN, September 15, 2003, p. 5.

of one day as part of the minimum of the indeterminate sentence is deleted despite its being within the parameters of the *Indeterminate Sentence Law*. The one-day increment to the minimum of the indeterminate sentence was surplusage that may occasion a slight degree of inconvenience when it will be time for the penal administrators concerned to pass upon and determine whether or not Bautista is already qualified to enjoy the benefits under the *Indeterminate Sentence Law* and other relevant legal provisions.[42] Accordingly, the penalty should be an indeterminate sentence of 12 years and eight months, as minimum, to 17 years and eight months, as maximum, and a fine of ₱300,000.00.

Under Section 5 of Republic Act No. 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. The RTC and the CA were correct in prescribing life imprisonment and fine of ₱500,000.00 due to the absence of any aggravating circumstance. It is relevant to observe that the higher penalty of death might no longer be possibly prescribed in view of the intervening enactment of Republic Act No. 9346,[43] a law that prohibits the imposition of the death penalty.

WHEREFORE, we **AFFIRM** the decision promulgated on February 15, 2007 by the Court of Appeals, subject to the **SOLE MODIFICATION** that the indeterminate sentence prescribed on the illegal possession of *shabu* as defined and punished under Section 11 (3) of Republic Act No. 9165 is 12 years and eight months, as minimum, to 17 years and eight months, as maximum, and a fine of ₱300,000.00.

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[42] See *Talampas v. People*, G.R. No. 180219, November 23, 2011.

[43] *An Act Prohibiting The Imposition of Death Penalty in The Philippines, repealing Republic Act 8177 otherwise known as the Act Designating Death By Lethal Injection, Republic Act 7659 otherwise known as the Death Penalty Law and all other laws, executive orders and decrees* (The law was signed on June 24, 2006, and was held to apply retroactively in *People v. Tubongbanua*, August 31, 2006, 500 SCRA 727 and *People v. Cabalquinto*, September 19, 2006, 502 SCRA 419).

The accused shall pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 180631-33. February 22, 2012]

PHILIPPINE CHARTER INSURANCE CORPORATION, *petitioner, vs.* **CENTRAL COLLEGES OF THE PHILIPPINES and DYNAMIC PLANNERS AND CONSTRUCTION CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WHAT NEED NOT BE PROVED; JUDICIAL ADMISSIONS; APPLICATION IN CASE AT BAR.— It is clear from the testimony of Crispino P. Reyes, CCP's President, that the school no longer wants to collect on Performance Bond PCIC 46172 (with a value of ₱692,890.74). This statement before the arbitral tribunal is a judicial admission effectively settling the issue with respect to PCIC 46172. Section 4, Rule 129 of the Rules of Court provides: 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. A party may make judicial admissions in (a) the pleadings; (b) during

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[*] Vice Associate Justice Mariano C. Del Castillo, who penned the decision of the Court of Appeals, per raffle of February 13, 2012.

the trial, either by verbal or written manifestations or stipulations; or (c) in other stages of the judicial proceeding. It is an established principle that judicial admissions cannot be contradicted by the admitter who is the party himself and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DELAY IN DELIVERY.— Article 1169 of the New Civil Code provides: Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. The civil law concept of delay or default commences from the time the obligor demands, judicially or extrajudicially, the fulfillment of the obligation from the obligee. In legal parlance, demand is the assertion of a legal or procedural right.

3. ID.; SPECIAL CONTRACTS; GUARANTY; SURETY SOLIDARILY BINDS ITSELF WITH THE PRINCIPAL DEBTOR TO ASSURE THE FULFILLMENT OF THE OBLIGATION.— A surety under *Article 2047 of the New Civil Code* solidarily binds itself with the principal debtor to assure the fulfillment of the obligation: x x x The case of *Asset Builders Corporation v. Stronghold Insurance Company, Inc.* explains how a surety agreement works: x x x Having acted as a surety, PCIC is duty bound to perform what it has guaranteed on its surety and performance bonds, all of which are callable on demand, occasioned by its principal's default.

4. ID.; ID.; DAMAGES; ACTUAL DAMAGES; MUST BE SUFFICIENTLY ESTABLISHED.— Actual or compensatory damages means the adequate compensation for pecuniary loss suffered and for profits the obligee failed to obtain. To be entitled to actual or compensatory damages, it is basic that there must be pleading and proof of actual damages suffered. Equally vital to the fact that the amount of loss must be capable of proof, such loss must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. The burden of proof of the damage suffered is, consequently, imposed on the party claiming it who, in turn, should present the best evidence available in support of his claim. It could include sales and delivery receipts, cash

and check vouchers and other pieces of documentary evidence of the same nature pertaining to the items he is seeking to recover. In the absence of corroborative evidence, it has been held that self-serving statements of account are not sufficient basis for an award of actual damages. Moreover, a claim for actual damages cannot be predicated on flimsy, remote, speculative, and insubstantial proof. Thus, courts are required to state the factual bases of the award.

APPEARANCES OF COUNSEL

Camara Tolentino & Associates Law Office for petitioner.
Del Rosario Bagamasbad & Raboca for Central Colleges of the Phils.
Salonga Hernandez & Mendoza for Dynamic Planners & Construction Corp.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure challenging the June 29, 2007 Decision[1] and November 19, 2007 Resolution[2] of the Court of Appeals *(CA)* in the consolidated cases CA-G.R. SP Nos. 90361, 90383 and 90384.

THE FACTS

On May 16, 2000, Central Colleges of the Philippines *(CCP)*, an educational institution, contracted the services of Dynamic Planners and Construction Corporation (*DPCC*) to be its general contractor for the construction of its five (5)-storey school building at No. 39 Aurora Boulevard, Quezon City, with a total contract price of ₱248,000,000.00. As embodied in a Contract Agreement,[3]

[1] *Rollo*, pp. 8-12. Penned by Associate Justice Ricardo R. Rosario, with Associate Justice Rebecca De Guia-Salvador and Associate Justice Magdangal de Leon, concurring.

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

[3] *Id.* at 183-192.

the construction of the entire building would be done in two phases with each phase valued at ₱124,000,000.00.

To guarantee the fulfillment of the obligation, DPCC posted three (3) bonds, all issued by the Philippine Charter Insurance Corporation *(PCIC)*, namely: (1) Surety Bond No. PCIC-45542, dated June 25, 2003, amounting to ₱7,031,460.74;[4] (2) Performance Bond No. PCIC-45541[5] in the amount of ₱2,929,775.31 which was subsequently increased to ₱6,199,999.99 through Bond Endorsement No. E-2003/12527;[6] and (3) Performance Bond No. PCIC-46172 for ₱692,890.74.[7] All the bonds were callable on demand and set to expire on October 30, 2003.

The Phase 1 of the project was completed without issue. Thereafter, CCP paid DPCC ₱14,880,000.00 or 12% of the agreed price of ₱124,000,000.00 with a check dated March 14, 2002 as downpayment for the Phase 2 of the project.

The Phase 2 of the project, however, encountered numerous delays. When CCP audited DPCC on July 25, 2003, only 47% of the work to be done was actually finished.

Thus, in a letter dated October 29, 2003 addressed to DPCC and PCIC, CCP informed them of the breach in the contract and its plan to claim on the construction bonds. Pertinent portions of the letter are herein quoted:

You are both hereby NOTIFIED that the Bonds referred to above for the faithful performance of a Contract, dated 16 May 2000 for the construction of CCP EXTENSION BLDG. (Phase 2) at 39 Aurora Blvd., Quezon City, Metro Manila and the Variation Order No. 2 has been breached by the CONTRACTOR for which reason, the CENTRAL COLLEGES OF THE PHILIPPINES, as owner, hereby

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[4] *Id.* at 195.

[5] *Id.* at 196.

[6] *Id.* at 198.

[7] *Id.* at 199.

gives NOTICE that it will file an action on the said performance and surety bonds.[8]

On November 6, 2003, CCP notified DPCC and PCIC that only 51% of the project was completed, which was way behind the construction schedule, prompting it to declare the occurrence of default against DPCC. It formally requested PCIC to remit the proceeds of the bonds.[9]

On November 14, 2003, DPCC wrote PCIC confirming the finding that Phase 2 was only 51% finished and, at the same time, requesting for the extension of its performance and surety bonds because the supposed revision of the plans would require more days.[10]

In a letter dated November 21, 2003, CCP notified PCIC that because of DPCC's inability to complete the project on time, it decided to terminate its contract with the latter and to continue the construction on its own. The full text of the letter is herein reproduced:

We acknowledge the receipt of your letter dated November 14, 2003 and we are in the process of compiling the documents you requested. The said documents will be submitted as soon as possible.

Furthermore, we would like to reiterate that your principal, the Dynamic Planners & Construction Corporation has breached the Contract of Agreement dated May 16, 2000 by having completed only an estimated 51% of the construction of the 5-storey CCP Extension Building, Phase 2 and has therefore failed to perform the work within the agreed schedule.

In view thereof, as stated in our earlier letter of 6 November 2003, we were compelled to declare the occurrence of a default on the part of your principal, and have terminated their contract. Please remit to us the proceeds of the captioned Bonds within the earliest possible time.

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[8] *Id.* at 200.

[9] *Id.* at 201.

[10] *Id.* at 234.

The Central Colleges of the Philippines will complete the construction of the 5-storey CCP Extension Building, Phase 2 on its own.[11]

Meanwhile, on December 5, 2003, PCIC informed DPCC that it had approved its request for extension of the bonds.[12]

Eventually, negotiations to continue on with the construction between CCP and DPCC reached a dead end. CCP hired another contractor to work on the school site.

On August 13, 2004, CCP sent a letter to PCIC of its final demand for the payment of ₱13,924,351.47 as indicated in the bonds.[13]

On August 20, 2004, PCIC denied CCP's claims against the three bonds.[14]

Thus, on October 28, 2004, CCP filed a complaint with request for arbitration before the Construction Industry Arbitration Commission (CIAC) against DPCC and PCIC.[15] In its complaint, CCP prayed that CIAC hold DPCC and PCIC, jointly and severally liable, against the following bonds:

1. Under Surety Bond No. 45542, the amount of Php7,031,460.74 plus legal interest from the date of demand until full payment thereof;

2. Under Performance Bond Nos. PCIC-45541 [Bond Endorsement Nos. E-2003/12527] and PCIC-46172, the amount of Php6,892,890.73 plus legal interest from the date of demand until full payment thereof; and

3. Php100,000.00 as and for attorney's fees.[16]

In their Answer,[17] DPCC and PCIC denied any liability and proffered that CCP unlawfully withheld the materials, equipment,

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[11] *Id.* at 238.

[12] *Id.* at 203.

[13] *Id.* at 205.

[14] *Id.* at 240.

[15] *Id.* at 173-182.

[16] *Id.* at 178.

[17] *Id.* at 212-230.

formworks and scaffoldings left at the premises amounting to ₱4,232,264.12.

On June 3, 2005, the CIAC rendered a decision in favor of CCP. It gave the following reasons:

1. Claimant was legally justified in terminating the Contract;

2. On the issue of whether claimant faithfully complied with its contractual obligation in respect of (a) the release of the downpayment, (b) the delivery of the drawings for construction, and (c) the payment of progress billings, there is no record that Dynamic protested the delay in the delivery of the site, the delay in the submission of technical plans and demanded as a result thereof the corresponding adjustment of the Contract Period or the Contract Price. The issue of delay in the reduction of the down payment is moot since Dynamic acquiesced in the reduction of the down payment from 15% to 12% and the issue of payment of the 12th progress billing arose as a consequence of a legitimate issue as to the percentage of completion of the work by Dynamic as of August 2003.

3. Dynamic's percentage of accomplishment as of the date of the termination of the Contract was 57.33% at ₱71,089,200.

4. The original Contract Price was ₱124,000,000. To this amount shall be added the price of Variation Order No. 2 of ₱13,857,814.87 or an adjusted Contract Price of ₱137,857,814.87. Deducting ₱110,000,792.87, the overpayment to Dynamic is ₱27,779,022.00. However, Claimant is entitled to an award not exceeding the amount of its claims in its Complaint and in the Terms of Reference.

5. Dynamic failed to produce evidence to show that it was not paid the balance of the Contract Price for Phase 1 of the Project.

6. Surety is liable to Claimant under the Performance and Surety Bonds it issued in favor of Claimant. The liability of Surety is to indemnify Claimant for the un-recouped down payment [which] shall not exceed ₱7,031,460.74 under the Surety Bond and for not more than ₱6,892,890.73 under the Performance Bonds.

7. If Surety is obliged to pay these amounts to Claimant, it is entitled, on its cross-claim, to indemnity from Dynamic.

8. Claimant's claims under the Surety and Performance Bonds are not time-barred.

9. Surety is not barred by estoppel from denying liability under the Surety and Performance Bonds.

10. Claimant's request to Dynamic to extend the term of these bonds, Dynamic's request to Surety to extend their terms and Surety's grant of the extension requested have no adverse legal effect upon the rights and obligations of the parties.

11. The contractual time-bar embodied in the bonds is valid and binding.

12. Dynamic is entitled to its claims for the payment of ₱1,732,264.14 for materials and of ₱2,500,000.00 for the equipment, formworks and scaffolding left at the site.

13. The claims for payment of moral, exemplary and temperate damages and for attorney's fees are denied.

14. The parties shall bear their own cost of arbitration.[18]

Thus, CIAC disposed of the case finding DPCC liable to pay CCP ₱7,031,460.74 from the Surety Bond representing the unrecouped downpayment and ₱6,892,890.73 from its Performance Bond for a total of ₱13,924,351.47. The CIAC likewise ordered CCP to pay DPCC ₱1,732,264.12 corresponding to the construction materials left at the site and ₱2,500,000.00 for the cost of equipment, formworks and scaffoldings appropriated by CCP or a total of ₱4,232,264.12. The *fallo* reads:

WHEREFORE, award is hereby made against Respondent Dynamic Planners and Construction Corporation and Respondent Philippine Charter Insurance Corporation, ordering them, jointly and severally, to pay Claimant, Central Colleges of the Philippines the amount of ₱7,031,460.74 under the Surety Bond as un-recouped down payment, and the amount of ₱6,892,890.73 under the Performance Bond or the total amount of ₱13,924,351.47.

Award is likewise made against Claimant, Central Colleges of the Philippines, ordering the latter to pay Respondent Dynamic Planners and Construction Corporation, the amount of ₱1,732,264.12 for the latter's materials left at the Project Site and the amount of

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[18] *Id.* at 169-170.

₱2,500,000.00 as the cost of its equipment, formworks and scaffoldings which were appropriated by the former or the total amount of ₱4,232,264.12.

Offsetting the amount due claimant Central Colleges of the Philippines from Respondent Dynamic Planners and Construction Corporation and that due the latter from the former, there is a net amount of ₱9,692,087.37 which Respondent Dynamic Planners and Construction Corporation is hereby ordered to pay Claimant Central Colleges of the Philippines with interest at the rate of 6% per annum from the date of this Final Award and 12% per annum from the time this Final Award becomes final and executory and until it is fully paid in accordance with *Eastern Shipping Lines, Inc. vs. Court of Appeals* (1994) 234 SCRA 78.

The joint and several liability of Respondent Philippine Charter Insurance Corporation with Respondent Dynamic Planners and Construction Corporation is accordingly reduced to ₱9,692,087.37. In the event of payment by Respondent Philippine Charter Insurance Corporation, the latter is entitled to indemnity from its co-Respondent Dynamic Planners and Construction Corporation up to the full amount of such payment. In the event of delay in making payment to indemnify Respondent Philippine Charter Insurance Corporation, Respondent Dynamic Planners Charter Insurance Corporation shall pay interest at the rate of 21% per annum in accordance with the Indemnity Agreement between them.

All other claims, counterclaims and cross-claims not otherwise determined in this Final Award are deemed denied for lack of merit.

SO ORDERED.[19]

All the parties appealed the CIAC decision to the CA. PCIC's appeal was docketed as CA-G.R. SP No. 90361;[20] CCP's appeal was docketed as CA-G.R. SP No. 90383;[21] and DPCC's appeal was docketed as CA-G.R. SP No. 90384.[22] Eventually, the cases were consolidated.[23]

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[19] *Id.* at 170-171.

[20] *Id.* at 464-522.

[21] *Id.* at 523-541.

[22] *Id.* at 542-569.

[23] *Id.* at 913.

On June 29, 2007, the CA modified CIAC's earlier decision.[24] The CA found that DPCC was already in delay for managing to complete only 51% of the construction work necessary to finish the Phase 2 of the project. It held that due to DPCC's inexcusable delay, CCP was legally within its rights to terminate the contract with it. It likewise did not give weight to PCIC's defense that Bond No. 46172 was already released because the said issue was never raised before the CIAC and was raised for the first time on appeal.[25] The CA, however, deleted the award of cost of the materials, equipment, formworks and scaffoldings allegedly left by DPCC at the work site for its failure to prove the actual costs of said materials.[26] It added, "In any event, the cost of such materials, equipment, formworks and scaffoldings cannot be deducted from Philippine Charter's liability on the bond, as the credit does not belong to the latter but to Dynamic."[27] Accordingly, the decretal portion of the CA decision reads:

> WHEREFORE, the Final Award, dated 03 June 2005, of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 36-2004 is AFFIRMED with MODIFICATION, in that the award to Dynamic Planners and Construction Corporation of its counterclaim for materials, equipment, formworks and scaffoldings left at the work site in the total amount of ₱4,232,264.12 is DELETED.
>
> Philippine Charter Insurance Corporation and Dynamic Planners and Construction Corporation are ORDERED jointly and severally to pay Central Colleges of the Philippines the total amount of ₱13,924,351.47 under Surety Bond No. PCIC-45542, Performance Bond No. PCIC-45541 (as modified by Bond Endorsement No. E-2003/12527), and Performance Bond No. PCIC-46172. Said amount shall bear interest at the rate of 6% per annum from the date of demand made on 29 October 2003. However, for any amount not yet paid after the date of the finality of this decision, the rate of interest on the payable amount shall be increased to 12%

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[24] *Id.* at 12-44.

[25] *Id.* at 27.

[26] *Id.* at 37.

[27] *Id.* at 38.

per annum from the date when this decision becomes final and executory until it is fully paid.

SO ORDERED.[28]

PCIC moved for the reconsideration of the said decision, but the CA disposed of it with a denial in its November 19, 2007 Resolution.

Hence, this petition.[29]

In its Memorandum,[30] PCIC submits the following issues for resolution:

1st Issue: Whether or not the CA grossly erred in sustaining the CIAC award finding petitioner liable to respondent CCP under the performance bonds and the surety bond?

2nd Issue: Whether or not the CA grossly erred in upholding the CIAC award pronouncing respondent CCP as rightfully and justifiably entitled to terminate the contract agreement?

3rd Issue: Whether or not the CA grossly erred in deleting the counterclaim of respondent DPCC covering the costs of materials, equipment, formworks and scaffoldings left at site and in denying petitioner to benefit from the counterclaim?[31]

PCIC argues that the CA erred in sustaining the award of ₱692,890.74 representing Performance Bond PCIC-46172 because the obligation guaranteed by said performance bond was already completed, therefore, no liability should attach against the said bond.[32]

In this regard, the petitioner has a point.

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

[29] *Id.* at 50-125.

[30] *Id.* at 900-972.

[31] *Id.* at 916.

[32] *Id.* at 917.

Although this particular issue was not expressly raised in the parties' Terms of Reference,[33] nevertheless, the issue on Performance Bond PCIC- 46172 was extensively discussed during the arbitral tribunal's hearing of February 21, 2005. To accurately reflect what transpired on said hearing, relevant portions of the transcript of stenographic notes are herein quoted:

ATTY. G. Q. ENRIQUEZ:[34]

I am calling your attention to Bond PCIC-45542.

MR. CRISPINO P. REYES:[35]

You are calling my attention where?

ATTY. G. Q. ENRIQUEZ:

In the terms of Reference, can we please get the copy of that so that we can be reminded?

ATTY. B.G. FAJARDO:

There are only two, Counsel-the Performance and the Surety Bond.

ATTY. G. Q. ENRIQUEZ:

Performance Bond in the amount of-

MR. CRISPINO P. REYES:

We're interested in 45542 and we're interested in 45541. What we're no longer interested in, we have to be candid to this Honorable Tribunal, we are no longer interested, [we] no longer want to collect on Performance Bond 46172.

ATTY. A.V. CAMARA:[36]

At this point in time, we would like to be of record that although that Bond 46172 covering the amount of ₱692,890.74 per their declaration had already been satisfied that is why only two bonds now are being…

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[33] *Id.* at 338-347.

[34] Counsel for Dynamic Planners and Construction Corporation (DPCC).

[35] President of Central Colleges of the Philippines (CCP).

[36] Counsel for Philippine Charter Insurance Corporation (PCIC).

ATTY. J.N. RABOCA:

May I make a qualification with that, your Honor? It's not that it was satisfied. It's that the Claimant is not claiming anymore because all the works under this bond were already accomplished.

ATTY. G. Q. ENRIQUEZ:

Yes, because you have already a Certificate of Acceptance.

ATTY. J.N. RABOCA:

Correct.

ATTY. G. Q. ENRIQUEZ:

So, we're just narrowing down into two bonds.

ATTY. A.V. CAMARA:

The two bonds.

ATTY. G. Q. ENRIQUEZ:

Okay.

ATTY. A.V. CAMARA:

Then therefore the liability on 46172 should be released. They are only covered by the pleadings especially the Complaint.

MR. CRISPINO P. REYES:

We do not dispute this.[37] [Emphases supplied]

It is clear from the testimony of Crispino P. Reyes, CCP's President, that the school no longer wants to collect on Performance Bond PCIC 46172 (with a value of ₱692,890.74). This statement before the arbitral tribunal is a judicial admission effectively settling the issue with respect to PCIC 46172. Section 4, Rule 129 of the Rules of Court provides:

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.

[37] Records I, pp. 418-420, TSN, February 21, 2005, pp. 84-86.

A party may make judicial admissions in (a) the pleadings; (b) during the trial, either by verbal or written manifestations or stipulations; or (c) in other stages of the judicial proceeding.[38] It is an established principle that judicial admissions cannot be contradicted by the admitter who is the party himself[39] and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it.[40]

Since CCP, through its President, judicially admitted that it is no longer interested in pursuing PCIC-46172, the scope of its claim will just be confined to Surety Bond No. PCIC-45542 and Performance Bond No. PCIC-45541.

PCIC claims that DPCC was already in default as early as September 4, 2003,[41] hence, the ten-day reglementary period to file a claim on the bonds should have been reckoned from such date and filed on September 14, 2003. PCIC claims that CCP notified them only on October 29, 2003 which is already beyond the limitation that any claim on the bonds should be presented in writing within ten (10) days from the expiration of the bond or from the occurrence of the default or failure of the principal, whichever is earliest.[42]

The Court finds itself unable to agree. Article 1169 of the New Civil Code provides:

> Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

The civil law concept of delay or default commences from the time the obligor demands, judicially or extrajudicially, the

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[38] *Binarao v. Plus Builders, Inc.*, 524 Phil. 361, 365 (2006).

[39] Regalado, *Remedial Law Compendium*, Volume II, 7th Revised Edition, 1995, p. 651, citing *Granada v. PNB*, 124 Phil. 561 (1966).

[40] *Yuliongsiu v. PNB*, 130 Phil. 575, 580 (1968).

[41] *Rollo*, p. 933.

[42] *Id.* at 204.

fulfillment of the obligation from the obligee. In legal parlance, demand is the assertion of a legal or procedural right.[43] Hence, DPCC incurred delay from the time CCP called its attention that it had breached the contract and extrajudicially demanded the fulfillment of its commitment against the bonds.

It is the obligor's culpable delay, not merely the time element, which gives the obligee the right to seek the performance of the obligation. As such, CCP's cause of action accrued from the time that DPCC became in culpable delay as contemplated in the surety and performance bonds. In fact, Surety Bond PCIC-45542,[44] Performance Bond PCIC-45541[45] and PCIC-46172 each specified how claims should be made against it:

Surety Bond PCIC-45542[46]

The liability of PHILIPPINE CHARTER INSURANCE CORPORATION, under this bond will expire on October 30, 2003; Furthermore, it is hereby agreed and understood that PHILIPPINE CHARTER INSURANCE CORPORATION will not be liable for any claim not presented to it in writing within FIFTEEN (15) DAYS from the expiration of this bond, and that the Obligee hereby waives its right to claim or file any court action against the surety after the termination of FIFTEEN (15) DAYS from the time its cause of action accrues.

Performance Bond PCIC-45541[47] and PCIC-46172:[48]

The liability of PHILIPPINE CHARTER INSURANCE CORPORATION, under this bond will expire on October 30, 2003; Furthermore, it is hereby agreed and understood that PHILIPPINE CHARTER INSURANCE CORPORATION will not be liable for any claim not presented to it in writing within TEN (10) DAYS from the

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[43] *Black's Law Dictionary*, Abridged 8th ed., 2005, p. 364.

[44] *Rollo*, p. 195.

[45] *Id.* at 196.

[46] *Id.* at 195.

[47] *Id.* at 196.

[48] *Id.* at 199.

expiration of this bond or from the occurrence of the default or failure of the Principal, whichever is the earliest, and the Obligee hereby waives its right to file any claims against the Surety after termination of the period of ten (10) DAYS above mentioned after which time this bond shall definitely terminate and be deemed absolutely cancelled.

Thus, DPCC became in default on October 29, 2003 when CCP informed it in writing of the breach of the contract agreement and demanded the fulfillment of its obligation against the bonds. Consequently, the November 6, 2003 letter that CCP sent to PCIC properly complied with the notice of claim requirement set forth in the said bonds.

Upon notice of default of obligor DPCC, PCIC's liability, as surety, was already attached. A surety under *Article 2047 of the New Civil Code* solidarily binds itself with the principal debtor to assure the fulfillment of the obligation:

> Art. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.
>
> If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. **In such case the contract is called a suretyship**. [Emphasis supplied]

The case of *Asset Builders Corporation v. Stronghold Insurance Company, Inc.*[49] explains how a surety agreement works:

> As provided in Article 2047, the surety undertakes to be bound solidarily with the principal obligor. That undertaking makes a surety agreement an ancillary contract as it presupposes the existence of a principal contract. Although the contract of a surety is in essence secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any

[49] G.R. No. 187116, October 18, 2010, 633 SCRA 370, 379-380.

benefit therefrom.[50] Let it be stressed that notwithstanding the fact that the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking.[51]

> *Stronghold Insurance Company, Inc. v. Republic-Asahi Glass Corporation*,[52] reiterating the ruling in *Garcia v. Court of Appeals*,[53] expounds on the nature of the surety's liability:
>
> x x x. The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. Nevertheless, although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promisee of the principal is said to be **direct, primary and absolute**; in other words, he is directly and equally bound with the principal.

Suretyship, in essence, contains two types of relationship – the principal relationship between the obligee and the obligor, and the accessory surety relationship between the principal and the surety. In this arrangement, the obligee accepts the surety's solidary undertaking to pay if the obligor does not pay. **Such acceptance, however, does not change in any material way the obligee's relationship with the principal obligor. Neither does it make the surety an active party to the principal obligee-obligor relationship. Thus, the acceptance does not give the surety the right to intervene in the principal contract. The surety's role arises only upon the obligor's default, at which time, it can be directly held liable by the obligee for payment as a solidary obligor**.[54] [Emphases supplied]

Having acted as a surety, PCIC is duty bound to perform what it has guaranteed on its surety and performance bonds, all

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[50] *Security Pacific Assurance Corporation v. Hon. Tria-Infante*, 505 Phil. 609, 620 (2005).

[51] *Philippine Bank of Communications v. Lim*, 495 Phil. 645, 651 (2005).

[52] 525 Phil. 270, 280 (2006).

[53] G.R. No. 80201, November 20, 1990, 191 SCRA 493, 495-496.

[54] *Intra-Strata Assurance Corporation v. Republic*, G.R. No. 156571, July 9, 2008, 557 SCRA 363, 375-376.

of which are callable on demand, occasioned by its principal's default.

PCIC also proffers that CCP did not file any claim against the bonds after its extension.[55]

The Court is not persuaded. CCP need not file another claim as to the supposed extended bonds because the October 29, 2003 letter was sufficient notice to PCIC and DPCC of the latter's default and its intention to proceed against the surety and performance bonds. Moreover, the extension of the bonds was only approved and relayed by PCIC to DPCC on December 5, 2003 or after the October 29, 2003 Notice of Default.

As to whether CCP was legally warranted in terminating the contract with DPCC for its failure to comply with its obligation, the Court affirms the CA's disquisition. The option to terminate the contract is clearly apparent in the parties' agreement. Specifically, Article 16 of the Contract Agreement provides:

ARTICLE 16
Termination

16.1 The OWNER shall have the right to terminate this CONTRACT after giving fifteen (15) days notice in writing for any of the following causes:

16.1.1. Substantial failure on the part of the CONTRACTOR in fulfilling its obligation;

16.1.2. Assignment or sub-contracting of any of the works herein by the CONTRACTOR without approval by the OWNER;

16.1.3. The CONTRACTOR is willfully violating any of the material conditions, stipulations and covenants of this CONTRACT and/or the attachments hereto. In the event of termination of this CONTRACT pursuant to the above, any amount owing to the CONTRACTOR at the time of such termination for services already rendered and/or materials delivered and taken over by the OWNER shall be withheld by the OWNER pending the determination of value of damages

[55] *Rollo,* p. 946.

sustained by the OWNER by reason of such termination and payment of such damages by the CONTRACTOR.

The Court also finds nothing improper in the deletion by the CA of the award of actual damages in favor of DPCC. Actual or compensatory damages means the adequate compensation for pecuniary loss suffered and for profits the obligee failed to obtain. To be entitled to actual or compensatory damages, it is basic that there must be pleading and proof of actual damages suffered.[56] Equally vital to the fact that the amount of loss must be capable of proof, such loss must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable.[57] The burden of proof of the damage suffered is, consequently, imposed on the party claiming it[58] who, in turn, should present the best evidence available in support of his claim. It could include sales and delivery receipts, cash and check vouchers and other pieces of documentary evidence of the same nature pertaining to the items he is seeking to recover. In the absence of corroborative evidence, it has been held that self-serving statements of account are not sufficient basis for an award of actual damages.[59] Moreover, a claim for actual damages cannot be predicated on flimsy, remote, speculative, and insubstantial proof.[60] Thus, courts are required to state the factual bases of the award.[61]

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[56] *Canada v. All Commodities Marketing Corporation*, G.R. No. 146141, October 17, 2008, 569 SCRA 321, 329.

[57] *Manila Electric Corporation v. T.E.A.M. Electronics Corporation*, G.R. No. 131723, December 13, 2007, 540 SCRA 62, 79.

[58] *Luxuria Homes, Inc. vs. Court of Appeals*, 361 Phil. 989, 1001-1002 (1999).

[59] *MCC Industrial Sales Corporation v. Ssangayong Corporation*, G.R. No. 170633, October 17, 2007, 536 SCRA 408, 467-468.

[60] *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*, G.R. Nos. 169408 & 170144, April 30, 2008, 553 SCRA 541, 567.

[61] *Santiago v. Court of Appeals*, G.R. No. 127440, January 26, 2007, 513 SCRA 69, 86.

In this case, DPCC was not able to establish that it is entitled to the actual damages that it prayed for in its counterclaim. As the CA put it, "while Dynamic (DPCC) presented receipts issued by its suppliers of materials, equipment, formworks and scaffoldings, it failed to prove that the items in the receipts correspond to the items allegedly left at the work site."[62] Besides, the Court cannot grant a relief in its favor because DPCC did not appeal the decision of the CA.

WHEREFORE, the petition is **PARTLY GRANTED**. The June 29, 2007 Decision of the Court of Appeals in CA-G.R. SP Nos. 90361, 90383 and 90384 is **MODIFIED** to read as follows:

> Philippine Charter Insurance Corporation and Dynamic Planners and Construction Corporation are ordered to, jointly and severally, pay Central Colleges of the Philippines the total amount of ₱13,231,460.73 under Surety Bond No. PCIC-45542 and Performance Bond No. PCIC-45541 (as modified by Bond Endorsement No. E-2003/12527). Said amount shall bear interest at the rate of 6% per annum from the date of demand made on October 29, 2003. For any amount not yet paid after the date of the finality of this decision, however, the rate of interest on the payable amount shall be increased to 12% per annum from the date when this decision becomes final and executory until it is fully paid.

SO ORDERED.

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

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[62] *Rollo,* p. 37.

THIRD DIVISION

[G.R. No. 181368. February 22, 2012]

GEORGE S. TOLENTINO, MONICA S. TOLENTINO, GUSTAVO S. TOLENTINO, JR., MA. MARJORIE S. TOLENTINO, MARILYN S. TOLENTINO, MICHAEL GLEN S. TOLENTINO, MYLENE S. TOLENTINO, MILAGROS M. GUEVARRA, MA. VICTORIA T. RAMIREZ, LORENZA T. ANDES, MICHAEL T. MEDRANO and JACINTO T. MEDRANO, *petitioners, vs.* **PACIFICO S. LAUREL, HEIRS OF ILUMINADA LAUREL-ASCALON, CONSUELO T. LAUREL, BIENVENIDO LAUREL, HEIRS OF ARCHIMEDES LAUREL, TEODORO LAUREL, FE LAUREL-LIMJUCO and CLARO LAUREL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PRE-TRIAL; EFFECT OF FAILURE TO APPEAR.— We perused the records of the case and failed to see the lack of due process claimed by petitioners. On the contrary, petitioners were given more than ample opportunity to be heard through counsel. Lest it be forgotten, petitioners were first declared in default on August 27, 1996, for their failure to appear at the pre-trial conference. However, the trial court set aside the default order and the pre-trial conference was set and reset for several times. Nonetheless, petitioners failed to appear on January 9, 1998, March 2, 1998, May 18, 1999, and March 21, 2000, prompting the trial court to allow the respondents to present their evidence *ex parte*. Thereafter, judgment was rendered. x x x [T]he failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof. Thus, the plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.

2. ID.; ID.; ID.; WHEN PARTIES AND THEIR COUNSEL FAILED TO TAKE ADVANTAGE OF THE OPPORTUNITY TO AIR THEIR SIDE AND DISREGARDED THE LEGAL PROCESSES BY CONTINUOUSLY FAILING TO APPEAR DURING THE PRE-TRIAL OF THE CASE WITHOUT ANY VALID CAUSE, THEY CANNOT FEIGN DENIAL OF DUE PROCESS.— In the case at bar, the trial court gave petitioners every chance to air their side and even reconsidered its first order declaring petitioners in default. Notwithstanding, petitioners and their counsel failed to take advantage of such opportunity and disregarded the legal processes, by continuously failing to appear during the pre-trial of the case without any valid cause. Clearly, when the trial court allowed the respondents to present evidence *ex parte* due to the continued failure of the petitioners to attend the pre-trial conference, it did so in accordance with Rule 18 of the 1997 Rules of Civil Procedure and with due regard to the constitutional guarantee of due process. Plainly, petitioners cannot complain that they were denied due process. What the fundamental law prohibits is total absence of opportunity to be heard. When a party has been afforded opportunity to present his side, he cannot feign denial of due process.

3. ID.; ID.; NOT A MERE TECHNICALITY IN COURT PROCEEDINGS; SIGNIFICANCE OF PRE-TRIAL.— In *The Philippine American Life & General Insurance Company v. Enario*, the Court held that pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. The Court said that: The importance of pre-trial in civil actions cannot be overemphasized. In *Balatico v. Rodriguez*, the Court, citing *Tiu v. Middleton*, delved on the significance of pre-trial, thus: Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," pre-trial seeks to achieve the following: (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution; (b) The simplification of the issues; (c) The necessity or desirability of amendments

to the pleadings; (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof; (e) The limitation of the number of witnesses; (f) The advisability of a preliminary reference of issues to a commissioner; (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist; (h) The advisability or necessity of suspending the proceedings; and (i) Such other matters as may aid in the prompt disposition of the action. Petitioners' repeated failure to appear at the pre-trial amounted to a failure to comply with the Rules and their non-presentation of evidence before the trial court was essentially due to their fault.

4. ID.; ACTIONS; ISSUES; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE LOWER COURT NEED NOT BE, AND ORDINARILY WILL NOT BE, CONSIDERED BY A REVIEWING COURT, AS THEY CANNOT BE RAISED FOR THE FIRST TIME AT THAT LATE STAGE.— Petitioners' assertion that it was necessary to include the government, through the Department of Agriculture, as a party to the case, in order to have a complete determination of the case, is specious, as the same was never raised before the RTC and the CA. It is settled that points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule. In the same manner, the Court cannot consider petitioners' allegation that respondents' failure to exhaust administrative remedies is fatal to the cause of the respondents, as this was not raised before the trial court.

5. CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; CANNOT BE THE SUBJECT OF COLLATERAL ATTACK; REASON.— It is a rule that a certificate of title cannot be the subject of collateral attack. Section 48 of Presidential Decree No. 1529 provides that: Section 48. *Certificate not Subject to Collateral Attack.* - A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled, except in a direct proceeding in accordance with law. Petitioners' attack on the legality of

TCT No. T-43927, issued in the name of respondents, is incidental to their quest to defend their possession of the property in an *accion publiciana*, not in a direct action whose main objective is to impugn the validity of the judgment granting the title. To permit a collateral attack on the title, such as what petitioners attempt, would reduce the vaunted legal indefeasibility of a Torrens title to meaningless verbiage.

6. ID.; ID.; ID.; UNLESS AND UNTIL THE LAND IS REVERTED TO THE STATE BY VIRTUE OF A JUDGMENT OF A COURT OF LAW IN A DIRECT PROCEEDING FOR REVERSION, THE TORRENS CERTIFICATE OF TITLE THERETO REMAINS VALID AND BINDING AGAINST THE WHOLE WORLD.— It must be pointed out that notwithstanding petitioners' submission that the subject property is owned by the Republic, there is no showing that the Office of the Solicitor General (OSG) or its representatives initiated an action for reversion of the subject property to become part of the public domain. 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. Unless and until the land is reverted to the State by virtue of a judgment of a court of law in a direct proceeding for reversion, the Torrens certificate of title thereto remains valid and binding against the whole world.

7. ID.; ID.; ID.; *ACCION PUBLICIANA*; THE OBJECTIVE OF THE PLAINTIFFS IS TO RECOVER POSSESSION ONLY, NOT OWNERSHIP OF THE PROPERTY; THE COURTS MAY PASS UPON THE ISSUE OF OWNERSHIP, WHEN RAISED BY THE PARTIES, BUT THE ADJUDICATION THEREON IS NOT FINAL AND BINDING BUT ONLY FOR THE PURPOSE OF RESOLVING THE ISSUE OF POSSESSION.— [I]t must be emphasized that the action filed before the trial court is an *accion publiciana,* which is a plenary action for recovery of possession in an ordinary civil proceeding in order to determine the better and legal right to possess, independently of title. The objective of the plaintiffs in an *accion publiciana* is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication,

however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property.

8. ID.; ID.; ID.; THE PERSON WHO HAS A TORRENS TITLE OVER A LAND IS ENTITLED TO POSSESSION THEREOF.— It is undisputed that the subject property is covered by TCT No. T-43927, registered in the name of the respondents. On the other hand, petitioners do not claim ownership, but allege that they are leasing the portion they are occupying from the government. Respondents' title over the subject property is evidence of their ownership thereof. It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. It is conclusive evidence with respect to the ownership of the land described therein. It is also settled that the titleholder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court held that the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.

9. ID.; ID.; ID.; THE REGISTERED OWNERS' RIGHT TO EVICT ANY PERSON ILLEGALLY OCCUPYING THEIR PROPERTY IS IMPRESCRIPTIBLE.— Petitioners' argument that an *accion publiciana* is not the proper remedy available for the respondents, because more than ten (10) years had already elapsed since the dispossession of the respondents' property, does not hold water. As the registered owners, respondents' right to evict any person illegally occupying their property is imprescriptible. In the case of *Labrador v. Perlas*, the Court held that: x x x As a registered owner, petitioner has a right to eject any person illegally occupying his property. **This right is imprescriptible** and can never be barred by laches. In *Bishop v. Court of Appeals*, we held, thus: As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners

have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.

10. ID.; DAMAGES; ATTORNEY'S FEES AND LITIGATION EXPENSES; AWARD THEREOF, IF MENTIONED ONLY IN THE DISPOSITIVE PORTION OF THE DECISION WITHOUT ANY PRIOR EXPLANATION AND JUSTIFICATION IN ITS BODY, IS BASELESS AND MUST BE DELETED.— [T]he Court finds no factual and legal basis for the award of attorney's fees and litigation expenses. The settled rule is that the matter of *attorney's fees cannot be mentioned only in the dispositive portion* of the decision. The same goes for the award of litigation expenses. The reasons or grounds for the award thereof must be set forth in the decision of the court. The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture. In the present case, the award of attorney's fees and litigation expenses was mentioned only in the dispositive portion of the RTC decision without any prior explanation and justification in its body, hence, the same is baseless and must be deleted.

APPEARANCES OF COUNSEL

Panganiban & Cenidoza Law Office for petitioners.
Aurora Escas-Ramos for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA),

[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring, *rollo*, pp. 20-30.

[2] *Rollo*, pp. 38-40.

dated October 18, 2007 and January 22, 2008, respectively, in CA-G.R. CV No. 78676.

The factual milieu follows.

Respondents, in their complaint before the Regional Trial Court, alleged that they are the registered owners of a parcel of land situated in *Barangay* Balugo, Tagkawayan, Quezon, with an area of 1,056,275 square meters, covered by Transfer Certificate of Title (TCT) No. T-43927. For several years, petitioners have been in actual possession of the western portion of the said property with a total area of 620,000 square meters which they tried to develop into fishponds. In the years 1993 and 1994, respondents informed petitioners, through Gustavo C. Tolentino, Sr. (Gustavo) who was then representing them, that the area they are occupying was inside the respondents' property and, therefore, they should vacate and leave the same. Gustavo, however, asked for time to verify respondents' claim. If found to be true, then the petitioners were willing to discuss with respondents the improvements that they have introduced on the subject area. Respondents have waited for almost a year for the outcome of the intended verification, but they waited in vain until Gustavo died. Petitioners continued to develop the area they were occupying into fishponds, thereby manifesting their unwillingness to vacate the premises and restore the possession thereof in favor of respondents. Hence, respondents filed a suit against petitioners to recover the property and demand payment of unearned income, attorney's fees and costs of suit.

Petitioners, as defendants in the trial court, averred in their Answer that the subject property is owned by the Republic and they are occupying the same by virtue of a Fishpond Lease Agreement entered with the Department of Agriculture. Thus, their stay over the property is lawful.

On August 27, 1996, petitioners were declared in default, for failure to appear at the pre-trial conference. However, the trial court set aside the default order and reset the pre-trial conference. Despite several resetting of the pre-trial conference of which petitioners were notified, petitioners failed to appear.

Hence, on March 21, 2000, the trial court issued an Order allowing respondents to present their evidence *ex parte,* instead of declaring petitioners in default.[3]

After the *ex parte* hearing for the reception of evidence, the RTC ruled in favor of respondents, thus:

> WHEREFORE, judgment is hereby rendered to wit:
>
> (a) Ordering the defendants [petitioners herein] George S. Tolentino, Monica S. Tolentino, Gustavo S. Tolentino, Jr., Ma. Marjorie S. Tolentino, Marilyn S. Tolentino, Michael Glenn S. Tolentino and Mylene S. Tolentino, their assigns, heirs and representatives to leave and vacate the portions of land they are occupying which are part of and inside Lot 647-E of the Subdivision Plan Csd-5627-D, covered by Transfer Certificate of Title No. T-43927 of the Office of the Register of Deeds of Quezon immediately upon this decision becoming final and executory;
>
> (b) Commanding the aforementioned defendants [petitioners herein] jointly and severally, to pay the plaintiffs [respondents herein] the reasonable rental value of the areas occupied by the aforesaid defendants [petitioners herein] at the rate of ₱20,000.00 per annum from October 13, 1995 until possession thereof is returned to the plaintiff. [respondents herein]; and
>
> (c) Enjoining the aforementioned defendants [petitioners herein] jointly and severally, to pay plaintiff [respondents herein] attorney's fees in the amount of ₱20,000.00, plus litigation expenses in the sum of ₱10,000.00.
>
> SO ORDERED.[4]

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[3] This is in consonance with Rule 18, Section 5 of the Rules of Court, which provides:

> *Effect of failure to appear*. - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

[4] Records, pp. 190-191.

Aggrieved, petitioners challenged the trial court's decision before the CA. The CA dismissed petitioners' appeal and affirmed the decision of the RTC. A motion for reconsideration was filed by the petitioners, but was denied by the CA for lack of merit.

Petitioners then filed this present Petition for Review on *Certiorari* under Rule 45, raising the following issues:

1. WHETHER OR NOT PETITIONERS WERE DENIED THEIR DAY IN COURT.

2. WHETHER OR NOT IT WAS PROPER TO INCLUDE THE GOVERNMENT THRU THE DEPARTMENT OF AGRICULTURE IN THIS CASE FOR A COMPLETE DETERMINATION OF THE CASE.

3. WHETHER OR NOT THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES FINDS APPLICATION IN THIS CASE.

4. WHETHER OR NOT *ACCION PUBLICIANA* WAS THE PROPER ACTION TO BE INSTITUTED IN THIS CASE.

Petitioners maintain that they were denied their day in court, because they were not allowed to present their evidence before the trial court which resulted in the denial of their right to due process.

We perused the records of the case and failed to see the lack of due process claimed by petitioners. On the contrary, petitioners were given more than ample opportunity to be heard through counsel. Lest it be forgotten, petitioners were first declared in default on August 27, 1996, for their failure to appear at the pre-trial conference. However, the trial court set aside the default order and the pre-trial conference was set and reset for several times. Nonetheless, petitioners failed to appear on January 9, 1998,[5] March 2, 1998,[6] May 18, 1999,[7] and March 21, 2000,[8]

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[5] *Id.* at 157.

[6] *Id.* at 159.

[7] *Id.* at 168.

[8] *Id.* at 172.

prompting the trial court to allow the respondents to present their evidence *ex parte*. Thereafter, judgment was rendered.

Sections 4 and 5, Rule 18 of the Rules of Court provides:

> Section 4. *Appearance of parties*. - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor, or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.
>
> Section 5. *Effect of failure to appear*. - The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

From the foregoing, the failure of a party to appear at the pre-trial has adverse consequences. If the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence *ex parte* and the court shall render judgment on the basis thereof. Thus, the plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.[9]

In the case at bar, the trial court gave petitioners every chance to air their side and even reconsidered its first order declaring petitioners in default. Notwithstanding, petitioners and their counsel failed to take advantage of such opportunity and disregarded the legal processes, by continuously failing to appear

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[9] *The Philippine American Life & General Insurance Company v. Enario*, G.R. No. 182075, September 15, 2010, 630 SCRA 607, 616.

during the pre-trial of the case without any valid cause. Clearly, when the trial court allowed the respondents to present evidence *ex parte* due to the continued failure of the petitioners to attend the pre-trial conference, it did so in accordance with Rule 18 of the 1997 Rules of Civil Procedure and with due regard to the constitutional guarantee of due process. Plainly, petitioners cannot complain that they were denied due process. What the fundamental law prohibits is total absence of opportunity to be heard. When a party has been afforded opportunity to present his side, he cannot feign denial of due process.[10]

In *The Philippine American Life & General Insurance Company v. Enario*,[11] the Court held that pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. The Court said that:

> The importance of pre-trial in civil actions cannot be overemphasized. In *Balatico v. Rodriguez*, the Court, citing *Tiu v. Middleton*, delved on the significance of pre-trial, thus:
>
> > Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," pre-trial seeks to achieve the following:
> >
> > (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
> >
> > (b) The simplification of the issues;
> >
> > (c) The necessity or desirability of amendments to the pleadings;

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[10] *Poltan v. BPI Family Savings Bank, Inc.*, G.R. No. 164307, March 5, 2007, 517 SCRA 430, 440.

[11] *Supra* note 9, at 617.

(d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e) The limitation of the number of witnesses;

(f) The advisability of a preliminary reference of issues to a commissioner;

(g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;

(h) The advisability or necessity of suspending the proceedings; and

(i) Such other matters as may aid in the prompt disposition of the action.[12]

Petitioners' repeated failure to appear at the pre-trial amounted to a failure to comply with the Rules and their non-presentation of evidence before the trial court was essentially due to their fault.

Petitioners' assertion that it was necessary to include the government, through the Department of Agriculture, as a party to the case, in order to have a complete determination of the case, is specious, as the same was never raised before the RTC and the CA. It is settled that points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule.[13]

In the same manner, the Court cannot consider petitioners' allegation that respondents' failure to exhaust administrative remedies is fatal to the cause of the respondents, as this was not raised before the trial court.

In substance, the appeal of petitioners hinges on their possession over the subject lot by virtue of an alleged Fishpond Lease

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[12] *Id.* at 616-617.

[13] *Del Rosario v. Bonga*, 402 Phil. 949, 957-958 (2001).

Agreement with the Department of Agriculture. They questioned the validity of the respondents' title by claiming that since the property is owned by the government, it is part of the public domain and, therefore, cannot be privately owned by the respondents. The petitioners' submission is not meritorious.

It is a rule that a certificate of title cannot be the subject of collateral attack. Section 48 of Presidential Decree No. 1529 provides that:

> Section 48. *Certificate not Subject to Collateral Attack*. - A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled, except in a direct proceeding in accordance with law.

Petitioners' attack on the legality of TCT No. T-43927, issued in the name of respondents, is incidental to their quest to defend their possession of the property in an *accion publiciana*, not in a direct action whose main objective is to impugn the validity of the judgment granting the title.[14] To permit a collateral attack on the title, such as what petitioners attempt, would reduce the vaunted legal indefeasibility of a Torrens title to meaningless verbiage.[15]

It must be pointed out that notwithstanding petitioners' submission that the subject property is owned by the Republic, there is no showing that the Office of the Solicitor General (OSG) or its representatives initiated an action for reversion of the subject property to become part of the public domain. 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.[16]

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[14] *Urieta Vda. de Aguilar v. Alfaro*, G.R. No. 164402, July 5, 2010, 623 SCRA 130, 143.

[15] *Tanenglian v. Lorenzo*, G.R. No. 173415, March 28, 2008, 550 SCRA 348, 380.

[16] Public Land Act, Sec. 101.

Unless and until the land is reverted to the State by virtue of a judgment of a court of law in a direct proceeding for reversion, the Torrens certificate of title thereto remains valid and binding against the whole world.[17]

Besides, it must be emphasized that the action filed before the trial court is an *accion publiciana*, which is a plenary action for recovery of possession in an ordinary civil proceeding in order to determine the better and legal right to possess, independently of title.[18] The objective of the plaintiffs in an *accion publiciana* is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication, however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property.[19]

It is undisputed that the subject property is covered by TCT No. T-43927, registered in the name of the respondents. On the other hand, petitioners do not claim ownership, but allege that they are leasing the portion they are occupying from the government.

Respondents' title over the subject property is evidence of their ownership thereof. It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.[20] It is conclusive

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[17] *Ybañez v. Intermediate Appellate Court*, G.R. No. 68291, March 6, 1991, 194 SCRA 743, 751.

[18] *Bejar v. Caluag*, G.R. No. 171277, February 15, 2007, 516 SCRA 84, 90.

[19] *Urieta Vda. de Aguilar v. Alfaro*, *supra* note 14, at 140-141.

[20] *Caña v. Evangelical Free Church of the Philippines*, G.R. No. 157573, February 11, 2008, 544 SCRA 225, 238.

evidence with respect to the ownership of the land described therein.[21] It is also settled that the titleholder is entitled to all the attributes of ownership of the property, including possession.[22] Thus, the Court held that the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.[23]

Petitioners' argument that an *accion publiciana* is not the proper remedy available for the respondents, because more than ten (10) years had already elapsed since the dispossession of the respondents' property, does not hold water. As the registered owners, respondents' right to evict any person illegally occupying their property is imprescriptible. In the case of *Labrador v. Perlas*,[24] the Court held that:

> x x x As a registered owner, petitioner has a right to eject any person illegally occupying his property. **This right is imprescriptible** and can never be barred by laches. In *Bishop v. Court of Appeals*, we held, thus:
>
> > As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.[25]

As a final note, the Court finds no factual and legal basis for the award of attorney's fees and litigation expenses. The settled

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[21] *Urieta Vda. de Aguilar v. Alfaro*, *supra* note 14, at 141.

[22] *Id.*

[23] *Caña v. Evangelical Free Church of the Philippines*, *supra* note 20, at 238-239.

[24] G.R. No. 173900, August 9, 2010, 627 SCRA 265, 272.

[25] *Id.* at 272. (Emphasis supplied.)

rule is that the matter of *attorney's fees cannot be mentioned only in the dispositive portion* of the decision. The same goes for the award of litigation expenses.[26] The reasons or grounds for the award thereof must be set forth in the decision of the court.[27] The discretion of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture.[28]

In the present case, the award of attorney's fees and litigation expenses was mentioned only in the dispositive portion of the RTC decision without any prior explanation and justification in its body, hence, the same is baseless and must be deleted.

WHEREFORE, the petition is **DENIED**. The Decision and Resolution of the Court of Appeals, dated October 18, 2007 and January 22, 2008, respectively, in CA-G.R. CV No. 78676, are **AFFIRMED** with **MODIFICATION** that the award of attorney's fees and litigation expenses is **DELETED**.

SO ORDERED.

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

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[26] *Spouses Samatra v. Vda. de Pariñas*, 431 Phil. 255, 267 (2002).

[27] *Cagungun v. Planters Development Bank*, G.R. No. 158674, October 17, 2005, 473 SCRA 259, 274.

[28] *Delos Santos v. Papa*, G.R. No. 154427, May 8, 2009, 587 SCRA 385, 397.

FIRST DIVISION

[G.R. No. 181497. February 22, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PATERNO SARMIENTO SAMANDRE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS; IN INCESTUOUS RAPE OF A MINOR, ACTUAL FORCE OR INTIMIDATION NEED NOT EVEN BE EMPLOYED WHERE THE OVERPOWERING MORAL INFLUENCE OF APPELLANT, WHO IS PRIVATE COMPLAINANT'S FATHER, WOULD SUFFICE.— Article 266-A of the Revised Penal Code provides that the crime of rape is committed by a man having carnal knowledge of a woman under any of the following circumstances: (1) through force, threat or intimidation; (2) when the offended party is deprived of reason or is otherwise unconscious; (3) by means of fraudulent machination or grave abuse of authority; and (4) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. In *People v. Orillosa*, the Court held that "in incestuous rape of a minor, actual force or intimidation need not even be employed where the overpowering moral influence of appellant, who is private complainant's father, would suffice." The prosecution has established beyond reasonable doubt that accused-appellant, taking advantage of his moral ascendancy as a father, had carnal knowledge of his 16-year-old daughter, AAA.

2. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; INHERENTLY WEAK DEFENSES AND CONSTITUTE SELF-SERVING NEGATIVE EVIDENCE WHICH CANNOT BE ACCORDED GREATER EVIDENTIARY WEIGHT THAN THE POSITIVE DECLARATION OF A CREDIBLE WITNESS.— The Court cannot give much weight to accused-appellant's defenses, constituting of denial, alibi, and the imputation of ill motive

on AAA's part in the filing of the instant rape charges. We have decreed in *People v. Nachor* that: Denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness. Between the positive assertions of the [victim] and the negative averments of the [appellant], the former indisputably deserve more credence and are entitled to greater evidentiary weight.

3. ID.; ID.; CREDIBILITY OF WITNESSES; THE INCONSISTENCIES IN THE RAPE VICTIM'S STATEMENTS DO NOT DESTROY HER CREDIBILITY.— The inconsistencies in AAA's statements do not destroy her credibility. Whether or not AAA has a boyfriend does not have any relevance to any of the essential elements of the crime of rape.

4. ID.; ID.; ID.; WHEN THE FINDINGS OF THE TRIAL COURT HAVE BEEN AFFIRMED BY THE APPELLATE COURT, SAID FINDINGS ARE GENERALLY CONCLUSIVE AND BINDING UPON THE COURT.— The issue of credibility of witnesses is "a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts" and "[a]bsent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case." The Court of Appeals further affirmed the findings of the RTC. In this regard, it is settled that when the findings of the trial court have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. The Court finds no compelling reason herein to deviate from said findings.

5. CRIMINAL LAW; QUALIFIED RAPE; PROPER PENALTY; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— [T]he Court adopts the penalties imposed by the Court of Appeals upon accused-appellant but modifies the damages awarded to AAA. With the enactment of Republic Act No. 9346, the Court

of Appeals properly imposed upon accused-appellant the penalty of *reclusion perpetua* without eligibility for parole for each of the four (4) counts of qualified rape for which he is hereby convicted. In line with current jurisprudence, however, accused-appellant is liable to pay AAA for each of the four (4) counts of qualified rape the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, another Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages. Exemplary damages should be awarded "in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters."

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated April 25, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02024, affirming with modifications the Decision[2] dated December 19, 2002 of the Regional Trial Court (RTC), Branch 21 of Santiago City, which convicted accused-appellant Paterno Sarmiento Samandre of four counts of rape of his minor daughter.

Consistent with the ruling in *People v. Cabalquinto*[3] and *People v. Guillermo*,[4] this Court withholds the real name of the private offended party and her immediate family members, as well as such other personal circumstances or any other

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[1] *Rollo*, pp. 4-14; penned by Associate Justice Marina L. Buzon with Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe, concurring.

[2] CA *rollo*, pp. 23-30; penned by Judge Fe Albano Madrid.

[3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] G.R. No. 173787, April 23, 2007, 521 SCRA 597.

information tending to establish or compromise the identity of said party. The initials AAA represent the private offended party and the initials BBB refer to her mother.

Accused-appellant was indicted for four counts of rape qualified by his relationship with and the minority of AAA. The Informations read:

[Criminal Case No. FC-3163]

That on or about 11:00 o'clock in the evening of January 11, 2000, at the City of Santiago, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats and intimidation and with lewd designs, did then and there, willfully, unlawfully, and feloniously lay with, and have carnal knowledge of [his] sixteen (16) year[s] old daughter, [AAA] against her will to the damage and prejudice of [AAA].[5]

[Criminal Case No. FC-3164]

That on or about 10:00 o'clock in the evening of January 12, 2000, at the City of Santiago, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats and intimidation and with lewd designs, did then and there, willfully, unlawfully, and feloniously lay with, and have carnal knowledge of [his] sixteen (16) year[s] old daughter, [AAA] against her will to the damage and prejudice of [AAA].[6]

[Criminal Case No. FC-3165]

That on or about January 14, 2000, at midnight in the City of Santiago, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats and intimidation and with lewd designs, did then and there, willfully, unlawfully, and feloniously lay with, and have carnal knowledge of [his] sixteen (16) year[s] old daughter, [AAA] against her will to the damage and prejudice of [AAA].[7]

[Criminal Case No. FC-3068]

That on or about 2:00 to 3:00 o'clock in the early morning of January 14, 2000 at Sinsayon, Santiago City, Philippines, and within

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[5] CA *rollo*, p. 11.

[6] *Id.* at 13.

[7] *Id.* at 15.

the jurisdiction of this Honorable Court, the above-named accused, by means of threats and intimidation and by reason of his moral ascendancy and influence as a father, did then and there, willfully, unlawfully, and feloniously have carnal knowledge of his 16[-]year[-]old daughter, [AAA], against her will to the damage and prejudice of the latter.[8]

On July 6, 2000, accused-appellant pleaded not guilty to all charges and waived the pre-trial conference.[9] Thereafter, trial ensued.

The prosecution presented the lone testimony of AAA,[10] the private offended party; and formally offered its documentary exhibits consisting of AAA's Certificate of Live Birth issued by the Office of the City Civil Registrar of Santiago City,[11] the Medico-Legal Certificate[12] dated January 17, 2000 issued by the Southern Isabela General Hospital, and AAA's Sworn Complaint[13] dated January 18, 2000. On the other hand, the defense submitted the testimonies of accused-appellant[14] and his sister, Mary Marquez.[15]

After trial, the RTC rendered its Decision on December 19, 2002 convicting accused-appellant for the crimes charged. The RTC decreed:

WHEREFORE, in the light of the foregoing considerations, the Court finds the accused Paterno Samandre *y* Sarmiento GUILTY beyond reasonable doubt of four counts of rape and hereby sentences him to the penalty of death in each of these four cases. He is also

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[8] *Id.* at 9.

[9] Records, pp. 19-20.

[10] TSN, August 17 and 24, 2000 and October 5, 2000.

[11] Records, p. 7.

[12] *Id.* at 7-A.

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

[14] TSN, May 28, 2001.

[15] TSN, September 27, 2001.

ORDERED to pay [AAA] the sum of Fifty Thousand Pesos (₱50,000.00) in each of these cases.[16]

Considering that death penalty was imposed on accused-appellant by the RTC Decision, said cases were directly elevated before us for automatic review. The Public Attorney's Office filed the Brief[17] for accused-appellant on April 2, 2004, while plaintiff-appellee filed its Brief[18] on August 10, 2004 through the Office of the Solicitor General.

In our Resolution[19] dated September 27, 2005, we referred the present case to the Court of Appeals for appropriate action conformably with our ruling in *People v. Mateo*.[20]

The Court of Appeals, in its assailed Decision dated April 25, 2007, recounted the prosecution's version of events as follows:

AAA was born on May 3, 1983, as evidenced by a Certification dated January 18, 2000 issued by the Office of the City Civil Registrar of Santiago City and is the eldest child of accused-appellant. AAA and her parents, together with her three (3) sisters and four (4) brothers, reside in a one room house in Sinsayon, Santiago City. AAA, [CCC], her six (6) year old sister, and accused-appellant sleep in one bed, while her mother and her other siblings sleep in a bigger bed.

In the evening of January 11, 2000, AAA was awakened by her father, AAA, who told her he wanted to have sex with her. AAA did not say anything and accused-appellant got angry and threatened to hurt her. Accused-appellant went on top of AAA, removed his short pants, as well as AAA's shorts, spread one of her legs and inserted his penis inside her vagina. Because of the pain, AAA cried and tried to struggle with accused-appellant while the latter made a push and pull movement. After removing his penis from the vagina of AAA,

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[16] CA *rollo*, p. 30.

[17] *Id.* at 60-73.

[18] *Id.* at 89-114.

[19] *Id.* at 126.

[20] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

he wiped it and the vagina of the latter and then slept beside her. In the evening of January 12, 2000, AAA was again awakened and raped by accused-appellant as what happened the night before. The same sexual molestation was repeated by accused-appellant on AAA at about 2:00 o'clock and 3:00 o'clock in the morning of January 14, 2000. All of the incidents took place while AAA's mother and other siblings were asleep.

On January 14, 2000, accused-appellant brought AAA with him to Cordon, Isabela, to the house of their relative, Lilia Tabuñar. That evening, AAA and Lilia went to a wake and the former took the opportunity to tell the latter what her father had done to her. On January 18, 2000, Lilia accompanied AAA to the Philippine National Police in Santiago City, where she executed a sworn statement before PO1 Arlyn Malabad Guray narrating the sexual molestations of accused-appellant. Said sworn statement was signed by AAA in the presence of Lilia Tabuñar.[21]

The Court of Appeals also presented a summary of accused-appellant's defenses, to wit:

Accused-appellant denied having molested AAA. He claimed that on January 11, 2000, AAA left their house after he scolded her because she wanted to marry Freddie Fragata, who is already a married man. He went to Solano, Nueva Vizcaya, which is his province, to look for AAA, because she told her mother that she would go there. He stayed in the house of his father until the morning of January 13, 2000 to wait for AAA, but the latter did not arrive. He then returned to his house in Sinsayon, Santiago City. In the afternoon of January 13, 2000, accused-appellant was called to the house of his brother-in-law in order to discuss the marriage of AAA. He went to the house of his brother-in-law where he saw AAA and Freddie. He told AAA not to get married yet and brought her home. He stated that AAA filed the cases against him because she wanted him to go to jail so that she could do whatever she wanted. He tried to show that they have three (3) beds in the house, one bed is occupied by his two (2) sons, the big bed is occupied by him, his wife and their other children, including AAA, and that no one occupies the small bed.

Accused-appellant's sister, Mary Marquez, testified that accused-appellant stayed in her house at Tukal, Solano, Nueva Vizcaya on

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[21] *Rollo,* pp. 6-7.

January 11, 2000 while looking for AAA, who stowed away; that accused-appellant left the following day; and that her house is quite far from the house of her father.[22]

After its evaluation of the foregoing evidence, the Court of Appeals promulgated its Decision on April 25, 2007 affirming accused-appellant's conviction for the four counts of rape, but modifying the penalty and awards for damages rendered against him. The decretal portion of said decision reads:

> WHEREFORE, the Decision appealed from is AFFIRMED with MODIFICATION. Accused-appellant Paterno Samandre *y* Sarmiento is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole in each case and is likewise ordered to pay AAA, in each case, the amounts of ₱50,000.00 as civil indemnity and ₱25,000.00 as exemplary damages, in addition to the award of moral damages in the amount of ₱50,000.00 in each case.[23]

Hence, this appeal.

In a Resolution[24] dated March 5, 2008, the Court gave the parties an opportunity to file their respective supplemental briefs. However, both plaintiff-appellee and accused-appellant manifested that they had already exhausted their arguments before the Court of Appeals and, thus, would no longer file any supplemental brief.[25]

In his lone assignment of error, accused-appellant professes his innocence of the crimes charged. Accused-appellant highlights the inconsistencies in AAA's testimony, particularly, on whether or not she has a suitor/boyfriend. Accused-appellant asserts that AAA's initial concealment of the fact that she already has a boyfriend supports accused-appellant's contention that AAA accused him of rape so he could go to jail and no longer prevent AAA from marrying her boyfriend.

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

[23] *Id.* at 13.

[24] *Id.* at 20.

[25] *Id.* at 21-24 and 26-29.

The Court sustains accused-appellant's conviction for raping his minor daughter on all four counts.

Article 266-A of the Revised Penal Code provides that the crime of rape is committed by a man having carnal knowledge of a woman under any of the following circumstances: (1) through force, threat or intimidation; (2) when the offended party is deprived of reason or is otherwise unconscious; (3) by means of fraudulent machination or grave abuse of authority; and (4) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. In *People v. Orillosa*,[26] the Court held that "in incestuous rape of a minor, actual force or intimidation need not even be employed where the overpowering moral influence of appellant, who is private complainant's father, would suffice."

The prosecution has established beyond reasonable doubt that accused-appellant, taking advantage of his moral ascendancy as a father, had carnal knowledge of his 16-year-old daughter, AAA.

In her Sworn Statement, executed in question-and-answer form, on January 18, 2000, AAA narrated to Police Officer (PO) Arlyn Malabad Guray that she had been sexually abused by her own father, accused-appellant, since she was 10 years old, and the latest incidents took place in January 2000. Below are relevant portions of AAA's Sworn Statement:

Q: What prompted you to appear before the Office of the Investigation section?
A: To file a complaint against my father Paterno Samandre, ma'am.

Q: What is your complaint against Paterno Samandre?
A: He sexually abused and molested me, ma'am.

Q: When and where did the incident happened?
A: Since when I was still 10 years old up to January 14, 2000 in our house and even in the river bank, ma'am.

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[26] G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 698.

Q: How many times did your father sexually abused/molested you?
A: He did it for many times, ma'am.

Q: When was the last time that your father sexually abused you?
A: On January 14, 2000 at about 2:00 to 3:00 o'clock in the morning, ma'am.

Q: Will you please narrate how the incident happened?
A: Sometime on the year 1993 we were then living at Tucal, Solano, Nueva Vizcaya, and I was then grade 3, while I was in our house one daylight sewing my cloth, my mother and younger brother and sister were out, my father came to me and wanted me to lay down and he will do something to me. Sensing that he is doing bad to me, I hesitated but forced me and laid me down in a bed. He then went on top of me and instructed me not to move. He is then wearing short pants, he removed my panty in my one leg then he removed his short pants and tried to insert his penis but I continuously move my body and pushed him. He told me that the pain was only in the beginning and later on the pain will no longer feel by me. He was able to insert partially his penis on my vagina and when he is about to ejaculate he immediately removed his penis and poured his semen in my vagina.

Q: What did you feel then?
A: Very painful, ma'am.

x x x x x x x x x

Q: On this month of January 2000, how many times did he abuse you?
A: Four (4) times, ma'am. The last time was on the dawn of January 14, 2000.

Q: Will you please narrate what happened on the dawn of January 14, 2000?
A: On January 13 at about 8:00 o'clock in the evening I slept beside my father together with my sister [CCC], at the dawn of January 14, 2000, my father awaken me to have again sexual intercourse. I refused and pushed him but he got angry so, I did nothing but to [give] myself.

Q: After the incident happened what did you do then?
A: I cried, ma'am and at about 6:00 o'clock in the morning of same date he told me that we will go to Solano, Nueva Vizcaya,

> but we did not proceed to said place, instead we proceeded at Sagat, Cordon, Isabela, at the house of my cousin Lilia Tabuñar. And at the evening of same date at around 8:00 PM my cousin Lilia Tabuñar invited me to attend the wake of the late mother of Vice Mayor Zuniega at that moment I've got a chance to reveal what my father did to me.[27]

During trial, AAA related more vividly her most recent sexual tribulations at the hands of accused-appellant:

Q: In the evening of January 11, 2000, where were you if you still remember Madam Witness?
A: I was at our house inside a room, sir.

Q: What were you doing inside that room of your house in that evening of January 11, 2000?
A: I was sleeping, sir.

Q: Who was your companion, if any, at that time inside the room where you were sleeping in the evening of January 11, 2000?
A: My father and my younger sister [CCC], sir.

Q. How old is [CCC]?
A. Six (6) years old, sir.

Q. What happened in the evening of January 11, 2000?
A. He woke me up, sir.

Q. Who woke you up?
A. My father, sir.

Q. After your father woke you up, what happened?
A. He wanted to rape me, sir.

Q. And what did you do when your father wanted to rape you?
A. I just did not say anything, sir.

Q. And when you did not say anything, what happened next?
A. He got angry with me, sir.

Q. And what did he tell you when he got angry at you?
A. He told me that he will be going to hurt me because he is angry, sir.

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[27] Records, pp. 4-5.

x x x x x x x x x

Q. And after your father wanted to harm you in the evening of January 11, 2000, what happened next?
A. He went on top of me, sir.

Q. When your father went on top of you, what did he do next, if any?
A. He removed his short pants, sir.

Q. After your father removed his short pants, what did he do next?
A. He removed my short from one of my legs, sir.

Q. When your father removed your short, what did you do?
A. He spread one of my legs and inserted his penis, sir.

Q. Where did your father insert his penis?
A. At my vagina, sir.

Q. When your father inserted his penis inside your vagina, what did you feel?
A. I felt pain, sir.

Q. What did you do when your father inserted his penis inside your vagina?
A. I struggled and crying, sir.

Q. Why did you cry and why did you struggle?
A. It is painful, sir.

Q. And after your father inserted his penis inside your vagina in the evening of January 11, 2000, what did you do next, if any?
A. He made push and pull movement, sir.

Q. And what did you do when your father made a push and pull move?
A. I kept on struggling and crying, sir.

Q. And after that, what happened?
A. He removed his penis, sir.

Q. And after your father removed his penis, from where did he remove his penis?
A. From my vagina, sir.

Q. After your father removed his penis from your vagina, what did he do next, if any?
A. He wiped it, sir.

Q. What did your father wipe?
A. His penis and my vagina, sir.

Q. And what did you feel when your father removed his penis from your vagina?
A. It is painful, sir.

Q. What else, if any?
A. There is something hot, sir.

Q. What was that?
A. The whitish substance that came out from his penis, sir.

Q. Where did it go that whitish substance when you felt it was hot?
A. Over my vagina, sir.

Q. After that, what happened?
A. I kept on crying, sir.

Q. Where did your father go after he removed his penis from your vagina?
A. He lied down and went to sleep, sir.

x x x x x x x x x

Q. Now what happened, if any, in the evening of January 12, 2000?
A. He again raped me, sir.

x x x x x x x x x

Q. You are referring to your father, is that correct?
A. Yes, sir.

Q. Where did your father rape you again in the evening of January 12, 2000?
A. Inside the room, sir.

x x x x x x x x x

Q. So, how did your father rape you in the evening of January 12, 2000?
A. It is the same, he also woke me up, sir.

Q. When your father woke you up in the evening of January 12, 2000, what did you do?
A. I just kept silent, sir.

Q. Why?
A. Because I do not want him to repeat what he did to me, sir.

Q. After your father woke you up in the evening of January 12, 2000, what happened next?
A. He got angry with me, sir.

x x x x x x x x x

Q. After your father got mad at you in the evening of January 12, 2000 inside a room of your house, what happened next, if any?
A. He suddenly went on top of me, sir.

Q. And what did your father do after he went on top of you?
A. He again removed his short pants, sir.

Q. After your father removed his short pants, what happened next?
A. He also removed my short pants and inserted his penis into my vagina, sir.

Q. And what did you feel when your father inserted his penis inside your vagina?
A. It is painful, sir.

Q. What did you do when your father inserted his penis inside your vagina?
A. I cried, sir.

Q. What did your father do after he was able to insert his penis inside your vagina?
A. He made a push and pull movement, sir.

Q. After that, what happened?
A. I kept on crying, sir.[28]

AAA went on to recall on the witness stand that accused-appellant committed the same bestial deeds against her two

[28] TSN, August 17, 2000, pp. 8-18.

more times, at around two and three o'clock in the morning of January 14, 2000.

AAA further testified that she was only able to put an end to her ordeal when accused-appellant brought her to Cordon, Isabela, to visit their relative, Lilia Tabuñar (Lilia). In the evening of January 14, 2000, when Lilia took AAA with her to attend a wake, AAA grabbed the chance to tell Lilia what accused-appellant had been doing to her. Thus, on January 18, 2000, Lilia accompanied AAA to the Philippine National Police in Santiago City, where AAA executed her Sworn Statement before PO2 Guray.

AAA's Certificate of Live Birth issued by the Office of the City Civil Registrar of Santiago City establishes that she was born on May 3, 1983. The Medico-Legal Certificate dated January 17, 2000 reports that AAA sustained old hymenal lacerations. These documents are consistent with AAA's claim of repeated sexual abuse by accused-appellant on January 11, 12, and 14, 2000, when she was only 16 years old.

The Court cannot give much weight to accused-appellant's defenses, constituting of denial, alibi, and the imputation of ill motive on AAA's part in the filing of the instant rape charges.

We have decreed in *People v. Nachor*[29] that:

> Denial and alibi are inherently weak defenses and constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness. Between the positive assertions of the [victim] and the negative averments of the [appellant], the former indisputably deserve more credence and are entitled to greater evidentiary weight.[30]

The testimony of Mary Marquez (Mary), accused-appellant's sister, did nothing to corroborate accused-appellant's alibi. As his alibi, accused-appellant claimed that he slept and stayed at

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[29] G.R. No. 177779, December 14, 2010, 638 SCRA 317.

[30] *Id.* at 333.

his father's house in Solano, Nueva Vizcaya, from January 11, 2000 until the morning of January 13, 2000. However, according to Mary, accused-appellant stayed overnight at her house also in Solano, Nueva Vizcaya, on January 11, 2000, and went home the very next day, on January 12, 2000. Mary admitted that her house is quite far from their father's house. Mary, when confronted with these conflicting averments as to accused-appellant's purported whereabouts on January 11 to 13, 2000, remained silent and could not offer any explanation for the same, thus:

Q: Madam witness on the night of January 11, 2000 where did the accused Paterno Samandre sleep?
A: In our house, sir.

Q: And in the following morning that is on January 12, 2000, where did the accused go, if you know?
A: He went home, sir.

x x x x x x x x x

Q: During your direct examination you stated that your brother the accused in this case went to your house on January 11, 2000, is that correct?
A: Yes, sir.

Q: And what time, did he arrive at your house on January 11, 2000?
A: At about 4:00 o'clock, sir.

Q: In the afternoon?
A: Yes, sir.

Q: When he arrived in your house he likewise slept in your house in the evening of January 11, 2000, is that correct?
A: Yes, sir.

x x x x x x x x x

Q: Now, the house of your father is likewise located at Tukal, Nueva Vizcaya, is that correct?
A: Yes, sir.

Q: How far is the house of your father to your house?
A: It is quite far, sir.

Q: What time did your [brother] Paterno Samandre sleep in your house in the evening of January 11, 2000?
A: About 7:30, sir.

Q: In the evening?
A: Yes, sir.

Q: You are very sure of that?
A: Yes, sir.

Q: What time did he wake up?
A: 6:00 o'clock, sir.

Q: **When your brother Paterno Samandre testified in this case madam witness he stated that he slept in the house of your father in the evening of January 11, 2000, what can you say about that?**

PROS. DAMASEN:

I would like to make it on record that the witness could not answer the question, your honor.

COURT:

Alright, put there no answer.

PROS. DAMASEN:

Q: **Likewise when your brother testified in this case he stated that he went to Solano and not to Tukal on January 11, 2000, what can you say about that?**

x x x x x x x x x

COURT:

Never mind the implication. So just ask the question. No answer also?

PROS. DAMASEN:

No answer, your honor.

COURT:

Put no answer.

PROS. DAMASEN:

Q: A while ago on direct examination you stated that your brother the accused in this case went home to Santiago City on January 12, 2000 from Tukal, Nueva Vizcaya, is that correct?

A: Yes, sir.

Q: **Now, when your brother testified in this case madam witness he stated that he went home here in Santiago City on January 13, 2000, what can you say about that?**

A: **Yes, he went home, sir.**

Q: **So you are now changing your previous answer?**

PROS. DAMASEN:

May we spread on record, your honor, that the witness is taking time to answer a very simple question.

No answer, your honor.

COURT:

Alright, put no answer.[31] (Emphases supplied.)

The inconsistencies in AAA's statements do not destroy her credibility. Whether or not AAA has a boyfriend does not have any relevance to any of the essential elements of the crime of rape. The Court adopts the following disquisition of the Court of Appeals on this matter:

As aptly pointed out by the Office of the Solicitor General in the appellee's brief, the initial denial by AAA that she has a boyfriend is immaterial as it has no bearing whatsoever on the essential elements of rape or the identity of the perpetrator. Settled is the rule that inconsistencies in the testimonies of witnesses that refer to minor or insignificant details do not destroy the witnesses' credibility. Moreover, no evidence was presented by accused-appellant to support his claim that AAA wanted to marry her boyfriend, Freddie Fragata, and that the latter is married. Thus, the motive imputed by accused-appellant on AAA for wanting him to be jailed is too tenuous to be given credence. As held in *People v. Torres*:

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[31] TSN, September 27, 2001, pp. 5-15.

"The attempt of accused-appellant to impute ill-motive on complainant for fabricating the charge of rape against him cannot succeed. Not a few persons accused of rape have attributed the charges brought against them to resentment or revenge, but such alleged motives have not prevented the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her direct and cross-examination. Given the naivete of complainant who was only 14 years old at the time of the incident, we are hard put to believe that she could have concocted a tale of pure fantasy, if only to get back at her father for not allowing her to live and study in Manila. Well-settled is the doctrine that no young and decent lass will publicly cry rape, particularly against her alleged father, if such were not the truth, or if justice was not her sole objective. The revelation of a young girl that she was sexually abused cannot be easily dismissed as a mere concoction, considering her willingness to undergo a public trial and relate the details of her defilement. Normally, no woman would be willing to undergo the arduous stages and embarrassing consequences of a rape trial, if not to condemn an injustice and obtain retribution."

We thus agree with the following observations of the court *a quo*:

"What does it take for a young daughter to wish her father to stay in jail possibly for the rest of his life or even executed to death? Certainly not for the reason that her father refused to let her marry someone. According to the accused in this case his daughter charged him of raping her because he scolded her and prohibited her to marry her boyfriend who is a married man. This is absurd especially as he did not try to show that his daughter has evil ways.

x x x x x x x x x

What lends credence to her accusation is that she immediately reported the matter at the first chance she had. Unfortunately not to her mother because according to her she did not have a chance to do so because her father was always around watching her. This turned out to be right because it happened that her mother was fool enough to side with her husband when the denouncement was made. [AAA] reported the matter to her cousin (or aunt) Lilia Tabuñar when her father brought her to Cordon, Isabela, on January 19, *(sic)* 2000."[32]

[32] *Rollo*, pp. 9-11.

In *People v. Crespo*, [33] we emphasized:

> It bears stressing once again that no woman would concoct a story of defloration, allow the examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her. It is settled jurisprudence that when a woman says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. A woman would think twice before she concocts a story of rape, especially against her own father, unless she is motivated by a patent desire to seek justice for the wrong committed against her.

The issue of credibility of witnesses is "a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts"[34] and "[a]bsent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case."[35] The Court of Appeals further affirmed the findings of the RTC. In this regard, it is settled that when the findings of the trial court have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. [36] The Court finds no compelling reason herein to deviate from said findings.

Finally, the Court adopts the penalties imposed by the Court of Appeals upon accused-appellant but modifies the damages

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[33] G.R. No. 180500, September 11, 2008, 564 SCRA 613, 640.

[34] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511, 524.

[35] *Id.*

[36] *People v. Nogpo, Jr.*, G.R. No. 184791, April 16, 2009, 585 SCRA 725, 748.

awarded to AAA. With the enactment of Republic Act No. 9346, the Court of Appeals properly imposed upon accused-appellant the penalty of *reclusion perpetua* without eligibility for parole for each of the four (4) counts of qualified rape for which he is hereby convicted. In line with current jurisprudence, however, accused-appellant is liable to pay AAA for each of the four (4) counts of qualified rape the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, another Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages.[37] Exemplary damages should be awarded "in order to deter fathers with perverse tendencies and aberrant sexual behavior from preying upon their young daughters."[38]

WHEREFORE, in view of the foregoing, the Decision dated April 25, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02024 is **AFFIRMED** with **MODIFICATION**. Paterno Samandre *y* Sarmiento is found GUILTY of four (4) counts of qualified rape for which he is sentenced to suffer the penalty of *reclusion perpetua* for each count without eligibility for parole and ordered to pay AAA the amounts of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Thirty Thousand Pesos (₱30,000.00) as exemplary damages, for every count, with interest on all damages awarded at the rate of 6% per annum from the date of finality of this Decision until fully paid.

No cost.

SO ORDERED.

Corona, C.J. (Chairperson), Villarama, Jr., Mendoza,[*] and Reyes,[**] JJ., concur.

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[37] *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 46.

[38] *People v. Blancaflor*, 466 Phil. 87, 103 (2004).

[*] Per Raffle dated February 1, 2012.

[**] Per Special Order No. 1203-A dated February 17, 2012.

FIRST DIVISION

[G.R. No. 184556. February 22, 2012]

CHINA BANKING CORPORATION, *petitioner, vs.* **QBRO FISHING ENTERPRISES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; FINDINGS OF FACT OF THE TRIAL COURT AND THE COURT OF APPEALS MAY BE SET ASIDE WHEN SUCH FINDINGS ARE NOT SUPPORTED BY THE EVIDENCE OR WHERE THE LOWER COURT'S CONCLUSIONS ARE BASED ON A MISAPPREHENSION OF FACTS.— The principle is well-established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court. The foregoing rule, however, is not without exceptions. Findings of fact of the trial court and the CA may be set aside when such findings are not supported by the evidence or where the lower courts' conclusions are based on a misapprehension of facts.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; MORTGAGE; THIRD PERSONS WHO ARE NOT PARTIES TO THE PRINCIPAL OBLIGATION MAY SECURE THE LATTER BY PLEDGING OR MORTGAGING THEIR OWN PROPERTY.— Here, we find that while there were indeed two different corporations that executed two separate mortgages, there was in fact only one loan account, that of TFRC. Respondent failed to offer evidence to prove that it had a separate loan account with petitioner. What is clear from the records is that respondent's Board of Directors specifically authorized the mortgage of its properties to serve as additional security to accommodate TFRC's request for the increase in its credit line. x x x. Undeniably, the real estate mortgage executed by respondent in favor of petitioner was intended to serve as additional security to accommodate the request of TFRC. Likewise, we note that petitioner's Executive Committee held a meeting on May 24,

1996, approving the loan requested by TFRC using the properties of respondent as collateral. A reading of the excerpts of the meeting further supports the contention of petitioner that there was only one obligation. x x x. It is also clear from the records that respondent does not have a separate credit line. When respondent mortgaged its properties described under TCT Nos. T-38759 to T-38767, inclusive, as security for the increase in the loan of TFRC, it bound itself as a third-party mortgagor. It has been held that third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property. The fact that the loans were solely for the benefit of TFRC would not invalidate the mortgage with respect to respondent's property as long as valid consent was given. Thus, when respondent executed the real estate mortgage over its properties, such properties thereby secured the performance of the principal obligation notwithstanding the fact that respondent itself had not assumed any liability for the debt of TFRC.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; FORECLOSURE SALE WHICH INCLUDED THE PROPERTIES OF THIRD-PARTY MORTGAGOR WHO ALLOWED ITS PROPERTIES TO BE USED AS ADDITIONAL SECURITY FOR THE LOANS OBTAINED BY ANOTHER; HELD VALID.— [W]e find that the CA overlooked and misappreciated facts and circumstances on record clearly showing that respondent's role in the transaction was that of a third-party mortgagor who allowed its properties to be used as additional security for the loans obtained by TFRC. Considering that the extrajudicial foreclosure proceedings initiated by petitioner pertain to only one loan account, we uphold the validity of the foreclosure sale which included the properties of respondent as third-party mortgagor.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao Alameda & Casiding for petitioner.
Bonifacio F. Doria, Jr. for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner China Banking Corporation appeals the June 27, 2008 Decision[1] and September 5, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 00226 which set aside the Decision[3] of the Regional Trial Court (RTC) of General Santos City in Civil Case No. 6665.

The facts follow:

In 1994, Trans-Filipinas Realty Corporation (TFRC) obtained a loan from petitioner China Banking Corporation in the amount of Seven Million Pesos (₱7,000,000). The loan was secured by a real estate mortgage over two parcels of land covered by Transfer Certificate of Title (TCT) Nos. T-34226 and T-34227. The credit line of TFRC was later increased to ₱14,000,000.[4]

On May 10, 1996, the Board of Directors of respondent QBRO Fishing Enterprises, Inc. issued a resolution[5] authorizing the mortgage of its properties to secure "the obligations incurred or which may [t]hereafter be incurred by [TFRC] with [petitioner] irrespective of the amount including any renewals, extensions and/or roll-overs thereof."[6]

On June 3, 1996, respondent, represented by Armando Cesar A. Reyes and Concepcion R. Quintana, its president and treasurer, respectively, executed a real estate mortgage over nine parcels of land, covered by TCT Nos. T-38759 to T-38767, inclusive, as collateral for TFRC's additional loan in the amount of ₱34,500,000.[7] The mortgage was annotated in the Registry of Deeds of General Santos City.

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[1] *Rollo*, pp. 10-25. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Romulo V. Borja and Mario V. Lopez, concurring.

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

[3] *Id.* at 125-127. Penned by Presiding Judge Jaime V. Quitain. The decision is dated February 26, 2004.

[4] *Id.* at 86.

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

[6] *Id.* at 97.

[7] *Id.* at 107-113.

TFRC, however, defaulted on the payment of its obligation and failed to settle its account despite having received several demand letters from petitioner.[8] Thus, petitioner filed a petition for extrajudicial foreclosure of the real properties respondent and TFRC had mortgaged.[9] During the public auction, petitioner emerged as the highest bidder and was issued a Certificate of Sale.[10]

Aggrieved, respondent filed a Complaint[11] with the RTC to annul the real estate mortgage, foreclosure proceedings and auction sale. It alleged that petitioner unlawfully treated the TFRC and respondent's separate loan accounts, which were secured by two different and separate real estate mortgages, as a single, inseparable account. Furthermore, respondent claimed that the loan in the amount of ₱34,500,000 had unilaterally ballooned to an unconscionable amount of ₱72,208,673.19, thus preventing TFRC from settling its obligation.

In its Answer,[12] petitioner denied that there were two separate loan accounts. It maintained that the real estate mortgage over respondent's properties was executed to serve as additional security to accommodate TFRC's request for an increase in its loan line. There being only one loan, petitioner asserted that the filing of a petition for extrajudicial foreclosure was proper.

After trial on the merits, the RTC dismissed respondent's complaint. The RTC found that while there were two mortgage contracts, the foreclosure of respondent's properties could not be set aside because to allow respondent to avoid liability based on the real estate mortgage over its properties would amount to unjust enrichment. The RTC noted, first, that the incorporators of TFRC and respondent are composed of the same persons. Second, it noted that respondent failed to act on its obligation to pay despite several demands from petitioner. Thus, the RTC ruled that foreclosure was petitioner's proper remedy, citing

[8] Exhibits for the defendants in Civil Case No. 6665, pp. 16-35.

[9] *Rollo*, pp. 116-120.

[10] *Id.* at 121-123.

[11] Records, pp. 1-8.

[12] *Id.* at 44-54.

the case of *Valmonte v. Court of Appeals*,[13] which held that "[t]he only condition the law requires in extrajudicial foreclosure is that the loan is already due and demandable and there was failure on the part of the mortgagor to pay the mortgage debt." Lastly, the RTC also noted that there was no merit to respondent's claim that the mortgage it signed was void for being irregular.[14]

Not satisfied with the above RTC Decision, respondent appealed to the CA.[15] The issues respondent raised were simplified by the appellate court as follows:

1. Whether or not the plaintiff-appellant and Trans-Filipinas Realty Corporation have separate and distinct personality from each other.

2. Whether or not it was proper for defendant-appellee bank to have merged and consolidated the respective loan accounts of plaintiff-appellant and Trans-Filipinas Realty Corporation, as well as the mortgaged properties into a single loan account and single mortgage, respectively, when defendant-appellee bank extrajudicially foreclosed the properties of both corporations.[16]

On June 27, 2008, the CA promulgated the assailed Decision declaring the foreclosure proceedings with respect to respondent's properties null and void. The dispositive portion of the decision reads:

WHEREFORE, the Decision dated February 26, 2004 of the Regional Trial Court, 11th Judicial Region, Branch 23, General Santos City, in Civil Case No. 6665, is **REVERSED** and **SET ASIDE**. A new judgment is hereby **ENTERED** declaring the November 17, 1997 foreclosure proceedings **NULL** and **VOID**, with respect to the mortgaged properties of plaintiff-appellant QBRO Fishing Enterprises, Inc[.], *to wit*: TCT No. T-38759, TCT No. T-38760, TCT No. T-38761, TCT No. T-38762, TCT No. T-38763, TCT No. T-38764, TCT No. T-38765, TCT No. T-38766 and TCT No. T-38767. Furthermore, the *Ex-Officio* Sheriff of the Regional Trial Court of General Santos City is hereby **DIRECTED** to **ISSUE** an amended certificate of sale in the name of defendant-appellee China Banking Corporation, covering only the foreclosed properties of Trans-

[13] G.R. No. 41621, February 18, 1999, 303 SCRA 278, 293.

[14] *Rollo*, pp. 125-126.

[15] Records, p. 165.

[16] CA *rollo*, p. 114.

Filipinas Corporation, *to wit*: TCT No. T-34226 and TCT No. T-34227. Defendant-appellee China Banking Corporation's counterclaim before the trial court is hereby **DISMISSED**. No pronouncement as to costs.

SO ORDERED.[17]

The CA ruled that respondent and TFRC are admittedly sister companies, having the same set of Board of Directors. However, it found that there was no allegation that their separate corporate entities were being used to defeat public convenience, justify wrong, protect fraud, or defend crime to disregard the separate juridical personality of a corporation. Moreover, the CA held that the fact that respondent agreed to mortgage its properties to secure the obligation of TFRC was not a valid reason for petitioner to consolidate the two loans and the real estate mortgages. The CA concluded that the foreclosure proceedings with respect to respondent's properties are null and void considering that there are two separate loans by different corporations.

Petitioner filed a motion for reconsideration.[18] In a Resolution dated September 5, 2008, the CA denied the motion.

Petitioner elevated the case to us via the present petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

Petitioner argues that:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO APPRECIATE THE FACT THAT THERE WAS ACTUALLY ONLY ONE (1) LOAN OBLIGATION BY TRANS-FILIPINAS REALTY CORPORATION, PAYMENT OF WHICH WAS PARTLY SECURED BY THE MORTGAGE OF QBRO FISHING ENTERPRISES, AS THIRD-PARTY MORTGAGOR, THUS, THERE BEING ONLY ONE OBLIGATION, ALBEIT SECURED BY TWO (2) MORTGAGES, ONLY ONE (1) FORECLOSURE THEREOF WAS LEGALLY SUFFICIENT.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ITS RULING WHEN IT FAILED TO APPRECIATE THE CORRECTNESS OF THE FORECLOSURE OF THE TWO (2)

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[17] *Rollo*, pp. 23-24.

[18] CA *rollo*, pp. 143-156.

MORTGAGES WHERE BOTH MORTGAGORS WERE SPECIFICALLY NAMED AND IMPLEADED AS RESPONDENTS IN THE PETITION FOR EXTRA-JUDICIAL FORECLOSURE.[19]

The two issues to be resolved are: *first*, whether TFRC and respondent actually had two separate loan accounts and *second*, whether the petition for extrajudicial foreclosure is valid with respect to the mortgaged properties of respondent.

Petitioner argues that there was only one loan extended to TFRC and that respondent never had a credit line with it. It further contends that the CA erred in venturing into a non-issue, that is, the separate juridical personality of respondent and TFRC. Petitioner stresses that it in fact recognized that the two corporations were distinct corporate entities; otherwise, it would not have required prior authorization from respondent's board for the use of respondent's properties as security to increase TFRC's loan. Petitioner insists that respondent's role in the transaction was only as a third-party mortgagor. Hence, the single petition for extrajudicial foreclosure was valid.

On the other hand, respondent submits that the issues raised in the petition are a mere rehash of the issues which were already passed upon and discussed by the CA. Likewise, it points out that the issue of whether there was only a single loan account and not two is a question of fact as it involves the review of the evidence adduced. Such factual issue may not be raised in the present petition.

The petition is meritorious.

The principle is well-established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court.[20]

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[19] *Rollo*, p. 41.

[20] *McKee v. Intermediate Appellate Court*, G.R. Nos. 68102-03, July 16, 1992, 211 SCRA 517, 537.

The foregoing rule, however, is not without exceptions. Findings of fact of the trial court and the CA may be set aside when such findings are not supported by the evidence or where the lower courts' conclusions are based on a misapprehension of facts.[21]

Here, we find that while there were indeed two different corporations that executed two separate mortgages, there was in fact only one loan account, that of TFRC. Respondent failed to offer evidence to prove that it had a separate loan account with petitioner. What is clear from the records is that respondent's Board of Directors specifically authorized the mortgage of its properties to serve as additional security to accommodate TFRC's request for the increase in its credit line. This is evidenced by the minutes of the Special Meeting of respondent's Board of Directors dated May 10, 1996, to wit:

> RESOLVED as it is hereby resolved that the corporation be authorized and empowered to mortgage and encumber its parcel of land:
>
> x x x x x x x x x
>
> of the Registry of Deeds of General Santos City **for the purpose of securing the obligations incurred or which may hereafter be incurred by TRANS-FILIPINAS REALTY CORPORATION with China Banking Corporation** irrespective of the amount including any renewals, extensions and/or roll-overs thereof.[22] [Emphasis ours.]

Undeniably, the real estate mortgage executed by respondent in favor of petitioner was intended to serve as additional security to accommodate the request of TFRC. Likewise, we note that petitioner's Executive Committee held a meeting on May 24, 1996, approving the loan requested by TFRC using the properties of respondent as collateral. A reading of the excerpts of the meeting further supports the contention of petitioner that there was only one obligation, thus:

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[21] *Id.*

[22] *Rollo,* pp. 95-97.

Acting on a memorandum dated March 25, 1996, the Committee, upon motion duly made and seconded, approved the following credit facilities in favor of TFR [Trans-Filipinas Realty Corp.]:

A. Seven-year term loan —— ₱20,000,000.00

x x x x x x x x x

B. Loan Line — ₱14,500,000.00

x x x x x x x x x

under the following joint terms and conditions:

1. **Real Estate Mortgage for 34.5 Million shall be executed by QBRO Fishing Enterprises, Inc. (QFE) for the account of TFR on nine lots** totalling 3,870 sq.m. at I. Santiago Blvd., General Santos City under TCT Nos. T-38759 to T-38767, inclusive, with a total appraised value of ₱58.050 Million and loan value of (70%) ₱34.83 Million per appraisal report dated March 22, 1996.

x x x x x x x x x[23] [Emphasis ours.]

As can be gleaned from the foregoing, there was indeed only one loan account with petitioner. It is also clear from the records that respondent does not have a separate credit line. When respondent mortgaged its properties described under TCT Nos. T-38759 to T-38767, inclusive, as security for the increase in the loan of TFRC, it bound itself as a third-party mortgagor.

It has been held that third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.[24] The fact that the loans were solely for the benefit of TFRC would not invalidate the mortgage with respect to respondent's property as long as valid consent was given. Thus, when respondent executed the real estate mortgage over its properties, such properties thereby secured the performance of the principal obligation notwithstanding the fact that respondent itself had not assumed any liability for the debt of TFRC.

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

[24] *Vda. de Jayme v. Court of Appeals*, G.R. No. 128669, October 4, 2002, 390 SCRA 380, 389, citing Article 2085 of the Civil Code.

We also note that on December 19, 1998, Armando Cesar Reyes, as President and General Manager of TFRC and respondent, wrote to petitioner requesting for an extension of the redemption period.[25] This is a clear indication that respondent recognized the rights of petitioner as mortgagee over the properties that were already foreclosed and sold to the highest bidder. Respondent, therefore, is already estopped from questioning the validity of the foreclosure sale by raising issue on whether its mortgaged properties should answer for the loan indebtedness of a separate corporate entity.[26]

All told, we find that the CA overlooked and misappreciated facts and circumstances on record clearly showing that respondent's role in the transaction was that of a third-party mortgagor who allowed its properties to be used as additional security for the loans obtained by TFRC. Considering that the extrajudicial foreclosure proceedings initiated by petitioner pertain to only one loan account, we uphold the validity of the foreclosure sale which included the properties of respondent as third-party mortgagor.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The June 27, 2008 Decision and the September 5, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 00226 are hereby **REVERSED and SET ASIDE**. The February 26, 2004 Decision of the Regional Trial Court, Branch 23, of General Santos City in Civil Case No. 6665 is **REINSTATED**.

No costs.

SO ORDERED.

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

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[25] *Rollo,* p. 124.

[26] See *Valmonte v. Court of Appeals, supra* note 13, at 290.

SECOND DIVISION

[G.R. No. 185463. February 22, 2012]

TEEKAY SHIPPING PHILS., INC., and/or TEEKAY SHIPPING CANADA, *petitioners, vs.* **RAMIER C. CONCHA,** *respondent.*

SYLLABUS

1. CIVIL LAW; PRESCRIPTION OF ACTIONS; WHEN ONE IS ARBITRARILY AND UNJUSTLY DEPRIVED OF HIS JOB OR MEANS OF LIVELIHOOD, THE ACTION INSTITUTED TO CONTEST THE LEGALITY OF ONE'S DISMISSAL FROM EMPLOYMENT CONSTITUTES AN ACTION PREDICATED UPON AN INJURY TO THE RIGHTS OF THE PLAINTIFF WHICH MUST BE BROUGHT WITHIN FOUR YEARS.— In *Callanta v. Carnation Philippines, Inc.*, this Court ruled that actions based on injury to rights prescribe in four (4) years under Article 1146 of the Civil Code rather than three (3) years as provided for the Labor Code. An action for damages involving a plaintiff separated from his employment for alleged unjustifiable causes is one for "injury to the rights of the plaintiff, and must be brought within four (4) years." Private respondent had gone to the Labor Arbiter on a charge, fundamentally, of illegal dismissal, of which his money claims form but an incidental part. Essentially, his complaint is one for "injury to rights" arising from his forced disembarkation. Thus, Article 1146 is the applicable provision. It provides: Art. 1146. The following actions must be instituted within four years: (1) Upon an injury to the rights of the plaintiff; (2) Upon a quasi-delict; It is a principle in American jurisprudence which, undoubtedly, is well-recognized in this jurisdiction that one's employment, profession, trade or calling is a "property right," and the wrongful interference therewith is an actionable wrong. The right is considered to be property within the protection of a constitutional guaranty of due process of law. Clearly then, when one is arbitrarily and unjustly deprived of his job or means of livelihood, the action instituted to contest the legality of one's dismissal from employment constitutes, in essence, an

action predicated "upon an injury to the rights of the plaintiff," as contemplated under Art. 1146 of the New Civil Code, which must be brought within four (4) years.

2. ID.; ID.; THE FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL BEFORE THE ARBITRATION BRANCH OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) TOLLED THE RUNNING OF THE PRESCRIPTIVE PERIOD FOR MONEY CLAIMS.— As in other causes of action, the prescriptive period for money claims is subject to interruption, and in view of the absence of an equivalent Labor Code provision for determining when said period may be interrupted, Article 1155 of the Civil Code is applicable. It states that: Article 1155. The prescription of actions is interrupted when they are filed before the Court, when there is written extra-judicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor. Records reveal that after his disembarkation from the vessel "MV Kyushu Spirit" on 6 December 2000, private respondent filed on 28 May 2001 a complaint for illegal dismissal before the Arbitration Branch of the NLRC. His complaint was dismissed by the Labor Arbiter on the same date. In accordance with Section 16, Rule V of the NLRC Rules of Procedure, private respondent can re-file a case in the Arbitration Branch of origin. Since the filing of his first complaint on 28 May 2001 tolled the running of the period of prescription, both the NLRC and the CA were correct in ruling that the filing of respondent's second complaint with money claims on 13 December 2004 was clearly filed on time.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Dela Cruz Entero & Associates for respondent.

D E C I S I O N

PEREZ, *J.*:

Petitioners Teekay Shipping Philippines, Inc., and/or Teekay Shipping Canada, Ltd. (hereinafter referred to as petitioners)

seek the reversal of the 3 July 2008 Decision[1] and 20 November 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. Sp. No. 98667. The CA ruled that "the NLRC acted without grave abuse of discretion in ordering the remand of the case to the Arbitration Branch for further proceedings as the case has not yet prescribed."[3]

Culled from the records are the following undisputed facts:

On 9 November 2000, Ramier C. Concha (hereinafter referred to as private respondent) was hired as an Able Seaman by petitioners under an employment contract[4] for a period of eight (8) months with a monthly salary of $535.00. He was deployed to Canada on 22 November 2000.

On a windy morning of 23 November 2000, while he was removing rusty fragments during his deck assignment, a foreign particle accidentally entered his left eye. When his eye became reddish and his vision became blurred, the designated medical officer on board administered first aid treatment. Since there was no sign of improvement, respondent requested for medical check-up in a hospital.

On 3 December 2000, private respondent was initially admitted at Karanatha Hospital in Australia and was diagnosed with Left Eye Acute Iritis. He was thereafter referred to the Royal Perth Hospital, West Australia and was diagnosed to be suffering from Left Eye Iritis (Granulomatous).

On 6 December 2000, after being deployed only for less than a month, private respondent was repatriated to the Philippines. Upon his arrival, private respondent was referred

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[1] Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Magdangal M. De Leon and Normandie B. Pizarro, concurring. *Rollo*, pp 27-33.

[2] *Id.* at 35-36.

[3] *Id.* at 33.

[4] *Id.* at 51.

to the Metropolitan Hospital. He underwent medical treatment until February 2001. As he had not been assessed whether he was fit to work as a seafarer, he filed a complaint for illegal dismissal with money claims with the Arbitration Branch of the National Labor Relations Commission (NLRC) on 28 May 2001.[5] The complaint, however, was dismissed without prejudice by the Labor Arbiter on same date.

On 13 December 2004, private respondent filed another complaint[6] for illegal dismissal before the Arbitration Branch of the NLRC. In his complaint, he sought to recover disability benefits, damages and attorney's fees. He likewise prayed for the payment of wages pertaining to the unexpired portion of his contract.

Petitioners moved to dismiss the complaint for being time-barred. Relying on Article 291 of the Labor Code, they maintained that all money claims premised on, or arising from one's employment should be brought within three (3) years from the time the cause of action accrued.

In an Order[7] dated 28 February 2005, the Labor Arbiter dismissed the complaint on the ground of prescription.

Aggrieved, private respondent on 11 April 2005 filed an appeal[8] to the NLRC arguing that the Labor Arbiter erred in dismissing his complaint and in denying him due process by not giving him the opportunity to present evidence against petitioners.

On 28 November 2006, the NLRC issued a Resolution[9] setting aside the 28 February 2005 Order of the Labor Arbiter. The NLRC, in effect, reinstated the case and ordered the Labor Arbiter of origin to conduct further proceedings.

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[5] CA *rollo*, pp. 3-4.

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

[7] *Id.* at 33.

[8] *Id.* at 34-49.

[9] *Rollo*, pp. 53-57.

Petitioners filed a Motion for Reconsideration but this was denied by the NLRC in an Order[10] dated 31 January 2007.

Petitioners assailed the 28 November 2006 and 31 January 2007 Resolutions of the NLRC before the CA.

On 3 July 2008, the CA promulgated a decision dismissing their petition. The motion for reconsideration filed by petitioners on 25 July 2008 was denied in a Resolution dated 20 November 2008.

Hence, this petition.

ISSUE

Whether or not the CA erred in ruling that private respondent's claims have not yet prescribed.

OUR RULING

The appellate court is correct.

We find the instant petition bereft of merit.

Petitioners contend that the CA unjustifiably turned a blind eye to pertinent existing laws, contract and prevailing jurisprudence. They insist that seafarers are contractual employees whose rights and obligations are governed primarily by the POEA Standard Employment Contract for Filipino Seamen, the Rules and Regulations Governing Overseas Employment, and more importantly, Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995.

Citing Section 30 of the POEA Standard Employment Contract, they maintained that all claims arising therefrom prescribes in three (3) years.[11]

Petitioners argue that since the aforesaid provision specifically set the prescription to three (3) years, the period provided under

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

[11] Section 30. All claims arising from this contract shall be made within three (3) years from the date the cause of action arises, otherwise, the same shall be barred.

Article 1146 of the Civil Code cannot be made to apply. They insist that private respondent's cause of action even if principally anchored on his alleged illegal dismissal clearly prescribed in three (3) years under the aforesaid provision.

Petitioners contend that even if private respondent's claims are well-founded, the latter's cause of action accrued on or before 6 December 2000. Thus, his complaint should have been instituted within three (3) years from 6 December 2000 or before 6 December 2003. They further contend that even assuming that the running of the period of prescription began only on 28 May 2001, the date when private respondent's first complaint was dismissed without prejudice, his claims would have prescribed on 28 May 2004. Since private respondent filed his complaint only on 13 December 2004, the same had clearly prescribed.[12]

The dispute is the period of prescription of action for illegal dismissal. It will be noticed that in their Motion to Dismiss before the NLRC, petitioners allege that the prescriptive period to be applied should be three (3) years from the time the cause of action accrued in accordance with the Labor Code. However, in their petition before this Court, they changed their stand and alleged that the applicable provision should be that which is stated in the POEA Standard Employment Contract for Filipino Seamen because seafarers are not regular employees and as such, are not covered by the Labor Code.

In *Callanta v. Carnation Philippines, Inc.*,[13] this Court ruled that actions based on injury to rights prescribe in four (4) years under Article 1146 of the Civil Code rather than three (3) years as provided for the Labor Code. An action for damages involving a plaintiff separated from his employment for alleged unjustifiable causes is one for "injury to the rights of the plaintiff, and must be brought within four (4) years."[14] Private respondent had

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[12] *Rollo*, p. 21.

[13] 229 Phil. 279, 288 (1986).

[14] *Valencia v. Cebu Portland Cement, et al.*, 106 Phils. 732, 735 (1959).

gone to the Labor Arbiter on a charge, fundamentally, of illegal dismissal, of which his money claims form but an incidental part. Essentially, his complaint is one for "injury to rights" arising from his forced disembarkation.[15] Thus, Article 1146 is the applicable provision. It provides:

Art. 1146. The following actions must be instituted within four years:

(1) Upon an injury to the rights of the plaintiff;
(2) Upon a quasi-delict;

It is a principle in American jurisprudence which, undoubtedly, is well-recognized in this jurisdiction that one's employment, profession, trade or calling is a "property right," and the wrongful interference therewith is an actionable wrong.[16] The right is considered to be property within the protection of a constitutional guaranty of due process of law.[17] Clearly then, when one is arbitrarily and unjustly deprived of his job or means of livelihood, the action instituted to contest the legality of one's dismissal from employment constitutes, in essence, an action predicated "upon an injury to the rights of the plaintiff," as contemplated under Art. 1146 of the New Civil Code, which must be brought within four (4) years.[18]

As in other causes of action, the prescriptive period for money claims is subject to interruption, and in view of the absence of an equivalent Labor Code provision for determining when said period may be interrupted, Article 1155 of the Civil Code is applicable. It states that:

Article 1155. The prescription of actions is interrupted when they are filed before the Court, when there is written extra-

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[15] *PAN-FIL Co., Inc. v. Agujar, et al.*, 249 Phil. 267, 273-274 (1988).

[16] *Callanta v. Carnation Philippines, Inc.*, *supra* note 14 at 288-289 citing *Carter v. Knapp Motor Co.*, 11 So. 2d 383, 384, 243 Ala. 600, 144 A.L.R. 1177.

[17] *Id.* at 289 citing FERNANDO, *Constitution of the Philippines*, Second Edition [1977] pp. 512 -513.

[18] *Id.*

judicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

Records reveal that after his disembarkation from the vessel "MV Kyushu Spirit" on 6 December 2000, private respondent filed on 28 May 2001 a complaint for illegal dismissal before the Arbitration Branch of the NLRC. His complaint was dismissed by the Labor Arbiter on the same date. In accordance with Section 16, Rule V of the NLRC Rules of Procedure,[19] private respondent can re-file a case in the Arbitration Branch of origin. Since the filing of his first complaint on 28 May 2001 tolled the running of the period of prescription, both the NLRC and the CA were correct in ruling that the filing of respondent's second complaint with money claims on 13 December 2004 was clearly filed on time.

The determination of the amount of claims or benefits to which private respondent may be entitled requires factual inquiry that devolves upon the Labor Arbiter. Considering that the case was dismissed through a minute resolution, the case, as correctly ruled by the NLRC and affirmed by the CA, should be referred back to the Arbitration Branch of NLRC for the reception of evidence.

WHEREFORE, the instant petition for review is **DENIED** and the assailed Decision dated 3 July 2008 of the Court of Appeals is **AFFIRMED** *in toto*.

Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Sereno,* and *Reyes, JJ.,* concur.

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[19] Section 16. *Revival And Re-Opening Or Re-Filing Of Dismissed Case*. - A party may file a motion to revive or re-open a case dismissed without prejudice, within ten (10) calendar days from receipt of notice of the order dismissing the same; otherwise, his only remedy shall be to re-file the case in the arbitration branch of origin.

[*] Designated additional member per Special Order No. 1195 dated 15 February 2012.

THIRD DIVISION

[G.R. No. 186983. February 22, 2012]

MA. LOURDES S. FLORENDO, *petitioner, vs.* **PHILAM PLANS, INC., PERLA ABCEDE and MA. CELESTE ABCEDE,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; INSURANCE; THE RESPONSIBILITY FOR PREPARING THE PENSION PLAN APPLICATION BELONGS TO THE INSURED.— Lourdes insists that Manuel had concealed nothing since Perla, the soliciting agent, knew that Manuel had a pacemaker implanted on his chest in the 70s or about 20 years before he signed up for the pension plan. But by its tenor, the responsibility for preparing the application belonged to Manuel. Nothing in it implies that someone else may provide the information that Philam Plans needed. Manuel cannot sign the application and disown the responsibility for having it filled up. If he furnished Perla the needed information and delegated to her the filling up of the application, then she acted on his instruction, not on Philam Plans' instruction.

2. ID.; ID.; IN SIGNING THE PENSION PLAN APPLICATION, THE INSURED CERTIFIED THAT HE WROTE ALL THE INFORMATION STATED IN IT OR HAD SOMEONE DO IT UNDER HIS DIRECTION.— Lourdes contends that the mere fact that Manuel signed the application in blank and let Perla fill in the required details did not make her his agent and bind him to her concealment of his true state of health. Since there is no evidence of collusion between them, Perla's fault must be considered solely her own and cannot prejudice Manuel. But Manuel forgot that in signing the pension plan application, he certified that he wrote all the information stated in it or had someone do it under his direction. x x x. Assuming that it was Perla who filled up the application form, Manuel is still bound by what it contains since he certified that he authorized her action. Philam Plans had every right to act on the faith of that certification.

3. ID.; ID.; THE INSURED PERSON IS EXPECTED TO READ EVERY DOCUMENT, ESPECIALLY IF IT CREATES RIGHTS AND OBLIGATIONS AFFECTING HIM, BEFORE SIGNING THE SAME.— Lourdes could not seek comfort from her claim that Perla had assured Manuel that the state of his health would not hinder the approval of his application and that what is written on his application made no difference to the insurance company. But, indubitably, Manuel was made aware when he signed the pension plan application that, in granting the same, Philam Plans and Philam Life were acting on the truth of the representations contained in that application. x x x. As the Court said in *New Life Enterprises v. Court of Appeals*: It may be true that x x x insured persons may accept policies without reading them, and that this is not negligence *per se*. But, this is not without any exception. It is and was incumbent upon petitioner Sy to read the insurance contracts, and this can be reasonably expected of him considering that he has been a businessman since 1965 and the contract concerns indemnity in case of loss in his money-making trade of which important consideration he could not have been unaware as it was precisely the reason for his procuring the same. The same may be said of Manuel, a civil engineer and manager of a construction company. He could be expected to know that one must read every document, especially if it creates rights and obligations affecting him, before signing the same. Manuel is not unschooled that the Court must come to his succor. It could reasonably be expected that he would not trifle with something that would provide additional financial security to him and to his wife in his twilight years.

4. ID.; ID.; INCONTESTABILITY PERIOD; INCONTESTABILITY CLAUSE; INSURER IS PRECLUDED FROM DISOWNING LIABILITY UNDER THE POLICY IT ISSUED ON THE GROUND OF CONCEALMENT OR MISREPRESENTATION REGARDING THE HEALTH OF THE INSURED AFTER A YEAR OF ITS ISSUANCE; ONE-YEAR INCONTESTABILITY PERIOD HAS NOT YET SET IN.— In a final attempt to defend her claim for benefits under Manuel's pension plan, Lourdes points out that any defect or insufficiency in the information provided by his pension plan application should be deemed waived after the same has been approved,

the policy has been issued, and the premiums have been collected. The Court cannot agree. The comprehensive pension plan that Philam Plans issued contains a one-year incontestability period. x x x The x x x incontestability clause precludes the insurer from disowning liability under the policy it issued on the ground of concealment or misrepresentation regarding the health of the insured after a year of its issuance. Since Manuel died on the eleventh month following the issuance of his plan, the one year incontestability period has not yet set in. Consequently, Philam Plans was not barred from questioning Lourdes' entitlement to the benefits of her husband's pension plan.

APPEARANCES OF COUNSEL

Bunag & Uy Law Offices for petitioner.
Redentor A. Salonga for Perla & Ma. Celeste Abcede.
Herrera Teehankee & Cabrera Law Office for Philam Plans, Inc.

D E C I S I O N

ABAD, *J.*:

This case is about an insured's alleged concealment in his pension plan application of his true state of health and its effect on the life insurance portion of that plan in case of death.

The Facts and the Case

On October 23, 1997 Manuel Florendo filed an application for comprehensive pension plan with respondent Philam Plans, Inc. (Philam Plans) after some convincing by respondent Perla Abcede. The plan had a pre-need price of ₱997,050.00, payable in 10 years, and had a maturity value of ₱2,890,000.00 after 20 years.[1] Manuel signed the application and left to Perla the task of supplying the information needed in the application.[2]

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[1] *Rollo*, pp. 285, 326.

[2] *Id.* at 285.

Respondent Ma. Celeste Abcede, Perla's daughter, signed the application as sales counselor.[3]

Aside from pension benefits, the comprehensive pension plan also provided life insurance coverage to Florendo.[4] This was covered by a Group Master Policy that Philippine American Life Insurance Company (Philam Life) issued to Philam Plans.[5] Under the master policy, Philam Life was to automatically provide life insurance coverage, including accidental death, to all who signed up for Philam Plans' comprehensive pension plan.[6] If the plan holder died before the maturity of the plan, his beneficiary was to instead receive the proceeds of the life insurance, equivalent to the pre-need price. Further, the life insurance was to take care of any unpaid premium until the pension plan matured, entitling the beneficiary to the maturity value of the pension plan.[7]

On October 30, 1997 Philam Plans issued Pension Plan Agreement PP43005584[8] to Manuel, with petitioner Ma. Lourdes S. Florendo, his wife, as beneficiary. In time, Manuel paid his quarterly premiums.[9]

Eleven months later or on September 15, 1998, Manuel died of blood poisoning. Subsequently, Lourdes filed a claim with Philam Plans for the payment of the benefits under her husband's plan.[10] Because Manuel died before his pension plan matured and his wife was to get only the benefits of his life insurance, Philam Plans forwarded her claim to Philam Life.[11]

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[3] Records, p. 225 (dorsal side).

[4] *Rollo*, pp. 285, 324.

[5] TSN, May 6, 2003, p. 879.

[6] *Id.* at 894; records, p. 226.

[7] *Id.* at 888-895.

[8] Records, pp. 9-13.

[9] *Id.* at 174-177.

[10] *Rollo*, p. 286.

[11] Records, pp. 227-232.

On May 3, 1999 Philam Plans wrote Lourdes a letter,[12] declining her claim. Philam Life found that Manuel was on maintenance medicine for his heart and had an implanted pacemaker. Further, he suffered from diabetes mellitus and was taking insulin. Lourdes renewed her demand for payment under the plan[13] but Philam Plans rejected it,[14] prompting her to file the present action against the pension plan company before the Regional Trial Court (RTC) of Quezon City.[15]

On March 30, 2006 the RTC rendered judgment,[16] ordering Philam Plans, Perla and Ma. Celeste, solidarily, to pay Lourdes all the benefits from her husband's pension plan, namely: ₱997,050.00, the proceeds of his term insurance, and ₱2,890,000.00 lump sum pension benefit upon maturity of his plan; ₱100,000.00 as moral damages; and to pay the costs of the suit. The RTC ruled that Manuel was not guilty of concealing the state of his health from his pension plan application.

On December 18, 2007 the Court of Appeals (CA) reversed the RTC decision,[17] holding that insurance policies are traditionally contracts *uberrimae fidae* or contracts of utmost good faith. As such, it required Manuel to disclose to Philam Plans conditions affecting the risk of which he was aware or material facts that he knew or ought to know.[18]

Issues Presented

The issues presented in this case are:

1. Whether or not the CA erred in finding Manuel guilty of concealing his illness when he kept blank and did not answer

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[12] *Rollo*, p. 110.

[13] *Id.* at 111-112.

[14] Records, p. 246.

[15] *Rollo*, pp. 93-96.

[16] Records, pp. 363-399.

[17] Penned by Associate Justice Monina Arevalo-Zeñarosa with Associate Justices Conrado M. Vasquez, Jr. and Edgardo F. Sundiam, concurring; *rollo*, pp. 38-55.

[18] *Id.* at 51.

questions in his pension plan application regarding the ailments he suffered from;

2. Whether or not the CA erred in holding that Manuel was bound by the failure of respondents Perla and Ma. Celeste to declare the condition of Manuel's health in the pension plan application; and

3. Whether or not the CA erred in finding that Philam Plans' approval of Manuel's pension plan application and acceptance of his premium payments precluded it from denying Lourdes' claim.

Rulings of the Court

One. Lourdes points out that, seeing the unfilled spaces in Manuel's pension plan application relating to his medical history, Philam Plans should have returned it to him for completion. Since Philam Plans chose to approve the application just as it was, it cannot cry concealment on Manuel's part. Further, Lourdes adds that Philam Plans never queried Manuel directly regarding the state of his health. Consequently, it could not blame him for not mentioning it.[19]

But Lourdes is shifting to Philam Plans the burden of putting on the pension plan application the true state of Manuel's health. She forgets that since Philam Plans waived medical examination for Manuel, it had to rely largely on his stating the truth regarding his health in his application. For, after all, he knew more than anyone that he had been under treatment for heart condition and diabetes for more than five years preceding his submission of that application. But he kept those crucial facts from Philam Plans.

Besides, when Manuel signed the pension plan application, he adopted as his own the written representations and declarations embodied in it. It is clear from these representations that he concealed his chronic heart ailment and diabetes from Philam

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[19] *Id.* at 292, 294, 296-297.

Plans. The pertinent portion of his representations and declarations read as follows:

> I hereby represent and declare to the best of my knowledge that:
>
> x x x x x x x x x
>
> **(c) I have never been treated for heart condition**, high blood pressure, cancer, **diabetes**, lung, kidney or stomach disorder or any other physical impairment **in the last five years.**
>
> **(d) I am in good health and physical condition.**
>
> **If your answer to any of the statements above reveal otherwise,** please give details in the space provided for:
>
> Date of confinement : _____
> Name of Hospital or Clinic : _____
> Name of Attending Physician : _____
> Findings : _____
> Others: (Please specify) : _____
>
> x x x x x x x x x.[20] (Emphasis supplied)

Since Manuel signed the application without filling in the details regarding his continuing treatments for heart condition and diabetes, the assumption is that he has never been treated for the said illnesses in the last five years preceding his application. This is implicit from the phrase "If your answer to any of the statements above (specifically, the statement: I have never been treated for heart condition or diabetes) reveal otherwise, please give details in the space provided for." But this is untrue since he had been on "Coumadin," a treatment for venous thrombosis,[21] and insulin, a drug used in the treatment of diabetes mellitus, at that time.[22]

Lourdes insists that Manuel had concealed nothing since Perla, the soliciting agent, knew that Manuel had a pacemaker implanted on his chest in the 70s or about 20 years before he signed up

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[20] *Supra* note 3.

[21] Mims & Mims Annual, 116th Ed., pp. 86-87.

[22] Webster's New World College Dictionary, Third Edition.

for the pension plan.[23] But by its tenor, the responsibility for preparing the application belonged to Manuel. Nothing in it implies that someone else may provide the information that Philam Plans needed. Manuel cannot sign the application and disown the responsibility for having it filled up. If he furnished Perla the needed information and delegated to her the filling up of the application, then she acted on his instruction, not on Philam Plans' instruction.

Lourdes next points out that it made no difference if Manuel failed to reveal the fact that he had a pacemaker implant in the early 70s since this did not fall within the five-year timeframe that the disclosure contemplated.[24] But a pacemaker is an electronic device implanted into the body and connected to the wall of the heart, designed to provide regular, mild, electric shock that stimulates the contraction of the heart muscles and restores normalcy to the heartbeat.[25] That Manuel still had his pacemaker when he applied for a pension plan in October 1997 is an admission that he remained under treatment for irregular heartbeat within five years preceding that application.

Besides, as already stated, Manuel had been taking medicine for his heart condition and diabetes when he submitted his pension plan application. These clearly fell within the five-year period. More, even if Perla's knowledge of Manuel's pacemaker may be applied to Philam Plans under the theory of imputed knowledge,[26] it is not claimed that Perla was aware of his two other afflictions that needed medical treatments. Pursuant to Section 27[27] of the Insurance Code, Manuel's concealment entitles Philam Plans to rescind its contract of insurance with him.

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[23] *Rollo*, pp. 285, 297-299.

[24] *Id.*

[25] *Supra* note 21, p. 968.

[26] Section 30 of the Insurance Code; see: *Sunace International Management Services, Inc. v. National Labor Relations Commission*, 515 Phil. 779, 787 (2006); *New Life Enterprises v. Court of Appeals*, G.R. No. 94071, March 31, 1992, 207 SCRA 669, 675.

[27] Section 27. A concealment whether intentional or unintentional entitles the injured party to rescind a contract of insurance.

Two. Lourdes contends that the mere fact that Manuel signed the application in blank and let Perla fill in the required details did not make her his agent and bind him to her concealment of his true state of health. Since there is no evidence of collusion between them, Perla's fault must be considered solely her own and cannot prejudice Manuel.[28]

But Manuel forgot that in signing the pension plan application, he certified that he wrote all the information stated in it or had someone do it under his direction. Thus:

APPLICATION FOR PENSION PLAN
(Comprehensive)

I hereby apply to purchase from **PHILAM PLANS, INC.** a Pension Plan Program described herein in accordance with the General Provisions set forth in this application and hereby **certify that the date and other information stated herein are written by me or under my direction.** x x x.[29] (Emphasis supplied)

Assuming that it was Perla who filled up the application form, Manuel is still bound by what it contains since he certified that he authorized her action. Philam Plans had every right to act on the faith of that certification.

Lourdes could not seek comfort from her claim that Perla had assured Manuel that the state of his health would not hinder the approval of his application and that what is written on his application made no difference to the insurance company. But, indubitably, Manuel was made aware when he signed the pension plan application that, in granting the same, Philam Plans and Philam Life were acting on the truth of the representations contained in that application. Thus:

DECLARATIONS AND REPRESENTATIONS

x x x x x x x x x

I agree that **the insurance coverage of this application is based on the truth of the foregoing representations** and is subject to

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[28] *Rollo*, pp. 308-311.

[29] Records, p. 171.

the provisions of the Group Life Insurance Policy issued by THE PHILIPPINE AMERICAN LIFE INSURANCE CO. to PHILAM PLANS, INC.[30] (Emphasis supplied)

As the Court said in *New Life Enterprises v. Court of Appeals*:[31]

> It may be true that x x x insured persons may accept policies without reading them, and that this is not negligence *per se*. But, this is not without any exception. It is and was incumbent upon petitioner Sy to read the insurance contracts, and this can be reasonably expected of him considering that he has been a businessman since 1965 and the contract concerns indemnity in case of loss in his money-making trade of which important consideration he could not have been unaware as it was precisely the reason for his procuring the same.[32]

The same may be said of Manuel, a civil engineer and manager of a construction company.[33] He could be expected to know that one must read every document, especially if it creates rights and obligations affecting him, before signing the same. Manuel is not unschooled that the Court must come to his succor. It could reasonably be expected that he would not trifle with something that would provide additional financial security to him and to his wife in his twilight years.

Three. In a final attempt to defend her claim for benefits under Manuel's pension plan, Lourdes points out that any defect or insufficiency in the information provided by his pension plan application should be deemed waived after the same has been approved, the policy has been issued, and the premiums have been collected. [34]

The Court cannot agree. The comprehensive pension plan that Philam Plans issued contains a one-year incontestability period. It states:

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[30] *Supra* note 3.

[31] *Supra* note 26.

[32] *Id.* at 676-677.

[33] TSN, October 28, 2002, p. 463.

[34] *Rollo*, pp. 294, 296-297.

VIII. INCONTESTABILITY

After this Agreement has remained in force for one (1) year, we can no longer contest for health reasons any claim for insurance under this Agreement, except for the reason that installment has not been paid (lapsed), or that you are not insurable at the time you bought this pension program by reason of age. If this Agreement lapses but is reinstated afterwards, the one (1) year contestability period shall start again on the date of approval of your request for reinstatement.[35]

The above incontestability clause precludes the insurer from disowning liability under the policy it issued on the ground of concealment or misrepresentation regarding the health of the insured after a year of its issuance.

Since Manuel died on the eleventh month following the issuance of his plan,[36] the one year incontestability period has not yet set in. Consequently, Philam Plans was not barred from questioning Lourdes' entitlement to the benefits of her husband's pension plan.

WHEREFORE, the Court **AFFIRMS** in its entirety the decision of the Court of Appeals in CA-G.R. CV 87085 dated December 18, 2007.

SO ORDERED.

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

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[35] Records, p. 173.

[36] *Rollo,* p. 286.

FIRST DIVISION

[G.R. No. 187122. February 22, 2012]

NEGROS SLASHERS, INC., RODOLFO C. ALVAREZ and VICENTE TAN, *petitioners, vs.* **ALVIN L. TENG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; THE COURT MAY RELAX THE RIGID APPLICATION OF THE RULES OF PROCEDURE TO AFFORD THE PARTIES THE OPPORTUNITY TO FULLY VENTILATE THEIR CASES ON THE MERITS.— [W]e rule that the CA did not commit a reversible error in giving due course to Teng's petition for *certiorari* although said petition was filed late. Ordinarily, rules of procedure are strictly enforced by courts in order to impart stability in the legal system. However, in not a few instances, we relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time honored principle that cases should be decided only after giving all the parties the chance to argue their causes and defenses. In that way, the ends of justice would be better served. For indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice x x x. Indeed the prevailing trend is to accord party litigants the amplest opportunity for the proper and just determination of their causes, free from the constraints of needless technicalities. Here, besides the fact that a denial of the recourse to the CA would serve more to perpetuate an injustice and violation of Teng's rights under our labor laws, we find that as correctly held by the CA, no intent to delay the administration of justice could be attributed to Teng. The CA therefore did not commit reversible error in excusing Teng's one-day delay in filing his motion for reconsideration and in giving due course to his petition for *certiorari*.

2. ID.; ACTIONS; FORUM SHOPPING; REQUISITES TO EXIST; DOCTRINE OF *RES JUDICATA*, NOT APPLICABLE.— For forum shopping to exist, it is necessary that (a) there be identity of parties or at least such parties that represent the same interests in both actions; (b) there be identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in one action will, regardless of which party is successful, amount to *res judicata* in the other action. Petitioners are correct as to the first two requisites of forum shopping. First, there is identity of parties involved: Negros Slashers Inc. and respondent Teng. Second, there is identity of rights asserted *i.e.*, the right of management to terminate employment and the right of an employee against illegal termination. However, the third requisite of forum shopping is missing in this case. Any judgment or ruling of the Office of the Commissioner of the MBA will **not** amount to *res judicata*.

3. ID.; ID.; ID.; *RES JUDICATA*; DEFINED; ELEMENTS; THE FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL WITH THE LABOR ARBITER, WHILE ARBITRATION PROCEEDINGS ARE STILL PENDING WITH THE OFFICE OF THE COMMISSIONER OF THE METROPOLITAN BASKETBALL ASSOCIATION (MBA), DOES NOT CONSTITUTE FORUM SHOPPING.— As defined in *Agustin v. Delos Santos*, *Res Judicata* is defined as "a matter adjudged; **a thing judicially acted upon or decided; a thing or matter settled by judgment**." According to the doctrine of *res judicata*, an existing final judgment or decree rendered on the merits, and without fraud or collusion, **by a court of competent jurisdiction**, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. To clarify, *res judicata* is defined in jurisprudence as to have four basic elements: (1) the judgment sought to bar the new action must be final; (2) the decision must have been

rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Here, although contractually authorized to settle disputes, the Office of the Commissioner of the MBA is not a court of competent jurisdiction as contemplated by law with respect to the application of the doctrine of *res judicata*. At best, the Office of the Commissioner of the MBA is a private mediator or go-between as agreed upon by team management and a player in the MBA Player's Contract of Employment. Any judgment that the Office of the Commissioner of the MBA may render will not result in a bar for seeking redress in other legal venues. Hence, respondent's action of filing the same complaint in the Regional Arbitration Branch of the NLRC does not constitute forum shopping.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE PENALTY TO BE IMPOSED TO THE ERRING EMPLOYEE MUST BE COMMENSURATE WITH THE ACT, CONDUCT OR OMISSION IMPUTED TO HIM AND MUST BE IMPOSED IN CONNECTION WITH THE DISCIPLINARY AUTHORITY OF THE EMPLOYER; IMPOSITION OF THE PENALTY OF DISMISSAL FOR VIOLATION OF TEAM RULES, UNJUSTIFIED.— As an employee of the Negros Slashers, Teng was expected to report for work regularly. Missing a team game is indeed a punishable offense. Untying of shoelaces when the game is not yet finished is also irresponsible and unprofessional. However, we agree with the Labor Arbiter that such isolated foolishness of an employee does not justify the extreme penalty of dismissal from service. Petitioners could have opted to impose a fine or suspension on Teng for his unacceptable conduct. Other forms of disciplinary action could also have been taken after the incident to impart on the team that such misconduct will not be tolerated. In *Sagales v. Rustan's Commercial Corporation*, this Court ruled: Truly, while the employer has the inherent right to discipline, including that of dismissing its employees, this prerogative is subject to the regulation by the State in the exercise of its police power. In this regard, it is a hornbook doctrine that **infractions committed by an employee should merit only the corresponding penalty demanded by the**

circumstance. The penalty must be commensurate with the act, conduct or omission imputed to the employee and must be imposed in connection with the disciplinary authority of the employer. In the case at bar, the penalty handed out by the petitioners was the ultimate penalty of dismissal. There was no warning or admonition for respondent's violation of team rules, only outright termination of his services for an act which could have been punished appropriately with a severe reprimand or suspension.

APPEARANCES OF COUNSEL

Roberto C. Leong for petitioners.
Ambray Castillo Law Firm for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* assailing the Decision[1] dated September 17, 2008 and Resolution[2] dated February 11, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 00817. The appellate court had reversed and set aside the September 10, 2004 Decision[3] and March 21, 2005 Resolution[4] of the National Labor Relations Commission (NLRC) and reinstated with modification the Decision[5] of the Labor Arbiter finding respondent to have been illegally dismissed.

The facts are undisputed.

Respondent Alvin Teng is a professional basketball player who started his career as such in the Philippine Basketball

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[1] *Rollo*, pp. 87-99. Penned by Associate Justice Francisco P. Acosta with Associate Justices Amy C. Lazaro-Javier and Edgardo L. Delos Santos, concurring.

[2] *Id.* at 100.

[3] *Id.* at 70-79.

[4] *Id.* at 80-81.

[5] *Id.* at 54-69.

Association and then later on played in the Metropolitan Basketball Association (MBA).

On February 4, 1999, Teng signed a 3-year contract[6] (which included a side contract and agreement for additional benefits and bonuses) with the Laguna Lakers. Before the expiration of his contract with the Laguna Lakers on December 31, 2001, the Lakers traded and/or transferred Teng to petitioner Negros Slashers, with the latter assuming the obligations of Laguna Lakers under Teng's unexpired contract, including the monthly salary of ₱250,000, ₱50,000 of which remained to be the obligation of the Laguna Lakers. On March 28, 2000, the management of the Laguna Lakers formally informed Teng of his transfer to the Negros Slashers.[7] Teng executed with the Negros Slashers the Player's Contract of Employment.[8]

On Game Number 4 of the MBA Championship Round for the year 2000 season, Teng had a below-par playing performance. Because of this, the coaching staff decided to pull him out of the game. Teng then sat on the bench, untied his shoelaces and donned his practice jersey. On the following game, Game Number 5 of the Championship Round, Teng called-in sick and did not play.

On November 21, 2000, Vicente Tan, Finance Head of Negros Slashers, wrote[9] Teng requiring him to explain in writing why no disciplinary action should be taken against him for his precipitated absence during the crucial Game 5 of the National Championship Round. He was further informed that a formal investigation would be conducted on November 28, 2000. The hearing, however, did not push through because Teng was absent on the said scheduled investigation. Hearing was rescheduled for December 11, 2000. On said date, the investigation proceeded,

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[6] CA *rollo*, pp. 53-55.

[7] *Id.* at 56.

[8] *Id.* at 96-99.

[9] *Id.* at 101.

attended by Teng's representatives, Atty. Arsenio Yulo and Atty. Jose Aspiras.[10] A subsequent meeting was also conducted attended by the management, coaching staff and players of the Negros Slashers team, wherein the team members and coaching staff unanimously expressed their sentiments against Teng and their opposition against the possibility of Teng joining back the team.[11]

On March 16, 2001, the management of Negros Slashers came up with a decision, and through its General Manager, petitioner Rodolfo Alvarez, wrote[12] Teng informing him of his termination from the team.

On July 28, 2001, Teng filed a complaint before the Office of the Commissioner of the MBA pursuant to the provision of the Uniform Players Contract which the parties had executed. Subsequently, on November 6, 2001, Teng also filed an illegal dismissal case with the Regional Arbitration Branch No. VI of the NLRC.[13]

On July 16, 2002, the Labor Arbiter issued a decision finding Teng's dismissal illegal and ordering petitioner Negros Slashers, Inc. to pay Teng ₱2,530,000 representing his unpaid salaries, separation pay and attorney's fees. The Labor Arbiter ruled that the penalty of dismissal was not justified since the grounds relied upon by petitioners did not constitute serious misconduct or willful disobedience or insubordination that would call for the extreme penalty of dismissal from service. The dispositive portion of the Labor Arbiter's decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainant illegal and respondents Negros Slashers, Inc. are hereby ordered to **PAY** complainant the total sum of **TWO MILLION FIVE HUNDRED THIRTY THOUSAND**

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[10] *Id.* at 104-109.

[11] *Id.* at 108-112.

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

[13] *Rollo*, pp. 45-46, 89; CA *rollo*, p. 186.

(₱2,530,000.00) PESOS representing complainant's unpaid salaries, separation pay and attorney's fee, the award to be deposited with this Office within ten (10) days from receipt of this Decision.

All other claims are hereby *DISMISSED* for lack of merit.

SO ORDERED.[14]

The case was then appealed to the NLRC. On September 10, 2004, the NLRC issued a Decision setting aside the July 16, 2002 Decision of the Labor Arbiter and entering a new one dismissing the complaint for being premature since the arbitration proceedings before the Commissioner of the MBA were still pending when Teng filed his complaint for illegal dismissal. The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the decision of the Executive Labor Arbiter *a quo* is hereby **REVERSED** and **SET ASIDE**. A new one is entered, dismissing the instant case for being premature.

SO ORDERED.[15]

Teng filed a motion for reconsideration, but it was denied for being filed beyond the ten-day reglementary period provided for in Section 15,[16] Rule VII of the NLRC Rules of Procedure.

Aggrieved, Teng filed a petition for *certiorari* with the CA assailing the NLRC Decision dated September 10, 2004 and the Resolution dated March 21, 2005 denying his motion for reconsideration.

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

[15] *Id.* at 78.

[16] Section 15. *Motions for Reconsideration*. - Motion for reconsideration of any decision/resolution/order of the Commission shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision/resolution/order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party, and provided further, that only one such motion from the same party shall be entertained.

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On September 17, 2008 the CA rendered the assailed Decision setting aside the September 10, 2004 Decision and March 21, 2005 Resolution of the NLRC and reinstating with modification the Labor Arbiter's Decision.

The CA reinstated the findings of the Labor Arbiter that Teng was illegally dismissed because the grounds relied upon by petitioners were not enough to merit the supreme penalty of dismissal. The CA held that there was no serious misconduct or willful disobedience or insubordination on Teng's part. On the issue of jurisdiction, the CA ruled that the Labor Arbiter had jurisdiction over the case notwithstanding the pendency of arbitration proceedings in the Office of the Commissioner of the MBA.

Petitioners sought reconsideration of the above ruling, but their motion was denied by the CA in a Resolution[17] dated February 11, 2009.

Petitioners now come to this Court assailing the Decision dated September 17, 2008 and Resolution dated February 11, 2009 of the CA.

Firstly, petitioners argue that respondent Teng and his counsel committed a blatant violation of the rule against forum shopping. Petitioners aver that on July 28, 2001, Teng filed a complaint before the MBA pursuant to the voluntary arbitration provision of the Uniform Players Contract he executed with Negros Slashers, Inc. During the pendency of said complaint, Teng filed another complaint for illegal dismissal with the Labor Arbiter. It is petitioners' position that Teng lied by certifying under oath that there is no similar case pending between him and Negros Slashers, Inc., when in fact, months before he had filed a complaint with the MBA alleging the same factual antecedents and raising the same issues.

Secondly, petitioners argue that the CA erred in ruling that Teng's offenses were just minor lapses and irresponsible action

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[17] *Rollo,* pp. 100-102.

not warranting the harsh penalty of dismissal. Petitioners allege that the CA paid scant attention to two very important pieces of evidence which would clearly show the gravity and seriousness of the offenses committed by Teng. Petitioners claim that these two documents, *i.e.*, the minutes of the meeting[18] of players, management, and coordinating staff, and a petition[19] by the players to the management not to allow Teng to come back to the team, would show that Teng should not have been treated as an ordinary working man who merely absented himself by feigning sickness when called upon to work. Petitioners argue that the nature of the work and team atmosphere should have been considered and given credence. By neglecting these two documents, the CA failed to appreciate the gravity of the misconduct committed by Teng and the effects it had on the basketball organization.

Petitioners also argue that respondent's petition for *certiorari* with the CA should have been dismissed outright because it was filed beyond the reglementary period. Petitioners point out that Teng received the NLRC Decision on October 15, 2004 and therefore had ten days[20] or until October 25, 2004 within which to file a motion for reconsideration. But he filed his motion for reconsideration only on October 26, 2004 and said motion was denied[21] on March 21, 2005 for being filed late. Thereafter he filed his petition for *certiorari*[22] with the CA on June 20, 2005. Petitioners contend that the petition for *certiorari* was filed beyond the period allowed by the Rules of Court because the 60-day period to file the petition for *certiorari* should have started to run from the receipt of the NLRC decision on October 15, 2004. And it should have expired on December 14, 2004 because it was as if no motion for reconsideration was

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[18] CA *rollo*, pp. 108-112.

[19] *Id.* at 113.

[20] Section 15, Rule VII of the NLRC Rules of Procedure, *supra* note 15.

[21] *Rollo*, p. 80.

[22] CA *rollo*, pp. 2-20.

filed in the NLRC. Further, petitioners argue that the CA could not take cognizance of the case because it is a settled rule that *certiorari* as a special civil action will not lie unless a motion for reconsideration is first filed before the NLRC to allow it an opportunity to correct its errors. In this case, since the motion for reconsideration was filed late, it should have been treated as if no motion for reconsideration was filed.

Teng, on the other hand, maintains that there is no violation of the rule against forum shopping. He submits that he indeed filed his complaint before the MBA as early as July 28, 2001. Unfortunately, for more than three months, the supposed voluntary arbitration failed to yield any result until the MBA itself was dissolved. It was only on November 2001, after exhausting the arbitration process, did he file his complaint before the Labor Arbiter. In other words, it was only after the MBA failed to come up with a resolution on the matter did he opt to seek legal redress elsewhere.

On the merits, Teng relies on the reasoning of the Labor Arbiter in finding that his alleged lapses and misconduct were too minor to justify the extreme penalty of dismissal from service. In large part, he quotes the Labor Arbiter's decision, and emphasizes the Labor Arbiter's statements that (1) loosening of the shoe laces and the donning of the practice jersey are not indicative of serious misconduct that would justify dismissal from employment; (2) it cannot be concluded that he merely feigned sickness when he informed the Coach of his inability to play during Game No. 5; and (3) there is no showing of any bad faith or ill motive on his part that would qualify his actions as serious, severe and grave as to warrant termination from service.

Teng also argues that the CA aptly clarified and explained the legal reason why the petition for *certiorari* was given due course despite some procedural lapses regarding the motion for reconsideration with the NLRC. Teng stresses that jurisprudence allows the relaxation of procedural rules even of the most mandatory character in the interest of substantial justice. In this particular case, justice and equity calls for the relaxation of

the reglementary period for filing a motion for reconsideration as well as the rule prohibiting the filing of a petition for *certiorari* without first filing a motion for reconsideration.

Simply put, the basic issues for our resolution are as follows: (1) whether the CA erred in giving due course to respondent Teng's petition for *certiorari* despite its late filing; (2) whether Teng violated the rule on forum shopping when he filed a complaint for illegal dismissal with the Regional Arbitration Branch of the NLRC while a similar complaint was pending in the Office of the Commissioner of the MBA; and (3) whether the CA erred in ruling that Teng's dismissal from the Negros Slashers Team was unjustified and too harsh considering his misconduct.

The petition is bereft of merit.

On the first issue raised by petitioners, we rule that the CA did not commit a reversible error in giving due course to Teng's petition for *certiorari* although said petition was filed late. Ordinarily, rules of procedure are strictly enforced by courts in order to impart stability in the legal system. However, in not a few instances, we relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time honored principle that cases should be decided only after giving all the parties the chance to argue their causes and defenses. In that way, the ends of justice would be better served. For indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.[23] In *Ong Lim Sing, Jr. v. FEB Leasing and Finance Corporation*,[24] we ruled:

Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both

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[23] *Republic Cement Corporation v. Guinmapang*, G.R. No. 168910, August 24, 2009, 596 SCRA 688, 695.

[24] G.R. No. 168115, June 8, 2007, 524 SCRA 333, 343, citing *Barnes v. Padilla*, G.R. No. 160753, June 28, 2005, 461 SCRA 533, 539.

the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice and equity. x x x

Indeed the prevailing trend is to accord party litigants the amplest opportunity for the proper and just determination of their causes, free from the constraints of needless technicalities.

Here, besides the fact that a denial of the recourse to the CA would serve more to perpetuate an injustice and violation of Teng's rights under our labor laws, we find that as correctly held by the CA, no intent to delay the administration of justice could be attributed to Teng. The CA therefore did not commit reversible error in excusing Teng's one-day delay in filing his motion for reconsideration and in giving due course to his petition for *certiorari*.

As regards the second issue, we likewise find no merit in petitioners' claim that respondent's act of filing a complaint with the Labor Arbiter while the same case was pending with the Office of the Commissioner of the MBA constituted forum shopping.

For forum shopping to exist, it is necessary that (a) there be identity of parties or at least such parties that represent the same interests in both actions; (b) there be identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in one action will, regardless of which party is successful, amount to *res judicata* in the other action.[25]

Petitioners are correct as to the first two requisites of forum shopping. First, there is identity of parties involved: Negros Slashers Inc. and respondent Teng. Second, there is identity of

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[25] *Korea Exchange Bank v. Gonzales*, G.R. Nos. 142286-87, April 15, 2005, 456 SCRA 224, 243, citing *Benedicto v. Court of Appeals*, G.R. No. 125359, September 4, 2001, 364 SCRA 334, 345.

rights asserted *i.e.*, the right of management to terminate employment and the right of an employee against illegal termination. However, the third requisite of forum shopping is missing in this case. Any judgment or ruling of the Office of the Commissioner of the MBA will **not** amount to *res judicata*. As defined in *Agustin v. Delos Santos*,[26]

> *Res Judicata* is defined as "a matter adjudged; **a thing judicially acted upon or decided; a thing or matter settled by judgment**." According to the doctrine of *res judicata*, an existing final judgment or decree rendered on the merits, and without fraud or collusion, **by a court of competent jurisdiction**, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. (Emphasis supplied.)

To clarify, *res judicata* is defined in jurisprudence as to have four basic elements: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.[27]

Here, although contractually authorized to settle disputes, the Office of the Commissioner of the MBA is not a court of competent jurisdiction as contemplated by law with respect to

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[26] G.R. No. 168139, January 20, 2009, 576 SCRA 576, 585, citing *Oropeza Marketing Corporation v. Allied Banking Corporation*, G.R. No. 129788, December 3, 2002, 393 SCRA 278, 285-286, quoting Black's Law Dictionary, 4th Ed. (1968) 1470, *Philippine National Bank v. Barreto*, 52 Phil. 818, 823-824 (1929), *Taganas v. Emuslan*, G.R. No.146980, September 2, 2003, 410 SCRA 237, 241-242.

[27] *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*, G.R. No. 167050, June 1, 2011, 650 SCRA 50, 57-58, citing *Oropeza Marketing Corporation v. Allied Banking Corporation*, *id.* at 287.

the application of the doctrine of *res judicata*. At best, the Office of the Commissioner of the MBA is a private mediator or go-between as agreed upon by team management and a player in the MBA Player's Contract of Employment.[28] Any judgment that the Office of the Commissioner of the MBA may render will not result in a bar for seeking redress in other legal venues. Hence, respondent's action of filing the same complaint in the Regional Arbitration Branch of the NLRC does not constitute forum shopping.

On the third issue, we find that the penalty of dismissal handed out against Teng was indeed too harsh.

We understand petitioners in asserting that a basketball organization is a "team-based" enterprise and that a harmonious working relationship among team players is essential to the success of the organization. We also take into account the petition of the other team members voicing out their desire to continue with the team without Teng. We note likewise the sentiments of the players and coaching staff during the meeting of February 4, 2001 stating how they felt when Teng "abandoned" them during a crucial Game Number 5 in the MBA championship round.

Petitioners rely heavily on the alleged effects of Teng's actions on the rest of the team. However, such reaction from team members is expected after losing a game, especially a championship game. It is also not unlikely that the team members looked for someone to blame after they lost the championship games and that Teng happened to be the closest target of the team's frustration and disappointment. But all these sentiments and emotions from Negros Slashers players and staff must not blur the eyes of the Court from objectively assessing Teng's infraction in order to determine whether the same constitutes just ground for dismissal. The incident in question should be clear: Teng had a below-par performance during Game Number 4 for which he was pulled out from the game, and then he untied his shoelaces and donned his practice jersey. In Game Number 5, he did not play.

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[28] *Rollo*, p. 47.

As an employee of the Negros Slashers, Teng was expected to report for work regularly. Missing a team game is indeed a punishable offense. Untying of shoelaces when the game is not yet finished is also irresponsible and unprofessional. However, we agree with the Labor Arbiter that such isolated foolishness of an employee does not justify the extreme penalty of dismissal from service. Petitioners could have opted to impose a fine or suspension on Teng for his unacceptable conduct. Other forms of disciplinary action could also have been taken after the incident to impart on the team that such misconduct will not be tolerated.

In *Sagales v. Rustan's Commercial Corporation*,[29] this Court ruled:

> Truly, while the employer has the inherent right to discipline, including that of dismissing its employees, this prerogative is subject to the regulation by the State in the exercise of its police power.
>
> In this regard, it is a hornbook doctrine that **infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance. The penalty must be commensurate with the act, conduct or omission imputed to the employee and must be imposed in connection with the disciplinary authority of the employer.** (Emphasis in the original.)

In the case at bar, the penalty handed out by the petitioners was the ultimate penalty of dismissal. There was no warning or admonition for respondent's violation of team rules, only outright termination of his services for an act which could have been punished appropriately with a severe reprimand or suspension.

WHEREFORE, the petition for review on *certiorari* is **DENIED** for lack of merit and the Decision of the Court of Appeals dated September 17, 2008 and Resolution dated February 11, 2009, in CA-G.R. SP No. 00817 are hereby **AFFIRMED**.

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[29] G.R. No. 166554, November 27, 2008, 572 SCRA 89, 104, citing *Manila Trading and Supply Co. v. Zulueta*, 69 Phil. 485, 486 (1940), *Caltex Refinery Employees Association (CREA) v. National Labor Relations Commission (Third Division)*, G.R. No. 102993, July 14, 1995, 246 SCRA 271, 279; *Radio Communications of the Phils., Inc. v. NLRC*, G.R. No. 102958, June 25, 1993, 223 SCRA 656, 667.

With costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187229. February 22, 2012]

ARNEL SISON *y* ESCUADRO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENT OF FORCE AND INTIMIDATION; THE GRAVAMEN OF THE CRIME IS SEXUAL CONGRESS WITH A WOMAN BY FORCE OR INTIMIDATION AND WITHOUT CONSENT.— In rape cases, the essential element that the prosecution must prove is the absence of the victim's consent to the sexual congress. The gravamen of the crime of rape is sexual congress with a woman by force or intimidation and without consent. Force in rape is relative, depending on the age, size and strength of the parties. In the same manner, intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule. Petitioner's act of holding a gun and threatening AAA with the same showed force or at least intimidation which was sufficient for her to submit to petitioner's bestial desire for fear of her life.

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[*] Designated additional member per Special Order No. 1203 dated February 17, 2012.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ACCUSED MAY BE CONVICTED ON THE SOLE TESTIMONY OF THE RAPE VICTIM, PROVIDED THAT SUCH TESTIMONY IS CREDIBLE, NATURAL, CONVINCING, AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS.— The fact that not one of AAA's textmates was presented as witness would not detract from her credibility. Jurisprudence has steadfastly been already repetitious that the accused may be convicted on the sole testimony of the victim in a rape case, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. AAA repeatedly stated that petitioner sexually abused her against her will. The straightforward narration by AAA of what transpired, accompanied by her categorical identification of petitioner as the malefactor, sealed the case for the prosecution.

3. ID.; ID.; ID.; THE FAILURE OF COMPLAINANT TO RUN AWAY OR SHOUT FOR HELP AT THE VERY FIRST OPPORTUNITY CANNOT BE CONSTRUED CONSENT TO THE SEXUAL INTERCOURSE.— AAA testified that when petitioner slightly opened the window of the driver's side to talk to the roomboy, only a part of petitioner's head could be seen and since the vehicle was heavily tinted, the roomboy could not see her. Also, she could not also say a thing because the gun was poked at her. And after she was pushed out of the vehicle, she tried to escape but petitioner who was still holding the gun went out of the vehicle and got hold of her. These circumstances present no opportunity for her to escape. Moreover, people react differently under emotional stress. There is no standard form of behavior when one is confronted by a shocking incident, especially if the assailant is physically near. The workings of the human mind when placed under emotional stress are unpredictable. In a given situation, some may shout, others may faint, and still others may be frozen into silence. Consequently, the failure of complainant to run away or shout for help at the very first opportunity cannot be construed consent to the sexual intercourse.

4. CRIMINAL LAW; RAPE; PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED IN RAPE WHEN INTIMIDATION IS EXERCISED UPON A VICTIM AND THE LATTER

SUBMITS HERSELF, AGAINST HER WILL, TO THE RAPIST'S ADVANCES BECAUSE OF FEAR FOR HER LIFE AND PERSONAL SAFETY.— Even assuming that AAA failed to put up a strong resistance to repel petitioner's physical aggression, such failure does not mean that she was not raped. Petitioner had a gun which was sufficient to intimidate her and to submit to his lustful desire. It is well settled that physical resistance need not be established in rape when intimidation is exercised upon a victim and the latter submits herself, against her will, to the rapist's advances because of fear for her life and personal safety.

5. ID.; ID.; THE VICTIM'S MORAL CHARACTER IS IMMATERIAL WHERE IT IS SHOWN THAT INTIMIDATION WAS USED FOR THE VICTIM TO HAVE SEX WITH THE ACCUSED.— [P]etitioner claims that his failure to give AAA the amount of ₱4,000.00 and the things he had promised to buy for her was the reason why AAA charged him with the crime of rape. Such argument deserves scant consideration. x x x [W]hile petitioner, in his direct testimony, was portraying AAA as a prostitute, the latter cried. AAA's crying shows how she might have felt after being raped by the petitioner and yet be accused of a woman of loose morals. The victim's moral character in rape is immaterial where it is shown that intimidation was used for the victim to have sex with the accused.

6. ID.; ID.; THE RAPE VICTIM'S ACT OF IMMEDIATELY REPORTING THE RAPE INCIDENT TO THE POLICE AND SUBMITTING HERSELF TO MEDICAL EXAMINATION BOLSTERED THE TRUTHFULNESS OF HER CHARGE FOR RAPE.— The truthfulness of AAA's charge for rape was further bolstered by her conduct immediately after the rape incident. After petitioner dropped her off in Cubao, AAA immediately went to her office and narrated her ordeal to her officemates. Accompanied by them, she went to the police station to report the incident and submitted herself to medical examination.

7. ID.; ILLEGAL POSSESSION OF FIREARMS AND AMMUNITIONS (P.D. 1866, AS AMENDED BY RA 8294); CONSTRUED.— However, as to petitioner's conviction for illegal possession of firearms, such judgment must be set aside.

We find that he can no longer be held liable for such offense since another crime was committed, *i.e.*, rape. P.D. 1866, as amended by RA 8294, the law governing Illegal Possession of Firearms provides: SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition Instruments Used or intended to be Used in the Manufacture of Firearms or Ammunition.* x x x. If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance. x x x. In *People v. Ladjaalam*, we laid down the correct interpretation of the law and ruled: x x x A simple reading thereof shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the "other crime" is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense. Since direct assault with multiple attempted homicide was committed in this case, appellant can no longer be held liable for illegal possession of firearms. Moreover, penal laws are construed liberally in favor of the accused. In this case, the plain meaning of RA 8294's simple language is most favorable to herein appellant. Verily, no other interpretation is justified, for the language of the new law demonstrates the legislative intent to favor the accused. Accordingly, appellant cannot be convicted of two separate offenses of illegal possession of firearms and direct assault with attempted homicide. Moreover, since the crime committed was direct assault and not homicide or murder, illegal possession of firearms cannot be deemed an aggravating circumstance. x x x The law is clear: the accused can be convicted of simple illegal possession of firearms, provided that "no other crime was committed by the person arrested." If the intention of the law in the second paragraph were to refer only to homicide and murder, it should have expressly said so, as it did in the third paragraph. Verily, where the law does not distinguish, neither should we.

8. ID.; QUALIFIED RAPE; PROPER PENALTY.— Under Article 266-B of the Revised Penal Code, whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. The prosecution was able to sufficiently allege in

the Information, and establish during trial, that a gun was used in the commission of rape. Since no aggravating or mitigating circumstance was established in the commission of the crime, the lesser penalty shall be imposed. Thus, we affirm the penalty of *reclusion perpetua* meted by the courts below.

9. ID.; ID.; CIVIL LIABILITY OF ACCUSED-PETITIONER.— As to the damages awarded for the crime of qualified rape, however, modifications are in order. Considering that the penalty imposable is *reclusion perpetua*, the award of ₱75,000.00 as civil indemnity must be reduced to ₱50,000.00. Also the award of ₱100,000.00 as moral damages should be reduced to ₱50,000.00 based on prevailing jurisprudence. Exemplary damages in the amount of ₱30,000.00 should be awarded by reason of the established presence of the qualifying circumstance of use of a deadly weapon. In addition, interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid, likewise pursuant to prevailing jurisprudence.

APPEARANCES OF COUNSEL

Bonifacio M. Sison & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* seeking the reversal of the Court of Appeals (CA) Decision[1] dated March 17, 2009, which affirmed with modification the Joint Decision[2] dated December 14, 2007 of the Regional Trial Court (RTC), Quezon City, Branch 81, finding petitioner Arnel Sison guilty of the crimes of rape and violation of Presidential Decree (P.D.) No. 1866, as amended by Republic Act (R.A.) No. 8294.

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[1] Penned by Associate Justice Vicente S. E. Veloso, with Associate Justices Edgardo P. Cruz and Ricardo R. Rosario, concurring; *rollo*, pp. 61-78.

[2] Per Judge Ma. Theresa L. dela Torre-Yadao; *id.* at 128-139.

On April 21, 2003, two (2) separate Informations were filed with the RTC against petitioner for Kidnapping with Rape and violation of P.D. 1866, as amended by R.A. 8294 (Illegal Possession of Firearms and Ammunitions). The accusatory portions of the two (2) Informations respectively state:

Criminal Case No. Q-03-116710

That on or about the 16th day of April 2003, in Quezon City, Philippines, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously, armed with firearm, kidnap and rape one [AAA] in the following manner, to wit: said [AAA] boarded the Mitsubishi Adventure with plate no. CSV-606, driven by the accused who was then plying his route at Bocaue Toll Gate going to Cubao, Quezon City, and upon reaching EDSA corner New York Street, Cubao, this City, accused suddenly poked his gun at her, kidnap and detain her and forcibly brought her at the Town and Country, Sta. Mesa, Manila, where accused had carnal knowledge of her by force and intimidation against her will and without her consent.[3]

Criminal Case No. Q-03-116711

That on or about the 17th day of April 2003, in Quezon City, Philippines, the said accused, without any authority of law, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) Peter Stahl .45 caliber pistol with Serial Number A414 with five (5) ammunitions, without first having secured the necessary license/permit issued by the proper authorities.[4]

Petitioner pleaded not guilty[5] to both charges.

Trial thereafter ensued. During the trial, two different versions were presented.

The evidence for the prosecution, as aptly summarized by the RTC and adopted by the CA, are as follows:

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[3] CA *rollo*, p. 10.

[4] *Id.* at 12.

[5] Records, p. 27.

Private complainant [AAA] was, at the time of subject incident, a resident of x x x and was working on a 10:00 p.m.–7:00 a.m. shift as a Product Support Representative with x x x. Since her residence is quite far from her place of work and considering her working hours, her aunt would usually bring her to the Bocaue toll gate and from there, she would ride either a Tamaraw FX or bus going to Cubao bound to her office.

At around 8:00 p.m. of April 16, 2003, [AAA] boarded accused's passenger van, a black Mitsubishi Adventure with plate number CSV-606, at the Bocaue toll gate. She sat at the front passenger seat as it was the only vacant seat at that time since there were already nine passengers on board. When they reached Quezon City, the passengers alighted one by one, the last of whom alighted in New York Street, Cubao, Quezon City. [AAA] was supposed to alight in Aurora Blvd. When they were already in front of Nepa Q-Mart and [AAA] was the only passenger left in the van, accused told her that he would change first the ₱100.00 bill that she paid. Her fare was only ₱30.00, so she still had a change of ₱70.00. Accused made a few turns until they reached an alley, with nobody passing through. [AAA] felt uneasy so she told the accused that she would alight, but then she heard cocking of a gun. Accused suddenly put his right arm over her right shoulder, drew her nearer to him, pointed a gun at her chest with his right hand, while [he] continued driving with his left hand. Accused kept driving for about ten to twenty minutes until such time that they entered a drive-thru. [AAA] saw the logo of the Town and Country Motel. She also noticed the signage of the AMA Computer College so she presumed that they were in Sta. Mesa, Quezon City. A boy approached the van and the accused slightly opened the window beside him. The boy pointed to a garage room to which the accused entered. When they were already inside the garage, the accused pushed [AAA] out of the van. With the gun pointed at her, accused dragged her upstairs and again pushed her inside a room. [AAA] sat on the lone chair inside the room. Accused approached her, pulled her from the chair and pushed her into the bed. [AAA] got up and ran to the door but the accused grabbed her before she could reach it and pushed her again to the bed. [AAA] pleaded to the accused, telling him: "*Pakawalan mo na ako. Ayoko na dito. Meron pa akong pamilya. Sana maintindihan mo na hindi ako ganun klaseng babae, meron pa naman iba pang babae dyan.*" However, the accused did not heed her plea but instead, pinned her to the bed, grabbed her pants destroying the zipper in the process,

stripped her of her panty and pants. Accused then removed his t-shirt, shorts and underwear and rubbed his penis against her vagina, inserted it into her vagina and made pumping motions a couple of times. [AAA] felt pain. She kept on pleading to the accused to stop abusing her, but the accused told her. "*Ang sarap-sarap mo. Pasensya ka na [AAA] nakagamit ako ng drugs*." After a while, [AAA] felt that something sticky was released from the accused. He then wore his t-shirt, underwear and shorts. [AAA] could no longer move as she was still in the state of shock and at the time, feeling sorry for herself for what had happened to her.

After the accused had sexual intercourse with [AAA], accused directed her to dress up to which she complied. Before they went out of the room, accused told her not to make any scene, otherwise, he would not hesitate to shoot her. When he dropped her off somewhere in Cubao, Quezon City, he again threatened her not to report the incident to the police as he would kill her. He even got her cell phone number. When the accused was gone, [AAA] boarded a taxi and proceeded to the office where she narrated to her supervisor and officemates what happened to her. Her officemates accompanied her to Police Station 7, Camp Panopio, P. Tuazon corner EDSA, Quezon City where she reported the incident and executed a sworn statement (Exhibit A).

At around 12:20 a.m. of April 17, 2003, while PO2 Mario Palic was on duty at Police Station 7, victim [AAA] arrived and reported her ordeal in the hands of the accused. Officer Palic, together with fellow police officers, namely, Police Inspector Gatos, PO3 Nacional, PO1 Sapulaan and PO2 Lanaso immediately conducted follow-up operations which led to the arrest of the accused in front of the Baliwag Bus Terminal, Cubao, Quezon City. Recovered from him was a .45 caliber Peter Stahl pistol with serial number A414 and five (5) ammunitions (Exhibits E and E-1 to E-5). The police officers likewise brought the black Mitsubishi Adventure with plate number CSV 606 (Exhibit F) to the police station for proper disposition.

The investigation conducted by PO2 Regundina Sosa disclosed that accused's Permit to Carry Firearm No. 1-B149052 has already expired on January 11, 2003 (Exhibit H).

Medico-Legal Report No. M-1231-03, dated April 24, 2003, submitted by Dr. Pierre Paul Carpio states that "Subject is in

non-virgin state physically. There are no external signs of application of any form of trauma." (Exhibit K)[6]

Petitioner denied the accusation and claimed that what happened between him and AAA was a consensual sex. The RTC summarized the evidence for the defense as follows:

At around 8:00 p.m. of April 16, 2006 (sic), which was a Holy Tuesday, [AAA] boarded his van in Bocaue, taking the front passenger seat. Aside from her, he has other four (4) passengers, two were seated at the middle passenger seat and the other two (2) were at the back passenger seat. While he was driving, he had a conversation with [AAA], such as she was a graduate of AMA Computer School, that she works in a computer company, that she sends her siblings to school, that her father is in a rehabilitation center and her parents are separated, that she has many rich suitors, that she has a hard time sending her siblings to school and she needs money at that time. In return, accused told [AAA] that he owns the van and that his wife works abroad. He made "*bola*" to her and offered to give her ₱4,000.00 and some signature clothes. [AAA] did not respond, so he just continue[d] driving. When they reached Aurora Blvd., Cubao, Quezon City, the other four (4) passengers alighted. From there, he made a U-turn, proceeded to their terminal and told the dispatcher to include him in his list so he could ply back to Cabanatuan. Considering that [AAA] did not make any attempt to alight from the van, he made a right turn to New York Street, Cubao, Quezon City, right turn again at the back of the terminal and proceeded to Aurora Blvd. He then asked [AAA] "*ano*?" When [AAA] did not respond again, he drove going to Sta. Mesa, Manila and proceeded to Gardenia Hotel. They waited for about two (2) minutes inside the premises of the hotel, as there were no vacant rooms at that time. Thereafter, a bellboy carrying a pail, approached them and pointed to a room. However, accused wanted a garage room so he opened the door of his van about a foot wide as his window had been damaged and told the bellboy what he wanted. The bellboy acceded to his request and directed them to a garage room. Accused maneuvered the van inside the garage. They went out of the van and proceeded upstairs where the room was located. When they entered, the bellboy, who was cleaning the room, left. [AAA] entered the comfort room, while accused watched

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[6] *Rollo,* pp. 64-65.

T.V. After coming out of the comfort room, [AAA] sat on the bed. Accused started kissing her on the neck and removed her tube blouse and transparent strapless bra and kissed her breasts, while [AAA] held his private part. When he reached out for the zipper of her pants and began unzipping it, [AAA] stood up and willingly removed her pants. Accused also removed his pants. He touched her private part and inserted his fingers on it. [AAA] embraced him, held his penis and she herself inserted it on her vagina. They made pumping motions. The sexual congress lasted for quite sometime because [AAA] even went on top of him, during which time, he held her breast. After [AAA] reached her climax, he went on top of her and afterwards, he ejaculated so he withdrew his penis from her vagina. Thereafter, they dressed up. Accused was about to pay [AAA] ₱800.00, but he changed his mind and instead, gave her ₱600.00 only and pocketed the remaining ₱200.00. [AAA] did not anymore [count] the money. He summoned the bellboy, paid their bill, went out of the room and boarded the van. While they were waiting for the bellboy to open the garage door, he checked his gun which he placed under the driver's seat. He even showed it to [AAA]. When the garage door was opened, they left the hotel premises and proceeded to Cubao. They passed by the SM Department Store but since it was already 11:00 p.m., it was already closed so he was not able to buy her the blouse and wallet that he promised her. He also told her that he had no more money. That irritated [AAA] who suddenly grabbed his wallet lying on the [dashboard]. Accused stopped the van, got back the wallet from [AAA] and even pulled her hair ("*Sinabunutan ko po siya*"). [AAA] got angry and called him "*hayop*." He then dropped her off somewhere in Cubao, while he went back to their terminal. At about 11:00 p.m., he plied the van to San Carlos, Pangasinan, reaching the place at about 4:00 a.m. the following day, April 17, 2003. From there, he went back to Cabanatuan terminal, arriving there at 5:30 a.m. After talking to the dispatcher, he went home to Bangad and slept. He woke up about lunchtime, took a bath, and plied again his van, leaving Cabanatuan at 1:00 p.m. and reaching Cubao at 4:00 p.m. It was then that he was arrested. While they were on board the police vehicle, one of the policemen showed him a picture which he recognized as [AAA]. The policemen brought him to Police Station 7 where he was told that a grave offense was filed against him. They demanded the amount of ₱150,000.00 for his release. The next day, his mother and sister arrived and talked to the policemen. His mother and sister agreed to pay the amount of ₱150,000.00 but when they came back, they were already accompanied by his lawyer, Atty. Hernani

Barrios, who advised them not to yield to the demand which they did. He was presented to the inquest fiscal and transferred to the Quezon City Jail where he is detained up to now.

Accused further testified that he, being a civilian agent of the MICO, Philippine Army, Fort Magsaysay, Palayan City, was carrying a caliber .45 Peter Stahl pistol (Exhibit E) with five (5) ammunitions (Exhibits A1 to A-5). However, the policemen took his Permit to Carry Firearm, Memorandum Receipt (MR) and Mission Order (MO) when they arrested him.

Nova Tabbu, accused's sister, merely corroborated his testimony that the policemen demanded the amount of ₱150,000.00 for his release.

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Erwin Ocampo, a technical sergeant of the 46th Military Intelligence Company, Fort Magsaysay, Palayan City, testified that the accused is a presidential agent for which reason he has on file an Agent Recruitment Report, Agent Agreement, Application for I.D. card, Oath of Loyalty, Pseudonym Agreement, Profile Penetration Agent and Human Resource Report.

Geronimo Ebrogar testified that he noticed the accused leaving the bus terminal at around 8:00 p.m. on April 16, 2003 with a female companion; that when the accused returned at 10:30 p.m. of the same night, he was alone.[7]

On December 14, 2007, the RTC issued a Joint Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

In Criminal Case No. Q-03-116710, the Court finds accused ARNEL SISON *y* ESCUADRO guilty beyond reasonable doubt of the crime of Kidnapping with Rape and is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* with all the accessory penalties provided by law, and to pay private complainant (AAA) the amounts of ₱75,000.00 as civil indemnity and ₱100,000.00 as moral damages.

In Criminal Case No. Q-03-116711, the Court finds ARNEL SISON *y* ESCUADRO guilty beyond reasonable doubt of the offense of

[7] *Id.* at 66-68.

Violation of P.D. 1866, as amended by R.A. 8294, and is hereby sentenced to suffer an indeterminate sentence of six (6) months and one (1) day to two (2) years and four (4) months, and to pay a fine of thirty thousand pesos (₱30,000.00).[8]

The RTC found AAA's testimony, narrating how petitioner raped her, to be candid and straightforward, thus reflective of her honesty and credibility. It found nothing on record that would show that AAA was actuated by ill motive in filing the charges against petitioner. The RTC also noted that AAA even cried when she testified in court. It did not believe petitioner's claim that AAA was a small time prostitute, considering that she was a college graduate who was already working at the time of the incident and the fact that she immediately reported the rape incident to the police despite threat to her life.

As to the charge of illegal possession of firearm and ammunitions, the RTC found the elements of the crime to be duly proven. AAA testified that petitioner pointed a gun at her and because of such threat submitted herself to his bestial desire; the gun, as well as the ammunitions, was offered in evidence and even the accused admitted that he had a gun at the time of the incident. It was established through the testimony of police investigator Regundina Sosa that based on petitioner's permit to carry firearm outside residence, the same had already expired on January 11, 2003, few months before his apprehension.

Petitioner filed his appeal with the CA. The Office of the Solicitor General filed its Comment and petitioner his Reply thereto.

On March 17, 2009, the CA issued its assailed Decision affirming petitioner's conviction. The dispositive portion of the Decision reads:

WHEREFORE, the instant appeal is DISMISSED. The assailed Decision dated December 14, 2007 is hereby AFFIRMED with MODIFICATION as follows:

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[8] *Id.* at 139.

1. Regarding Criminal Case No. Q-03-116710, the Court finds accused ARNEL SISON *y* ESCUADRO guilty beyond reasonable doubt of the crime of RAPE qualified by the use of a deadly weapon, and is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* with all the accessory penalties provided by law, and to pay private complainant the amounts of ₱75,000.00 as civil indemnity and ₱100,000.00 as moral damages.

2. Anent Criminal Case No. Q-03-116711, the Court finds accused ARNEL SISON *y* ESCUADRO guilty beyond reasonable doubt of the offense of Violation of P.D. 1866, as amended by R.A. 8294, and is hereby sentenced to suffer an indeterminate sentence of thirty (30) days to four (4) months.

SO ORDERED.[9]

In so ruling, the CA pointed out that the crime committed was not kidnapping with rape, but only rape qualified with the use of a deadly weapon. Applying jurisprudence, it said that if the offender is only to rape the victim and in the process, the latter had to be illegally detained, only the crime of rape is committed since illegal detention is deemed absorbed in rape. The CA upheld the RTC's assessment of AAA's credibility, because of its unique position to observe the deportment of the witness while testifying. It also found that while the prosecution was able to prove that petitioner's license to carry said firearm outside residence already expired at the time he was apprehended with it, however, there was no showing that the firearm he carried on April 17, 2003 was not licensed or its license had expired, thus petitioner could only be liable for carrying a licensed firearm outside his residence under the last paragraph of Section 1, P.D. 1866, as amended.

Hence, this petition for review on the following assignment of errors:

A. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT, GIVING FULL CREDENCE

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[9] *Id.* at 77-78.

TO THE TESTIMONIES OF THE PRIVATE COMPLAINANT , WHICH IS PUNCTURED WITH MATERIAL INCONSISTENCY, UNCERTAINTY, UNRELIABILITY AND WHOSE TESTIMONIES WERE INHERENTLY WEAK, FLAWED AND CONTRARY TO NORMAL HUMAN BEHAVIOR THEREBY CASTING GRAVE DOUBT ON THE CRIMINAL CULPABILITY OF THE ACCUSED-APPELLANT. IT LIKEWISE TOOK THE TESTIMONY OF THE COMPLAINANT AS GOSPEL TRUTH *SANS* ANY CRITICAL SCRUTINY AND ACCEPTED THE SAME WITH PRECIPITATE CREDULITY.

B. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT BY FAILING TO APPRECIATE NUMEROUS VITAL EVIDENCE, WHICH IF CONSIDERED, WOULD OTHERWISE RESULT IN THE ACQUITTAL OF THE ACCUSED-APPELLANT.

C. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT IN FINDING THAT ACCUSED-APPELLANT USED A DEADLY WEAPON AGAINST COMPLAINANT IN THE PERPETUATION OF THE ALLEGED INCIDENT IN QUESTION.

D. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT IN CONVICTING THE ACCUSED-APPELLANT WHEN THE EVIDENCE ADDUCED BY THE PROSECUTION FAILED TO MEET THE STANDARD OF MORAL CERTAINTY.[10]

Petitioner faults the CA for affirming his conviction on the basis of AAA's inconsistent and incredible testimony. He argues that he and AAA had given two conflicting testimonies and the RTC erred in giving more weight to the unsubstantiated testimony of AAA.

Petitioner's assignment of errors hinges on AAA's credibility and the sufficiency of the prosecution evidence to convict him of the crimes charged.

In *People v. Espino, Jr.*,[11] we said:

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

[11] G.R. No. 176742, June 17, 2008, 554 SCRA 682.

Time and again, we have held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case. The trial judge enjoys the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" "all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[12]

We find no reason to disregard the findings of the RTC, as affirmed by the CA, that AAA was raped by petitioner on April 16, 2003, since their findings were supported by the evidence on record. AAA testified in a straightforward manner, declaring that petitioner, with the use of a gun poked at her chest, drove her to a motel and brought her to the motel parking garage, dragged her to the second floor, then pushed her to the room and then to the bed. She tried to run and reach for the door, but petitioner grabbed her and pushed her back to the bed. She was stripped of her pants and panty and, thereafter, petitioner took off his shorts and underwear and despite her plea, forced himself to her and had sex with her. Afterwards, with the gun in his hand, petitioner threatened to kill her if she would report the matter to the police.[13]

In rape cases, the essential element that the prosecution must prove is the absence of the victim's consent to the sexual

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[12] *Id.* at 696-697.

[13] TSN, July 2, 2003, pp. 8-14.

congress.[14] The gravamen of the crime of rape is sexual congress with a woman by force or intimidation and without consent.[15] Force in rape is relative, depending on the age, size and strength of the parties. In the same manner, intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.[16]

Petitioner's act of holding a gun and threatening AAA with the same showed force or at least intimidation which was sufficient for her to submit to petitioner's bestial desire for fear of her life.

Petitioner denies having raped AAA and claims that what transpired between him and AAA was a consensual sex. In his desire to be acquitted of the crime of rape, petitioner insists that AAA's testimony was replete with incredibilities and inconsistencies, thus not worthy of credence.

First, petitioner claims that while AAA testified during her direct examination that his right arm was on her shoulder with a gun pointed at her chest, she also testified during her cross-examination that she was texting her officemates, thus under such a circumstance, it would be insane for him to allow her to text her officemates if he has plans of raping her.

We do not agree.

A reading of AAA's testimony during her cross-examination shows that she never said that she was texting her officemates at the time that a gun was already pointed at her. She testified that she was the last passenger in the vehicle driven by petitioner and the latter told her that he had no change for the 100-peso

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[14] *People v. Baluya*, G.R. No. 133005, April 11, 2005, 380 SCRA 532, 542.

[15] *Id.*, citing *People v. Dela Cruz*, G.R. Nos. 131167-68, August 23, 2000, 338 SCRA 582.

[16] *Id.*, citing *People v. Yparraguire*, G.R. No. 124391, July 5, 2000, 335 SCRA 69.

bill fare she paid him;[17] that petitioner continued driving, but when he did not stop in a store they passed by to have the 100-peso bill changed, it was then that she texted her officemates.[18] She decided to go down the vehicle, but it was moving fast[19] and, thereafter, petitioner pulled her nearer to him by putting his right hand on her shoulder and pointed a gun at her chest.[20] Hence, the texting of officemates happened before the gun was poked at her.

The fact that not one of AAA's textmates was presented as witness would not detract from her credibility. Jurisprudence has steadfastly been already repetitious that the accused may be convicted on the sole testimony of the victim in a rape case, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things.[21] AAA repeatedly stated that petitioner sexually abused her against her will. The straightforward narration by AAA of what transpired, accompanied by her categorical identification of petitioner as the malefactor, sealed the case for the prosecution.[22]

Second, petitioner assails AAA's vivid remembrance of the places they passed by, which shows her relaxed condition in petitioner's company.

Such contention is devoid of merit.

AAA was a 21-year-old working woman and was not blindfolded when they were traversing the roads on the way to the motel. Thus, she was able to read the landmarks and logos in the places that they passed by which included the name of the motel.

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[17] TSN, August 14, 2003, p. 3.

[18] *Id.* at 8.

[19] *Id.* at 10.

[20] *Id.*

[21] *People v. Espino, Jr.*, *supra* note 11, at 701.

[22] *Id.* at 702, citing *People v. Macapal, Jr.*, G.R. No. 155335, July 14, 2005, 463 SCRA 387, 400.

Third, petitioner contends that AAA had several opportunities to ask for help or escape while they were in the motel, *i.e.*, when petitioner was negotiating with the motel roomboy for a room with a parking garage, and after the roomboy had left the garage and petitioner pushed her outside of the vehicle.

We are not persuaded.

AAA testified that when petitioner slightly opened the window of the driver's side to talk to the roomboy, only a part of petitioner's head could be seen and since the vehicle was heavily tinted, the roomboy could not see her.[23] Also, she could not also say a thing because the gun was poked at her.[24] And after she was pushed out of the vehicle, she tried to escape but petitioner who was still holding the gun went out of the vehicle and got hold of her.[25] These circumstances present no opportunity for her to escape. Moreover, people react differently under emotional stress.[26] There is no standard form of behavior when one is confronted by a shocking incident, especially if the assailant is physically near. The workings of the human mind when placed under emotional stress are unpredictable.[27] In a given situation, some may shout, others may faint, and still others may be frozen into silence. Consequently, the failure of complainant to run away or shout for help at the very first opportunity cannot be construed consent to the sexual intercourse.[28]

Fourth, petitioner avers that to strip an unwilling person of her clothes will result in a serious struggle. However, the medical report did not show any indication of contusion or hematoma on AAA's legs or abdomen.

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[23] TSN, September 10, 2003, p. 5.

[24] *Id.* at 6-7.

[25] TSN, July 2, 2003, p. 10.

[26] *People v. Sandig*, G.R. No. 143124, July 25, 2003, 407 SCRA 280, 287.

[27] *Id.*

[28] *Id.*, citing *People v. Gecomo*, G.R. Nos. 115035-36, February 23, 1996, 254 SCRA 82.

Even assuming that AAA failed to put up a strong resistance to repel petitioner's physical aggression, such failure does not mean that she was not raped. Petitioner had a gun which was sufficient to intimidate her and to submit to his lustful desire. It is well settled that physical resistance need not be established in rape when intimidation is exercised upon a victim and the latter submits herself, against her will, to the rapist's advances because of fear for her life and personal safety.[29]

Fifth, petitioner points out the impossibility of AAA's account that his right arm was around her right shoulder poking a gun at her chest while his left hand was at the wheels, because such position would not allow him to change gear while making turns.

Such contention remained unsubstantiated and, therefore, self-serving. As the Solicitor General correctly argued, petitioner neglected to prove such impossibility by actual demonstration which is fatal to his cause.

Sixth, petitioner insists that he and AAA had a getting-to-know conversation during the trip, which explained why AAA even testified that he uttered her name during the sexual act; that she even got his cell phone number and it was through her text message that she arranged a tip for his arrest.

Such contention fails to persuade.

Granting that they had a conversation during the trip since AAA was seated in the front seat, such circumstance did not establish that she agreed to the sexual act. In fact, there is no evidence to prove petitioner's claim that after the incident, AAA texted him and arranged for them to meet and was then apprehended by the police. The prosecution established that it was through the efforts of the police that petitioner was apprehended. Police Officer Mario Palic testified that based on the complaint for rape lodged by AAA in their station, he and the other police officers made a follow-up.[30] After which, they

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[29] *People v. Magbanua*, G.R. No. 176265, April 30, 2008, 553 SCRA 698, 705.

[30] TSN, October 15, 2003, pp. 4-5.

received an information that the vehicle used in the rape incident was parked along Edsa, New York, Quezon City, in front of the Baliwag Terminal.[31] Together with AAA, they proceeded to the place where the vehicle was parked and when AAA saw petitioner standing near the parked vehicle, she identified him as her rapist.[32]

Seventh, petitioner claims that his failure to give AAA the amount of ₱4,000.00 and the things he had promised to buy for her was the reason why AAA charged him with the crime of rape.

Such argument deserves scant consideration.

We find *apropos* what the RTC said in the issue, thus:

> x x x Even in these very hard times, the court could not believe that AAA, a college graduate of x x x Computer College and working as a Product Support Representative with x x x would stoop so low to subject herself to the shame and scandal of having undergone such a debasing defilement of her chastity if the charge filed were not true.[33]

In fact, while petitioner, in his direct testimony, was portraying AAA as a prostitute, the latter cried.[34] AAA's crying shows how she might have felt after being raped by the petitioner and yet be accused of a woman of loose morals. The victim's moral character in rape is immaterial where it is shown that intimidation was used for the victim to have sex with the accused.[35]

The truthfulness of AAA's charge for rape was further bolstered by her conduct immediately after the rape incident. After petitioner dropped her off in Cubao, AAA immediately went to her office

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[31] *Id.* at 6

[32] *Id.* at 7.

[33] *Rollo*, p. 137.

[34] TSN, June 8, 2007, p. 8.

[35] *People v. Baluya*, G.R. No. 133005, April 11, 2002, 380 SCRA 532, 545.

and narrated her ordeal to her officemates. Accompanied by them, she went to the police station to report the incident and submitted herself to medical examination.

However, as to petitioner's conviction for illegal possession of firearms, such judgment must be set aside. We find that he can no longer be held liable for such offense since another crime was committed, *i.e*., rape.

P.D. 1866, as amended by RA 8294, the law governing Illegal Possession of Firearms provides:

SECTION 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition Instruments Used or intended to be Used in the Manufacture of Firearms or Ammunition*. - The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (₱15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: *Provided,* That no other crime was committed.

The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (₱30,000) shall be imposed if the firearm is classified as high-powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter, such as caliber .40, .41, .44, .45 and also lesser-calibered firearms but considered powerful, such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: *Provided*, however, That no other crime was committed by the person arrested.

If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted *coup d'etat*, such violation shall be absorbed as an element of the crime of rebellion or insurrection, sedition, or attempted *coup d'etat*.

The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use, unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.

In *People v. Ladjaalam*,[36] we laid down the correct interpretation of the law and ruled:

x x x A simple reading thereof shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the "other crime" is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense. Since direct assault with multiple attempted homicide was committed in this case, appellant can no longer be held liable for illegal possession of firearms.

Moreover, penal laws are construed liberally in favor of the accused. In this case, the plain meaning of RA 8294's simple language is most favorable to herein appellant. Verily, no other interpretation is justified, for the language of the new law demonstrates the legislative intent to favor the accused. Accordingly, appellant cannot be convicted of two separate offenses of illegal possession of firearms and direct assault with attempted homicide. Moreover, since the crime committed was direct assault and not homicide or murder, illegal possession of firearms cannot be deemed an aggravating circumstance.

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x x x The law is clear: the accused can be convicted of simple illegal possession of firearms, provided that "no other crime was committed

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[36] G.R. Nos. 136149-51, September 19, 2000, 340 SCRA 617.

by the person arrested." If the intention of the law in the second paragraph were to refer only to homicide and murder, it should have expressly said so, as it did in the third paragraph. Verily, where the law does not distinguish, neither should we.[37]

All told, we affirm petitioner's conviction for the crime of rape. However, petitioner's conviction of illegal possession of firearms is set aside.

Under Article 266-B of the Revised Penal Code, whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death. The prosecution was able to sufficiently allege in the Information, and establish during trial, that a gun was used in the commission of rape. Since no aggravating or mitigating circumstance was established in the commission of the crime, the lesser penalty shall be imposed.[38] Thus, we affirm the penalty of *reclusion perpetua* meted by the courts below.

As to the damages awarded for the crime of qualified rape, however, modifications are in order. Considering that the penalty imposable is *reclusion perpetua*, the award of ₱75,000.00 as civil indemnity must be reduced to ₱50,000.00.[39] Also the award of ₱100,000.00 as moral damages should be reduced to ₱50,000.00 based on prevailing jurisprudence.[40] Exemplary damages in the amount of ₱30,000.00 should be awarded by reason of the established presence of the qualifying circumstance of use of a deadly weapon.[41]

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[37] *Id.* at 648-650.

[38] Revised Penal Code, Art. 63.

[39] *People of the Philippines v. Carlo Dumadag y Romio*, G.R. No. 176740, June 22, 2011, citing *People v. Macapanas*, G.R. No. 187049, May 4, 2010, 620 SCRA 54, 76; *People v. Jumawid*, G.R. No. 184756, June 5, 2009, 588 SCRA 808.

[40] *Id.*

[41] *Id.*, citing *People v. Toriaga*, G.R. No. 177145, February 9, 2011, 642 SCRA 515.

In addition, interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of finality of this judgment until fully paid, likewise pursuant to prevailing jurisprudence.[42]

WHEREFORE, the Decision dated March 17, 2009 of the Court of Appeals, sentencing petitioner Arnel Sison *y* Escuadro to *reclusion perpetua* for the crime of qualified rape, is hereby **AFFIRMED** with **MODIFICATION** that he is **ORDERED** to pay AAA the reduced amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. Petitioner is also **ORDERED** to pay ₱30,000.00 as exemplary damages and interest at the rate of six percent (6%) per annum is imposed on all the damages awarded from the date of finality of this judgment until fully paid.

Petitioner's conviction of Illegal Possession of Firearms is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189021. February 22, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LUCIA M. GOMEZ,** *respondent.*

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[42] *Id.*, citing *People v. Jimmy Alverio*, G.R. No. 194259, March 16, 2011; *People v. Jose Galvez y Blanco*, G.R. No. 181827, February 2, 2011.

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (P.D. 1529); APPLICATION FOR REGISTRATION; REQUISITES; CERTIFICATION FROM THE COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICER (CENRO) IS INADEQUATE TO PROVE THAT THE LAND WAS ALIENABLE AND DISPOSABLE.—** In *Republic v. Doldol*, we said that the Public Land Act requires that the applicant must prove (a) that the land is alienable public land; and (b) that the open, continuous, exclusive and notorious possession and occupation of the land must have been either since time immemorial or for the period prescribed in the Public Land Act. In resolving the case at bar, we find *Republic of the Philippines v. T.A.N. Properties, Inc*, is on all fours with the present case. In 1999, T.A.N. Properties sought the registration of a property for which it presented a Certification from the CENRO. Thus, we held that this Certification was inadequate to prove that the land was alienable and disposable, to wit: **The well-entrenched rule is that all lands not appearing to be clearly of private dominion presumably belong to the State. The onus to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant**.

2. **ID.; ID.; ID.; WHO MAY APPLY; REQUISITES NOT COMPLIED WITH.—** It is likewise important to note that the Certifications considered by the CA were not presented during trial, but only on appeal. This being so, the genuineness and due execution of these documents were not proven. Furthermore, they did not cover the contested property, but merely the lots adjacent to it. In conclusion, respondent was not able to comply with Sec. 14(1) of P.D. 1529, or the Property Registration Decree, which states: Who May Apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives: (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation **of alienable and disposable lands of the public**

domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Gepty Dela Cruz Morales & Associates for respondent.

D E C I S I O N

SERENO, *J.*:

The present Petition seeks to reverse the Decision[1] of the Court of Appeals (CA) promulgated on 24 July 2009. The Decision affirmed the order for the registration of a 430-square meter property situated in *Barangay* Andagao, Kalibo, Aklan in the name of herein respondent.

The facts are as follows:

Lot No. 2872, Csd 06-005822, Psc. 24, Kalibo, Cadastre was alleged to have been originally possessed by Gabriel Gomez. In 1936, his nephew Emilio Gomez, who was the father of respondent herein, bought the lot in a public auction and declared it under the name of the heirs of Gabriel Gomez.

In 1945, the lot was declared for taxation purposes and was issued Tax Declaration (TD) No. 2234. In 1955, Emilio declared part of Lot No. 2872 under his name. When he died in 1969, his surviving spouse and children allegedly took continuous possession and occupancy of the lot, for which they paid real property tax. On 29 December 1986, the lot was allegedly partitioned by Emilio's heirs when they executed a Deed of Adjudication with Consolidation and Extrajudicial Partition, by which Lot No. 2872-I was allegedly partitioned to respondent.

Thus, on 15 December 1999, respondent filed an Application for registration of title with regard to her part.

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[1] Penned by Associate Justice Florito S. Macalino, with Associate Justices Stephen C. Cruz and Rodil V. Zalameda, concurring; *rollo*, pp. 49-56.

Meanwhile, herein petitioner filed its Opposition to the Application on the following grounds:

1. That neither the [respondent] nor [her] predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the land in question since June 12, 1945 or prior thereto (Sec. 48 (b), C.A. 141,[2] as amended by P.D. 1073).

2. That the muniments of title and/or the tax declaration/s and tax payment/s (sic) receipts of [respondent] does (sic) not constitute competent and sufficient evidence of bona fide acquisition of lands applied for; or her open, continuous, exclusive and notorious possession and occupation thereof, in the concept of owner, since June 12, 1945 or prior thereto. The alleged tax declarations adverted to in the petition do not appear to be genuine and the tax declaration/s and/or tax payment receipt/s indicate the pretended possession of applicant/s to be recent vintage.

3. That the claim of ownership in fee simple on the basis of Spanish title or grant can no longer be availed of by the applicant/s who have failed to file an appropriate application for registration within the period of six (6) months from February 16, 1976 as required by P.D. No. 892.[3] From the records, it appears that the instant application was filed on April 21, 1998.[4]

4. That the parcel/s applied for is/are portions of the public domain belonging to the Republic of the Philippines not subject to private appropriation.[5]

On 28 November 2002, the Municipal Trial Court (MTC) rendered its Decision[6] in favor of respondent, the dispositive portion of which states:

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[2] Commonwealth Act No. 141, or The Public Land Act.

[3] Discontinuance of the Spanish Mortgage System of Registration and of the Use of Spanish Titles as Evidence in Land Registration Proceedings.

[4] Note that in the narration of facts by the CA, the application was filed on 15 December 1999.

[5] *Rollo*, p. 21.

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

WHEREFORE, premises considered, judgment is hereby rendered ordering the parcel of land described in the survey plan of Lot 2872 as Lot No. 2872-I, Csd-06-005822, Psc-24 Kalibo Cadastre and its corresponding technical description with an area of four hundred thirty (430) square meters, more or less, situated in Brgy. Andagao, Kalibo, Aklan, Philippines brought under the Property Registration Degree (sic) (P.D. 1529) and the title thereto registered and confirmed in the name of Lucia M. Gomez, single, Filipino, of legal age, and resident of Toting Reyes Street, Kalibo, Aklan, Philippines.

SO ORDERED.

On appeal, petitioner alleged that respondent failed to prove that the subject lot was alienable and disposable; that she was further not able to prove open, continuous, exclusive, and peaceful possession for at least thirty (30) years; and that the requirements of Presidential Decree (P.D.) No. 1529[7] had not been complied with.

Petitioner asserted that respondent had the burden to prove that the subject lot was alienable and disposable. Failing to present this certification, she failed to overcome that burden.

Petitioner also contended that the witnesses of respondent gave general statements and inconsistent testimonies. In addition, it posited that tax declarations under respondent's name or those of her predecessors were not conclusive proofs of ownership in land registration cases.

Finally, petitioner pointed out that respondent failed to state in her application or to testify whether she wanted to have the line of way or road determined, in accordance with Sec. 20 of P.D. 1529.

Subsequently, the CA dismissed the appeal. It held that the Certification made by Geodetic Engineer Rafael Escabarte that the land was alienable and disposable was sufficient. The Certification states:

I HEREBY CERTIFY THAT THIS IS INSIDE THE ALIENABLE AND DISPOSABLE AREA AS PER L.C. MAP NO. 2415, PROJECT

[7] Property Registration Decree.

NO. 1 OF KALIBO, AKLAN, CERTIFIED BY THE BUREAU OF FOREST DEVELOPMENT NOW DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ON DEC. 22, 1960 AND IT IS OUTSIDE CIVIL, (sic) AND MILITARY RESERVATION.

This Certification was found in the subdivision plan of Lot No. 2872, the mother lot of Lot No. 2872-I.[8] The subdivision plan was also approved by the Officer-in-Charge, Regional Technical Director Edgardo R. Gerobin of the Land Management Division of the Department of Environment and Natural Resources (DENR). The CA also considered that the Community Environment and Natural Resources Officer (CENRO) also certified[9] that the lots adjacent to Lot No. 2872-I were alienable and disposable.

Finally, the CA affirmed the MTC's findings of fact with regard to respondent's open, continuous, exclusive and notorious possession and occupation of the subject lot.

Petitioner is now before this Court contending that the CA erred in ruling that respondent was able to sufficiently prove that the land was alienable and disposable; and that she had possessed the subject lot in the manner and for the duration required by law.

The Petition is meritorious.

In *Republic v. Doldol*,[10] we said that the Public Land Act requires that the applicant must prove (a) that the land is alienable public land; and (b) that the open, continuous, exclusive and notorious possession and occupation of the land must have been either since time immemorial or for the period prescribed in the Public Land Act.

In resolving the case at bar, we find *Republic of the Philippines v. T.A.N. Properties, Inc.*[11] is on all fours with the present

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[8] *Rollo*, p. 109.

[9] *Id.* at 110-114.

[10] 356 Phil. 670 (1998).

[11] G.R. No. 154953, 26 June 2008, 555 SCRA 477.

case. In 1999, T.A.N. Properties sought the registration of a property for which it presented a Certification from the CENRO. Thus, we held that this Certification was inadequate to prove that the land was alienable and disposable, to wit:

> The well-entrenched rule is that all lands not appearing to be clearly of private dominion presumably belong to the State. The onus to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant.
>
> In this case, respondent submitted two certifications issued by the Department of Environment and Natural Resources (DENR). The 3 June 1997 Certification by the Community Environment and Natural Resources Offices (CENRO), Batangas City, certified that "lot 10705, Cad-424, Sto. Tomas Cadastre situated at Barangay San Bartolome, Sto. Tomas, Batangas with an area of 596,116 square meters falls within the ALIENABLE AND DISPOSABLE ZONE under Project No. 30, Land Classification Map No. 582 certified [on] 31 December 1925." The second certification in the form of a memorandum to the trial court, which was issued by the Regional Technical Director, Forest Management Services of the DENR (FMS-DENR), stated "that the subject area falls within an alienable and disposable land, Project No. 30 of Sto. Tomas, Batangas certified on Dec. 31, 1925 per LC No. 582."
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> **The certifications are not sufficient. DENR Administrative Order (DAO) No. 20, 18 dated 30 May 1988, delineated the functions and authorities of the offices within the DENR. Under DAO No. 20, series of 1988, the CENRO issues certificates of land classification status for areas below 50 hectares**. The Provincial Environment and Natural Resources Offices (PENRO) issues certificate of land classification status for lands covering over 50 hectares. DAO No. 38, dated 19 April 1990, amended DAO No. 20, series of 1988. DAO No. 38, series of 1990 retained the authority of the CENRO to issue certificates of land classification status for areas below 50 hectares, as well as the authority of the PENRO to issue certificates of land classification status for lands covering over 50 hectares. **In this case, respondent applied for registration of Lot 10705-B. The area covered by Lot 10705-B is over 50 hectares (564,007 square meters). The CENRO certificate covered the entire Lot 10705 with an area of 596,116 square meters which, as per DAO No. 38, series of 1990, is beyond**

the authority of the CENRO to certify as alienable and disposable.

The Regional Technical Director, FMS-DENR, has no authority under DAO Nos. 20 and 38 to issue certificates of land classification. Under DAO No. 20, the Regional Technical Director, FMS-DENR:

1. Issues original and renewal of ordinary minor products (OM) permits except rattan;

2. Approves renewal of resaw/mini-sawmill permits;

3. Approves renewal of special use permits covering over five hectares for public infrastructure projects; and

4. Issues renewal of certificates of registration for logs, poles, piles, and lumber dealers.

Under DAO No. 38, the Regional Technical Director, FMS-DENR:

1. Issues original and renewal of ordinary minor [products] (OM) permits except rattan;

2. Issues renewal of certificate of registration for logs, poles, and piles and lumber dealers;

3. Approves renewal of resaw/mini-sawmill permits;

4. Issues public gratuitous permits for 20 to 50 cubic meters within calamity declared areas for public infrastructure projects; and

5. Approves original and renewal of special use permits covering over five hectares for public infrastructure projects.

Hence, the certification issued by the Regional Technical Director, FMS-DENR, in the form of a memorandum to the trial court, has no probative value.

Further, it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary

and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.

Only Torres, respondent's Operations Manager, identified the certifications submitted by respondent. The government officials who issued the certifications were not presented before the trial court to testify on their contents. The trial court should not have accepted the contents of the certifications as proof of the facts stated therein. **Even if the certifications are presumed duly issued and admissible in evidence, they have no probative value in establishing that the land is alienable and disposable.**

Public documents are defined under Section 19, Rule 132 of the Revised Rules on Evidence as follows:

(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;

(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.

Applying Section 24 of Rule 132, the record of public documents referred to in Section 19 (a), when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy…**The CENRO is not the official repository or legal custodian of the issuances of the DENR Secretary declaring public lands as alienable and disposable. The CENRO should have attached an official publication of the DENR Secretary's issuance declaring the land alienable and disposable.**

Section 23, Rule 132 of the Revised Rules on Evidence provides:

> Sec. 23. Public documents as evidence. — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts stated therein. All other public documents are evidence,

even against a third person, of the fact which gave rise to their execution and of the date of the latter.

The CENRO and Regional Technical Director, FMS-DENR, certifications do not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer," such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship's logbook. The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents. The certifications are conclusions unsupported by adequate proof, and thus have no probative value. Certainly, the certifications cannot be considered *prima facie* evidence of the facts stated therein.

The CENRO and Regional Technical Director, FMS-DENR, certifications do not prove that Lot 10705-B falls within the alienable and disposable land as proclaimed by the DENR Secretary. Such government certifications do not, by their mere issuance, prove the facts stated therein. Such government certifications may fall under the class of documents contemplated in the second sentence of Section 23 of Rule 132. As such, the certifications are *prima facie* evidence of their due execution and date of issuance but they do not constitute *prima facie* evidence of the facts stated therein. (Emphasis supplied.)

It is likewise important to note that the Certifications considered by the CA were not presented during trial, but only on appeal. This being so, the genuineness and due execution of these documents were not proven. Furthermore, they did not cover the contested property, but merely the lots adjacent to it.

In conclusion, respondent was not able to comply with Sec. 14(1) of P.D. 1529, or the Property Registration Decree, which states:

Who May Apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious

possession and occupation **of alienable and disposable lands of the public domain** under a *bona fide* claim of ownership since June 12, 1945, or earlier. (Emphasis supplied.)

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Court of Appeals Decision in CA-G.R. CV No. 79088 is hereby **SET ASIDE**. The application for registration filed by Lucia M. Gomez is **DENIED**.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 190794. February 22, 2012]

JOSAN, JPS, SANTIAGO CARGO MOVERS, and MARY GRACE S. PARUNGAO,[*] *petitioners, vs.* **EDUARDO RAMOS ADUNA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ABANDONMENT; ELEMENTS.—

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[*] Designated as Acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1195 dated 15 February 2012.

[*] The case title indicated in the Petition filed before this Court was followed. However, a review of court records reveals that petitioners were also referred to as "JO-SAN TRUCKING CORPORATION / SANTIAGO CARGO MOVERS, INC. / JPS SANTIAGO CARGO MOVERS, INC., and MARY GRACE S. PARUNGAO." *See* respondent's Position Paper, pp. 1-3; *rollo*, pp. 53-55.

Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts, especially during times of hardship. Thus, we have ruled in a series of cases that there are two elements that must concur in order for an act to constitute abandonment: (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship. The second element is the more determinative factor, which must be manifested by some overt acts. Mere absence or failure to report for work does not, *ipso facto*, amount to abandonment of work. To prove abandonment, the employer must show that the employee deliberately and unjustifiably refused to resume his employment without any intention of returning.

2. ID.; ID.; ID.; A CHARGE OF ABANDONMENT IS TOTALLY INCONSISTENT WITH THE IMMEDIATE FILING OF A COMPLAINT FOR ILLEGAL DISMISSAL.— The NLRC and the CA found that the true reason why respondent did not report for work for about 50 days was that he had been told by petitioners to "lie low." This is a finding of fact, which we shall no longer disturb. Thus, when respondent realized that he was no longer going to receive work assignments, he wasted no time in filing a case for illegal dismissal against petitioners. Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work. A charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal. The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment.

3. ID.; ID.; ID.; ABSENT ANY PROOF OF DIRE EXIGENCY THAT WOULD JUSTIFY THE FAILURE TO GIVE FURTHER ASSIGNMENTS, THE ONLY LOGICAL CONCLUSION IS THAT THE EMPLOYEE WAS CONSTRUCTIVELY DISMISSED.— There is constructive dismissal when continued employment is rendered impossible, unreasonable, or unlikely. In this case, although Aduna agreed to "lie low" because of the incident, it became clear that petitioners no longer had the intention to give him future assignments. In fact, they already deemed the issuance of the Certificate of Employment as a sign of abandonment of work. The continued failure of petitioners to offer him a new assignment makes the former liable for constructive dismissal.

Clearly, the instruction to temporarily "lie low" was meant to be for a permanent cessation from work. With the absence of any proof of dire exigency that would justify the failure to give further assignments, the only logical conclusion is that respondent was constructively dismissed.

4. ID.; ID.; ID.; THE EMPLOYER MUST PROVE THAT THE EMPLOYEE CLEARLY, VOLUNTARILY, AND INTENTIONALLY ABANDONED HIS WORK.— In an illegal dismissal case, the *onus probandi* rests on the employer, who has to prove that the dismissal of an employee was for a valid cause. Since petitioners based their defense on abandonment by respondent, it is likewise incumbent upon them, as employers, to prove that he clearly, voluntarily, and intentionally abandoned his work. As previously discussed, it is clear from the evidence on record that petitioners failed to discharge this burden. As we have consistently affirmed, if the evidence presented by the employer and the employee are in equipoise, the scales of justice must be tilted in favor of the latter. Accordingly, the finding of illegal dismissal must be upheld.

5. ID.; ID.; AN EMPLOYEE WHO IS UNJUSTLY DISMISSED FROM WORK SHALL BE ENTITLED TO REINSTATEMENT AND FULL BACK WAGES.— Article 279 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges; to his full back wages, inclusive of allowances; and to other applicable benefits or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement. However, in recognition of the strained relations between petitioners and respondent, the former are instead liable to give separation pay as found by the CA.

APPEARANCES OF COUNSEL

Armando San Antonio for petitioners.
Tagumpay Ponce for respondent.

D E C I S I O N

SERENO, *J.*:

Before the Court is a Petition filed under Rule 45 of the Rules of Court, assailing the 21 October 2009 Decision and 16 December 2009 Resolution of the Court of Appeals (CA).[1] The Petition involves a Complaint for illegal dismissal and nonpayment of employment benefits filed by respondent Eduardo Ramos Aduna (Aduna) against petitioners JO-SAN Trucking Corporation, Santiago Cargo Movers, Inc., JPS Santiago Cargo Movers, Inc., and Mary Grace S. Parungao (Parungao).

Facts

Petitioners are engaged in the trucking business under the sole proprietorship of Parungao,[2] their president-manager. Sometime in January 2001, petitioners hired Aduna as a delivery truck driver. He was tasked to make deliveries of various ingredients used in the production of poultry feeds. His payment was on a per trip basis, the amount of which depended on the length of the trip or the distance to the point of destination.

The factual circumstances surrounding the case are contentious.

Petitioners narrate that on the morning of 5 December 2005, Parungao told Aduna to come to work later in the day to make deliveries. When he reported for work a little before 5 p.m. that afternoon, Parungao noticed that he was drunk. She then

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[1] Both the Decision and the Resolution in CA-G.R. SP No. 108996 were penned by CA Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose Catral Mendoza and Romeo F. Barza.

[2] Petition for Review on *Certiorari*, p. 2; *rollo*, p. 10. However, records are inconsistent as to the true form of the business organization of petitioner-entities. A perusal of respondent's Position Paper, as quoted in the labor arbiter's Decision, indicates that the entities are duly organized domestic corporations. It also mentioned that the business names "JO-SAN Trucking Corporation" and "JPS Santiago Cargo Movers, Inc." are, in fact, the former or alternative names of the business entity "Santiago Cargo Movers, Inc." (*See* respondent-complainant's Position Paper, pp. 2-3; *rollo*, pp. 54-55).

advised him not to make deliveries anymore on account of his inebriated condition. Allegedly, respondent reacted discourteously by hurling invectives at her. He purportedly uttered, "*Hindi lang sa inyo makakapagtrabaho dahil maraming kompanya*," after which he threw out the keys of the vehicles assigned to him and stormed out of the office. On his way out, he met a co-employee, Raymond dela Cruz (Dela Cruz). The two had a confrontation within company premises, which eventually led to respondent's punching Dela Cruz several times.

Aduna did not report for work until about 50 days from the date of the incident. On 24 January 2006, when he returned to the office, he allegedly informed a certain Maria Agnes del Castillo that he no longer wished to continue working with petitioners. He then purportedly asked for a certificate of employment, which he would use in applying for a new job. Thus, petitioners posit that they did not terminate him as it was actually respondent who had refused to work. He no longer worked for petitioners thereafter.

Respondent, on the other hand, denies being drunk when he went to work. According to him, he only had a bottle of beer early that day. He also rejects the allegation that he hurled invectives at Parungao, as he had never been instructed to cease carrying out his delivery assignments in the first place. He also denies punching Dela Cruz, explaining that they simply had a misunderstanding. Supposedly, Dela Cruz was just displeased with how the new driver, whom Aduna had recommended, was being treated favorably by petitioners. Respondent then alludes to the police blotter of Dela Cruz, who only mentioned being elbowed by Aduna. Respondent then narrates that after the incident of 5 December 2005, he was told to "lie low" until further notice in order to set an example to other employees. Despite his objections, he eventually acceded to the instruction.

Thereafter, respondent claims that he was no longer given any delivery assignments and was even prevented from entering company premises. He argues that petitioner voluntarily issued to him a Certificate of Employment without his asking, and that he was told to look for work for the time being. He thus

contends that he did not abandon his job. Consequently, he filed a Complaint for illegal dismissal and nonpayment of overtime, holiday, 13th month, and service incentive leave pays.

Findings of the Labor Arbiter

The labor arbiter (LA) ruled that there was no basis to hold petitioners liable for illegal dismissal. Indeed, he found that the confrontation between respondent and Dela Cruz, which happened within company premises, was tantamount to a just cause for dismissal. However, he also found that there was no evidence to show that respondent had been terminated verbally or in writing. The LA gave credence to the assertion of petitioner that it was Aduna who was no longer interested in returning to work; respondent was already contemplating finding another job, as evidenced by his request for the issuance of a certificate of employment. Consequently, the LA ruled that respondent's failure to report for work may be considered abandonment, which in turn is a valid ground for dismissal.[3]

Findings of the National Labor Relations Commission

The National Labor Relations Commission (NLRC) reversed the LA's finding and ruled that respondent had been illegally dismissed. According to the NLRC, there was no showing that petitioners exerted efforts to question the absences of respondent. They did not require him to return to work, which could have enabled them to determine with certainty whether he really wanted to cease working for them. The NLRC pronounced that it must be clearly established that there was deliberate and unjustified refusal on the part of the employee to return to work through a manifestation of a clear intention to abandon his employment.

Petitioners were found to have failed to discharge this burden. They relied heavily on the information allegedly given by their company secretary that Aduna was no longer interested in the job. The NLRC took note of the absence of an affidavit from the secretary confirming the actual statement relayed to her by

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[3] LA Decision, pp. 7-8; *rollo*, pp. 80-81.

respondent. On the contrary, the commission viewed the request for a certificate of employment as respondent's way of ascertaining his actual status after he was not recalled for some time. The NLRC admitted as fact that petitioners told respondent to "lie low" and to wait for further notice; however, no such notice was given to him. He was simply eased out of his job. The Commission reasoned that it was difficult to believe that a worker would forgo his job simply by abandoning it, without any alternative source of income or prospect of another employment. Thus, according to the NLRC, the continued and prolonged unemployment was unreasonable, inconvenient, prejudicial to respondent, and can be equated with constructive dismissal.[4]

Findings of the Court of Appeals

The CA affirmed the Decision and the Resolution of the NLRC. It ruled that respondent's failure to come to work for 50 days was not indicative of his intention to discontinue employment. According to the appellate court, he did not report for work, as he was told to "lie low" and to wait for further notice. It reasoned that, if indeed he had been absent for such a long period of time, it was implausible for petitioners not to even exert any effort to call his attention, considering that habitual absenteeism is a just cause for dismissal. Neither was there any order from petitioners requiring him to return to work. It pointed out that a company is expected to call the attention of an employee to any undesirable act or omission within a reasonable time. Failure of petitioners to take any disciplinary action against respondent for his alleged absences undermined their claim that these absences were overt acts of abandonment.[5] The court also held that Aduna's request for a certificate of employment did not, *ipso facto,* equate with abandonment. The CA ruled that petitioners failed to establish that respondent had a clear intention to abandon his work. Consequently, it found that he had been illegally dismissed. The CA later on denied petitioners' Motion for Reconsideration. Hence this Petition for Review on *Certiorari*.

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[4] NLRC Decision, pp. 4-6; *rollo*, pp. 100-102.

[5] CA Decision, pp. 6-7; *rollo*, pp. 37-38.

Issue

The sole issue in this case is whether respondent was illegally dismissed.

Discussion

We rule in the affirmative.

Abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts, especially during times of hardship.[6] Thus, we have ruled in a series of cases that there are two elements that must concur in order for an act to constitute abandonment: (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship.[7] The second element is the more determinative factor, which must be manifested by some overt acts.[8] Mere absence or failure to report for work does not, *ipso facto*, amount to abandonment of work.[9] To prove abandonment, the employer must show that the employee deliberately and unjustifiably refused to resume his employment without any intention of returning.[10]

The NLRC and the CA found that the true reason why respondent did not report for work for about 50 days was that he had been told by petitioners to "lie low." This is a finding of fact, which we shall no longer disturb. Thus, when respondent realized that he was no longer going to receive work assignments, he wasted no time in filing a case for illegal dismissal against petitioners. Employees who take steps to protest their dismissal cannot logically be said to have abandoned their work.[11] A charge

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[6] *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506 (2003).

[7] *Icawat v. National Labor Relations Commission*, 389 Phil. 441 (2000).

[8] *Id.*

[9] *Samarca v. Arc-Men Industries, Inc.*, *supra* note 6.

[10] *Icawat v. National Labor Relations Commission*, *supra* note 7.

[11] *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, 21 July 2008, 559 SCRA 110.

of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal.[12] The filing thereof is proof enough of one's desire to return to work, thus negating any suggestion of abandonment.[13]

Respondent must therefore be deemed to have been constructively dismissed. There is constructive dismissal when continued employment is rendered impossible, unreasonable, or unlikely.[14] In this case, although Aduna agreed to "lie low" because of the incident, it became clear that petitioners no longer had the intention to give him future assignments. In fact, they already deemed the issuance of the Certificate of Employment as a sign of abandonment of work. The continued failure of petitioners to offer him a new assignment makes the former liable for constructive dismissal.[15] Clearly, the instruction to temporarily "lie low" was meant to be for a permanent cessation from work. With the absence of any proof of dire exigency that would justify the failure to give further assignments, the only logical conclusion is that respondent was constructively dismissed.[16]

In an illegal dismissal case, the *onus probandi* rests on the employer, who has to prove that the dismissal of an employee was for a valid cause.[17] Since petitioners based their defense on abandonment by respondent, it is likewise incumbent upon them, as employers, to prove that he clearly, voluntarily, and intentionally abandoned his work.[18] As previously discussed, it

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[12] *Icawat v. National Labor Relations Commission, supra* note 7.

[13] *Megaforce Security and Allied Services, Inc. v. Lactao, supra* note 11.

[14] *Philippine Wireless, Inc. (Pocketbell) v. NLRC*, 369 Phil. 907 (1999); *Ledesma & Co. v. National Labor Relations Commission*, 316 Phil. 80 (1995).

[15] *Megaforce Security and Allied Services, Inc. v. Lactao, supra* note 11.

[16] *See Mobile Protective & Detective Agency v. Ompad*, 497 Phil. 621 (2005).

[17] *Id.*

[18] *Id.*

is clear from the evidence on record that petitioners failed to discharge this burden.[19] As we have consistently affirmed, if the evidence presented by the employer and the employee are in equipoise, the scales of justice must be tilted in favor of the latter.[20] Accordingly, the finding of illegal dismissal must be upheld.[21]

Article 279 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges; to his full back wages, inclusive of allowances; and to other applicable benefits or their monetary equivalent computed from the time compensation was withheld up to the time of actual reinstatement.[22] However, in recognition of the strained relations between petitioners and respondent, the former are instead liable to give separation pay as found by the CA.

WHEREFORE, the Petition is **DENIED**. The 21 October 2009 Decision and 16 December 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 108996 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[**] *Perez,* and *Reyes, JJ.,* concur.

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[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Megaforce Security and Allied Services, Inc. v. Lactao, supra* note 11.

[**] Designated as Acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1195 dated 15 February 2012.

SECOND DIVISION

[G.R. No. 191365. February 22, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO NAVARETTE, JR. *y* NATO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS.— For the charge of statutory rape to prosper, the prosecution must prove that: (1) the accused had carnal knowledge of the woman; and, (2) that such woman is under twelve (12) years of age.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT RELATIVE TO THE CREDIBILITY OF THE RAPE VICTIM ARE NORMALLY RESPECTED AND NOT DISTURBED ON APPEAL, MORE SO, IF AFFIRMED BY THE APPELLATE COURT; EXCEPTIONS; NOT APPLICABLE.— In cases of rape, only two (2) persons are normally privy to its occurrence, the complainant and the accused. Generally, the nature of the offense is such that the only evidence that can prove the guilt of the accused is the testimony of the complainant herself. Thus, the prosecution of rape cases is anchored mainly on the credibility of the complaining witness. The general rule is that findings of trial court relative to the credibility of the rape victim are normally respected and not disturbed on appeal, more so, if affirmed by the appellate court. This rule may be brushed aside in exceptional circumstances, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case. After an exhaustive review of the records, we find that there is no sufficient justification to apply the exception.

3. CRIMINAL LAW; STATUTORY RAPE; THE DATE OR TIME OF THE COMMISSION OF RAPE IS NOT A MATERIAL INGREDIENT THEREOF BECAUSE THE GRAVAMEN OF RAPE IS CARNAL KNOWLEDGE OF A WOMAN

THROUGH FORCE AND INTIMIDATION.— Indeed, it is doctrinal that date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. The precise time when the rape took place has no substantial bearing on its commission. In statutory rape, time is not an essential element. What is important is that the information alleges that the victim was a minor under twelve years of age and that the accused had carnal knowledge of her, even if the accused did not use force or intimidation on her or deprived her of reason. In this case, the courts *a quo* found the Informations stating only the years of the commission of rape as sufficient. The more pertinent statement relating to the elements of rape, such as carnal knowledge and the age of the victim were adequately proved by the prosecution. We further consider that at the time of the occurrence of the first incident of rape, AAA was only 8 years old. She could not be expected to remember with detailed accuracy the exact date of the rape.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE RETURN OF THE RAPE VICTIM TO THE PLACE WHERE THE SEXUAL HARASSMENT TOOK PLACE, WHILE SEEMINGLY OPPOSED TO THE MANNER THAT MOST WOULD CONSIDER "NORMAL", SHOULD NOT BE READILY TAKEN AS PROOF THAT SHE IS LYING.— In attempting to discredit AAA, appellant harps on the supposed return of AAA to the house of appellant despite her claims of rape. The Court of Appeals countered that "there is no such thing as 'normal human behavior' when a person is faced with an extraordinary circumstance. Thus, the victim's having returned to the place where the sexual harassment took place, while seemingly opposed to the manner that most would consider "normal", should not be readily taken as proof that she is lying." In *People v. Marcos*, we expounded: x x x Rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances. The range of emotions shown by rape victims is yet to be captured even by calculus. It is, thus, unrealistic to expect

uniform reactions from rape victims. Certainly the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.

5. ID.; ID.; ID.; DELAY IN REVEALING THE COMMISSION OF A CRIME SUCH AS RAPE DOES NOT NECESSARILY RENDER SUCH CHARGE UNWORTHY OF BELIEF; ONLY WHEN THE DELAY IS UNREASONABLE OR UNEXPLAINED MAY IT WORK TO DISCREDIT THE COMPLAINANT.— Regarding the delay in reporting the incident, the Court of Appeals stated that "it is well entrenched that delay in reporting rape cases does not by itself undermine the charge, where the delay is grounded in threats from the accused." Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant. In the instant case, it bears noting that on those two occasions that the appellant raped AAA, he threatened to kill her and her family if ever she would tell anyone about what happened. AAA was only 8 years old when she was first ravished by appellant. Obviously, such threat could easily, as it did, in fact, intimidate her. Thus, the delay in reporting is justified in this case.

6. ID.; ID.; ID.; ILL MOTIVES BECOME INCONSEQUENTIAL IF THERE IS AN AFFIRMATIVE AND CREDIBLE DECLARATION FROM THE RAPE VICTIM WHICH CLEARLY ESTABLISHED THE LIABILITY OF THE ACCUSED.— The main thrust of the defense is that the rape charges were concocted to serve as leverage for the murder case filed by appellant's family against AAA's father. Motives such as feuds, resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim. Also, ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim

> which clearly established the liability of the accused. In the present case, AAA categorically identified appellant as the one who ravished her. Her account of the rape incidents, as found by the lower courts, was credible. x x x Assuming *arguendo* that the instant rape case was only filed as a leverage to the dismissal of Dominador's case, there exists no more reason on the part of AAA to pursue the charges against appellant because Dominador's case had already been long dismissed due to the latter's passing.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] of the Court of Appeals dated 29 January 2010 in CA-G.R. CR H.C. No. 03344 affirming with modification the Decision[2] of the Regional Trial Court (RTC) of Imus, Cavite, Branch 21, in Criminal Cases No. 10680-03 and No. 10681-03 finding appellant Eduardo Navarette, Jr. *y* Nato guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

On 11 June 2002, appellant was charged in two (2) Informations for rape allegedly committed as follows:

Criminal Case No. 10680-03

That sometime in 1994 in Imus, Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused

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[1] Penned by Associate Justice Bienvenido L. Reyes (now Supreme Court Associate Justice) with Associate Justices Celia C. Librea-Leagogo and Francisco P. Acosta, concurring. *Rollo*, pp. 2-8.

[2] Penned by Executive Judge Norberto J. Quisumbing, Jr. Records, pp. 166-175.

being the first cousin of the offended party [AAA][3], then eight (8) years old, with lewd designs and by means of threat, force and intimidation did, then and there, willfully, unlawfully and feloniously lie and had sexual intercourse with private complainant [AAA], against her will and consent, to the damage and prejudice of said minor.[4]

Criminal Case No. 10681-03

That sometime in 1996 in Imus, Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the first cousin of the offended party [AAA], then ten (10) years old, with lewd designs and by means of threat, force and intimidation did, then and there, willfully, unlawfully and feloniously lie and had sexual intercourse with private complainant [AAA], against her will and consent, to the damage and prejudice of said minor.[5]

Appellant pleaded not guilty on arraignment. Trial then proceeded.

As a backgrounder, AAA is the first cousin of appellant. AAA's father, Dominador Navarette (Dominador) is the brother of appellant's father Eduardo Navarette, Sr. (Eduardo, Sr.)

The prosecution presented the testimonies of the victim, AAA, her mother, BBB,[6] and the medico-legal officer, Dr. Ida C. De Perio-Daniel (Dr. Perio-Daniel).

AAA related that she was raped by appellant twice — the first time, when she was 8 years old in 1994, and the second time, when she was 10 years old in 1996. On both occasions, AAA claimed that she went to the house of appellant to play

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[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with that of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[4] Records, p. 4.

[5] *Id.* at 8.

[6] See note 3.

with appellant's brother Emerson. Appellant apparently suggested that AAA look for Emerson upstairs. AAA heeded and proceeded to the second floor. Appellant followed AAA and pulled her towards a room. Thereat, appellant forced her to the floor and undressed her. In 1994, appellant tried inserting his penis in AAA, but it merely touched her vagina. In 1996, however, appellant was able to insert his penis on AAA's vagina and there was complete penetration. It took AAA three (3) years before she reported the incident to BBB because appellant allegedly threatened that he would kill AAA's parents and sister. AAA was however forced to tell her parents about the rape incident because her sister was being harassed sexually by appellant.[7]

During the cross-examination, it was revealed that on 2 January 2002, Eleazar Navarrette (Eleazar), appellant's brother was killed by Dominador. AAA admitted that her father killed Eleazar because the latter allegedly raped her too. Several days after the murder case was filed against AAA's father, appellant was charged with rape by AAA.[8]

BBB recalled that in 1999, AAA told her that she was raped by appellant in the years 1994 and 1996. BBB did not immediately tell her husband out of fear and shame. When appellant allegedly attempted to sexually abuse AAA in 2002, BBB was impelled to inform her husband.[9]

Dr. Perio-Daniel, a medico-legal officer of the National Bureau of Investigation (NBI), conducted an examination on AAA, which findings were contained in Living Case No. MG-02-17, as follow:

GENERAL PHYSICAL EXAMINATION:

x x x x x x x x x

GENITAL EXAMINATION

Pubic hairs, fully grown, moderate. Labia majora and minora, coaptated. Fourchette, lax. Vestibular mucosa, pinkish. Hymen,

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[7] TSN, 30 November 2005, pp. 3-12.

[8] TSN, 9 February 2006, pp. 8-13.

[9] TSN, 8 June 2006, pp. 5-6.

fimbriated, tall, thick with healed laceration, complete at 2:00 o'clock position, edges rounded, non-coaptable. Vaginal walls, tight. Rugosities, prominent.

CONCLUSION:

1. No evident sign of extragenital physical injuries were noted on the body of the subject at the time of the examination.
2. Healed hymenal laceration, present.[10]

Dr. Perio-Daniel could not exactly tell whether AAA was raped because of the lapse of time between the date of the alleged commission of the crime and the date of the physical examination.[11]

For the defense, appellant claimed that AAA falsely charged him of rape because AAA's father killed his brother Eleazar. Dominador wanted to have the case for murder filed against him dismissed in exchange for the dismissal of the rape case.[12] Appellant's testimony was corroborated by his aunt, Lualhati Navarette (Lualhati), who happens to be the sister of Dominador and Eduardo, Sr.. Lualhati testified that Dominador planned to file a case against appellant as leverage to the case filed against the former for killing Eleazar.[13]

Dominador passed away sometime in 2002.[14]

On 6 March 2008, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of the crime of rape. The dispositive portion of the Decision reads:

WHEREFORE, finding the accused guilty beyond reasonable doubt of two counts of the crime of RAPE as charged in the two

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[10] Records, p. 24.

[11] TSN, 18 April 2005, p. 6.

[12] TSN, 19 September 2007, pp. 4-5.

[13] TSN, 31 October 2007, p. 6.

[14] Records, pp. 170-171 citing testimony of herein accused-appellant, TSN, 19 September 2007, pp. 1-8 and testimony of Lualhati Navarette, TSN, 31 October 2007, pp. 1-7.

informations, said accused is hereby sentenced to suffer the penalty of *reclusion perpetua* in each of the two cases.

Said accused is ordered to pay private complainant the amount of ₱75,000.00 for civil indemnity, another ₱75,000.00 for moral damages and ₱25,000.00 as exemplary damages for each conviction of rape.

The period of detention while the cases were pending before the Court shall be deducted from the sentence to be served by the accused.[15]

The trial court lent credence to the testimony of AAA that she was raped. The trial court found her testimony categorical, straightforward and candid. Moreover, in upholding the credibility of AAA, the trial court relied heavily on established doctrines in rape cases.

On appeal, the Court of Appeals affirmed the conviction of appellant but modified the award of exemplary damages by increasing it from ₱25,000.00 to ₱30,000.00.

In his Brief, appellant casts doubt on the testimony of AAA. He insists that AAA should have at least remembered the month when she was raped considering the traumatic experience she had undergone. Appellant also questions why AAA still went to the house of appellant despite the fact that she was raped the first time. The belated reporting of the incident by AAA to BBB may have been justified but the fact that it took BBB another 3 years before she filed a case only confirmed the defense that the charges were fabricated and filed so that Dominador would have a leverage against the murder case lodged against him for allegedly killing appellant's brother.

On the other hand, the Office of the Solicitor General (OSG) maintains that the victim's ability to remember the exact months when the rapes were committed are not necessary to prove appellant's guilt beyond reasonable doubt. The OSG vouches for the credibility of AAA's testimony and adds that AAA's

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[15] CA *rollo*, p. 28.

failure to recall has no bearing on her credibility. Moreover, the OSG avers that AAA's act of returning to appellant's house, by itself, cannot be taken against her nor cast doubt on her credibility because the victim had undergone a traumatic experience which affected her mental disposition. The OSG maintains that the threats made by appellant on the victim are sufficient to dissuade her from reporting the abuses she suffered. The OSG refutes the "leverage theory" of the defense by stating that these allegations are unsubstantiated and were categorically denied by AAA.

The primary issue in this case pertains to whether appellant's guilt has been proven beyond reasonable doubt. Appellant's main defense is that the rape charges were concocted to serve as leverage for the murder case filed by appellant's family against AAA's father.

For the charge of statutory rape to prosper, the prosecution must prove that: (1) the accused had carnal knowledge of the woman; and, (2) that such woman is under twelve (12) years of age.[16]

In cases of rape, only two (2) persons are normally privy to its occurrence, the complainant and the accused. Generally, the nature of the offense is such that the only evidence that can prove the guilt of the accused is the testimony of the complainant herself. Thus, the prosecution of rape cases is anchored mainly on the credibility of the complaining witness.[17]

The general rule is that findings of trial court relative to the credibility of the rape victim are normally respected and not disturbed on appeal, more so, if affirmed by the appellate court. This rule may be brushed aside in exceptional circumstances,

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[16] *People v. Garbida*, G.R. No. 188569, 13 July 2010, 625 SCRA 98, 105 citing *People v. Lopez*, G.R. No. 179714, 2 October 2009, 602 SCRA 517, 527.

[17] *People v. Coja*, G.R. No. 179277, 18 June 2008, 555 SCRA 176, 186 citing *People v. Buenviaje*, 408 Phil. 342, 351 (2001); *People v. Bares*, 407 Phil. 747, 759 (2001).

such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case.[18] After an exhaustive review of the records, we find that there is no sufficient justification to apply the exception.

In recounting her ordeal, AAA narrated that she was raped twice, first in 1994, to wit:

Q: As far as you can recollect AAA, how did the first rape happened [sic]? What time was it?

A: I cannot recall anymore sir.

Q: Was it in the afternoon or in the morning?

A: In the afternoon.

Q: Where did it happen?

A: In their house.

Q: Why were you there?

A: Because I was playing there among his siblings because he is my childhood [friend].

Q: You went [to] there [sic] house looking for his youngest sibling?

A: Yes sir.

Q: What was the name of his sibling?

A: Emerson.

Q: He is a boy?

A: Yes sir.

Q: And how old is Emerson?

A: 7 years old.

Q: And you were 8 years old?

A: Yes sir.

[18] *People v. Bongat*, G.R. No. 184170, 2 February 2011.

Q: You went to the place of Eduardo Navarette looking for Emerson. Did you find Emerson?

A: No sir.

Q: Who was there in the house of Eduardo Navarette?

A: Only Eduardo.

Q: What did Eduardo Navarette, Jr. tell you?

A: According to him Emerson is upstair[s].

Q: Did you find [him] there?

A: No sir.

Q: What happened?

A: Eduardo also went upstair[s].

Q: And then?

A: He pulled me towards the room.

Q: [Who else was there] at that time?

A: Nobody else.

Q: What happened once you where [sic] inside the room?

A: He laid me on the floor.

Q: And then?

A: And then he undress[ed] me.

Q: What particular clothes did he undress you [sic]?

A: Short[s].

Q: What about the upper clothes?

A: No sir.

Q: What about your panty?

A: Yes sir.

Q: Did he remove his brief?

A: Yes sir.

Q: What did he do?
A: He was trying to insert his penis.
Q: Did his penis touch your genitalia?
A: Yes sir.
Q: Where in particular or what part of your genitalia?
A: In the middle.
Q: Did he completely able to penetrate?
A: No sir.
Q: Why?
A: Because it did not fit.
Q: While he was doing that to you, what did you react?
A: I was just crying sir.
Q: And after that what happen[ed] next?
A: He told me not to tell anybody.
Q: And then?
A: He threatened me.
Q: How did he threaten you?
A: He told me that he would kill my parents.
Q: How did you feel when he threatened you?
A: I was scared and I cried I could not do anything.
Q: And he let you go?
A: Yes sir.[19]

and in 1996, *viz*:

Q: When was the next time that he raped you?
A: It was in 1996.

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[19] TSN, 30 November 2005, pp. 5-8.

Q: Where?

A: Also in their house.

Q: In 1996 could you remember the month?

A: No sir.

Q: How did the second rape happened?

A: I was also looking for my playmate his sibling.

Q: You are referring to Emerson?

A: Yes, sir.

Q: At the time you went to the house of Eduardo Navarette, who was inside the house?

A: Nobody was inside the house.

Q: Where was Eduardo Navarette?

A: He was downstair[s].

Q: So you were looking [for] Emerson?

A: Yes sir.

Q: Did you find Emerson there?

A: No sir, he was not there.

Q: So what happen[ed]?

A: The same thing happened sir, I went upstair[s] because that is the place where we play.

Q: So when you went upstair[s] at the house of Eduardo Navarette, what happened to you there?

A: He followed me.

Q: What did he if any do to you?

A: He [a]gain pulled me inside the room.

Q: Only the 2 of you were upstairs?

A: Yes.

Q: What happened inside the room?

A: He covered my mouth.

Q: At that time how old were you?

A: 10 years old.

Q: So, when he covered your mouth what else did he do to you?

A: He laid me on the floor.

Q: And once you were already lying on the floor, what other things did Eduardo do to you?

A: He removed my shorts, panty and he raised my clothes.

Q: What were you wearing on top, the upper part of your body?

A: T-shirt.

Q: Once he did that to you, what next did he do to you?

A: He undressed [me].

Q: What clothes did he remove from his body?

A: Short[s] and brief?

Q: And then he mounted you?

A: Yes.

Q: While he was on top of you, what did you do?

A: He was trying to insert his private part.

Q: Was his penis able to touch your genitalia?

A: Yes sir.

Q: In what particular portion of your genitalia?

A: In the middle sir.

Q: At that time was he able to penetrate?

A: Yes sir.

Q: How did you feel?

A: It was painful sir. [20]

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[20] *Id.* at 8-11.

AAA is consistent and categorical in stating that she was raped and that appellant is the perpetrator. On two occasions, appellant forced her to lie down, removed her underwear, and tried to insert his penis into her vagina. Appellant's penis merely touched AAA's vagina in 1994 while there was complete penetration in 1996. AAA did not waver despite the rigorous cross-examination of the defense counsel. Incidentally, AAA's testimony before the court corresponds to her sworn statement[21] previously executed on 15 January 2002. In said statement, AAA told the NBI Special Investigator that in the years 1994 and 1996, she went to the house of appellant to play with the latter's brother. In both times, she was dragged into the room. Thereat, appellant undressed her and forced her to the floor. Appellant laid on top of her and inserted his penis into her vagina. AAA reportedly told BBB of the incident in 1999. In October 2001, appellant again asked her if they could have sex as his birthday gift. This prompted AAA and BBB to tell Dominador.

According to appellant, AAA's testimony is fraught with some improbabilities, such as her failure remember the dates of the alleged rape; her return to the house of appellant despite her claims that she was already raped; and the delay in reporting the case.

The Court of Appeals opined that "errorless testimony cannot be expected of a rape victim for she may not be able to remember or recount every ugly detail of the harrowing experience and appalling outrage she went through, especially so since she might in fact be trying not to recall the same, as they are too painful to remember." Indeed, it is doctrinal that date or time of the commission of rape is not a material ingredient of the said crime because the gravamen of rape is carnal knowledge of a woman through force and intimidation. The precise time when the rape took place has no substantial bearing on its commission.[22] In statutory rape, time is not an essential element. What is important

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[21] Records, p. 21.

[22] *People v. Lolos*, G.R. No. 189092, 9 August 2010, 627 SCRA 509, 518 citing *People v. Ching*, G.R. No. 177150, 22 November 2007, 538 SCRA 117, 129.

is that the information alleges that the victim was a minor under twelve years of age and that the accused had carnal knowledge of her, even if the accused did not use force or intimidation on her or deprived her of reason.[23]

In this case, the courts *a quo* found the Informations stating only the years of the commission of rape as sufficient. The more pertinent statement relating to the elements of rape, such as carnal knowledge and the age of the victim were adequately proved by the prosecution. We further consider that at the time of the occurrence of the first incident of rape, AAA was only 8 years old. She could not be expected to remember with detailed accuracy the exact date of the rape.

In attempting to discredit AAA, appellant harps on the supposed return of AAA to the house of appellant despite her claims of rape. The Court of Appeals countered that "there is no such thing as 'normal human behavior' when a person is faced with an extraordinary circumstance. Thus, the victim's having returned to the place where the sexual harassment took place, while seemingly opposed to the manner that most would consider "normal", should not be readily taken as proof that she is lying." In *People v. Marcos*,[24] we expounded:

> x x x Rape victims, especially child victims, should not be expected to act the way mature individuals would when placed in such a situation. It is not proper to judge the actions of children who have undergone traumatic experience by the norms of behavior expected from adults under similar circumstances. The range of emotions shown by rape victims is yet to be captured even by calculus. It is, thus, unrealistic to expect uniform reactions from rape victims. Certainly the Court has not laid down any rule on how a rape victim should behave immediately after she has been violated. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. Indeed, different people act differently to a given

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[23] *People v. Dion*, G.R. No. 181035, 4 July 2011 citing *People v. Escultor*, 473 Phil. 717, 727 (2004).

[24] G.R. No. 185380, 18 June 2009, 589 SCRA 661, 673-674.

stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[25]

Regarding the delay in reporting the incident, the Court of Appeals stated that "it is well entrenched that delay in reporting rape cases does not by itself undermine the charge, where the delay is grounded in threats from the accused."[26] Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.[27]

In the instant case, it bears noting that on those two occasions that the appellant raped AAA, he threatened to kill her and her family if ever she would tell anyone about what happened. AAA was only 8 years old when she was first ravished by appellant. Obviously, such threat could easily, as it did, in fact, intimidate her. Thus, the delay in reporting is justified in this case.

The main thrust of the defense is that the rape charges were concocted to serve as leverage for the murder case filed by appellant's family against AAA's father.

Motives such as feuds, resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a rape victim. Also, ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim which clearly established the liability of the accused.[28]

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[25] *People v. Remoto*, 314 Phil. 432, 450 (1995); *People v. Malones*, 469 Phil. 301, 326-327 (2004).

[26] *Rollo*, p. 6.

[27] *People v. Ariola*, G.R. Nos. 142602-05, 3 October 2001, 418 SCRA 809, 821 citing *People v. Baway*, 402 Phil. 872, 892 (2001).

[28] *People v. Aure*, G.R. No. 180451, 17 October 2008, 569 SCRA 836, 864 citing *People v. Audine*, G.R. No. 168649, 6 December 2006, 510 SCRA 531, 549 and *People v. Santos*, G.R. No. 172322, 8 September 2006, 501 SCRA 325, 343.

In the present case, AAA categorically identified appellant as the one who ravished her. Her account of the rape incidents, as found by the lower courts, was credible.

We agree with the Court of Appeals when it ruled:

> In this case, the defense would want us to believe that the complaining witness had brazenly resorted to prevarication and lies only to pressure the family of the accused to drop the murder charge they filed against the father of the supposed rape victim. Apart from their naked and self-serving say so, however, the defense witnesses failed to tender any specie of evidence that would substantiate this claim to the satisfaction of this Court. As pointed out by the trial court, no documentary and testimonial evidence were shown to establish that the father of the complainant really murdered the brother of the accused. In fact, even if we are to indulge the version of the accused, it would seem to benefit still the case of the prosecution since, according to the version of the defense, the **father of the complainant murdered Eleazar precisely out of rage because he was informed that his daughter was raped by Eleazar and Eduardo Navarette.**[29] [Emphasis supplied]

Assuming *arguendo* that the instant rape case was only filed as a leverage to the dismissal of Dominador's case, there exists no more reason on the part of AAA to pursue the charges against appellant because Dominador's case had already been long dismissed due to the latter's passing.

WHEREFORE, the Decision of the Court of Appeals dated 29 January 2010 finding appellant Eduardo Navarette, Jr. *y* Nato guilty beyond reasonable doubt of rape is **AFFIRMED** *in toto*.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Mendoza,*[**] and *Sereno, JJ.*, concur.

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[29] *Rollo,* pp. 6-7.

[*] Per Special Order No. 1195.

[**] Per Raffle dated 6 February 2012.

SECOND DIVISION

[G.R. No. 192085. February 22, 2012]

CARIDAD SEGARRA SAZON, *petitioner, vs.* **LETECIA VASQUEZ-MENANCIO, represented by attorney-in-fact EDGAR S. SEGARRA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; WHEN A CASE IS APPEALED, THE APPELLATE COURT HAS THE POWER TO REVIEW THE CASE IN ITS ENTIRETY.— In *Heirs of Carlos Alcaraz v. Republic of the Philippines*, we reiterated the cardinal rule that when a case is appealed, the appellate court has the power to review the case in its entirety, to wit: In any event, when petitioners interposed an appeal to the Court of Appeals, the appealed case was thereby thrown wide open for review by that court, which is thus necessarily empowered to come out with a judgment as it thinks would be a just determination of the controversy. Given this power, the appellate court has the authority to either affirm, reverse or modify the appealed decision of the trial court. To withhold from the appellate court its power to render an entirely new decision would violate its power of review and would, in effect, render it incapable of correcting patent errors committed by the lower courts. Thus, we agree with respondent that the CA was free to affirm, reverse, or modify either the Decision or the Order of the RTC.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; AGENCY; ONCE THE AUTHORITY OF THE PARTY AS ADMINISTRATOR OF THE PROPERTIES IS REVOKED, HE NO LONGER HAS THE RIGHT TO ADMINISTER THE PROPERTIES OR TO RECEIVE THE INCOME THEY GENERATE.— [W]e agree with the CA in its ruling that even though the lease agreements covering these lots should be respected, petitioner must turn over the administration of the leases to respondent's attorney-in-fact. The reason is that respondent has already revoked the authority of petitioner as

administrator. Hence, the latter no longer has the right to administer the properties or to receive the income they generate on respondent's behalf.

3. REMEDIAL LAW; EVIDENCE; THE SUPREME COURT DOES NOT REVIEW THE FACTUAL FINDINGS OF AN APPELLATE COURT, UNLESS THESE FINDINGS ARE MISTAKEN, ABSURD, SPECULATIVE, CONJECTURAL, CONFLICTING, TAINTED WITH GRAVE ABUSE OF DISCRETION, OR CONTRARY TO THE FINDINGS CULLED BY THE TRIAL COURT OF ORIGIN.— Factual findings of the trial court are accorded high respect and are generally not disturbed by appellate courts, unless found to be clearly arbitrary or baseless. This Court does not review the factual findings of an appellate court, unless these findings are "mistaken, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the trial court of origin." Although the pronouncement of the trial court is not identical to that of the CA, the declaration of one corroborates the findings of the other. We rule that the findings of the lower court and the CA regarding Lots V and VI should be respected. The mother of petitioner purchased both of these lots in her capacity as respondent's attorney-in-fact, which explains why these lots were — for taxation purposes — declared in the name of respondent.

4. ID.; ID.; PRESUMPTIONS; OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED; THE COURT OF APPEALS' FINDINGS OF FACT SHALL BE REVIEWED WHERE THE SAME ARE INCONSISTENT WITH THOSE OF THE TRIAL COURT AND THE EVIDENCE ON RECORD.— Petitioner correctly posits that it was wrong for the CA to base the computation of unremitted fruits and rents solely on the evidence submitted by respondent's attorney-in-fact, as this computation was obviously self-serving. Furthermore, the Certifications issued by the NFA and PCA should have been be given weight, as they are documentary evidence issued by government offices mainly responsible for determining the buying/selling price of *palay*, corn, and other food and coconut products. We shall review the findings of fact of the Court of Appeals in view of some inconsistencies with those of the trial court and the

evidence on record. This Court is convinced that the Certifications are genuine, authentic, valid, and issued in the proper exercise and regular performance of the issuing authority's official duties. Under Section 3(m), Rule 131 of the Revised Rules of Court, there is a legal presumption that official duty has been regularly performed. No evidence was presented to rebut or dispute this presumption.

5. CIVIL LAW; OBLIGATIONS AND CONTRACTS; AGENCY; DOCTRINE OF *QUANTUM MERUIT* APPLIED ABSENT EXPRESS CONTRACT AS TO THE ADMINISTRATOR'S COMPENSATION FOR THE SERVICES RENDERED.— We have already ruled that petitioner should be compensated for the services she rendered. Since there was no exact amount agreed upon, and she failed to fix her own salary despite the authority given to her, the RTC correctly applied the doctrine of *quantum meruit*. x x x The doctrine of *quantum meruit* (as much as one deserves) prevents undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. Being an equitable principle, it should only be applied if no express contract was entered into, and no specific statutory provision is applicable. Although petitioner was given the authority to set the amount of her salary, she failed to do so. Thus, she should at least be given what she merits for her services. We find no reason to reverse the finding of both the RTC and the CA that ₱1,000 per month for 15 years is a just, reasonable, and fair compensation to petitioner for administering respondent's properties. The lower court is ordered to add this amount to the deductibles that petitioner is able to prove or, if the deductibles exceed the monetary value of the income generated by the properties, to add this amount to whatever respondent ends up owing petitioner.

APPEARANCES OF COUNSEL

Law Firm of Dupaya & Dupaya for petitioner.
Rodrigo R. Reantaso for respondent.

D E C I S I O N

SERENO, *J.*:

The present case stems from a Complaint for Recovery of Possession of Real Properties, Accounting and Injunction[1] filed by Leticia Vasquez-Menancio (respondent) against Caridad S. Sazon (petitioner) in the Regional Trial Court (RTC) of Ligao City, Albay. The RTC ruled in favor of respondent, but reversed itself when petitioner filed a Motion for Reconsideration (MR). Petitioner appealed the case to the Court of Appeals (CA), but it affirmed the first Decision of the RTC. She filed another MR, but the CA denied it for lack of merit.

The Case

Before us is a Petition for Review[2] under Rule 45 of the Rules of Court, assailing the 26 November 2009 Decision[3] of the appellate court in CA-GR CV No. 91570. The challenged Decision disposed as follows:

> **WHEREFORE**, the appeal is **DISMISSED.** The *Decision* dated 31 July 2007 of the Regional Trial Court, Branch 13, Ligao City, in Civil Case No. T-1944 is **AFFIRMED** with **MODIFICATION** in that Caridad S. Sazon is **ORDERED** to pay Leticia Vasquez-Menancio the amount of ₱908,112.62, representing the unremitted fruits and income of the subject properties from 1979 to 1997. This is already net of administration expenses, allowance for compensation and proved real estate taxes paid. The *Decision* is **affirmed** in all other respects.
>
> **SO ORDERED**.[4]

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[1] *Rollo*, pp. 74-77.

[2] *Id.* at 29-39.

[3] *Id.* at 58-69; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Jose C. Reyes, Jr. and Magdangal M. de Leon.

[4] *Rollo*, pp. 68-69.

Antecedents

Respondent is a resident of the United States of America. Sometime in 1979, she entrusted the management, administration, care and preservation of her properties to petitioner. These properties are more specifically described as follows:

I. Residential lot, with an area of 573 sq. m., located in Zone III, Libon, Albay, declared under Tax No. 097-03-0066 in the sum of ₱24,070.00

II. Residential lot, with an area of 299 sq. m., located in Zone III, Libon, Albay, declared under Tax No. 097-003-00115 in the sum of ₱12,560.00

III. Residential lot, with an area of 873 sq. m., located in San Antonio St., Libon, Albay, declared under Tax No. 097-003-00068 in the sum of ₱36,670.00

IV. Irrigated riceland, Cad. Lot No. 852, with an area of 3.1304 hectares, located at San Isidro, Libon, Albay, declared under Tax No. 07-039-235 in the sum of ₱96,580.00

V. Irrigated riceland, with an area of 1.5652 hectares, located at Bololo Centro, Libon, Albay, declared under Tax No. 07-005-104 in the sum of ₱48,290.00

VI. Irrigated riceland, with an area of .6720 hectares, located at Bololo Centro, Libon, Albay, declared under Tax No. 07-005-103 in the sum of ₱29,730.00

VII. Irrigated riceland, with an area of .6380 hectares, located at Balagon Centro, Libon, Albay, declared under Tax No. 07-005-222 in the sum of ₱19,680.00

VIII. Coconut land, with an area of ten (10) hectares, located at Macabugos, Libon, Albay, declared under Tax No. 07-023-85 in the sum of ₱42,840.00

IX. Coconut land, with an area of 3.7102 hectares, located at Macabugos, Libon, Albay, declared under Tax No. 07-023-86 in the sum of ₱15,740.00[5]

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

The properties shall hereinafter be referred to individually as "Lot I," "Lot II" and so on for brevity.

Respondent avers that Lots I to IX are productive, and that petitioner as the administrator has collected and received all the fruits and income accruing therefrom. Petitioner, on the other hand, claims that several of the properties do not produce any fruit or generate any income at all,[6] and that any supposed income derived from them is not sufficient to answer for all the expenses incurred to maintain them.[7]

According to respondent, petitioner never rendered a full accounting of the fruits and income derived from the properties, but has instead appropriated and in fact applied these for her own use and benefit. Denying this allegation, petitioner presented five letters—dated 21 January 1983, 12 March 1984, 15 September 1986, 2 December 1988, and one undated—which had been sent to respondent as proof of the accounting.[8]

Furthermore, petitioner denies receipt of any letter asking her to make an accounting or to remit the fruits collected from the properties.[9] She further avers that, since the start of her agency agreement with respondent, the latter never answered "any of the communications" petitioner had sought to initiate.[10]

As a result of the foregoing, respondent revoked, in writing, all the powers and authority of administration granted to petitioner effective March 1997. Thereafter, the former demanded that petitioner return and/or turn over the possession and administration of the properties.

Respondent claims that she made repeated verbal, and served written, demands upon petitioner, asking the latter to render an

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[6] *Id.* at 81.

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

[8] *Id.* at 32.

[9] *Id.* at 80.

[10] *Supra* note 6.

accounting and to remit the owner's share of the fruits. Petitioner, however, continued to fail and to refuse to perform her obligation.[11] In fact, she continues to hold on to the properties and the management and administration thereof. Further, she continues to collect, receive, and keep all the income generated by the properties.

Thus, on 30 October 1997, respondent filed her Complaint with Preliminary Injunction,[12] praying that the RTC order petitioner to render an accounting and remit all the fruits and income the latter, as the administrator, received from the properties.

In her Answer with Counterclaim,[13] petitioner alleges as follows:

> 2.a. Lot area of 573 sq.m.-is being leased by Salome S. Segarra which is duly covered by a Lease Contract executed during the effectivity of the Special Power of Attorney granted to the herein defendant. Furthermore, the said Lease Contract was entered into with the express consent, and without any objection on the part of the plaintiff since she was consulted prior to its execution; xxx,
>
> 2.b. Lot area of 299 sq. m. — This is included in the [L]ease [C]ontract above-mentioned.
>
> 2.c. Lot area of 873 sq. m. — This is likewise duly covered by a Lease Contract executed between the herein defendant as lessee and Ana C. Segarra when the latter was still the administrator of the properties of the plaintiff. The said Lease Contract was likewise entered into with the express consent and without any objection on the part of the plaintiff since she was again consulted prior to its execution; xxx.
>
> 2.d. Lot area of 3.1304 hectares – this is administered as to 2/3 of the total land area but not as to the other 1/3 as the same is owned by the defendant's mother Ana C. Segarra by virtue

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[11] *Id.* at 75.

[12] *Id.* at 59.

[13] *Id.* at 78-87.

of a contract of sale from Mrs. Josefina Segarra, the co-owner of the plaintiff over the said land; xxx,

2.e. Lot area of 1.5652 hectares and .6720 hectares are not owned by the plaintiff but that of the mother of the herein defendant Ana C. Segarra by virtue of a Deed of Redemption, as in fact, they are in possession thereof as owners and not as administrator of the plaintiff; xxx,

2.f. Lot area of .6380 hectares – said land is presently possessed by the alleged administrator of the plaintiff yet the plaintiff still seeks the return of the same which constitutes an act that trifles with the administration of justice and further prove that this groundless case was filed with this court purely to harass the herein defendant;

2.g. Lot area of 10 hectares and Lot area of 3.7102 hectares – the herein defendant is no longer in possession of these lots as in fact, the fruits of these lands are not being turned over to the defendant ever since the plaintiff revoked the authority given to the defendant, x x x.[14]

In short, petitioner argues that respondent has no cause of action against her for the following reasons:[15]

1. The properties that cannot be returned because they are under valid lease agreements—Lots I-III—and those that have been transferred to a third party by virtue of contracts of sale with corresponding deeds of redemption—Lots V and VI—can no longer be given to respondent;[16]

2. Some properties are already in respondent's possession—Lots IV and VII-IX.[17]

By way of compulsory counterclaim, petitioner is asking this Court to order respondent to return the one-third portion of

[14] *Id.* at 78-80.

[15] *Id.* at 83.

[16] *Id.* at 81-82.

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

Lot IV allegedly owned by petitioner's mother and the fruits collected therefrom.[18]

During the pretrial conference held on 24 July 1998, the parties agreed that respondent already had possession over Lots IV, VII, VIII, and IX. They also agreed that all the income derived from Lots I to IX since 1979 were received by petitioner.[19]

In a Decision[20] dated 31 July 2007, the RTC ruled in favor of respondents. The dispositive portion thereof reads:

> WHEREFORE, the foregoing premises duly considered, judgment is hereby rendered in favor of plaintiff Leticia Vasquez-Menancio and against defendant Caridad S. Sazon, as follows:
>
> a) ordering the defendant to turn over the possession, management and administration of all the properties enumerated in paragraph 2 of the complaint, except parcels 4, 7, 8 and 9 which were already under plaintiff's possession since August, 1977, to the plaintiff, thru attorney-in-fact Edgar S. Segarra;
>
> b) ordering the defendant to remit to the plaintiff the total sum of ₱1,265,493.75 representing unremitted fruits and income of the subject properties, less the amount of ₱150,000.00 by way of administration expenses incurred by defendant;
>
> c) ordering the defendant to pay the plaintiff the sum of ₱50,000.00 as moral damages;
>
> d) ordering the defendant to reimburse the plaintiff the sum of ₱20,000.00 as and for attorney's fees, plus the sum of ₱1,000.00 for every court appearance of counsel; and —
>
> e) ordering the defendant to pay the costs of the suit.
>
> On the other hand, plaintiff Leticia Vasquez-Menancio is hereby ordered to pay defendant Caridad S. Sazon the total sum of ₱180,000.00, representing the latter's compensation in administering the former's properties based on *quantum meruit*.
>
> SO ORDERED.[21]

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[18] *Id.* at 84.

[19] *Id.* at 91.

[20] *Id.* at 88-102, Civil Case No. T-1944, penned by Judge William B. Volante.

[21] *Id.* at 101-102.

Petitioner filed her MR on 20 August 2007 questioning the trial court's Decision to rely on the computation made by respondent's attorney-in-fact. These computations, reflected in paragraph (b) of the dispositive portion, were used by the RTC to determine the prices of *palay*, corn and copra at the time that petitioner administered the properties. Realizing, however, that it should have considered the Certifications issued by the National Food Authority (NFA) and the Philippine Coconut Authority (PCA) for that purpose, the RTC ruled in favor of respondent and partly reversed its 28 March 2008 Decision, the dispositive portion of which reads:

> WHEREFORE, **the foregoing premises duly considered, the Court resolves to set aside the Decision dated July 31, 2007. In lieu thereof, a new decision** is hereby rendered as follows:
>
> a) ordering the defendant Caridad S. Sazon to turn over the possession, management and administration of all the properties enumerated in paragraph 2 of the complaint, except parcels 4, 7, 8 and 9 which were already under plaintiff's possession since August, 2007, to plaintiff Leticia Vasquez-Menancio, thru her attorney-in-fact Edgar S. Segarra;
>
> b) ordering the defendant to render full, accurate and complete accounting of all the fruits and proceeds of the subject properties during the period of her administration; and
>
> c) ordering the defendant to reimburse the plaintiff the sum of ₱20,000.00, as and for attorney's fees;
>
> Costs against defendant.
>
> SO ORDERED.[22] (Emphasis supplied in the original)

Still aggrieved, petitioner raised the matter to the CA, but it dismissed her appeal. It affirmed the trial court's 31 July 2007 Decision, except for the amount ordered to be remitted to respondent, which was reduced to ₱908,112.62. The MR filed by petitioner was also denied on 29 April 2010.[23]

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[22] *Id.* at 17.

[23] *Id.* at 72-73.

Petitioner is now asking this Court to set aside the CA's Decision.[24]

In questioning the Decision of the CA, petitioner first raises a procedural issue. She argues that the appellate court should not have affirmed the RTC Decision in this case, because when the trial court abandoned its original Decision, the latter impliedly admitted that it had "committed erroneous findings of facts."[25] Respondent argues that the CA had the power to affirm the RTC's second Decision — the Resolution on the MR — because the entire case was opened for review upon appeal.

We agree with respondent.

In *Heirs of Carlos Alcaraz v. Republic of the Philippines*,[26] we reiterated the cardinal rule that when a case is appealed, the appellate court has the power to review the case in its entirety, to wit:

> In any event, when petitioners interposed an appeal to the Court of Appeals, the appealed case was thereby thrown wide open for review by that court, which is thus necessarily empowered to come out with a judgment as it thinks would be a just determination of the controversy. Given this power, the appellate court has the authority to either affirm, reverse or modify the appealed decision of the trial court. To withhold from the appellate court its power to render an entirely new decision would violate its power of review and would, in effect, render it incapable of correcting patent errors committed by the lower courts.

Thus, we agree with respondent that the CA was free to affirm, reverse, or modify either the Decision or the Order of the RTC.

Next, petitioner avers that she cannot turn over possession of Lots I to III, because these are subject of valid lease agreements.

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[24] *Id.* at 54.

[25] *Id.* at 21.

[26] 502 Phil. 521, 536 (2005).

None of the parties question the appellate court's finding that the lease agreements covering Lots I-III should be respected. After all, when petitioner entered into these agreements, she acted within her authority as respondent's agent.[27]

In this matter, we agree with the CA in its ruling that even though the lease agreements covering these lots should be respected, petitioner must turn over the administration of the leases to respondent's attorney-in-fact.[28] The reason is that respondent has already revoked the authority of petitioner as administrator. Hence, the latter no longer has the right to administer the properties or to receive the income they generate on respondent's behalf.

With respect to the one-third portion of Lot IV, the parties also agree that the sale of one-third of this lot to petitioner's mother should be respected by respondent.[29] Lot IV has been in the latter's possession since 1997. Since it is not controverted that one-third of this lot is now owned by petitioner's mother, respondent should turn over possession of the corresponding one-third portion and remit all fruits collected therefrom since 1997.

Petitioner questions the factual findings of the appellate court. She claims that the CA erred in finding that "the reason why petitioner allegedly never rendered an accounting of income is because the respondent never demanded it."[30] According to petitioner, she never claimed that this was the reason why she never rendered an accounting of income. In fact, she insists that she actually sent letters of accounting to respondent. Supposedly, she only said that respondent never demanded accounting from her to refute the claim of respondent that such demand letter was sent to her.

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[27] *Id.* at 66.

[28] *Rollo*, p. 67.

[29] *Id.*

[30] *Id.* at 28.

Petitioner insists, however, that Article 1891 of the Civil Code contains a few of the obligations owed by an agent to his principal, *viz*:

> Art. 1891. Every agent is bound to render an account of his transactions and to deliver to the principal whatever he may have received by virtue of the agency, even though it may not be owing to the principal.
>
> Every stipulation exempting the agent from the obligation to render an account shall be void.

It is evident that the reason behind the failure of petitioner to render an accounting to respondent is immaterial. What is important is that the former fulfill her duty to render an account of the relevant transactions she entered into as respondent's agent.

Petitioner claims that in the course of her administration of the properties, the letters she sent to respondent should be considered as a fulfillment of her obligation, as respondent's agent, to render an accounting of her administration.[31] Both the RTC and the CA found these letters insufficient. We agree. Petitioner was the administrator of respondent's properties for 18 years or from 1979 to 1997, and four letters within 18 years can hardly be considered as sufficient to keep the principal informed and updated of the condition and status of the latter's properties.

As to Lots V and VI, petitioner avers that ownership thereof was transferred to her mother through a Deed of Redemption,[32] *viz*:

> Defendant averred that her mother owned parcels 5 and 6. She Identified a Deed of Redemption purporting to have transferred the property to her mother. When the deed was executed, plaintiff was in the United States but defendant's mother notified her. She saw her mother putting 100-peso bills amounting to ₱6,500.00 in a big

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[31] *Id.* at 32.

[32] *Id.* at 96.

brown envelope to pay for the lot. Her father Simeon Segarra who just came from the United States gave her the money.[33]

On this matter, the RTC found thus:

> As regards parcels 5 and 6, the defendant averred that they were owned by her mother Ana Segarra because she was the one who redeemed the properties. But the evidence extant in the records disclosed that the said parcels of land were declared for taxation purposes in the name of plaintiff Leticia Vasquez-Menancio. In many cases, it has been repeatedly held that although tax declarations are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of an owner for no one in his right mind would be paying taxes for a property that is not under his actual or at least constructive possession. Hence, the fruits and profits of these properties shall still incur to the plaintiff.[34]

For its part, the CA held as follows:

> To prove that one of Leticia's properties now belongs to her mother, Ana Segarra, Sazon presented evidence showing that when Ana was still the administrator of Leticia's properties, she redeemed Leticia's property that was sold by Leticia's father to vendee-a-retro, Loreto San Andres-Seda. However, *the Deed of Redemption* clearly shows that Ana redeemed the property only in her capacity as attorney-in-fact of Leticia, and not in her personal capacity.[35]

Factual findings of the trial court are accorded high respect and are generally not disturbed by appellate courts, unless found to be clearly arbitrary or baseless.[36] This Court does not review the factual findings of an appellate court, unless these findings are "mistaken, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the trial court of origin."[37]

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[33] *Id.*

[34] *Id.* at 99.

[35] *Id.* at 61.

[36] *People v. Agunias*, 344 Phil. 467 (1997).

[37] *Ramirez v. CA*, 356 Phil. 10 (1998).

Although the pronouncement of the trial court is not identical to that of the CA, the declaration of one corroborates the findings of the other. We rule that the findings of the lower court and the CA regarding Lots V and VI should be respected. The mother of petitioner purchased both of these lots in her capacity as respondent's attorney-in-fact, which explains why these lots were — for taxation purposes — declared in the name of respondent.

Petitioner bewails the appellate court's supposed failure to rule on her claim that respondent promised to give the former a 20% commission for the sale of respondent's properties in Las Piñas, Quiapo; and Fraternal, Sampaloc, Manila.[38] We rule that petitioner failed to prove that this agreement had been entered into. No other evidence, except for her testimony, was presented to prove that an agreement of this nature had been entered into between the parties.[39]

Finally, the crux of the present Petition is the determination of the value of all the fruits and proceeds collected from respondent's properties from 1979 to 1997 and the total sum thereof.

Petitioner does not deny that she never remitted to respondent any of the fruits or income derived from the properties. Instead, petitioner claims that (1) the properties did not produce any fruit or generate any income at all;[40] (2) any supposed income derived from the properties was not sufficient to answer for all the expenses incurred to maintain them;[41] and (3) she was never compensated for the services she rendered as the administrator of respondent's properties.

As previously mentioned, every agent is bound to deliver to the principal whatever the former may have received by virtue

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[38] *Rollo*, pp. 45-46.

[39] See *rollo*, pp. 45-47.

[40] *Supra* note 6.

[41] *Supra* note 7.

of the agency, even though that amount may not be owed to the principal.[42]

In determining the value of the fruits, the RTC—in its original Decision—relied on the computation submitted by respondent's attorney-in-fact and ordered petitioner to remit to respondent the total sum of ₱1,265,493.75, to wit:

> At the outset, it may be stated that plaintiff's attorney-in-fact Edgar S. Segarra, being a farmer himself and a resident of the area where the subject properties are located can best testify regarding the income thereof. In preparing a computation of income of his principal, plaintiff Leticia Vasquez-Menancio, he consulted people from the agrarian sector, as well as grains buyers. He also referred to the lease contracts entered into between the former administratrix and the tenants. Based on his computation, the amount which represented the fruits of the properties being administered by the defendant but were not remitted to the plaintiff totaled ₱1,265,493.75 x x x, which amount to the mind of the Court, is not colossal but a reasonable claim, especially in this instance where the subject properties have been administered by defendant and her mother for more than (10) years.[43]

The computation is based on the alleged prevailing price of ₱8.75 per kilo for *palay* and ₱12 per kilo for copra. The trial court also ordered respondent to reimburse petitioner in the amount of ₱150,000 representing the administrative expenses the latter incurred as the agent. Furthermore, petitioner was awarded ₱180,000 as compensation for administering respondent's properties. Lastly, petitioner was ordered to pay respondent attorney's fees in the amount of ₱20,000 plus ₱1,000 for every appearance of counsel.

In the Order of the RTC reversing its Decision, it found that it should have considered the Certifications issued by the NFA and PCA with respect to the prevailing prices of *palay*, corn, and copra at the time of petitioner's administration. These

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[42] CIVIL CODE OF THE PHILIPPINES, Art. 1891.

[43] *Rollo*, p. 98.

Certifications revealed that the prevailing prices from 1979 to 1997 were as follows: (1) from ₱1.75 to ₱8 per kilo for *palay*; (2) from ₱1 to ₱6 per kilo for corn; and (3) from ₱3.15 to ₱10.77 per kilo for copra. The RTC found that the parties failed to prove the exact quantity and quality of harvests for the period. Consequently, it ordered petitioner to "render full, accurate, and complete accounting of all the fruits and proceeds of the subject properties during the period of her administration."[44]

The CA affirmed the RTC's original Decision and ordered petitioner to pay respondent the amount of ₱1,315,533.75—even though the trial court had ordered the return of only ₱1,265,493.75—representing the total value of the fruits and rents derived from the properties from 1979 to 1997 less the ₱150,000 administrative expenses, the ₱180,000 compensation for administering the properties, and the ₱77,221.13 real estate taxes paid by petitioner from 1979 to 1997.

We disagree with the appellate court's finding with respect to the total value of fruits and rents earned by the properties from 1979 to 1997.

As found by the RTC, the following computation of the amounts owed by petitioner to respondent was submitted by the latter's attorney-in-fact, Edgar S. Segarra:

> Witness Edgar S. Segarra testified that the properties which were administered by defendant Caridad S. Sazon consisted of residential and agricultural lands. Caridad Sazon leased the residential lots to one Salome Segarra in the amount of 100 pesos a month since 1988. Another parcel of land was leased to defendant's mother Ana Segarra in exchange for one sack or 46 kilograms of *palay* for a period of 20 years. A cornland which is being tenanted by Orlando Macalinao produced ₱72,000.00. The computation was based on a 75/25 sharing plan multiplied by the price of corn at 6 pesos and again multiplied by 15 years, the number of years that the properties were being tenanted. Another riceland was tilled by the defendant's husband. This 1.56 hectares Riceland produced 1,932 kilograms of rice per year and at ₱8.75 a kilogram, for 14 years, the amount which was not

[44] *Id.* at 125.

remitted to the plaintiff amounted to ₱836,670.00. Another property, located at Libon, Albay, containing an area of .6720 hectare and tilled by defendant's husband produced harvest amounting to ₱121,030.00. Further, a riceland with an area of .6380 hectare being farmed by the defendant's daughter produced ₱183,720.00. Two coconut lands, located at Macabugos, Libon, Albay, produced coconuts made into copras, thus bringing in profits of about ₱705,600.00.

The foregoing amounts correspond to the years by which the properties were administered by the defendant, the number of crops they harvested, the sharing plan, and the prevailing price of the produce during the years of administration. He also asked the *comprador* (buyer of grains) about the prices and consulted employees of the department of Agrarian Reform regarding the sharing of the crops. The lease contracts affecting the properties were also considered. All these amounts were never remitted by the defendant to the owner-plaintiff.[45]

Petitioner correctly posits that it was wrong for the CA to base the computation of unremitted fruits and rents solely on the evidence submitted by respondent's attorney-in-fact, as this computation was obviously self-serving. Furthermore, the Certifications issued by the NFA and PCA should have been given weight, as they are documentary evidence issued by government offices mainly responsible for determining the buying/selling price of *palay*, corn, and other food and coconut products.

We shall review the findings of fact of the Court of Appeals in view of some inconsistencies with those of the trial court and the evidence on record.

This Court is convinced that the Certifications are genuine, authentic, valid, and issued in the proper exercise and regular performance of the issuing authority's official duties. Under Section 3(m), Rule 131 of the Revised Rules of Court, there is a legal presumption that official duty has been regularly performed. No evidence was presented to rebut or dispute this presumption.

Petitioner claims that several of the properties did not produce any fruit or generate any income at all.[46] However, the trial

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[45] *Id.* at 93-94.

[46] *Supra* note 6.

court found that not only was there evidence on record showing that the properties administered yielded agricultural produce and rents, but petitioner herself had testified that the properties increased when she served as administrator. In effect, she admitted that the properties indeed generated income.[47]

This Court is left with no other choice but to order both parties to present their evidence in support of their respective claims considering that no evidence was submitted to prove the quantity and quality of harvests for the relevant period. Neither the RTC nor the CA was able to explain or present a breakdown to show how it arrived at the supposed amount representing the total value of the fruits and rents derived from the properties.

The trial court correctly ordered petitioner to "render full, accurate, and complete accounting of all the fruits and proceeds of the subject properties during the period of her administration." However, it should have also ordered petitioner to present all her evidence regarding the alleged transportation expenses, attorney's fees, docket fees, and other fees; [48] the total amount expended for the purchase of respondent's Las Piñas property;[49] and the total amount of real property taxes paid. These claimed expenses, if and when duly proven by sufficient evidence, should be deducted from the total income earned by the properties.

Both parties should be required to present their evidence to finally resolve the following issues: (1) the total amount of the income generated by Lots I to IX during the administration of petitioner; and (2) the total amount of expenses incurred by petitioner that should be borne by respondent as the owner of the properties, or the total deductibles in petitioner's favor.

There is no doubt that petitioner is entitled to compensation for the services she rendered. Respondent does not deny that she never paid the former, since they had no agreement regarding the amount, the determination of which she left to petitioner.[50]

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[47] *Supra* note 34.

[48] *Rollo*, p. 95.

[49] TSN, 21 June 2002, pp. 34-35.

[50] *Rollo*, pp. 92-93.

Petitioner now argues that since the expenses for the maintenance of the properties exceeded whatever income they generated, then whatever is left of the income should now belong to her as compensation.[51] She says that the "admission of the respondent admitted during cross-examination that she expected petitioner to fix her own salary out of the remaining income, if any, of the administered property" is enough reason to reverse and Decision and Resolution of the CA.[52]

The contention is not acceptable. Considering that neither of the parties was able to prove how much the properties earned, this Court cannot just agree with petitioner's claim that whatever is left of this income, after the expenses have been deducted, should be considered as her salary. To begin with, she repeatedly claimed that all the income derived from these properties was insufficient to cover even just the expenses; thus, there is no "remaining income" left to speak of.

We have already ruled that petitioner should be compensated for the services she rendered. Since there was no exact amount agreed upon, and she failed to fix her own salary despite the authority given to her, the RTC correctly applied the doctrine of *quantum meruit*. With respect to this matter, the trial court found thus:

> And where the payment is based on *quantum meruit*, the amount of recovery would only be the reasonable value of the thing or services rendered regardless of any agreement as to value. In the instant case, the amount of ₱1,000.00 per month for 15 years representing defendant's compensation for administering plaintiff's properties appears to be just, reasonable and fair.[53]

The doctrine of *quantum meruit* (as much as one deserves) prevents undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for

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[51] *Id.* at 53.

[52] *Id.*

[53] *Id.* at 101.

it.[54] Being an equitable principle, it should only be applied if no express contract was entered into, and no specific statutory provision is applicable. Although petitioner was given the authority to set the amount of her salary, she failed to do so. Thus, she should at least be given what she merits for her services. We find no reason to reverse the finding of both the RTC and the CA that ₱1,000 per month for 15 years is a just, reasonable, and fair compensation to petitioner for administering respondent's properties. The lower court is ordered to add this amount to the deductibles that petitioner is able to prove or, if the deductibles exceed the monetary value of the income generated by the properties, to add this amount to whatever respondent ends up owing petitioner.

We delete the award of moral damages and attorney's fees in the absence of proof of bad faith and malice on the part of petitioner.

WHEREFORE, in view of the foregoing, the Petition is **PARTLY GRANTED**, as follows:

(1) Petitioner Caridad S. Sazon is ordered to **TURN OVER** the possession, management, and administration of Lots I, II, III, V, and VI to respondent Leticia Vasquez-Menancio through the latter's attorney-in-fact, Edgar S. Segarra.

(2) Respondent is ordered to **TURN OVER** the possession, management, and administration of one-third of Lot IV to petitioner.

(3) The case is **REMANDED** to the Regional Trial Court of Ligao City, Albay, the court of origin, which is ordered to do the following:

    (a) **ORDER** petitioner to render full, accurate, and complete accounting of all the fruits and proceeds earned by respondent's properties during petitioner's administration thereof;

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[54] See *Soler v. Court of Appeals*, 410 Phil. 264, 273 (2001).

(b) **ORDER** petitioner to submit a detailed list with a breakdown of all her claimed expenses, including but not limited to the following: maintenance expenses including transportation expenses, legal expenses, attorney's fees, docket fees, *etc.*; the total amount expended for the purchase of respondent's Las Piñas property;[55] and the total amount of real property taxes paid, all for the period 1979 to 1997;

(c) **ORDER** the parties to submit their evidence to prove the exact quantity and quality of the harvests or the fruits produced by the properties and all the expenses incurred in maintaining them from 1979 to 1997;

(d) **DETERMINE** the total amount earned by the properties by using as basis the declaration of the National Food Authority and the Philippine Coconut Authority with respect to the prevailing prices of *palay*, corn, and copra for the period 1979 to 1997; and

(e) **SUBTRACT** from the determined total amount the expenses proven by petitioner and the ₱180,000 serving as her compensation for administering the properties from 1979 to 1997.

COSTS against petitioner.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,* and *Reyes, JJ.,* concur.

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[55] *Supra* note 48.

[*] Designated as Acting Member of the Second Division vice Associate Justice Arturo D. Brion per Special Order No. 1195 dated 15 February 2012.

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— Defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty; it implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle. *(Id.)*

ADMINISTRATIVE PROCEEDINGS

Proof required — In administrative proceedings, complainants have the burden of proving by substantial evidence the allegations in their complaints; mere accusations or surmises will not suffice. (Atty. Medina *vs*. Judge Canoy, A.M. No. RTJ-11-2298, Feb. 22, 2012) p. 397

ADMISSIONS

Judicial admissions — Construed and applied. (Phil. Charter Ins. Corp. *vs.* Central Colleges of the Phils., G.R. Nos. 180631-33, Feb. 22, 2012) p. 507

AGENCY

Compensation of agent — Doctrine of quantum meruit applied absent express contract as to the administrator's compensation for the services rendered. (Segarra Sazon *vs.* Vasquez-Menancio, G.R. No. 192085, Feb. 22, 2012) p. 669

Revocation of — Once the authority of the party as administrator of the properties is revoked, he no longer has the right to administer the properties or to receive the income they generate. (Segarra Sazon *vs*. Vasquez-Menancio, G.R. No. 192085, Feb. 22, 2012) p. 669

AGGRAVATING CIRCUMSTANCES

Treachery — The essence of treachery is that the attack comes without a warning and in a swift, deliberate and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. (People of the Phils. *vs*. Cabrillas, G.R. No. 175980, Feb. 15, 2012) p. 164

— There is no proceeding for the judicial declaration of the citizenship of an individual. *(Id.)*

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation — The lack of participation of the Philippine Drug Enforcement Agency in the buy-bust operation would not make the arrest of the accused illegal or the evidence obtained pursuant thereto inadmissible. (People of the Phils. *vs*. Clarite *y* Salazar, G.R. No. 187157, Feb. 15, 2012) p. 289

Illegal possession of dangerous drugs — For illegal possession of a dangerous drug, like shabu, the elements are: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug. (People of the Phils. *vs*. Bautista *y* Santos, G.R. No. 177320, Feb. 22, 2012) p. 487

Illegal sale of dangerous drugs — The elements necessary in every prosecution for the illegal sale of shabu are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment; similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the "actual commission by someone of the particular crime charged"; the *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself. (People of the Phils. *vs*. Bautista *y* Santos, G.R. No. 177320, Feb. 22, 2012) p. 487

(People of the Phils. *vs*. Clarite *y* Salazar, G.R. No. 187157, Feb. 15, 2012) p. 289

— What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. (People of the Phils. *vs*. Bautista *y* Santos, G.R. No. 177320, Feb. 22, 2012) p. 487

DAMAGES

Actual damages — Actual or compensatory damages means the adequate compensation for pecuniary loss suffered and for profits the obligee failed to obtain; to be entitled to actual or compensatory damages, there must be pleading and proof of actual damages suffered. (Phil. Charter Ins. Corp. *vs*. Central Colleges of the Phils., G.R. Nos. 180631-33, Feb. 22, 2012) p. 507

— To be entitled to an award thereof, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable. (Wuerth Phils., Inc. *vs*. Ynson, G.R. No. 175932, Feb. 15, 2012) p. 143

Attorney's fees — An employee is entitled to an award of attorney's fees where he was forced to litigate and incur expenses to protect his right and interest. (Wuerth Phils., Inc. *vs*. Ynson, G.R. No. 175932, Feb. 15, 2012) p. 143

Award of — Made proper with the failure of petitioner-doctors to administer the necessary medical attention to their patient. (Dr. Jarcia, Jr. *vs*. People of the Phils., G.R. No. 187926, Feb. 15, 2012) p. 317

Temperate damages — Granted so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification. (People of the Phils. *vs*. Cabrillas, G.R. No. 175980, Feb. 15, 2012) p. 164

Temperate or moderate damages — May be recovered when the court finds that some pecuniary loss has been suffered, but the amount cannot, from the nature of the case, be proved with certainty. (Wuerth Phils., Inc. *vs*. Ynson, G.R. No. 175932, Feb. 15, 2012) p. 143

DANGEROUS DRUGS

Illegal sale of dangerous or regulated drugs — In the prosecution of illegal sale of dangerous drugs, the following elements must be established: (1) identities of the buyer and seller,

declarant is under a consciousness of an impending death; (c) that the declarant is competent as a witness; and (d) that the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is a victim. (People of the Phils. *vs.* Salafranca *y* Bello, G.R. No. 173476, Feb. 22, 2012) p. 470

Part of res gestae — A declaration or an utterance is deemed as part of the *res gestae* and thus admissible in evidence as an exception to the hearsay rule when the following requisites concur, to wit: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statements are made before the declarant had time to contrive or devise; and (c) the statements must concern the occurrence in question and its immediately attending circumstances. (People of the Phils. *vs.* Salafranca *y* Bello, G.R. No. 173476, Feb. 22, 2012) p. 470

INJUNCTIONS

Nature — An action for injunction has an independent existence, and is distinct from the ancillary remedy of preliminary injunction. (BPI *vs.* Hong, G.R. No. 161771, Feb. 15, 2012) p. 66

INSURANCE

Incontestability period — The insurer is precluded from disowning liability under the policy it issued on the ground of concealment or misrepresentation regarding the health of the insured after a year of its issuance; one-year incontestability period has not yet set in. (Florendo *vs.* Philam Plans, Inc., G.R. No. 186983, Feb. 22, 2012) p. 582

Pension plans — In signing the pension plan application, the insured certified that he wrote all the information stated in it or had someone do it under his direction. (Florendo *vs.* Philam Plans, Inc., G.R. No. 186983, Feb. 22, 2012) p. 582

— The insured person is expected to read every document, especially if it creates rights and obligations affecting him, before signing the same. *(Id.)*

— For the charge of statutory rape to prosper, the prosecution must prove that: (1) the accused had carnal knowledge of the woman; and (2) that such woman is under twelve (12) years of age. *(Id.)*

— Ill-motives become inconsequential if there is an affirmative and credible declaration from the rape victim which clearly established the liability of the accused. *(Id.)*

— The date or time of the commission of rape is not a material ingredient thereof because the gravamen of rape is carnal knowledge of a woman through force and intimidation. *(Id.)*

— The return of the rape victim to the place where the sexual harassment took place, while seemingly opposed to the manner that most would consider "normal", should not be readily taken as proof that she is lying. *(Id.)*

RES JUDICATA

Doctrine of — *Res judicata* is defined in jurisprudence as to have four basic elements: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second actions, identity of parties, subject matter, and cause of action. (Negros Slashers, Inc. *vs*. Teng, G.R. No. 187122, Feb. 22, 2012) p. 593

RULES OF PROCEDURE

Application — The court may relax the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merits. (Negros Slashers, Inc. *vs*. Teng, G.R. No. 187122, Feb. 22, 2012) p. 593

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