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FROM

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2014

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PHILIPPINE REPORTS

CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 647

IV. CITATIONS 671

PHILIPPINE REPORTS

Page

Aberca, et al., Rogelio *vs.* "John Does" 207
Aberca, et al., Rogelio *vs.* Maj. Gen. Fabian Ver, et al. 207
Adviento, et al., Norberto (Jun) –
People of the Philippines *vs.* 507
ALPA-PCM, Inc. *vs.* Vincent Bulasao, et al. 451
Asia United Bank, et al. – Goodland Company, Inc. *vs.* 391
Australian Professional Realty, Inc., et al. *vs.*
Municipality of Padre Garcia, Batangas Province 283
Bachelor Express, Inc. / Ceres Liner, Inc., et al. –
Cresencio Baño, et al. *vs.* 12
Bantigue Point Development Corporation –
Republic of the Philippines *vs.* 192
Baño, et al., Cresencio *vs.* Bachelor Express,
Inc. / Ceres Liner, Inc., et al. 12
Bulasao, et al., Vincent – ALPA-PCM, Inc. *vs.* 451
C. Alcantara & Sons, Inc. *vs.* Court of Appeals, et al. 174
C. Alcantara & Sons, Inc. *vs.* Nagkahiusang Mamumuo
sa Alsons-SPFL (NAMAAL-SPFL), et al. 174
C. Alcantara & Sons, Inc. – Nagkahiusang Mamumuo
sa Alsons-SPFL (NAMAAL-SPFL), et al. *vs.* 177
C. Alcantara & Sons, Inc., et al. – Nagkahiusang Mamumuo
sa Alsons-SPFL (NAMAAL-SPFL), et al. *vs.* 175-176
Castalloy Technology Corporation, et al. – Philippine
National Bank *vs.* 438
Castro *y* Peralta, et al., Eduardo – People of the
Philippines *vs.* 319
Casuga, Atty. Rodolfo – Corazon T. Nevada *vs.* 463
Casumpang, et al., Adriano – Mariter Mendoza *vs.* 459
Cerdan, Aurora D. *vs.* Atty. Carlo Gomez 418
Codilla, Jr., et al., Eufrocino C. – Congresswoman
Lucy Marie Torres-Gomez *vs.* 632
Court of Appeals, et al. – C. Alcantara & Sons, Inc. *vs.* 174
Dela Cruz, Sheryll C. *vs.* Pamela P. Malunao, etc. 493
Descallar, Delfin S. – Norkis Distributors, Inc., et al. *vs.* 306
Dilangalen, Didagen P. *vs.* Eduardo R. Ermita, etc., et al. 526
Ermita, etc., et al., Eduardo – Dilangalen, Didagen P. *vs.* 526
Ermita, in his capacity as Executive Secretary, Eduardo R. –
Christian Monsod, et al. *vs.* 528

Page

F.F. Cruz & Co., Inc. *vs.* HR Construction Corp. 330
Fernandez, Victory M. *vs.* Office of the
Ombudsman, et al. 377
Fortun, et al., Philip Sigfrid A. *vs.* Gloria
Macapagal-Arroyo, etc., et al. 526
Gomez, Atty. Carlo – Aurora D. Cerdan *vs.* 418
Goodland Company, Inc. *vs.* Asia United Bank, et al. 391
HR Construction Corp. – F.F. Cruz & Co., Inc. *vs.* 330
In Re: Letters of Atty. Estelito P. Mendoza re:
G.R. No. 178083 – Flight Attendants and Stewards
Association of the Philippines (FASAP) *vs.*
Philippines Airlines, Inc. (PAL), et al. 55
"John Does" – Rogelio Aberca, et al. *vs.* 207
John/Jane Does – Manuel H. Nieto, Jr. *vs.* 261
Land Bank of the Philippines *vs.* Perfecto Obias, et al. 296
Llenado, Eleanor De Leon *vs.* People of the
Philippines, et al. 357
Llenado, Eleanor De Leon *vs.* Editha Villaflores 357
Loyola, Joseph Nelson Q. *vs.* Her Execellency
President Gloria Macapagal-Arroyo, etc., et al. 527
Lumayog, Manuel A. *vs.* Spouses Leonard Pitcock and
Corazon Pitcock 233
Macapagal-Arroyo, etc., et al., Gloria – Fortun, et al.,
Philip Sigfrid A. *vs.* 526
Macapagal-Arroyo, etc., et al., Her Execellency
President Gloria – Joseph Nelson Q. Loyola *vs.* 527
Macapagal-Arroyo, etc., et al., in his (sic) capacity as
President of the Republic of the Philippines, Gloria –
Jovito R. Salonga, et al. *vs.* 527
Macapagal-Arroyo, etc., et al., President Gloria –
National Union of Peoples' Lawyers (NUPL)
Secretary General Neri Javier Colmenares, et al. *vs.* 526-527
Malunao, etc., Pamela P. – Sheryll C. Dela Cruz *vs.* 493
Mantawil, et al., Baileng S. *vs.* The Executive
Secretary, et al. 528
MBf Card International Limited, et al. – MCA-MBF
Countdown Cards Philippines, Inc., et al. *vs.* 246

Page

MCA-MBF Countdown Cards Philippines, Inc., et al. *vs.*
MBf Card International Limited, et al. 246
Mendoza, Mariter *vs.* Adriano Casumpang, et al. 459
Monsod, et al., Christian *vs.* Eduardo R. Ermita,
in his capacity as Executive Secretary 528
Montajes, Alfredo Jaca *vs.* People of the Philippines 1
Mumar, Nelfa T. – Paulita "Edith" Serra *vs.* 363
Municipality of Padre Garcia, Batangas Province –
Australian Professional Realty, Inc., et al. *vs.* 283
Nagkahiusang Mamumuo sa Alsons-SPFL
(NAMAAL-SPFL), et al. *vs.* C. Alcantara & Sons, Inc. 177
Nagkahiusang Mamumuo sa Alsons-SPFL
(NAMAAL-SPFL), et al. *vs.* C. Alcantara &
Sons, Inc., et al. 175-176
Nagkahiusang Mamumuo sa Alsons-SPFL
(NAMAAL-SPFL), et al. – C. Alcantara &
Sons, Inc. *vs.* 174
Naredo, et al., Leoncia – Ricardo Rizal, et al. *vs.* 154
National Union of Peoples' Lawyers (NUPL) Secretary
General Neri Javier Colmenares, et al. *vs.* President Gloria
Macapagal-Arroyo, etc., et al. 526-527
Nevada, Corazon T. *vs.* Atty. Rodolfo D. Casuga 463
Nieto, Jr., Manuel H. *vs.* John/Jane Does 261
Nieto,Jr., Manuel H. *vs.* Securities and Exchange
Commission (SEC), et al. 261
Norkis Distributors, Inc., et al. *vs.* Delfin S. Descallar 306
Obias, et al., Perfecto – Land Bank of the Philippines *vs.* 296
Office of the Ombudsman, et al. –
Victory M. Fernandez *vs.* 377
People of the Philippines *vs.* Norberto (Jun)
Adviento, et al. 507
Eduardo Castro *y* Peralta, et al. 319
Roger Posada *y* Urbano, et al. 20
Erland Sabadlab *y* Bayquel 269
Francisca Talaro, et al. 507
People of the Philippines – Alfredo Jaca Montajes *vs.* 1
People of the Philippines, et al. –
Eleanor De Leon Llenado *vs.* 357

Page

Philippine Golf Development & Equipment, Inc. – Philippine Tourism Authority *vs.* 429
Philippine National Bank *vs.* Castalloy Technology Corporation, et al. 438
Philippine Tourism Authority *vs.* Philippine Golf Development & Equipment, Inc. 429
Pitcock, Spouses Leonard and Corazon Pitcock – Mauel A. Lumayog *vs.* 233
Posada *y* Urbano, et al., Roger – People of the Philippines *vs.* 20
Re: Complaint filed by (Ret.) MCTC Judge Rodolfo B. Garcia against 18th Division Clerk of Court Atty. May Faith L. Trumata-Rebotiaco, Court of Appeals, Cebu City 480
Re: In the Matter of Clarification of Exemption from Payment of all Court and Sheriff's Fees of Cooperatives duly Registered in Accordance with Republic Act No. 9520 otherwise known as the Philippine Cooperative Code of 2008, Perpetual Help Community Cooperative (PHCCI) 48
Re: Order of the Office of the Ombudsman Referring the Complaint of Attys. Oliver O. Lozano and Evangeline J. Lozano-Endriano against Chief Justice Reynato S. Puno (Ret.) 489
Re: Subpoena Duces Tecum dated January 11, 2010 of Acting Director Aleu A. Amante, PIAB-C, Office of the Ombudsman 489
Republic of the Philippines *vs.* Bantigue Point Development Corporation 192
Rizal, et al., Ricardo *vs.* Leoncia Naredo, et al. 154
Sabadlab *y* Bayquel, Erland – People of the Philippines *vs.* 269
Salonga, et al., Jovito R. *vs.* Gloria Macapagal-Arroyo, in his (sic) capacity as President of the Republic of the Philippines, etc., et al. 527
Securities and Exchange Commission (SEC), et al. – Manuel H. Nieto, Jr. *vs.* 261
Serra, Paulita "Edith *vs.* Nelfa T. Mumar 363

Page

Talaro, et al., Francisca – People of the Philippines *vs.* 507
The Executive Secretary, et al. – Baileng S.
Mantawil, et al. *vs.* 528
Torres-Gomez, Congresswoman Lucy Marie *vs.*
Eufrocino C. Codilla, Jr., et al. 632
Ver, et al., Maj. Gen. Fabian – Rogelio Aberca, et al. *vs.* 207
Villaflores, Editha – Eleanor De Leon Llenado *vs.* 357

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 183449. March 12, 2012]

ALFREDO JACA MONTAJES, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW FILED TWO DAYS LATE GIVEN DUE COURSE.—** We find that the CA correctly ruled that the petition for review was filed out of time based on our clarification in A.M. No. 00-2-14-SC that the 15-day extension period prayed for should be tacked to the original period and commences immediately after the expiration of such period. Thus, counting 15 days from the expiration of the period which was on May 19, 2007, the petition filed on June 5, 2007 was already two days late. However, we find the circumstances obtaining in this case to merit the liberal application of the rule in the interest of justice and fair play. Notably, the petition for review was already filed on June 5, 2007, which was long before the CA issued its Resolution dated September 21, 2007 dismissing the petition for review for being filed out of time. There was no showing that respondent suffered any material injury or his cause was prejudiced by reason of such delay. Moreover, the RTC decision which was sought to be reversed in the petition for review filed in the CA had affirmed the MTC judgment convicting petitioner of direct assault, hence, the petition involved no less than

petitioner's liberty. We do not find anything on record that shows petitioner's deliberate intent to delay the final disposition of the case as he had filed the petition for review within the extended period sought, although erroneously computed. These circumstances should have been taken into consideration for the CA not to dismiss the petition outright. We have ruled that being a few days late in the filing of the petition for review does not automatically warrant the dismissal thereof. And even assuming that a petition for review is filed a few days late, where strong considerations of substantial justice are manifest in the petition, we may relax the stringent application of technical rules in the exercise of our equity jurisdiction.

APPEARANCES OF COUNSEL

Dolfuss R. Go & Associates Law Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Resolutions dated September 21, 2007[1] and May 19, 2008 [2] of the Court of Appeals (CA) issued in CA-G.R. CR No. 00410 which dismissed the petition for review filed by petitioner Alfredo Jaca Montajes for being filed out of time, and denied reconsideration thereof, respectively.

In an Information[3] dated June 5, 2003, petitioner was charged with the crime of Direct Assault before the Municipal Trial Court (MTC) of Buenavista, Agusan del Norte, the accusatory portion of which reads:

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[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Michael P. Elbinias, concurring; *rollo*, pp. 36-37.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Mario V. Lopez and Michael P. Elbinias, concurring; *id*. at 39-40.

[3] Records, p. 1.

That on or about the 8th day of December, 2002, at 1:00 early morning, more or less, in Purok 10, Barangay Abilan, Buenavista, Agusan del Norte, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously attack, assault, and hack one JOSE B. RELLON, an elected *Punong Barangay*, while in the performance of his duties, and accused fully know that Jose B. Rellon is a *Barangay* Official, to the damage and prejudice of said Jose B. Rellon.

CONTRARY TO LAW: Article 148 of the revised Penal Code.[4]

When arraigned, petitioner pleaded *not guilty* to the charge.[5]

Thereafter, trial ensued.

The evidence of the prosecution and the defense is summarized by the MTC as follows:

To substantiate the alleged commission of the crime of direct assault by the accused, complaining witness Jose B. Rellon declared *inter alia*, that he has been the Barangay Captain of Barangay Abilan, Buenavista, Agusan del Norte since the year 2002. On December 8, 2002, at about 1:00 o'clock in the early morning, he was at the benefit dance sponsored by the *Sangguniang Kabataan* at Purok 4, Barangay Abilan, Buenavista, Agusan del Norte. He met accused Alfredo Montajes who uttered to him the words "YOU'RE A USELESS CAPTAIN." Other words of similar import were likewise uttered by the accused against him which he could no longer recall. After uttering the said words, the accused then drew his bolo locally known as "*lagaraw*" and approached him. He then moved backward, but the accused came near to him and struck him once with the "*lagaraw*." Luckily, complainant was not hit as he managed to move backward. Complainant's daughter named Vilma Dector and his wife, approached him and brought him home. Many people, including two (2) CVO (Rodelio Laureto and Victorio Trinquite), witnessed the incident.

During the mediation in the *barangay* hall, an investigation was conducted. The accused, according to the complainant, asked for forgiveness from him which he declined, as he was of the impression that the law must be applied and the accused should instead ask for forgiveness in court.

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[4] *Id*.

[5] *Id.* at 32.

As proof that the accused asked for forgiveness, complainant presented a document (Exh. "B") to that effect.

Complainant had the incident blottered at the police station as evidenced by an extract thereof.

On cross-examination, complainant testified that he went to the benefit dance to stop it since it was already 1:00 o'clock in the early morning and the benefit dance was still going on when it was supposed to end at 12:00 o'clock midnight as the permit he gave was only up to 12:00 o'clock midnight. As a result of the stoppage of the benefit dance, many persons got angry, and he heard that the house of the accused was stoned which made the accused angry. In fact, he saw the accused murmuring as his house was stoned by unknown persons. When the accused came near to him, the former did not ask for assistance from him.

Prosecution witness Rodelio Laureto corroborated the declaration of the complainant that it was the accused who hacked the complainant with the use of a "*lagaraw*," but failed to hit him.

Accused Alfredo Montajes testified that in the evening of December 7, 2002, he was at home listening to the disco as there was a benefit dance near their house. The benefit dance started at 7 o'clock in the evening and ended at 1 o'clock in the early morning of December 8, 2002 when it was stopped by Barangay Captain Jose Rellon. It was then that trouble started because many of those who have paid but were not anymore allowed to dance complained to the *Barangay* Captain and requested that they be given one more music so that they could avail for what they have paid for on that benefit dance, as they were not refunded with their payments. When this protest went on, the CVO's reacted by clubbing them using their jackets. Then a stoning incident followed. One of those hit by stones was his house. This made him wild prompting him to get his "*lagaraw*" to look for the people responsible for stoning his house. While looking for these persons along the road, he saw Barangay Captain Jose Rellon who was then two (2) meters away from him, and he responded by telling him that he was looking for those persons responsible for the stoning of his house. The complainant wanted to get the "*lagaraw*" from him but he refused.

The accused explained, when confronted with a document (Exh. "B") wherein it was stated that he asked for apology from the *Barangay* Captain during the *barangay* level conciliation, that it was for the

sole purpose of not elevating this case and that they would settle amicably.

The accused also vehemently denied the accusation that he attacked the *barangay* captain.

Defense witness Luis A. Cajeles, Jr., a Barangay Kagawad of Barangay Abilan, Buenavista, Agusan del Norte, testified that at about 1:00 o'clock in the early dawn of December 8, 2002, he heard of stoning and shouting, in fact the window grill of his house was hit and he heard the people in panic. As a *barangay* kagawad assigned to the Peace and Order Committee, he went out immediately from his house and went to the road across the basketball court where the stoning was. He then saw accused Alfredo Montajes holding a bolo. The accused was shouting that he was looking for the persons who stoned his house. He also witnessed that the *barangay* captain asked the accused why he was bringing a bolo and the accused replied that he was looking for the persons who stoned his house. He did not know what else happened because he tried to drive the teenagers to their homes, because it was already very late in the evening.

On cross-examination, he declared that the accused asked for forgiveness during the confrontation at the *Barangay* because of the disturbance he made to the barangay captain and to the community because some people were in panic as he was bringing a bolo, and not for attacking the *Barangay* Captain.

Anatolio Lozada Bangahon, another defense witness, testified that he saw the accused coming out from his house carrying a bolo, and when he asked him why he was bringing a bolo, the accused replied that he was going to look for the persons who stoned his house. The accused was roaming around to look for the persons who stoned his house, but he was not looking after the *Barangay* Captain.[6]

On December 29, 2005, the MTC issued its Judgment[7] finding petitioner guilty of the crime of direct assault. The dispositive portion of the judgment reads:

WHEREFORE, the Court finds accused ALFREDO MONTAJES *y* JACA guilty beyond reasonable doubt of the crime of Direct Assault

[6] *Rollo*, pp. 73-75.

[7] Docketed as Criminal Case No. 3626; per Judge Edgar G. Manilag; *id*. at 73-76.

as defined and penalized under Art. 148 of the Revised Penal Code and hereby sentences him to suffer an indefinite prison term of FOUR (4) MONTHS AND ONE DAY of *arresto mayor* in its maximum period, as minimum, to FOUR (4) YEARS, NINE MONTHS AND TEN DAYS of *prision correccional* in its medium period, as maximum, there being no mitigating or aggravating circumstance attending the commission of the offense charged. The accused is likewise ordered to pay a fine of ONE THOUSAND PESOS (₱1,000.00) Philippine Currency, without subsidiary imprisonment in case of insolvency.[8]

On appeal, the Regional Trial Court (RTC), Branch 3, Butuan City, rendered its Decision[9] dated January 23, 2007 affirming *in toto* the judgment of the MTC.

Petitioner filed a motion for reconsideration which the RTC denied in an Order[10] dated May 4, 2007.

Petitioner filed with the CA a petition (should be motion) for extension of time to file petition for review under Rule 42 of the Rules of Court praying for an extended period of 15 days from May 21, 2007, or until June 5, 2007, within which to file his petition. Petitioner subsequently filed his petition for review on June 5, 2007.

On September 21, 2007, the CA issued its assailed Resolution dismissing the petition outright for being filed out of time. In so ruling, the CA said:

As borne by the records, the petitioner received the copy of the resolution denying his motion for reconsideration on May 4, 2007, Thus, the 15-day reglementary period within which to file a petition for review expired on May 21, 2007 (Monday) considering that the last day fell on a Saturday, May 19, 2007. It appears that petitioner reckoned the extension from May 21, 2007 (Monday) and not from May 19, 2007 (Saturday). Petitioner should have reckoned the 15-day extension from May 19, 2007 and not from May 21, 2007. It

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[8] *Id.* at 76.

[9] Docketed as Criminal Case No. 11870; per Judge Francisco F. Maclang; *id.* at 69-72.

[10] *Id.* at 77.

is well settled that when the day of the period falls on a Saturday, Sunday, or a legal holiday, and a party is granted an extension of time, the extension should be counted from the last day which is a Saturday, Sunday or legal holiday.[11]

Petitioner's motion for reconsideration was denied in a Resolution dated May 19, 2008.

Petitioner is now before us on the issue of whether the CA erred in denying due course to his petition for review for being filed out of time.

Petitioner argues that he filed the motion for extension of time to file a petition for review with the CA pursuant to Section 1, Rule 22 of the Rules of Court; that based on such provision, if the last day to file a petition falls on a Saturday, the time shall not run until the next working day. Here, the last day of the reglementary period within which to file the said petition for review with the CA fell on a Saturday, thus, the last day to file the petition was moved to the next working day which was May 21, 2007, Monday. Hence, he was not wrong in asking the CA to give him 15 days from May 21, 2007 to file the petition and not from May 19, 2007, Saturday. Nonetheless, petitioner asks for liberality in the interest of justice taking into consideration the merit of his petition claiming that his conviction was not supported by the evidence on record. Moreover, he claims that his petition for review was filed with the CA on June 5, 2007, which was long before the CA dismissed the same on September 21, 2007 for being filed out of time. He prays that the CA resolutions be reversed and set aside and the CA be directed to give due course to his petition and to resolve the case on the merits.

We grant the petition.

Section 1, Rule 22 of the Rules of Court relied upon by petitioner provides:

Section 1. *How to compute time*. – In computing any period of time prescribed or allowed by these Rules, or by order of the court,

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

or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

We then clarified the above-quoted provision when we issued A.M. No. 00-2-14-SC dated February 29, 2000 (Re: Computation of Time When the Last Day Falls on a Saturday, Sunday or a Legal Holiday and a Motion for Extension on Next Working Day is Granted) which reads:

xxx xxx xxx

Whereas, the aforecited provision [Section 1, Rule 22 of the Rules of Court] applies in the matter of filing of pleadings in courts when the due date falls on a Saturday, Sunday or legal holiday, in which case, the filing of the said pleading on the next working day is deemed on time;

Whereas, the question has been raised if the period is extended *ipso jure* to the next working day immediately following where the last day of the period is a Saturday, Sunday or a legal holiday, so that when a motion for extension of time is filed, the period of extension is to be reckoned from the next working day and not from the original expiration of the period.

NOW THEREFORE, the Court Resolves, for the guidance of the Bench and the Bar, to declare that Section 1, Rule 22 speaks only of "the last day of the period" so that when a party seeks an extension and the same is granted, the due date ceases to be the last day and hence, the provision no longer applies. Any extension of time to file the required pleading should therefore be counted from the expiration of the period regardless of the fact that said due date is a Saturday, Sunday or legal holiday.

In *De la Cruz v. Maersk Filipinas Crewing, Inc.*,[12] we said:

Section 1, Rule 22, as clarified by the circular, is clear. Should a party desire to file any pleading, even a motion for extension of

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[12] G.R. No. 172038, April 14, 2008, 551 SCRA 284.

time to file a pleading, and the last day falls on a Saturday, Sunday or a legal holiday, he may do so on the next working day. This is what petitioner did in the case at bar.

However, according to the same circular, the petition for review on *certiorari* was indeed filed out of time. The provision states that in case a motion for extension is granted, the due date for the extended period shall be counted from the original due date, not from the next working day on which the motion for extension was filed. In *Luz v. National Amnesty Commission*, we had occasion to expound on the matter. In that case, we held that the extension granted by the court should be tacked to the original period and commences immediately after the expiration of such period.

In the case at bar, although petitioner's filing of the motion for extension was within the period provided by law, the filing of the petition itself was not on time. Petitioner was granted an additional period of 30 days within which to file the petition. Reckoned from the original period, he should have filed it on May 8, 2006. Instead, he did so only on May 11, 2006, that is, 3 days late.[13]

Based on Section 1, Rule 22 of the Rules of Court, where the last day of the period for doing any act required by law falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. In this case, the original period for filing the petition for review with the CA was on May 19, 2007, a Saturday. Petitioner's filing of his motion for extension of time to file a petition for review on May 21, 2007, the next working day which followed the last day for filing which fell on a Saturday, was therefore on time. However, petitioner prayed in his motion for extension that he be granted 15 days from May 21, 2007 or up to June 5, 2007 within which to file his petition. He then filed his petition for review on June 5, 2007. The CA did not act on the motion for extension, but instead issued a Resolution dated September 21, 2007 dismissing the petition for review for being filed out of time.

We find that the CA correctly ruled that the petition for review was filed out of time based on our clarification in A.M.

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[13] *Id.* at 293-294. (Citation omitted.)

No. 00-2-14-SC that the 15-day extension period prayed for should be tacked to the original period and commences immediately after the expiration of such period.[14] Thus, counting 15 days from the expiration of the period which was on May 19, 2007, the petition filed on June 5, 2007 was already two days late. However, we find the circumstances obtaining in this case to merit the liberal application of the rule in the interest of justice and fair play.

Notably, the petition for review was already filed on June 5, 2007, which was long before the CA issued its Resolution dated September 21, 2007 dismissing the petition for review for being filed out of time. There was no showing that respondent suffered any material injury or his cause was prejudiced by reason of such delay. Moreover, the RTC decision which was sought to be reversed in the petition for review filed in the CA had affirmed the MTC judgment convicting petitioner of direct assault, hence, the petition involved no less than petitioner's liberty.[15] We do not find anything on record that shows petitioner's deliberate intent to delay the final disposition of the case as he had filed the petition for review within the extended period sought, although erroneously computed. These circumstances should have been taken into consideration for the CA not to dismiss the petition outright.

We have ruled that being a few days late in the filing of the petition for review does not automatically warrant the dismissal thereof.[16] And even assuming that a petition for review is filed

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[14] *Luz v. National Amnesty Commission*, G.R. No. 159708, September 24, 2004, 439 SCRA 111, 115.

[15] *Fabrigar v. People*, G.R. No. 150122, February 6, 2004, 422 SCRA 395, 402.

[16] *De la Cruz v. Maersk Filipinas Crewing, Inc., supra* note 12, at 294, citing *Orata v. Intermediate Appellate Court*, G.R. No. 73471, May 8, 1990, 185 SCRA 148, 152, citing *Serrano v. Court of Appeals*, G.R. No. L-46357, October 9, 1985, 139 SCRA 179. In *Ramos v. Bagasao*, No. L-51552, February 28, 1980, 96 SCRA 395, we held that the delay of four (4) days in filing a notice of appeal and a motion for an extension of time to file a record on appeal can be excused on the basis of equity with the additional consideration

a few days late, where strong considerations of substantial justice are manifest in the petition, we may relax the stringent application of technical rules in the exercise of our equity jurisdiction.[17]

Courts should not be so strict about procedural lapses that do not really impair the proper administration of justice.[18] After all, the higher objective of procedural rule is to insure that the substantive rights of the parties are protected.[19] Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities.[20]

WHEREFORE, the petition is granted. The assailed Resolutions of the Court of Appeals are **SET ASIDE**. The Court of Appeals is **ORDERED** to reinstate the Petition for Review filed by petitioner in CA-G.R. CR No. 00410.

SO ORDERED.

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

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that said record was then already with respondent judge; citing *Serrano v. CA*, *supra*, at 186.

[17] *Orata v. Intermediate Appellate Court*, *supra*.

[18] *Fabrigar v. People*, *supra* note 15, at 402, citing *Ligon v. Court of Appeals*, G.R. No. 107751, June 1, 1995, 244 SCRA 693.

[19] *Id*.

[20] *Id*.

THIRD DIVISION

[G.R. No. 191703. March 12, 2012]

CRESENCIO BAÑO and HEIRS OF THE DECEASED AMANCIO ASUMBRADO, NAMELY: ROSALINDA ASUMBRADO, VICENTE ASUMBRADO, ROEL ASUMBRADO, ANNALYN ASUMBRADO, ARNIEL ASUMBRADO, ALFIE ASUMBRADO and RUBELYN ASUMBRADO, *petitioners, vs.* **BACHELOR EXPRESS, INC./CERES LINER, INC. and WENIFREDO SALVAÑA,** *respondents.*

SYLLABUS

1. **CIVIL LAW; QUASI-DELICT; GROSS NEGLIGENCE; WHERE THE GROSS NEGLIGENCE OF THE BUS DRIVER WAS ESTABLISHED, EXEMPLARY DAMAGES SHOULD BE AWARDED.—** In the present case, records show that when bus driver Salvaña overtook the jeepney in front of him, he was rounding a blind curve along a descending road. Considering the road condition, and that there was only one lane on each side of the center line for the movement of traffic in opposite directions, it would have been more prudent for him to confine his bus to its proper place. Having thus encroached on the opposite lane in the process of overtaking the jeepney, without ascertaining that it was clear of oncoming traffic that resulted in the collision with the approaching dump truck driven by deceased Asumbrado, Salvaña was grossly negligent in driving his bus. He was remiss in his duty to determine that the road was clear and not to proceed if he could not do so in safety. Consequently, the CA erred in deleting the awards of exemplary damages, which the law grants to serve as a warning to the public and as a deterrent against the repetition of similar deleterious actions. However, the award should be tempered as it is not intended to enrich one party or to impoverish another. Thus, the Court reinstates the *separate* awards of exemplary damages to petitioners in the amount of ₱50,000.00.

2. **ID.; ID.; ID.; AWARD OF MORAL DAMAGES NOT PROPER WHERE DAMAGE TO THE VEHICLE WAS NOT SHOWN TO HAVE BEEN MADE WILLFULLY; TEMPERATE DAMAGES, AWARDED.—** With respect to Baño, the award of moral damages for the loss of his dump truck was correctly deleted since the damage to his vehicle was not shown to have been made willfully or deliberately. However, the Court finds the grant of ₱100,000.00 as temperate damages for the damaged vehicle to be insufficient considering its type as a 10-wheeler dump truck and its good running condition at the time of the incident. Instead, the Court finds the amount of ₱400,000.00 as fair and reasonable under the circumstances. With respect to the adjudged lost income from the dump truck, the Court sustains, for being just and equitable, the award of temperate damages in the sum of ₱200,000.00.

3. **ID.; ID.; ID.; KINDS OF DAMAGES AWARDED TO THE HEIRS.—** [T]he Court upholds the grant to petitioner Heirs of ₱19,136.90 as actual damages corresponding to the pecuniary loss that they have actually sustained, ₱50,000.00 as death indemnity, the reduced awards of ₱50,000.00 as moral damages and ₱415,640.16 as loss of earning capacity of the deceased Asumbrado, which are all in conformity with prevailing jurisprudence.

4. **ID.; ID.; ID.; ATTORNEY'S FEES AWARDED IN VIEW OF THE LENGTH OF TIME THAT THE CASE HAS BEEN PENDING.—** [T]he attorney's fees of ₱50,000.00 as awarded by the CA is increased to ₱100,000.00 considering the length of time that this case has been pending, or a period of about 18 years since the complaint *a quo* was filed on *March 11, 1994*.

APPEARANCES OF COUNSEL

Alabastro & Olaguer Law Offices for petitioners.

Segundo Y. Chua for respondents.

DECISION

PERLAS-BERNABE, *J.*:

This petition for review under Rule 45 of the Rules of Court assails the February 20, 2009 Decision[1] and February 9, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 00190, which reduced the amount of damages awarded to petitioners by the Regional Trial Court (RTC) of Tagum City, Branch 30 in its June 30, 2004 Decision.[3]

The Facts

In the early afternoon of November 6, 1993, respondent Wenifredo Salvaña (Salvaña) was driving the bus owned by respondent Bachelor Express, Inc./Ceres Liner, Inc. with plate number LVD-273 and body number 4042 (Bus 4042) along the national highway at Magdum, Tagum City bound for Davao City. At about 1:20 in the afternoon, he overtook a Lawin PUJ jeepney while negotiating a blind curve in a descending road at Km. 60, causing him to intrude into the opposite lane and bump the 10-wheeler Hino dump truck of petitioner Cresencio Baño (Baño) running uphill from the opposite direction. The collision resulted in damage to both vehicles, the subsequent death of the truck driver, Amancio Asumbrado (Asumbrado), and serious physical injuries to bus driver Salvaña.

On March 11, 1994, Baño and the heirs of Asumbrado (collectively called "petitioners") filed a complaint[4] for quasi-delict, damages and attorney's fees against respondents, accusing Salvaña of negligently driving Bus 4042 causing it to collide with the dump truck.

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[1] Penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson; *Rollo*, pp. 42-55.

[2] *Id.* at pp. 96-97.

[3] RTC records, pp. 735-754.

[4] *Id.* at pp. 1-9.

Respondents denied liability, claiming that prior to the collision, Bus 4042 was running out of control because of a problem in the steering wheel system which could not have been avoided despite their maintenance efforts. Instead, they claimed that Asumbrado had the last clear chance to avoid the collision had he not driven the dump truck at a very fast speed.

The RTC Decision

After due proceedings, the RTC found that the immediate and proximate cause of the accident was the reckless negligence of the bus driver, Salvaña, in attempting to overtake a jeepney along a descending blind curve and completely invading the opposite lane. The photographs taken immediately after the collision, the Traffic Accident and Investigation Report, and the Sketch all showed the dump truck at the shoulder of its proper lane while the bus was positioned diagonally in the same lane with its right side several feet from the center line.

Having established the negligence of its employee, the presumption of fault or negligence on the part of the employer, respondent Bachelor Express, Inc./Ceres Liner, Inc., arose, which it failed to rebut by evidence that it exercised due diligence in the selection and supervision of its bus driver Salvaña. The RTC thus disposed of the case as follows:

> "**In View Of All The Foregoing,** judgment is hereby rendered in favor of the plaintiffs and against the defendants; ordering the defendants to solidarily pay:
>
> 1. To plaintiff Cresencio Baño -
>
> (a) ₱700,000.00, as payment for his Hino dump truck which was rendered a total wreck;
>
> (b) ₱296,601.50 per month, as loss of earning of the Hino dump truck, to be computed from November 6, 1993 with legal interest thereon until the ₱700,000.00 mentioned in the next preceding number will be fully paid by the defendants to plaintiff Cresencio Baño;
>
> (c) ₱100,000.00 and ₱50,000.00, as moral damages and exemplary damages, respectively;

2. To the Heirs of the late Amancio Asumbrado -

(a) ₱50,000.00, as civil indemnity for the death of Amancio Asumbrado;

(b) ₱20,268.45, as reimbursement for the medicines, hospitalization and funeral expenses incurred by the late Amancio Asumbrado;

(c) ₱576,000.00, as loss of earning capacity of the late Amancio Asumbrado;

(d) ₱100,000.00 and ₱50,000.00, as moral damages and exemplary damages, respectively;

3. To the Plaintiffs -

(a) P25,000.00, as reimbursement of the expenses incurred initially by them in the preparation of this complaint and other expenses in instituting the suit;

(b) Attorney's fee in the sum of equivalent to 25% of plaintiffs' total claim against the defendants plus ₱14,500.00, as appearance fees;

(c) Costs of suit.

SO ORDERED."[5]

The CA Ruling

On appeal, the CA affirmed the RTC's findings on respondents' negligence and liability for damages, but deleted the separate awards of exemplary damages in favor of petitioners for their failure to prove that respondents acted with gross negligence.

Similarly, the appellate court deleted the awards for the value of and lost income from the dump truck for lack of sufficient basis, awarding in their stead temperate damages in the sums of ₱100,000.00 and ₱200,000.00, respectively. The CA also deleted the award of moral damages to Baño for the damage to his property.

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[5] *Supra* note 3, at pp. 753-754.

With respect to petitioner Heirs, the CA reduced the RTC's awards of actual damages representing the hospital and funeral expenses from ₱20,268.45 to ₱19,136.90; loss of earning capacity from ₱576,000.00 to ₱415,640.16; and moral damages from ₱100,000.00 to ₱50,000.00.

Finally, the appellate court deleted the award of litigation expenses and reduced the award of attorney's fees from 25% of petitioners' claims to ₱50,000.00.

The Issues Before The Court

In the instant petition, petitioners posit that respondent Salvaña was grossly negligent in continuing to drive the bus even after he had discovered the malfunction in its steering wheel. They further averred that the CA erred in reducing the amounts of damages awarded by the RTC despite sufficient evidence.

The Court's Ruling

While the courts *a quo,* in their respective decisions, have concurred that the proximate cause of the collision was the negligence of the bus driver, Salvaña, in overtaking the jeepney in front as the bus traversed a curve on the highway, they, however, imputed varied degrees of negligence on him. Thus, although the issue of negligence is basically factual,[6] the Court may properly pass upon this question under Rule 45 of the Rules of Court.

In the case of *Government Service Insurance System v. Pacific Airways Corporation*,[7] the Court has defined *gross negligence* as "one that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected."

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[6] *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281.

[7] G.R. No. 170414, August 25, 2010, 629 SCRA 219, 230.

In the present case, records show that when bus driver Salvaña overtook the jeepney in front of him, he was rounding a blind curve along a descending road. Considering the road condition, and that there was only one lane on each side of the center line for the movement of traffic in opposite directions, it would have been more prudent for him to confine his bus to its proper place. Having thus encroached on the opposite lane in the process of overtaking the jeepney, without ascertaining that it was clear of oncoming traffic that resulted in the collision with the approaching dump truck driven by deceased Asumbrado, Salvaña was grossly negligent in driving his bus. He was remiss in his duty to determine that the road was clear and not to proceed if he could not do so in safety.[8]

Consequently, the CA erred in deleting the awards of exemplary damages, which the law grants to serve as a warning to the public and as a deterrent against the repetition of similar deleterious actions. However, the award should be tempered as it is not intended to enrich one party or to impoverish another.[9] Thus, the Court reinstates the *separate* awards of exemplary damages to petitioners in the amount of ₱50,000.00.

With respect to Baño, the award of moral damages for the loss of his dump truck was correctly deleted since the damage to his vehicle was not shown to have been made willfully or deliberately.[10] However, the Court finds the grant of ₱100,000.00

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[8] Section 41 (a), Republic Act No. 4136 otherwise known as the "Land and Transportation and Traffic Code," as amended provides:

> "Section 41. Restrictions on overtaking and passing.
>
> (a) The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking or passing another vehicle proceeding in the same direction, unless such left side is clearly visible, and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking or passing to be made in safety.
>
> xxx xxx xxx

[9] *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, January 12, 2011, 639 SCRA 471, 485.

[10] *B.F. Metal (Corporation) v. Lomotan*, G.R. No. 170813, April 16, 2008, 551 SCRA 618, 630-631.

as temperate damages for the damaged vehicle to be insufficient considering its type as a 10-wheeler dump truck and its good running condition at the time of the incident. Instead, the Court finds the amount of ₱400,000.00 as fair and reasonable under the circumstances. With respect to the adjudged lost income from the dump truck, the Court sustains, for being just and equitable, the award of temperate damages in the sum of ₱200,000.00.

On the other hand, the Court upholds the grant to petitioner Heirs of ₱19,136.90 as actual damages corresponding to the pecuniary loss that they have actually sustained, ₱50,000.00 as death indemnity, the reduced awards of ₱50,000.00 as moral damages and ₱415,640.16 as loss of earning capacity of the deceased Asumbrado, which are all in conformity with prevailing jurisprudence.[11]

Finally, the attorney's fees of ₱50,000.00 as awarded by the CA is increased to ₱100,000.00 considering the length of time that this case has been pending, or a period of about 18 years since the complaint *a quo* was filed on *March 11, 1994*.

WHEREFORE, the assailed February 20, 2009 Decision and February 9, 2010 Resolution of the Court of Appeals are **AFFIRMED** with **MODIFICATIONS**. Respondents are ordered to solidarily pay:

(1) petitioner Heirs of Amancio Asumbrado:

(a) ₱19,136.90 as actual damages representing hospital and funeral expenses;

(b) ₱415,640.16 as loss of earning capacity of the deceased Asumbrado;

(c) ₱50,000.00 as death indemnity;

(d) ₱50,000.00 as moral damages; and

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[11] *OMC Carriers, Inc. v. Nabua*, G.R. No. 148974, July 2, 2010, 622 SCRA 624, 639-641; *Philippine Hawk Corporation v. Lee*, G.R. No. 166869, February 16, 2010, 612 SCRA 576, 591-592.

(e) ₱50,000.00 as exemplary damages.

(2) petitioner Cresencio Baño:

(a) ₱400,000.00 as temperate damages for his damaged dump truck;

(b) ₱200,000.00 as lost income of the said truck; and

(c) ₱50,000.00 as exemplary damages.

(3) attorney's fees of ₱100,000.00 to petitioners collectively.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 194445. March 12, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff, vs.* **ROGER POSADA *Y* URBANO and EMILY POSADA *Y* SARMIENTO,** *accused.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); CHAIN OF CUSTODY AND INTEGRITY OF THE SEIZED ILLEGAL ITEMS, DULY ESTABLISHED.— [W]e say that the prosecution has established the chain of custody and integrity of the seized illegal items. After PO1 Area arrested Emily and confiscated the 13 sachets of *shabu* (<u>one bought by PO1 Area from Emily</u>

and 12 found in Emily's coin purse after she received the same from her husband Roger), P/CI Tria took pictures of the incident using his cellphone while the official photographer was also taking pictures. Then PO1 Area prepared an RPS, which Asuncion, Sarmiento and Vargas witnessed. Meanwhile, SPO1 Aldave, seizing officer went inside the house of the accused-appellants, prepared and signed an RPS after the raiding team found a piece of aluminum foil, one plastic sachet containing residue of white crystalline substance, one small pair of green scissors beside the bed inside a room, 15 pieces of used lighters, and two pieces of ₱50.00 bill and one piece of ₱100.00 bill. Asuncion, Arcilla and Gonzales witnessed the preparation and signing of the said RPS. Thereafter, on August 4, 2005, P/CI Tria requested for a laboratory examination of a piece of small size heat-sealed transparent plastic sachet, containing white crystalline substance marked with initial "R"; 12 pieces of small size heat sealed transparent plastic sachets, containing white crystalline substance with sub-markings "R-1" to "R-12"; and one small size crumpled aluminum foil and small size plastic sachet. The request of P/CI Tria for laboratory examination dated August 4, 2005 was received by a certain PO2 Abanio and P/Insp. Sta. Cruz. Subsequently, witness PSI Clemen, the forensic expert, received personally from PO2 Abanio the above-mentioned marked pieces of evidence. She then immediately conducted a laboratory examination, yielding a result that the 12 pieces of plastic sachets (with markings "R-1" to "R-12"), the one heat-sealed transparent plastic sachet with marking "R" and the one aluminum foil strip contained methamphetamine hydrochloride. In open court, the above-mentioned pieces of evidence were identified and marked. From the foregoing, the prosecution, without an iota of doubt, has established the chain of custody and integrity of the seized illegal items.

2. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; WHERE THE ACCUSED WERE CHARGED OF ILLEGAL SALE OF TWELVE (12) SACHETS OF *SHABU* AND WHAT WAS PROVED WAS THE SALE OF ONLY ONE (1) SACHET OF *SHABU*, THE ACCUSED MUST BE ACQUITTED; REASONS.— The unfortunate fact of this case is that rather than separately charging Emily for the sale of the one sachet of *shabu* and charging both Emily and Roger for possession

of the 12 sachets of *shabu*, the public prosecutor lumped the charges together to sale of 12 sachets of *shabu*. This is wrong. The Information is defective for charging the accused-appellants of selling 12 sachets of *shabu* when, in fact, they should have been charged of selling one sachet of *shabu* and possessing 12 sachets of *shabu*. From the evidence adduced, Emily and Roger never sold the 12 sachets of *shabu*. They possessed them. Thus, they should have not been convicted for selling the 12 sachets of *shabu*. However, this was exactly what was done both by the trial court and the CA. Without basis in fact, they convicted the couple for selling the 12 sachets of *shabu*. Indeed, it must be pointed out that the prosecution filed a defective Information. An Information is fatally defective when it is clear that it does not really charge an offense or when an essential element of the crime has not been sufficiently alleged. In the instant case, while the prosecution was able to allege the identity of the buyer and the seller, it failed to particularly allege or identify in the Information the subject matter of the sale or the *corpus delicti*. We must remember that one of the essential elements to convict a person of sale of prohibited drugs is to identify with certainty the *corpus delicti*. Here, the prosecution took the liberty to lump together two sets of *corpora delicti* when it should have separated the two in two different informations. To allow the prosecution to do this is to deprive the accused-appellants of their right to be informed, not only of the nature of the offense being charged, but of the essential element of the offense charged; and in this case, the very *corpus delicti* of the crime. Furthermore, when ambiguity exists in the complaint or information, the court has no other recourse but to resolve the ambiguity in favor of the accused. Here, since there exists ambiguity as to the identity of *corpus delicti*, an essential element of the offense charged, it follows that such ambiguity must be resolved in favor of the accused-appellants. Thus, from the foregoing discussion, we have no other choice but to acquit the accused-appellants of sale of 12 sachets of *shabu*. Truly, both the trial court and the CA were wrong in convicting the couple for selling 12 sachets of *shabu* because the prosecution failed to show that the husband and wife had indeed sold the 12 sachets of *shabu*. x x x [W]hile there was indeed a transaction between Emily and PO1 Area, the prosecution failed to show that the subject matter of the

sale to PO1 Area was the 12 sachets of *shabu*. Based on the testimony of PO1 Area, the 12 sachets of *shabu* were the sachets of *shabu* which Roger handed to his wife Emily and were not sold, but which PO1 Area found in her possession after the latter identified himself as a police officer. x x x PO1 Area's testimony showed no evidence that the transaction as to the sale of the 12 sachets of *shabu* ever happened. Rather, PO1 Area adequately testified on the fact that accused-appellant Roger handed the 12 sachets of *shabu* to Emily who kept them in a coin purse. And after PO1 Area identified himself as a police operative, he found the 12 sachets of *shabu* in Emily's possession. From the foregoing, while the prosecution was able to prove the sale of **one** sachet of *shabu*, it is patently clear that it **never** established with moral certainty all the elements of illegal sale of the 12 sachets of *shabu*. And failure to show that indeed there was sale means failure to prove the guilt of the accused for illegal sale of drugs, because what matters in the prosecution for illegal sale of dangerous drugs is to show proof that the sale actually happened, coupled with the presentation in court of *corpus delicti*. Here, the prosecution failed to prove the existence of the sale of the 12 sachets of *shabu* and also to prove that the 12 sachets of *shabu* presented in court were truly the subject matter of the sale between the accused-appellants and PO1 Area.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS, DULY ESTABLISHED.— For prosecution of illegal possession of dangerous drugs to prosper, the following essential elements must be proven, namely: "(1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possess the said drug." x x x [I]t is patently clear that the prosecution established with moral certainty all the elements of illegal possession of *shabu*, that is: PO1 Area found in Emily's physical and actual possession the 12 sachets of *shabu*; such possession of the 12 sachets of *shabu* was not authorized; and since Emily put the 12 sachets of *shabu* in the purse after receiving them from her husband, she possessed the same freely and consciously.

4. ID.; ID.; ID.; AN ACCUSED WHO HAD LOST PHYSICAL POSSESSION OF DANGEROUS DRUGS MAY BE CONVICTED OF ILLEGAL POSSESSION AS LONG AS HE HAD CONSTRUCTIVE POSSESSION OF THE SAME.— In *United States v. Juan*, x x x we recognized the fact that a person remains to be in possession of the prohibited drugs although he may not have or may have lost physical possession of the same. x x x Our ruling in *Juan* applies to the present case. Admittedly, the 12 sachets of *shabu* were found in the possession of Emily. But PO1 Area saw Roger hand the same 12 sachets of *shabu* to Emily. While Roger had lost physical possession of the said 12 sachets of *shabu*, he had constructive possession of the same because they remain to be under his control and management. In the *Juan* case, Lee See gave the physical possession of the opium to Cabinico while Chan Guy Juan had not yet received the same opium from Lee See, but both were held guilty of illegal possession of opium. Thus, we can liken the instant case to that of *Juan* because while Roger had lost physical possession of the 12 sachets of *shabu* to Emily, he maintained constructive possession of the same.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff.
Public Attorney's Office for accused.

D E C I S I O N

REYES, *J.*:

As we decide this appeal involving a couple who allegedly violated Republic Act No. 9165 (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002, we should bear in mind the words emanating from the pen of former Justice Isagani A. Cruz:

> We need only add that the active support of everyone is needed to bolster the campaign of the government against the evil of drug addiction. The merchants of all prohibited drugs, from the rich and

powerful syndicates to the individual street "pushers," must be hounded relentlessly and punished to the full extent of the law, subject only to the inhibitions of the Bill of Rights.[1]

The Case

Accused-appellants Roger Posada (Roger) and Emily Posada (Emily) were convicted by the Regional Trial Court (RTC), Branch 43, Virac, Catanduanes, in Criminal Case No. 3490 for selling twelve (12) pieces of transparent sealed plastic sachet, containing Methamphetamine Hydrochloride or *shabu* with a total weight of 0.4578 grams, in violation of Section 5, Article II of R.A. No. 9165.[2]

Roger was also convicted by the same RTC in Criminal Case No. 3489 for possession of one piece of torn plastic sachet, containing residue of a crystalline substance (allegedly *shabu*), a piece of small aluminum foil, a pair of small scissors, and fifteen (15) pieces of used lighter – all of which are intended to be used for smoking or introducing dangerous drugs into the body of a person, in violation of Section 12, Article II of R.A. No. 9165.[3]

Aggrieved by the RTC Decision, the accused-appellants filed an appeal before the Court of Appeals (CA) which, *via* a Decision[4] dated June 17, 2010, affirmed the RTC Decision as to the accused-appellants' conviction in Criminal Case No. 3490 but acquitted Roger in Criminal Case No. 3489 on the ground of reasonable doubt.

Now, the accused-appellants ask this Court for a complete exoneration from the offense charged in Criminal Case No. 3490 on the ground that the prosecution failed to establish the chain

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[1] *People v. Manalansan*, G.R. Nos. 76369-70, September 14, 1990, 189 SCRA 619, 624.

[2] CA *rollo,* pp. 45 and 51.

[3] *Id.*

[4] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Jose C. Reyes, Jr. and Elihu A. Ybañez, concurring; *rollo*, pp. 2-20.

of custody and integrity of the seized illegal items and to prove their guilt beyond reasonable doubt.

Antecedent Facts

According to the evidence of the prosecution, P/CI Gil Francis Tria (P/CI Tria), the Chief of Police of Virac Municipal Police Station and representative of the Philippine Drug Enforcement Agency (PDEA), ordered surveillance on the activities of the accused-appellants and a certain Johnjohn Urbano (Urbano).[5] As a result of the said surveillance, PO1 Roldan Area (PO1 Area) was able to buy one sachet of *shabu* from Emily for ₱250.00 on August 2, 2005.[6]

Consequently, after the August 2, 2005 test-buy yielded positive result, P/CI Tria applied for a search warrant, which the Honorable Jaime E. Contreras granted.[7] Thus, at noontime of August 3, 2005, P/CI Tria and his team proceeded to *Barangay* Concepcion and coordinated with *Punong Barangay* Antonio Asuncion, Jr. (Asuncion) in the operation against the accused-appellants.[8]

When the team of P/CI Tria reached the place of operation, they found Emily standing in front of her house. PO1 Area, who was the poseur-buyer, called her and when she came near him, he told her that he would buy *shabu*. PO1 Area then handed to Emily ₱250.00, consisting of two pieces of ₱100.00 bill and one piece of ₱50.00 bill. After receiving the money from PO1 Area, Emily immediately went to her house and got a coin purse. When she returned at the scene of the operation, Emily gave PO1 Area one sachet of *shabu*, which she got from the coin purse. Subsequently, Roger appeared and handed to Emily 12 plastic sachets of *shabu* which Emily placed inside the coin purse. At this point, PO1 Area identified himself as a police officer while giving the signal to his team that the buy-bust turned positive. He arrested Emily while Roger ran away and

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

[6] *Id.*

[7] *Id.*

[8] *Id.*

went inside their house. PO1 Area informed Emily of her constitutional rights, but the latter failed to utter any word.[9]

While PO1 Area was holding the arm of Emily, who still had in her hands the coin purse where she got the sachet of *shabu* and the buy-bust money, P/CI Tria took pictures of the incident using his cellphone while the official photographer was also taking pictures. After the search, a coin purse containing sachets of *shabu* and a bundle of money was found in Emily's possession.[10] PO1 Area then prepared a Receipt for Property Seized (RPS).[11] Asuncion, *Kagawad* Eva Sarmiento (Sarmiento) and a certain Robert Vargas (Vargas) witnessed the preparation of the said receipt.[12]

Meanwhile, when Roger left Emily at the scene of the buy-bust operation, he went inside his house and closed the door. Armed with the search warrant, SPO1 Salvador Aldave, Jr. (SPO1 Aldave) forced the door open. SPO1 Aldave was the first person to enter the house, followed by the *barangay* officials and his fellow officers, SPO1 Roger Masagca (SPO1 Masagca) and PO1 Ronnie Valeza (PO1 Valeza). The search warrant was shown to Roger. In his presence and in the presence of *Kagawad* Jena Arcilla (Arcilla), the raiding team recovered one piece of aluminum foil, one plastic sachet containing residue of white crystalline substance, and one small pair of green scissors beside the bed inside a room, and 15 pieces of used lighters from an improvised altar on top of a wooden table. A search of Roger's pocket yielded two pieces of ₱50.00 bill and one piece of ₱100.00 bill. SPO1 Aldave as the seizing officer prepared and signed an RPS. Asuncion, Arcilla and *Barangay Tanod* Juan Gonzales (Gonzales) witnessed the preparation and signing of the said RPS. Roger, however, refused to sign the same. The couple was then brought to the police station.[13]

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

[10] TSN, October 31, 2006, pp. 13-14.

[11] RTC records, Criminal Case No. 3490, p. 87.

[12] TSN, October 31, 2006, pp. 9-10; TSN, May 10, 2006, pp. 12-17.

[13] RTC records, Criminal Case No. 3490, p. 110.

At the Virac Police Station, a body search on Emily resulted in the seizure of bills of different denominations, totaling ₱2,720.00. Some of these bills were identified as those bills photocopied and submitted to the Provincial Prosecution Office.[14]

On August 4, 2005, immediately after the operation and the execution of the search warrant, P/CI Tria requested for a laboratory examination of a piece of small size heat-sealed transparent plastic sachet, containing white crystalline substance marked with initial "R"; 12 pieces of small size heat-sealed transparent plastic sachets, containing white crystalline substance with sub-markings "R-1" to "R-12"; and one small size crumpled aluminum foil and small size plastic sachet. The request of P/CI Tria for laboratory examination dated August 4, 2005 was received by a certain PO2 Abanio [Abaño] and Police Inspector Sta. Cruz, J. (P/Insp. Sta. Cruz). The sachet with the initial "R" was the sachet of *shabu* sold to PO1 Area during the buy bust operation while the sachets of *shabu* marked as "R-1" to "R-12" were the sachets of *shabu* which Roger handed to Emily and which were found in the possession of Emily after PO1 Area identified himself as a police officer.[15]

Subsequently, witness Police Senior Inspector Josephine Macura Clemen (PSI Clemen), the forensic expert, received personally from the receiving clerk (PO2 Abanio) the above-mentioned marked pieces of evidence. She then immediately conducted laboratory examination, yielding a result that the 12 pieces of plastic sachets (with markings "R-1" to "R-12"), the one heat-sealed transparent plastic sachet with marking "R", the one aluminum foil strip, and a small size plastic sachet contained methamphetamine hydrochloride.[16]

The accused-appellants were subsequently charged in two separate Informations,[17] both dated August 4, 2005, with violation

[14] CA *rollo*, pp. 48 and 160.

[15] RTC records, Criminal Case No. 3490, p. 89.

[16] *Id.*

[17] RTC records, Criminal Case No. 3490, pp. 1-2 and Criminal Case No. 3489, pp. 5-6.

of Sections 5, 11 and 12, Article II of R.A. No. 9165, which were respectively docketed as Criminal Case No. 3490 and Criminal Case No. 3489. The Informations state as follows:

Criminal Case No. 3490

The undersigned Provincial Prosecutor accuses Roger Posada *y* Urbano and Emily Posada y Sarmiento of Violation of R.A. 9165 defined and penalized under Section 5 of said Law, committed as follows:

That on or about the 3rd day of August 2005 at noontime along Imelda Blvd. in barangay Concepcion, municipality (sic) of Virac, [P]rovince of Catanduanes, Philippines and within the jurisdiction of the Honorable Court, **the above-named accused without the authority of law, conspiring, confederating and helping one another, did then and there willfully, unlawfully, and feloniously sell, deliver and give away to another 12 pieces of transparent sealed plastic sachet** containing Methamphetamine Hydrochloride[,] locally known as shabu[,] with a total weight of 0.9 gram [-] a prohibited drug[,] and several marked money bills.[18] [Emphasis supplied]

Criminal Case No. 3489

The undersigned Provincial Prosecutor accuses Roger Posada *y* Urbano of Violation of R.A. 9165 defined and penalized under Section 12 of said law, committed as follows:

That on or about the 3rd day of August 2005 in the afternoon in Barangay Concepcion, municipality (sic) of Virac, province (sic) of Catanduanes, Philippines, within the jurisdiction of the Honorable Court, the said accused without the authority of law did then and there willfully, unlawfully and feloniously possess and in control of one (1) piece of teared plastic sachet containing residue of a crystalline substance[,] locally known as shabu, (1) piece small aluminum foil, (1) piece small scissors (sic) and 15 pieces of used lighter[,] which paraphernalia are (sic) fit or intended for smoking or introducing any dangerous drug into the body of a person.[19]

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[18] *Id.*

[19] *Id.*

However, the Information for Criminal Case No. 3490 was later amended,[20] to reflect a change in the weight of the seized drugs from 0.9 gram to 0.4578 gram.

Meanwhile, on the part of the accused-appellants, they simply denied the accusations against them. Roger claimed that on April 3, 2005 (which was even a misleading date since the event happened on August 3, 2005), at around 12 noon, he was putting his three year-old child to sleep inside their house, while his wife Emily was washing their clothes at his parents' house. He then peeped through the window jalousies when he heard his wife calling out his name. He saw a policeman, later identified as PO1 Area, pulling Emily towards the road. Roger claimed that PO1 Valeza later poked a gun at him, preventing him to move from the window. Thereafter, the door of Roger's house was forced open, allowing SPO1 Aldave, SPO1 Masagca, PO1 Valeza and *Barangay Tanod* Vic Vargas (Vargas) to enter his house. Inside the house, PO1 Valeza allegedly took down the jackets hanging on the wall and searched them; SPO1 Aldave took pictures while Vargas and SPO1 Masagca went inside the room and searched the cabinets where toys were kept. Roger further claims that nothing was found in his house. After the search, Roger was brought to the patrol car where his wife Emily was taken.[21]

Meanwhile, Emily testified that on that fateful day of August 3, 2005, she was washing clothes at her mother-in-law's house when a man, whom she could not identify, approached her and asked her if she was Emily Posada. She alleged that the man immediately held her hands, shouting "Police! Police!" after which police officers Tria and Aldave arrived. Her picture was taken. Subsequently, she was brought to the patrol car where her husband Roger later joined her. Both Roger and Emily were then transported to the police station. Roger was placed behind bars while Emily was placed at the detention cell of the Bureau of Jail Management and Penology (BJMP).[22]

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[20] RTC records, Criminal Case No. 3490, pp. 20-21.

[21] TSN, August 28, 2007, pp. 3-6, 10, 12-18.

[22] TSN, August 31, 2007, pp. 3-6.

The couple claimed that the police officers did not inform them why they were brought to the police station and subsequently detained. Emily denied that a buy-bust operation was conducted against her, but she was aware of the search conducted in their house because her husband informed her at the police station. Meanwhile, Roger also denied that the police officers presented to him a search warrant. Likewise, both alleged that the money taken from Emily's wallet were the proceeds of the sale of their chickens, which Roger gave to Emily. The said money amounted to more or less ₱3,000.00.[23]

Issues

Considering that the accused-appellants did not file a supplemental brief and that appellee People of the Philippines adopted its brief before the CA, we now rule on the matter based on the issues[24] which the accused-appellants raised in their brief before the CA, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS NOTWITHSTANDING THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY AND INTEGRITY OF THE ALLEGED SEIZED ILLEGAL ITEMS.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELANTS DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[25]

Our Ruling

While we give due credence to the trial court's evaluation of the credibility of witnesses absent any showing that the elements of the crime have been overlooked, misapprehended, or

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[23] *Id.*

[24] CA *rollo*, p. 83.

[25] *Id.*

misapplied, we will take pains in taking a second hard look on the issues the accused-appellants raised, considering they are husband and wife whose imprisonment will greatly affect the children they will leave behind once they are declared guilty beyond reasonable doubt.

Now, we are going to discuss the case following the issues the accused-appellants raised.

The prosecution has established the chain of custody and integrity of the seized illegal items.

The accused-appellants alleged that the prosecution failed to establish the chain of custody and integrity of the seized illegal items because:

(1) The apprehending officers allegedly failed to submit the seized illegal items to the PNP Crime Laboratory Service for a qualitative and quantitative examination within the mandatory 24-hour period from confiscation; and

(2) There is an alleged discrepancy as to the number of plastic sachets recovered from the accused-appellants and those submitted to forensic chemist PSI Clemen.

On the **first factual issue**, we find that the records of the case and the testimonies of witnesses belie the accused-appellants' contention.

Based on the records, the buy-bust operation, the arrest of the accused-appellants and the confiscation of the illegal items happened at around 12 noon of August 3, 2005.[26] PO1 Area received from Emily one sachet of *shabu* and after PO1 Area introduced himself and arrested Emily, 12 more sachets of *shabu* were found in the possession of Emily. The said 12 sachets of *shabu* were inside a coin purse, with a bundle of money.[27] PO1

[26] RTC records, Criminal Case No. 3490, p. 3; TSN, August 31, 2007, p. 3, Criminal Case No. 3489.

[27] RTC records, Criminal Case No. 3490, p. 6

Area prepared on the same day an RPS[28] in the presence of Asuncion, *Kagawad* Sarmiento and Vargas.[29] On August 4, 2005, P/CI Tria requested for a laboratory examination of a piece of small size heat-sealed transparent plastic sachet, containing white crystalline substance marked with initial "R"; 12 pieces of small size heat-sealed transparent plastic sachets, containing white crystalline substance with sub-markings "R-1" to "R-12"; and one small size crumpled aluminum foil and small size plastic sachet. The request of P/CI Tria for laboratory examination dated August 4, 2005 was received by PO2 Abanio and P/Insp. Sta. Cruz on the same date.[30]

The accused-appellants wanted us to believe that a day had lapsed before P/CI Tria submitted the illegal drugs to PNP Crime Laboratory Service, contrary to the mandate of Section 21 of R.A. No. 9165. They even cited the testimony of P/CI Tria where the latter allegedly admitted submitting the subject seized items on August 4, 2005. However, a close look at the testimony of P/CI Tria[31] will reveal that nothing in it would show that he submitted the alleged illegal drugs beyond the 24-hour reglementary period. In fact, even the Laboratory Examination Request dated August 4, 2005 does not indicate violation of Section 21 of R.A. No. 9165.[32] Clearly, from the foregoing, the accused-appellants failed to adduce any evidence to prove their contention. The age-old but familiar rule that he who alleges must prove his allegation applies[33] in this case. The accused-appellants' failure to show evidence that the police officers did not comply with Section 21 of R.A. No. 9165 gives us no other recourse but to respect the findings of trial court and of the CA.

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[28] *Supra* note 11.

[29] TSN, October 31, 2006, pp. 9-10.

[30] TSN, October 31, 2006, pp. 8-9.

[31] Accused-appellants cited TSN, October 31, 2006, p. 8.

[32] *Supra* note 15.

[33] *Evangelista v. People*, G.R. No.163267, May 5, 2010, 620 SCRA 134, 148, citing *Samson v. Daway*, 478 Phil. 784, 795 (2004).

Furthermore, the CA is correct in giving credence to the testimonies of the police officers as regards the timely submission of the subject illegal drugs since they are presumed to have regularly performed their duties, unless there is evidence suggesting ill-motive on the part of the police officers.[34] In this case, the accused-appellants failed to contradict the presumption. What goes against the accused-appellants is the fact that they have not offered any evidence of ill-motive against the police officers. Emily even admitted that she did not know PO1 Area, the poseur-buyer.[35] Considering that there was no existing relationship between the police officers and the accused-appellants, the former could not be accused of improper motive to falsely testify against the accused-appellants. In *People v. Dumangay*,[36] we upheld the findings of the lower court on the presumption of regularity in the performance of official duties because there was no proof of ill-motive. Therein, the accused-appellant's self-serving and uncorroborated defenses did not prevail over the trial court's findings on the credibility of witnesses. The same may be said in the present case.

Finding the accused-appellants' arguments without a leg to stand on, the apprehending police officers are presumed to have timely submitted the seized illegal items to the PNP Crime Laboratory Service for a qualitative and quantitative examination within the mandatory 24-hour period from confiscation.

On the **second factual issue**, we find the accused-appellants' claim not supported by evidence.

The accused-appellants alleged that the integrity of the seized illegal items was compromised and their evidentiary value diminished because of the alleged discrepancy between the number of plastic sachets recovered from the accused-appellants and those submitted to forensic chemist PSI Clemen. They insisted that based on the Informations in Criminal Case Nos. 3489 and

[34] *People v. Unisa*, G.R. No. 185721, September 28, 2011.

[35] TSN, August 31, 2007, pp. 8-10.

[36] G.R. No. 173483, September 23, 2008, 566 SCRA 290.

3490 and the testimonies of witnesses Asuncion[37] and SPO1 Aldave,[38] only fourteen (14) plastic sachets were recovered from the accused-appellants, while PSI Clemen allegedly testified that a total of 15 sachets were submitted for examination.[39]

However, a review of the defense-quoted testimony of PSI Clemen would show that she received one piece of small size heat-sealed transparent plastic sachet with marking "R",[40] 12 pieces small size heat-sealed marked as "R-1" to "R-12"[41] and one small size crumpled aluminum foil and small size plastic sachet[42] – totaling to 15 items. PSI Clemen's testimony tallies with the Laboratory Examination Request (Exhibit "J") of P/CI Tria. We reproduce Exhibit "J" below, to wit:

Republic of the Philippines
NATIONAL POLICE COMMISSION
PHILIPPINE NATIONAL POLICE
Virac Municipal Police Station
Virac, Catanduanes

MEMORANDUM :

FOR : The Chief
PNP Crime Laboratory Service
Camp Gen Simeon A Ola
Legaspi City

SUBJECT : Laboratory Examination request for
DATE : 04 August 2005

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1. Request conduct laboratory examination on the accompanying specimen to determine whether the white crystalline granules inside Thirteen (13) pcs small size transparent heat seald (sic) plastic sachets are *Methamphetamine Hydrochloride* or *SHABU*

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[37] TSN, May 10, 2006, p. 13-14.

[38] TSN, May 8, 2006, p. 7.

[39] TSN, May 19, 2006, pp. 7-8 for Criminal Case No. 3490.

[40] *Id.* at p. 8.

[41] TSN, May 19, 2006, pp. 3 and 5-6 for Criminal Case No. 3490.

[42] *Supra* note 40.

and also whether the one (1) pc small size crumpled aluminum foil and small size transparent plastic sachet contains residue or granules of Methamphetamine Hydrochloride or Shabu.

EXHIBIT	QUANTITY/ DESCRIPTION
"A"	One (1) pc small size heat sealed transparent plastic sachet sachet (sic) containing white crystalline substance with marking initial "R" the initial of PO1 ROLDAN AREA who acted as posuer (sic) buyer during the drug buy bust operation.
"B"	Twelve (12) pcs small size heat sealed transparent plastic sachet containing white crystalline substance with markings R1-R12 found/confiscated from the suspect during drug buy bust operation.
"C"	One (1) small size crumpled aluminum foil and small size plastic sachet confiscated/found in the possession of suspect during the execution of search warrant number 37 issued by Hon[.] Judge Jaime E[.] Contreras of RTC Branch 43.

SUSPECT/S	Roger Posada *y* Urbano Emily Posada *y* Sarmiento John-John Bryan Urbano *y* Zafe
COMPLAINANT	Officer-in-Charge Virac MPS

FACTS OF THE CASE: Evidence submitted for laboratory examination was bought and others were confiscated by the PNP team of Virac during Buy Bust (sic) operation and the effect/execution of search warrant number 37 on August 3, 2005 in [B]arangay Concepcion Virac, Catanduanes.

2. Request acknowledge reciept (sic) and furnish this office Laboratory examination result as soon as possible for subsequent submission/filing same in court as supporting documents to this case.

GIL FRANCIS G[.] TRIA
Pol Chief Inspector
Officer-in-Charge[43]

[43] *Supra* note 15.

Based on the cited exhibit, we find that in Exhibit "A" we have the first item, marked with "R". Under Exhibit "B", we have the next 12 items marked as "R-1" to "R-12". Under Exhibit "C", we have the remaining two items submitted to the crime laboratory, namely one small size crumpled aluminum foil and small size plastic sachet confiscated and found in the possession of Roger. All these items total to 15 items – consistent with the testimony of PSI Clemen. Thus, evidence shows no discrepancy as to the number of plastic sachets recovered from the accused-appellants and those submitted to forensic chemist PSI Clemen.

Finally, we say that the prosecution has established the chain of custody and integrity of the seized illegal items.

After PO1 Area arrested Emily and confiscated the 13 sachets of *shabu* (one bought by PO1 Area from Emily and 12 found in Emily's coin purse after she received the same from her husband Roger),[44] P/CI Tria took pictures of the incident using his cellphone while the official photographer was also taking pictures.[45] Then PO1 Area prepared an RPS,[46] which Asuncion, Sarmiento and Vargas witnessed.[47] Meanwhile, SPO1 Aldave, seizing officer went inside the house of the accused-appellants, prepared and signed an RPS after the raiding team found a piece of aluminum foil, one plastic sachet containing residue of white crystalline substance, one small pair of green scissors beside the bed inside a room, 15 pieces of used lighters, and two pieces of ₱50.00 bill and one piece of ₱100.00 bill. Asuncion, Arcilla and Gonzales witnessed the preparation and signing of the said RPS.[48] Thereafter, on August 4, 2005, P/CI Tria requested

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[44] Duplicate TSN, July 19, 2006, pp. 10-13, 22-24.

[45] TSN, October 31, 2006, pp. 13-14.

[46] Supra note 11.

[47] TSN, October 31, 2006, pp. 9-10; TSN, May 10, 2006, pp. 12-17.

[48] *Supra* note 13.

for a laboratory examination of a piece of small size heat-sealed transparent plastic sachet, containing white crystalline substance marked with initial "R"; 12 pieces of small size heat sealed transparent plastic sachets, containing white crystalline substance with sub-markings "R-1" to "R-12"; and one small size crumpled aluminum foil and small size plastic sachet. The request of P/CI Tria for laboratory examination dated August 4, 2005 was received by a certain PO2 Abanio and P/Insp. Sta. Cruz.[49] Subsequently, witness PSI Clemen, the forensic expert, received personally from PO2 Abanio the above-mentioned marked pieces of evidence. She then immediately conducted a laboratory examination, yielding a result that the 12 pieces of plastic sachets (with markings "R-1" to "R-12"), the one heat-sealed transparent plastic sachet with marking "R" and the one aluminum foil strip contained methamphetamine hydrochloride.[50] In open court, the above-mentioned pieces of evidence were identified and marked.[51]

From the foregoing, the prosecution, without an iota of doubt, has established the chain of custody and integrity of the seized illegal items. The Supreme Court in *People v. Sanchez*,[52] clearly discussed how chain of custody should be proven, to wit:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession,**

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[49] *Supra* note 15.

[50] *Id.*

[51] Duplicate TSN, July 19, 2006, pp. 11-12, 15, 17; TSN, May 19, 2006, pp. 3-9.

[52] G.R. No. 175832, October 15, 2008, 569 SCRA 194, 216.

the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[53]

In the instant case, the prosecution was able to present, not only the *corpus delicti*, but the testimonies of the people involved in each link in the chain of custody.

The prosecution failed to prove beyond reasonable doubt that the accused-appellants sold 12 sachets of *shabu*, but it has proven the accused-appellants' guilt beyond reasonable doubt of possession of the same number of *shabu* in violation of Section 11, Article II of R.A. No. 9165.

Before we proceed in discussing the guilt of the couple, we must first take into account a discrepancy in the Information for Criminal Case No. 3490. In the said information, the accused-appellants were charged for selling 12 pieces of transparent sealed plastic sachet of *shabu*. However, based on the evidence which the prosecution adduced, Emily sold to PO1 Area one sachet of *shabu*, which was worth ₱250.00. Then, after she handed the one sachet of *shabu* to the poseur-buyer, Emily received additional 12 sachets of *shabu* from her husband Roger and when PO1 Area informed the couple of the buy-bust, Emily had in her possession the 12 sachets of *shabu*.[54] Subsequently, the confiscated sachets of *shabu* were marked. The one sold to PO1 Area was marked with "R", while the 12 sachets of *shabu*

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[53] *Id.* at 216, citing *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[54] *Supra* note 44.

[55] *Supra* note 15.

Roger handed to Emily before their arrest were marked as "R-1" to "R-12".[55]

The unfortunate fact of this case is that rather than separately charging Emily for the sale of the one sachet of *shabu* and charging both Emily and Roger for possession of the 12 sachets of *shabu*, the public prosecutor lumped the charges together to sale of 12 sachets of *shabu.* This is wrong. The Information is defective for charging the accused-appellants of selling 12 sachets of *shabu* when, in fact, they should have been charged of selling one sachet of *shabu* and possessing 12 sachets of *shabu.* From the evidence adduced, Emily and Roger never sold the 12 sachets of *shabu*. They possessed them. Thus, they should have not been convicted for selling the 12 sachets of *shabu*. However, this was exactly what was done both by the trial court and the CA. Without basis in fact, they convicted the couple for selling the 12 sachets of *shabu*.

Indeed, it must be pointed out that the prosecution filed a defective Information. An Information is fatally defective when it is clear that it does not really charge an offense[56] or when an essential element of the crime has not been sufficiently alleged.[57] In the instant case, while the prosecution was able to allege the identity of the buyer and the seller, it failed to particularly allege or identify in the Information the subject matter of the sale or the *corpus delicti.* We must remember that one of the essential elements to convict a person of sale of prohibited drugs is to identify with certainty the *corpus delicti*. Here, the prosecution took the liberty to lump together two sets of *corpora delicti* when it should have separated the two in two different informations. To allow the prosecution to do this is to deprive the accused-appellants of their right to be informed, not only of the nature of the offense being charged, but of the essential element of the offense charged; and in this case, the very *corpus delicti* of the crime.

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[56] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 723 (2003).

[57] *People v. Galido*, G.R. Nos. 148689-92, March 30, 2004, 426 SCRA 502.

Furthermore, when ambiguity exists in the complaint or information, the court has no other recourse but to resolve the ambiguity in favor of the accused.[58] Here, since there exists ambiguity as to the identity of *corpus delicti*, an essential element of the offense charged, it follows that such ambiguity must be resolved in favor of the accused-appellants. Thus, from the foregoing discussion, we have no other choice but to acquit the accused-appellants of sale of 12 sachets of *shabu*.

Truly, both the trial court and the CA were wrong in convicting the couple for selling 12 sachets of *shabu* because the prosecution failed to show that the husband and wife had indeed sold the 12 sachets of *shabu*. Section 5, Article II of R.A. 9165 provides:

> SEC. 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.

More, jurisprudence holds that the prosecution for illegal sale of dangerous drugs can only be successful when the following elements are established, namely:

(1) the identity of the buyer and the seller, the object and consideration of the sale; and

(2) the delivery of the thing sold and the payment therefore.[59]

To our minds, while there was indeed a transaction between Emily and PO1 Area, the prosecution failed to show that the subject matter of the sale to PO1 Area was the 12 sachets of *shabu*. Based on the testimony of PO1 Area, the 12 sachets of

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[58] *People v. Ng Pek*, 81 Phil. 562, 565 (1948).

[59] *Supra* note 34; *People v. Macatingag*, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 361-362.

shabu were the sachets of *shabu* which Roger handed to his wife Emily and were not sold, but which PO1 Area found in her possession after the latter identified himself as a police officer.

In *People v. Paloma*,[60] we acquitted the accused for the prosecution's failure to prove the crime of illegal sale of drugs, and we have set the standard in proving the same, to wit:

> Under the "objective" test set by the Court in *People v. Doria*, the prosecution must clearly and adequately show the details of the purported sale, namely, the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, and, finally, the accused's delivery of the illegal drug to the buyer, whether the latter be the informant alone or the police officer. This proof is essential to ensure that law-abiding citizens are not unlawfully induced to commit the offense.[61]

In the instant case, PO1 Area's testimony showed no evidence that the transaction as to the sale of the 12 sachets of *shabu* ever happened. Rather, PO1 Area adequately testified on the fact that accused-appellant Roger handed the 12 sachets of *shabu* to Emily who kept them in a coin purse. And after PO1 Area identified himself as a police operative, he found the 12 sachets of *shabu* in Emily's possession.[62] From the foregoing, while the prosecution was able to prove the sale of **one** sachet of *shabu*, it is patently clear that it **never** established with moral certainty all the elements of illegal sale of the 12 sachets of *shabu*. And failure to show that indeed there was sale means failure to prove the guilt of the accused for illegal sale of drugs, because what matters in the prosecution for illegal sale of dangerous drugs is to show proof that the sale actually happened, coupled with the presentation in court of *corpus delicti*.[63] Here, the prosecution failed to prove the existence of the sale of the 12

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[60] G.R. No. 178544, February 23, 2011.

[61] *Id.*

[62] Duplicate TSN, July 19, 2006, pp. 7-12.

[63] Please see *People v. Macatingag*, G.R. No. 181037, January 19, 2009, 576 SCRA 354, 362; *People v. Dumangay*, G.R. No. 173483, September 23, 2008, 566 SCRA 290, 298.

sachets of *shabu* and also to prove that the 12 sachets of *shabu* presented in court were truly the subject matter of the sale between the accused-appellants and PO1 Area.

Notwithstanding the above-discussion, we convict both Roger and Emily of illegal possession of prohibited drugs despite the fact that they were charged for the sale of illegal drugs, because possession is necessarily included in sale of illegal drugs.

Section 4, Rule 120 of the Rules of Court provides:

> Sec. 4. Judgment in case of variance between allegation and proof. – When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Since sale of dangerous drugs necessarily includes possession of the same, the accused-appellants should be convicted of possession. We have consistently ruled that possession of prohibited or dangerous drugs is absorbed in the sale thereof.[64] Then Associate Justice Artemio Panganiban logically and clearly explained the rationale behind this ruling, to wit:

> The prevailing doctrine is that possession of marijuana is absorbed in the sale thereof, except where the seller is further apprehended in possession of another quantity of the prohibited drugs not covered by or included in the sale and which are probably intended for some future dealings or use by the seller.
>
> Possession is a necessary element in a prosecution for illegal sale of prohibited drugs. It is indispensable that the prohibited drug subject of the sale be identified and presented in court. That the *corpus delicti* of illegal sale could not be established without a showing that the accused possessed, sold and delivered a prohibited drug clearly indicates that possession is an element of the former. The same rule is applicable in cases of delivery of prohibited drugs and giving them away to another.[65] (Citations omitted)

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[64] *People v. Lacerna*, 344 Phil. 100, 121 (1997); *People v. Tabar*, G.R. No. 101124, May 17, 1993, 222 SCRA 144, 152.

[65] *Id.* at 120.

For prosecution of illegal possession of dangerous drugs to prosper, the following essential elements must be proven, namely: "(1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possess the said drug."[66]

All these elements are obtaining and duly established in this case and we will discuss them thoroughly below, since we are not ready to altogether exonerate the couple.

On Emily's Liability

To our minds, the testimony of PO1 Area is sufficient to establish concurrence of all the elements necessary to convict Emily of violating Section 11, Article II of R.A. No. 9165. PO1 Area vividly narrated the details of the buy-bust operation. He recounted how on August 3, 2005 at around 12 noon, he acted as the poseur-buyer of *shabu*. He approached Emily, who was then standing in front of their house, and told her that he would like to buy *shabu*, and then gave her the ₱250.00. Emily then returned to her house and got a coin purse. Upon returning, Emily handed to PO1 Area a piece of sachet containing *shabu*. After receiving the sachet of *shabu*, PO1 Area saw Roger hand the 12 sachets of *shabu* to Emily who kept them in a coin purse. After paying for and receiving the sachet of *shabu* from Emily, PO1 Area arrested the latter and found in her possession the 12 sachets of *shabu*.[67] From the foregoing, it is patently clear that the prosecution established with moral certainty all the elements of illegal possession of *shabu*, that is: PO1 Area found in Emily's physical and actual possession the 12 sachets of *shabu*; such possession of the 12 sachets of *shabu* was not authorized; and since Emily put the 12 sachets of *shabu* in the purse after receiving them from her husband, she possessed the same freely and consciously.

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[66] *People v. Dela Cruz*, G.R. No. 182348, November 20, 2008, 571 SCRA 469, 474-475.

[67] *Supra* note 9.

Furthermore, PO1 Area's testimony was corroborated by the testimonies of the following: (a) *Barangay Kagawad* Sarmiento who witnessed how PO1 Area caught Emily doing the illegal act; (b) *Barangay* Captain Asuncion, Jr. who testified that he was with the raiding team when the latter conducted the buy-bust operation and that he witnessed how money changed hands; (c) P/CI Tria who witnessed the buy-bust operation and was one of the arresting officers; (d) SPO1 Aldave who executed the search warrant; and (e) *Barangay Kagawad* Arcilla who also accompanied the raiding team in the search of the accused-appellants' house. All these witnesses completed all the angles of the buy-bust operation and the search on Emily's person up to the finding that she possessed the 12 sachets of *shabu*. Indeed, considering all of the above-findings of facts, we cannot have other conclusion but to find Emily guilty beyond reasonable doubt for possession of prohibited drugs.

Indeed, every accused deserves a second look before conviction. This is the essence of the constitutional presumption of innocence. In the present case, we did not only take a second look at the facts and laws of this case because the accused-appellants are both parents. We take a third, a fourth up to a seventh look to ensure that no child will be left unattended because his parents were imprisoned based on false accusations. Thus, after reviewing this case, the bare truth is Emily was found in possession of 12 sachets of *shabu* on August 3, 2005.

On Roger's Liability

As to Roger, can we also convict him of possession of the same 12 sachets of *shabu* considering that same had been found in the possession of his wife Emily?

We resolve in the affirmative.

In *United States v. Juan*,[68] we have clarified the meaning of the words "having possession of." We said that the said phrase included constructive possession, that is, "the relation between the owner of the drug and the drug itself when the owner is not

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[68] 23 Phil. 105 (1912).

in actual physical possession, but when it is still under his control and management and subject to his disposition."[69] In other words, in that case, we recognized the fact that a person remains to be in possession of the prohibited drugs although he may not have or may have lost physical possession of the same.

To elucidate, we must go back to the circumstances surrounding the *Juan* case. A Chinaman named Lee See arrived at the Bay of Calbayog, Samar through the steamer *Ton-Yek*. Upon disembarking, he went to the house of therein appellant Chan Guy Juan, who was living in the town of Calbayog. Lee See and Chan Guy Juan had a lengthy conversation. Chan Guy Juan then hired a certain Isidro Cabinico (Cabinico) to go alongside of the steamer with his *baroto*, to carry and deliver to him a sack which appellant Chan Guy Juan alleged was sugar. Cabinico went to Lee See to get the said sack. However, on his way to the house of Chan Guy Juan, Cabinico was arrested by the local authorities. Found in his possessions were a small amount of sugar and 28 cans of opium. The opium was confiscated and separate criminal charges were instituted against the two Chinamen and Cabinico. After a thorough investigation, the provincial fiscal dismissed the case against Cabinico because he had no knowledge of the content of the sack, while the two Chinamen were eventually convicted. Chan Guy Juan appealed his conviction arguing that he did not have actual physical possession or control of the 28 cans of opium. But we held that both Chinese had constructive possession of the opium and that they were both guilty as principals.[70]

Our ruling in *Juan* applies to the present case. Admittedly, the 12 sachets of *shabu* were found in the possession of Emily. But PO1 Area saw Roger hand the same 12 sachets of *shabu* to Emily. While Roger had lost physical possession of the said 12 sachets of *shabu*, he had constructive possession of the same because they remain to be under his control and management. In the *Juan* case, Lee See gave the physical

[69] *Id.* at p. 107.

[70] *Id.* at pp. 106-107.

possession of the opium to Cabinico while Chan Guy Juan had not yet received the same opium from Lee See, but both were held guilty of illegal possession of opium. Thus, we can liken the instant case to that of *Juan* because while Roger had lost physical possession of the 12 sachets of *shabu* to Emily, he maintained constructive possession of the same.

Convicting both Emily and Roger of possession of illegal drugs deprives their children of parents. But if we have to take care of our children and the family where each of us belongs, we are obligated to put in jail all those, including fathers and mothers, who peddle illegal drugs.

Finally, we cannot let this case pass us by without emphasizing the need for the public prosecutor to properly evaluate all the pieces of evidence and file the proper information to serve the ends of justice. The public prosecutor must exert all efforts so as not to deny the People a remedy against those who sell prohibited drugs to the detriment of the community and its children. Many drug cases are dismissed because of the prosecutor's sloppy work and failure to file airtight cases. If only the prosecution properly files the Information and prosecutes the same with precision, guilty drug pushers would be punished to the extent allowed under the law, as in this case.

WHEREFORE, the Decision of the Court of Appeals dated June 17, 2010 is **MODIFIED**. Accused-appellants **ROGER POSADA and EMILY POSADA ARE FOUND GUILTY OF ILLEGAL POSSESSION OF TWELVE (12) SACHETS OF METHAMPETAMINE HYDROCHOLORIDE OR *SHABU*, WITH A NET WEIGHT OF 0.4578 GRAMS AND ARE HEREBY SENTENCED TO THE INDETERMINATE PENALTY OF TWELVE (12) YEARS AND ONE (1) DAY, AS MINIMUM, TO FOURTEEN (14) YEARS AND EIGHT (8) MONTHS, AS MAXIMUM AND A FINE OF ₱300,000.00.**

SO ORDERED.

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

EN BANC

[A.M. No. 12-2-03-0. March 13, 2012]

RE: IN THE MATTER OF CLARIFICATION OF EXEMPTION FROM PAYMENT OF ALL COURT AND SHERIFF'S FEES OF COOPERATIVES DULY REGISTERED IN ACCORDANCE WITH REPUBLIC ACT NO. 9520 OTHERWISE KNOWN AS THE PHILIPPINE COOPERATIVE CODE OF 2008, PERPETUAL HELP COMMUNITY COOPERATIVE (PHCCI), *petitioner.*

SYLLABUS

1. REMEDIAL LAW; LEGAL FEES; COOPERATIVES ARE NOT EXEMPT FROM THE PAYMENT OF LEGAL FEES.— [T]he Supreme Court *En Banc* issued a Resolution in A.M. No. 08-2-01-0, which denied the petition of the Government Service Insurance System (GSIS) for recognition of its exemption from payment of legal fees imposed under Section 22 of Rule 141 of the Rules of Court. In the *GSIS* case, the Court citing *Echegaray v. Secretary of Justice*, stressed that the 1987 Constitution molded an even stronger and more independent judiciary; took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure; and held that the power to promulgate these Rules is no longer shared by the Court with Congress, more so, with the Executive[.] x x x [I]n *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Cabato-Cortes,* this Court reiterated its ruling in the *GSIS* case when it denied the petition of the cooperative to be exempted from the payment of legal fees under Section 7(c) of Rule 141 of the Rules of Court relative to fees in petitions for extra-judicial foreclosure. On 10 March 2010, relying again on the *GSIS* ruling, the Court *En Banc* issued a resolution clarifying that the National Power Corporation is not exempt from the payment of legal fees. With the foregoing categorical pronouncements of the Supreme Court, it is evident that the exemption of cooperatives from payment of court and sheriff's fees no longer

stands. Cooperatives can no longer invoke Republic Act No. 6938, as amended by Republic Act No. 9520, as basis for exemption from the payment of legal fees.

APPEARANCES OF COUNSEL

Marivic Z. Pintor for petitioner.

R E S O L U T I O N

PEREZ, *J.*:

In a Petition[1] dated 24 October 2011, Perpetual Help Community Cooperative (PHCCI), through counsel, requests for the issuance of a court order to clarify and implement the exemption of cooperatives from the payment of court and sheriff's fees pursuant to Republic Act No. 6938, as amended by Republic Act No. 9520, otherwise known as the *Philippine Cooperative Act of 2008*.

PHCCI contends that as a cooperative it enjoys the exemption provided for under Section 6, Article 61 of Republic Act No. 9520, which states:

(6) Cooperatives shall be exempt from the payment of all court and sheriff's fees payable to the Philippine Government for and in connection with all actions brought under this Code, or where such actions is brought by the Authority before the court, to enforce the payment of obligations contracted in favor of the cooperative.

It claims that this was a reiteration of Section 62, paragraph 6 of Republic Act No. 6938, *An Act to Ordain a Cooperative Code of the Philippines*,[2] and was made basis for the Court's

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[1] Records, pp. 9-13.

[2] xxx (6) Cooperatives shall be exempt from the payment of all court and sheriff's fees payable to the Philippine Government for and in connection with all actions brought under this Code, or where such actions is brought by the Cooperative Development Authority before the court, to enforce the payment of obligations contracted in favor of the cooperative.

Resolution in A.M. No. 03-4-01-0, as well as of Office of the Court Administrator (OCA) Circular No. 44-2007.[3]

It avers that despite the exemptions granted by the aforesaid laws and issuances, PHCCI had been continuously assessed and required to pay legal and other fees whenever it files cases in court.

PHCCI reports that it filed with the Office of the Executive Judge of the Municipal Trial Court in Cities (MTCC), Dumaguete City, Negros Oriental, a Motion to implement the exemption of cooperatives from the payment of court and sheriff's fees in cases filed before the courts in his jurisdiction, but the Executive Judge ruled that the matter is of national concern and should be brought to the attention of the Supreme Court for it to come up with a straight policy and uniform system of collection. In the meantime, the MTCC has continued the assessment of filing fees against cooperatives.

Records reveal that on 21 September 2011, Executive Judge Antonio Estoconing (Executive Judge Estoconing), MTCC, Dumaguete City, Negros Oriental, issued an Order treating the motion filed by PHCCI as a mere *consulta* considering that no

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[3] For your information and guidance, the Court En Banc in its Resolution dated 15 July 2003, issued in A.M. No. 03-4-01-0, Resolved to EXEMPT the cooperatives from the payment of all court and sheriff's fees payable to the Philippine Government for and in connection with all actions brought under Republic Act No. 6938 or the Cooperative Development Code of the Philippines, or where such action is brought by the Cooperative Development Authority before the court, to enforce the payment of obligations contracted in favor of the cooperative.

In connection therewith the following guidelines shall be observed:

(a) All actions brought before the Court are filed by the duly elected officers of the cooperative in the name of or for and on behalf of the cooperative;

(b) All actions brought before the Court are filed pursuant to the pertinent provisions of Republic Act No. 6938 also known as the Cooperative Code of the Philippines but shall be limited only to enforce the payment of obligations contracted in favor of cooperative, otherwise cooperatives will not be exempt from payment of pertinent fees.

main action was filed in his court. Executive Judge Estoconing submits that he had second thoughts in considering the exemption in view of the guidelines laid down in the Rules. He reported that many cases filed by PHCCI are small claims cases and under Section 8 of the Rule on Small Claims, the plaintiff is required to pay docket fees and other related costs unless he is allowed to litigate the case as an indigent.

Hence, this Petition.

Before this Court is the issue on whether cooperatives are exempt from the payment of court and sheriff's fees. The fees referred to are those provided for under Rule 141 (Legal Fees) of the Rules of Court.

The term "all court fees" under Section 6, Article 61 of Republic Act No. 9520 refers to the totality of "legal fees" imposed under Rule 141 of the Rules of Court as an incident of instituting an action in court.[4] These fees include filing or docket fees, appeal fees, fees for issuance of provisional remedies, mediation fees, sheriff's fees, stenographer's fees and commissioner's fees.[5]

With regard to the term "sheriff's fees," this Court, in an extended minute Resolution dated 1 September 2009, held that the exemptions granted to cooperatives under Section 2, paragraph 6 of Republic Act No. 6938; Section 6, Article 61 of Republic Act No. 9520; and OCA Circular No. 44-2007 clearly do not cover the amount required "to defray the actual travel expenses of the sheriff, process server or other court-authorized person in the service of summons, subpoena and other court processes issued relative to the trial of the case,"[6] which are

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[4] "Legal fees" as defined in Section 1, paragraph (d) of Article II of A.M. No. 08-11-7-SC (IRR) Rule on the Exemption from the Payment of Legal Fees of the Clients of the National Committee on Legal Aid (NCLA) and of the Legal Aid Offices in the Local Chapters of the Integrated Bar of the Philippines (IBP) as approved by the Supreme Court on 25 August 2009.

[5] *Id.*

[6] Section 10, Rule 141 of the Rules of Court.

neither considered as court and sheriff's fees nor are amounts payable to the Philippine Government.[7]

In fine, the 1 September 2009 Resolution exempted the cooperatives from court fees but not from sheriff's fees/expenses.

On 11 February 2010, however, the Supreme Court *En Banc* issued a Resolution in A.M. No. 08-2-01-0,[8] which denied the petition of the Government Service Insurance System (GSIS) for recognition of its exemption from payment of legal fees imposed under Section 22 of Rule 141 of the Rules of Court. In the *GSIS* case, the Court citing *Echegaray v. Secretary of Justice*,[9] stressed that the 1987 Constitution molded an even stronger and more independent judiciary; took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure; and held that the power to promulgate these Rules is no longer shared by the Court with Congress, more so, with the Executive,[10] thus:

> Since the payment of legal fees is a vital component of the rules promulgated by this Court concerning pleading, practice and procedure, it cannot be validly annulled, changed or modified by Congress. As one of the safeguards of this Court's institutional independence, the power to promulgate rules of pleading, practice and procedure is now the Court's exclusive domain. That power is no longer shared by this Court with Congress, much less with the Executive.[11]

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[7] A.M. No. 03-4-01-0. Exemption of Cooperatives from Payment of Court and Sheriff's Fees Payable to the Government in Actions Brought under Republic Act No. 6938.

[8] *Re: Petition for Recognition of the Exemption of the Government Service Insurance System (GSIS) for Payment of Legal Fees,* A.M. No. 08-2-01-0, 11 February 2010, 612 SCRA 193.

[9] 361 Phil. 73 (1999).

[10] *Id.* at 88.

[11] *Re: Petition for Recognition of the Exemption of the Government Service Insurance System (GSIS) for Payment of Legal Fees, supra* note 8 at 206 citing *Echegaray v. Secretary of Justice, supra* note 9 at 88-89.

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The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by this Court. Viewed from this perspective, the claim of a legislative grant of exemption from the payment of legal fees under Section 39 of R.A. 8291 necessarily fails.

Congress could not have carved out an exemption for the GSIS from the payment of legal fees without transgressing another equally important institutional safeguard of the Court's independence - fiscal autonomy.[12] Fiscal autonomy recognizes the power and authority of the Court to levy, assess and collect fees,[13] including legal fees. Moreover, legal fees under Rule 141 have two basic components, the Judiciary Development Fund (JDF) and the Special Allowance for the Judiciary Fund (SAJF).[14] The laws which established the JDF and SAJF[15] expressly declare the identical purpose of these funds to guarantee the independence of the Judiciary as mandated by the Constitution and public policy.[16] Legal fees therefore do not only

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[12] *Re: Petition for Recognition of the Exemption of the Government Service Insurance System (GSIS) for Payment of Legal Fees,id.* at 209 citing Section 3, Article VIII of the Constitution, "[t]he Judiciary shall enjoy fiscal autonomy."

[13] *Id.*, citing *Bengzon v. Drilon,* G.R. No. 103524, 15 April 1992, 208 SCRA 133, 150.

[14] *Id.* See Amended Administrative Circular No. 35-2004 dated 20 August 2004 (*Guideline in the Allocation of the Legal Fees Collected Under Rule 141of the Rules of Court, as Amended, between the [SAJF] and the [JDF]*).

[15] *Id.* Presidential Decree No. 1949 and Republic Act No. 9227.

[16] *Id.* Sec. 1 of Presidential Decree No. 1949 provides:

Sec. 1. There is hereby established a [JDF], hereinafter referred to as the Fund, for the benefit of the members and personnel of the Judiciary to help ensure and guarantee the independence of the Judiciary as mandated by the Constitution and public policy and required by the impartial administration of justice.

constitute a vital source of the Court's financial resources but also comprise an essential element of the Court's fiscal independence. Any exemption from the payment of legal fees granted by Congress to government-owned or controlled corporations and local government units will necessarily reduce the JDF and the SAJF. Undoubtedly, such situation is constitutionally infirm for it impairs the Court's guaranteed fiscal autonomy and erodes its independence.[17]

In a decision dated 26 February 2010 in *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Cabato-Cortes,*[18] this Court reiterated its ruling in the *GSIS* case when it denied the petition of the cooperative to be exempted from the payment of legal fees under Section 7(c) of Rule 141 of the Rules of Court relative to fees in petitions for extra-judicial foreclosure.

On 10 March 2010, relying again on the *GSIS* ruling, the Court *En Banc* issued a resolution clarifying that the National Power Corporation is not exempt from the payment of legal fees.[19]

With the foregoing categorical pronouncements of the Supreme Court, it is evident that the exemption of cooperatives from payment of court and sheriff's fees no longer stands. Cooperatives can no longer invoke Republic Act No. 6938, as amended by Republic Act No. 9520, as basis for exemption from the payment of legal fees.

WHEREFORE, in the light of the foregoing premises, the petition of PHCCI requesting for this Court to issue an order

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Sec. 1 of Republic Act 9227 provides:

Sec. 1. *Declaration of Policy.* – It is hereby declared a policy of the State to adopt measures to guarantee the independence of the Judiciary as mandated by the Constitution and public policy and to ensure impartial administration of justice, as well as an effective and efficient system worthy of public trust and confidence.

[17] *Id.* at 210.

[18] G.R. No. 165922, 26 February 2010, 613 SCRA 733.

[19] *In Re: Exemption of the National Power Corporation from Payment of Filing/Docket Fees,* A.M. No. 05-10-20-SC, 10 March 2010, 615 SCRA 1.

clarifying and implementing the exemption of cooperatives from the payment of court and sheriff's fees is hereby *DENIED*.

The Office of the Court Administrator is *DIRECTED* to issue a circular clarifying that cooperatives are not exempt from the payment of the legal fees provided for under Rule 141 of the Rules of Court.

SO ORDERED.

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

Del Castillo, J., on leave.

EN BANC

[A.M. No. 11-10-1-SC. March 13, 2012]

IN RE:* LETTERS OF ATTY. ESTELITO P. MENDOZA *RE*: G.R. NO. 178083 — FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP) *vs.* PHILIPPINE AIRLINES, INC. (PAL), *ET AL.

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT OF THE PHILIPPINES; INTERNAL RULES OF THE SUPREME COURT (IRSC); THE OCTOBER 4, 2011 RESOLUTION WAS ISSUED TO DETERMINE THE PROPRIETY OF THE SEPTEMBER 7, 2011 RESOLUTION AFTER THE RULING DIVISION'S EXAMINATION OF THE

RECORDS; THE RECALL WAS NOT A RULING ON THE MERITS AND DID NOT CONSTITUTE THE REVERSAL OF THE SUBSTANTIVE ISSUES ALREADY DECIDED IN THE *FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES'* (FASAP) CASE.— The October 4, 2011 Resolution was issued to determine the propriety of the September 7, 2011 Resolution given the facts that came to light after the ruling Division's examination of the records. To point out the obvious, the recall was not a ruling on the merits and did not constitute the reversal of the substantive issues already decided upon by the Court in the FASAP case in its previously issued Decision (of July 22, 2008) and Resolution (of October 2, 2009). In short, the October 4, 2011 Resolution was not meant and was never intended to favor either party, but to simply remove any doubt about the validity of the ruling Division's action on the case. The case, in the ruling Division's view, could be brought to the Court *en banc* since it is one of "sufficient importance"; at the very least, it involves the interpretation of conflicting provisions of the IRSC with potential jurisdictional implications.

2. **ID.; ID.; ID.; ID.; ID.; SINCE NO UNANIMITY AMONG THE MEMBERS OF THE RULING DIVISION COULD BE GATHERED ON THE UNRESOLVED LEGAL QUESTIONS, THEY CONCLUDED THAT THE MATTER IS BEST DETERMINED BY THE COURT *EN BANC* AS IT POTENTIALLY INVOLVED QUESTIONS OF JURISDICTION AND INTERPRETATION OF CONFLICTING PROVISIONS OF THE IRSC.—** At the time the Members of the ruling Division went to the Chief Justice to recommend a recall, there was no clear indication of how they would definitively settle the unresolved legal questions among themselves. The only matter legally certain was the looming finality of the September 7, 2011 Resolution if it would not be immediately recalled by the Court *en banc* by October 4, 2011. No unanimity among the Members of the ruling Division could be gathered on the unresolved legal questions; thus, they concluded that **the matter is best determined by the Court *en banc*** as it potentially involved questions of jurisdiction and interpretation of conflicting provisions of the IRSC. To the extent of the recommended

recall, the ruling Division was unanimous and the Members communicated this intent to the Chief Justice in clear and unequivocal terms.

3. ID.; ID.; ID.; ID.; ID.; DEVELOPMENTS IN THE FASAP CASE WHICH, IN NO SMALL MEASURE, CONTRIBUTED IN THEIR OWN PECULIAR WAY TO THE CONFUSING SITUATIONS THAT ATTENDED THE SEPTEMBER 7, 2011 RESOLUTION, RESULTING IN THE RECALL OF THE RESOLUTION BY THE COURT *EN BANC*.— To summarize all the developments that brought about the present dispute – expressed in a format that can more readily be appreciated in terms of the Court *en banc's* ruling to recall the September 7, 2011 ruling – the FASAP case, as it developed, was attended by special and unusual circumstances that saw: (a) the confluence of the successive retirement of three Justices (in a Division of five Justices) who actually participated in the assailed Decision and Resolution; (b) the change in the governing rules – from the A.M.s to the IRSC regime – which transpired during the pendency of the case; (c) the occurrence of a series of inhibitions in the course of the case (Justices Ruben Reyes, Leonardo-De Castro, Corona, Velasco, and Carpio), and the absences of Justices Sereno and Reyes at the critical time, requiring their replacement; notably, Justices Corona, Carpio, Velasco and Leonardo-De Castro are the four most senior Members of the Court; (d) the three re-organizations of the divisions, which all took place during the pendency of the case, necessitating the transfer of the case from the Third Division, to the First, then to the Second Division; (c) the unusual timing of Atty. Mendoza's letters, made after the ruling Division had issued its Resolution of September 7, 2011, but before the parties received their copies of the said Resolution; and (f) finally, the time constraint that intervened, brought about by the parties' receipt on September 19, 2011 of the Special Division's Resolution of September 7, 2011, and the consequent running of the period for finality computed from this latter date; and the Resolution would have lapsed to finality after October 4, 2011, had it not been recalled by that date. All these developments, in no small measure, contributed in their own peculiar way to the confusing situations that attended

the September 7, 2011 Resolution, resulting in the recall of this Resolution by the Court *en banc*.

4. ID.; ID.; ID.; ID.; ID.; SECTION 3, RULE 8 OF THE IRSC SHOULD BE READ AS THE GENERAL RULE APPLICABLE TO THE INHIBITION OF A MEMBER-IN-CHARGE; THE RULE, HOWEVER, MUST YIELD TO THE MORE SPECIFIC SECTION 7, RULE 2 OF THE IRSC WHICH CONTEMPLATES A SITUATION WHEN THE *PONENTE* IS NO LONGER AVAILABLE, AND CALLS FOR THE REFERRAL OF THE CASE FOR RAFFLE AMONG THE REMAINING MEMBERS OF THE DIVISION WHO ACTED ON THE DECISION OR ON THE SIGNED RESOLUTION.— The general rule on statutory interpretation is that apparently conflicting provisions should be reconciled and harmonized, as a statute must be so construed as to harmonize and give effect to all its provisions whenever possible. Only after the failure at this attempt at reconciliation should one provision be considered the applicable provision as against the other. Applying these rules by reconciling the two provisions under consideration, **Section 3, Rule 8 of the IRSC should be read as the general rule applicable to the inhibition of a Member-in-Charge**. **This general rule should, however, yield where the inhibition occurs at the late stage of the case when a decision or signed resolution is assailed through an MR.** At that point, when the situation calls for the ***review of the merits*** of the decision or the signed resolution made by a *ponente* (or writer of the assailed ruling), Section 3, Rule 8 no longer applies and must yield to **Section 7, Rule 2 of the IRSC which contemplates a situation when the *ponente* is no longer available, and calls for the referral of the case for raffle among the remaining Members of the Division who acted on the decision or on the signed resolution.** This latter provision should rightly apply as it gives those who intimately know the facts and merits of the case, through their previous participation and deliberations, the chance to take a look at the decision or resolution produced with their participation. To reiterate, Section 3, Rule 8 of the IRSC is the general rule on inhibition, but it must yield to the more specific Section 7, Rule 2 of the IRSC where the obtaining situation is for the review *on the merits* of an already issued decision or resolution and the *ponente* or writer is no longer

available to act on the matter. On this basis, the *ponente,* on the merits of the case on review, should be chosen from the remaining participating Justices, namely, Justices Peralta and Bersamin.

5. **ID.; ID.; ID.; ID.; ID.; IN THE ABSENCE OF ANY CLEAR PERSONAL MALICIOUS PARTICIPATION, IT IS NEITHER CORRECT NOR PROPER TO HOLD THE CHIEF JUSTICE, AS THE PRESIDING OFFICER OF THE COURT *EN BANC*, PERSONALLY ACCOUNTABLE FOR THE COLLEGIAL RULING OF THE COURT.—** A final point that needs to be fully clarified at this juncture, in light of the allegations of the Dissent is **the role of the Chief Justice** in the recall of the September 7, 2011 Resolution. As can be seen from the above narration, the Chief Justice acted only on the recommendation of the ruling Division, since he had inhibited himself from participation in the case long before. The confusion on this matter could have been brought about by the Chief Justice's role as the Presiding Officer of the Court *en banc* (particularly in its meeting of October 4, 2011), and the fact that the four most senior Justices of the Court (namely, Justices Corona, Carpio, Velasco and Leonardo-De Castro) inhibited from participating in the case. In the absence of any clear personal malicious participation, it is neither correct nor proper to hold the Chief Justice personally accountable for the collegial ruling of the Court *en banc.*

6. **ID.; ID.; ID.; ID.; ID.; THE ALLEGED SILENCE OF, OR LACK OF OBJECTION FROM, THE MEMBERS OF THE RULING DIVISION DURING THE OCTOBER 4, 2011 DELIBERATIONS WAS NOT DUE TO ANY CONSPIRACY TO REVERSE THEIR RULING TO AFFIRM THE PREVIOUS COURT RULINGS ALREADY MADE IN FAVOR OF FASAP; THE LACK OF A VERY ACTIVE ROLE IN THE ARGUMENTS CAN ONLY BE ATTRIBUTABLE TO THEIR UNANIMOUS AGREEMENT TO RECALL THE RULING IN THEIR DESIRE TO HAVE THE INTRICATE ISSUES VENTILATED BEFORE THE COURT *EN BANC* AND THEIR FIRM RESOLVE TO AVOID ANY OCCASION FOR FUTURE FLIP-FLOPPING BY THE COURT.—** Another disturbing allegation in the Dissent is the implication

of the **alleged silence of, or lack of objection from, the Members of the ruling Division** during the October 4, 2011 deliberations, citing for this purpose the internal *en banc* deliberations. The lack of a very active role in the arguments can only be attributable to the Members of the ruling Division's unanimous agreement to recall their ruling immediately; to their desire to have the intricate issues ventilated before the Court *en banc*; to the looming finality of their Division's ruling if this ruling would not be recalled; and to their firm resolve to avoid any occasion for future flip-flopping by the Court. To be sure, it was not due to any conspiracy to reverse their ruling to affirm the previous Court rulings already made in favor of FASAP; the Division's response was simply dictated by the legal uncertainties that existed and the deep division among them on the proper reaction to Atty. Mendoza's letters.

7. ID.; ID.; ID.; ID.; ID.; TIME CONSTRAINT IS ALSO A MAJOR INFLUENCING FACTOR.— Of the above-cited reasons, a **major influencing factor,** of course, was the time constraint – the Members of the ruling Division met with the Chief Justice **on September 30, 2011, the Friday before October 4, 2011** (the date of the closest Court *en banc* meeting, as well as the **deadline for the finality of the September 7, 2011 Resolution**). They impressed upon the Chief Justice the urgent need to recall their September 7, 2011 Resolution under the risk of being accused of a flip-flop if the Court *en banc* would later decide to override its ruling.

8. ID.; ID.; ID.; ID.; ID.; IF NO DETAILED REFERENCE TO INTERNAL COURT DELIBERATIONS IS MADE IN THE PRESENT RESOLUTION, THE OMISSION IS INTENTIONAL IN VIEW OF THE PROHIBITION AGAINST THE PUBLIC DISCLOSURE OF THE INTERNAL PROCEEDINGS OF THE COURT DURING ITS DELIBERATIONS.— As a final word, if no detailed reference to internal Court deliberations is made in this Resolution, ***the omission is intentional*** in view of the prohibition against the public disclosure of the internal proceedings of the Court during its deliberations. The present administrative matter, despite its pendency, is being ventilated in the impeachment of Chief Justice Corona before the Senate acting as an Impeachment Court, and any disclosure in this Resolution

could mean the disclosure of the Court's internal deliberations to outside parties, contrary to the clear terms of the Court *en banc* Resolution of February 14, 2012 on the attendance of witnesses from this Court and the production of Court records.

SERENO, *J., dissenting opinion*:

1. **POLITICAL LAW; 1987 CONSTITUTION; JUDICIAL DEPARTMENT; SUPREME COURT OF THE PHILIPPINES; INTERNAL RULES OF THE SUPREME COURT (IRSC); SINCE NO IRREGULARITY IN THE APPLICATION OF THE RULES OCCURRED, THE MAIN *FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES* (FASAP) *VS. PHILIPPINE AIRLINES, INC.* (PAL) *ET AL.* CASE IN G.R. NO. 178083 SHOULD BE RETURNED TO THE SECOND DIVISION AS REGULAR CASE AND THE RECALLED 07 SEPTEMBER 2011 RESOLUTION BE REINSTATED AND DULY EXECUTED UNDER THE EXISTING LAWS AND RULES.—** Given that the factual bases for the impressions of the majority of the Court do not exist, and that the resulting conclusion that allowed them to accede to the 04 October 2011 Resolution on the instant administrative matter can no longer be sustained, I submit that no such irregularity in the application of the rules occurred. Therefore, the main FASAP case in G.R. No. 178083 should be returned to the Second Division as a regular case, and the recalled 07 September 2011 Resolution be reinstated and duly executed under the existing laws and rules. While it is true that the Supreme Court has the power to suspend its rules "(i)n the interest of sound and efficient administration of justice," under Rule 1, Section 4 of its Internal Rules, the interest of justice in this case requires that the rules be appropriately followed. The 04 October 2011 Resolution to transfer the case from the Second Division to the *En Banc* was apparently pursuant to the desire to observe the rules, not suspend them. The transfer of the case to the Second Division having been proven to be regularly made, there was no need for the suspension of any rule.

2. **ID.; ID.; ID.; ID.; ID.; THE PROPOSAL TO REFER A CASE TO THE COURT *EN BANC* MUST FIRST BE AGREED UPON AND MADE BY THE DIVISON AND FORMAL**

NOTICE THEREOF SHOULD BE SENT TO THE CLERK OF COURT; NO SUCH FORMAL NOTICE OF REFERRAL WAS MADE BY THE REGULAR SECOND DIVISION OR SENT TO THE CLERK OF COURT *EN BANC* TO ELEVATE THE MAIN FASAP CASE FOR CONSIDERATION OF THE COURT *EN BANC*.— No Division of the Court is a body inferior to the Court En Banc; and each Division sits veritably as the Court En Banc itself. The Court En Banc is not an appellate Court to which decisions or resolutions of a Division may be appealed. Before a judgment or resolution on a case becomes final and executory, the Court En Banc may accept a referral by the Division for **sufficiently important reasons**. Otherwise, the case would be returned to the Division for decision or resolution. The proposal to refer the case to the Court En Banc must first be agreed upon and made by the Division and formal notice thereof should then be sent to the Clerk of Court. The Clerk of Court would then calendar the referral in the Agenda for consideration of the Court *En Banc*. In this case, no such formal notice of a referral was made by the regular Second Division or sent to the Clerk of Court *En Banc* to elevate the main FASAP case for the consideration of the Court *En Banc*. In fact, the Internal Rules of the Supreme Court are explicit on referring cases to the Court En Banc in instances in which the matter to be considered is a case that has already been decided by the Division and is already the subject of a second motion for reconsideration, similar to the circumstance in the case of PAL. In a Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.

3. **ID.; ID.; ID.; ID.; ID.; NO DECISION OR VOTE BY AT LEAST THREE MEMBERS OF THE REGULAR SECOND DIVISION WAS EVER MADE TO REFER THE CASE TO THE COURT *EN BANC*.—** Applying this rule to PAL's 2nd MR in the main FASAP case, no decision or vote by at least three Members of the regular Second Division was ever made to refer the case to the Court *En Banc*. Those who informally met with the Chief Justice and decided to raise the main FASAP case to the Court En Banc without any formal written notice thereof committed a serious lapse. The determination of sufficiently important reasons to refer the

case, which was already the subject of a 2nd motion for reconsideration, was within the purview of the regular Members of the Second Division, and not by those who merely substituted for them in the 07 September 2011 Resolution. Regardless of the validity of that Resolution, the referral to the Court *En Banc* was a separate and distinct matter that should have been decided by the regular Members of the Second Division. Hence, Justices Sereno and Reyes, as regular members of the Second Division who – during their absence in the 07 September 2011 Session of the Second Division were substituted by Justices Bersamin and Mendoza, respectively – should have been included in the discussion on the referral of the matter to the Court *En Banc*.

4. **ID.; ID.; ID.; ID.; ID.; THE NEW RULE EGREGIOUSLY CREATED IN CASE BY THE MAJORITY WILL OPEN THE FLOODGATES FOR ALL DISGRUNTLED LITIGANTS OR THEIR COUNSEL TO APPEAL UNFAVORABLE FINAL JUDGMENTS OF THE COURT'S THREE DIVISIONS TO THE *EN BANC*.—** For the Court to take cognizance of the Mendoza letters as a separate administrative matter independent from the judicial case in G.R. No. 178083 in order to justify the recall of the Second Division's 07 September 2011 Resolution is unacceptable because it is plainly a circumvention of the above-discussed rules on the proper referral of a case from a Division to the *En Banc*. Rather than formally filing a motion for the referral of their case to the *En Banc*, any party-litigant may now, under the majority's ruling, subscribe to Atty. Mendoza's course of action and simply write a separate letter to the Clerk of Court or any of the justices, which can now be treated as an independent administrative matter so that the Court *En Banc* may unilaterally appropriate or take away a case from the Division. This new rule being egregiously created in this case by the majority will open the floodgates for all disgruntled litigants or their counsel to appeal unfavorable final judgments of the Court's three Divisions to the *En Banc*. Absent a formal referral by the regular Members of the Second Division and an articulation of sufficiently important reasons, the Court *En Banc* cannot properly take cognizance of the main FASAP case; nor can it oust, on its own, the authority of the Second Division over that case. **Thus, I maintain that the Court *En Banc* should**

recall its 04 October 2011 Resolution and return this case to the Second Division for reinstatement and finality of the 07 September 2011 Resolution.

5. **ID.; ID.; ID.; ID.; ID.; THE FOUR *MENDOZA LETTERS* THAT BECAME THE SUBJECT OF THE INSTANT ADMINISTRATIVE MATTER SHOULD SIMPLY BE NOTED; THE VARIOUS REQUESTS TO THE CLERK OF COURT FOR COPIES OF THE COURT'S PROCESSES IN RELATION TO THE CASE SHOULD ALSO BE DENIED, ESPECIALLY SINCE THE CASE HAS BEEN DECIDED WITH FINALITY.—** I vote to simply **NOTE** the four Mendoza letters that have become the subject of the instant administrative matter (A.M. No. 11-10-1-SC). Atty. Mendoza, counsel for PAL, should be guided by the findings in this Opinion in order to find some of the answers to the questions raised in his letters to the Clerk of Court. His various requests to the Clerk of Court for (a) copies of Special Orders regarding the reorganization of the various Divisions relative to the main FASAP case; (b) information on and copies of the official assignments of the *ponentes* as well as additional Members to the various Divisions to which the said case was assigned; and (c) information on dates and times when deliberations took place, should be denied. Although Atty. Mendoza, as counsel for PAL is entitled to the **results of the raffle of the main FASAP case** under the rules, this is not a *carte blanche* authority to demand the smallest minutiae of the Court's processes in relation thereto, especially since this case has already been decided with finality. If as the majority in the Decision seek to imply that such detailed requests should be entertained in all cases by this Court, an unduly oppressive burden will be imposed that would prevent this Court from discharging its constitutional duty to resolve with reasonable dispatch the many other cases pending before it.

6. **ID.; ID.; ID.; ID.; ID.; THE MAJORITY'S PROPOSITION TO CONDUCT ANOTHER RAFFLE AND THROW THE CASE WIDE OPEN FOR ANOTHER REVIEW IS NOT ONLY RIDDLED WITH OPERATIONAL INEFFICIENCY, BUT LIKEWISE OPENS ALL FINAL DECISIONS OF ANY DIVISION TO SECOND-GUESSING BY MEMBERS OF THE TWO OTHER DIVISIONS.—** I must however make a marked divergence with the majority

with respect to the actions of the Clerk of Court and the Raffle Committee after the issuance of the 20 January 2010 Resolution, penned by Justice Velasco, to grant the motion for leave to file the 2nd MR and thus, give new life to the main FASAP case. As the majority explained, throwing the case wide open for another review warrants its removal from Justice Velasco's caseload and the conduct of another raffle to either Justices Peralta or Bersamin, who are the remaining members of the Court that decided the 02 October 2009 Resolution denying PAL's 1st MR. However, the majority's proposition is not only riddled with operational inefficiency, but likewise opens all final decisions of any Division to second-guessing by Members of the two other Divisions. It is incongruent, if not burdensome, for a Member of this Court, acting in a Division, to revive a case that has been denied with finality on a 2nd MR and then, to throw that same motion back to the other Justices for them to review anew the substantial merits of the case, which they have already decided. As the new Member-in-Charge of the 2nd MR of the main FASAP case, Justice Velasco together with the Members of the then reorganized Third Division found some cause for review of the main FASAP case, when it issued the 20 January 2010 Resolution. Presumably, they reviewed the two unanimously supported *ponencias* of Justice Ynares-Santiago and found issues in the case worth looking anew. Having resolved to re-open the case for a third review, the burden should have been on Justice Velasco, as Member-in-Charge, and the other Members of the reorganized Third Division to hear the parties on the 2nd MR and resolve the matter on a final decision.

7. ID.; ID.; ID.; ID.; ID.; THE PRINCIPLE OF IMMUTABILITY OF FINAL JUDGMENT IS BETTER PROTECTED AND UPHELD BY DISALLOWING REVIEW OF A FINAL DECISION BY A DIVISION ON A PROHIBITED SECOND MOTION FOR RECONSIDERATION (MR) BASED SOLELY ON THE RETIREMENT OF THE *PONENTE* OR CHANGE IN THE COMPOSITION OF THE DIVISION.— For the Court to recognize the action of the Third Division to re-open a final decision and suddenly throw back the responsibility of deciding the 2nd MR to the original Members who decided the main FASAP case is to second-guess decisions of the various Divisions of this Court and to

allow a peculiar circumvention of our rule on immutability of judgments. The unacceptable contradiction lies in the fact that based on the *ponencia* of Justice Brion, a Member of this Court who does not "intimately know the facts and merits of the case," can be given authority to re-open a final decision on 2nd MR and yet be precluded from holding on to the case to decide its substantial merits. Worse, those Members, who had in fact participated in the deliberations of the Decision and Resolution of the 1st MR, will now be compelled to review their own findings based on the recommendation of Member, who instigated the reopening, but will not participate in the same review. The original Members of Third Division, which issued the 22 July 2008 Decision and 02 October 2009 Resolution, including Justices Peralta and Bersamin, and the five other Justices, have already made known their unanimous stand on the main FASAP case by their votes thereon. PAL cannot be allowed, by merely the retirement of Justice Ynares Santiago, to question the unfavorable rulings of a Court's Division on a 2nd MR. The principle of immutability of final judgment is better protected and upheld by disallowing review of a final decision by a Division on a prohibited second motion for reconsideration based solely on the retirement of the *ponente* or a change in the composition of the Division.

8. ID.; ID.; ID.; ID.; ID.; THE INTRODUCTION OF THE MAJORITY OF THE CONCEPT OF A NOMINAL *PONENTE*, TO DECIDE WHETHER TO OPEN A THIRD REVIEW OF A DECIDED CASE ON A 2ND MR, FINDS NO SUPPORT IN ANY EXISTING RULE OR JURISPRUDENCE.— The introduction by the majority of the concept of a **nominal *ponente***, to decide whether to open a third review of a decided case on a 2nd MR, **finds no support in any existing rule or jurisprudence**. Justice Velasco, to whom the case was properly raffled, and the members of the reorganized Third Division, at the time the 2nd MR was filed, had full authority to decide the motion in two respects: (1) whether to accept the 2nd MR despite the finality of the decision; and (2) if accepted, subsequently rule on the substantial merits of the main FASAP case based on the arguments in the 2nd MR. Justice Velasco was in no sense a **nominal *ponente***, who will make a first determination of the propriety of accepting the 2nd MR and thereafter forward the second determination

of the merits of the case to the "**ruling *ponente***" – the existing Members who were part of the Division which originally deliberated and decided the main FASAP case. Contrary to the majority's conclusions, Justice Velasco is the proper *ponente* to whom the case was raffled to, with the dual responsibilities (1) to decide on accepting the 2nd MR and (2) if accepted, to resolve the substantial merits thereof.

9. **ID.; ID.; ID.; ID.; ID.; THE GENERAL RULE ON RESOLVING MOTIONS FOR RECONSIDERATIONS RELIED BY THE MAJORITY CANNOT BE APPLIED IN THE INSTANT CASE BECAUSE WHAT IS BEING RESOLVED IS NOT A 1ST MR BUT A 2ND MR SUBSEQUENT TO THE DENIAL OF THE 1ST MOTION FOR RECONSIDERATION; THE CASE WAS CORRECTLY RAFFLED TO JUSTICE VELASCO, AS A REGULAR MEMBER OF THE THIRD DIVISION, AT THE TIME THE 2ND MR WAS TAKEN UP.—** The general rule is that the *ponente* of the case and the other Members of the Division who participated in the rendition of the decision or signed resolution shall act upon motions for reconsideration or clarification. If the *ponente* had already retired, is no longer a member, is disqualified or has inhibited himself or herself, he or she will be replaced by the Members of the Division who participated in the rendition of the decision or signed resolution and who concurred therein. This rule is specific only to a **first motion for reconsideration**, which is permitted under the Rules of Court. However, a different rule obtains for pleadings, motions or incidents **subsequent to the denial of the motion for reconsideration or clarification**, including in this case, a 2nd MR, which is already a prohibited pleading. The *ponente* on record shall still continue to act on these motions, pleadings or incidents after the denial of the motion for reconsideration, but with the participation of the Division to which he or she belongs at the time the said pleading, motion or incident is taken up by the Court, and **not** by the members of the original Division who participated and concurred in the rendition of the decision or signed resolution. The principle therefore is that after the resolution of the 1st MR, all incidents subsequent thereto shall stay with the *ponente*, and if he or she retires, with the Division that decided the case and resolved the 1st MR. Hence, the general rule relied by the majority

cannot be applied in the instant case because what is being resolved is not a 1st MR (which was in fact already denied with finality) but a 2nd MR. Being a 2nd MR subsequent to the denial of the 1st motion for reconsideration, the case was correctly raffled to Justice Velasco, as a regular Member of the Third Division, at the time the 2nd MR was filed and taken up.

10. ID.; ID.; ID.; ID.; ID.; THE DISTINCTIONS IN APPLYING THE RULES IN RESOLVING 1ST MOTIONS FOR RECONSIDERATION AND THE RULES ON INHIBITION BETWEEN A NOMINAL *PONENTE* AND A MEMBER-IN-CHARGE ARE ILLUSORY IN THE PRESENT CASE.— The distinctions in applying the rules on resolving 1st motions for reconsideration and the rules on inhibition between a nominal *ponente* and a Member-in-Charge are illusory in this case. After Justice Velasco, as Member-in-Charge, recommended that PAL's 2nd MR be given due course, nothing changed the fact that the 2nd MR continues to be a **motion subsequent to the denial of the 1st MR**. Under our Internal Rules, all motions, pleadings or incidents subsequent to the denial of the first motion for reconsideration or clarification shall be acted upon by the *ponente* on record. However, since Justice Ynares Santiago had already retired, these subsequent motions, pleadings or incidents in the main FASAP case will remain with the Third Division which resolved the 1st MR, but will now be raffled off as an ordinary case among that Division's present Members, in this instance to Justice Velasco. When Justice Velasco recused himself afterwards on 17 January 2011, the 2nd MR nevertheless continues to be treated as a **motion subsequent to the denial of a 1st MR**. Much like any ordinary case, the Court's regular rules arising from a valid inhibition of a Justice now govern, and the special rules for resolution of a 1st MR in case of the retirement of the *ponente* still do not apply. Hence, following the regular rules for inhibition and substitution, the 2nd MR was properly re-raffled out of the hands of Justice Velasco to the Members of the two other Divisions, in this case to Justice Brion of the Third Division, and eventually to the Second Division, after the re-organization. This is not a simplistic view of the rules of this Court to the main FASAP case but a direct, proper and appropriate application thereof.

11. ID.; ID.; ID.; ID.; ID.; THE MUCH UNDERSCORED TIME CONSTRAINT THAT THE 07 SEPTEMBER 2011

RESOLUTION WOULD LAPSE INTO FINALITY AFTER THE 15TH DAY, OR ON 04 OCTOBER 2011, WAS NOT A COMPELLING REASON TO RECALL IT BECAUSE THE MAIN FASAP CASE HAD BEEN DECIDED WITH FINALITY AND WAS ON ITS THIRD REVIEW.— The supposed exigencies, which compelled the recall of the 07 September 2011 Resolution, penned by Justice Brion himself, are infinitesimally and overwhelmingly insufficient to retract a substantial ruling by the Second Division on PAL's 2nd MR. That the 07 September 2011 Resolution would lapse into finality after the 15th day, or on 04 October 2011, was not a compelling reason to recall it. At that point, the main FASAP case had already been decided with finality by the 02 October 2009 Resolution which denied the 1st MR and PAL did not have any realistic expectation that its 2nd MR would be given any more judicial consideration. In fact, the recalled 07 September 2011 reiterated the substantial findings of Third Division, as penned by Justice Ynares Santiago, and ultimately denied the 2nd MR. In hindsight, the much underscored time constraint was not as shocking to the judicial sense as to warrant a *motu proprio* recall by the *En Banc* of the 07 September 2011 Resolution of the Second Division, because the case had already been decided with finality since 02 October 2009 and was on its third review.

12. **ID.; ID.; ID.; ID.; ID.; THE RECALL OF THE 07 SEPTEMBER 2011 RESOLUTION OF THE SECOND DIVISION WAS UNDULY PRECIPITOUS AND DONE WITHOUT PROPER DISCLOSURE TO ALL MEMBERS OF THE COURT OF THE FACTUAL CIRCUMSTANCES SURROUNDING THE ISSUES.—** In any case, the concerns raised by the majority regarding the proper raffling of the main FASAP case (albeit properly executed by the Raffle Committee) could have been raised by the party concerned and was in fact questioned in the third and fourth letters of Atty. Mendoza as well as in the Motion to Vacate filed by PAL. There was no need for the Court *En Banc* to act with haste prior to the lapse of the 15-day period to move for reconsideration because the case was already denied with finality twice over (by 02 October 2009 and 07 September 2011 Resolutions). The recall of the 07 September 2011 Resolution by the Second Division was

unduly precipitous and done without proper disclosure to all Members of the Court of the factual circumstances surrounding the issues.

13. ID.; ID.; ID.; ID.; ID.; THE MAJORITY'S EMPHASIS ON THE FEAR THAT THE COURT WOULD BE ACCUSED OF "FLIP-FLOPPING" IF THE 07 SEPTEMBER 2011 RESOLUTION BE RECALLED ON THE GROUND OF LACK OF JURISDICTION OF THE SECOND DIVISION AFTER THE LAPSE OF THE PERIOD IS BASELESS; THE DIVISIONS OF THE COURT ARE NOT INFERIOR BODIES TO THE *EN BANC*, NEITHER ARE THEY INDEPENDENT TRIBUNALS, WHOSE DECISIONS CAN BE APPEALED ON A 2ND MR TO THE OTHER DIVISIONS.— The majority's emphasis on the fear that the Court would be accused of "flip-flopping" if the 07 September 2011 Resolution be recalled on the ground of **lack of jurisdiction** of the Second Division after the lapse of the period is baseless. This concern erroneously assumes that a ruling made by one of the Divisions can be questioned based on the ground that another Division of this Court has purportedly better jurisdiction over deciding the case. Each Division sits veritably as the Court *En Banc* itself. The Divisions of the Court are not inferior bodies to the Court *En Banc*; neither are they independent tribunals, whose decisions can be appealed on a 2nd MR to the other two divisions.

14. ID.; ID.; ID.; ID.; ID.; JURISDICTION ONCE ACQUIRED IS NOT LOST BUT CONTINUES UNTIL THE CASE IS FINALLY TERMINATED; EVEN ASSUMING *ARGUENDO* THAT SOME ERRORS ATTENDED THE ASSIGNMENT OF THE CASE, THE COURT THROUGH ITS SECOND DIVISION CANNOT BE CONSIDERED BY THE MAJORITY AS HAVING LOST JURISIDICTION BY THAT PURPORTED LAPSE AND THUS, ENABLE A FOURTH REVIEW.— It is axiomatic that "jurisdiction once acquired is not lost but continues until the case is finally terminated." The jurisdiction of a court depends upon the state of facts existing at the time it is invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have prevented jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already

attached. In *Mercado v. CA*, the Court even went so far as to say that errors committed by the court in the exercise of its jurisdiction will not deprive it of the same. Applying the foregoing principles to the factual circumstances of the instant case, this Court through its Second Division was not ousted of its jurisdiction when the case was assigned to Justice Brion and he, together with the other members of the Second Division, voted to deny PAL's 2nd MR in the recalled 07 September 2011 Resolution. Even assuming *arguendo* that some errors attended the assignment of the case from Justice Velasco to Justice Brion by the Raffle Committee (albeit, no such mistake occurred in this instance, as it was done in accordance with our existing rules), this Court through its Second Division cannot be considered by the majority as having lost jurisdiction by that purported lapse and thus, enable a fourth review by either Justices Peralta or Bersamin.

15. **ID.; ID.; ID.; ID.; ID.; NEITHER CAN A CLAIM OF VIOLATION OF SUBSTANTIVE OR PROCEDURAL DUE PROCESS RIGHTS OF PAL BY THE ALLEGED MISTAKE IN THE INTERNAL OPERATIONS OF THE COURT BE SUSTAINED BECAUSE IT CANNOT BE DENIED THAT PAL WAS AFFORDED ALL THE OPPORTUNITY TO VENTILATE ITS LEGAL CLAIMS BEFORE THE COURT.—** Neither can a claim of violation of substantive or procedural due process rights of PAL by this alleged mistake in the internal operations of the Court be sustained because it cannot be denied that PAL was afforded all the opportunity to ventilate its legal claims before the Court. In fact, when the Second Division, speaking through Justice Brion, voted to deny the 2nd MR, the main FASAP case had already been decided with finality in favor of FASAP and was on its third review by this Court. Thus, the parties, especially PAL, had been given more than adequate opportunities to argue the cause before this Court. In sum, the purported mistake in the raffle of the case pointed to by the majority is not so grave and deplorable to our sense of justice as to warrant the retraction of the substantive decision of the members of this Court's Second Division that voted without any dissent to deny the 2nd MR and finally lay to rest this case. The aim here is not just to give definitive resolution to the controversy between the parties in this case but to ensure that final decisions of this Court are indeed final.

16. **ID.; ID.; ID.; ID.; ID.; THE RECALL OF THE 07 SEPTEMBER 2011 RESOLUTION PRODUCED THE VERY EFFECT OR PERCEPTION THAT THE MAJORITY WANTED TO AVOID – FLIP-FLOPPING ON CASES DECIDED WITH FINALITY ON ACCOUNT OF A PROHIBITED 2ND MR AND PERSONAL CORRESPONDENCES BY PARTY'S COUNSEL.—** The recall of the 07 September 2011 Resolution produced the very effect or perception that Justice Brion, speaking for the majority, wanted to avoid – flip-flopping on cases decided with finality on account of a prohibited 2nd MR and personal correspondences by a party's counsel. There can be no surer indication of flip-flopping than the subsequent and sudden denial of the petition in the main FASAP case on a 2nd MR, despite the grant of the petition in three rulings by at least ten justices (22 July 2008 Decision, 02 October 2009 Resolution and the recalled 07 September 2011 Resolution). The view of the majority that the recall of the 07 September 2011 Resolution did not constitute a reversal of the substantial issues is a false view of the effects of such an action. This argument ignores the fact that the substantial merits of the case is yet again opened for review and the case reverts back to its status after the 20 January 2010 Resolution penned by Justice Velasco, which is the grant of the motion for leave to file the 2nd MR. Yet, even Justice Brion in the recalled 07 September 2011 Resolution asserted that "the issues raised by PAL in the 2nd MR have already been discussed and settled by the Court in the July 22, 2008 Decision." It is so odd that this Court would open the main FASAP case for a fourth review by either Justices Peralta or Bersamin, when no new or earth-shattering argument has been offered that has not been taken up in the past that would warrant a reversal of the undisputed and repeatedly reiterated finding of this Court that PAL was guilty of illegal dismissal.

17. **ID.; ID.; ID.; ID.; ID.; IF THE COURT IS TO ADHERE TO ITS CHARACTER AS A COURT OF LAST RESORT, IT MUST STOP GIVING NEVER ENDING REFUGE TO PARTIES WHO OBSTINATELY SEEK TO RESIST EXECUTION OF THE COURT'S FINAL DECISIONS ON THE SOLE GROUND OF THEIR COUNSEL'S CREATIVITY IN RE-LABELLING A PROHIBITED SECOND MOTION FOR RECONSIDERATION, OR THE**

CHANGING COMPOSITION OF THE THREE DIVISIONS OF THE COURT.— Rather than write *finis* to the controversy hounding PAL and its employees, the Court has opened the flood gates anew for a fourth review of the main FASAP case, which had already achieved finality but has been resurrected by the mere expedience of supposed confusion in the raffling of the case. If this Court is to adhere to its character as a court of last resort, it must stop giving never-ending refuge to parties who obstinately seek to resist execution of our final decisions on the sole ground of their counsel's creativity in re-labelling a prohibited second motion for reconsideration, or the changing composition of the three Divisions of this Court. Otherwise, the Court might as well lay to rest in the sepulcher the founding judicial principles of immutability of judgments and *res judicata*. I am duty-bound to register my dissent from the position taken by the majority in this case. Nothing has been established in the letters or pleadings to merit the Court's extraordinary or special treatment in reopening for a third time, a unanimously-agreed upon Decision and to assign as new *ponente*, either of the two Justices who had twice agreed with that Decision. Nothing can be more unconstitutionally deprivatory of the winning party's right to enforcement of a final judgment.

APPEARANCES OF COUNSEL

April D. Cabeza and *Kapunan Imperial Panaguiton & Bongolan* for petitioner in G.R. No. 178083.

Sycip Salazar Hernandez and *Gatmaitan* for respondents in G.R. No. 178083.

R E S O L U T I O N

BRION, *J.*:

Before the Court is the administrative matter that originated from the letters dated September 13, 16, 20, and 22, 2011 of Atty. Estelito P. Mendoza regarding G.R. No. 178083 – *Flight Attendants and Stewards Association of the Philippines v.*

Philippine Airlines, Inc., et al.

For a full background of the matter, the antecedent developments are outlined below.

1. <u>The July 22, 2008 Decision</u>

On July 22, 2008, the Court's Third Division ruled to grant[1] the petition for review on *certiorari* filed by the Flight Attendants and Stewards Association of the Philippines (*FASAP*), finding Philippine Airlines, Inc. (*PAL*) guilty of illegal dismissal. The July 22, 2008 Decision was penned by **Justice Consuelo Ynares-Santiago** who was joined by the other four Members of the **Third Division**. The Third Division was then composed of:

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[1] The dispositive portion of the July 22, 2008 Decision reads:

WHEREFORE, the instant petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are REVERSED and SET ASIDE and a new one is rendered:

1. FINDING respondent Philippine Airlines, Inc. GUILTY of illegal dismissal;
2. ORDERING Philippine Air Lines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July 15, 1998, without loss of seniority rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of service;
3. ORDERING Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

   Costs against respondent PAL.

1. Justice Ynares-Santiago,
2. Justice Alicia Austria-Martinez,
3. Justice Minita Chico-Nazario,
4. Justice Antonio Eduardo Nachura, and
5. Justice Teresita Leonardo-De Castro (replacing Justice Ruben Reyes who inhibited himself from the case).

Justice Leonardo-de Castro was included to replace Justice Ruben Reyes who had inhibited himself from the case because he concurred in the Court of Appeals (*CA*) decision assailed by FASAP before the Court.[2] Then Associate Justice Renato Corona was originally designated to replace Justice Ruben Reyes, but he likewise inhibited himself from participation on June July 14, 2008 due to his previous efforts in settling the controversy when he was still in Malacañang. Under Administrative Circular (*AC*) No. 84-2007, one additional Member needed be drawn from the rest of the Court to replace the inhibiting Member.[3] In this manner, Justice Leonardo-de Castro came to participate in the July 22, 2008 Decision.

PAL subsequently filed its motion for reconsideration (*MR*) of the July 22, 2008 Decision. The motion was handled by the **Special Third Division** composed of:

1. Justice Ynares-Santiago,
2. Justice Chico-Nazario,
3. Justice Nachura,

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[2] Justice Ruben Reyes inhibited from the case as of July 14, 2008, per Division Raffle Sheet of the same date.

[3] AC No. 84-2007 states:

> **4**. A Member of a Division, who is not the *ponente* in the Division, shall recuse herself or himself from a case if she or he participated in the decision of the case in the lower court. The case shall be decided by **the four remaining Members and one additional Member from the other two Divisions chosen by raffle.**

4. Justice Diosdado Peralta (replacing Justice Austria-Martinez who retired on April 30, 2009), and

5. Justice Lucas Bersamin (replacing Justice Leonardo-de Castro who inhibited at the MR stage for personal reasons on July 28, 2009).

2. The October 2, 2009 Resolution

Justice Ynares-Santiago, as the *ponente* of the July 22, 2008 Decision, continued to act as the *ponente* of the case.[4]

The Special Third Division[5] **denied the MR** with finality on October 2, 2009.[6] The Court further declared that "[n]o further

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[4] Paragraph 1 of Administrative Matter No. 99-8-09-SC states:

RULES ON WHO SHALL RESOLVE MOTIONS FOR RECONSIDERATION IN CASES ASSIGNED TO THE DIVISIONS OF THE COURT.

The following supplemental rules on who shall take part in resolving motions for reconsideration of decisions or signed resolutions promulgated by Divisions are hereby adopted:

1. **Motions for reconsideration of a decision or of a signed resolution shall be acted upon by the *ponente* and the other members of the Division, whether special or regular, who participated in the rendition of the decision or signed resolution sought to be reconsidered**, irrespective of whether or not such members are already in other divisions at the time the motion for reconsideration is filed or acted upon; for this purpose, they shall be deemed constituted as a special division of the division to which the *ponente* belonged at the time of promulgation of the decision or the signed resolution. [Emphasis ours.]

[5] Now a "special" division because of the permanent change of membership due to the intervening retirement of Justice Austria-Martinez and the inhibition of Justice Leonardo-de Castro.

[6] The dispositive portion of the October 2, 2009 Resolution states:

WHEREFORE, for lack of merit, the Motion for Reconsideration is hereby **DENIED with FINALITY**. The assailed Decision dated July 22, 2008 is AFFIRMED with MODIFICATION in that the award of attorney's fees and expenses of litigation is reduced to ₱2,000,000.00. The case is hereby REMANDED to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.

pleadings will be entertained."[7] The other Members of the Special Third Division unanimously concurred with the denial of the motion.

To fully explain the movements in the membership of the division, the Special Third Division missed Justice Austria-Martinez (who was among those who signed the July 22, 2008 Decision) due to her intervening retirement on April 30, 2009. Justice Leonardo-de Castro also did not participate in resolving the 1st MR, despite having voted on the July 22, 2008 Decision, because of her own subsequent inhibition on July 28, 2009.[8]

3. PAL's 2nd MR

On November 3, 2009, PAL asked for leave of court to file (a) an MR of the October 2, 2009 Resolution, and (b) a 2nd MR of the July 22, 2008 Decision. Both rulings were anchored on the validity of PAL's retrenchment program.

In view of the retirement of the *ponente*, Justice Ynares-Santiago (who retired on October 5, 2009), the Court's Raffle Committee[9] had to resolve the question of who would be the new *ponente* of the case.

Under **A.M. No. 99-8-09-SC** (*Rules on Who Shall Resolve Motions for Reconsideration in Cases Assigned to the Divisions of the Court*, effective April 1, 2000), **if the *ponente* has retired, he/she shall be replaced by another Justice who shall be chosen by raffle from among the *remaining Members* of the Division**:

2. **If the *ponente* is no longer a member of the Court** or is disqualified or has inhibited himself from acting on the motion, **he shall be**

No further pleadings will be entertained.

SO ORDERED. [*Id.* at 506-507.]

[7] *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc.*, G.R. No. 178083, October 2, 2009, 602 SCRA 473, 507.

[8] Per Division Raffle Sheet of July 28, 2009.

[9] The Raffle Committee was then composed of Justice Corona, Justice Chico-Nazario, and Justice Velasco.

replaced by another Justice who shall be chosen by raffle from among the remaining members of the Division who participated and concurred in the rendition of the decision or resolution and who concurred therein. If only one member of the Court who participated and concurred in the rendition of the decision or resolution remains, he shall be designated as the *ponente*.

However, on November 11, 2009, the case was raffled, not to a Member of the Third Division that issued the July 22, 2008 Decision or to a Member of the Special Third Division that rendered the October 2, 2009 Resolution, but to **Justice Presbitero Velasco, Jr.** who was then a Member of the newly-constituted regular Third Division.[10]

In raffling the case to Justice Velasco, the Raffle Committee considered the above-quoted rule inapplicable because of the express excepting qualification provided under A.M. No. 99-8-09-SC that states:

[t]hese rules shall **not apply** to **motions for reconsideration of decisions or resolutions already denied with finality**. [underscoring ours]

Stated otherwise, when the original *ponente* of a case retires, motions filed after the case has been denied with finality may be resolved by any Member of the Court to whom the case shall be raffled, not necessarily by a Member of the same Division that decided or resolved the case. *Presumably, the logic behind the rule is that no further change can be made involving the merits of the case, as judgment has reached finality and is*

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[10] The Third Division had a new membership because of the re-organization of the divisions that came after the retirement of Justice Ynares-Santiago. Thus, the old Third Division under Justice Ynares-Santiago had a different membership from the new Third Division, of which Justice Velasco was a Member.

The other new Third Division Members included Justices Corona, Chico-Nazario, Nachura and Peralta. Justice Corona, however, had already inhibited himself from the case on July 14, 2008 due to his previous efforts in settling the case when he was still in Malacañang and was thus replaced by Justice Carpio. (Division Raffle Sheet of November 11, 2009)

thus irreversible, based on the Rules of Court provision that "[n]o second MR of a judgment or final resolution by the same party shall be entertained."[11] (The October 2, 2009 Resolution denying PAL's 1st MR further stated that "[n]o further pleadings will be entertained.") Thus, the resolution of post-decisional matters in a case already declared final may be resolved by other Members of the Court to whom the case may be raffled after the retirement of the original *ponente*.

Given the denial of PAL's 1st MR and the declaration of finality of the Court's July 22, 2008 Decision through the October 2, 2009 Resolution, **the Raffle Committee found it unnecessary to create a special Third Division**. Thus, it found nothing irregular in raffling the case to **Justice Velasco** (who did not take part in the deliberation of the Decision and the Resolution) of the **reorganized Third Division** for handling by a new regular division.

4. The acceptance of PAL's 2nd MR

On January 20, 2010 (or **while A.M. No. 99-8-09-SC was still in effect**), the new regular Third Division, through Justice Velasco, granted PAL's *Motion for Leave to File and Admit Motion for Reconsideration of the Resolution dated 2 October 2009 and 2nd Motion for Reconsideration of Decision dated 22 July 2008*. The Court's Third Division further required the respective parties to comment on PAL's motion and FASAP's Urgent Appeal dated November 23, 2009. This grant, which opened both the Decision and the Resolution penned by Justice Ynares-Santiago for review, effectively opened the whole case for review on the merits.

The following were the Members of the Third Division that issued the January 20, 2010 Resolution:

1. Justice Antonio Carpio (*vice* Justice Corona who inhibited himself as of July 14, 2008),
2. Justice Velasco (*ponente*),

[11] Rule 52, Section 2.

3. Justice Nachura,
4. Justice Peralta, and
5. Justice Bersamin.

Significantly, at the time leave of court was granted (which was effectively an acceptance for review of PAL's 2nd MR), the prohibition against entertaining a 2nd MR under Section 2, Rule 52[12] (in relation with Section 4, Rule 56[13]) of the Rules of Court applied. This prohibition, however, had been subject to various existing Court decisions that entertained 2nd MRs **in the higher interest of justice**.[14] This liberalized policy was not formalized by the Court until the effectivity of the Internal Rules of the Supreme Court (*IRSC*) on May 4, 2010.[15]

With the acceptance of PAL's 2nd MR, **the question that could have arisen (*but was not asked then*)** was whether the general rule under A.M. No. 99-8-09-SC (which was then still

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[12] Section 2. *Second motion for reconsideration*. — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

[13] Section 4. *Procedure*. — The appeal shall be governed by and disposed of in accordance with the applicable provisions of the Constitution, laws, Rules 45, 48, Sections 1, 2, and 5 to 11 of Rule 51, 52 and this Rule.

[14] See *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.)*, G.R. No. 169712, January 20, 2009, 576 SCRA 625, 628, citing *Ortigas and Co. Ltd. Partnership v. Judge Velasco*, 324 Phil. 483, 489 (1996).

[15] Rule 15, Section 3. *Second motion for reconsideration*. — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.

In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.

in effect) should have applied so that the case should have been transferred to the remaining Members of the Division that ruled ***on the merits*** of the case. In other words, with the re-opening of the case for review on the merits, the application of the excepting qualification under A.M. No. 99-8-09-SC that the Raffle Committee cited lost its efficacy, as the rulings of the Court were no longer final for having been opened for further review.

A **necessary implication** is that either the Clerk of Court or the Raffle Committee should have advised Justice Velasco that his Division should refer the case back to raffle for referral of the case to the original Justices who participated in the assailed Decision and Resolution under the terms of the general rule under A.M. No. 99-8-09-SC; the Justices who participated in the assailed Decision and Resolution were the best ones to consider the motion and to review their own rulings. **This was the first major error that transpired in the case and one that the Clerk of Court failed to see**.

Parenthetically, when PAL's 2nd MR was filed and when it was subsequently accepted, Justices Nachura, Peralta, and Bersamin were the only remaining Members of the Special Third Division that rendered the October 2, 2009 Resolution. Of these three Justices, only Justice Nachura was a Member of the original Third Division that issued the main decision on July 22, 2008. The case should have gone to Justice Nachura or, at the very least, to the two other remaining Justices. The re-raffle of the FASAP case to Justice Nachura (or to Justices Peralta and Bersamin) would have been consistent with the constitutional rule that "***[c]ases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon[.]***"[16]

5. The Reorganization of the Court

In May 2010, **three developments** critical to the FASAP case transpired.

[16] CONSTITUTION, Article VIII, Section 4 (3).

The ***first*** was the approval of the IRSC by the Court on May 4, 2010. The IRSC codified the procedural rules of the Court, heretofore existing under various separate and scattered resolutions. Its relevant terms took the place of A.M. No. 99-8-09-SC.

The ***second*** was the retirement of then Chief Justice Reynato Puno and the appointment as Chief Justice of then Associate Justice Corona.

The ***third*** was the reorganization of the divisions of the Court under Special Order No. 838 dated **May 17, 2010**. Justice Velasco was transferred from the Third Division to the First Division. Pursuant to the new IRSC, Justice Velasco brought with him the FASAP case so that the case went from the Third Division to the First Division:

RULE 2. THE OPERATING STRUCTURES

Section 9. *Effect of reorganization of Divisions on assigned cases*. – In the reorganization of the membership of Divisions, **cases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves**, subject to the rule on the resolution of motions for reconsideration under Section 7 of this Rule. The Member-in-Charge is the Member given the responsibility of overseeing the progress and disposition of a case assigned by raffle.

Another significant development in the case came on January 17, 2011 (**or under the new regime of the IRSC**) when Justice Velasco, after acting on the FASAP case for almost one whole year, inhibited himself from participation "due to a close relationship to a party," despite his previous action on the case. The pertinent provisions of the IRSC on the matter of **inhibition** state:

RULE 2.
THE OPERATING STRUCTURES

Section 7. *Resolutions of motions for reconsideration or clarification of decisions or signed resolutions and all other motions and incidents subsequently filed; creation of a Special Division*. –

Motions for reconsideration or clarification of a decision or of a signed resolution and all other motions and incidents subsequently filed in the case shall be acted upon by the *ponente* and the other Members of the Division who participated in the rendition of the decision or signed resolution.

If the *ponente* has retired, is no longer a Member of the Court, is disqualified, or **has inhibited himself** or herself from acting on the motion for reconsideration or clarification, **he or she shall be replaced through raffle by a new *ponente* who shall be chosen [from] among the new Members of the Division who participated in the rendition of the decision or signed resolution remains**, he or she shall be designated as the new *ponente*.

If a Member (not the *ponente*) of the Division which rendered the decision or signed resolution has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a replacement Member who shall be chosen from the other Divisions until a new Justice is appointed as replacement for the retired Justice. Upon the appointment of a new Justice, he or she shall replace the designated Justice as replacement Member of the Special Division.

Any vacancy or vacancies in the Special Division shall be filled by raffle from among the other Members of the Court to constitute a Special Division of five (5) Members.

If the *ponente* and all the Members of the Division that rendered the Decision or signed Resolution are no longer members of the Court, the case shall be raffled to any Member of the Court and the motion shall be acted upon by him or her with the participation of the other Members of the Division to which he or she belongs.

If there are pleadings, motions or incidents subsequent to the denial of the motion for reconsideration [or] clarification, the case shall be acted upon by the ponente on record with the participation of the other Members of the Division to which he or she belongs at the time said pleading, motion or incident is to be taken up by the Court.

xxx xxx xxx

**RULE 8.
INHIBITION AND SUBSTITUTION OF MEMBERS
OF THE COURT**

SEC. 3. *Effects of Inhibition.* – **The consequences of an inhibition of a Member of the Court** shall be governed by these rules:

(a) **Whenever a Member-in-Charge of a case in a Division inhibits himself for a just and valid reason**, the case shall be returned to the Raffle Committee for **re-raffling among the Members of the *other* two Divisions of the Court.** (IRSC, as amended by A.M. No. 10-4-20-SC dated August 3, 2010) [All emphasis supplied.]

The case was then referred to the Raffle Committee pursuant to Administrative Circular (*AC*) No. 84-2007, as stated in the Division Raffle Sheet. The pertinent provision of AC No. 84-2007 states:

2. **Whenever the *ponente***, in the exercise of sound discretion, **inhibits herself or himself from the case for just and valid reasons** other than those mentioned in paragraph 1, a to f above, **the case shall be returned to the Raffle Committee for re-raffling among the other Members of the *same* Division with one additional Member from the other two Divisions.** [underscoring and italics ours]

Reference to AC No. 84-2007, however, was erroneous. For one, the IRSC was already in effect when Justice Velasco inhibited himself from participation, and the IRSC had already superseded AC No. 84-2007. The prevailing IRSC, though, has an almost similar rule, with the difference that the IRSC speaks of the inhibition of a Member-in-Charge or of a Member of the Division other than the Member-in-Charge in its rule on inhibition, and did not use the *ponente* as its reference point. This seemingly trivial point carries a lot of significance, particularly in the context of the FASAP case.

Under the rule on inhibition found in Section 3, Rule 8 of the governing IRSC (as Justice Ma. Lourdes Sereno found in her dissenting opinion), the inhibition called for the raffle to a Member of the two other divisions of the Court. Thus, Justice Sereno found the subsequent January 26, 2011 raffle of the

case to Justice Brion to be legally correct. As discussed by the Division that issued the September 7, 2011 Resolution (*the ruling Division*), however, the application of the IRSC is not as simple as Justice Sereno views it to be. This matter is discussed at length below.

On June 21, 2011 (after the retirement of Justice Nachura on June 13, 2011), Chief Justice Corona issued Special Order No. 1025, again reorganizing the divisions of the Court. Justice Brion was transferred from the Third Division to the Second Division. Accordingly, the Third Division – composed of Justice Velasco, Justice Peralta, Justice Bersamin, Justice Jose Mendoza, and Justice Sereno (who was included as additional Member) – referred the FASAP case to the Second Division where Justice Brion belonged, pursuant to Section 9, Rule 2 of the IRSC.[17]

Justice Carpio (the Chair of the Second Division), after voting for the January 20, 2010 Resolution granting leave to PAL to file its 2nd MR, inhibited himself from the case on August 15, 2011. As stated in the Division Raffle Sheet of August 15, 2011, Justice Carpio "recused himself from the case per advice of the office of the Member-in-Charge." Justice Peralta became the replacement for Justice Carpio, pursuant to Rule 8, Section 3 of the IRSC.

6. The September 7, 2011 Resolution and Atty. Estelito Mendoza's letters

On September 7, 2011, the Court – through its Second Division as then constituted – resolved to deny with finality PAL's 2nd MR through an unsigned resolution. The Second Division, as then constituted, was composed of:

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[17] Section 9. *Effect of reorganization of Divisions on assigned cases.* — In the reorganization of the membership of Divisions, cases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves, subject to the rule on the resolution of motions for reconsideration under Section 7 of this Rule. The Member-in-Charge is the Member given the responsibility of overseeing the progress and disposition of a case assigned by raffle.

1. Justice Brion (as Member-in-Charge and as Acting Chair, being the most senior Member),
2. Justice Peralta (replacing Justice Carpio who inhibited),
3. Justice Jose Perez,
4. Justice Bersamin (replacing Justice Sereno who was on leave[18]), and
5. Justice Mendoza (replacing Justice Bienvenido Reyes who was on leave[19]).

On September 13, 2011, the counsel for PAL, Atty. Mendoza, sent the **first of a series of letters**[20] addressed to the Clerk of Court of the Supreme Court. This letter noted that, of the Members of the Court who acted on the MR dated August 20, 2008 and who issued the Resolution of October 2, 2009, Justices Ynares-Santiago (*ponente*), Chico-Nazario, and Nachura had already retired from the Court, and the Third Division had issued a Resolution on the case dated January 20, 2010, acted upon by Justices Carpio, Velasco, Nachura, Peralta, and Bersamin. The letter then asked whether the Court had acted on the 2nd MR and, if so, which division – whether regular or special – acted and who were the chairperson and members. It asked, too, for the identity of the current *ponente* or justice-in-charge, and when and for what reason he or she was designated as *ponente*. It further asked for a copy of the Resolution rendered on the 2nd MR, if an action had already been taken thereon.

On September 16, 2011, Atty. Mendoza sent his **second letter**, again addressed to the Clerk of Court requesting that "copies of any Special Orders or similar issuances transferring the case to another division, and/or designating Members of the division which resolved" its 2nd MR, in case a resolution had already been rendered by the Court and in the event that "such resolution was issued by a different division."

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[18] Special Order No. 1074-A dated September 6, 2011.

[19] Special Order No. 1066 dated August 23, 2011.

[20] The four letters were dated September 13, 16, 20, and 22, 2011.

The Court received Atty. Mendoza's **third letter**, again addressed to the Clerk of Court, on September 20, 2011.[21] Atty. Mendoza stated that he received a copy of the September 7, 2011 Resolution issued by the Second Division, notwithstanding that all prior Court Resolutions he received regarding the case had been issued by the Third Division.[22] He reiterated his request in his two earlier letters to the Court, asking for the date and time when the Resolution was deliberated upon and a vote taken thereon, as well as the names of the Members of the Court who had participated in the deliberation and voted on the September 7, 2011 Resolution.

Atty. Mendoza sent his **fourth and last letter** dated September 22, 2011, also addressed to the Clerk of Court, suggesting that "if some facts subject of my inquiries are not evident from the records of the case or are not within your knowledge, that you refer the inquiries to the Members of the Court who appear to have participated in the issuance of the Resolution of September 7, 2011, namely: Hon. Arturo D. Brion, Hon. Jose P. Perez, Hon. Diosdado M. Peralta, Hon. Lucas P. Bersamin, and Hon. Jose C. Mendoza."

On September 26, 2011, the Clerk of Court issued the Vidal-Anama[23] Memorandum to the Members of the Second Division in relation to the inquiries contained in the first and second letters of Atty. Mendoza dated September 13 and 20, 2011. Justice Brion also furnished the Members of the ruling Division a copy of the Vidal-Anama Memorandum.

The Vidal-Anama Memorandum explained the events that transpired and the actions taken, which resulted in the transfer of the case from its original *ponente*, Justice Ynares-Santiago, to Justice Velasco, and eventually to Justice Brion. Attached

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[21] Atty. Mendoza's Letter dated September 20, 2011; *rollo*, Vol. 2, pp. 3577-3578.

[22] Per record, the parties both received the September 7, 2011 Resolution on September 19, 2011. This started the running of the period for the finality of the Resolution, which would have ended on October 4, 2011.

[23] Referring to Atty. Enriqueta Esguerra Vidal (Clerk of Court, *En Banc*) and Atty. Felipa Anama (Deputy Clerk of Court, *En Banc*).

to the Memorandum were the legal and documentary bases for all the actions of the various raffle committees.[24] These included the decisions of the two raffle committees on the transfer of the *ponencia* from Justice Ynares-Santiago to Justice Velasco and finally to Justice Brion as a regular Second Division case.

On September 28, 2011, the Letters dated September 13 and 20, 2011 of Atty. Mendoza to Atty. Vidal (asking that his inquiry be referred to the relevant Division Members who took part on the September 7, 2011 Resolution) were "NOTED" by the regular Second Division. The Members of the ruling Division also met to consider the queries posed by Atty. Mendoza. Justice Brion met with the Members of the **ruling Division** (composed of Justices Brion, Peralta, Perez, Bersamin, and Mendoza), rather than with the **regular Second Division** (composed of Justices Carpio, Brion, Perez, and Sereno[25]), as the former were the active participants in the September 7, 2011 Resolution.

In these meetings, some of the Members of the ruling Division saw the problems pointed out above, some of which indicated that the ruling Division might have had **no authority to rule on the case**. Specifically, their discussions centered on the application of A.M. No. 99-8-09-SC for the incidents that transpired prior to the effectivity of the IRSC, and on the conflicting rules under the IRSC – Section 3, Rule 8 on the effects of inhibition and Section 7, Rule 2 on the resolution of MRs.

A.M. No. 99-8-09-SC indicated the general rule that the re-raffle shall be made among the other Members of the same Division who participated in rendering the decision or resolution

[24] Included in the Vidal-Anama Memorandum were the following: Raffle Report dated June 20, 2007, Raffle Report dated July 14, 2008, Raffle Report dated July 28, 2008, Raffle Report dated September 28, 2009, Raffle Report dated November 11, 2009, Raffle Report dated January 26, 2011, Raffle Report dated August 15, 2011, Resolution dated February 15, 2009 in A.M. No. 99-8-09-SC, Special Order No. 838, Special Order No. 1025, Special Order No. 1066 and Special Order No. 1074-A.

[25] Per Special Order No. 1025 dated June 21, 2011.

and who concurred therein, which should now apply because the ruling on the case is no longer final after the case had been opened for review on the merits. In other words, after acceptance by the Third Division, through Justice Velasco, of the 2nd MR, there should have been a referral to raffle because the excepting qualification that the Clerk of Court cited no longer applied; what was being reviewed were the merits of the case and the review should be by the same Justices who had originally issued the original Decision and the subsequent Resolution, or by whoever of these Justices are still left in the Court, pursuant to the same A.M. No. 99-8-09-SC.

On the other hand, the raffle to Justice Brion was made by applying AC No. 84-2007 that had been superseded by Section 3, Rule 8 of the IRSC. Even the use of this IRSC provision, however, would not solve the problem, as its use still raised the question of the provision that should really apply in the resolution of the MR: should it be Section 3, Rule 8 on the inhibition of a Member-in-Charge, or Section 7, Rule 2 of the IRSC on the inhibition of the *ponente* when an MR of a decision and a signed resolution was filed. These two provisions are placed side-by-side in the table below for easier and clearer comparison, with emphasis on the more important words:

RULE 2 THE OPERATING STRUCTURES	**RULE 8 INHIBITION AND SUBSTITUTION OF MEMBERS OF THE COURT**
SEC. 7. *Resolutions of motions for reconsideration or clarification of decisions or signed resolutions and all other motions and incidents subsequently filed; creation of a Special Division.* - **Motions for reconsideration or clarification of a decision or of a signed resolution and all**	SEC. 3. *Effects of inhibition.* - The consequences of an inhibition of a Member of the Court shall be governed by these rules: **(a) Whenever a <u>Member-in-Charge</u> of a case in a Division inhibits** himself for a just and valid reason, **<u>the case shall be returned to the Raffle</u>**

other motions and incidents subsequently filed in the case shall be acted upon by the *ponente* and the other Members of the Division who participated in the rendition of the decision or signed resolution. **If the *ponente*** has retired, is no longer a Member of the Court, is disqualified, or **has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a new *ponente* who shall be chosen among the new Members of the Division who participated in the rendition of the decision or signed resolution and who concurred therein.** If only one Member of the Court who participated and concurred in the rendition of the decision or signed resolution remains, he or she shall be designated as the new *ponente*.	**Committee for re-raffling among the Members of the other two (2) Divisions of the Court.** x x x

A comparison of these two provisions shows the semantic sources of the seeming conflict: Section 7, Rule 2 refers to a situation where the ***ponente*** has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself from acting on the case; while Section 3, Rule 8 generally refers to the inhibition of a ***Member-in-Charge*** who does not need to be the writer of the decision or resolution under review.

Significantly, Section 7, Rule 2 expressly uses the word ***ponente*** (not Member-in-Charge) and refers to a specific situation where the ***ponente*** **(or the writer of the Decision or the**

Resolution) is no longer with the Court or is otherwise unavailable to review the decision or resolution he or she wrote. Section 3, Rule 8, on the other hand, expressly uses the term ***Member-in-Charge*** and generally refers to his or her **inhibition, without reference to the stage of the proceeding when the inhibition is made**.

Under Section 7, Rule 2, the case should have been re-raffled and assigned to anyone of Justices Nachura (who did not retire until June 13, 2011), Peralta, or Bersamin, either (1) after the acceptance of the 2nd MR (because the original rulings were no longer final); or (2) after Justice Velasco's inhibition because the same condition existed, *i.e.*, the need for a review by the same Justices who rendered the decision or resolution. As previously mentioned, Justice Nachura participated in both the original Decision and the subsequent Resolution, and all three Justices were the remaining Members who voted on the October 2, 2009 Resolution. On the other hand, if Section 3, Rule 8 were to be solely applied after Justice Velasco's inhibition, the Clerk of Court would be correct in her assessment and the raffle to Justice Brion, as a Member outside of Justice Velasco's Division, was correct.

These were the legal considerations that largely confronted the ruling Division in late September 2011 when it deliberated on what to do with Atty. Mendoza's letters.

The propriety of and grounds for the recall of the September 7, 2011 Resolution

Most unfortunately, the above unresolved questions were even further **compounded** in the course of the deliberations of the Members of the ruling Division when they were informed that **the parties received the ruling on September 19, 2011, and this ruling would lapse to finality after the 15th day, or after October 4, 2011.**

Thus, on September 30, 2011 (a Friday), the Members went to Chief Justice Corona and recommended, as a prudent move, that the September 7, 2011 Resolution be recalled at the very

latest on October 4, 2011, and that the case be referred to the Court *en banc* for a ruling on the questions Atty. Mendoza asked. **The consequence, of course, of a failure to recall their ruling was for that Resolution to lapse to finality. After finality, any recall for lack of jurisdiction of the ruling Division might not be understood by the parties and could lead to a charge of flip-flopping against the Court.** The basis for the referral is Section 3(n), Rule 2 of the IRSC, which provides:

RULE 2.
OPERATING STRUCTURES

Section 3. *Court en banc matters and cases*. – The Court *en banc* shall act on the following matters and cases:

xxx xxx xxx

(n) cases that the Court *en banc* deems of sufficient importance to merit its attention[.]

Ruling positively, the Court *en banc* duly issued its disputed October 4, 2011 Resolution recalling the September 7, 2011 Resolution and ordering the re-raffle of the case to a new Member-in-Charge. *Later in the day*, the Court received PAL's Motion to Vacate (the September 7, 2011 ruling) dated October 3, 2011. This was followed by FASAP's MR dated October 17, 2011 addressing the Court Resolution of October 4, 2011. The FASAP MR mainly invoked the violation of its right to due process as the recall arose from the Court's *ex parte* consideration of mere letters from one of the counsels of the parties.

As the narration in this Resolution shows, the Court acted on its own pursuant to its power to recall its own orders and resolutions before their finality. **The October 4, 2011 Resolution was issued to determine the propriety of the September 7, 2011 Resolution given the facts that came to light after the ruling Division's examination of the records. To point out the obvious, the recall was not a ruling on the merits and did not constitute the reversal of the substantive issues already decided upon by the Court in the FASAP case in its previously issued Decision (of July 22, 2008) and Resolution (of**

October 2, 2009). In short, the October 4, 2011 Resolution was not meant and was never intended to favor either party, but to simply remove any doubt about the validity of the ruling Division's action on the case. The case, in the ruling Division's view, could be brought to the Court *en banc* since it is one of "sufficient importance"; at the very least, it involves the interpretation of conflicting provisions of the IRSC with potential jurisdictional implications.

At the time the Members of the ruling Division went to the Chief Justice to recommend a recall, there was no clear indication of how they would definitively settle the unresolved legal questions among themselves. The only matter legally certain was the looming finality of the September 7, 2011 Resolution if it would not be immediately recalled by the Court *en banc* by October 4, 2011. No unanimity among the Members of the ruling Division could be gathered on the unresolved legal questions; thus, they concluded that **the matter is best determined by the Court *en banc*** as it potentially involved questions of jurisdiction and interpretation of conflicting provisions of the IRSC. To the extent of the recommended recall, the ruling Division was unanimous and the Members communicated this intent to the Chief Justice in clear and unequivocal terms.

Given this background, the Clerk of Court cannot and should not be faulted for her recommended position, as indeed there was a ruling in the 1st MR that declared the original ruling on the case final. Perhaps, she did not fully realize that the ruling on the 1st MR varied the terms of the original Decision of July 22, 2008; she could not have considered, too, that a subsequent 2nd MR would be accepted for the Court's further consideration of the case on the merits.

Upon acceptance of the 2nd MR by the Third Division through Justice Velasco, the Clerk of Court and the Raffle Committee, however, should have realized that Justice Velasco was not the proper Member-in-Charge of the case and another raffle should have been held to assign the case to a Justice who participated in the original Decision of July 22, 2008 or in the Resolution

of October 2, 2009. This realization, unfortunately, did not dawn on the Clerk of Court.

For practically the same reasons, the Third (or Velasco) Division, with Justice Velasco as Member-in-Charge, cannot and should not be faulted for accepting the 2nd MR; the variance introduced by the ruling on the 1st MR and the higher interest of justice (in light alone of the gigantic amount involved) appeared to justify further consideration of the case. Recall that at that time, the IRSC was not yet in existence and a specific rule under the IRSC on the handling of 2nd MRs was yet to be formulated, separately from the existing jurisprudential rulings. Justice Velasco, though, could not have held on to the case after its merits were opened for new consideration, as he was not the writer of the assailed Decision and Resolution, nor was he a Member of the Division that acted on the case. Under A.M. No. 99-8-09-SC, the rightful *ponente* should be a remaining Member of the Division that rendered the decision or resolution.

With Justice Velasco's subsequent inhibition, a legal reason that the involved officials and Justices should have again recognized is the rationale of the rule on replacements when an inhibition or retirement intervenes. Since the inhibiting Justice was only the Member-in-Charge and was technically merely a ***nominal ponente***[26] in so far as the case is concerned (because he was not the writer of the Decision and Resolution under consideration), the raffle should have been confined among the Members who actually participated in ***ruling on the merits*** of the original Decision or of the subsequent Resolution. At that point, only Justices Peralta and Bersamin were left because all the other Members of the original ruling groups had retired. Since under the IRSC[27] and Section 4(3), Article VIII of the Constitution, the case should have been decided by the Members who actually took part in the deliberations, the ruling on the merits made by the ruling Division on September 7, 2011 was effectively void and should appropriately be recalled.

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[26] Used merely as a convenient term for want of a better description.

[27] Specifically, Rule 2, Section 7, quoted above.

To summarize all the developments that brought about the present dispute – expressed in a format that can more readily be appreciated in terms of the Court *en banc's* ruling to recall the September 7, 2011 ruling – the FASAP case, as it developed, was attended by special and unusual circumstances that saw:

(a) the confluence of the successive retirement of three Justices (in a Division of five Justices) who actually participated in the assailed Decision and Resolution;

(b) the change in the governing rules – from the A.M.s to the IRSC regime – which transpired during the pendency of the case;

(c) the occurrence of a series of inhibitions in the course of the case (Justices Ruben Reyes, Leonardo-de Castro, Corona, Velasco, and Carpio), and the absences of Justices Sereno and Reyes at the critical time, requiring their replacement; notably, Justices Corona, Carpio, Velasco and Leonardo-de Castro are the four most senior Members of the Court;

(d) the three re-organizations of the divisions, which all took place during the pendency of the case, necessitating the transfer of the case from the Third Division, to the First, then to the Second Division;

(e) the unusual timing of Atty. Mendoza's letters, made after the ruling Division had issued its Resolution of September 7, 2011, but before the parties received their copies of the said Resolution; and

(f) finally, the time constraint that intervened, brought about by the parties' receipt on September 19, 2011 of the Special Division's Resolution of September 7, 2011, and the consequent running of the period for finality computed from this latter date; and the Resolution would have lapsed to finality after October 4, 2011, had it not been recalled by that date.

All these developments, in no small measure, contributed in their own peculiar way to the confusing situations that attended the September 7, 2011 Resolution, resulting in the recall of this Resolution by the Court *en banc*.

On deeper consideration, the majority now firmly holds the view that Section 7, Rule 2 of the IRSC should have prevailed in considering the raffle and assignment of cases after the 2nd MR was accepted, as advocated by some Members within the ruling Division, as against the general rule on inhibition under Section 3, Rule 8. The underlying constitutional reason, of course, is the requirement of Section 4(3), Article VIII of the Constitution already referred to above.[28]

The general rule on statutory interpretation is that apparently conflicting provisions should be reconciled and harmonized,[29] as a statute must be so construed as to harmonize and give effect to all its provisions whenever possible.[30] Only after the failure at this attempt at reconciliation should one provision be considered the applicable provision as against the other.[31]

Applying these rules by reconciling the two provisions under consideration, **Section 3, Rule 8 of the IRSC should be read as the general rule applicable to the inhibition of a Member-in-Charge**. **This general rule should, however, yield where the inhibition occurs at the late stage of the case when a decision or signed resolution is assailed through an MR.** At that point, when the situation calls for the ***review of the merits*** of the decision or the signed resolution made by a *ponente* (or writer of the assailed ruling), Section 3, Rule 8 no longer applies and must yield to **Section 7, Rule 2 of the IRSC which contemplates a situation when the *ponente* is no longer available, and calls for the referral of the case for raffle among**

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[28] *Supra*, at page 9.

[29] See *Planters Association of Southern Negros, Inc. v. Hon. Ponferrada*, 375 Phil. 901 (1999).

[30] See *National Tobacco Administration v. COA*, 370 Phil. 793 (1999).

[31] See *Dreamwork Construction, Inc. v. Janiola*, G.R. No. 184861, June 30, 2009, 591 SCRA 466.

the remaining Members of the Division who acted on the decision or on the signed resolution. This latter provision should rightly apply as it gives those who intimately know the facts and merits of the case, through their previous participation and deliberations, the chance to take a look at the decision or resolution produced with their participation.

To reiterate, Section 3, Rule 8 of the IRSC is the general rule on inhibition, but it must yield to the more specific Section 7, Rule 2 of the IRSC where the obtaining situation is for the review *on the merits* of an already issued decision or resolution and the *ponente* or writer is no longer available to act on the matter. On this basis, the *ponente,* on the merits of the case on review, should be chosen from the remaining participating Justices, namely, Justices Peralta and Bersamin.

A final point that needs to be fully clarified at this juncture, in light of the allegations of the Dissent is **the role of the Chief Justice** in the recall of the September 7, 2011 Resolution. As can be seen from the above narration, the Chief Justice acted only on the recommendation of the ruling Division, since he had inhibited himself from participation in the case long before. The confusion on this matter could have been brought about by the Chief Justice's role as the Presiding Officer of the Court *en banc* (particularly in its meeting of October 4, 2011), and the fact that the four most senior Justices of the Court (namely, Justices Corona, Carpio, Velasco and Leonardo-de Castro) inhibited from participating in the case. In the absence of any clear personal malicious participation, it is neither correct nor proper to hold the Chief Justice personally accountable for the collegial ruling of the Court *en banc.*

Another disturbing allegation in the Dissent is the implication of the **alleged silence of, or lack of objection from, the Members of the ruling Division** during the October 4, 2011 deliberations, citing for this purpose the internal *en banc* deliberations. The lack of a very active role in the arguments can only be attributable to the Members of the ruling Division's unanimous agreement to recall their ruling immediately; to their desire to have the

intricate issues ventilated before the Court *en banc*; to the looming finality of their Division's ruling if this ruling would not be recalled; and to their firm resolve to avoid any occasion for future flip-flopping by the Court. To be sure, it was not due to any conspiracy to reverse their ruling to affirm the previous Court rulings already made in favor of FASAP; the Division's response was simply dictated by the legal uncertainties that existed and the deep division among them on the proper reaction to Atty. Mendoza's letters.

Of the above-cited reasons, a **major influencing factor,** of course, was the time constraint – the Members of the ruling Division met with the Chief Justice **on September 30, 2011, the Friday before October 4, 2011** (the date of the closest Court *en banc* meeting, as well as the **deadline for the finality of the September 7, 2011 Resolution**). They impressed upon the Chief Justice the urgent need to recall their September 7, 2011 Resolution under the risk of being accused of a flip-flop if the Court *en banc* would later decide to override its ruling.

As a final word, if no detailed reference to internal Court deliberations is made in this Resolution, ***the omission is intentional*** in view of the prohibition against the public disclosure of the internal proceedings of the Court during its deliberations. The present administrative matter, despite its pendency, is being ventilated in the impeachment of Chief Justice Corona before the Senate acting as an Impeachment Court, and any disclosure in this Resolution could mean the disclosure of the Court's internal deliberations to outside parties, contrary to the clear terms of the Court *en banc* Resolution of February 14, 2012 on the attendance of witnesses from this Court and the production of Court records.

CONCLUSION

In sum, the recall of the September 7, 2011 Resolution of the ruling Division was a proper and legal move to make under the applicable laws and rules, and the indisputably unusual developments and circumstances of the case.

Between Section 3, Article 8 and Section 7, Rule 2, both of the IRSC, the former is the general provision on a Member-in-Charge's inhibition, but it should yield to the more specific Section 7, Rule 2 in a situation where the review of an issued decision or signed resolution is called for and the *ponente* or writer of these rulings is no longer available to act. Section 7, Rule 2 exactly contemplates this situation.

WHEREFORE, premises considered, we hereby confirm that the Court *en banc* has assumed jurisdiction over the resolution of the merits of the motions for reconsideration of Philippine Airlines, Inc., addressing our July 22, 2008 Decision and October 2, 2009 Resolution; and that the September 7, 2011 ruling of the Second Division has been effectively recalled. This case should now be raffled either to Justice Lucas P. Bersamin or Justice Diosdado M. Peralta (the remaining Members of the Special Third Division that originally ruled on the merits of the case) as Member-in-Charge in resolving the merits of these motions.

The Philippine Airlines, Inc.'s Motion to Vacate dated October 3, 2011, but received by this Court after a recall had been made, has thereby been rendered moot and academic.

The Flight Attendants and Stewards Association of the Philippines' Motion for Reconsideration of October 17, 2011 is hereby denied; the recall of the September 7, 2011 Resolution was made by the Court on its own before the ruling's finality pursuant to the Court's power of control over its orders and resolutions. Thus, no due process issue ever arose.

SO ORDERED.

Peralta, Bersamin, Abad, Perez, Mendoza, and *Reyes, JJ.,* concur.

Corona, C.J., and *del Castillo, J.,* no part.

Carpio, J., no part, prior inhibition in Lucio Tan related cases.

Velasco, Jr., J., no part due to relationship to a party.

Leonardo-de Castro, J., no part: Due to prior inhibition in G.R. No. 178083.

Villarama, Jr., J., no part due to prior action of wife in the raffle.

Sereno, J., see dissenting opinion.

Perlas-Bernabe, J., joins the dissent of *J*. Sereno.

DISSENTING OPINION

SERENO, *J.*:

The majority Resolution has opened a Pandora's box full of future troubles for Philippine judicial decision-making. **First**, it opened for review a Decision[1] on the merits that had been unanimously agreed upon and affirmed by at least ten (10) justices sitting in three differently constituted Divisions of this Court for a staggering third time. **Second**, it has made a possible, and we emphasize, only a "possible" error in the raffling of the case to a wrong *ponente* a jurisdictional defect as to render invalid that *ponente*'s decision and the concurrence thereto by four colleagues. **Third**, this extreme "flipping" was prompted not even by a formal motion for reconsideration by the losing party, but by four (4) letters from its counsel addressed not to the Court, but only to the Clerk of Court. **Fourth**, the circumstances under which this flipping was made are so curiously strange where the five (5) justices who voted to deny the second motion for reconsideration (2nd MR),[2] according to the *ponente* who penned the Resolution of denial,[3] themselves initiated moves

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[1] *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc*. (PAL), *Patria Chiong and Court of Appeals*, G.R. No. 178083, Decision dated 22 July 2008 (559 SCRA 252), Resolution dated 02 October 2009 (602 SCRA 473) and Resolution dated 07 September 2011.

[2] PAL's Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2009. (*Rollo* [G.R. No. 178083], Vol. 2, pp. 2239-2296)

[3] SC Resolution dated 07 September 2011.

to prevent their promulgated decision from ever becoming final. **Fifth**, for the first time in Philippine law, a *ponente* is being called only a "**nominal**" one,[4] *i.e.*, a *ponente* with authority to admit a 2nd MR but who upon successfully recommending the same to his Division, immediately loses authority over that case by virtue of such favorable recommendation, to a "**ruling**" *ponente*,[5] who will then have the authority to write the decision on the merits.

Immediate Antecedents of the 04 October 2011 *En Banc* Session

On 04 October 2011, the Court *En Banc*, in its 10 a.m. session, considered item no. 147 entitled "*Re: Letters of Atty. Estelito P. Mendoza re: G.R. No. 178083 – Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc. (PAL), Patria Chiong, et al.*" The agenda item consisted of two sub-items: (a) the 1st Indorsement dated 03 October 2011 of Atty. Enriqueta E. Vidal, Clerk of Court *En Banc*, referring to the *En Banc* four letters of Atty. Estelito P. Mendoza (the "Mendoza letters") dated September 13, 16, 20 and 22, 2011 – all addressed to her – regarding G. R. No. 178083 (the "Mendoza letters") for the inclusion thereof in the Court En Banc's Agenda; and as items (b) to (e) of the Agenda the aforesaid Mendoza letters, which were briefly described in chronological order.

The Mendoza letters are all in connection with G. R. No. 178083 (the main FASAP case),[6] a case now lodged with the Second Division of this Court. On 07 September 2011, the Second Division issued an unsigned extended Resolution (07 September 2011 Resolution) on the said case denying the Second Motion

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[4] Justice Presbitero J. Velasco, Jr., was denominated by the majority Resolution as purported "nominal *ponente*."

[5] The majority Resolution had designated that either Justices Diosdado M. Peralta or Lucas P. Bersamin be the ruling *ponente*, who will be assigned to decide the substantial merits of the 2nd MR.

[6] *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc.*, G.R. No. 178083, 22 July 2008, 559 SCRA 252.

for Reconsideration (2nd MR) of Philippine Airlines, Inc. (PAL), the respondent therein.

The first two letters of Atty. Mendoza, counsel of PAL, inquired about any Court action on the 2nd MR; which Division of the Court (whether regular or special) had been acting on the case; who was the Justice in charge; and the reason for such Division and *ponencia* assignments; also requested were copies of the documents regarding those assignments. The first letter of Atty. Mendoza recalled for the Clerk of Court the participants in the original Decision on the case, as well as in the denial of the First Motion for Reconsideration (1st MR) of PAL. The letter further proferred the observation that the last communication received from the Court was the Third Division's admission of its 2nd MR.

The third letter of Atty. Mendoza acknowledged receipt by PAL of the Second Division's 07 September 2011 Resolution,[7] which reads as follows:

> We resolve the second motion for reconsideration (*2nd MR*) filed by respondent Philippine Airlines (*PAL*) of the Court's July 22, 2008 Decision.
>
> PAL submits in its 2nd MR that the October 2, 2009 Resolution of the Court did not rule on the issues it raised in its first motion for reconsideration, in the oral arguments and in the memorandum. According to PAL, the resolution "left unresolved the issues raised in PAL's xxx Motion for Reconsideration of the Decision dated July 22, 2008." Since the Court did not rule on all the issues, according to PAL, the present motion must be considered as the FIRST motion for reconsideration of the Resolution of October 2, 2009.
>
> **PAL's arguments fail to convince us of their merits.**
>
> We remind PAL that the Court is only bound to discuss those issues that are relevant and are necessary to the full disposition of the case, it is not "incumbent upon the court" to discuss each and every issue in the pleadings and memoranda of the parties.
>
> PAL likewise incorrectly asserts that the resolution "did not rule on the issues raised and argued by the respondents," and that Mme.

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[7] *Rollo* (G.R. No. 178083), Vol. 2, pp. 3568-3570.

Justice Consuelo Ynares-Santiago "modified" the Court's July 22, 2008 Decision.

First, **the issues raised by PAL in its 2nd MR have already been discussed and settled by the Court in its July 22, 2008 Decision**. The Flight Attendants and Stewards Association of the Phils. (FASAP) is correct in its position that the resolution **"sustained the challenged decision dated 22 July 2008."** To reiterate, the Court is not required to re-state its factual and legal findings in its Resolution. The Court's supposed silence cannot be construed as a repudiation of the original decision; it only implies that the Court sustained the decision in its entirety.

Second, although the subsequent Resolution did not discuss all the issues raised by the petitioner, it does not mean that the Court did not take these issues into consideration.

Finally, the Resolution did not "modify" the July 22, 2008 Decision of the Court. The Resolution clearly upheld its original ruling and unequivocally stated so when we said:

> Therefore, this Court finds no reason to disturb its finding that the retrenchment of the flight attendants was illegally executed. **As held in the Decision sought to be reconsidered, PAL failed to observe the procedure and requirements for a valid retrenchment. Assuming that PAL was indeed suffering financial losses, the requisite proof therefor was not presented before the NLRC which was the proper forum. More importantly, the manner of the retrenchment was not in accordance with the procedure required by law.** Hence, the retrenchment of the flight attendants amounted to illegal dismissal.

Significantly, PAL appeared to have deliberately omitted the above highlighted portions of the Court's Resolution in its 2nd MR. The omission appears to us to be deliberate as we not only referred to our original finding that PAL failed to observe the proper procedures and requirements of a valid retrenchment; **we also reaffirmed these findings**. Thus, PAL appears to be less than honest in its claim.

To conclude, the rights and privileges that PAL unlawfully withheld from its employees have been in dispute for a decade and a half. Many of these employees have since then moved on, but the arbitrariness and illegality of PAL's actions have yet to be rectified.

This case has dragged on for so long and we are now more than duty-bound to finally put an end to the illegality that took place; otherwise, the illegally retrenched employees can rightfully claim that the Court has denied them justice.

WHEREFORE, the Court resolves to deny with finality respondent PAL's second motion for reconsideration. No further pleadings shall be entertained. Costs against the respondents. Let entry of judgment be made in due course.

SO ORDERED. (Emphasis supplied; footnotes omitted).

The En Banc Resolution of 04 October 2011

The Mendoza letters, as earlier mentioned, were taken up in the *En Banc* session on 04 October 2011. As a result, the following Resolution (the 04 October 2011 Resolution) was issued by the Court *En Banc*, which recalled the 07 September 2011 Resolution of the Second Division:

RESOLUTION

Pursuant to Section 3(m) and (n), Rule II of the Internal Rules of the Supreme Court, the Court *En Banc* resolves to accept G.R. No. 178083 (*Flight Attendants and Stewards Association of the Philippines [FASAP] v. Philippine Airlines, Inc. (PAL), Patricia Chiong, et al.*)

The Court *En Banc* further resolves **to recall the Resolution dated September 7, 2011 issued by the Second Division** in this case.

The Court furthermore resolves to re-raffle this case to a new Member-in-Charge. (Carpio, Velasco, Jr., Leonardo-de Castro and del Castillo, JJ., no part. Brion, J., no part insofar as the re-raffle is concerned.) [Footnotes omitted; emphasis supplied].

By virtue of this 04 October 2011 Resolution, the main FASAP case was re-raffled and initially assigned to Justice Maria Lourdes P.A. Sereno on 10 October 2011. That assignment intended to have the new Member-in-Charge recommend a course of action for the Court *En Banc* on the main FASAP case, particularly on PAL's 2nd MR. Such recommendation would have necessitated this Member-in-Charge to evaluate all the records of the main

FASAP case in G. R. No. 178083. The evaluation of the record would have been the fourth evaluation of the case by the Court and effectively an action on a third motion for reconsideration of the original Decision dated 22 July 2008 (the 22 July 2008 Decision). Instead, what was discovered by the assigned Member-in-Charge from a review of the records is that the 07 September 2011 Resolution of the Second Division should not even have been recalled; thus, a fourth evaluation of the record, or a resolution of what is effectively a third motion for reconsideration, is completely unwarranted. I thus circulated a draft resolution to the Court for the recall of the 04 October 2011 Resolution, which has now become this Dissenting Opinion. Sadly, the majority of this Court chose to ignore judicial precedents and compel another review of the main FASAP case, specifically by the two remaining members of the Division, who themselves twice earlier denied PAL's motions for reconsideration.

I

Assignment of Cases to the Court *En Banc* or in Division

As designed by the Constitution,[8] the Court acts either *En Banc* or through three (3) Divisions of five (5) Members each. The first arrangement involves all fifteen (15) Members of the Court, and the cases which the *En Banc* may take cognizance of are defined by the Constitution[9] and by the Internal Rules of

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[8] "The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or, in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof." (CONSTITUTION, Article VIII, Sec. 4 [1])

[9] "All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon." (CONSTITUTION, Article VIII, Sec. 4 [2])

the Supreme Court.[10] All other cases are assigned to one of the three Divisions.[11] A Rule 45 petition for review on *certiorari* of a Court of Appeals Decision involving a labor dispute, such as the main FASAP case, is cognizable by a Division.

The first step in the assignment of a case filed with the Supreme Court is the determination or classification of whether it is properly an *En Banc* or a Division case.[12] The case is then listed with the others filed in the same period, in the order in which they were filed for random assignment. This process is supervised by two Raffle Committees, one for *En Banc* cases and another for Division cases.[13] These committees have three (3) members each, chaired by the two (2) most senior associate justices, with the four other slots occupied by the next four (4) associate justices in the order of their seniority.

Membership in the three Divisions of the Court is also determined by seniority.[14] When a Member departs from the

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[10] Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC, as amended), Rule 2, Sec. 3.

[11] "All cases and matters under the jurisdiction of the Court not otherwise provided by law, by the Rules of Court or by these Internal Rules to be cognizable by the Court *en banc* shall be cognizable by the Divisions." (Internal Rules of the Supreme Court, Rule 2, Sec. 4)

[12] "A court attorney in the Docket Division shall preliminarily classify the petitions and appeals filed as *en banc* or as Division Cases in accordance with law." (Internal Rules of the Supreme Court, Rule 6, Sec. 6) "The initiatory pleadings duly docketed by the Judicial Records Office shall be classified into *en banc* and Division cases for purposes of the raffle. The Clerk of Court shall forthwith make a report on the classified cases to the Chief Justice." (*Id.*, Sec. 4)

[13] "Two Raffle Committees — one for the *en banc* and the other for Division cases, each to be composed of a Chairperson and two members — shall be designated by the Chief Justice from among the Members of the Court on the basis of seniority." (Internal Rules of the Supreme Court, Rule 7, Sec. 2)

[14] The composition of each Division shall be based on seniority. The Chief Justice may, however, consider factors other than seniority in Division assignments. The appointment of a new Member of the Court shall necessitate the reorganization of Divisions at the call of the Chief Justice. (Internal Rules of the Supreme Court, Rule 2, Sec. 8)

Court, the memberships in the Divisions also change as a result of the change in seniority of the remaining justices. Thus, a Member who stays in the Court for a significant period of time will periodically be re-assigned to different Divisions. The rules also provide that a case follows its *ponente* when he or she transfers to another Division.[15]

II

Conclusions from the Records on the main FASAP case in G.R. No. 178083 from 18 July 2007 to 04 October 2011.

On 18 July 2007, the above Petition was filed by the Flight Attendants and Stewards Association of the Philippines (FASAP).[16] It was raffled on 20 June 2007 to now retired **Justice Consuelo Ynares-Santiago.**

On 22 July 2008, Justice Ynares-Santiago penned the Decision of the **Third Division** on the case. The Division ruled in favor of petitioner FASAP and found PAL guilty of illegal dismissal.[17]

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[15] "*Effect of reorganization of Division on assigned cases.* — In the reorganization of Membership of Divisions, **cases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves**, subject to the rule on the resolution of motions for reconsideration under Section 7 of this Rule. The Member-in-Charge is the Member given the responsibility of overseeing the progress and disposition of a case assigned by raffle." (Internal Rules of the Supreme Court, Rule 2, Sec. 9)

[16] A Motion for Extension of Time (To File Petition for Review on *Certiorari*) dated 15 June 2007 was earlier filed. (*Rollo*, Vol. I, pp. 3-7)

[17] "WHEREFORE, the instant petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 87956 dated August 23, 2006, which affirmed the Decision of the NLRC setting aside the Labor Arbiter's findings of illegal retrenchment and its Resolution of May 29, 2007 denying the motion for reconsideration, are REVERSED and SET ASIDE and a new one is rendered:

1. FINDING respondent Philippine Airlines, Inc. GUILTY of illegal dismissal;

2. ORDERING Philippine Air Lines, Inc. to reinstate the cabin crew personnel who were covered by the retrenchment and demotion scheme of June 15, 1998 made effective on July 15, 1998, without loss of seniority

The *ponencia* was unanimously concurred in by Justices Ma. Alicia Austria-Martinez, Minita Chico-Nazario, Antonio Eduardo Nachura and Teresita Leonardo-de Castro.[18] The counsel of record to whom the Notice of Judgment was sent was the SyCip Salazar Hernandez and Gatmaitan law firm (SyCip law firm).[19]

On 20 August 2008, PAL, through the SyCip law firm, filed the 1st MR of even date and prayed for the reversal of the 22 July 2008 Decision of the Third Division.[20]

On 10 February 2009, PAL, through the SyCip law firm and now in collaboration with Atty. Estelito P. Mendoza, also filed a Motion to Set the Case for Oral Argument.[21] This Motion was granted and notices were sent to the counsel of the parties, including Atty. Mendoza.[22] In the oral argument on the case

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rights and other privileges, and to pay them full backwages, inclusive of allowances and other monetary benefits computed from the time of their separation up to the time of their actual reinstatement, provided that with respect to those who had received their respective separation pay, the amounts of payments shall be deducted from their backwages. Where reinstatement is no longer feasible because the positions previously held no longer exist, respondent Corporation shall pay backwages plus, in lieu of reinstatement, separation pay equal to one (1) month pay for every year of service;

3. ORDERING Philippine Airlines, Inc. to pay attorney's fees equivalent to ten percent (10%) of the total monetary award.

Costs against respondent PAL." (Decision dated 22 July 2008, pp. 30-31; *rollo* [G.R. No. 178083], Vol. 1, pp. 1546-1547)

[18] Justice Leonardo-de Castro was designated in lieu of Justice Ruben Reyes, who had inhibited himself for having penned the assailed Court of Appeals Decision dated 23 August 2006 (*Rollo* [G.R. No. 178083], Vol. 1, pp. 58-83) and Resolution dated 29 May 2007 (*Rollo* [G.R. No. 178083], Vol. 1, pp. 84-86).

[19] Notice of Judgment dated 22 July 2008. (*Rollo* [G.R. No. 178083], Vol. 1, p. 1516)

[20] PAL's Motion for Reconsideration dated 20 August 2008. (*Rollo* [G.R. No. 178083], Vol. 1, pp. 1549-1587)

[21] PAL's Motion to Set Case for Oral Arguments dated 09 February 2009. (*Rollo* [G.R. No. 178083], Vol. 2, pp. 1805-1809)

[22] SC Resolution dated 04 March 2009. (*Rollo* [G.R. No. 178083], Vol. 2, p. 1812)

held on 18 March 2009,[23] Atty. Lozano Tan of the SyCip law firm and Atty. Mendoza appeared as counsel for PAL.[24]

On 02 October 2009, the **Special Third Division** of the Court **denied with finality** PAL's 1st MR through a signed Resolution (the 02 October 2009 Resolution) penned by Justice Ynares-Santiago and concurred in by Justices Chico-Nazario, Nachura, Diosdado M. Peralta (vice Justice Austria-Martinez who had retired) and Lucas P. Bersamin (vice Justice Leonardo-de Castro, who had earlier inhibited for personal reasons).[25] It was a unanimous Decision. Justice Ynares-Santiago retired three days later, on 05 October 2009. Notice of Judgment was sent to PAL through the SyCip law firm; as well as to Attys. Estelito P. Mendoza and Claudette A. de la Cerna, who were denominated in the Notice of Judgment also as counsel for PAL.[26] The claim publicly made by FASAP – that Atty. Mendoza was not a counsel of record – was therefore refuted by the Division Clerk of Court's action of describing him in a Notice as "counsel for respondent."

The dispositive portion of the 02 October 2009 Resolution reads:

> **WHEREFORE**, for lack of merit, the Motion for Reconsideration is hereby **DENIED with FINALITY**. The assailed Decision dated July 22, 2008 is **AFFIRMED with MODIFICATION** in that the award of attorney's fees and expenses of litigation is reduced to 2,000,000.00. The case is hereby **REMANDED** to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.

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[23] SC Resolution dated 18 March 2009. (*Rollo* [G.R. No. 178083], Vol. 2, pp. 1816-1817)

[24] "Atty. Estelito P. Mendoza and Atty. Lozano A. Tan argued for respondent PAL while Atty. Daniel C. Gutierrez and Atty. Joaquin N. Gan III argued for petitioner FASAP." (*Id.*)

[25] SC Resolution dated 02 October 2009. (*Rollo* [G.R. No. 178083], Vol. 2, pp. 2044-2074) See *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc.*, 602 SCRA 473 (2009).

[26] Notice of Judgment dated 06 October 2009. (*Rollo* [G.R. No. 178083], Vol. 2, p. 2042)

No further pleadings will be entertained.

SO ORDERED.[27]

On 03 November 2009, respondent PAL, through both the SyCip law firm and law office of Atty. Mendoza (Estelito P. Mendoza & Associates), asked for leave[28] to file a motion for reconsideration of the 02 October 2009 Resolution and a second motion for reconsideration of the 22 July 2008 Decision and attached thereto were the twin motions (the 2nd MR).[29] At the time this 2nd MR was filed, Justice Ynares-Santiago, who penned both the 22 July 2008 Decision and 02 October 2009 Resolution, had already retired.

On 11 November 2009, per Special Order No. 792, the Raffle Committee – composed of then Associate Justices Renato C. Corona, Chico-Nazario and Presbitero J. Velasco, Jr. – had to respond to the queries of the Raffle Committee Secretariat on who the new *ponente* of the case would be in view of the retirement of Justice Ynares-Santiago.[30] Ordinarily, a second motion for reconsideration, considering that it is prohibited,[31] is not entertained by the Court.[32] **Thus, ordinarily, had Justice Ynares-**

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[27] *Rollo* (G.R. No. 1708083), Vol. 2, pp. 2072-2073.

[28] PAL's Motion for Leave to File, and to Admit Attached "Motion for Reconsideration of the Resolution dated October 2, 2009" and "Second Motion for Reconsideration of the Decision dated 22 July 2008" dated 03 November 2009. (*Rollo* [G.R. No. 178083], Vol. 2, pp. 2220-2238)

[29] PAL's Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2009. (*Rollo* [G.R. No. 178083], Vol. 2, pp. 2239-2296)

[30] Report dated 11 November 2009 of the Division Raffle. (*See* attachment of Memorandum dated 26 September 2011 signed by Atty. Felipa B. Anama, Deputy Clerk of Court *En Banc*)

[31] "Accordingly, **a second motion for reconsideration is a prohibited** pleading, which shall not be allowed, except for extraordinarily persuasive reasons and only after an express leave shall have first been obtained." (*Tirazona v. Philippine Eds Techno-Service, Inc., (PET, Inc.)*, G.R. No. 169712, 20 January 2009, 576 SCRA 625, citing *Ortigas and Co., Limited Partnership v. Velasco*, 324 Phil. 483, 489 [1996])

[32] "No second motion for reconsideration of a judgment or final resolution by the same party shall not be entertained." (Rules of Court, Rule 52, Sec. 2)

Santiago not yet retired, the 2nd MR would just have been ordered "expunged from the record" for being an unauthorized pleading.[33]

It must be emphasized that even in *Tirazona v. Philippine EDS Techno-Service, Inc., (PET, Inc.)*,[34] a case cited by the majority Resolution, the Court found that unless there is an extraordinarily persuasive reason to entertain a second motion for reconsideration, it must be denied outright for lack of merit:

> Section 2, Rule 52 of the Rules of Court explicitly decrees that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Accordingly, a second motion for reconsideration is a prohibited pleading, which shall not be allowed, except for extraordinarily persuasive reasons and only after an express leave shall have first been obtained. **In this case, we fail to find any such extraordinarily persuasive reason to allow Tirazona's Second Motion for Reconsideration.**

"The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership." (Internal Rules of the Supreme Court, Rule 15, Sec. 3)

[33] "We have stated, at the outset, **that petitioner's second motion for reconsideration could have been correctly rejected outright**. But, as further noted, petitioner has distressingly adopted the lamentable technique contrived by losing litigants of resorting to ascriptions of supposed irregularities in the courts of justice as the cause for their defeat. Here, petitioner speaks of pressure having been employed by respondents against the trial court. It then proceeds to insinuate anomalous haste on the part of respondent court in reversing the trial court, pointing to the supposed short period of time it took the former to come out with its decision. It never even bothered to mention that the issues are actually very simple, that the evidence is basically documentary, and that the questions raised are easily answered by applying settled doctrines of this Court.

xxx xxx xxx

WHEREFORE, petitioner's second motion for reconsideration is hereby DENIED for lack of merit and EXPUNGED as an unauthorized pleading. This resolution is immediately final and executory, and no further pleadings or motions will be entertained."(*Komatsu Industries [Phils.], Inc. v. Court of Appeals*, G.R. No. 127682, 24 April 1998, 352 Phil. 440)

[34] G.R. No. 169712, 20 January 2009, 576 SCRA 625, 628.

… … …

WHEREFORE, the Motion for Leave to File [a] Second Motion for Reconsideration is hereby DENIED for lack of merit and the Second Motion for Reconsideration incorporated therein is NOTED WITHOUT ACTION in view of the denial of the former. (Emphasis supplied)

The Minutes of the Raffle Committee meeting of 11 November 2009, which included the queries of its Secretariat reflected the Committee's response as follows:

The case was decided by the Third Division on July 22, 2008. The motion for reconsideration was denied with finality on October 2, 2009. Both the decision and resolution on the MR were penned by retired Justice Ynares-Santiago.

In cases where the regular Division which rendered the [Decision] is no longer complete as when one of them has retired, a special division is created under A.M. No. 99-8-09-SC. **However, A.M. No. 99-8-09-SC specifically states that *it does not apply where the motion has been denied with finality.***

QUERY: May this case be acted upon by the regular Third Division and raffled among its Members? Note: Justice Corona already inhibited from this case; thus, an additional Member must be designated from the other two Divisions to replace Justice Corona.

(Answer in handwritten note): *Yes, PV*
additional member – AC

OR

Should this case be inherited by Justice Villarama who succeeded Justice Ynares-Santiago? NOTE: The case will be transferred to the First Division.
(Answer in handwritten note): No

In line with the above answers to the queries, the Raffle Committee raffled the case among the regular members of the **Third Division**, then composed of then Associate Justices Corona, Chico-Nazario, Velasco, Nachura and Peralta. The case was raffled to **Justice Velasco**. Since Justice Corona, a regular member

of the Third Division, had inhibited himself from the main FASAP case, Justice Carpio was designated to replace him as an additional member during the same day's raffle.[35] According to the Report dated 14 July 2008 of the Division Raffle Committee, Justice Corona inhibited "due to his previous efforts in settling the controversy when he was still in Malacañang."[36]

A.M. No. 99-8-09-SC, which was the justification for the decision of the Raffle Committee, provided for the rules on who among the Members of this Court shall be assigned to resolve motions for reconsiderations in cases assigned to the Divisions. It took effect by its express provision on 01 April 2000[37] and was the prevailing rule at the time of the raffle on 11 November 2009. Its relevant provision reads:

RULES ON WHO SHALL RESOLVE MOTIONS FOR RECONSIDERATION IN CASES ASSIGNED TO THE DIVISIONS OF THE COURT

2. If the *ponente* is no longer a Member of the Court or is disqualified or has inhibited himself from acting on the motion, he shall be replaced by another Justice who shall be chosen by raffle from among the remaining members of the Division who participated in the rendition of the decision or resolution and who concurred

[35] "PV" in the above handwritten notation refers to Justice Presbitero J. Velasco, Jr., and "AC" to Justice Antonio T. Carpio.

[36] "NOTE: The case is presently assigned to Justice YNARES-SANTIAGO of the Third Division. Justice Reyes inhibited himself from the case for having concurred in the assailed decision and resolution of the Court of Appeals. During the division raffle held on February 26, 2008, Justice Corona was drawn as the additional member to take the place of Justice Reyes. Justice Corona also inhibited himself from the case due to his previous efforts in settling the controversy when he was still in Malacañang.

Following the pertinent provisions of Administrative Circular No. 84-2007, one (1) additional member shall be drawn from the rest of the Court to replace Justice Corona." (*See* attachment of Memorandum dated 26 September 2011 signed by Atty. Felipa B. Anama, Deputy Clerk of Court *En Banc*)

[37] "This Resolution shall take effect on the 1st day of April 2000 and shall be published in two (2) newspapers of general circulation in the Philippines not later than 29 February 2000." (A.M. No. 99-8-09-SC)

therein. If only one member of the Court who participated and concurred in the rendition of the decision or resolution remains, he shall be designated as the *ponente*.

xxx xxx xxx

These rules shall not apply to motions for reconsideration of decisions or resolutions already denied with finality. (Emphasis supplied.)

This interpretation by the Raffle Committee makes perfect sense, since a contrary interpretation would prevent a decision from ever being considered as having been "denied with finality" by the mere filing of a motion to admit a second motion for reconsideration. The Raffle Committee has the right to presume that a final decision is indeed final, since a second motion for reconsideration is expressly prohibited by the Rules of Court[38] and the Internal Rules of the Supreme Court.[39] The admission of a second motion for reconsideration is highly contingent on the demonstration of an exceptional circumstance that would warrant the allowance of a second motion for reconsideration.

It is important to note that a contrary opinion – that the case should have been raffled to a Member of the Division who participated in the deliberation on the Decision or the Resolution denying the first Motion for Reconsideration – did not seem to be held by Justice Chico-Nazario, a member of the Raffle Committee. Having concurred in both the original 22 July 2008 Decision as well as in the 02 October 2009 Resolution that denied the 1st MR, Justice Chico-Nazario, as concurring Member of the Third Division in both Decisions, could have opined that the case was not really denied with finality as that is understood

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[38] "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." (Rule 52, Sec. 2, in relation to Rule 56, Sec. 2 of the Rules of Court)

[39] "The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. . . ." (Internal Rules of the Supreme Court, Rule 15, Sec. 3)

in A.M. No. 99-8-09-SC. Thus, she could have asserted that the case be raffled among Justices Nachura, Peralta, Bersamin, and herself, but she did not. Instead, she appeared to have held the view that the raffling of the case falls under the exception that "[these] rules shall not apply to motions for reconsideration of decisions or resolutions already denied with finality."

The only conclusion from Justice Chico-Nazario's action as a Member of the Raffle Committee is that she interpreted the denial with finality as a genuine "denial with finality," which would not require the case to be raffled among the remaining Members of the Division that decided and resolved the case. Rather, the alternative rule requiring that the case be raffled among the regular Members of the Third Division – whether or not they took part in the Decision – would apply.

The Clerk of Court, Atty. Enriqueta E. Vidal, through Atty. Felipa B. Anama, the Deputy Clerk of Court, explained in a Memorandum dated 26 September 2011 (the Vidal-Anama Memorandum) the actions of the Raffle Committee for Division Cases with respect to the main FASAP case in this way:

> The case was referred to the Raffle Committee in November 2009 in view of the filing of the *Motion for Leave to File and Admit Motion for Reconsideration of the Resolution dated October 2, 2009* and *Second Motion for Reconsideration of the Decision dated July 22, 2008* mentioned on page 3 of the Letter dated September 13, 2011 of Atty. Mendoza. At that time, Justice Ynares-Santiago had already retired. Moreover, the standing rules with respect to motions for reconsideration in cases assigned to the Divisions of the Court were provided in A. M. No. 99-8-09-SC.
>
> A. M. No. 99-8-09-SC mandated the creation of a special division to act on motions for reconsideration of decisions or signed resolutions of the Divisions of the Court. However, it specifically stated that it **did not apply to cases where the motion for reconsideration was already denied with finality**.
>
> Thus, on November 11, 2009, the Raffle Committee resolved that a **special division need not be created** to act on the aforecited pending second motion for reconsideration and **proceeded to raffle the case among the regular Members of the Third Division**. As the raffle agenda would show, the case was raffled to Justice Presbitero J. Velasco, Jr.

On 20 January 2010, with **Justice Velasco as the new *ponente***, the regular Third Division,[40] acting on PAL's motion for leave to file the twin motions and the attached 2nd MR itself, resolved: (1) to grant the two motions and (2) to require the parties to comment on PAL's twin Motions for Reconsideration and FASAP's Urgent Appeal to the Supreme Court Justices dated 23 November 2009 (the 20 January 2010 Resolution).[41] Then Associate Justice Corona, according to the Resolution, took no part therein. The names of Justices Carpio, Velasco (chairperson), Nachura, Peralta, and Bersamin appeared in the Resolution.

Notably, in taking part in the 20 January 2010 Resolution, Justices Nachura, Peralta, and Bersamin – all of whom took part in the denial of the 1st MR in the 02 October 2009 Resolution – could have objected to either: (a) the assignment of the case to Justice Velasco, a member of the regular Third Division who did not participate in either action; or (b) the non-constitution of a Special Third Division. However, none of them did. Justice Nachura, it must be additionally noted, had concurred in both the original 22 July 2008 Decision and the 02 October 2009 Resolution.

On 17 May 2010, Chief Justice Renato Corona, who had then been appointed Chief Justice, issued Special Order No. 838 reorganizing the three Divisions of the Court in view of his

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[40] SC Resolution dated 20 January 2010, as witnessed by Justices Antonio T. Carpio, Presbitero J. Velasco, Jr., Antonio Eduardo B. Nachura, Diosdado Peralta and Lucas P. Bersamin. (*Rollo*, Vol. 2, pp. 2435-2436)

[41] "The Court resolves to GRANT respondents' motion for leave to file and to admit motion for reconsideration of the Resolution dated 02 October 2009 and second motion for reconsideration of the Decision dated 22 July 2008.

The Court further resolves to require the respective parties to COMMENT within ten (10) days from notice hereof on:

> (1) respondent's Motion for Reconsideration of the Resolution dated 02 October 2009 and Second Motion for Reconsideration of the Decision dated 22 July 2008; and
>
> (2) petitioners' An Urgent Appeal to the Supreme Court Justices dated 23 November 2009." (*Id.*)

vacating his former position as Associate Justice.[42] As a result, **Justice Velasco, Jr. was transferred to the First Division**. Under the applicable rule on the effect of reorganization, the main FASAP case, which was assigned to Justice Velasco, was correspondingly transferred to the First Division. Parenthetically, Justice Arturo D. Brion was assigned to the Third Division under the same Special Order.

On 17 January 2011, Justice Velasco inhibited himself "due to a close relationship to a party." The First Division, to which he was transferred, thus referred the matter to the Raffle Committee "for designation of additional members," the intention being to seek a replacement *ponente* for Justice Velasco.

On 26 January 2011, the Raffle Committee for Division Cases (composed of Justices Conchita Carpio Morales, Nachura and Arturo D. Brion) resolved, in its Minutes, as follows:

> The case is presently assigned to Justice Velasco, Jr. who inhibited from the case due to close relation to one of the parties.
>
> Following the pertinent provision of Administrative Circular No. 84-2007, **the case must be raffled among the Members of the Second and Third Division**.
>
> *Justice De Castro also recused from the case.[43]

(NB: The handwritten note in the minutes designated the new *ponente* as a result of the raffle by his acronym - "AB" - referring to Justice Brion).

As a result of the 26 January 2011 raffle, the case fell on the lap of Justice Brion, who was then a member of the Third Division.

Administrative Circular No. 84-2007, cited in the Report of the Raffle Committee, provided the various rules on the inhibition, leaves and vacancies of the *ponente* or other members of the

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[42] Special Order No. 838 dated 17 May 2010; Annexed to the Vidal-Anama Memorandum.

[43] Report dated 26 January 2011 of the Division Raffle. (*See* attachment of Memorandum dated 26 September 2011 signed by Atty. Felipa B. Anama, Deputy Clerk of Court *En Banc*)

Division in pending cases and their proper substitution. The old rule was that when the *ponente* inhibits from the case, the case shall be returned to the Raffle Committee **for re-raffling among the other Members of the same Division** with one additional Member from the other two Divisions:

> 2. **Whenever the *ponente*,** in the exercise of sound discretion, **inhibits herself or himself from the case for just and valid reasons** other than those mentioned in paragraph 1, a to f above, **the case shall be returned to the Raffle Committee for re-raffling among the other Members of the same Division with one additional Member from the other two Divisions.** (Emphasis supplied)

These Rules have been twice amended; first, on 04 May 2010; second, on 03 August 2010. At the time that the case was assigned to Justice Brion as the new *ponente* by the 26 January 2011 raffle, the pertinent rule was that provided in the 03 August 2010 amendment. The **Resolution dated 03 August 2010** in **A.M. No. 10-4-20-SC amended Rule 8, Sections 2 and 3(a) of the Internal Rules of the Supreme Court**. The amended rule reads as follows:

> *Motion to inhibit a Division or a Member of the Court*. – A motion for inhibition must be in writing and under oath and shall state the grounds therefor.
>
> No motion for inhibition of a Division or a Member of the Court shall be granted after a decision on the merits or substance of the case has been rendered or issued by any Division, except for a valid or just reason such as an allegation of a graft and corrupt practice or a ground not earlier apparent. (Rule 8, Sec. 2, Internal Rules of the Supreme Court)
>
> *Effects of Inhibition*. — The consequences of an inhibition of a Member of the Court shall be governed by these rules:
>
> (a) Whenever a **Member-in-Charge of a case in a Division inhibits himself for a just and valid reason**, **the case shall be returned to the Raffle Committee for re-raffling among the Members of the other two Divisions of the Court.** … (Rule 8, Sec. 3 [a] of the Internal Rules of the Supreme Court; emphasis supplied.)

Unlike in the old rule where the case remains with the Division of the inhibiting Justice, the amended rule now uniformly provides for the effect of inhibition of the *ponente* on the assignment of a case – the case **will be taken out of the Division** to which the inhibiting Member of this Court belongs and raffled among the members of the two other Divisions.

Following the new rule, the inhibition from the main FASAP case by Justice Velasco – a member of the First Division – resulted in the need to re-raffle the case to members of the Second and the Third Divisions. When the case was re-raffled, **Justice Brion to whom the case was assigned, was then a member of the Third Division. The case was thus properly assigned to him as a regular member of that Division.**

On 21 June 2011, the Chief Justice issued Special Order No. 1025 reorganizing the Divisions of the Court, in view of the retirement of Justices Carpio-Morales and Nachura. **Justice Brion was then transferred from the Third Division to the Second Division**.[44]

On 27 June 2011, as required by the new reorganization, the new Third Division had to order the transfer of all of Justice Brion's cases in the former Third Division to the new Second Division. The new Third Division, composed of its regular members – Justices Velasco, Peralta, Bersamin and Jose C. Mendoza, together with Justice Sereno as additional member – issued an internal Resolution "**to transfer the case to the Second Division, the same being assigned to a member thereof**."[45]

This procedure follows the aforecited Rule 2, Section 9 of the Internal Rules of the Supreme Court stating that if a case is a regular Division case, it follows the *ponente* to his or her new Division under the reorganization. It is also consistent with Rule 2, Section 7, paragraph 6 of the Internal Rules of the Supreme Court stating that "(i)f there are pleadings, motions or incidents subsequent to the denial of the motion for

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[44] Special Order No. 1025 dated 21 June 2011; Annexed to the Vidal-Anama Memorandum.

[45] SC Internal Resolution dated 27 June 2011. (*Rollo*, Vol. 2, p. 3489)

reconsideration or clarification, the case shall be acted upon by the *ponente* on record **with the participation of the other Members of the Division to which he or she belongs at the time said pleading, motion or incident is to be taken up by the Court**." The main FASAP case was thus appropriately transferred from the Third Division to the Second Division when Justice Brion was reassigned to the latter.

On 24 August 2011, the Court issued a Resolution that would give notice to the parties that the main FASAP case had been transferred to the Second Division.[46] In the said Resolution, the Second Division "NOTED" the pleadings filed by FASAP and PAL, parties to the case.[47] The parties received the notice under the document heading of the Second Division and under the name of the Clerk of Court of the same Division. The notice of the Resolution was sent to PAL through its principal counsel, the SyCip law firm.

Hence, it is wrong for any of the co-counsel for PAL to assert that their receipt of the 07 September 2011 Resolution of the Second Division was the first time that the parties were apprised of the transfer of the case to another Division.[48] Under the Rules

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[46] SC Resolution dated 24 August 2011. (*Rollo*, Vol. 2, pp. 3566-3567)

[47] "The Court NOTES the copies furnished the Court of: (1) the comment/ opposition (to petitioners' denial of application for [TRO] dated 14 April 2011) filed by petitioner Flight Attendants and Stewards Association of the Philippines before the Court of Appeals dated 23 June 2011; and (2) motion to resolve (re: memorandum of appeal with application for a temporary restraining order and a writ of preliminary injunction) dated 30 June 2011 filed by Philippine Airlines, Inc. and Patria Chiong before the National Labor Relations Commission, NCR, Quezon City. *Sereno, J. on leave; Abad, J. designated additional member per S.O. No. 1067-B. Reyes, J., on official leave; Mendoza, J., designated additional member per S.O. No. 1066"* (*Id.*)

[48] "We received yesterday a copy of the 'Resolution' of the Supreme Court (Second Division) in the above-entitled case dated September 7, 2011. **We recall that all Resolutions of the Court on the above-entitled case, which we received prior to this Resolution, were issued by the Third Division of the Supreme Court**. We also note that unlike most minute resolutions of Division resolutions we have received from the Supreme Court, there is no concluding clause stating the name of those who participated in the promulgation of the Resolution."

of Court, service upon the principal counsel of PAL is service to all the co-counsel:

> Filing and service, defined. — Filing is the act of presenting the pleading or other paper to the clerk of court.
>
> Service is the act of providing a party with a copy of the pleading or paper concerned. **If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court.** Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. (Rule 13, Sec. 2, of the Rules of Court; emphasis supplied)

It is also important to emphasize that parties cannot complain about lack of receipt of formal notices that their cases are being transferred from one Division to another, since that is a matter of reorganization entirely internal to the Court.

On 07 September 2011, a Second Division session was held. The Agenda, Supplemental Agenda and Minutes of the Second Division session for that day reveal the dispositions of the agenda items as discussed by the Members of the Division. One hundred forty-eight (148) agenda items were calendared that day, broken down as follows: 96 judicial matters, 21 administrative matters and 31 administrative cases. This is not an unusual volume for a Division case load for a day. The main FASAP case in G. R. No. 178083 was one of the judicial matters tackled during the said Session of the Second Division.

Two non-regular Members of the Division had earlier been designated by raffle as replacements for the two regular Members who were on leave: (1) Justice Bersamin (*vice* Justice Sereno), and (2) Justice Mendoza (*vice* Justice Bienvenido L. Reyes). Most of the cases for the day were acted upon by unsigned

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"With your indulgence, therefore, and further to the requests we made by our letters dated September 13, 2011 and September 16, 2011, we respectfully request, in regard the Resolution of September 7, 2011, the date and time when the Resolution was deliberated upon, and a vote thereon, and the names of the members of the Court who participated in the deliberation and voted on the afore-mentioned Resolution." (Letter of Atty. Estelito P. Mendoza dated 20 September 2011)

Resolutions, but five signed Decisions/dispositive Resolutions were also promulgated. Among the unsigned Resolutions that were promulgated was the denial of PAL's 2nd MR in the main FASAP case in G.R. No. 178083.

Justice Carpio (who had earlier inhibited, the reason given being "per advice of the office of the Member-in-Charge") was replaced by Justice Peralta.[49] Note that Justices Peralta and Bersamin became Members of the Second Division for the purpose of resolving the main FASAP case – not because they took part in the denial of the 1st MR, but because they were replacements for a regular Member of the Second Division who had inhibited from the case and for another who was on leave.

Justice Brion, as the next most senior Justice in the Second Division, was acting chairperson and, at the same time, the Member-in-Charge. Thus, the Members of the Second Division during the 07 September 2011 Session for the main FASAP case were composed of Justices (1) Brion (Chairperson), (2) Peralta, (3) Bersamin, (4) Jose P. Perez, and (5) Mendoza. This Second Division promulgated the **unsigned 07 September 2011 Resolution** penned by Justice Brion, denying with finality respondent PAL's 2nd MR.[50] Of these five, two – Justices Peralta and Bersamin – had earlier concurred in the 02 October 2009 Resolution that denied PAL's 1st MR. The Notice of this 07 September 2011 Resolution was sent not only to the SyCip law firm, but also to Atty. Mendoza.[51]

On 13 September 2011, Atty. Estelito P. Mendoza, counsel for PAL in the main FASAP case, addressed his **first letter** to the Clerk of Court of the Supreme Court, which contained the following matters:

1. Noting that (a) of the members of the Court who acted on the Motion for Reconsideration dated 20 August 2008 (the

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[49] Justice Peralta was designated as acting Member of the Second Division vice Justice Carpio as per Raffle dated 15 August 2011.

[50] SC Resolution dated 07 September 2011. (*Rollo*, Vol. 2, pp. 3568-3571)

[51] *Rollo*, Vol. 2, p. 3570.

1st MR), Justices Ynares-Santiago (*ponente*), Chico-Nazario and Nachura had retired from the Court; and (b) the Third Division had issued a Resolution on the case dated 20 January 2010, acted upon by Justices Carpio, Velasco, Nachura, Peralta, and Bersamin;

2. Seeking advice on (a) whether the Court had acted on the 2nd MR and, if so, which Division – whether regular or special – and the identities of the chairperson and the members thereof; and (b) the identity of the current *ponente* or Justice-in-charge of the case, and when and for what reason he or she was designated as *ponente*; and

3. Requesting a copy of the Resolution rendered on the 2nd MR, if an action had already been taken thereon.

On 16 September 2011, Atty. Mendoza sent a **second letter** addressed to the Clerk of Court requesting "copies of any Special Orders or similar issuances transferring the case to another division, and/or designating members of the division which resolved" its 2nd MR, in case a resolution had already been rendered by the Court and in the event that "such resolution was issued by a different division."

A **third letter** from Atty. Mendoza addressed to the Clerk of Court was received by the Court on 20 September 2011.[52] Atty. Mendoza stated that he received a copy of the 07 September 2011 Resolution issued by the Second Division, notwithstanding that all prior Court Resolutions he received regarding the case had been issued by the Third Division. He reiterated his request in two earlier letters to the Court, asking for the date and time when the said Resolution was deliberated upon and a vote taken thereon, as well as the names of the Members of the Court who had participated in the deliberation and voted on the 07 September 2011 Resolution.

Atty. Mendoza sent a **fourth letter** dated 22 September 2011 addressed to the Clerk of Court, suggesting that "if some facts

[52] Atty. Estelito Mendoza's Letter dated 20 September 2011. (*Rollo*, Vol. 2, pp. 3577-3578)

subject of my inquiries are not evident from the records of the case or are not within your knowledge, that you refer the inquiries to the members of the Court who appear to have participated in the issuance of the Resolution of September 7, 2011, namely: Hon. Arturo D. Brion, Hon. Jose P. Perez, Hon. Diosdado M. Peralta, Hon. Lucas P. Bersamin, and Hon. Jose C. Mendoza."

On 26 September 2011, upon request by Justice Brion, the Clerk of Court issued the Vidal-Anama Memorandum for the members of the Second Division regarding the inquiries contained in Atty. Mendoza's first and second letters dated 13 and 20 September 2011, respectively. According to Justice Brion, as the acting Chairperson of the Second Division that rendered the 07 September 2011 Resolution, he decided to send a copy of the Vidal-Anama Memorandum only to those who had participated in the issuance of the Resolution.[53] Neither Senior Associate Justice Carpio, the regular Chairperson of the Second Division, nor Justices Sereno and Reyes, its other regular Members, received a copy of this Memorandum at that time.

In the said Memorandum, which was signed by Atty. Felipa Anama on behalf of Atty. Enriqueta Vidal, the legal and documentary bases for all the actions of the various Raffle Committees were attached and discussed.[54] These included the decisions of the two raffle committees that oversaw the transfer of the *ponencia*, as a regular Second Division case, from Justice Ynares-Santiago to Justice Velasco and finally to Justice Brion. A reading of the Vidal-Anama Memorandum would lead to the conclusion that the two transfers of *ponencia* were compliant with the applicable rules.

[53] Namely, Justices Perez, Peralta, Bersamin, and Mendoza.

[54] Included in the Vidal-Anama Memorandum were the following: Raffle Report dated 20 June 2007, Raffle Report dated 14 July 2008, Raffle Report dated 28 July 2008, Raffle Report dated 28 September 200, Raffle Report dated 11 November 2009, Raffle Report dated 26 January 2011, Raffle Report dated 15 August 2011, Resolution dated 15 February 2009 in A.M. No. 99-8-09-SC, Special Order No. 838, Special Order No. 1025, Special Order No. 1066 and Special Order No. 1074-A.

One parenthetical note. In the above Vidal-Anama Memorandum, the Raffle Committee is quoted as having relied on Administrative Order No. 84-2007 as basis for raffling out the case from the Third Division to the First and the Second Divisions.[55] Apparently, the Vidal-Anama Memorandum refers to Administrative Order No. 84-2007, as amended, *i.e*., by the Resolution dated 03 August 2010 in A.M. No. 10-4-20-SC. The implication of the latter Resolution on the assignment of the case to Justice Brion has been discussed here earlier.

On 28 September 2011, the regular Second Division "NOTED" the Letters dated 13 and 20 September 2011 of Atty. Mendoza to Atty. Vidal, asking that his inquiry be referred to the relevant Division members who took part in the 07 September 2011 Resolution. In response to an earlier suggestion to just simply direct the Division Clerk of Court to answer the letters of Atty. Mendoza, Justice Brion – the *ponente* – informed those present that he needed to consult Chief Justice Corona on this matter. **There was no suggestion from anyone, much less any agreement among the Justices present, to refer the matter to the *En Banc***. Indeed, Justices Sereno and Reyes, who were then present, were not fully informed of the contents of those letters.

As related by Justice Brion to the *En Banc*, a meeting was held on 28 September 2011 among the Justices who participated in the deliberations of the 07 September 2011 Resolution – namely, Justices Brion, Peralta, Bersamin, Perez and Mendoza – to inform them of the four letters of Atty. Mendoza and to ask for their inputs. According to him, a couple more meetings were held to this effect, but there was no unanimity on how to specifically respond to these letters.

According also to Justice Brion, on 30 September 2011, a meeting held between Chief Justice Corona and Justices Brion, Peralta, Bersamin, Perez and Mendoza yielded the recommendation to refer the matter to the *En Banc* and to vacate the 07 September 2011 Resolution in the meantime. Chief Justice

[55] Raffle Report dated 26 January 2011.

Corona, who presided over the meeting, was also furnished a copy of the Vidal-Anama Memorandum.

On 04 October 2011, the following happened in the *En Banc* session:

1. In the Agenda distributed, the Clerk of Court endorsed item no. 147 for inclusion therein, referring the letters of Atty. Mendoza with respect to the main FASAP case to the Court En Banc. Instead of being given its regular judicial docket number, G.R. No. 178083, it was given a separate administrative matter number, A.M. No. 11-10-1-SC.

2. This separate administrative matter in the *En Banc*'s agenda, apparently raffled to Justice Mariano del Castillo on 03 October 2011,[56] merited his recommendation to "refer to *ponente*," meaning, to Justice Brion, to whom the main FASAP case in G.R. No. 178083 was assigned.

3. Without waiting for Justice Brion to respond to the recommendation of referral, the Chief Justice, who was presiding, informed the Court that the 07 September 2011 Resolution of the Second Division must be recalled, because it had a lot of serious problems. Justice Brion, the *ponente* of the said Resolution, kept quiet.

4. Despite the fact that the matter was characterized by the Chief Justice as a very sensitive matter and that the Resolution had a lot of serious problems, copies of the four letters of Atty. Mendoza were not furnished the rest of the Court.

5. Neither did the Chief Justice inform the rest of the Court that the Clerk of Court, through her Deputy Felipa B. Anama, had issued her narration of facts *via* the Vidal-Anama Memorandum, which detailed the raffle process undertaken with respect to the main FASAP case, and which tended to prove the regularity of the assignment of the case from Justice Velasco to Justice Brion, with its citation of the legal bases for the actions of the various Raffle Committees.

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[56] *En Banc* Raffle Committee Report dated 03 October 2011.

6. The rest of the Court assented, through their silence, to the recall of the 07 September 2011 Resolution of the Second Division.

7. There was **no formal referral** of the case by way of written resolution from the Second Division to the *En Banc*, but only an assumption and cognizance of the Mendoza letters by the *En Banc*.

The Court *En Banc* thus issued the above-quoted **04 October 2011 Resolution** in the separate administrative matter docketed as A.M. No. 11-10-1-SC (Re: Letters of Atty. Estelito P. Mendoza re: G.R. No. 178083 – *Flight Attendants and Stewards Association of the Philippines v. Philippine Airlines, Inc., Patria Chiong, et al.*) accepting and taking cognizance of the above-cited case; recalling the 07 September 2011 Resolution of the Second Division on the main FASAP case; and ordering the re-raffle of the same case to a new Member-in-Charge. At this point, four Members inhibited themselves from the main FASAP case:[57] Justices Carpio, Velasco, Leonardo-de Castro, and Del Castillo.[58] As earlier stated, the main FASAP case was re-raffled to Justice Sereno, as new Member-in-Charge.[59]

Under the Internal Rules of the Supreme Court, as amended, the Court *En Banc* cannot just take cognizance of a case assigned to a Division. The initiative of transferring the case from a Division to the *En Banc* must always come from the Division itself. Rules 2 and 15 of the Internal Rules of the Supreme Court provide:

Division cases. – All cases and matters under the jurisdiction of the Court not otherwise provided for by law, by the Rules

[57] "In its resolution dated October 4, 2011, the Court *En Banc* resolved to have the case re-raffled to a new Member-in-Charge. [NOTE: Justices Carpio (2), Velasco, Jr. (3), Leonardo-de Castro (4) and del Castillo (8) have inhibited from the case. Justice Brion (5) is taking no part in the re-raffle.]" (*En Banc* Raffle Committee Report dated 10 October 2011)

[58] The record does not reveal the reason for Justice del Castillo's inhibition.

[59] *En Banc* Raffle Committee Report dated 10 October 2011.

of Court or by these Internal Rules to be cognizable by the Court *en banc* shall be cognizable by the Divisions. (Rule 2, Section 4, Internal Rules of the Supreme Court)

Actions on Cases Referred to the Court En Banc. — The referral of a Division case to the Court *en banc* shall be subject to the following rules:

(a) the resolution of a Division denying a motion for referral to the Court *en banc* shall be final and shall not be appealable to the Court *en banc*;

(b) the Court *en banc* may, in the absence of sufficiently important reasons, decline to take cognizance of a case referred to it and return the case to the Division; and

(c) No motion for reconsideration of a resolution of the Court *en banc* declining cognizance of a referral by a Division shall be entertained. (Rule 2, Section 11, Internal Rules of the Supreme Court)

Second Motion for Reconsideration. – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. … **In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *en banc*.** (Rule 15, Section 3, Internal Rules of the Supreme Court)

While it is true that none of the Second Division Members – whether regular or their substitutes – objected to the discussion, several important observations must be made here:

1. When the matter of the Mendoza letters was calendared for agenda in the *En Banc*, not all Members of the Court – including certain regular members of the Second Division, such as Justices Carpio, Sereno and Reyes – were sufficiently alerted to the significance of their contents.

2. Except for Chief Justice Corona and those who took part in the 07 September 2011 Resolution, neither the Members

of the Second Division, nor any of the remaining Members of the Court were furnished a copy of the Vidal-Anama Memorandum before or during the *En Banc* Session, which would have clearly shown the regularity of the assignment of the case to Justice Brion as a regular Second Division matter.

3. The impression given to the majority of the Court was that something deeply irregular had transpired, something akin to not vesting Justice Brion with authority to act on the main FASAP case – such that, to protect the Court, the 07 September 2011 Resolution must be recalled and the case taken cognizance of as an *En Banc* matter.

Given that the factual bases for the impressions of the majority of the Court do not exist, and that the resulting conclusion that allowed them to accede to the 04 October 2011 Resolution on the instant administrative matter can no longer be sustained, I submit that no such irregularity in the application of the rules occurred. Therefore, the main FASAP case in G.R. No. 178083 should be returned to the Second Division as a regular case, and the recalled 07 September 2011 Resolution be reinstated and duly executed under the existing laws and rules.

While it is true that the Supreme Court has the power to suspend its rules "(i)n the interest of sound and efficient administration of justice," under Rule 1, Section 4 of its Internal Rules, the interest of justice in this case requires that the rules be appropriately followed. The 04 October 2011 Resolution to transfer the case from the Second Division to the *En Banc* was apparently pursuant to the desire to observe the rules, not suspend them. The transfer of the case to the Second Division having been proven to be regularly made, there was no need for the suspension of any rule.

The following are therefore very clear:

First, the assignment of the case to Justice Brion as *ponente* and its transfer to the regular Second Division to which he belongs complies with all the applicable rules.

Second, there was no proper referral of the main FASAP case from the Second Division to the Court En Banc; hence,

the latter did not act properly in taking cognizance of the case under the 04 October 2011 Resolution.

No Division of the Court is a body inferior to the Court *En Banc*; and each Division sits veritably as the Court *En Banc* itself.[60] The Court *En Banc* is not an appellate Court to which decisions or resolutions of a Division may be appealed.[61] Before a judgment or resolution on a case becomes final and executory, the Court *En Banc* may accept a referral by the Division for **sufficiently important reasons**.[62] Otherwise, the case would be returned to the Division for decision or resolution.[63] The proposal to refer the case to the Court *En Banc* must first be agreed upon and made by the Division and formal notice thereof should then be sent to the Clerk of Court. The Clerk of Court would then calendar the referral in the Agenda for consideration of the Court *En Banc*. In this case, no such formal notice of a referral was made by the regular Second Division or sent to the Clerk of Court *En Banc* to elevate the main FASAP case for the consideration of the Court *En Banc*.

In fact, the Internal Rules of the Supreme Court are explicit on referring cases to the Court *En Banc* in instances in which the matter to be considered is a case that has already been decided

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[60] *Olympic Mines and Development Corp. v. Platinum Group Metals Corp.*, G.R. Nos. 178188, 180674, 181141 & 183527, 15 August 2009, 596 SCRA 314, citing *Apo Fruits Corporation v. CA*, 553 SCRA 237 (2008), J.G. Summit Holdings, Inc. v. CA, 450 SCRA 169 (2005), and *Firestone Ceramics v. CA*, 334 SCRA 465 (2000).

[61] Supreme Court Circular No. 2-89 dated 07 February 1989.

[62] 4. At any time after a Division takes cognizance of a case and before a judgment or resolution therein rendered becomes final and executory, the Division may refer the case *en consulta* to the Court *en banc* which, after consideration of the reasons of the Division for such referral may return to the case to the Division or accept the case for decision or resolution." (Supreme Court Circular No. 2-89 dated 07 February 1989)

[63] "6. When a decision or resolution is referred by a Division to the Court *en banc*, the latter may, **in the absence of sufficiently important reasons, decline to take cognizance of the same, in which case, the decision or resolution shall be returned to the referring Division**." (Supreme Court Circular No. 2-89 dated 07 February 1989)

by the Division and is already the subject of a second motion for reconsideration, similar to the circumstance in the case of PAL. In a Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.[64]

Applying this rule to PAL's 2nd MR in the main FASAP case, no decision or vote by at least three Members of the regular Second Division was ever made to refer the case to the Court *En Banc*. Those who informally met with the Chief Justice and decided to raise the main FASAP case to the Court *En Banc* without any formal written notice thereof committed a serious lapse. The determination of sufficiently important reasons to refer the case, which was already the subject of a 2nd motion for reconsideration, was within the purview of the regular Members of the Second Division, and not by those who merely substituted for them in the 07 September 2011 Resolution. Regardless of the validity of that Resolution, the referral to the Court *En Banc* was a separate and distinct matter that should have been decided by the regular Members of the Second Division. Hence, Justices Sereno and Reyes, as regular members of the Second Division who – during their absence in the 07 September 2011 Session of the Second Division were substituted by Justices Bersamin and Mendoza, respectively – should have been included in the discussion on the referral of the matter to the Court *En Banc*.

For the Court to take cognizance of the Mendoza letters as a separate administrative matter independent from the judicial case in G.R. No. 178083 in order to justify the recall of the Second Division's 07 September 2011 Resolution is unacceptable because it is plainly a circumvention of the above-discussed rules on the proper referral of a case from a Division to the *En Banc*. Rather than formally filing a motion for the referral of their case to the *En Banc*, any party-litigant may now, under the majority's ruling, subscribe to Atty. Mendoza's course of action and simply write a separate letter to the Clerk of Court

[64] Internal Rules of the Supreme Court, Rule 15, Sec. 3, par. 2.

or any of the justices, which can now be treated as an independent administrative matter so that the Court *En Banc* may unilaterally appropriate or take away a case from the Division. This new rule being egregiously created in this case by the majority will open the floodgates for all disgruntled litigants or their counsel to appeal unfavorable final judgments of the Court's three Divisions to the *En Banc*.

Absent a formal referral by the regular Members of the Second Division and an articulation of sufficiently important reasons, the Court *En Banc* cannot properly take cognizance of the main FASAP case; nor can it oust, on its own, the authority of the Second Division over that case.

Thus, I maintain that the Court *En Banc* should recall its 04 October 2011 Resolution and return this case to the Second Division for reinstatement and finality of the 07 September 2011 Resolution.

It must be further noted that the decisions of the two raffle committees headed by Chief Justice Corona and by retired Justice Carpio-Morales, which led to the assignment of this case from Justice Ynares-Santiago to Justice Velasco and eventually to Justice Brion, were concurred in by retired Justices Chico-Nazario and Nachura and by incumbent Justices Velasco and Brion.

Significantly also, all three main dispositions of this case in favor of FASAP – the 22 July 2008 Decision, the 02 October 2009 Resolution denying PAL's 1st MR, and the 07 September 2011 Resolution denying PAL's 2nd MR – were uniformly unanimous, and concurred in by a total of ten (10) justices, retired and incumbent:

22 July 2008 Decision	02 October 2009 Resolution	07 September 2011 Resolution
1.Ynares-Santiago (*ponente*) 2. Austria-Martinez 3. Chico-Nazario 4. Nachura 5. Leonardo-de Castro	1. Ynares-Santiago (*ponente*) 2. Chico-Nazario 3. Nachura 4. Peralta 5. Bersamin	1. Brion (*ponente*) 2. Peralta 3. Bersamin 4. Perez 5. Mendoza

III

Pleadings Submitted After Atty. Mendoza's Letters to the Clerk of Court

After the four Mendoza letters were received by the Court, the parties to the main FASAP case filed three significant pleadings: (a) PAL's Motion to Vacate dated 03 October 2011; (b) FASAP's Motion for Reconsideration dated 17 October 2011; and (c) PAL's Comment on the said Motion for Reconsideration.

A. PAL's Motion to Vacate dated 03 October 2011

It appears that a day before the issuance of the Court *En Banc*'s 04 October 2011 Resolution recalling the Second Division's 07 September 2011 Resolution, or at 11:31 a.m. of 03 October 2011, the Court received a copy of PAL's Motion to Vacate (Resolution dated September 7, 2011) [the Motion to Vacate]. However, the Motion to Vacate was received only on 04 October 2011 at 3:00 p.m., by the Court's Judicial Records Office, Judgment Division.

In the Motion to Vacate, PAL argued that the 07 September 2011 Resolution of the Second Division denying its 2nd MR should be vacated on the following grounds:

A.1. The 07 September 2011 Resolution was issued in violation of Sections 4 and 13, Article VIII of the Constitution.

A.2. It was issued in violation of the Internal Rules of the Supreme Court.

A.1. *PAL's First Ground in the Motion to Vacate*

Quoting portions of the Records of the Constitutional Commission dated 14 July 1986, PAL argued that the intention of the Constitution is for cases or matters heard by the division to be decided/resolved with the concurrence of "a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon …" and that the conclusion shall be reached "in consultation before the case is assigned to

a Member for the writing of the opinion of the Court," with the phrase "in consultation" having a settled meaning as "after due deliberation."

PAL concluded that the constitutional requirement may not have been met because those who participated in the issuance of the 07 September 2011 Resolution – Justices Brion, Mendoza, and Perez – had never taken part in the resolution of any matter in connection with the instant case, while Justice Bersamin was designated on 06 September 2011, or only one day before the 07 September 2011 Resolution was voted upon.

Effectively, although PAL was not articulating this thought explicitly, it was arguing that, under the Constitution, only Justices Peralta and Bersamin could have taken part in any deliberation on its 2nd MR. It was also effectively claiming that a one-day notice to Justice Bersamin of his designation as a replacement Member of the Second Division was not enough notice for him to take part in the deliberation on the 2nd MR, even though he had earlier voted to deny the 1st MR in the 02 October 2009 Resolution.

A.2. *PAL's Second Ground in the Motion to Vacate.*

PAL insisted that its motion should have been resolved by a Special Third Division, based on A. M. No. 99-8-09-SC dated 17 November 2009 (Amended Rules on who shall resolve motions for reconsideration of decisions or signed resolutions in cases assigned to the division of the court). It argued that although another Court issuance, A.M. No. 99-8-09-SC, as amended (Rules on who shall Resolve Motions for Reconsideration in Cases Assigned to the Divisions of the Court, 15 February 2000), provides that a special division need not be constituted to resolve motions for reconsideration of decisions or resolutions that have already been denied with finality, this latter rule would not apply to its case. PAL contended that when its 2nd MR was allowed by the Third Division in the 20 January 2010 Resolution, the Court's 02 October 2009 Resolution denying the 1st MR "with finality" was thereby suspended.

Although PAL was not explicitly saying so, it was in effect arguing that when it filed a 2nd MR on 03 November 2009 after the denial of its 1st MR by the 02 October 2009 Resolution, the rules required that (1) a Special Third Division consisting of Justices Chico-Nazario, Nachura, Peralta and Bersamin, with an additional fifth Member, should have been constituted to take cognizance of the case; and (2) the *ponencia* should have been raffled only to these first four Members who had actually taken part in the deliberation on the 1st MR. Thus, its Motion for Reconsideration should not have been raffled off to Justice Velasco.

PAL was anchoring its argument on the eventual admission of its 2nd MR, an action initiated by Justice Velasco after the case was raffled to him on 11 November 2009. It was saying that, by admitting the 2nd MR, the Court did not consider the said motion for reconsideration is to have been denied with finality, hence, the assignment of the case to Justice Velasco was erroneous, because he was not among the remaining four Justices who had concurred in the Decision or Resolution of the main FASAP case. But how could PAL argue that the assignment of the case to Justice Velasco was wrong and at the same time claim benefit from his action as Member-in-Charge?

At the time when the Raffle Committee met on 11 November 2009 for the purpose, among others, of making a decision on how to dispose of PAL's 2nd MR, the legal status of the main FASAP case was unambiguous – its 1st MR had been "denied with finality." There was no room to read into the case any other legal status. The Raffle Committee could have taken cognizance of only that status; it was bereft of any authority to dwell on any other future possibility, including the admission of PAL's 2nd MR admitted a year later when Justice Velasco was designated as Member-in-Charge.

A.3. *PAL's Prayer in Its Motion to Vacate*

PAL additionally contended that parties should be made aware of who among the Members of this Court were deliberating on its case, so that they may be allowed to move for their inhibition.

We note at this point that this argument was being raised, bereft of any basis to claim a right of prior information on who would ultimately constitute the membership in a Division.[65]

PAL prays that the Court: (1) direct the Clerk of Court to respond to all its inquiries as contained in its letters; (2) vacate the 07 September 2011 Resolution and thereafter refer its 2nd MR to a Special Third Division constituted in accordance with A.M. No. 99-8-09-SC dated 17 November 2009 and Section 7, Rule 2 of the Internal Rules of the Supreme Court; and, (3) considering the issues involved, refer its Motion to Vacate to the Court *En Banc* for resolution.

B. FASAP's Motion for Reconsideration dated 17 October 2011

In its Motion for Reconsideration dated 17 October 2011, FASAP argued that the 04 October 2011 Resolution of the Court *En Banc* – taking cognizance of the main FASAP case, recalling the Second Division's 07 September 2011 Resolution denying PAL's 2nd MR, and re-raffling the case to a new Member-in-Charge – was wrong, since the 07 September 2011 Resolution of the Second Division was already final, executory and immutable. FASAP also claimed that the recall by the Court *En Banc* was violative of due process because the latter did not provide the reason therefor, and the recall arose from an *ex parte* consideration of mere letters from PAL's counsel, Atty. Mendoza. Finally, the recall was already not a valid exercise of the functions of the Court *En Banc*, whether administrative or judicial.

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[65] "*Confidentiality of identity of Member-in-Charge or ponente and of Court actions* — Personnel assigned to the *Rollo* Room and all other Court personnel handling documents relating to the raffling of cases are bound by strict confidentiality on the identity of the Member-in-Charge or *ponente* and on the actions taken on the case. . . ." (Internal Rules of the Supreme Court, Rule 9, Sec. 4)

C. PAL's Comment on FASAP's Motion for Reconsideration dated 17 October 2011

In its Comment on FASAP's Motion for Reconsideration, PAL argued that the recall made by the Court *En Banc* was proper and in keeping with due process, because the 07 September 2011 Resolution of the Second Division violated the Constitution and the Internal Rules of the Supreme Court.

PAL also contended that the Court had the power to recall its own orders and resolutions and to take cognizance, *motu proprio*, of cases being heard by any of its Divisions, as it had done in the past. It cited several instances in which the Court *En Banc* had re-submitted and re-deliberated on cases and pointed to Rule 135, Section 5 of the Rules of Court on the inherent powers of the court, including "(g) [t]o amend and control its process and orders so as to make them more conformable to law and justice."

Finally, PAL claimed that the four Mendoza letters were not *ex parte* third motions for reconsiderations, because neither the merits of the main FASAP case in G.R. No. 178083 nor any prayer for reconsideration of the 07 September 2011 Resolution was discussed therein.

PAL prayed that: (1) FASAP's Motion for Reconsideration dated 17 October 2011 be denied; and (2) that the Court *En Banc* proceed with the disposition of the main FASAP case in G.R. No. 178083.

IV

Main Disposition of the Case

A. The Sufficiency of the Factual Findings in the Case

Considering that the assignment of the main FASAP case in G.R. No. 178083 was perfectly regular, the 04 October 2011 Resolution of the Court *En Banc* recalling the 07 September 2011 Resolution of the Second Division has been found to be

without of any legal basis. Hence, this should have been sufficient for the Court to vacate the 04 October 2011 Resolution and to return the main FASAP case to the Second Division for proper action.

I vote to simply **NOTE** the four Mendoza letters that have become the subject of the instant administrative matter (A.M. No. 11-10-1-SC). Atty. Mendoza, counsel for PAL, should be guided by the findings in this Opinion in order to find some of the answers to the questions raised in his letters to the Clerk of Court. His various requests to the Clerk of Court for (a) copies of Special Orders regarding the reorganization of the various Divisions relative to the main FASAP case; (b) information on and copies of the official assignments of the *ponentes* as well as additional Members to the various Divisions to which the said case was assigned; and (c) information on dates and times when deliberations took place, should be denied. Although Atty. Mendoza, as counsel for PAL is entitled to the **results of the raffle of the main FASAP case** under the rules,[66] this is not a *carte blanche* authority to demand the smallest minutiae of the Court's processes in relation thereto, especially since this case has already been decided with finality. If as the majority in the Decision seek to imply that such detailed requests should be entertained in all cases by this Court, an unduly oppressive burden will be imposed that would prevent this Court from discharging its constitutional duty to resolve with reasonable dispatch the many other cases pending before it.

It is important to note that any of the five Members of the Second Division who voted for the 07 September 2011 Resolution – namely, Justices Brion, Peralta, Bersamin, Perez and Mendoza – could have easily dissented therefrom, in keeping with the

[66] "The Clerk of Court shall make the result of the raffle available to the parties and their counsels or to their duly authorized representatives, except the raffle of (a) bar matters; (b) administrative cases; and (c) criminal cases where the penalty imposed by the lower court is life imprisonment, and which shall be treated with strict confidentiality." (Internal Rules of the Supreme Court, Rule 7, Sec. 3)

practice observed in this Court, but none of them dissented.[67] Deliberations took place not only on the main FASAP case in G.R. No. 178083, but also on many other cases calendared for the day. Justices Brion, Peralta, Bersamin, Perez and Mendoza, as regular or additional Members of the Second Division, in fact signed several other Decisions and Resolutions of the Second Division of this Court promulgated on 07 September 2011, as listed below.[68] If any of them felt that they could not participate in the deliberations in the main FASAP case in the manner that the Constitution required them to, they could have easily done so by either requesting deferment of the discussion to give them

[67] All decisions and resolutions as well as separate, concurring, or dissenting opinions are submitted to the Office of the Chief Justice. (Internal Rules of the Supreme Court, Rule 13, Sec. 9) In the ordinary course of proceedings, these decisions or resolutions as well as all concurring or dissenting opinions are simultaneously sent by the Office of the Chief Justice to the Clerk of Court for promulgation. However, there were instances in recent history when the decision or resolution of the Court was immediately promulgated without awaiting the separate opinions. These separate opinions are submitted and released after the main decision or resolution has already been promulgated and made public. Some examples of this recent phenomenon in which Separate Opinions were belatedly promulgated include the following: (1) Resolution dated 08 February 2011 in In matter of the charges of plagiarism, etc. against Associate Justice Mariano C. del Castillo, A.M. No. 10-7-17-SC; (2) Decision dated 15 February 2011 in *Gutierrez v. House of Representatives*, G.R. No. 193459; and (3) Resolution dated 15 November 2011 in *Gloria Macapagal-Arroyo v. Hon. Leila de Lima*, G.R. Nos. 199034 and 199046.

[68] (1) *Edna Lopez Delicano, Eduardo Alberto Lopez, Mario Diez Cruz, Howard E. Meneses, and Corazon E. Meneses v. Pechaten Corporation*, G.R. No. 191251; (2) *Atilano O. Nollora, Jr. v. People of the Philippines*, G.R. No. 191425; (3) A*ntonio Francisco, Substituted By His Heirs: Nelia E.S. Francisco, Emilia F. Bertiz, Rebecca E.S. Francisco, Antonio E.S. Francisco, Jr., Socorro F. Fontanilla, and Jovito E.S. Francisco v. Chemical Bulk Carriers, Inc.*, G.R. No. 193577; (4) *Leave Division, Office of Administrative Services*, *Office of the Court Administrator v. Romeo L. De Lemos, Clerk of Court VI, Dominador C. Masangkay, Sheriff IV, Adelaida D. Tolentino, Cash Clerk II, Ma. Fatima M. Yumena, Demo II Ma. Fe E. Yumol, Court Aide II, and Ronald M. Taguinod, Process Server, All of the Office of the Clerk of Court, Regional Trial Court, Balanga City, Bataan*, A.M. No. P-11-2953; and (5) *National Housing Authority v. First United Constructors Corp.*, G.R. No. 176535.

time to reflect on the draft resolution, or by writing their own Dissent from the unsigned 07 September 2011 Resolution. None of them did and, thus, the said Resolution remains on record as a unanimous Decision of the Second Division.

In assailing the composition of the Second Division during its 07 September 2011 Session, which acted on the main FASAP case, Atty. Mendoza was effectively placing serious doubts on the effectivity of all actions of the Second Division on the 147 other items on that day's Agenda, including the signed Decisions and Resolution above-cited. Giving in to his assertions would wreak havoc on the Court's procedures and allow litigants to incessantly question the validity of orders based on mere suspicions about the propriety of the composition of a Division of the Court.

The 07 September 2011 Resolution was far from transgressing the constitutional requirements for the valid adoption of a decision. Indeed, while the Constitution requires a Division action to have the concurrence of at least three Justices thereof, the Decision to uphold FASAP's position has been consistently and unanimously concurred in by all the justices who acted on the case. The 22 July 2008 Decision of the Third Division in favor of FASAP, penned by Justice Ynares-Santiago, was unanimously concurred in by Justices Austria-Martinez, Chico-Nazario, Nachura, and Leonardo-de Castro. PAL's 1st MR of the Decision was denied with finality in the signed 02 October 2009 Resolution by the Special Third Division, penned once again by Justice Ynares-Santiago and unanimously concurred in by Justices Chico-Nazario, Nachura, Peralta, and Bersamin. Thereafter, the 07 September 2011 Resolution of the Second Division denying PAL's 2nd MR, penned by Justice Brion, was concurred in by Justices Peralta, Perez, Bersamin, and Mendoza. In sum, the position expressed in the 07 September 2011 Resolution of the Court has been shared by ten (10) Justices of this Court throughout the years.

B. The Validity of the Raffle of the main FASAP Case

In the Decision, the majority, led by Justice Brion as *ponente*, explained the consequences of the 20 January 2010 Resolution, which accepted the review prayed for by PAL in its 2nd MR. To my respected colleagues, the said Resolution, which opened the main FASAP case entirely anew for review on the merits, should have been raffled off to the remaining Members of the Division, who participated in the deliberations and previous rulings, specifically Justices Peralta or Bersamin. However, I must register my dissent to this position since it glosses over factual circumstances attendant in this case and makes hairline distinctions in the rules to come up with a strained conclusion to justify the recall of the 07 September 2011 Resolution, penned by no less than Justice Brion, himself. The raffle of the case to Justice Velasco, then to Justice Brion and his subsequent ruling in 07 September 2011 Resolution are reasonable and consistent with our rules.

First, the Court was tasked to resolve the 2nd MR filed by PAL, which was undoubtedly a **prohibited pleading** and was already in contravention of the Court's express ruling against entertaining any further pleadings in the main FASAP case.[69] Hence, when the 2nd MR was filed on 03 November 2009, the status of the case was one where a 1st MR had already been filed and subsequently **denied with finality**. Since Justice Ynares Santiago had already retired and the then prevailing rules on resolving motions for reconsideration had no application for motions for reconsiderations of decisions or resolutions which

[69] "WHEREFORE, for lack of merit, the Motion for Reconsideration is hereby DENIED with FINALITY. The assailed Decision dated July 22, 2008 is AFFIRMED with MODIFICATION in that the award of attorney's fees and expenses of litigation is reduced to ₱2,000,000.00. The case is hereby REMANDED to the Labor Arbiter solely for the purpose of computing the exact amount of the award pursuant to the guidelines herein stated.

No further pleadings will be entertained." (SC Resolution dated 02 October 2009; *rollo* [G.R. No. 178083], Vol. 2, pp. 2044-2074; See *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc*., 602 SCRA 473 [2009])

were already denied with finality,[70] the Raffle Committee correctly treated the 2nd MR as an ordinary matter to be raffled to the now regular members of the Third Division, which was the Division that issued the 22 July 2008 Decision and 02 October 2009 Resolution. The Raffle Committee found no need to forward the matter to Justice Martin S. Villarama, Jr., who succeeded Justice Ynares Santiago and inherited her caseload,[71] since the main FASAP case was already denied with finality.[72]

There can be no arguing with the majority, when it found no fault in the position taken by the Clerk of Court, as explained in the Vidal-Anama Memorandum.[73] It would indeed be unreasonable for the Court to require the Clerk to divine or speculate on a future and favorable resolution of PAL's 2nd MR and consequently, proceed to raffle the case to the original Members of the Division who participated and concurred in the Decision or denial of the 1st MR. Hence, as the majority found, there was nothing erroneous with respect to the raffle of the case after the 2nd MR was filed and that the assignment to Justice Velasco was still proper.

I must however make a marked divergence with the majority with respect to the actions of the Clerk of Court and the Raffle

[70] "These rules shall not apply to motion for reconsideration of decisions or resolutions already denied with finality." (A.M. No. 99-8-09-SC dated 15 February 2000)

[71] The practice in the Supreme Court is that the newly appointed Member of the Court shall inherit the caseload of the Member being replaced, which is now codified. (Internal Rules of the Supreme Court, Rule 2, Sec. 10 [b])

[72] "Should this case be inherited by Justice Villarama, Jr., who succeeded Justice Ynares-Santiago? NOTE: The case will be transferred to the First Division. No. [Handwritten Note]" (Division Raffle Report dated 11 November 2009, attached to the Vidal-Anama Memorandum)

[73] "Given this background the Clerk of Court cannot and should not be faulted for her recommended position, as indeed there was a ruling in the 1st MR that declared the original ruling on the case final. . . . she could not have considered, too, that a subsequent 2nd MR would be accepted for the Court's further consideration of the case on the merits." (Dissenting Opinion, Justice Brion, p. 18)

Committee after the issuance of the 20 January 2010 Resolution, penned by Justice Velasco, to grant the motion for leave to file the 2nd MR and thus, give new life to the main FASAP case. As the majority explained, throwing the case wide open for another review warrants its removal from Justice Velasco's caseload and the conduct of another raffle to either Justices Peralta or Bersamin, who are the remaining members of the Court that decided the 02 October 2009 Resolution denying PAL's 1st MR. However, the majority's proposition is not only riddled with operational inefficiency, but likewise opens all final decisions of any Division to second-guessing by Members of the two other Divisions.

It is incongruent, if not burdensome, for a Member of this Court, acting in a Division, to revive a case that has been denied with finality on a 2nd MR and then, to throw that same motion back to the other Justices for them to review anew the substantial merits of the case, which they have already decided. As the new Member-in-Charge of the 2nd MR of the main FASAP case, Justice Velasco together with the Members of the then reorganized Third Division found some cause for review of the main FASAP case, when it issued the 20 January 2010 Resolution. Presumably, they reviewed the two unanimously supported *ponencias* of Justice Ynares-Santiago and found issues in the case worth looking anew. Having resolved to re-open the case for a third review, the burden should have been on Justice Velasco, as Member-in-Charge, and the other Members of the reorganized Third Division to hear the parties on the 2nd MR and resolve the matter on a final decision.

For the Court to recognize the action of the Third Division to re-open a final decision and suddenly throw back the responsibility of deciding the 2nd MR to the original Members who decided the main FASAP case is to second-guess decisions of the various Divisions of this Court and to allow a peculiar circumvention of our rule on immutability of judgments. The unacceptable contradiction lies in the fact that based on the *ponencia* of Justice Brion, a Member of this Court who does not "intimately know the facts and merits of the case," can be

given authority to re-open a final decision on 2nd MR and yet be precluded from holding on to the case to decide its substantial merits. Worse, those Members, who had in fact participated in the deliberations of the Decision and Resolution of the 1st MR, will now be compelled to review their own findings based on the recommendation of Member, who instigated the reopening, but will not participate in the same review.

The original Members of Third Division, which issued the 22 July 2008 Decision and 02 October 2009 Resolution, including Justices Peralta and Bersamin, and the five other Justices,[74] have already made known their unanimous stand on the main FASAP case by their votes thereon. PAL cannot be allowed, by merely the retirement of Justice Ynares Santiago, to question the unfavorable rulings of a Court's Division on a 2nd MR. The principle of immutability of final judgment is better protected and upheld by disallowing review of a final decision by a Division on a prohibited second motion for reconsideration based solely on the retirement of the *ponente* or a change in the composition of the Division.

Furthermore, the introduction by the majority of the concept of a **nominal *ponente***, to decide whether to open a third review of a decided case on a 2nd MR, **finds no support in any existing rule or jurisprudence**. Justice Velasco, to whom the case was properly raffled, and the members of the reorganized Third Division, at the time the 2nd MR was filed, had full authority to decide the motion in two respects: (1) whether to accept the 2nd MR despite the finality of the decision; and (2) if accepted, subsequently rule on the substantial merits of the main FASAP case based on the arguments in the 2nd MR. Justice Velasco was in no sense a **nominal *ponente***, who will make a first determination of the propriety of accepting the 2nd MR and thereafter forward the second determination of the merits of the case to the "**ruling *ponente***" – the existing Members who

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[74] Namely, Justices (1) Ynares-Santiago, (2) Austria-Martinez, (3) Chico-Nazario, (4) Nachura, (5) Leonardo-de Castro. Justices Ynares-Santiago, Chico-Nazario and Nachura all voted in favor of both the 22 July 2008 Decision and the 02 October 2009 Resolution in the main FASAP case.

were part of the Division which originally deliberated and decided the main FASAP case. Contrary to the majority's conclusions, Justice Velasco is the proper *ponente* to whom the case was raffled to, with the dual responsibilities (1) to decide on accepting the 2nd MR and (2) if accepted, to resolve the substantial merits thereof.

Second, the subsequent inhibition of Justice Velasco was not cause to resort to the rule on resolving motions for reconsideration. What was called for was the regular application of the ordinary rules on inhibition and substitution of Members of the Court.

Under the Internal Rules of the Supreme Court, the general rule on resolving motions for reconsideration, as relied on by the majority itself, is expressed in its entirety as follows:

Resolutions of Motions for Reconsideration or Clarification of Decisions or Signed Resolutions and All Other Motions and Incidents Subsequently Filed; Creation of a Special Division. — Motions for reconsideration or clarification of a decision or of a signed resolution and all other motions and incidents subsequently filed in the case shall be acted upon by the *ponente* and the other Members of the Division who participated in the rendition of the decision or signed resolution.

If the *ponente* has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a new ponente who shall be chosen among the new Members of the Division who participated in the rendition of the decision or signed resolution and who concurred therein. If only one Member of the Court who participated and concurred in the rendition of the decision or signed resolution remains, he or she shall be designated as the new ponente.

If a Member (not the ponente) of the Division which rendered the decision or signed resolution has retired, is no longer a Member of the Court, is disqualified, or has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a replacement Member who shall be chosen from the other Divisions until a new Justice is appointed as replacement for the retired Justice. Upon the appointment

of a new Justice, he or she shall replace the designated Justice as replacement Member of the Special Division.

Any vacancy or vacancies in the Special Division shall be filled by raffle from among the other Members of the Court to constitute a Special Division of five (5) Members.

If the *ponente* and all the Members of the Division that rendered the Decision or signed Resolution are no longer Members of the Court, the case shall be raffled to any Member of the Court and the motion shall be acted upon by him or her with the participation of the other Members of the Division to which he or she belongs.

If there are pleadings, motions or incidents subsequent to the denial of the motion for reconsideration or clarification, the case shall be acted upon by the ponente on record with the participation of the other Members of the Division to which he or she belongs at the time said pleading, motion or incident is to be taken up by the Court.[75] (Emphasis supplied.)

Briefly stated, the general rule is that the *ponente* of the case and the other Members of the Division who participated in the rendition of the decision or signed resolution shall act upon motions for reconsideration or clarification. If the *ponente* had already retired, is no longer a member, is disqualified or has inhibited himself or herself, he or she will be replaced by the Members of the Division who participated in the rendition of the decision or signed resolution and who concurred therein. This rule is specific only to a **first motion for reconsideration**, which is permitted under the Rules of Court.

However, a different rule obtains for pleadings, motions or incidents **subsequent to the denial of the motion for reconsideration or clarification**, including in this case, a 2nd MR, which is already a prohibited pleading. The *ponente* on record shall still continue to act on these motions, pleadings or incidents after the denial of the motion for reconsideration, but with the participation of the Division to which he or she belongs at the time the said pleading, motion or incident is taken up by the Court, and **not** by the members of the original Division

[75] Internal Rules of the Supreme Court, Rule 2, Sec. 7.

who participated and concurred in the rendition of the decision or signed resolution. The principle therefore is that after the resolution of the 1st MR, all incidents subsequent thereto shall stay with the *ponente*, and if he or she retires, with the Division that decided the case and resolved the 1st MR.

Hence, the general rule relied by the majority cannot be applied in the instant case because what is being resolved is not a 1st MR (which was in fact already denied with finality) but a 2nd MR. Being a 2nd MR subsequent to the denial of the 1st motion for reconsideration, the case was correctly raffled to Justice Velasco, as a regular Member of the Third Division, at the time the 2nd MR was filed and taken up.

Neither can the inhibition of Justice Velasco result in the return of the resolution of the 2nd MR to those Members of the Court who participated and concurred in the rendition of the decision or signed resolution in the main FASAP case. After Justice Velasco resolved to accept the 2nd MR and then inhibited himself due "to close personal relationship," the Raffle Committee applied the regular rules on inhibition and substitutions of members of a Division.[76] Hence, there was nothing irregular or out of the ordinary when the case was subsequently raffled from Justice Velasco, who had by then moved to the First Division, to Justice Brion, as a member of the other two Divisions (namely the Third Division, and subsequently the Second Division, after the re-organization):

> The case is presently assigned to Justice Velasco, Jr. who inhibited from the case due to close relation to one of the parties.
>
> Following the pertinent provisions of Administrative Circular No. 84-2007, the case must be re-raffled among the Members of the Second and Third Divisions.[77]

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[76] "Whenever a Member-in-Charge of a case in a Division inhibits himself for a just and valid reason, the case shall be returned to the Raffle Committee for re-raffling among the Members of the other two (2) Divisions of the Court." (Internal Rules of the Supreme Court, Rule 8, Sec. 3 [a])

[77] Division Raffle Committee Report dated 26 January 2011, as attached the Vidal-Anama Memorandum.

The distinctions in applying the rules on resolving 1st motions for reconsideration and the rules on inhibition between a nominal *ponente* and a Member-in-Charge are illusory in this case. After Justice Velasco, as Member-in-Charge, recommended that PAL's 2nd MR be given due course, nothing changed the fact that the 2nd MR continues to be a **motion subsequent to the denial of the 1st MR**. Under our Internal Rules, all motions, pleadings or incidents subsequent to the denial of the first motion for reconsideration or clarification shall be acted upon by the *ponente* on record.[78] However, since Justice Ynares Santiago had already retired, these subsequent motions, pleadings or incidents in the main FASAP case will remain with the Third Division which resolved the 1st MR, but will now be raffled off as an ordinary case among that Division's present Members, in this instance to Justice Velasco. When Justice Velasco recused himself afterwards on 17 January 2011, the 2nd MR nevertheless continues to be treated as a **motion subsequent to the denial of a 1st MR**. Much like any ordinary case, the Court's regular rules arising from a valid inhibition of a Justice now govern, and the special rules for resolution of a 1st MR in case of the retirement of the *ponente* still do not apply.[79] Hence, following the regular rules for inhibition and substitution,[80] the 2nd MR was properly

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[78] "If there are pleadings, motions or incidents subsequent to the denial of the motion for reconsideration or clarification, the case shall be acted upon by the ponente on record with the participation of the other Members of the Division to which he or she belongs at the time said pleading, motion or incident is to be taken up by the Court." (Internal Rules of the Supreme Court, Rule 2, Sec. 7, last paragraph)

[79] "**If the *ponente*** has retired, is no longer a Member of the Court, is disqualified, or **has inhibited himself or herself from acting on the motion for reconsideration or clarification, he or she shall be replaced through raffle by a new *ponente* who shall be chosen among the new Members of the Division who participated in the rendition of the decision or signed resolution and who concurred therein**. If only one Member of the Court who participated and concurred in the rendition of the decision or signed resolution remains, he or she shall be designated as the new ***ponente***." (Internal Rules of the Supreme Court, Rule 2, Sec. 7, 2nd paragraph)

[80] "Whenever a Member-in-Charge of a case in a Division inhibits himself for a just and valid reason, **the case shall be returned to the Raffle**

re-raffled out of the hands of Justice Velasco to the Members of the two other Divisions, in this case to Justice Brion of the Third Division, and eventually to the Second Division, after the re-organization. This is not a simplistic view of the rules of this Court to the main FASAP case but a direct, proper and appropriate application thereof.

Finally, the supposed exigencies, which compelled the recall of the 07 September 2011 Resolution, penned by Justice Brion himself, are infinitesimally and overwhelmingly insufficient to retract a substantial ruling by the Second Division on PAL's 2nd MR.

That the 07 September 2011 Resolution would lapse into finality after the 15th day, or on 04 October 2011, was not a compelling reason to recall it. At that point, the main FASAP case had already been decided with finality by the 02 October 2009 Resolution which denied the 1st MR and PAL did not have any realistic expectation that its 2nd MR would be given any more judicial consideration. In fact, the recalled 07 September 2011 reiterated the substantial findings of Third Division, as penned by Justice Ynares Santiago, and ultimately denied the 2nd MR. In hindsight, the much underscored time constraint was not as shocking to the judicial sense as to warrant a *motu proprio* recall by the En Banc of the 07 September 2011 Resolution of the Second Division, because the case had already been decided with finality since 02 October 2009 and was on its third review.

In any case, the concerns raised by the majority regarding the proper raffling of the main FASAP case (albeit properly executed by the Raffle Committee) could have been raised by the party concerned and was in fact questioned in the third and fourth letters of Atty. Mendoza as well as in the Motion to Vacate filed by PAL. There was no need for the Court *En Banc* to act with haste prior to the lapse of the 15-day period to move for reconsideration because the case was already denied with finality twice over (by 02 October 2009 and 07 September 2011

Committee for re-raffling among the Members of the other two Divisions of the Court." (Internal Rules of the Supreme Court, Rule 8, Sec. 3 [a])

Resolutions). The recall of the 07 September 2011 Resolution by the Second Division was unduly precipitous and done without proper disclosure to all Members of the Court of the factual circumstances surrounding the issues.

The majority's emphasis on the fear that the Court would be accused of "flip-flopping" if the 07 September 2011 Resolution be recalled on the ground of **lack of jurisdiction** of the Second Division after the lapse of the period is baseless. This concern erroneously assumes that a ruling made by one of the Divisions can be questioned based on the ground that another Division of this Court has purportedly better jurisdiction over deciding the case. Each Division sits veritably as the Court *En Banc* itself.[81] The Divisions of the Court are not inferior bodies to the Court *En Banc*; neither are they independent tribunals, whose decisions can be appealed on a 2nd MR to the other two divisions.

It is axiomatic that "jurisdiction once acquired is not lost but continues until the case is finally terminated."[82] The jurisdiction of a court depends upon the state of facts existing at the time it is invoked, and if the jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events, although they are of such a character as would have prevented jurisdiction from attaching in the first instance, will not operate to oust jurisdiction already attached.[83] In *Mercado v. CA*,[84] the Court even went so far as to say that errors committed by the court in the exercise of its jurisdiction will not deprive it of the same:

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[81] *Olympic Mines and Development Corp. v. Platinum Group Metals Corp.*, G.R. Nos. 178188, 180674, 181141 & 183527, 15 August 2009, 596 SCRA 314, citing *Apo Fruits Corporation v. CA*, 553 SCRA 237 (2008), *J.G. Summit Holdings, Inc. v. CA*, 450 SCRA 169 (2005), and Firestone *Ceramics v. CA*, 334 SCRA 465 (2000).

[82] *Rizal Surety & Insurance Company v. Manila Railroad Company, et al.*, G.R. No. L-20875, 30 April 1966.

[83] *Dioquino v. Cruz, Jr.*, G.R. Nos. L-38579 & L-39951, 09 September 1982, 202 Phil. 35, citing *Tinitigan v. Tinitigan, Sr.*, 100 SCRA 619, 634 (1980).

[84] G.R. No. L-44001, 10 June 1988, 162 SCRA 75.

Now, jurisdiction, once acquired, is not lost by any error in the exercise thereof that might subsequently be committed by the court. Where there is jurisdiction over the person and the subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction. **And when a court exercises its jurisdiction, an error committed while engaged in that exercise does not deprive it of the jurisdiction being exercised when the error is committed**. If it did, every error committed by a court would deprive it of jurisdiction and every erroneous judgment would be a void judgment. This, of course, can not be allowed. The administration of justice would not survive such a rule. … (Emphasis supplied.)

Applying the foregoing principles to the factual circumstances of the instant case, this Court through its Second Division was not ousted of its jurisdiction when the case was assigned to Justice Brion and he, together with the other members of the Second Division, voted to deny PAL's 2nd MR in the recalled 07 September 2011 Resolution. Even assuming *arguendo* that some errors attended the assignment of the case from Justice Velasco to Justice Brion by the Raffle Committee (albeit, no such mistake occurred in this instance, as it was done in accordance with our existing rules), this Court through its Second Division cannot be considered by the majority as having lost jurisdiction by that purported lapse and thus, enable a fourth review by either Justices Peralta or Bersamin.

Neither can a claim of violation of substantive or procedural due process rights of PAL by this alleged mistake in the internal operations of the Court be sustained because it cannot be denied that PAL was afforded all the opportunity to ventilate its legal claims before the Court. In fact, when the Second Division, speaking through Justice Brion, voted to deny the 2nd MR, the main FASAP case had already been decided with finality in favor of FASAP and was on its third review by this Court. Thus, the parties, especially PAL, had been given more than adequate opportunities to argue the cause before this Court. In sum, the purported mistake in the raffle of the case pointed to by the majority is not so grave and deplorable to our sense of justice as to warrant the retraction of the substantive decision of the members of this Court's Second Division that voted without

any dissent to deny the 2nd MR and finally lay to rest this case. The aim here is not just to give definitive resolution to the controversy between the parties in this case but to ensure that final decisions of this Court are indeed final.

Indeed, the recall of the 07 September 2011 Resolution produced the very effect or perception that Justice Brion, speaking for the majority, wanted to avoid – flip-flopping on cases decided with finality on account of a prohibited 2nd MR and personal correspondences by a party's counsel. There can be no surer indication of flip-flopping than the subsequent and sudden denial of the petition in the main FASAP case on a 2nd MR, despite the grant of the petition in three rulings by at least ten justices (22 July 2008 Decision, 02 October 2009 Resolution and the recalled 07 September 2011 Resolution).

The view of the majority that the recall of the 07 September 2011 Resolution did not constitute a reversal of the substantial issues is a false view of the effects of such an action. This argument ignores the fact that the substantial merits of the case is yet again opened for review and the case reverts back to its status after the 20 January 2010 Resolution penned by Justice Velasco, which is the grant of the motion for leave to file the 2nd MR. Yet, even Justice Brion in the recalled 07 September 2011 Resolution asserted that "the issues raised by PAL in the 2nd MR have already been discussed and settled by the Court in the July 22, 2008 Decision."[85] It is so odd that this Court would open the main FASAP case for a fourth review by either Justices Peralta or Bersamin, when no new or earth-shattering argument has been offered that has not been taken up in the past that would warrant a reversal of the undisputed and repeatedly reiterated finding of this Court that PAL was guilty of illegal dismissal.

Finally, the unfounded allegations by PAL of the mishandling of the raffle of the case (albeit erroneous) which supported a review of the substantial merits of the main FASAP case clearly compelled discussion of the administrative matters and operations

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[85] Resolution dated 07 September 2011, p. 1.

of this Court. Contrary to the insinuation that this possibly violates the 14 February 2011 Resolution of this Court on its internal deliberations, these matters are decidedly outside the province of judicial privilege, since it treats of issues not with respect to internal deliberations of the merits of the case, but on the procedural and administrative proceedings in raffling and designating the Members of the Court to handle cases.

Rather than write *finis* to the controversy hounding PAL and its employees, the Court has opened the flood gates anew for a fourth review of the main FASAP case, which had already achieved finality but has been resurrected by the mere expedience of supposed confusion in the raffling of the case. If this Court is to adhere to its character as a court of last resort, it must stop giving never-ending refuge to parties who obstinately seek to resist execution of our final decisions on the sole ground of their counsel's creativity in re-labelling a prohibited second motion for reconsideration, or the changing composition of the three Divisions of this Court. Otherwise, the Court might as well lay to rest in the sepulcher the founding judicial principles of immutability of judgments and *res judicata*. I am duty-bound to register my dissent from the position taken by the majority in this case. Nothing has been established in the letters or pleadings to merit the Court's extraordinary or special treatment in reopening for a third time, a unanimously-agreed upon Decision and to assign as new *ponente*, either of the two Justices who had twice agreed with that Decision. Nothing can be more unconstitutionally deprivatory of the winning party's right to enforcement of a final judgment.

IN VIEW OF THE FOREGOING, I vote to (a) **RECALL** the Court's *En Banc* 04 October 2011 Resolution in A.M. No. 11-10-1-SC; and (b) **RETURN** the main case in G.R. No. 178083 to the regular Second Division for implementation of the reinstated 07 September 2011 Resolution. I also vote to **GRANT** the Motion for Reconsideration dated 17 October 2011 of the Flight Attendants and Stewards Association of the Philippines (FASAP) in A.M. No. 11-10-1-SC.

I also find that the claim of violation by the Court of the Constitution and the Internal Rules of the Supreme Court argued by Philippine Airlines, Inc., in its Motion to Vacate dated 03 October 2011 and in its Comment dated 03 November 2011 to be **WITHOUT ANY MERIT**. Hence, the said Motion to Vacate filed by Philippine Airlines, Inc., (PAL) in G.R. No. 178083 should be **DENIED**.

The letters of Atty. Estelito P. Mendoza, counsel for PAL, to the Clerk of Court dated 13, 16, 20 and 22, all of September 2011 should simply be **NOTED**. Hence, I submit that the Court should **DENY** the requests of Atty. Mendoza in the aforesaid letters for further information, as stated therein, from the Clerk of Court.

SECOND DIVISION

[G.R. No. 151898. March 14, 2012]

RICARDO RIZAL, POTENCIANA RIZAL, SATURNINA RIZAL, ELENA RIZAL, and BENJAMIN RIZAL, *petitioners, vs.* **LEONCIA NAREDO, ANASTACIO LIRIO, EDILBERTO CANTAVIEJA, GLORIA CANTAVIEJA, CELSO CANTAVIEJA, and the HEIRS of MELANIE CANTAVIEJA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; WHERE FAILURE TO INDICATE THE PAGE REFERENCES TO THE RECORDS OF THE CASE AND TO PAY CORRECT DOCKET FEES IS FATAL TO THE APPEAL.—** It is settled that technical rules of procedure are mere tools designed to facilitate the

attainment of justice. Their strict and rigid application should be relaxed when they hinder rather than promote substantial justice. Cases should as much as possible be resolved on the merits, and not on mere technicalities. The failure of the petitioners' appeal brief to contain page references to the records is a formal defect which may be considered as minor, if not negligible. However, while this Court may be lenient in some instances on formal defects of pleadings filed with the court, it could not close its eyes when a litigant continuously ignores technical rules, to the point of wanton disregard of the rationale behind those rules. In fact, this Court has consistently affirmed the importance of complying with the requirements in Section 13(a), Rule 44 of the Rules of Court in many of its decisions[.] x x x Moreover, the petitioners also failed to pay the correct docket fees; in which case, jurisdiction did not vest in the trial court. x x x [W]ith the exception of pauper litigants, without the payment of the correct docket or filing fees within the reglementary period, jurisdiction over the subject-matter or nature of the action will not vest in the trial court. In fact, a pauper litigant may still have to pay the docket fees later, by way of a lien on the monetary or property judgment that may accrue to him. Clearly, the flexibility or liberality of the rules sought by the petitioners cannot apply in the instant case.

2. ID.; JUDGMENTS; *RES JUDICATA*; WHERE AN ACTION FOR PARTITION IS DISMISSIBLE ON THE GROUND OF *RES JUDICATA*; AN APPROVED COMPROMISE AGREEMENT HAS THE FORCE OF *RES JUDICATA*.— Pursuant to Article 494 of the Civil Code, no co-owner is obliged to remain in the co-ownership, and his proper remedy is an action for partition under Rule 69 of the Rules of Court, which he may bring at anytime in so far as his share is concerned. Article 1079 of the Civil Code defines partition as the separation, division and assignment of a thing held in common among those to whom it may belong. It has been held that the fact that the agreement of partition lacks the technical description of the parties' respective portions or that the subject property was then still embraced by the same certificate of title could not legally prevent a partition, where the different portions allotted to each were determined and became separately identifiable. The partition of Lot No. 252 was the result of

the approved Compromise Agreement in Civil Case No. 36-C, which was immediately final and executory. Absent any showing that said Compromise Agreement was vitiated by fraud, mistake or duress, the court cannot set aside a judgment based on compromise. It is axiomatic that a compromise agreement once approved by the court settles the rights of the parties and has the force of *res judicata.* It cannot be disturbed except on the ground of vice of consent or forgery. Of equal significance is the fact that the compromise judgment in Civil Case No. 36-C settled as well the question of which specific portions of Lot No. 252 accrued to the parties separately as their proportionate shares therein. Through their subdivision survey plan, marked as Annex "A" of the Compromise Agreement and made an integral part thereof, the parties segregated and separately assigned to themselves distinct portions of Lot No. 252. The partition was immediately executory, having been accomplished and completed on December 1, 1971 when judgment was rendered approving the same. The CA was correct when it stated that no co-ownership exists when the different portions owned by different people are already concretely determined and separately identifiable, even if not yet technically described. It bears to note that the parties even acknowledged in Paragraph 7 of the Compromise Agreement that they had accepted their "respective determined shares in the subject parcel of land, and they agree to have their respective determined portions, Two-Fifths (2/5) for defendants and Three-Fifths (3/5) for plaintiffs, to be covered by independent and separate certificates of title in their respective names."

3. **CIVIL LAW; LACHES; WHERE THE PARTIES SLEPT ON THEIR RIGHTS UNDER THE PARTITION AGREEMENT, THEY CANNOT ENFORCE THEIR RIGHTS THEREIN THROUGH AN ENTIRELY NEW ACTION FOR PARTITION.—** Paragraph 8 of the Compromise Agreement provided that the petitioners shall "shoulder all the expenses incurred in the partition and to pay all expenses and fees which may be incurred in the issuance of the independent certificates of title in favor of the respective parties by the proper Registry of Deeds." Unfortunately, the records do not disclose that the petitioners neither filed and registered with the Register of Deeds a certified copy of the final judgment of partition in Civil Case No. 36-C, nor did they perform or cause to be

performed all further acts requisite for the cancellation of TCT No. 12206 and the issuance of the parties' separate titles over their assigned portions in Lot No. 252. The only entry in TCT No. 12206, prior to the recording on June 13, 1979 of the issuance to the petitioners of a second duplicate copy of TCT No. 12206, is the annotation in April 1952 of the execution sale of Lot No. 252 to the petitioners. x x x A final and executory judgment may be executed by the prevailing party as a matter of right by mere motion within five (5) years from the entry of judgment, failing which the judgment is reduced to a mere right of action which must be enforced by the institution of a complaint in a regular court within ten (10) years from finality of the judgment. In the instant case, there is no showing that after the judgment in Civil Case No. 36-C, the petitioners filed a motion to execute the same during the first five (5) years after its finality, or within the succeeding five (5) years, by a civil action to revive the judgment, before it would have been barred by the statute of limitations. An action for revival of judgment is governed by Articles 1144(3) and 1152 of the Civil Code, and Section 6, Rule 39 of the Rules of Court. xxx When the petitioners filed Civil Case No. 1153-87-C on September 21, 1987, it was not purportedly to revive the judgment in Civil Case No. 36-C. It was apparently an action for "Partition, Recovery of Shares with Damages," but nonetheless citing as basis of the Compromise Agreement in Civil Case No. 36-C. The petitioners wanted to accomplish through an entirely new action what was already adjudicated in Civil Case No. 36-C, rendered 17 years earlier, but which they inexplicably failed to enforce. The petitioners do not allege that they tried to execute the compromise judgment in Civil Case No. 36-C either by motion or by action to revive judgment within the prescriptive period. Absent any proof that the respondents resorted to dilatory schemes and maneuvers to prevent the execution of the Compromise Agreement, and contrary to the petitioners' gratuitous assertion in paragraph VIII of their complaint in Civil Case No. 1153-87-C, we fail to see how the mere filing by the respondents of Civil Case No. 299-83-C on August 11, 1981 could have in any way prevented or impeded the petitioners from executing the judgment in Civil Case No. 36-C. We thus sustain the respondents' affirmative defenses of *res judicata* and lack of cause of action, and uphold the appellate and trial courts'

rejection of the petitioners' ostensible attempt to revive the already stale judgment in Civil Case No. 36-C through an entirely new action for partition.

APPEARANCES OF COUNSEL

Beatriz O. Geronilla-Villegas for petitioners.

Rolando B. Villa Del Rey for respondents.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Decision[1] of the Court of Appeals (CA) dated July 13, 2001 in CA-G.R. CV No. 26109, affirming the decision of the Regional Trial Court (RTC), Branch 36, Calamba, Laguna which dismissed the Complaint,[2] docketed as Civil Case No. 1153-87-C[3] for "partition, recovery of shares with damages" of Lot No. 252 on *res judicata.*

Factual Antecedents

Herein petitioners Ricardo, Potenciana, Elena, Saturnina and Benjamin, all surnamed Rizal, commenced Civil Case No. 7836 against Matias Naredo (Matias), Valentin Naredo (Valentin) and Juana de Leon (Juana) before the then Court of First Instance (CFI) of Laguna involving the accretion of two (2) hectares of land to Lot No. 454 of the Calamba Estate. In a decision rendered on May 22, 1947, the CFI ruled in favor of the petitioners. The CFI awarded the ownership of the two-hectare accretion to the petitioners and ordered the defendants therein to vacate the said land and to pay ₱500.00 a year from 1943 as reasonable

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[1] Penned by Justice Conrado M. Vasquez, Jr., with Justices Martin S. Villarama (now a member of this Court) and Sergio L. Pestaño, concurring; *rollo*, pp. 53-66.

[2] *Id.* at 34-39.

[3] *Id.* at 48-50.

rent for their occupancy thereof. Both the CA and the Supreme Court upheld the decision.

To satisfy the money judgment in Civil Case No. 7836, the provincial sheriff of Laguna levied upon Lots Nos. 252 and 269 of the Calamba Estate, together with the house erected on Lot No. 252. This Lot No. 252, which is the subject of the controversy, was registered under Transfer Certificate of Title (TCT) No. RT-488 (RT-3377 No. 12206) in the name of the "Legal Heirs of Gervacia Cantillano," of Parian, Calamba, Laguna. Several third-party claims were filed, to wit: (a) by Leoncia Naredo (Leoncia) and Marcela Naredo (Marcela), who are also heirs of Gervacia Cantillano over Lot No. 252; (b) by Pedro Cantavieja, husband of Marcela over Lot No. 269; and (c) by Teodoro Armesto over the house of mixed materials standing on Lot No. 252. After the petitioners posted the required bond, the provincial sheriff proceeded with the auction sale on April 7, 1951. The petitioners were declared the highest bidders. A final deed of sale was issued to them on April 15, 1952.

On May 9, 1955, Marcela, Leoncia, Matias, Valentin, and Juana instituted Civil Case No. 9908 before the CFI Branch 1, Laguna, questioning the validity of the execution sale of Lots Nos. 252 and 269 and the house of mixed materials on Lot No. 252. They claimed that these properties were exempt from execution.

On December 8, 1955, the CFI declared valid the execution sale of Lots Nos. 252 and 269 of the Calamba Estate in favor of the petitioners, with a qualification that the petitioners only acquired whatever rights, title or interests Matias, Valentin and Juana had in Lot No. 252. The sale of the house of mixed materials in Lot No. 252 was set aside considering that a waiver was executed by the petitioners in favor of Juana. Although the CFI ordered that the petitioners be placed in possession of Lots Nos. 252 and 269 and Matias and Valentin be ejected therefrom, it did not evict Marcela and Leoncia from Lot No. 252 since they were not parties to Civil Case No. 7836.[4]

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[4] *Id.* at 77-79.

After the aforesaid judgment in Civil Case No. 9908, the petitioners filed Civil Case No. 36-C against Marcela and Leoncia for partition, accounting and recovery of possession of Lot No. 252. The parties then entered into a Compromise Agreement whereby the parties acknowledged that they owned Lot No. 252 in common, with 3/5 thereof as the interest of the petitioners and the other 2/5 belonging to therein defendants Marcela and Leoncia. Said Compromise Agreement was approved by the CFI Branch VI, Laguna, in an Order dated December 1, 1971.[5] The pertinent portions of the agreement read as follows:

> 5. That the plaintiffs (herein petitioners) and the defendants (herein respondents) agree that said parcel of land (Lot 252) embraced in Transfer Certificate of Title 12206, and registered in the names of the Legal Heirs of Gervacia Cantillano, is now owned in common and in undivided shares of TWO-FIFTHS (2/5) for the defendants and THREE-FIFTHS (3/5) for the plaintiffs;
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> 6. That the plaintiffs and the defendants agree that the subject parcel of land be actually partitioned as they have so caused the survey and partition of the same per the hereto attached copy of the pertinent subdivision survey plan, marked as Annex "A" hereof and made integral part of this compromise agreement;
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> 7. That the plaintiffs and the defendants do hereby express their unqualified conformity to the said partition and they hereby accept to their full and entire satisfaction their respective determined shares in the subject parcel of land, and they agree to have their respective determined portions, Two-Fifths (2/5) for defendants and Three-Fifths (3/5) for plaintiffs, to be covered by independent and separate certificates of title in their respective names.
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> 8. That the plaintiffs agree to shoulder all the expenses incurred in the partition and to pay all expenses and fees which may be entailed in the issuance of the independent certificates of title in favor of the respective parties by the proper Registry of Deeds;[6]

Ten years after or on August 11, 1981, Marcela and Leoncia, assisted by their husbands, instituted Civil Case No. 299-83-C

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[5] *Id.* at 81-83.

[6] *Id.* at 82.

assailing the Compromise Agreement. They claimed that said agreement was a forgery and that their lawyer was not duly authorized for the purpose. In an Order dated July 6, 1984, the trial court dismissed the case without prejudice to the plaintiffs' failure to prosecute.

Thereafter, on September 26, 1984, Marcela and Leoncia instituted Civil Case No. 792-84-C, for enforcement of judgment, partition and segregation of shares with damages over Lot No. 252. On July 6, 1985, the trial court dismissed the complaint on the ground of prescription. No appeal was taken therefrom.

On September 21, 1987, the petitioners filed a Complaint before the RTC for the immediate segregation, partition and recovery of shares and ownership of Lot No. 252, with damages. This was docketed as Civil Case No. 1153-87-C. However, on April 3, 1990, on the basis of the pleadings and exhibits, the court *a quo* dismissed the complaint because of *res judicata*. The trial court stated thus:

> "A perusal of this instant case and Civil Case No. 792-84-C, (Exh. '1') will readily show that between these causes of actions, there are (a) identity of parties; (b) identity of subject matter; and (c) identity of cause of action. As admitted by the parties, the judgment in Civil Case No. 792-84-C is now final and executory. While there may appear a difference in the forms of action, the same is irrelevant for purposes of determining *res judicata*. It is a firmly established rule that a different remedy sought or a diverse form of action does not prevent the estoppel of the former adjudication.
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> xxx xxx xxx."[7]

Aggrieved, the petitioners appealed to the CA, docketed as CA-G.R. CV No. 26109. Unfortunately, the original records of the case were misplaced. After earnest efforts were made for the reconstitution of the records of the case, the parties agreed to have the case submitted for decision based on the documents submitted.[8]

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[7] *Id.* at 58-59.

[8] *Id.* at 55.

In the now assailed decision,[9] the CA dismissed the appeal. The CA found that the appellants' brief neither contained the required page references to the records, as provided in Section 13 of Rule 44 of the Rules of Court; nor was it specified, both in the prayer and in the body of the complaint, the specific amounts of the petitioners' claim for actual, moral, exemplary and compensatory damages, as enunciated in *Manchester Development Corporation v. Court of Appeals.*[10]

As to the substantive issues raised in the complaint, the CA ruled that the action for partition has been barred by *res judicata. It also held that the* petitioners no longer had any cause of action for partition because the co-ownership of the parties over Lot No. 252 had ceased to exist by the Order of the CFI Branch VI, Laguna on December 1, 1971.

Issues

In the case at bar, the petitioners submit the following issues for this Court's consideration, to wit:

A.

THE CA ERRED IN DISMISSING THE APPEAL ON THE GROUND THAT THE PETITIONERS' APPEAL BRIEF FAILED TO MAKE PAGE REFERENCES TO THE RECORD.

B.

THE CA ERRED IN APPLYING THE RULING IN THE *MANCHESTER* CASE REGARDING DOCKET FEES.

C.

THE CA ERRED IN DISMISSING THE APPEAL ON THE GROUND OF PRESCRIPTION AND *RES JUDICATA*.

D.

THE RTC ERRED IN DISMISSING THE ENTIRE CASE.[11]

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[9] *Supra* note 1.

[10] 233 Phil. 579 (1987).

[11] *Rollo*, p. 19.

Ruling and Discussions

We find no merit in the petition.

Failure to observe the requirements under Section 13(a), Rule 44 of the 1997 Rules of Court and to pay the correct docket fees is fatal to the appeal.

The petitioners argue that the CA erred in dismissing their appeal for their failure to indicate the page references to the records of the case pursuant to Section 13(a), Rule 44[12] of the Rules of Court. They invoke Section 6, Rule 1 of the 1997 Rules of Civil Procedure which states that "technical rules shall be liberally construed in order to promote a just, speedy and inexpensive disposition of every action and proceeding." They cite the case of *Pacific Life Assurance Corporation v. Sison,*[13] where it was held that an appeal should not be dismissed on mere technicality.

It is settled that technical rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application should be relaxed when they hinder rather than promote substantial justice. Cases should as much as possible be resolved on the merits, and not on mere technicalities. The failure of the petitioners' appeal brief to contain page references to the records is a formal defect which may be considered as minor, if not negligible.[14]

However, while this Court may be lenient in some instances on formal defects of pleadings filed with the court, it could not

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[12] Rule 44, Section 13. *Contents of appellant's brief.* — The appellant's brief shall contain, in the order herein indicated, the following:

(a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

[13] 359 Phil. 332 (1998).

[14] *Tan v. Planters Products, Inc.*, G.R. No. 172239, March 28, 2008, 550 SCRA 287, 301.

close its eyes when a litigant continuously ignores technical rules, to the point of wanton disregard of the rationale behind those rules. In fact, this Court has consistently affirmed the importance of complying with the requirements in Section 13(a), Rule 44[15] of the Rules of Court in many of its decisions, particularly in *Mendoza v. United Coconut Planters Bank, Inc.*,[16] where the Court explicitly stated that:

Rule 44 and 50 of the 1997 Rules of Civil Procedure are designed for the proper and prompt disposition of cases before the Court of Appeals Rules of Procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. The Court of Appeals noted in its Resolution denying petitioners' motion for reconsideration that despite ample opportunity, petitioners never attempted to file an amended appellants' brief correcting the deficiencies of their brief, but obstinately clung to their argument that their Appellants' Brief substantially complied with the rules. Such obstinacy is incongruous with their plea for liberality in construing the rules on appeal.

De Liano v. Court of Appeals held:

"Some may argue that adherence to these formal requirements serves but a meaningless purpose, that these may be ignored with little risk in the smug certainty that liberality in the application of procedural rules can always be relied upon to remedy the infirmities. This misses the point. We are not martinets; in appropriate instances, we are prepared to listen to reason, and to give relief as the circumstances may warrant. However, when the error relates to something so elementary as to be inexcusable, our discretion becomes nothing more than an exercise in frustration. It comes as an unpleasant shock to us that the contents of an appellant's brief should still be raised as an issue now. There is nothing arcane or novel about the provisions of Section 13, Rule 44. The rule governing the contents of appellants' briefs has existed since the old Rules of Court, which took effect on *July 1, 1940*, as well as the Revised Rules of Court, which took effect on *January 1, 1964*, until they were superseded

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[15] *Supra* note 12.

[16] G.R. No. 165575, February 2, 2011, 641 SCRA 333.

by the present 1997 Rules of Civil Procedure. The provisions were substantially preserved, with few revisions."[17]

Moreover, the petitioners also failed to pay the correct docket fees; in which case, jurisdiction did not vest in the trial court. In *Siapno v. Manalo*,[18] this Court has made it abundantly clear that any complaint, petition, answer and other similar pleading, which does not specify both in its body and prayer the amount of damages being claimed, should not be accepted or admitted, or should be expunged from the records, as may be the case.[19]

The petitioners alleged in their complaint in Civil Case No. 1153-87-C[20] that they suffered actual loss from the time they had been deprived of their share of 3/5 on Lot No. 252 by the respondents, as well as moral and exemplary damages, attorney's fees and litigation expenses. However, the only claims they specified in their prayer were for the attorney's fees in the amount of ₱30,000.00 and ₱500.00 for every court appearance of the counsel.

In *Siapno*,[21] the complaint alleged in its body the aggregate sum of ₱4,500,000 in moral and exemplary damages and attorney's fees, but the prayer portion did not mention these claims, nor did it even pray for the payment of damages. This Court held that such a complaint should be dismissed outright; or if already admitted, should be expunged from the records. The Court explained that the rule – requiring the amount of damages claimed to be specified not only in the body of the pleading but also in its prayer portion – was intended to put an end to the then prevailing practice of lawyers where the damages prayed for were recited only in the body of the complaint, but

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[17] *Id.* at 348-349, citing *Lumbre v. CA*, G.R. No. 160717, July 23, 2008, 559 SCRA 419, 431 and 434; *Sps. Del Rosario v. CA*, 311 Phil. 630 (1995); *De Liano v. CA*, 421 Phil. 1033, 1046-1047 (2001).

[18] 505 Phil. 430 (2005).

[19] *Id.* at 440.

[20] *Rollo* pp. 34-39.

[21] *Supra* note 18.

not in the prayer, in order to evade payment of the correct filing fees. As held by the Court in *Manchester*:[22]

> To put a stop to this irregularity, henceforth all complaints, petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with this requirement shall not be accepted nor admitted, or shall otherwise be expunged from the record.[23]

In *Sun Insurance Office Ltd. v. Judge Asuncion,*[24] the Court laid down the following rules as regards the payment of filing fees:

> 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
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> 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.
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> 3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.[25]

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[22] *Supra* note 10.

[23] *Id.* at 585.

[24] 252 Phil. 280 (1989).

[25] *Id.* at 291-292.

It cannot be gainsaid from the above guidelines that, with the exception of pauper litigants,[26] without the payment of the correct docket or filing fees within the reglementary period, jurisdiction over the subject-matter or nature of the action will not vest in the trial court. In fact, a pauper litigant may still have to pay the docket fees later, by way of a lien on the monetary or property judgment that may accrue to him. Clearly, the flexibility or liberality of the rules sought by the petitioners cannot apply in the instant case.

Action is dismissible for res judicata **and lack of cause of action.**

The petitioners vehemently deny that the partition of Lot No. 252 has already been settled in Civil Case No. 36-C. They insist that the mere determination of the proportionate shares of the parties, as well as their respective portions of the aforesaid lot in the Compromise Agreement is not enough. They allege that Lot No. 252 is still covered by the old title, TCT No. 12206, in the name of the heirs of Gervacia Cantillano. The finality of the decision in Civil Case No. 36-C did not cause Lot No. 252 to divide itself in accordance with the subdivision plan. They assert that there must be an actual and exclusive possession of their respective portions in the plan and titles issued to each of them accordingly.[27]

The petitioners' contentions are untenable.

Article 484 of the New Civil Code provides that there is co-ownership whenever the ownership of an undivided thing or right belongs to different persons. Thus, on the one hand, a co-owner of an undivided parcel of land is an owner of the whole, and over the whole he exercises the right of dominion, but he is at the same time the owner of a portion which is truly abstract. On the other hand, there is no co-ownership when the different portions owned by different people are already concretely

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[26] Section 16, Rule 141 of the Rules of Court states that "the legal fees shall be a lien on the monetary or property judgment in favor of the pauper-litigant."

[27] *Del Blanco v. Intermediate Appellate Court*, 240 Phil. 55, 67 (1987). (Citation omitted)

determined and separately identifiable, even if not yet technically described.[28]

Pursuant to Article 494 of the Civil Code, no co-owner is obliged to remain in the co-ownership, and his proper remedy is an action for partition under Rule 69 of the Rules of Court, which he may bring at anytime in so far as his share is concerned. Article 1079 of the Civil Code defines partition as the separation, division and assignment of a thing held in common among those to whom it may belong. It has been held that the fact that the agreement of partition lacks the technical description of the parties' respective portions or that the subject property was then still embraced by the same certificate of title could not legally prevent a partition, where the different portions allotted to each were determined and became separately identifiable.[29]

The partition of Lot No. 252 was the result of the approved Compromise Agreement in Civil Case No. 36-C, which was immediately final and executory. Absent any showing that said Compromise Agreement was vitiated by fraud, mistake or duress, the court cannot set aside a judgment based on compromise.[30] It is axiomatic that a compromise agreement once approved by the court settles the rights of the parties and has the force of *res judicata.* It cannot be disturbed except on the ground of vice of consent or forgery.[31]

Of equal significance is the fact that the compromise judgment in Civil Case No. 36-C settled as well the question of which specific portions of Lot No. 252 accrued to the parties separately as their proportionate shares therein. Through their subdivision survey plan, marked as Annex "A"[32] of the Compromise

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[28] *Spouses Si v. Court of Appeals*, 396 Phil. 819, 828 (2000). (Citation omitted)

[29] *De la Cruz v. Cruz, et al*., 143 Phil. 230, 234 (1970).

[30] *Republic of the Philippines v. Court of Appeals*, 357 Phil. 174, 184 (1998), citing *De Guzman v. Court of Appeals*, 222 Phil. 236, 242 (1985).

[31] CIVIL CODE OF THE PHILIPPINES, Article 2037 and 2038; *Magbanua v. Uy*, 497 Phil. 511, 519 (2005); *Cebu International Finance Corporation v. Court of Appeals*, 374 Phil. 844, 858 (1999).

[32] *Rollo*, p. 82.

Agreement and made an integral part thereof, the parties segregated and separately assigned to themselves distinct portions of Lot No. 252. The partition was immediately executory,[33] having been accomplished and completed on December 1, 1971 when judgment was rendered approving the same. The CA was correct when it stated that no co-ownership exist when the different portions owned by different people are already concretely determined and separately identifiable, even if not yet technically described.[34]

It bears to note that the parties even acknowledged in Paragraph 7 of the Compromise Agreement that they had accepted their "respective determined shares in the subject parcel of land, and they agree to have their respective determined portions, Two-Fifths (2/5) for defendants and Three-Fifths (3/5) for plaintiffs, to be covered by independent and separate certificates of title in their respective names."[35]

The petitioners slept on their rights under the partition agreement.

To recall, the petitioners obtained part ownership of Lot No. 252 as the highest bidders at the execution sale of Lots Nos. 252 and 269 in Civil Case No. 7836, whereas respondents Marcela and Leoncia as heirs of Gervacia Cantillano retained their 2/5 interest in Lot No. 252 since they were not impleaded in the said case. As buyers of land, the petitioners had the right to pursue their share therein all the way to the issuance of their separate title and recovery of possession of their portion, beginning with the filing of Civil Case No. 36-C.

Concerning the registration with the Registry of Deeds of a judgment of partition of land, Section 81 of Presidential Decree (P.D.) No. 1529 provides that after the entry of the final judgment of partition, a copy of such final judgment shall be filed and registered. If the land is set off to the owner in severalty, each

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[33] *Pamintuan, et al. v. Muñoz, et al.*, 131 Phil. 213, 216 (1968); *The Pasay City Government, et al., v. CFI of Manila*, Branch X, *et al.*, 217 Phil. 153 (1984).

[34] *Supra* note 29.

[35] *Rollo*, p. 82.

owner shall be entitled to have his certificate entered showing the share set off to him in severalty, and to receive an owner's duplicate thereof.[36]

Accordingly, Paragraph 8 of the Compromise Agreement provided that the petitioners shall "shoulder all the expenses incurred in the partition and to pay all expenses and fees which may be incurred in the issuance of the independent certificates of title in favor of the respective parties by the proper Registry of Deeds."[37] Unfortunately, the records do not disclose that the petitioners neither filed and registered with the Register of Deeds a certified copy of the final judgment of partition in Civil Case No. 36-C, nor did they perform or cause to be performed all further acts requisite for the cancellation of TCT No. 12206 and the issuance of the parties' separate titles over their assigned portions in Lot No. 252. The only entry in TCT No. 12206,[38] prior to the recording on June 13, 1979 of the issuance to the petitioners of a second duplicate copy of TCT No. 12206, is the annotation in April 1952 of the execution sale of Lot No. 252 to the petitioners.

Section 6, Rule 39 of the Rules of Court provides:

Sec. 6. *Execution by motion or by independent action*. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

A final and executory judgment may be executed by the prevailing party as a matter of right by mere motion within five

[36] Section 81. Judgment of partition. — In proceedings for partition of registered land, after the entry of the final judgment of partition, a copy of such final judgment, certified by the clerk of court rendering the same, shall be filed and registered; thereupon, if the land is set off to the owner in severalty, each owner shall be entitled to have his certificate entered showing the share set off to him in severalty, and to receive an owner's duplicate thereof.

[37] *Id.*

[38] *Rollo*, pp. 85-87.

(5) years from the entry of judgment, failing which the judgment is reduced to a mere right of action which must be enforced by the institution of a complaint in a regular court within ten (10) years from finality of the judgment.[39] In the instant case, there is no showing that after the judgment in Civil Case No. 36-C, the petitioners filed a motion to execute the same during the first five (5) years after its finality, or within the succeeding five (5) years, by a civil action to revive the judgment, before it would have been barred by the statute of limitations.[40] An action for revival of judgment is governed by Articles 1144(3) and 1152 of the Civil Code, and Section 6, Rule 39 of the Rules of Court. Articles 1144(3) and 1152 of the Code state:

Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

xxx xxx xxx

(3) Upon a judgment

Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final.

When the petitioners filed Civil Case No. 1153-87-C on September 21, 1987, it was not purportedly to revive the judgment in Civil Case No. 36-C. It was apparently an action for "Partition, Recovery of Shares with Damages," but nonetheless citing as basis of the Compromise Agreement in Civil Case No. 36-C. The petitioners wanted to accomplish through an entirely new action what was already adjudicated in Civil Case No. 36-C, rendered 17 years earlier, but which they inexplicably failed to enforce. The petitioners do not allege that they tried to execute the compromise judgment in Civil Case No. 36-C either by motion or by action to revive judgment within the prescriptive

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[39] *Villeza v. German Management and Services, Inc.*, G.R. No. 182937, August 9, 2010, 627 SCRA 425, 431.

[40] *Umali v. Judge Coquia*, 244 Phil. 159, 164; citing *Demetriou v. Lesaca*, 63 Phil. 112 (1936); *Republic v. Court of Appeals*, G.R. No. L-43179, June 27, 1985, 137 SCRA 220, 227; *Luzon Security Company v. Intermediate Appellate Court*, 157 SCRA 652 (1987).

period. Absent any proof that the respondents resorted to dilatory schemes and maneuvers to prevent the execution of the Compromise Agreement,[41] and contrary to the petitioners' gratuitous assertion in paragraph VIII of their complaint in Civil Case No. 1153-87-C, we fail to see how the mere filing by the respondents of Civil Case No. 299-83-C on August 11, 1981 could have in any way prevented or impeded the petitioners from executing the judgment in Civil Case No. 36-C.

We thus sustain the respondents' affirmative defenses of *res judicata* and lack of cause of action, and uphold the appellate and trial courts' rejection of the petitioners' ostensible attempt to revive the already stale judgment in Civil Case No. 36-C through an entirely new action for partition. The Court agrees with the CA when it explained:

a. The judgment that effected *res judicata* is not so much the dismissal of the case due to prescription in Civil Case No. 792-84-C. What more appropriately leads to *res judicata* to this case is the final Compromise Judgment in Civil Case No. 36-C. All the elements of *res judicata* are present, a final decision on the merits, between the same parties, on the same subject matter and cause of action. x x x.

b. The present complaint states no cause of action. There is no doubt that appellants' prayer for partition is anchored on their supposed co-ownership of Lot No. 252 plus the added fact that it is still covered by Transfer Certificate of Title No. 12206. However, appellants must have lost track of the fact that at the time the present action was commenced, partition was no longer an available remedy in their favor simply because their pretended co-ownership had already ceased to exist. Their 3/5 shares had already been segregated and determined in the subdivision plan mentioned in the Compromise Judgment and have, in fact, accepted their share to their satisfaction. In *De la Cruz vs. Cruz*, 32 SCRA 307 [1970], the Supreme Court, through Justice J.B.L. Reyes, said that co-ownership no longer exists over the whole parcel of land where the portions owned by the parties are already determined and identifiable. That said respective portions are not technically described, or that said portions

[41] 221 Phil. 685, 695 (1985).

> are still embraced in one and the same certificate of title, does not make said portions less determinable, or identifiable, or distinguishable, one from the other, nor that dominion over its portions rest exclusively in their respective owners.[42]

Nonetheless, it must be made clear that nothing in this decision shall be understood to mean that the petitioners have lost their title or interest in the subject property. The final ("definite") deed of sale executed by the sheriff in favor of the petitioners pursuant to the execution sale in Civil Case No. 7836, which was duly registered in TCT No. 12206 on April 15, 1952, constituted an effective conveyance to the petitioners of the property sold therein and entitled them to possession thereof,[43] although in the subsequent decision in 1955 in Civil Case No. 9908, the respondents' 2/5 interest in the property was recognized, thereby amending the extent of the petitioners' title. The said judgment has not been registered, and neither was the compromise judgment of partition in Civil Case No. 36-C dated December 1, 1971, which established the parties' respective specific portions in Lot No. 252. Thus, as a prerequisite to the issuance of a new title in the name of the petitioners over their 3/5 allocated portion, we believe that Section 81[44] of P.D. No. 1529 does not bar the belated registration of the compromise judgment in Civil Case No. 36-C.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision of the Court of Appeals dated July 13, 2001 in CA-G.R. CV No. 26109 is **AFFIRMED.**

SO ORDERED.

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

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[42] *Rollo*, pp. 64-65.

[43] *Gonzalez v. Calimbas and Poblete*, 51 Phil. 355, 358 (1927).

[44] *Supra* note 36.

SPECIAL SECOND DIVISION

[G.R. No. 155109. March 14, 2012]

C. ALCANTARA & SONS, INC., *petitioner, vs.* **COURT OF APPEALS, LABOR ARBITER ANTONIO M. VILLANUEVA, LABOR ARBITER ARTURO L. GAMOLO, SHERIFF OF NLRC RAB-XI-DAVAO CITY, NAGKAHIUSANG MAMUMUO SA ALSONS-SPFL (NAMAAL-SPFL), FELIXBERTO IRAG, JOSHUA BARREDO, ERNESTO CUARIO, EDGAR MONDAY, EDILBERTO DEMETRIA, HERMINIO ROBILLO, ROMULO LUNGAY, MATROIL DELOS SANTOS, BONERME MATURAN, RAUL CANTIGA, EDUARDO CAMPUSO, RUDY ANADON, GILBERTO GABRONINO, BONIFACIO SALVADOR, CIRILO MINO, ROBERTO ABONADO, WARLITO MONTE, PEDRO ESQUIERDO, ALFREDO TROPICO, DANILO MEJOS, HECTOR ESTUITA, BARTOLOME CASTILLANES, EDUARDO CAPUYAN, SATURNINO CAGAS, ALEJANDRO HARDER, EDUARDO LARENA, JAIME MONTEDERAMOS, ERMELANDO BASADRE, REYNALDO LIMPAJAN, ELPIDIO LIBRANZA, TEDDY SUELO, JOSE AMOYLIN, TRANQUILINO ORALLO, CARLOS BALDOS, MANOLITO SABELLANO, CARMELITO TOBIAS, PRIMITIVO GARCIA, JUANITO ALDEPOLLA, LUDIVICO ABAD, WENCISLAO INGHUG, RICARDO ALTO, EPIFANIO JARABAY, FELICIANO AMPER, ALEXANDER JUDILLA, ROBERTO ANDRADE, ALFREDO LESULA, JULIO ANINO, BENITO MAGPUSAO, PEDRO AQUINO, EDDIE MANSANADES, ROMEO ARANETA, ARGUILLAO MANTICA, CONSTANCIO ARNAIZ, ERNESTO HOTOY, JUSTINO ASCANO, RICARDO MATURAN, EDILBERTO YAMBAO, ANTONIO MELARGO, JESUS BERITAN, ARSENIO MELICOR, DIOSDADO BONGABONG, LAURO MONTENEGRO, CARLITO**

BURILLO, LEO MORA, PABLO BUTIL, ARMANDO GUCILA, JEREMIAH CAGARA, MARIO NAMOC, CARLITO CAL, GERWINO NATIVIDAD, ROLANDO CAPUYAN, EDGARDO ORDIZ, LEONARDO CASURRA, PATROCINIO ORTEGA, FILEMON CESAR, MARIO PATAN, ROMEO COMPRADO, JESUS PATOC, RAMON CONSTANTINO, ALBERTO PIELAGO, SAMUEL DELA LLANA, NICASIO PLAZA, ROSALDO DAGONDON, TITO GUADES, BONIFACIO DINAGUDOS, PROCOPIO RAMOS, JOSE EBORAN, ROSENDO SAJOL, FRANCISCO EMPUERTO, PATRICIO SALOMON, NESTOR ENDAYA, MARIO SALVALEON, ERNESTO ESTILO, BONIFACIO SIGUE, VICENTE FABROA, JAIME SUCUAHI, CELSO HUISO, ALEX TAUTO-AN, SATURNINO YAGON, CLAUDIO TIROL, SULPECIO GAGNI, JOSE TOLERO, FERVIE GALVEZ, ALFREDO TORALBA and EDUARDO GENELSA, *respondents.*

[G.R. No. 155135. March 14, 2012]

NAGKAHIUSANG MAMUMUO SA ALSONS-SPFL (NAMAAL-SPFL), FELIXBERTO IRAG, JOSHUA BARREDO, ERNESTO CUARIO, EDGAR MONDAY, EDILBERTO DEMETRIA, HERMINIO ROBILLO, ROMULO LUNGAY, MATROIL DELOS SANTOS, BONERME MATURAN, RAUL CANTIGA, EDUARDO CAMPUSO, RUDY ANADON, GILBERTO GABRONINO, BONIFACIO SALVADOR, CIRILO MINO, ROBERTO ABONADO, WARLITO MONTE, PEDRO ESQUIERDO, ALFREDO TROPICO, DANILO MEJOS, HECTOR ESTUITA, BARTOLOME CASTILLANES, EDUARDO CAPUYAN, SATURNINO CAGAS, ALEJANDRO HARDER, EDUARDO LARENA, JAIME MONTEDERAMOS, ERMELANDO BASADRE, REYNALDO LIMPAJAN, ELPIDIO LIBRANZA, TEDDY SUELO, JOSE AMOYLIN,

TRANQUILINO ORALLO, CARLOS BALDOS, MANOLITO SABELLANO, CARMELITO TOBIAS, PRIMITIVO GARCIA, JUANITO ALDEPOLLA, LUDIVICO ABAD, WENCISLAO INGHUG, RICARDO ALTO, EPIFANIO JARABAY, FELICIANO AMPER, ALEXANDER JUDILLA, ROBERTO ANDRADE, ALFREDO LESULA, JULIO ANINO, BENITO MAGPUSAO, PEDRO AQUINO, EDDIE MANSANADES, ROMEO ARANETA, ARGUILLAO MANTICA, CONSTANCIO ARNAIZ, ERNESTO HOTOY, JUSTINO ASCANO, RICARDO MATURAN, EDILBERTO YAMBAO, ANTONIO MELARGO, JESUS BERITAN, ARSENIO MELICOR, DIOSDADO BONGABONG, LAURO MONTENEGRO, CARLITO BURILLO, LEO MORA, PABLO BUTIL, ARMANDO GUCILA, JEREMIAH CAGARA, MARIO NAMOC, CARLITO CAL, GERWINO NATIVIDAD, ROLANDO CAPUYAN, JUANITO NISNISAN, AURELIO CARIN, PRIMO OPLIMO, ANGELITO CASTANEDA, EDGARDO ORDIZ, LEONARDO CASURRA, PATROCINIO ORTEGA, FILEMON CESAR, MARIO PATAN, ROMEO COMPRADO, JESUS PATOC, RAMON CONSTANTINO, MANUEL PIAPE, ROY CONSTANTINO, ALBERTO PIELAGO, SAMUEL DELA LLANA, NICASIO PLAZA, ROSALDO DAGONDON, TITO GUADES, BONIFACIO DINAGUDOS, PROCOPIO RAMOS, JOSE EBORAN, ROSENDO SAJOL, FRANCISCO EMPUERTO, PATRICIO SALOMON, NESTOR ENDAYA, MARIO SALVALEON, ERNESTO ESTILO, BONIFACIO SIGUE, VICENTE FABROA, JAIME SUCUAHI, CELSO HUISO, ALEX TAUTO-AN, SATURNINO YAGON, CLAUDIO TIROL, SULPECIO GAGNI, JOSE TOLERO, FERVIE GALVEZ, ALFREDO TORALBA and EDUARDO GENELSA, *petitioners, vs.* **C. ALCANTARA & SONS, INC., EDITHA I. ALCANTARA, ATTY. NELIA A. CLAUDIO, CORNELIO E. CAGUIAT, JESUS S. DELA CRUZ,**

ROLANDO Z. ANDRES and JOSE MA. MANUEL YRASUEGUI, *respondents.*

[G.R. No. 179220. March 14, 2012]

NAGKAHIUSANG MAMUMUO SA ALSONS-SPFL (NAMAAL-SPFL), AND ITS MEMBERS whose names are listed below, *petitioners, vs.* **C. ALCANTARA & SONS, INC.,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKES; PROHIBITED ACTIVITIES; LIABILITIES OF UNION OFFICERS AND MEMBERS.—** Article 264 (a) of the Labor Code lays down the liabilities of the Union officers and members participating in illegal strikes and/or committing illegal acts x x x. [T]he x x x provision sanctions the dismissal of a Union officer who knowingly participates in an illegal strike or who knowingly participates in the commission of illegal acts during a lawful strike. In this case, the Union officers were in clear breach of the above provision of law when they knowingly participated in the illegal strike. As to the Union members, the same provision of law provides that a member is liable when he knowingly participates in the commission of illegal acts during a strike. We find no reason to reverse the conclusion of the Court that CASI presented substantial evidence to show that the striking Union members committed the following prohibited acts: "a. They threatened, coerced, and intimidated non-striking employees, officers, suppliers and customers; b. They obstructed the free ingress to and egress from the company premises; and c. They resisted and defied the implementation of the writ of preliminary injunction issued against the strikers." The commission of the above prohibited acts by the striking Union members warrants their dismissal from employment.

2. **ID.; ID.; APPEALS; THE DECISION OF THE LABOR ARBITER REINSTATING A DISMISSED EMPLOYEE, INSOFAR AS THE REINSTATEMENT ASPECT IS CONCERNED, SHALL IMMEDIATELY BE EXECUTORY,**

PENDING APPEAL.— [T]he LA found the strike illegal and sustained the dismissal of the Union officers, but ordered the reinstatement of the striking Union members for lack of evidence showing that they committed illegal acts during the illegal strike. This decision, however, was later reversed by the NLRC. Pursuant to Article 223 of the Labor Code and well-established jurisprudence, the decision of the LA reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or, at the option of the employee, merely reinstated in the payroll. It is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. If the employer fails to exercise the option of re-admitting the employee to work or to reinstate him in the payroll, the employer must pay the employee's salaries during the period between the LA's order of reinstatement pending appeal and the resolution of the higher court overturning that of the LA. In this case, CASI is liable to pay the striking Union members their accrued wages for four months and nine days, which is the period from the notice of the LA's order of reinstatement until the reversal thereof by the NLRC.

3. **ID.; ID.; TERMINATION OF EMPLOYMENT; SEPARATION PAY; NATURE.—** Separation pay may be given as a form of financial assistance when a worker is dismissed in cases such as the installation of labor-saving devices, redundancy, retrenchment to prevent losses, closing or cessation of operation of the establishment, or in case the employee was found to have been suffering from a disease such that his continued employment is prohibited by law. It is a statutory right defined as the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the wherewithal during the period that he is looking for another employment. It is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.

4. **ID.; ID.; ID.; ID.; CANNOT BE GRANTED WHEN JUST CAUSES FOR TERMINATING THE SERVICES OF AN**

EMPLOYEE EXIST; EXCEPTIONS.— As a general rule, when just causes for terminating the services of an employee exist, the employee is not entitled to separation pay because lawbreakers should not benefit from their illegal acts. The rule, however, is subject to exceptions. The Court, in *Philippine Long Distance Telephone Co. v. NLRC*, laid down the guidelines when separation pay in the form of financial assistance may be allowed, to wit: "We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice. A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed x x x."

APPEARANCES OF COUNSEL

Potenciano A. Flores, Jr. for Nagkahiusang Mamumuo sa Alsons-SPEL.

Laguesma Magsalin Consulta & Gastardo Law Office for C. Alcantara & Sons, Inc.

R E S O L U T I O N

PERALTA, *J.*:

For resolution are the (1) Motion for Partial Reconsideration[1] filed by C. Alcantara & Sons, Inc. (CASI) and (2) Motion for Reconsideration[2] filed by Nagkahiusang Mamumuo sa Alsons-

[1] *Rollo* (G.R. No. 155109), pp. 1485-1499.

[2] *Id.* at 1501-1651.

SPFL (the Union) and the Union officers[3] and their striking members[4] of the Court's Decision[5] dated September 29, 2010. In a Resolution[6] dated December 13, 2010, the parties were required to submit their respective Comments. After several motions for extension, the parties submitted the required comments. Hence, this resolution.

For a proper perspective, we state briefly the facts of the case.

The negotiation between CASI and the Union on the economic provisions of the Collective Bargaining Agreement (CBA) ended in a deadlock prompting the Union to stage a strike,[7] but the

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[3] The officers of the Union are the following: Felixberto Irag, Joshua Barredo, Edilberto Demetria, Romulo Lungay, Bonerme Maturan, Eduardo Campuso, Gilberto Gabronino, Cirilo Mino, Roberto Abonado, Fructoso Cabahog, Alfredo Tropico, Hector Estuita, Eduardo Capuyan, Alejandro Harder, Jaime Montederamos, Reynaldo Limpajan, Ernesto Cuario, Edgar Monday, Herminio Robillo, Matroil delos Santos, Raul Cantiga, Rudy Anadon, Bonifacio Salvador, Florente Seno, Warlito Monte, Pedro Esquierdo, Danilo Mejos, Bartolome Castillanes, Saturnino Cagas, Eduardo Larena, Ermelando Basadre, Elpidio Libranza, Teddy Suelo, Tranquilino Orallo, Manolito Sabellano, Primitivo Garcia, Jose Amoylin, Carlos Baldos, Carmelito Tobias and Juanito Aldepolla.

[4] These are Ludivicio Abad, Ricardo Alto, Feliciano Amper, Roberto Andrade, Julio Anino, Pedro Aquino, Romeo Araneta, Constancio Arnaiz, Justino Ascano, Ernesto Baino, Jesus Beritan, Diosdado Bongabong, Carilito Cal, Rolando Capuyan, Aurelio Carin, Angelito Castañeda, Leonardo Casurra, Filemon Cesar, Romeo Comprado, Ramon Constantino, Roy Constantino, Samuel dela Llana, Rosaldo Dagondon, Bonifacio Dinagudos, Jose Eboran, Francisco Empuerto, Nestor Endaya, Ernesto Estilo, Vicente Fabroa, Ramon Fernando, Samson Fulgueras, Sulpecio Gagni, Fervie Galvez, Eduardo Genelsa, Tito Guades, Armando Gucila, Ernesto Hotoy, Wencislao Inghug, Epifanio Jarabay, Alexander Judilla, Alfredo Lesula, Benito Magpusao, Eddie Mansanades, Arguilao Mantica, Silverio Maranian, Ricardo Maturan, Antonio Melargo, Arsenio Melicor, Lauro Montenegro, Leo Mora, Ronaldo Naboya, Mario Namoc, Gerwino Natividad, Juanito Nisnisan, Primo Oplimo, Edgardo Ordiz, Patrocinio Ortega, Mario Patan, Jesus Patoc, Manuel Piape, Alberto Pielago, Nicasio Plaza, Fausto Quibod, Procopio Ramos, Rosendo Sajol, Patricio Solomon, Mario Salvaleon, Bonifacio Sigue, Jaime Sucuahi, Alex Tauto-an, Claudio Tirol, Jose Tolero, Alfredo Toralba, Eusebio Tumulak, Hermes Villacarlos, Saturnino Yagon and Edilberto Yambao.

[5] *Rollo* (G.R. No. 155109), pp. 1467-1484.

[6] *Id.* at 1654-1655.

[7] *Id.* at 1473.

strike was later declared by the Labor Arbiter (LA) to be illegal having been staged in violation of the CBA's no strike-no lockout provision.[8] Consequently, the Union officers were deemed to have forfeited their employment with the company and made them liable for actual damages plus interest and attorney's fees, while the Union members were ordered to be reinstated without backwages there being no proof that they actually committed illegal acts during the strike.[9]

Notwithstanding the provision of the Labor Code mandating that the reinstatement aspect of the decision be immediately executory, the LA refused to reinstate the dismissed Union members. On November 8, 1999, the NLRC affirmed the LA decision insofar as it declared the strike illegal and ordered the Union officers dismissed from employment and liable for damages but modified the same by considering the Union members to have been validly dismissed from employment for committing prohibited and illegal acts.[10]

On petition for *certiorari*, the Court of Appeals (CA) annulled the NLRC decision and reinstated that of the LA. Aggrieved, CASI, the Union and the Union officers and members elevated the matter to this Court. The cases were docketed as G.R. Nos. 155109 and 155135.[11]

During the pendency of the cases, the affected Union members (who were ordered reinstated) filed with the LA a motion for reinstatement pending appeal and the computation of their backwages. Instead of reinstating the Union members, the LA awarded separation pay and other benefits.[12] On appeal, the NLRC denied the Union members' claim for separation pay, accrued wages and other benefits.[13] When elevated to the CA,

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[8] The LA decision was rendered on June 29, 1999; *id.* at 1474.

[9] *Rollo* (G.R. No. 155109), p. 1474.

[10] *Id.* at 1475.

[11] *Id.*

[12] *Id.*

[13] *Id.* at 1475-1476.

the appellate court held that reinstatement pending appeal applies only to illegal dismissal cases under Article 223 of the Labor Code and not to cases under Article 263.[14] Hence, the petition by the Union and its officers and members in G.R. No. 179220.

G.R. Nos. 155109, 155135, and 179220 were consolidated. On September 29, 2010, the Court rendered a decision the dispositive portion of which reads:

> **WHEREFORE**, the Court **DENIES** the petition of the Nagkahiusang Mamumuo sa Alsons-SPFL and its officers and members in G.R. No. 155135 for lack of merit, and **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals in CA-G.R. SP 59604 dated March 20, 2002. The Court, on the other hand, **GRANTS** the petition of C. Alcantara & Sons, Inc. in G.R. 155109 and **REINSTATES** the decision of the National Labor Relations Commission in NLRC CA M-004996-99 dated November 8, 1999.
>
> Further, the Court **PARTIALLY GRANTS** the petition of the Nagkahiusang Mamumuo sa Alsons-SPFL and their dismissed members in G.R. No. 179220 and **ORDERS** C. Alcantara & Sons, Inc. to pay the terminated Union members backwages for four (4) months and nine (9) days and separation pays equivalent to one-half month salary for every year of service to the company up to the date of their termination, with interest of 12% per annum from the time this decision becomes final and executory until such backwages and separation pays are paid. The Court **DENIES** all other claims.
>
> **SO ORDERED**.[15]

The Court agreed with the CA on the illegality of the strike as well as the termination of the Union officers, but disagreed with the CA insofar as it affirmed the reinstatement of the Union members. The Court, instead, sustained the dismissal not only of the Union officers but also the Union members who, during the illegal strike, committed prohibited acts by threatening, coercing, and intimidating non-striking employees, officers, suppliers and customers; obstructing the free ingress to and egress from the

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[14] *Id.* at 1476.

[15] *Id.* at 1482-1483.

company premises; and resisting and defying the implementation of the writ of preliminary injunction issued against the strikers.[16]

The Court further held that the terminated Union members, who were ordered reinstated by the LA, should have been immediately reinstated due to the immediate executory nature of the reinstatement aspect of the LA decision. In view, however, of CASI's failure to reinstate the dismissed employees, the Court ordered CASI to pay the terminated Union members their accrued backwages from the date of the LA decision until the eventual reversal by the NLRC of the order of reinstatement.[17] In addition to the accrued backwages, the Court awarded separation pay as a form of financial assistance to the Union members equivalent to one-half month salary for every year of service to the company up to the date of their termination.[18]

Not satisfied, CASI filed a Motion for Partial Reconsideration of the above decision based on the following grounds:

I.

IT IS RESPECTFULLY SUBMITTED THAT A PRECEDENT SETTING RULING OF THIS HONORABLE COURT IN *ESCARIO V. NLRC* [G.R. No. 160302, 27 SEPTEMBER 2010] – PARTICULARLY ON THE PROPER APPLICATION OF ARTICLES 264 AND 279 OF THE LABOR CODE – SUPPORTS THE AFFIRMATION AND NOT THE REVERSAL OF THE FINDINGS OF THE COURT OF APPEALS ["CA"], AND NEGATES THE ENTITLEMENT TO ACCRUED WAGES OF THE UNION MEMBERS WHO COMMITTED ILLEGAL ACTS DURING THE ILLEGAL STRIKE, NOTWITHSTANDING THAT THE LABOR ARBITER AWARDED THE SAME.

II.

IT IS RESPECTFULY SUBMITTED THAT THIS HONORABLE COURT ERRED WHEN IT RESOLVED TO GRANT SEPARATION PAY TO THE UNION MEMBERS WHO COMMITTED ILLEGAL ACTS DURING THE ILLEGAL STRIKE CONSIDERING THAT

[16] *Id.* at 1478-1479.

[17] *Id.* at 1480-1481.

[18] *Id.* at 1481-1482.

JURISPRUDENCE CITED TO JUSTIFY THE GRANT OF SEPARATION PAY DO NOT APPLY TO THE PRESENT CASE AS IT APPLIES ONLY TO DISMISSALS FOR A JUST CAUSE.[19]

The Union, its officers and members likewise filed their separate motion for reconsideration assailing the Court's conclusions that: (1) the strike is illegal; (2) that the officers of the Union and its appointed shop stewards automatically forfeited their employment status when they participated in the strike; (3) that the Union members committed illegal acts during the strike and are deemed to have lost their employment status; and (4) that CASI is entitled to actual damages and attorney's fees.[20] They also fault the Court in not finding that: (1) CASI and its officers are guilty of acts of unfair labor practice or violation of Article 248 of the Labor Code; (2) the lockout declared by the company is illegal; (3) CASI and its officers committed acts of discrimination; (4) CASI and its officers violated Article 254 of the Labor Code; and (5) CASI and its officers are liable for actual, moral, and exemplary damages to the Union, its officers and members.[21]

Simply stated, CASI only questions the propriety of the award of backwages and separation pay, while the Union, its officers and members seek the reversal of the Court's conclusions on the illegality of the strike, the validity of the termination of the Union officers and members, and the award of actual damages and attorney's fees as well as the denial of their counterclaims against CASI.

After a careful review of the records of the case, we find it necessary to reconsider the Court's September 29, 2010 decision, but only as to the award of separation pay.

The LA, the NLRC, the CA and the Court are one in saying that the strike staged by the Union, participated in by the Union officers and members, is illegal being in violation of the no strike-no lockout provision of the CBA which enjoined both

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[19] *Id.* at 1486.

[20] *Id.* at 1511-1513.

[21] *Id.* at 1513-1515.

the Union and the company from resorting to the use of economic weapons available to them under the law and to instead take recourse to voluntary arbitration in settling their disputes.[22] We, therefore, find no reason to depart from such conclusion.

Article 264 (a) of the Labor Code lays down the liabilities of the Union officers and members participating in illegal strikes and/or committing illegal acts, to wit:

ART. 264. PROHIBITED ACTIVITIES

(a) x x x

Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full backwages. Any Union officer who knowingly participates in an illegal strike and any worker or Union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: *Provided*, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

Thus, the above-quoted provision sanctions the dismissal of a Union officer who knowingly participates in an illegal strike or who knowingly participates in the commission of illegal acts during a lawful strike.[23] In this case, the Union officers were in clear breach of the above provision of law when they knowingly participated in the illegal strike.[24]

As to the Union members, the same provision of law provides that a member is liable when he knowingly participates in the commission of illegal acts during a strike. We find no reason to reverse the conclusion of the Court that CASI presented substantial evidence to show that the striking Union members committed the following prohibited acts:

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[22] *Id.* at 1477.

[23] *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 207.

[24] *Id.*

a. They threatened, coerced, and intimidated non-striking employees, officers, suppliers and customers;

b. They obstructed the free ingress to and egress from the company premises; and

c. They resisted and defied the implementation of the writ of preliminary injunction issued against the strikers.[25]

The commission of the above prohibited acts by the striking Union members warrants their dismissal from employment.

As clearly narrated earlier, the LA found the strike illegal and sustained the dismissal of the Union officers, but ordered the reinstatement of the striking Union members for lack of evidence showing that they committed illegal acts during the illegal strike. This decision, however, was later reversed by the NLRC. Pursuant to Article 223[26] of the Labor Code and well-established jurisprudence,[27] the decision of the LA reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, pending appeal.[28] The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or, at the option of the employee, merely reinstated in the payroll.[29] It is obligatory on the part of the

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[25] *Rollo* (G.R. No. 155109), p. 1479.

[26] Article 223. Appeal. — . . .

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

xxx xxx xxx.

[27] *Islriz Trading/Victor Hugo Lu v. Capada*, G.R. No. 168501, January 31, 2011, 641 SCRA 9; *Garcia v. Philippine Airlines, Inc.*, G.R. No 164856, January 20, 2009, 576 SCRA 479.

[28] *Garcia v. Philippine Airlines, Inc.*, *supra*, at 489.

[29] *Id.*

employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court.[30] If the employer fails to exercise the option of re-admitting the employee to work or to reinstate him in the payroll, the employer must pay the employee's salaries during the period between the LA's order of reinstatement pending appeal and the resolution of the higher court overturning that of the LA.[31] In this case, CASI is liable to pay the striking Union members their accrued wages for four months and nine days, which is the period from the notice of the LA's order of reinstatement until the reversal thereof by the NLRC.[32]

Citing *Escario v. National Labor Relations Commission (Third Division)*,[33] CASI claims that the award of the four-month accrued salaries to the Union members is not sanctioned by jurisprudence. In *Escario*, the Court categorically stated that the strikers were not entitled to their wages during the period of the strike (even if the strike might be legal), because they performed no work during the strike. The Court further held that it was neither fair nor just that the dismissed employees should litigate against their employer on the latter's time.[34] In this case, however, the four-month accrued salaries awarded to the Union members are not the backwages referred to in *Escario*. To be sure, the awards were not given as their salaries during the period of the strike. Rather, they constitute the employer's liability to the employees for its failure to exercise the option of actual reinstatement or payroll reinstatement following the LA's decision to reinstate the Union members as mandated by Article 223 of the Labor Code adequately discussed earlier. In other words, such monetary award refers to the Union members'

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[30] *Id.* at 493.

[31] *Islriz Trading/Victor Hugo Lu v. Capada*, *supra* note 27, at 24; *College of Immaculate Conception v. National Labor Relations Commission*, G.R. No. 167563, March 22, 2010, 616 SCRA 299, 309; *Garcia v. Philippine Airlines, Inc.*, *supra* note 27, at 493.

[32] *Rollo* (G.R. No. 155109), p. 1481.

[33] G.R. No. 160302, September 27, 2010, 631 SCRA 261.

[34] *Id.* at 274.

accrued salaries by reason of the reinstatement order of the LA which is self-executory pursuant to Article 223.[35] We, therefore, sustain the award of the four-month accrued salaries.

Finally, as regards the separation pay as a form of financial assistance awarded by the Court, we find it necessary to reconsider the same and delete the award pursuant to prevailing jurisprudence.

Separation pay may be given as a form of financial assistance when a worker is dismissed in cases such as the installation of labor-saving devices, redundancy, retrenchment to prevent losses, closing or cessation of operation of the establishment, or in case the employee was found to have been suffering from a disease such that his continued employment is prohibited by law.[36] It is a statutory right defined as the amount that an employee receives at the time of his severance from the service and is designed to provide the employee with the wherewithal during the period that he is looking for another employment.[37] It is oriented towards the immediate future, the transitional period the dismissed employee must undergo before locating a replacement job.[38] As a general rule, when just causes for terminating the services of an employee exist, the employee is not entitled to separation pay because lawbreakers should not benefit from their illegal acts.[39] The rule, however, is subject to exceptions.[40] The Court, in *Philippine Long Distance Telephone Co. v. NLRC*,[41] laid down the guidelines when separation pay in the form of financial assistance may be allowed, to wit:

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[35] *Islriz Trading/Victor Hugo Lu v. Capada*, *supra* note 27, at 16.

[36] *Gold City Integrated Port Service, Inc. v. NLRC*, 315 Phil. 698, 711 (1995).

[37] *Id.* at 712.

[38] *Id.*

[39] *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, *supra* note 23, at 219.

[40] *Id.* at 220.

[41] 247 Phil. 641 (1988).

We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.

A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed x x x.[42]

We had the occasion to resolve the same issue in *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*.[43] Following the declaration that the strike staged by the Union members is illegal, the Union officers and members were considered validly dismissed from employment for committing illegal acts during the illegal strike. The Court affirmed the CA's conclusion that the commission of illegal acts during the illegal strike constituted serious misconduct.[44] Hence, the award of separation pay to the Union officials and members was not sustained.[45]

Indeed, we applied social justice and equity considerations in several cases to justify the award of financial assistance. In *Piñero v. National Labor Relations Commission,*[46] the Court declared the strike to be illegal for failure to comply with the procedural requirements. We, likewise, sustained the dismissal of the Union president for participating in said illegal strike. Considering, however, that his infraction is not so reprehensible

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[42] *Id.* at 649.

[43] *Supra* note 23.

[44] *Id.*

[45] *Id.* at 227.

[46] 480 Phil. 534 (2004).

and unscrupulous as to warrant complete disregard of his long years of service, and considering further that he has no previous derogatory records, we granted financial assistance to support him in the twilight of his life after long years of service.[47] The same compassion was also applied in *Aparente, Sr. v. NLRC*[48] where the employee was declared to have been validly terminated from service after having been found guilty of driving without a valid driver's license, which is a clear violation of the company's rules and regulations.[49] We, likewise, awarded financial assistance in *Salavarria v. Letran College*[50] to the legally dismissed teacher for violation of school policy because such infraction neither amounted to serious misconduct nor reflected that of a morally depraved person.

However, in a number of cases cited in *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*,[51] we refrained from awarding separation pay or financial assistance to Union officers and members who were separated from service due to their participation in or commission of illegal acts during the strike.[52] In *Pilipino Telephone Corporation v. Pilipino Telephone Employees Association (PILTEA),*[53] the strike was found to be illegal because of procedural infirmities and for defiance of the Secretary of Labor's assumption order. Hence, we upheld the Union officers' dismissal without granting financial assistance. In *Sukhotai Cuisine and Restaurant v. Court of Appeals*,[54] and *Manila Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union,*[55] the Union officers and members who

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[47] *Id.* at 543-544.

[48] 387 Phil. 96 (2000).

[49] *Id.*

[50] G.R. No. 110396, September 25, 1998, 296 SCRA 184.

[51] *Supra* note 23.

[52] *Id.* at 225.

[53] G.R. Nos. 160058 & 160094, June 22, 2007, 525 SCRA 361.

[54] G.R. No. 150437, July 17, 2006, 495 SCRA 336.

[55] G.R. No. 158075, June 30, 2006, 494 SCRA 195.

participated in and committed illegal acts during the illegal strike were deemed to have lost their employment status and were not awarded financial assistance.

In *Telefunken Semiconductors Employees Union v. Court of Appeals,*[56] the Court held that the strikers' open and willful defiance of the assumption order of the Secretary of Labor constitute serious misconduct and reflective of their moral character, hence, granting of financial assistance to them cannot be justified. In *Chua v. National Labor Relations Commission,*[57] we disallowed the award of financial assistance to the dismissed employees for their participation in the unlawful and violent strike which resulted in multiple deaths and extensive property damage because it constitutes serious misconduct on their part.

Here, not only did the Court declare the strike illegal, rather, it also found the Union officers to have knowingly participated in the illegal strike. Worse, the Union members committed prohibited acts during the strike. Thus, as we concluded in *Toyota, Telefunken, Chua* and the other cases cited above, we delete the award of separation pay as a form of financial assistance.

WHEREFORE, premises considered, the motion for reconsideration of the Union, its officers and members are **DENIED** for lack of merit, while the motion for partial reconsideration filed by C. Alcantara & Sons, Inc. is **PARTLY GRANTED**. The Decision of the Court dated September 29, 2010 is hereby **PARTLY RECONSIDERED** by deleting the award of separation pay.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr., Mendoza, and *Reyes, JJ.,* concur.

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[56] 401 Phil. 776 (2000).

[57] G.R. No. 105775, February 8, 1993, 218 SCRA 545.

SECOND DIVISION

[G.R. No. 162322. March 14, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **BANTIGUE POINT DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; QUESTIONS OF JURISDICTION MAY BE COGNIZABLE EVEN IF RAISED FOR THE FIRST TIME ON APPEAL.—** The rule is settled that lack of jurisdiction over the subject matter may be raised at any stage of the proceedings. Jurisdiction over the subject matter is conferred only by the Constitution or the law. It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court. Consequently, questions of jurisdiction may be cognizable even if raised for the first time on appeal.

2. **ID.; ACTIONS; DOCTRINE OF ESTOPPEL BY LACHES; INAPPLICABLE IN CASE AT BAR.—** The ruling of the Court of Appeals that "a party may be estopped from raising such [jurisdictional] question if he has actively taken part in the very proceeding which he questions, belatedly objecting to the court's jurisdiction in the event that the judgment or order subsequently rendered is adverse to him" is based on the doctrine of estoppel by laches. We are aware of that doctrine first enunciated by this Court in *Tijam v. Sibonghanoy.* In *Tijam*, the party-litigant actively participated in the proceedings before the lower court and filed pleadings therein. Only 15 years thereafter, and after receiving an adverse Decision on the merits from the appellate court, did the party-litigant question the lower court's jurisdiction. Considering the unique facts in that case, we held that estoppel by laches had already precluded the party-litigant from raising the question of lack of jurisdiction on appeal. In *Figueroa v. People*, we cautioned that *Tijam* must be construed as an exception to the general rule and applied only in the most exceptional cases whose factual milieu is similar to that in the latter case. The facts are starkly different

in this case, making the exceptional rule in *Tijam* inapplicable. Here, petitioner Republic filed its Opposition to the application for registration when the records were still with the RTC. At that point, petitioner could not have questioned the delegated jurisdiction of the MTC, simply because the case was not yet with that court. When the records were transferred to the MTC, petitioner neither filed pleadings nor requested affirmative relief from that court. On appeal, petitioner immediately raised the jurisdictional question in its Brief. Clearly, the exceptional doctrine of estoppel by laches is inapplicable to the instant appeal.

3. **ID.; ID.; LACHES; DEFINED.—** Laches has been defined as the "failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it." In this case, petitioner Republic has not displayed such unreasonable failure or neglect that would lead us to conclude that it has abandoned or declined to assert its right to question the lower court's jurisdiction.

4. **CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE; APPLICATION FOR ORIGINAL REGISTRATION; THE LAPSE OF TIME BETWEEN THE ISSUANCE OF THE ORDER SETTING THE DATE OF INITIAL HEARING, AND THE DATE OF THE INITIAL HEARING ITSELF IS NOT FATAL TO THE APPLICATION.—** The Property Registration Decree provides: "Sec. 23. Notice of initial hearing, publication, *etc*. - The court shall, within five days from filing of the application, issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order. x x x." While the date set by the RTC was beyond the 90-day period provided for in Section 23, this fact did not affect the jurisdiction of the trial court. In *Republic v. Manna Properties, Inc.*, petitioner Republic therein contended that there was failure to comply with the jurisdictional requirements for original registration, because there were 125 days between the Order setting the date of the initial hearing and the initial hearing itself. We ruled that the lapse of time between the issuance of the Order

setting the date of initial hearing and the date of the initial hearing itself was not fatal to the application.

5. **ID.; ID.; ID.; ID.; FAILURE TO ISSUE THE ORDER SETTING THE DATE AND HOUR OF THE INITIAL HEARING WITHIN FIVE DAYS FROM THE FILING OF THE APPLICATION FOR REGISTRATION DOES NOT AFFECT THE COURT'S JURISDICTION.—** The RTC's failure to issue the Order setting the date and hour of the initial hearing within five days from the filing of the application for registration, as provided in the Property Registration Decree, did not affect the court's jurisdiction. Observance of the five-day period was merely directory, and failure to issue the Order within that period did not deprive the RTC of its jurisdiction over the case. To rule that compliance with the five-day period is mandatory would make jurisdiction over the subject matter dependent upon the trial court. Jurisdiction over the subject matter is conferred only by the Constitution or the law. It cannot be contingent upon the action or inaction of the court. This does not mean that courts may disregard the statutory periods with impunity. We cannot assume that the law deliberately meant the provision "to become meaningless and to be treated as a dead letter." However, the records of this case do not show such blatant disregard for the law.

6. **REMEDIAL LAW; JUDICIARY REORGANIZATION ACT; METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS; HAVE DELEGATED JURISDICTION IN CADASTRAL AND LAND REGISTRATION CASES.—** The MTC has delegated jurisdiction in cadastral and land registration cases in two instances: *first,* where there is no controversy or opposition; or, *second*, over contested lots, the value of which does not exceed 100,000. The case at bar does not fall under the first instance, because petitioner opposed respondent Corporation's application for registration on 8 January 1998. However, the MTC had jurisdiction under the second instance, because the value of the lot in this case does not exceed 100,000.

7. **ID.; ID.; ID.; MAY HEAR AND DETERMINE CADASTRAL OR LAND REGISTRATION CASES COVERING CONTESTED LOTS THE VALUE OF WHICH DOES NOT EXCEED ONE HUNDRED THOUSAND PESOS; VALUE**

OF PROPERTY, HOW ASCERTAINED.— [T]he value of the land should not be determined with reference to its selling price. Rather, Section 34 of the Judiciary Reorganization Act provides that the value of the property sought to be registered may be ascertained in three ways: *first*, by the affidavit of the claimant; *second*, by agreement of the respective claimants, if there are more than one; or, *third*, from the corresponding tax declaration of the real property. In this case, the value of the property cannot be determined using the first method, because the records are bereft of any affidavit executed by respondent as to the value of the property. Likewise, valuation cannot be done through the second method, because this method finds application only where there are multiple claimants who agree on and make a joint submission as to the value of the property. Here, only respondent Bantigue Point Development Corporation claims the property. The value of the property must therefore be ascertained with reference to the corresponding Tax Declarations submitted by respondent Corporation together with its application for registration.

8. **CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE; APPLICATION FOR ORIGINAL REGISTRATION; REQUIREMENTS.—** The Regalian doctrine dictates that all lands of the public domain belong to the State. The applicant for land registration has the burden of overcoming the presumption of State ownership by establishing through incontrovertible evidence that the land sought to be registered is alienable or disposable **based on a positive act of the government.** We held in *Republic v. T.A.N. Properties, Inc.* that a CENRO certification is insufficient to prove the alienable and disposable character of the land sought to be registered. The applicant must also show sufficient proof that the DENR Secretary has approved the land classification and released the land in question as alienable and disposable. Thus, the present rule is that an application for original registration must be accompanied by (1) a CENRO or PENRO Certification; and (2) 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. Here, respondent Corporation only presented a CENRO certification in support of its application. Clearly, this falls short of the requirements for original registration.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Noel I. Malaluan for respondent.

D E C I S I O N

SERENO, *J.*:

This Rule 45 Petition requires this Court to address the issue of the proper scope of the delegated jurisdiction of municipal trial courts in land registration cases. Petitioner Republic of the Philippines (Republic) assails the Decision of the Court of Appeals (CA)[1] in CA-G.R. CV No. 70349, which affirmed the Decision of the Municipal Trial Court (MTC) of San Juan, Batangas[2] in LRC Case No. N-98-20, LRA Record No. 68329, granting respondent Bantigue Point Development Corporation's (Corporation) application for original registration of a parcel of land. Since only questions of law have been raised, petitioner need not have filed a Motion for Reconsideration of the assailed CA Decision before filing this Petition for Review.

The Facts

On 17 July 1997, respondent Bantigue Point Development Corporation filed with the Regional Trial Court (RTC) of Rosario, Batangas an application for original registration of title over a parcel of land with an assessed value of 4,330, 1,920 and 8,670, or a total assessed value of 14,920 for the entire property, more particularly described as Lot 8060 of Cad 453-D, San Juan Cadastre, with an area of more or less 10,732 square meters, located at Barangay Barualte, San Juan, Batangas. [3]

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[1] CA Decision dated 13 February 2004, penned by Justice Elvi John S. Asuncion and concurred in by Justices Godardo A. Jacinto and Lucas P. Bersamin, *rollo*, pp. 31-35.

[2] MTC Decision dated 22 January 2001, penned by Judge Fermin M. Chavez, *rollo*, pp. 37-41.

[3] Application for Original Registration of Title dated 17 July 1997, MTC records, pp. 1-2.

On 18 July 1997, the RTC issued an Order setting the case for initial hearing on 22 October 1997.[4] On 7 August 1997, it issued a second Order setting the initial hearing on 4 November 1997.[5]

Petitioner Republic filed its Opposition to the application for registration on 8 January 1998 while the records were still with the RTC.[6]

On 31 March 1998, the RTC Clerk of Court transmitted *motu proprio* the records of the case to the MTC of San Juan, because the assessed value of the property was allegedly less than 100,000.[7]

Thereafter, the MTC entered an Order of General Default[8] and commenced with the reception of evidence.[9] Among the documents presented by respondent in support of its application are Tax Declarations,[10] a Deed of Absolute Sale in its favor,[11] and a Certification from the Department of Environment and Natural Resources (DENR) Community Environment and Natural Resources Office (CENRO) of Batangas City that the lot in question is within the alienable and disposable zone.[12] Thereafter, it awarded the land to respondent Corporation.[13]

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[4] Order dated 18 July 1997, MTC records, pp. 25-27.

[5] Order dated 7 August 1997, MTC records, pp. 28-29.

[6] Opposition dated 8 January 1998, MTC records, pp. 50-52.

[7] Order dated 30 April 1998, MTC records, p. 59.

[8] Order dated 27 August 1998, MTC records, p. 62.

[9] *Id.*

[10] Tax Declarations, Exhibits Q to BB and Exhibit EE of Applicant's Formal Offer of Documentary Evidence dated 29 September 2000.

[11] Deed of Absolute Sale dated 15 September 1994, Exhibit CC of Applicant's Formal Offer of Documentary Evidence dated 29 September 2000.

[12] Certification by the Community Environment and Natural Resources Office of Batangas City dated 5 May 1997, Exhibit K of Applicant's Formal Offer of Documentary Evidence dated 29 September 2000.

[13] Decision dated 22 January 2001, MTC records, pp. 76-85.

Acting on an appeal filed by the Republic,[14] the CA ruled that since the former had actively participated in the proceedings before the lower court, but failed to raise the jurisdictional challenge therein, petitioner is thereby estopped from questioning the jurisdiction of the lower court on appeal.[15] The CA further found that respondent Corporation had sufficiently established the latter's registrable title over the subject property after having proven open, continuous, exclusive and notorious possession and occupation of the subject land by itself and its predecessors-in-interest even before the outbreak of World War II.[16]

Dissatisfied with the CA's ruling, petitioner Republic filed this instant Rule 45 Petition and raised the following arguments in support of its appeal:

I.

THE REPUBLIC CANNOT BE ESTOPPED FROM QUESTIONING THE JURISDICTION OF THE MUNICIPAL TRIAL COURT OVER THE APPLICATION FOR ORIGINAL REGISTRATION OF LAND TITLE EVEN FOR THE FIRST TIME ON APPEAL

II.

THE MUNICIPAL TRIAL COURT FAILED TO ACQUIRE JURISDICTION OVER THE APPLICATION FOR ORIGINAL REGISTRATION OF LAND TITLE.[17]

The Court's Ruling

We uphold the jurisdiction of the MTC, but remand the case to the court *a quo* for further proceedings in order to determine if the property in question forms part of the alienable and disposable land of the public domain.

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[14] Notice of Appeal dated 12 February 2001, MTC records, p. 86-87.

[15] CA Decision dated 13 February 2004, p. 3; *rollo*, p. 8.

[16] CA Decision dated 13 February 2004, pp. 3-4; *rollo*, pp. 8-9.

[17] Petition for Review on *Certiorari* dated 12 April 2004, p. 8; *rollo*, p. 20.

I

The Republic is not estopped from raising the issue of jurisdiction in this case.

At the outset, we rule that petitioner Republic is not estopped from questioning the jurisdiction of the lower court, even if the former raised the jurisdictional question only on appeal. The rule is settled that lack of jurisdiction over the subject matter may be raised at any stage of the proceedings.[18] Jurisdiction over the subject matter is conferred only by the Constitution or the law.[19] It cannot be acquired through a waiver or enlarged by the omission of the parties or conferred by the acquiescence of the court.[20] Consequently, questions of jurisdiction may be cognizable even if raised for the first time on appeal.[21]

The ruling of the Court of Appeals that "a party may be estopped from raising such [jurisdictional] question if he has actively taken part in the very proceeding which he questions, belatedly objecting to the court's jurisdiction in the event that the judgment or order subsequently rendered is adverse to him"[22] is based on the doctrine of estoppel by laches. We are aware of that doctrine first enunciated by this Court in *Tijam v. Sibonghanoy.*[23] In *Tijam*, the party-litigant actively participated in the proceedings before the lower court and filed pleadings therein. Only 15 years thereafter, and after receiving an adverse Decision on the merits from the appellate court, did the party-litigant question the lower court's jurisdiction. Considering the unique facts in that case, we held that estoppel by laches had

[18] *Sps. Pasco v. Pison-Arceo Agricultural and Development Corp.*, 520 Phil. 387 (2006).

[19] *Sps. Genato v. Viola*, G.R. No. 169706, 5 February 2010, 611 SCRA 677.

[20] *Gomez-Castillo v. COMELEC*, G.R. No. 187231, 22 June 2010, 621 SCRA 499.

[21] *La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, 31 August 1994, 236 SCRA 78.

[22] CA Decision dated 13 February 2004, p. 3; *rollo*, p. 8.

[23] 131 Phil. 556 (1968).

already precluded the party-litigant from raising the question of lack of jurisdiction on appeal. In *Figueroa v. People*,[24] we cautioned that *Tijam* must be construed as an exception to the general rule and applied only in the most exceptional cases whose factual milieu is similar to that in the latter case.

The facts are starkly different in this case, making the exceptional rule in *Tijam* inapplicable. Here, petitioner Republic filed its Opposition to the application for registration when the records were still with the RTC.[25] At that point, petitioner could not have questioned the delegated jurisdiction of the MTC, simply because the case was not yet with that court. When the records were transferred to the MTC, petitioner neither filed pleadings nor requested affirmative relief from that court. On appeal, petitioner immediately raised the jurisdictional question in its Brief.[26] Clearly, the exceptional doctrine of estoppel by laches is inapplicable to the instant appeal.

Laches has been defined as the "failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it."[27] In this case, petitioner Republic has not displayed such unreasonable failure or neglect that would lead us to conclude that it has abandoned or declined to assert its right to question the lower court's jurisdiction.

II

The Municipal Trial Court properly acquired jurisdiction over the case.

In assailing the jurisdiction of the lower courts, petitioner Republic raised two points of contention: (a) the period for

[24] G.R. No. 147406, 14 July 2008, 558 SCRA 63.

[25] Opposition dated 8 January 1998, MTC records, pp. 50-52.

[26] Brief for the Appellant dated 27 November 2001, pp. 8-10; CA *rollo*, pp. 25-27.

[27] *Tijam v. Sibonghanoy, supra* note 23, at 563.

setting the date and hour of the initial hearing; and (b) the value of the land to be registered.

First, petitioner argued that the lower court failed to acquire jurisdiction over the application, because the RTC set the date and hour of the initial hearing beyond the 90-day period provided under the Property Registration Decree.[28]

We disagree.

The Property Registration Decree provides:

> Sec. 23. Notice of initial hearing, publication, *etc*. — The court shall, within five days from filing of the application, issue an order setting the date and hour of the initial hearing which shall not be earlier than forty-five days nor later than ninety days from the date of the order. x x x.

In this case, the application for original registration was filed on 17 July 1997.[29] On 18 July 1997, or a day after the filing of the application, the RTC immediately issued an Order setting the case for initial hearing on 22 October 1997, which was 96 days from the Order.[30] While the date set by the RTC was beyond the 90-day period provided for in Section 23, this fact did not affect the jurisdiction of the trial court. In *Republic v. Manna Properties, Inc.*,[31] petitioner Republic therein contended that there was failure to comply with the jurisdictional requirements for original registration, because there were 125 days between the Order setting the date of the initial hearing and the initial hearing itself. We ruled that the lapse of time between the issuance of the Order setting the date of initial hearing and the date of the initial hearing itself was not fatal to the application. Thus, we held:

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[28] Petition for Review on *Certiorari* dated 12 April 2004, pp. 11-13; *rollo*, pp. 23-25.

[29] Application for Original Registration of Title dated 17 July 1997, MTC records, pp. 1-2.

[30] Order dated 18 July 1997, MTC records, pp. 25-27.

[31] 490 Phil. 654 (2005).

x x x [A] party to an action has no control over the Administrator or the Clerk of Court acting as a land court; he has no right to meddle unduly with the business of such official in the performance of his duties. A party cannot intervene in matters within the exclusive power of the trial court. No fault is attributable to such party if the trial court errs on matters within its sole power. It is unfair to punish an applicant for an act or omission over which the applicant has neither responsibility nor control, especially if the applicant has complied with all the requirements of the law.[32]

Indeed, it would be the height of injustice to penalize respondent Corporation by dismissing its application for registration on account of events beyond its control.

Moreover, since the RTC issued a second Order on 7 August 1997 setting the initial hearing on 4 November 1997,[33] within the 90-day period provided by law, petitioner Republic argued that the jurisdictional defect was still not cured, as the second Order was issued more than five days from the filing of the application, again contrary to the prescribed period under the Property Registration Decree.[34]

Petitioner is incorrect.

The RTC's failure to issue the Order setting the date and hour of the initial hearing within five days from the filing of the application for registration, as provided in the Property Registration Decree, did not affect the court's its jurisdiction. Observance of the five-day period was merely directory, and failure to issue the Order within that period did not deprive the RTC of its jurisdiction over the case. To rule that compliance with the five-day period is mandatory would make jurisdiction over the subject matter dependent upon the trial court. Jurisdiction over the subject matter is conferred only by the Constitution or the law.[35] It cannot be contingent upon the action or inaction of the court.

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[32] *Id.* at 664.

[33] Order dated 7 August 1997, MTC records, pp. 28-29.

[34] Petition for Review on *Certiorari* dated 12 April 2004, p. 12; *rollo*, p. 24.

[35] *Sps. Genato v. Viola, supra* note 19.

This does not mean that courts may disregard the statutory periods with impunity. We cannot assume that the law deliberately meant the provision "to become meaningless and to be treated as a dead letter."[36] However, the records of this case do not show such blatant disregard for the law. In fact, the RTC immediately set the case for initial hearing a day after the filing of the application for registration,[37] except that it had to issue a second Order because the initial hearing had been set beyond the 90-day period provided by law.

Second, petitioner contended[38] that since the selling price of the property based on the Deed of Sale annexed to respondent's application for original registration was 160,000,[39] the MTC did not have jurisdiction over the case. Under Section 34 of the Judiciary Reorganization Act, as amended,[40] the MTC's delegated jurisdiction to try cadastral and land registration cases is limited to lands, the value of which should not exceed 100,000.

We are not persuaded.

The delegated jurisdiction of the MTC over cadastral and land registration cases is indeed set forth in the Judiciary Reorganization Act, which provides:

Sec. 34. *Delegated Jurisdiction in Cadastral and Land Registration Cases.—* Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts may be assigned by the Supreme Court to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition, or **contested lots where the value of which does not exceed One hundred thousand pesos (100,000.00)**, such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants if there are more than one, or from the corresponding tax

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[36] *Tatad v. Sandiganbayan*, 242 Phil. 563, 575 (1988).

[37] Order dated 18 July 1997, MTC records, pp. 25-27.

[38] Petition for Review on *Certiorari* dated 12 April 2004, pp. 13-15; *rollo*, pp. 25-27.

[39] Deed of Absolute Sale dated 15 September 1994, Annex "A" to the Application for Original Registration of Title, MTC records pp. 4-5.

[40] *Batas Pambansa Bilang* 129, as amended.

declaration of the real property. Their decision in these cases shall be appealable in the same manner as decisions of the Regional Trial Courts. (As amended by R.A. No. 7691) (Emphasis supplied.)

Thus, the MTC has delegated jurisdiction in cadastral and land registration cases in two instances: *first,* where there is no controversy or opposition; or, *second*, over contested lots, the value of which does not exceed 100,000.

The case at bar does not fall under the first instance, because petitioner opposed respondent Corporation's application for registration on 8 January 1998.[41]

However, the MTC had jurisdiction under the second instance, because the value of the lot in this case does not exceed 100,000.

Contrary to petitioner's contention, the value of the land should not be determined with reference to its selling price. Rather, Section 34 of the Judiciary Reorganization Act provides that the value of the property sought to be registered may be ascertained in three ways: *first*, by the affidavit of the claimant; *second*, by agreement of the respective claimants, if there are more than one; or, *third*, from the corresponding tax declaration of the real property.[42]

In this case, the value of the property cannot be determined using the first method, because the records are bereft of any affidavit executed by respondent as to the value of the property. Likewise, valuation cannot be done through the second method, because this method finds application only where there are multiple claimants who agree on and make a joint submission as to the value of the property. Here, only respondent Bantigue Point Development Corporation claims the property.

The value of the property must therefore be ascertained with reference to the corresponding Tax Declarations submitted by respondent Corporation together with its application for registration. From the records, we find that the assessed value

[41] Opposition dated 8 January 1998, MTC records, pp. 50-52.

[42] The Judiciary Reorganization Act, as amended, Sec. 34.

of the property is 4,330, 1,920 and 8,670, or a total assessed value of 14,920 for the entire property.[43] Based on these Tax Declarations, it is evident that the total value of the land in question does not exceed 100,000. Clearly, the MTC may exercise its delegated jurisdiction under the Judiciary Reorganization Act, as amended.

III

A certification from the CENRO is not sufficient proof that the property in question is alienable and disposable land of the public domain.

Even as we affirm the propriety of the MTC's exercise of its delegated jurisdiction, we find that the lower court erred in granting respondent Corporation's application for original registration in the absence of sufficient proof that the property in question was alienable and disposable land of the public domain.

The Regalian doctrine dictates that all lands of the public domain belong to the State.[44] The applicant for land registration has the burden of overcoming the presumption of State ownership by establishing through incontrovertible evidence that the land sought to be registered is alienable or disposable **based on a positive act of the government.**[45] We held in *Republic v. T.A.N. Properties, Inc.* that a CENRO certification is insufficient to prove the alienable and disposable character of the land sought to be registered.[46] The applicant must also show sufficient proof that the DENR Secretary has approved the land classification and released the land in question as alienable and disposable.[47]

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[43] Tax Declaration Nos. 004-00465, 004-00466 and 004-00467; Annexes "B", "B-1" and "B-2" to the Application for Original Registration of Title, MTC records, pp. 6-8.

[44] Constitution, Article XII, Section 2.

[45] *Secretary of the Department of Environment and Natural Resources v. Yap*, G.R. No. 167707, 8 October 2008, 568 SCRA 164.

[46] G.R. No. 154953, 26 June 2008, 555 SCRA 477.

[47] *Id.*

Thus, the present rule is that an application for original registration must be accompanied by (1) a CENRO or PENRO[48] Certification; and (2) 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.[49]

Here, respondent Corporation only presented a CENRO certification in support of its application.[50] Clearly, this falls short of the requirements for original registration.

We therefore remand this case to the court *a quo* for reception of further evidence to prove that the property in question forms part of the alienable and disposable land of the public domain. If respondent Bantigue Point Development Corporation presents a certified true copy of the original classification approved by the DENR Secretary, the application for original registration should be granted. If it fails to present sufficient proof that the land in question is alienable and disposable based on a positive act of the government, the application should be denied.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED.** Let this case be **REMANDED** to the Municipal Trial Court of San Juan, Batangas, for reception of evidence to prove that the property sought to be registered is alienable and disposable land of the public domain.

SO ORDERED.

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

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[48] Provincial Environment and Natural Resources Office.

[49] *Republic v. Vega*, G.R. No. 177790, January 17, 2011, 639 SCRA 541.

[50] Certification by the Community Environment and Natural Resources Office of Batangas City dated 5 May 1997, Exhibit K of Applicant's Formal Offer of Documentary Evidence dated 29 September 2000.

THIRD DIVISION

[G.R. No. 166216. March 14, 2012]

ROGELIO ABERCA, RODOLFO BENOSA, NESTOR BODINO, NOEL ETABAG, DANILO DELA FUENTE, BELEN DIAZ-FLORES, MANUEL MARIO GUZMAN, ALAN JASMINEZ, EDWIN LOPEZ, ALFREDO MANSOS, ALEX MARCELINO, ELIZABETH PROTACIO-MARCELINO, JOSEPH OLAYER, CARLOS PALMA, MARCO PALO, ROLANDO SALUTIN, BENJAMIN SEGUNDO, ARTURO TABARA, EDWIN TULALIAN, and REBECCA TULALIAN, *petitioners, vs.* **MAJ. GEN. FABIAN VER, COL. FIDEL SINGSON, COL. GERARDO B. LANTORIA, COL. ROLANDO ABADILLA, COL. GALILEO KINTANAR, LT. COL. PANFILO M. LACSON, MAJ. RODOLFO AGUINALDO, CAPT. DANILO PIZARRO, 1LT. PEDRO TANGO, 1LT. ROMEO RICARDO, 1LT. RAUL BACALSO, M/SGT. BIENVENIDO BALABA and "JOHN DOES,"** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; RULES ON MODES OF SERVICE; MANDATORY IN NATURE AND, HENCE, SHOULD BE STRICTLY FOLLOWED.—** Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property. Moreover, pursuant to the provisions of Section 5(5) of Article VIII of the 1987 Constitution, the Court adopted and promulgated x x x rules concerning, among others, the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts x x x. The x x x rules x x x prescribe the modes of service of pleadings, motions, notices, orders, judgments, and other papers, namely: (1) personal service; (2) service by mail; and (3) substituted service, in case service cannot be effected either personally or by mail. The Rules of Court has

been laid down to insure the orderly conduct of litigation and to protect the substantive rights of all party litigants. It is for this reason that the basic rules on the modes of service provided under Rule 13 of the Rules of Court have been made mandatory and, hence, should be strictly followed.

2. **ID.; ID.; ID.; ID.; SERVICE OF NOTICE TO FILE ANSWER BY PUBLICATION IS NOT RECOGNIZED.—** [T]he only modes of service of pleadings, motions, notices, orders, judgments and other papers allowed by the rules are personal service, service by mail and substituted service if either personal service or service by mail cannot be made, as stated in Sections 6, 7 and 8 of Rule 13 of the Rules of Court. Nowhere under this rule is service of notice to file answer by publication is mentioned, much less recognized.

3. **ID.; ID.; SERVICE BY PUBLICATION; ONLY APPLIES TO SERVICE OF SUMMONS AND TO JUDGMENTS, FINAL ORDERS AND RESOLUTIONS.—** [T]he Court would like to point out that service by publication only applies to service of summons stated under Rule 14 of the Rules of Court where the methods of service of summons in civil cases are: (1) personal service; (2) substituted service; and (3) service by publication. Similarly, service by publication can apply to judgments, final orders and resolutions as provided under Section 9, Rule 13 of the Rules of Court x x x.

4. **ID.; COURTS; THE INHERENT POWER OF COURTS TO CONTROL THEIR PROCEEDINGS MUST BE EXERCISED WITHOUT VIOLATING COURT PROCEDURE OR DISREGARDING ONE'S BASIC CONSTITUTIONAL RIGHT TO PROCEDURAL DUE PROCESS.—** [T]he basic rules on modes of service of pleadings, motions, notices, orders, judgments, and other papers are mandatory in nature and, therefore, must be strictly observed. The Court is not unaware of the inherent power of courts to control its proceedings. Nonetheless, the exercise of such inherent power must not violate basic court procedures. More importantly, it must not disregard one's basic constitutional right to procedural due process.

5. **ID.; CIVIL PROCEDURE; EFFECT OF FAILURE TO PLEAD; DEFAULT; JUDGMENTS BY DEFAULT; GENERALLY**

LOOKED UPON WITH DISFAVOR AND ARE FROWNED UPON AS CONTRARY TO PUBLIC POLICY.— On countless occasions, the Court ruled that, generally, judgments by default are looked upon with disfavor and are frowned upon as contrary to public policy. An example here would be the case of *Regalado P. Samartino v. Leonor B. Raon,* where the Court stated: xxx "Well-settled is the rule that courts should be liberal in setting aside orders of default for default judgments are frowned upon, unless in cases where it clearly appears that the reopening of the case is intended for delay. The issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court. Suits should as much as possible be decided on the merits and not on technicalities. In this regard, we have often admonished courts to be liberal in setting aside orders of default as default judgments are frowned upon and not looked upon with favor for they may amount to a positive and considerable injustice to the defendant and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that this Court is empowered to suspend its operation, or except a particular case from its operation, when the rigid application thereof tends to frustrate rather than promote the ends of justice."

6. **LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; NOT PRESENT IN CASE AT BAR.—** [T]here was no longer any lawyer-client relationship between the OSG and the respondents at the time the decision of the Court dated April 15, 1988 was promulgated because, admittedly, after the 1986 EDSA Revolution, the respondents were no longer occupying their respective government positions and Sol. Gen. Mendoza, who represented them, was no longer the Solicitor General. In fact, in compliance with the RTC's order dated September 10, 1990, former Solicitor General Mendoza submitted a manifestation that his legal representation for the respondents was deemed terminated when he ceased to be the Solicitor General and that he was not representing the respondents in his private capacity. For his part, on December 11, 1990, the incumbent Solicitor General at that time, Solicitor

General Francisco Chavez *(Sol. Gen. Chavez),* filed a notice of withdrawal of appearance for the respondents citing the case of *Urbano v. Chavez,* where the Court ruled that the OSG is not authorized to represent a public official at any stage of a criminal case or in a civil suit for damages arising from a felony. The records do not show any proof that the respondents were furnished a copy of this notice of withdrawal or whether or not they gave their conformity thereto. Contrary to the petitioners' position, while it is true that Sol. Gen. Chavez filed a notice of withdrawal only on December 11, 1990, the respondents were in effect no longer represented by counsel as early as April 15, 1988 when the Court's decision was rendered, or much earlier, right after the 1986 EDSA Revolution due to the change in government. The Court cannot subscribe to the petitioners' argument that there was negligence or mistake on the part of the OSG considering that Sol. Gen. Mendoza ceased to hold office due to the EDSA Revolution while Sol. Gen. Chavez withdrew his representation because of the prohibition in *Urbano v. Chavez.* Definitely, Sol. Gen. Mendoza's cessation from holding office and Sol. Gen. Chavez's withdrawal of representation in the unique scenario of this case are not equivalent to professional delinquency or ignorance, incompetency or inexperience or negligence and dereliction of duty. Hence, there is no negligence of counsel in this case. After the 1986 EDSA Revolution, the respondents were practically left without counsel.

APPEARANCES OF COUNSEL

Free Legal Assistance Group (FLAG) for petitioners.

M.M. Lazaro & Associates for Fidel Singson, Panfilo Lacson and Heirs of Rolando Abadilla.

DECISION

MENDOZA, *J.*:

Assailed in this petition is the July 31, 2003 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CV No. 43763 and its November 26, 2004 Resolution[2] reversing and setting aside the February 19, 1993 Decision[3] of the Regional Trial Court, Branch 107, Quezon City *(RTC)*, in Civil Case No. 37487 entitled *"Rogelio Aberca, et al. v. Maj. Gen. Fabian Ver, et al."* for sum of money and damages.

The Facts

The factual and procedural antecedents were succinctly recited by the CA as follows:

> On 25 January 1983, several suspected subversives who were arrested and detained by the military filed a complaint for damages with the Regional Trial Court of Quezon City against Gen. Fabian Ver, then AFP Chief of Staff, and the following subordinate officers: Col. Fidel Singson, Col. Gerardo Lantoria, Col. Rolando Abadilla, Col. Guillermo Kintanar, Lt. Col. Panfilo Lacson, Maj. Rodolfo Aguinaldo, Capt. Danilo Pizarro, 1Lt. Pedro Tango, 1Lt. Romeo Ricardo, 1Lt. Raul Bacalso, M/Sgt. Bienvenido Balaba and "John Does." The case was docketed as Civil Case No. 37487 and assigned to Branch 95.
>
> In their complaint, the plaintiff-appellees alleged that they were arrested and detained by Task Force Makabansa, a composite group of various intelligence units of the AFP, on the strength of defective search warrants; that while under detention and investigation, they were subjected to physical and psychological harm, torture and other brutalities to extort from them confessions and other information that would incriminate them; and that by reason thereof, they suffered actual and moral damages.

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[1] *Rollo*, pp. 52-63 (Penned by Associate Justice Oswaldo D. Agcaoili and concurred in by Associate Justice Perlita J. Tria-Tirona and Associate Justice Rosalinda Asuncion-Vicente).

[2] *Id.* at 67-69.

[3] *Id.* at 97-123.

Defendants-appellants, through their counsel, the then Solicitor General Estelito Mendoza, filed a motion to dismiss on the following grounds: (1) since the privilege of the writ of *habeas corpus* was then suspended, the trial court cannot inquire into the circumstances surrounding plaintiffs-appellees' arrests; (2) the defendants-appellants are immune from liability for the reason that they were then performing their official duties; and (3) the complaint states no cause of action.

In an order dated November 8, 1983, the trial court granted defendants-appellants' motion to dismiss and ordered the case dismissed.

Plaintiffs-appellees filed a motion to reconsider and set aside the order of dismissal. In an order dated May 11, 1984, the trial court declared the order of November 8, 1983 final.

Plaintiffs-appellees again filed a motion for reconsideration of the order dated May 11, 1984. In an order dated September 21, 1984, the trial court denied the motion for reconsideration.

On March 15, 1985, plaintiffs-appellees went to the Supreme Court on a petition for review on *certiorari*, seeking to annul and set aside the orders of the trial court dated November 8, 1983, May 11, 1984 and September 21, 1984. The case was docketed as G.R. No. 69866.

While the case was pending in the Supreme Court, the so-called EDSA revolution took place. As a result, the defendants-appellants lost their official positions and were no longer in their respective office addresses as appearing in the record. Also, in the meantime, the case was re-raffled to Branch 107.

On April 15, 1988, the Supreme Court rendered a decision annulling and setting aside the assailed orders and remanded the case to the trial court for further proceedings.

However, trial could not proceed immediately because on June 11, 1988, the record of the case was destroyed when fire razed the City Hall of Quezon City. It was only on October 9, 1989 when plaintiffs-appellees sought a reconstitution of the record of the case. The record shows that the petition for reconstitution was set for hearing on October 27, 1989. However, there is nothing in the record to show that defendants-appellants or their counsel were notified. For lack

of an opposition, the petition for reconstitution was granted in an order dated March 12, 1990.

On August 15, 1990, plaintiffs-appellees filed a motion praying that defendants-appellants be required to file their answer. However, the record as reconstituted did not show who are the lawyers of the defendants-appellants considering that Estelito Mendoza, who had represented them in his capacity as Solicitor General, was no longer holding that position. Furthermore, defendants-appellants were also no longer occupying the positions they held at the time the complaint was filed. Thus, in an order dated August 17, 1990, plaintiffs-appellees were directed to report to the trial court the addresses and whereabouts of defendants-appellants so that they could be properly notified.

Instead of complying with the order of August 17, 1990, plaintiffs-appellees filed a motion to declare defendants-appellants in default. The trial court deferred resolution of this motion and instead, it issued an order on September 10, 1990 directing that a copy of the order dated August 17, 1990 be furnished to new Solicitor General Francisco Chavez to enable him to take action pursuant to Section 18, Rule 3 of the Rules of Court, and to former Solicitor General Estelito Mendoza to enable him to give notice as to whether he [would] continue to represent the defendants-appellants in his private capacity. As it said in its order, the trial court took this action "in view of the change in government and corresponding change in the addresses and circumstances of the defendants-appellants who may not even be aware of the decision of the Supreme Court in case G.R. No. L-69866 and of the reconstitution of records in this case xxx."

On October 1, 1990, former Solicitor General Mendoza filed a manifestation informing the trial court that his appearance as defendants-appellants' counsel terminated when he ceased to be Solicitor General and that he was not representing them in his private capacity. On his part, Solicitor General Chavez finally filed on December 11, 1990 a notice of withdrawal of appearance, citing *Urbano v. Go*, where the Supreme Court said that "the Office of the Solicitor General (OSG) is not authorized to represent a public official at any stage of a criminal case or in a civil suit for damages arising from a felony." The record does not show that defendants-appellants were furnished a copy of this notice of withdrawal or that they gave their conformity thereto.

In an order dated December 27, 1990, the trial court denied plaintiffs-appellees' motion to declare defendants-appellants in

default, emphatically pointing out that defendants-appellants were not duly notified of the decision of the Supreme Court. In the same order, the trial court directed plaintiffs-appellees to comply with the order of August 17, 1990 within ten (10) days from notice, with a warning that the case [would] be archived and eventually dismissed if plaintiffs-appellees failed to furnish to the court the addresses of defendants-appellants. Plaintiffs-appellees moved to reconsider the order dated December 27, 1990 but in an order dated February 1, 1991, the trial court denied the motion, stating that "without actual notice of the judgment of the Supreme Court xxx the defendants-appellants herein would not be aware that they should file a responsive pleading" and that, therefore, "to consider the defendants-appellants in default would be tantamount to lack of due process xxx."

For failure of the plaintiffs-appellees to comply with the orders dated August 17, 1990 and December 27, 1990, the trial court dismissed the case without prejudice in its order dated March 7, 1991. Subsequently, however, in an order dated June 4, 1991, the trial court set aside the order of dismissal and reinstated the case. It also approved plaintiffs-appellees' request to serve the notice to file answer or responsive pleading by publication.

In a compliance dated September 12, 1991, plaintiffs-appellees informed the trial court that the following notice was published in the Tagalog newspaper BALITA in its issues of August 29, 1991 and September 5, 1991:

xxx xxx xxx

No answer was filed by defendants-appellants within the period stated in the notice. On motion of plaintiffs-appellees, the trial court in its order dated December 5, 1991 declared defendants-appellants in default and directed plaintiffs-appellees to present their evidence *ex-parte*.[4]

Ruling of the RTC

On February 19, 1993, the RTC handed down a decision in favor of the petitioners, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered, ordering the following defendants:

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[4] *Id.* at 52-56.

1) Maj. General Fabian Ver
2) Col. Fidel Singson
3) Col. Rolando Abadilla
4) Col. Gerardo Lantoria
5) Col. Galileo Kintanar
6) Lt. Col. Panfilo Lacson
7) Maj. Rodolfo Aguinaldo
8) 1Lt. Pedro Tango
9) M/Sgt. Bienvenido Balaba

to pay jointly and severally to EACH of the following plaintiffs:

a) Rodolfo Benosa
b) Manuel Mario Guzman
c) Joseph Olayer
d) Marco Palo
e) Rolando Salutin

the amounts of FIFTY THOUSAND PESOS (₱50,000.00) as temperate or moderate damages; ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00) as moral damages; and ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00) as exemplary damages. Likewise, they are ordered to pay jointly and severally the sum of TWO HUNDRED THOUSAND PESOS to the plaintiffs' counsel.

The claims of the rest of the plaintiffs are denied and thereby dismissed. Likewise, the case against the following defendants: Capt. Danilo Pizarro, 1Lt. Romeo Ricardo and 1Lt. Raul Bacalso is DISMISSED, and the said defendants are exonerated from any liability.[5]

Subsequently, respondents Col. Fidel Singson *(Col. Singson)*, Lt. Col. Panfilo M. Lacson *(Lt. Col. Lacson)*, and Col. Rolando Abadilla *(Col. Abadilla)* filed their Omnibus Motion praying as follows: 1) that the order of default dated December 5, 1991 be reversed and set aside; 2) that the decision dated February 19, 1993 be reversed and set aside; 3) that the entire proceedings be declared null and void; and 4) that they be given fifteen (15)

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[5] *Id.* at 122-123.

days from notice to file answer to the complaint and present their evidence. Col. Gerardo B. Lantoria *(Col. Lantoria)* filed his own Motion for Reconsideration.

On his part, respondent Maj. Rodolfo Aguinaldo *(Maj. Aguinaldo)* failed to file a timely notice of appeal so he filed a Petition for Relief from Judgment praying that the RTC set aside its decision and proceed to try the case based on the following grounds: 1) the decision was rendered without the benefit of notice in gross violation of his right to due process; 2) the reconstitution of the records of the case and further proceedings taken thereon were effected through fraud; and 3) his failure to move for a new trial or to appeal was due to mistake or excusable negligence.

The Omnibus Motion of Col. Singson, Lt. Col. Lacson and Col. Abadilla; the Motion for Reconsideration of Col. Gerardo Lantoria; and the Petition for Relief from Judgment of Maj. Aguinaldo were denied by the RTC.[6] Aggrieved, the said respondents elevated their case to the CA.

Maj. Aguinaldo argued that he was deliberately deprived of the opportunity to be heard and put up his defense, while Col. Singson, Lt. Col. Lacson and Col. Abadilla presented the following assignment of errors:

I

THE TRIAL COURT ERRED IN ALLOWING THE OFFICE OF THE SOLICITOR GENERAL (OSG) TO WITHDRAW AS COUNSEL WITHOUT THE REQUIRED NOTICE TO, AND/OR CONSENT/ CONFORMITY OF APPELLANTS.

II

THE TRIAL COURT ERRED IN NOT SETTING ASIDE THE ORDER OF DEFAULT AND/OR THE JUDGMENT BY DEFAULT AND GRANTING NEW TRIAL.

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[6] *Id.* at 200-205.

III

THE TRIAL COURT ERRED IN HOLDING THAT THE OSG'S MISTAKES AND NEGLIGENCE ARE BINDING ON THE DEFENDANTS-APPELLANTS.

IV

THE TRIAL COURT ERRED IN HOLDING THE DEFENDANTS-APPELLANTS SINGSON, ABADILLA AND LACSON LIABLE FOR THE ALLEGED DAMAGES SUSTAINED BY THE PLAINTIFFS-APPELLANTS (SIC).[7]

The Ruling of the CA

On July 31, 2003, the CA rendered a decision reversing and setting aside the RTC decision and ordering the case remanded to the RTC for further proceedings. The dispositive portion of the CA decision reads as follows:

WHEREFORE, premises considered, the appeal is hereby GRANTED. The assailed decision dated February 19, 1993 is hereby REVERSED and SET ASIDE. Let the record be REMANDED to the trial court for further proceedings in accordance with the foregoing disquisition.

SO ORDERED.[8]

The CA ruled, among others, that the RTC committed four (4) errors in declaring the respondents in default and proceeding to hear the case. The RTC committed its *first error* when it abandoned the proper modes of service of notices, orders, resolutions or judgments as the petitioners failed to comply with its order dated August 17, 1990, directing them to report the addresses and whereabouts of the respondents so that they could be properly notified.

The *second error* was the failure of the RTC to avail of substituted service after failing to effect personal service or service by mail. It perpetrated its *third error* when it authorized

[7] *Id.* at 58-59.

[8] *Id.* at 63.

service by publication after dismissing the case for failure of the petitioners to furnish the current addresses of the respondents. The CA reasoned out that there was nothing in the rules which would authorize publication of a notice of hearing to file answer and for what was authorized to be published were summons and final orders and judgments. The *fourth error* was committed when the respondents were declared in default because they were not duly notified and, therefore, were denied due process.

The CA stated that since the RTC failed to notify the respondents of the proceedings undertaken, the latter were denied the chance to actively participate therein. It explained as follows:

> Instead of observing the above precepts by according defendants-appellants every opportunity to ventilate their side of the controversy, the trial court failed not only to notify them of the proceedings undertaken relative to the resolution of the case but the chance as well to actively participate therein. It bears stressing that defendants-appellants were not informed of the reinstatement of the case against them when the High Tribunal set aside the orders of the trial court dated May 11, 1984, September 21, 1984 and November 8, 1983 dismissing the complaint instituted by plaintiffs-appellees. Likewise, defendants-appellants were not apprised of the reconstitution of the records of the case which were destroyed by the fire that razed the City Hall of Quezon City. In the same manner, they were not notified of the withdrawal of the OSG as their official counsel of record, much less was their consent thereto sought. Finally and most significantly, defendants-appellants were precluded the chance to file their respective answer or responsive pleadings to the complaint with the issuance of the order dated December 5, 1991 declaring them in default notwithstanding the defective service by publication of the court's notice requiring them to file such answer or responsive pleading.[9]

Not satisfied, the petitioners come to this Court praying for the reversal and setting aside of the CA decision anchored on the following arguments:

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[9] *Id.* at 61-62.

I

IN REVERSING THE TRIAL COURT'S RULINGS DECLARING DEFENDANTS IN DEFAULT AND ALLOWING PLAINTIFFS TO PRESENT THEIR EVIDENCE EX-PARTE; AND IN NULLIFYING THE TRIAL COURT'S JUDGMENT BY DEFAULT, THE COURT *A QUO* ACTED CONTRARY TO LAW AND JURISPRUDENCE AND SO FAR DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO WARRANT THE EXERCISE BY THIS COURT OF ITS POWER OF SUPERVISION.[10]

II

IN HOLDING THAT THE TRIAL COURT ERRED IN DENYING RESPONDENTS' MOTION FOR NEW TRIAL TO SET ASIDE THE JUDGMENT AND PETITION FOR RELIEF FROM JUDGMENT, THE COURT *A QUO* ACTED CONTRARY TO LAW AND JURISPRUDENCE, AND SO FAR DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO WARRANT THE EXERCISE BY THIS COURT OF ITS POWER OF SUPERVISION.[11]

The Petitioners' Position

The petitioners claim that the RTC did not err in declaring the respondents in default and in allowing them to present evidence *ex- parte*; that the respondents were represented by the OSG from 1983 up to December 11, 1990 when the latter withdrew its appearance from the case; that after the respondents had appeared, thru the OSG, by filing a motion to dismiss, the petitioners were under no obligation to track down the respondents' addresses since the Rules of Court provide that once a litigant is represented by counsel, all notices, motions and pleadings must be sent to him as counsel of record; that it is a matter of record that the OSG was furnished copies of all court orders and the petitioners' pleadings for the period it remained as the respondents' counsel of record or from 1983 until the OSG withdrew on December 11, 1990; that as counsel of record, the OSG was duty-bound to file the respondents' answer to the complaint within 15 days from notice that it was reinstated by

[10] *Id.* at 31.

[11] *Id.* at 35.

this Court and the case was remanded to the RTC for further proceedings; and that despite having received copies of this Court's decision in G.R. No. 69866 on or about April 20, 1988 and despite having been duly notified of the finality of said decision by means of this Court's Entry of Judgment, the OSG did not file any answer or seek an extension of time to do so.

The petitioners further argue that as early as May 1988, when this Court's decision became final and executory and the respondents received notice thereof through their counsel of record, it was incumbent upon them to have answered the complaint within the period provided by the Rules of Court; that the RTC was not hasty in declaring the respondents in default for they were given several chances to file their answers even after their period to do so had already lapsed; that it was the respondents' failure to exercise ordinary prudence in monitoring the progress of this case that placed the petitioners in a difficult situation; that the respondents in this case cannot seize control of the proceedings or cause them to be suspended indefinitely by the simple expedient of not filing their answers or by feigning ignorance of the status of the proceedings; that the rule on service of summons by means of publication applies to service of summons by publication, not to notices to file answer by publication; that while service of summons by publication entails acquiring jurisdiction over the person of the defendant, it was already obtained over the respondents in this case by their voluntary appearance through counsel and their act of filing a motion to dismiss on substantive grounds; that substituted service was an exercise in futility because the respondents were no longer holding the positions they were holding at the time the petition was filed and, therefore, could not be reached at the addresses indicated on the complaint; that the only remaining option was to notify the respondents by publication; that the RTC did not err in holding that the respondents failed to establish the fraud, accident, mistake and/or excusable negligence that would warrant the grant of a new trial, or the setting aside of the judgment and/or petition for relief from judgment; that the negligence of the OSG is binding on the

respondents in the same manner that its initial success in securing the dismissal of the case was binding on them; and that it would be highly unfair to allow the respondents, who reaped the benefits of the initial dismissal of the case and never complained then about the OSG, to suddenly complain that they were not bound by their counsel's handling or mishandling of the case.

The Respondents' Position

The respondents counter that the CA did not commit a reversible error in reversing and setting aside the default judgment rendered by the RTC; that the petitioners failed to address four (4) errors committed by the RTC cited by the CA; that the respondents were deprived of the opportunity to file their answer or responsive pleadings to the complaint when the RTC issued a default order against them after a defective service of notice to file answer by publication; that the petitioners' invocation of the jurisprudence that a defaulting party has the burden of showing that he has a meritorious defense does not apply in this case; and that what should apply is the settled rule that once a denial or deprivation of due process is determined, the RTC is ousted of its jurisdiction to proceed and its judgment is null and void.

The Court's Ruling

The basic question is whether the constitutional right to procedural due process was properly observed or was unacceptably violated in this case when the respondents were declared in default for failing to file their answer within the prescribed period and when the petitioners were allowed to present their evidence *ex-parte.*

Section 1, Article III of the 1987 Constitution guarantees that:

> No person shall be deprived of life, liberty, or property without due process of law nor shall any person be denied the equal protection of the law.

Procedural due process is that which hears before it condemns, which proceeds upon inquiry and renders judgment only after

trial. It contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property.[12]

Moreover, pursuant to the provisions of Section 5(5) of Article VIII of the 1987 Constitution,[13] the Court adopted and promulgated the following rules concerning, among others, the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts:

Rule 13

SEC. 5. *Modes* of service.—Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

SEC. 6. *Personal service.*—Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

SEC. 7. *Service by mail*.—Service by registered mail shall be made by depositing the copy in the office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is

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[12] *Luzon Surety Co., Inc. v. Jesus Panaguiton*, G.R. No. L-26054, July 21, 1978, 84 SCRA 148, 153.

[13] Section 5. The Supreme Court shall have the following powers.

xxx xxx xxx

(5) **Promulgate rules concerning the protection and enforcement of constitutional rights**, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. **Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court**. [Emphases supplied]

available in the locality of either the sender or the addressee, service may be done by ordinary mail.

SEC. 8. *Substituted service*.—If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

The above rules, thus, prescribe the modes of service of pleadings, motions, notices, orders, judgments, and other papers, namely: (1) personal service; (2) service by mail; and (3) substituted service, in case service cannot be effected either personally or by mail.

The Rules of Court has been laid down to insure the orderly conduct of litigation and to protect the substantive rights of all party litigants. It is for this reason that the basic rules on the modes of service provided under Rule 13 of the Rules of Court have been made mandatory and, hence, should be strictly followed. In *Marcelino Domingo v. Court of Appeals*, [14] the Court wrote:

Section 11, Rule 13 of the Rules of Court states:

SEC. 11. Priorities in modes of service and filing.— Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

Section 11 is **mandatory**. In *Solar Team Entertainment, Inc. v. Judge Ricafort*, the Court held that:

Pursuant x x x to Section 11 of Rule 13, service and filing of pleadings and other papers must, whenever practicable, be done personally; and if made through other modes, the party concerned

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[14] *Marcelino Domingo v. Court of Appeals*, G.R. No. 169122, February 2, 2010, 611 SCRA 353, 364-365.

must provide a written explanation as to why the service or filing was not done personally. x x x

Personal service and filing are preferred for obvious reasons. Plainly, such should expedite action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail, considering the inefficiency of postal service. Likewise, personal service will do away with the practice of some lawyers who, wanting to appear clever, resort to the following less than ethical practices: (1) serving or filing pleadings by mail to catch opposing counsel off-guard, thus leaving the latter with little or no time to prepare, for instance, responsive pleadings or an opposition; or (2) upon receiving notice from the post office that the registered parcel containing the pleading of or other paper from the adverse party may be claimed, unduly procrastinating before claiming the parcel, or, worse, not claiming it at all, thereby causing undue delay in the disposition of such pleading or other papers.

If only to underscore the **mandatory nature** of this innovation to our set of adjective rules requiring personal service whenever practicable, Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place. The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause "whenever practicable."

We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is **mandatory**. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the prima facie merit of the pleading sought to be expunged for violation of Section 11. This Court cannot rule otherwise, lest we allow circumvention of the innovation introduced by the 1997

Rules in order to obviate delay in the administration of justice.

xxx xxx xxx

x x x [F]or the guidance of the Bench and Bar, **strictest compliance with Section 11 of Rule 13 is mandated**. [Emphasis supplied]

In the case at bench, the respondents were completely deprived of due process when they were declared in default based on a defective mode of service – service of notice to file answer by publication. The rules on service of pleadings, motions, notices, orders, judgments, and other papers were not strictly followed in declaring the respondents in default. The Court agrees with the CA that the RTC committed procedural lapses in declaring the respondents in default and in allowing the petitioners to present evidence *ex-parte*.

A review of the records discloses that after the Court rendered its April 15, 1988 Decision in G.R. No. 69866, annulling the RTC orders dated November 8, 1983, May 11, 1984 and September 21, 1984 and ordering the remand of the case to the RTC for further proceedings, the RTC issued an order[15] dated August 17, 1990 directing the petitioners to report the addresses and whereabouts of the respondents so that they would be properly notified of the proceedings. This directive was issued by the RTC considering that the respondents' counsel of record, the OSG, could no longer represent them and because the respondents were no longer holding official government positions because of a change in government brought about by the 1986 EDSA Revolution. This order was likewise made in response to the motion[16] filed by the petitioners praying that the respondents be required to file their answer.

Instead of complying with the RTC's directive to report the respondents' addresses and whereabouts, the petitioners filed a motion[17] dated September 4, 1990 to declare the respondents

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[15] *Rollo*, p. 127.

[16] *Id.* at 125-126.

[17] *Id.* at 129.

in default. On December 27, 1990, the RTC denied the petitioners' default motion because the respondents were not duly notified of the April 15, 1988 Decision of this Court and the OSG no longer wanted to represent them. The RTC likewise ordered the petitioners to comply with its August 17, 1990 Order, otherwise, the case would be archived and eventually dismissed. On February 1, 1991, the RTC denied the petitioners' motion for reconsideration and on March 7, 1991, it issued an order dismissing the case without prejudice.

Surprisingly, on June 4, 1991, the RTC issued an order[18] setting aside its March 7, 1991 Order and reinstating the case. It directed the petitioners, among others, to cause the publication of a notice on the respondents to file answer or responsive pleading. After the petitioners complied with the publication requirements, the RTC issued the order dated December 5, 1991 declaring the respondents in default and directing the petitioners to present evidence *ex-parte*.

As correctly observed by the CA, the RTC's August 17, 1990 Order was an attempt to serve a notice to file answer on the respondents by personal service and/or by mail. These proper and preferred modes of service, however, were never resorted to because the OSG abandoned them when the petitioners failed to comply with the August 17, 1990 RTC order requiring them to report the addresses and whereabouts of the respondents. Nevertheless, there was still another less preferred but proper mode of service available – substituted service - which is service made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. Unfortunately, this substitute mode of service was not resorted to by the RTC after it failed to effect personal service and service by mail. Instead, the RTC authorized an unrecognized mode of service under the Rules, which was service of notice to file answer by publication.

Considering the fact that the OSG could no longer represent the respondents, the RTC should have been more patient in

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[18] *Id.* at 135-136.

notifying the respondents through personal service and/or service by mail. It should not have simply abandoned the preferred modes of service when the petitioners failed to comply with its August 17, 1990 order with the correct addresses of the respondents. More so, it should not have skipped the substituted service prescribed under the Rules and authorized a service of notice on the respondents to file answer by publication.

In view of the peculiar circumstances surrounding the case, the RTC should have instead directed the petitioners to exert diligent efforts to notify the respondents either personally or by registered mail. In case the preferred modes were impractical, the Court should have required the petitioners to at least report in writing why efforts exerted towards personal service or service by mail failed. In other words, a convincing proof of an impossibility of personal service or service by mail to the respondents should have been shown first. The RTC, thus, erred when it ruled that the publication of a notice to file answer to the respondents substantially cured the procedural defect equivalent to lack of due process. The RTC cannot just abandon the basic requirement of personal service and/or service by mail.

At any rate, the Court is of the view that personal service to the respondents was practicable under the circumstances considering that they were well-known persons who used to occupy high government positions.

To stress, the only modes of service of pleadings, motions, notices, orders, judgments and other papers allowed by the rules are personal service, service by mail and substituted service if either personal service or service by mail cannot be made, as stated in Sections 6, 7 and 8 of Rule 13 of the Rules of Court. Nowhere under this rule is service of notice to file answer by publication is mentioned, much less recognized.

Furthermore, the Court would like to point out that service by publication only applies to service of summons stated under Rule 14 of the Rules of Court where the methods of service of summons in civil cases are: (1) personal service;[19] (2) substituted

[19] 1997 Rules of Civil Procedure, Section 6, Rule 14.

service;[20] and (3) service by publication.[21] Similarly, service by publication can apply to judgments, final orders and resolutions as provided under Section 9, Rule 13 of the Rules of Court, as follows:

> SEC. 9. Service of judgments, final orders or resolutions.— Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party **summoned by publication** has failed to appear in the action, **judgments, final orders or resolutions** against him shall be **served upon him also by publication** at the expense of the prevailing party. [Emphasis supplied]

As correctly ruled by the CA:

> Its third error was when it authorized service by publication after initially dismissing the case for failure of plaintiffs-appellees to furnish the current address of defendants-appellants. There is, however, nothing in the Rules that authorizes publication of a notice of hearing to file answer. What is authorized to be published are: (1) summons, and (2) final orders and judgments.
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> xxx xxx xxx
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> The above-quoted provision cannot be used to justify the trial court's action in authorizing service by publication. Firstly, what was published was not a final order or judgment but a simple order or notice to file answer. Secondly, even granting that the notice to file answer can be served by publication, it is explicit in the Rule that publication is allowed only if the defendant-appellant was summoned by publication. The record is clear that defendants-appellants were not summoned by publication.

On this point, the petitioners argue that the publication was a valid and justified procedure because following the ruling of the RTC, it was "an extra step to safeguard the interest of the defendants done pursuant to the inherent power of the courts to control its proceedings to make them comfortable to law and justice." The petitioners further argue that "the defendants in a civil case cannot seize control of the proceedings or cause them

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[20] 1997 Rules of Civil Procedure, Section 7, Rule 14.

[21] 1997 Rules of Civil Procedure, Sections 14, 15 & 16, Rule 14.

to be suspended indefinitely by the simple expedient of not filing their answers or by feigning ignorance of the proceedings. All these could have been avoided had the defendants not been so inexplicably complacent and utterly lacking in ordinary prudence."

The Court is not convinced.

As already discussed above, the basic rules on modes of service of pleadings, motions, notices, orders, judgments, and other papers are mandatory in nature and, therefore, must be strictly observed. The Court is not unaware of the inherent power of courts to control its proceedings. Nonetheless, the exercise of such inherent power must not violate basic court procedures. More importantly, it must not disregard one's basic constitutional right to procedural due process.

This was precisely the reason for the RTC's denial of the petitioner's default motion in its August 17, 1990 Order, and for the eventual dismissal of the case in its December 27, 1990 Order.

It must be noted that as the RTC orders stated, the respondents were not notified of the April 15, 1988 Decision of this Court, which ordered the re-opening and remanding of this case to the RTC. They were neither notified of the reconstitution proceedings that took place pertaining to the burned records of the case. The RTC further stated that the respondents were no longer holding their official government positions and that they were no longer represented by the OSG on account of the change in government. In other words, the respondents had no counsel of record and no notice of subsequent proceedings. In short, due process was absent.

Next, the court records got burned during the June 11, 1988 fire that hit the Quezon City Hall where the records were kept. On March 12, 1990, the RTC granted the petitioners' petition for reconstitution. Again, the records do not show that the RTC initiated extra efforts to notify the respondents about the reconstitution proceedings. The entire records of this case tend

to show that the respondents were completely out of the picture until after the promulgation of the RTC decision.

On countless occasions, the Court ruled that, generally, judgments by default are looked upon with disfavor and are frowned upon as contrary to public policy. An example here would be the case of *Regalado P. Samartino v. Leonor B. Raon,*[22] where the Court stated:

> The trial court should not have been too rash in declaring petitioner in default, considering it had actual notice of valid reasons that prevented him from answering. Well-settled is the rule that courts should be liberal in setting aside orders of default for default judgments are frowned upon, unless in cases where it clearly appears that the reopening of the case is intended for delay. The issuance of orders of default should be the exception rather than the rule, to be allowed only in clear cases of obstinate refusal by the defendant to comply with the orders of the trial court.
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> Suits should as much as possible be decided on the merits and not on technicalities. In this regard, we have often admonished courts to be liberal in setting aside orders of default as default judgments are frowned upon and not looked upon with favor for they may amount to a positive and considerable injustice to the defendant and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside. Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that this Court is empowered to suspend its operation, or except a particular case from its operation, when the rigid application thereof tends to frustrate rather than promote the ends of justice. We are not unmindful of the fact that during the pendency of the instant petition, the trial court has rendered judgment against petitioners. However, being the court of last resort, we deem it in the best interest that liberality and relaxation of the Rules be extended to petitioners by setting aside the order of default issued by the trial court and the consequent default judgment; otherwise, great injustice would result if petitioners are not afforded an opportunity to prove their claims.

Finally, the Court finds unacceptable the petitioners' contention that 1) the respondents were well represented by counsel from

[22] G.R. No. 131482, July 3, 2002, 383 SCRA 664, 672-673.

1983 up to December 1990 and that the respondents were properly notified of the entire proceedings through their counsel; 2) the respondents' counsel was negligent for failing to file an answer within the prescribed period; and 3) the negligence of the OSG binds the respondents.

The petitioners do not deny the fact that on May 15, 1985, they filed a petition for *certiorari* before this Court questioning the RTC orders granting the respondents' motion to dismiss and denying their motion for reconsideration. They do not question the fact that while their petition was pending in this Court, the 1986 EDSA Revolution took place which resulted in the removal of the respondents from their respective high government offices and the replacement of then Solicitor General Estelito Mendoza *(Sol. Gen. Mendoza)*. There is likewise no dispute that subsequently, on April 15, 1988, this Court rendered its decision annulling the subject RTC orders and remanding the case to the RTC for further proceedings. The case was then re-raffled to another branch.

Clearly from the above circumstances, there was no longer any lawyer-client relationship between the OSG and the respondents at the time the decision of the Court dated April 15, 1988 was promulgated because, admittedly, after the 1986 EDSA Revolution, the respondents were no longer occupying their respective government positions and Sol. Gen. Mendoza, who represented them, was no longer the Solicitor General.

In fact, in compliance with the RTC's order dated September 10, 1990,[23] former Solicitor General Mendoza submitted a manifestation[24] that his legal representation for the respondents was deemed terminated when he ceased to be the Solicitor General and that he was not representing the respondents in his private capacity. For his part, on December 11, 1990, the incumbent Solicitor General at that time, Solicitor General Francisco Chavez *(Sol. Gen. Chavez),* filed a notice of withdrawal of appearance

[23] *Rollo*, p. 130.

[24] *Id.* at 132.

for the respondents citing the case of *Urbano v. Chavez,*[25] where the Court ruled that the OSG is not authorized to represent a public official at any stage of a criminal case or in a civil suit for damages arising from a felony. The records do not show any proof that the respondents were furnished a copy of this notice of withdrawal or whether or not they gave their conformity thereto.

Contrary to the petitioners' position, while it is true that Sol. Gen. Chavez filed a notice of withdrawal only on December 11, 1990, the respondents were in effect no longer represented by counsel as early as April 15, 1988 when the Court's decision was rendered, or much earlier, right after the 1986 EDSA Revolution due to the change in government. The Court cannot subscribe to the petitioners' argument that there was negligence or mistake on the part of the OSG considering that Sol. Gen. Mendoza ceased to hold office due to the EDSA Revolution while Sol. Gen. Chavez withdrew his representation because of the prohibition in *Urbano v. Chavez.* Definitely, Sol. Gen. Mendoza's cessation from holding office and Sol. Gen. Chavez's withdrawal of representation in the unique scenario of this case are not equivalent to professional delinquency or ignorance, incompetency or inexperience or negligence and dereliction of duty. Hence, there is no negligence of counsel in this case. After the 1986 EDSA Revolution, the respondents were practically left without counsel.

As a final point, this Court commiserates with the petitioners' plight and cry for justice. They should not be denied redress of their grievances. The Court, however, finds Itself unable to grant their plea because the fundamental law clearly provides that no person shall be deprived of life, liberty and property without due process of law.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

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[25] G.R. No. 88578, March 19, 1990, 183 SCRA 347, 358.

THIRD DIVISION

[G.R. No. 169628. March 14, 2012]

MANUEL A. LUMAYOG, *petitioner, vs.* **SPOUSES LEONARD PITCOCK and CORAZON PITCOCK,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN.—** Under Section 1, Rule 45 of the Rules of Court, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth. The question regarding respondent's tenancy status is factual in nature, which is not proper in a petition for review, where only questions of law may be entertained. The Court may resolve questions of fact only in exceptional cases, which is not present here. The Court upholds the finding of the Court of Appeals that petitioner failed to present any evidence to show that a tenancy relationship existed between petitioner and respondents Spouses Pitcock. x x x To reiterate, the issue on whether or not a tenancy relationship exists between petitioner and respondents, which is raised before this Court, is factual in nature. This Court is not a trier of facts. The factual finding of the lower courts and the Court of Appeals that no tenancy relationship existed between petitioner and respondents is conclusive upon this Court.

2. **ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; THE GRANT OF THE CERTIFICATE OF LAND OWNERSHIP AWARD TO PETITIONER IN CASE AT BAR DOES NOT EXEMPT HIM FROM THE COVERAGE OF RULE 70 OF THE RULES OF COURT.—** [T]he supervening event which was the grant of the Certificate of Land Ownership Award to petitioner does not exempt petitioner from the coverage of Rule 70 (Forcible Entry and Unlawful Detainer) of the Rules of Court, as the **premises involved in this case is the <u>barn/stable</u> of the racehorses of the respondents being occupied, illegally,**

by the petitioner, which premises are located at the western portion of the property, while the area allegedly planted with crops and occupied by petitioner is located at the northeastern and eastern portions of the property.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Diokno & Diokno Law Office for respondents.

D E C I S I O N

PERALTA, *J*.:

This is a petition for review on *certiorari*[1] of the Court of Appeals' Decision[2] in CA-G.R. SP No. 74482 dated March 30, 2005 and its Resolution dated September 6, 2005, denying petitioner's motion for reconsideration.

The Court of Appeals affirmed the decision of the Regional Trial Court (RTC) of Lipa City, Branch 12, which held that no tenancy relationship existed between the parties and which affirmed the decision of the Municipal Trial Court in Cities (MTCC), ordering petitioner Manuel A. Lumayog, Sr. and his family to vacate the barn/stable of respondents Spouses Leonard and Corazon Pitcock and to return to respondents the possession of the same; to pay rent for the occupancy of the said premises in the amount of ₱1,000 per month from September 22, 2000 until the premises is vacated, and to pay attorney's fees.

The facts, as stated by the Court of Appeals, are as follows:

Respondents Spouses Leonard and Corazon Pitcock are the registered owners of a parcel of land containing an area of 81,351 square meters, situated in Barangay Talisay, Lipa City. The

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

[2] Penned by Associate Justice Marina L. Buzon, with Associate Justices Mario L. Guariña III and Santiago Javier Ranada, concurring; *rollo*, pp. 113-117.

said parcel of land is covered by Transfer Certificate of Title (TCT) No. 69503[3] of the Register of Deeds for Lipa City. They constructed thereon perimeter fences and buildings, consisting of a farm house, employees' quarters, and the barn/stable for their racehorses. They employed Manuel A. Lumayog, Sr. as groom or *sota* for their horses, but he was subsequently replaced by his son, Manuel A. Lumayog, Jr.

On September 22, 2000, respondents filed with the MTCC of Lipa City a complaint[4] for unlawful detainer against petitioner, his wife and their nine (9) children in view of their refusal to vacate, despite demand, a portion of the barn/stable that they used as their temporary quarters, alleging that petitioner's employment as groom or *sota* was terminated for just cause in March 2000; that only petitioner was allowed by them, at his request, to use a portion of the barn/stable as his temporary quarters, subject to the condition that he would vacate the same when the space would be needed by respondents and upon the termination of petitioner's employment; and that in October 1999, they found out that petitioner allowed his wife and children to stay with him in his temporary quarters and petitioner promised to relocate his wife and children outside the farm.

In their Answer,[5] petitioner, his wife and children alleged that four of the children (Randy, Lina, Jeffrey and Veronica) were not residing on respondent's property; that Randy, Gerbel and Manuel, Jr. worked for respondents for many years, but only Manuel, Jr. received compensation; that Lina, Snooky and Wendy worked as housemaids for respondents, but they were not fully compensated; that petitioner ceased to be a paid laborer of respondents in 1992, but he was made to work as a tenant and he and the immediate members of his family planted

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[3] Annex "A", records, p. 7.

[4] Entitled *Spouses Leonard Pitcock and Corazon Pitcock v. Manuel Lumayog, Sr., Estrella Lumayog, Randy Lumayog, Lina Lumayog, Manuel Lumayog, Jr., Gerbel Lumayog, Marlon Lumayog, Veronica Lumayog, Jeffrey Lumayog, Snooky Lumayog and Wendy Lumayog*.

[5] Records, p. 53.

different fruit-bearing trees; and that in view of the tenancy relationship between the parties, the court had no jurisdiction over the case.

On December 21, 2001, the MTCC rendered a Decision[6] in favor or respondents, the dispositive portion of which reads:

> WHEREFORE, finding sufficient evidence to support the complaint for unlawful detainer, judgment is hereby rendered in favor of the plaintiffs and against all defendants Manuel Lumayog, Sr., Estrella Lumayog, Randy Lumayog, Manuel Lumayog, Jr., Gerbel Lumayog, Marlon Lumayog, Veronica Lumayog, Jeffrey Lumayog, Snooky Lumayog and Wendy Lumayog as follows:
>
> 1. Ordering all the aforementioned defendants to vacate the barn/stable and to return possession thereof to the plaintiffs;
> 2. Directing the defendants to, jointly and severally, pay the amount of ₱1,000.00 per month as reasonable rent for the use and occupancy of said premises computed from September 22, 2000 until the same is vacated and possession is returned to the plaintiffs;
> 3. Ordering the defendants, jointly and severally, to pay the amount of ₱20,000.00 as and for attorney's fees plus an allowance of ₱2,000.00 per attendance in court hearing or trial;
> 4. Ordering the defendants, jointly and severally, to pay the cost of suit.[7]

The MTCC stated that defendants, petitioner herein and his wife and children, were not being evicted from the land they claim to be tilling as alleged in their Answer, but the premises in question was the barn/stable of the racehorses of plaintiffs, respondents herein, allegedly being occupied, illegally, by the defendants.

Nevertheless, the MTCC stated that it was inclined to believe that defendants were not tenants based on the following:

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[6] *Rollo*, pp. 75-83.

[7] *Id*. at 82-83.

In their special and affirmative defenses, defendants alleged that defendants Randy, Lina, Jeffrey and Veronica are not residing and staying at the subject premises but elsewhere in Bulacan and Cardona, Rizal, so they could not be considered tenants. The other women defendants worked as housemaids. Likewise, Randy and Gerbel worked but no evidence was presented to show that they worked as tenants. Manuel Lumayog, Jr. could not be considered a tenant because he was substituted as the groom or *sota* in place of his father and was being paid a salary.

Alex Mayor, a witness for the defendants, states in paragraph 7 of his sinumpaang salaysay (Exhibit 3) "*na ito ay personal kong nalalaman dahil ako pa ang pinakiusapan ni Ka Maning na magtabas sa farm na iyon at magtanim ayon sa kagustuhan ni G. Pitcock*."[8]

The main issue that the MTCC resolved was whether or not the plaintiffs, respondents herein, have the right to eject the defendants — petitioner and his family — from a portion of the barn/stable of the plaintiffs which defendants are presently occupying.

The MTCC found that there was sufficient evidence to prove that the occupancy of the barn/stable was by mere tolerance of respondents. It held that even if there was tacit consent to petitioner and his family's occupancy thereof, the same may be lawfully terminated as provided under Section 1, Rule 70 of the Rules of Court.

The decision of the MTCC was affirmed, on appeal, by the RTC of Lipa City, Branch 12 in its Decision[9] dated December 1, 2002.

Petitioner filed a petition for review of the decision of the RTC before the Court of Appeals. On March 30, 2005, the Court of Appeals rendered a decision,[10] denying the petition for lack of merit.

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[8] *Id*. at 82. (Emphasis supplied.)

[9] *Id*. at 99-104.

[10] *Id*. at 113-117.

The Court of Appeals stated that as pointed out by petitioner himself, citing ***Sintos v. Court of Appeals***,[11] the essential elements of tenancy relationship are: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests. However, the Court of Appeals noted that petitioner failed to present any evidence to support the existence of their alleged tenancy relationship with respondents.

The appellate court drew attention to the Pre-Trial Order dated October 8, 2001 issued by the MTCC, which Order stated that the parties stipulated that respondents constructed on their property perimeter fences and buildings, consisting of a farm house, employees' quarters and barn/stable for their racehorses. The Court of Appeals held that such admission by petitioner supported respondents' claim that the subject property was purely devoted to commercial livestock, including the breeding and raising of horses used in polo games. It also noted that the tax declaration[12] for the subject property for the year 2000 made no mention of plants or fruit-bearing trees thereon and only indicated building and fence as the improvements thereon. Thus, the Court of Appeals denied the petition for lack of merit.

Petitioner's motion for reconsideration was denied for lack of merit by the Court of Appeals in its Resolution[13] dated September 6, 2005.

Hence, this petition raising the following issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THERE WAS TENANCY RELATIONSHIP BETWEEN THE PARTIES.

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[11] 316 Phil. 278, 284 (1995).

[12] CA *rollo*, p. 30.

[13] *Rollo*, p. 123.

II

WHETHER THE SUPERVENING EVENT WHICH WAS THE SUBSEQUENT GRANT OF THE CERTIFICATE OF LAND OWNERSHIP AWARD (CLOA) TO HEREIN PETITIONER WOULD EXEMPT THE LATTER FROM THE COVERAGE OF RULE 70 OF THE REVISED RULES OF COURT.[14]

Petitioner contends that in its Decision dated March 30, 2005, the Court of Appeals ruled that the subject property was purely devoted to commercial livestock, including the breeding and raising of horses used in polo games, and dismissed petitioner's petition for review.

Petitioner informs the Court that respondent Leonard Pitcock filed an application for the exclusion of his property covered by TCT No. 69598 from the coverage of the Comprehensive Agrarian Reform Program (CARP), pursuant to the Department of Agrarian Reform (DAR) Administrative Order No. 9, Series of 1993.

Petitioner submits that in an Order[15] dated June 15, 2004, the DAR, after evaluation and inspection of the said property, denied respondent Leonard Pitcock's application for exclusion of the property from CARP coverage, and ordered thus:

> WHEREFORE, premises considered, the herein Application for Exclusion from CARP coverage pursuant to Administrative Order No. 9, series of 1993 involving a parcel of land covered by TCT No. 69598 located at Brgy. Talisay, Lipa City, Batangas with an area of 7.9052 hectares is hereby DENIED. The MARO/PARO is hereby directed to immediately proceed with the acquisition and distribution of subject property to qualified program beneficiaries.[16]

Petitioner contends that pursuant to the DAR Order dated June 15, 2004, he (petitioner) was granted TCT No. T-422[17] under Certificate of Land Ownership Award No. 00751620 by

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[14] *Id*. at 17.

[15] *Id*. at 124-128.

[16] *Id*. at 127-128.

[17] *Id*. at 129.

the Land Registration Authority on November 26, 2004, covering a parcel of land (Lot 14394-B) containing an area of 29,054 square meters of the subdivision plan, Psd-04-003794 (AR) being a portion of Lot 14394, Cad. 218, Lipa Cadastre, situated in Barrio Talisay, Lipa City, Batangas Province. Tax Declaration of Real Property for the year 2005[18] was subsequently issued under petitioner's name.

Petitioner argues that by virtue of the pronouncement of the DAR which discussed petitioner's right as a tenant dating back to the time of the filing of the complaint for unlawful detainer, it is but just that he be exempt from the coverage of Rule 70 of the Rules of Court.

Petitioner contends that if the Court finds that this ejectment case was properly filed, his subsequent ownership of the land he had been tilling should be considered in determining the issue of possession. He states that in an action for ejectment, the only issue involved is possession *de facto*, but when the issue of possession cannot be decided without resolving the issue of ownership, the court may receive evidence upon the question of title to the property for the purpose of determining the issue of possession.

Under Section 1, Rule 45 of the Rules of Court, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth.[19] The question regarding respondent's tenancy status is factual in nature, which is not proper in a petition for review, where only questions of law may be entertained.[20] The Court may resolve questions of fact only in exceptional cases,[21] which is not present here. The Court upholds the finding of the Court of Appeals that petitioner failed to present any evidence to show that a tenancy

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[18] *Id.* at 131.

[19] *Tayco v. Heirs of Concepcion Tayco-Flores*, G.R. No. 168692, December 13, 2010, 637 SCRA 742, 747.

[20] *Pascual v. Court of Appeals*, 422 Phil. 675, 682 (2001).

[21] *Tayco v. Heirs of Concepcion Tayco-Flores*, *supra* note 19.

relationship existed between petitioner and respondents Spouses Pitcock. ***Jeremias v. Estate of the late Irene P. Mariano***[22] held:

> Claims that one is a tenant do not automatically give rise to security of tenure. The elements of tenancy must first be proved in order to entitle the claimant to a security of tenure.
>
> A tenant has been defined under Section 5 (a) of Republic Act No. 1199, otherwise known as the Agricultural Tenancy Act of the Philippines, as a person, who, himself, and with the aid available from within his immediate farm household, cultivates the land belonging to or possessed by another, with the latter's consent for purposes of production, sharing the produce with the landholder, under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or in money or both, under the leasehold system.
>
> This Court had once ruled that self-serving statements regarding tenancy relations could not establish the claimed relationship. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. Substantial evidence entails not only the presence of a mere scintilla of evidence in order that the fact of sharing can be established; there must also be concrete evidence on record that is adequate to prove the element of sharing. In fact, this Court likewise ruled that to prove sharing of harvests, a receipt or any other evidence must be presented; self-serving statements are deemed inadequate.[23]

In respondents' Supplemental Memorandum with Prayer for the Dismissal of the Petition[24] filed on October 20, 2009, respondents brought to the attention of the Court that respondent Leonard Pitcock filed before the Court of Appeals a petition for *certiorari*,[25] contending that public respondent DAR committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying his application for exclusion of their

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[22] G.R. No. 174649, September 26, 2008, 566 SCRA 539.

[23] *Id*. at 551.

[24] *Rollo*, pp. 208-212.

[25] Under Rule 65 of the Rules of Court.

landholding from the coverage of the CARP, and seeking the reversal and nullity of the DAR Orders dated June 15, 2004 and January 11, 2007. The said case was docketed as CA-G.R. SP No. 97763 and entitled ***Spouses Leonard and Corazon Pitcock v. Manuel Lumayog, Kilusang Mamamayan ng Batangas***.

Respondents contend that the issues presented for resolution by petitioner are now moot and academic in view of the Court of Appeals' decision dated September 24, 2008 in CA-G.R. SP No. 97763, ruling that the subject landholding is exempt from the coverage of the CARP, not being an agricultural land. The Court of Appeals, in CA-G.R. SP No. 97763, held:

The evidence on record shows that the subject landholding has been exclusively developed and devoted for livestock raising by the petitioners from the date of their acquisition on July 6, 1988. Based on the Report of the MARO, PARO and the CLUPPI-2, it is clear that a greater portion of the landholding utilized for grazing and breeding horses while only the eastern portion has been planted with coffee, cassava, bananas and other seasonal crops. There is nothing in the evidence presented that the subject landholding was ever utilized for agricultural purposes.

Even the tax declarations in the name of the petitioners where the subject landholding was classified as cocoland and riceland are not sufficient evidence to prove that the subject landholding was utilized for agricultural purposes. There is no law or jurisprudence that holds that the classification embodied in the tax declarations is conclusive and final nor would proscribe any further inquiry. Furthermore, the tax declarations are clearly not the sole basis of the classification of a land. Thus, we give more faith and credence to the findings of the MARO, PARO and CLUPPI-2 that the land has been utilized for livestock farming in the absence of any apparent irregularity in the ocular inspections made on the subject property.

Moreover, the affidavits of petitioner Leonard Pitcock, Cong. Espina and Alejandro Espiritu constitute substantial evidence of the utilization of the subject land prior to the acquisition thereof by the petitioners. These affidavits are acceptable form of evidence and are considered as the affiants' direct testimonies which private respondent Lumayog failed to refute especially when, in the affidavit of the petitioner Leonard Pitcock, it was stated that private respondent

Lumayog was working as groom at the Manila Polo Club when he was hired by the petitioners as a groom for their race horses.

All told, the DAR Secretary committed grave abuse of discretion amounting to lack or excess of jurisdiction when he issued the assailed orders including the subject landholding within the coverage of CARP on the basis of the guidelines provided for in DAR Administrative Order No. 9, Series of 1993, which had been duly declared by the Supreme Court as unconstitutional. The ruling in the cases of ***Luz Farms*** and ***Natalia Realty, Inc. v. DAR*** was emphatic on the exemption from CARP of land devoted to residential, commercial and industrial purposes without any qualifications.

WHEREFORE, in view of the foregoing premises, the petition for certiorari filed in this case is hereby **GRANTED**. The assailed Orders dated June 15, 2004 and January 11, 2007 of the Secretary of the Department of Agrarian Reform are hereby **SET ASIDE**.[26]

Lumayog's motion for reconsideration of the Decision dated September 24, 2008 in CA-G.R. SP No. 97763 was denied by the Court of Appeals in a Resolution[27] dated February 25, 2009.

Lumayog appealed the Court of Appeals Decision dated September 24, 2008 and its Resolution dated February 25, 2009 in CA-G.R. SP No. 97763 before this Court *via* a petition for review on *certiorari*, docketed as G.R. No. 186986. On July 13, 2009, the First Division of this Court issued a Minute Resolution in G.R. No. 186986, resolving, thus:

Considering the allegations, issues, and arguments adduced in the petition for review on *certiorari* of the Decision and Resolution dated 24 September 2008 and 25 February 2009, respectively, of the Court of Appeals in CA-GR SP No. 97763, the Court further resolves to ***DENY*** the petition for failure of petitioner to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction.[28]

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[26] *Rollo*, pp. 224-225.

[27] *Id*. at 228-229.

[28] *Id*. at 230.

No motion for reconsideration of the Minute Resolution was filed by Manuel Lumayog. The said Minute Resolution dated July 13, 2009 in G.R. No. 186986 became final and executory on September 4, 2009.

The Court's denial of the petition in G.R. No. 186986 renders the decision of the Court of Appeals in CA-G.R. SP No. 97763 final and executory. Petitioner cannot find support in the DAR Order dated June 15, 2004 to establish his tenancy relationship with respondents Spouses Pitcock, since the issue resolved therein was not the existence of a tenancy relationship between petitioner and respondents, but whether or not the subject property of respondents may be excluded from the coverage of the CARP pursuant to DAR Administrative Order No. 9, Series of 1993. Contrary to petitioner's allegation, the DAR Order dated June 15, 2004 did not discuss petitioner's right as a tenant dating back to the time of the filing of the complaint for unlawful detainer.

More importantly, the Court notes that in the Complaint, the premises from which petitioner and his family were sought to be ejected was the barn/stable of respondents. Thus, the MTCC stated:

> x x x "The allegations in the complaint clearly show that [the] instant case is for unlawful detainer xxx. The premises in question in this case is the barn/stable of the racehorses of the plaintiffs allegedly being occupied, illegally, by the defendants."
>
> Defendants are not being evicted from the land they claim to be tilling as alleged in their Answer x x x.
>
> xxx xxx xxx
>
> x x x [T]he court is inclined to believe that defendants are not tenants as defined under Republic Act No. 3844 nonetheless **the court must resolve only the issues pertinent to this case. After a perusal of the case, the court finds that there is sufficient evidence to prove that the occupancy of the barn/stable by the defendants is by mere tolerance of the plaintiffs. Even if there was tacit consent to defendant's occupancy, the same may be lawfully terminated as provided under Section 1 of Rule 70 of the Rules of Court**. x x x[29] (Emphasis supplied.)

[29] MTCC Decision, *id*. at 81-82.

It must be pointed out that the Pre-trial Order[30] dated October 8, 2001 of the MTCC stated that *both* parties agreed to stipulate, among others, that (1) respondents, in 1988, bought a parcel of land covered by TCT No. 69598, situated in Barangay Talisay, Lipa City, for commercial livestock, including the breeding and raising of horses used in polo games; and (2) respondents caused to be constructed perimeter fences and built buildings consisting of a farm house, employees quarters and barn/stable for their racehorses. Therefore, petitioner and his family admitted the existence of the barn/stable in the subject property, which property they also admitted was owned by respondents. The MTCC ruled that the occupancy of the barn/stable by petitioner was by mere tolerance of respondents; hence, it ordered petitioner and his family to vacate the same and to pay monthly rent in the amount of ₱1,000.00 from September 22, 2000 until the premises is vacated. The decision of the MTCC was affirmed, on appeal, by the RTC of Lipa City, Branch 12 in its Decision[31] dated December 1, 2002 and by the Court of Appeals in its Decision dated March 30, 2005.

To reiterate, the issue on whether or not a tenancy relationship exists between petitioner and respondents, which is raised before this Court, is factual in nature. This Court is not a trier of facts. The factual finding of the lower courts and the Court of Appeals that no tenancy relationship existed between petitioner and respondents is conclusive upon this Court.

Further, the supervening event which was the grant of the Certificate of Land Ownership Award to petitioner does not exempt petitioner from the coverage of Rule 70 (Forcible Entry and Unlawful Detainer) of the Rules of Court, as the **premises involved in this case is the <u>barn/stable</u> of the racehorses of the respondents being occupied, illegally, by the petitioner, which premises are located at the <u>western</u> portion of the property, while the area allegedly planted with crops and**

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[30] Records, p. 127.

[31] *Rollo*, pp. 99-104.

occupied by petitioner is located at the northeastern and eastern portions of the property.[32]

WHEREFORE, the petition is **DENIED** for lack of merit. The decision of the Court of Appeals in CA-G.R. SP No. 74482 dated March 30, 2005, and its Resolution dated September 6, 2005, are hereby **AFFIRMED.**

No costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 173586. March 14, 2012]

MCA-MBF COUNTDOWN CARDS PHILIPPINES, INC., AMABLE R. AGUILUZ V, AMABLE C. AGUILUZ IX, CIELO C. AGUILUZ, ALBERTO L. BUENVIAJE, VICENTE ACSAY and MCA HOLDINGS AND MANAGEMENT CORPORATION, *petitioners, vs.* **MBf CARD INTERNATIONAL LIMITED and MBf DISCOUNT CARD LIMITED,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPELLANT'S BRIEF; CHARACTERIZATION OF THE

[32] See the DAR Order dated June 15, 2004, *id*. at 124-128, and the Decision of the Court of Appeals dated September 24, 2008 in CA-G.R. SP No. 97763, *id*. at 213-226. (Emphasis supplied.)

RULES CONCERNING THE FILING THEREOF AS INSIGNIFICANT AND HARMLESS TECHNICALITIES IS DOWNRIGHT IMPROPER; CASE AT BAR.— Confronted with the necessity to justify their failure to file their Appellants' Brief before the Court of Appeals, all that the petitioners could offer was that the lawyer who was handling the case resigned from the law firm shortly after they received the notice to file the Brief, while other counsels have been handling voluminous cases, numerous court appearances, and out of town hearings. Petitioners did not allege that the other lawyers of the firm were not informed of the appellate court's notice to file the Brief. Petitioners did not even ask the court for an extension. Instead, petitioners claim that the rules concerning the filing of the Appellant's Brief are mere "insignificant and harmless technicalities" and argue that because of the alleged merits of their case, they do not have to prove that their failure to file the said brief was excusable x x x. This contention, which in effect advances that the appellate court does not even deserve a valid explanation for the appellant's failure to file its Brief, cannot be countenanced. Liberality is given to litigants who are worthy of the same, and not to ones who flout the rules, give explanations to the effect that the counsels are busy with other things, and expect the court to disregard the procedural lapses on the mere self-serving claim that their case is meritorious. x x x Furthermore, petitioners' characterization of the rules concerning the filing of the Appellant's Brief as "insignificant and harmless technicalities" is downright improper as it is contrary to established jurisprudence.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; WHEN THERE IS AS OF YET NO MEETING OF THE MINDS AS TO THE SUBJECT MATTER OR THE CAUSE OF CONSIDERATION OF THE CONTRACT BEING NEGOTIATED, THE SAME CANNOT BE CONSIDERED TO HAVE BEEN PERFECTED.—** [W]hile we agree with petitioners that the absence of a *written* Joint Venture and Licensing Agreement does not necessarily negate the perfection of a contract, we nevertheless find that this very lack of a written contract constitutes convincing circumstantial proof that said parties were indeed in the process of negotiating the contract's

terms. When there is as of yet no meeting of the minds as to the subject matter or the cause or consideration of the contract being negotiated, the same cannot be considered to have been perfected.

3. **MERCANTILE LAW; CORPORATION LAW; PRIVATE CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION, NOT NECESSARY IN CASE AT BAR.—** In ruling in favor of respondents, the RTC made a factual finding that the Joint Venture and Licensing Agreement being negotiated between petitioners and respondents was never perfected. Respondents are neither incorporators nor stockholders of MCA-MBF, the company that was supposedly intended to be converted into the Joint Venture Company. It must be stressed that MCA-MBF has not yet been converted into the Joint Venture Company as no shares of stock have been delivered to respondents. As alleged by respondents and found by the RTC, the respondents were assured that the money remitted by them will only be applied to its proposed 40% shareholding in the JVC upon the execution and approval of the Joint Venture and Licensing Agreements. Therefore, while the US $74,074.04 was remitted to the account of MCA-MBF as requested by Aguiluz V, said money was, insofar as respondents are concerned, with the persons they are negotiating with for the creation of the JVC. Consequently, respondents cannot be said to be suing the natural persons among the petitioners as officers of the yet-to-be-created JVC. They were instead held liable for the US$74,074.04 in their individual capacities as the persons negotiating with respondents for the creation of the JVC and, thus, there was no need to pierce the corporate fiction of MCA-MBF.

APPEARANCES OF COUNSEL

Almazan Veloso Mira & Partners for petitioners.

RESOLUTION

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* assailing the Resolutions of the Court of Appeals in CA-G.R. CV No. 84370 dated March 20, 2006[1] and July 6, 2006.[2]

Herein respondents MBf Card International Limited (MBf Card) and MBf Discount Card Limited (MBf Discount Card), both foreign corporations not doing business in the Philippines, filed a complaint for Recovery of Money, Unfair Competition and Damages, with Application for Preliminary Injunction against herein petitioners MCA-MBF Countdown Cards Phils., Inc. (MCA-MBF), Amable R. Aguiluz V (Aguiluz V), Amable C. Aguiluz IX, Cielo C. Aguiluz, Alberto L. Buenviaje, Vicente Acsay and MCA Holdings and Management Corporation (MCA Holdings). The complaint alleged that sometime in the second half of 1993, respondent MBf Card and petitioner MCA Holdings, the latter principally acting through petitioner Aguiluz V, entered into negotiations for the execution of a Joint Venture Agreement wherein: (1) they would establish a Joint Venture Company (JVC) in the Philippines with MBf Card owning about 40% and MCA Holdings owning 60% of the capital stock thereof, and (2) said JVC would execute a "Countdown Country License Agreement" with respondent MBf Discount Card, under which the JVC would conduct the business of discount cards in the Philippines under the "Countdown" mark, and use the distinctive business format and method for the operation of the "Countdown Discount Card."[3]

The Complaint further alleged that even before respondent MBf Card and petitioner MCA Holdings could agree on drafts of the Joint Venture and Licensing Agreement, and pending

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[1] *Rollo*, p. 53; penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Godardo A. Jacinto and Vicente Q. Roxas, concurring.

[2] *Id.* at 56.

[3] *Id.* at 85-86.

negotiations thereon, petitioner Aguiluz V, on January 3, 1994, wrote respondent MBf Card that he had already incorporated on October 18, 1993, a company which would later be converted into the proposed JVC upon the execution and approval of the pertinent Agreements. The company incorporated by Aguiluz V with the Securities and Exchange Commission (SEC) was stated in the letter as "MBF-MCA Discount Card Corp. Philippines," but is actually named "MCA-MBF Countdown Cards Philippines, Inc.," *i.e.*, petitioner MCA-MBF. Acceding to a request in the same letter, respondent MBf Card remitted on January 21, 1994 the amount of US$74,074.04 to Account No. 838-06 (Metrobank, Quezon Avenue Branch), which, as it turned out, belongs to petitioner MCA-MBF. The understanding was that such amount was to be applied as MBf Card's payment of its 40% shareholding in the JVC upon the execution and approval of the Joint Venture and Licensing Agreements.[4] However, without the prior authority of the respondents, and while the parties were still discussing and negotiating on the terms and conditions of the Joint Venture and Licensing Agreements, petitioners, through the intended JVC (petitioner MCA-MBF), began to promote, market and sell the Countdown Discount Cards to the public, using the "Countdown" name, logo and trademark.[5]

The Complaint then alleged the facts that led up to respondents' decision to end its negotiations with petitioners:

> 8. Accordingly, [respondent] MBf card advised [petitioners] not to promote, market and sell Countdown Discount Cards to the public until the Joint Venture Agreement and the License Agreement (for the use of the tradename "Countdown" and the format and method for the operation of the Countdown Discount Card) had been signed and, thereafter, approved by the appropriate government agency.
>
> 9. In particular, on March 8 and 17, 1994, [respondent] MBf Card wrote [petitioner] MCA-MBF's Ruby Pearl M. Shan to "freeze" all selling activities on the Countdown Discount Card until after the pertinent Agreements had been signed and approved. x x x.

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[4] *Id.* at 86.

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

10. In reply to [respondent] MBf Card's freeze advice, [petitioner] Amable R. Aguiluz V promised that they would comply therewith. This was confirmed by Ruby Pearl M. Shan, who wrote [respondent] MBf Card on March 19, 1994 "to confirm that selling activities of Discount Card have been ordered [frozen] temporarily, effective 10th March 1994." x x x.

11. On March 30 and April 3, 1994, before any of the Joint Venture and License Agreements had been signed and approved, and with malice, bad faith and in breach of [petitioner's] promise to [respondent] MBf Card, the [petitioners] illegally caused the publication of two advertisements in the Manila Bulletin, promoting, marketing and selling the Countdown Discount Card. x x x.

> 11.1 In the said ads, [petitioners] fraudulently misrepresented to the public that they have already been authorized by [respondents] to promote, market and sell the Countdown Discount Card and that the discount cards they offer are valid and enforceable, and as such would be honored in various establishments in the Philippines and elsewhere.
>
> 11.2 Moreover, in the said advertisements, [petitioners] offered to the public, aside from the regular features of the Countdown Discount Card, a purchase protection plan and even personal accident insurance. This caused great concern for [respondents] as, to their knowledge, these have not been firmed up with any insurance company.

12. What is worse, in his column appearing in the April 15, 1994 issue of the Philippine Star[,] [petitioner] Amable R. Aguiluz V misrepresented to the public that he, "representing the MCA Holdings had actually signed a joint venture agreement with Mr. Gordon Yuen, Chairman, of the Malaysia Borneo Finance." No such joint venture agreement has to date been signed and Mr. Gordon Yuen is president and chief executive officer of [respondent] MBf Card and not the chairman of Malaysia Borneo Finance.

13. On April 20, 1994, [respondent] MBf Card wrote [petitioners], advising them that it had decided not to proceed with the joint venture project on the Countdown Discount Card, and demanding that [petitioners] immediately:

(a) refund to [respondent] MBf Card the US$74,074.04 it had remitted;

(b) cease and desist from using the MBf and Countdown names, logos and trademarks; and

(c) delete "MBf" and "Countdown" from MCA-MBF's corporate name as registered with the Securities and Exchange Commission.

xxx xxx xxx

14. To date, to the damage and prejudice of [respondents], the [petitioners] continue to promote, market and sell the Countdown Discount Card, thereby misrepresenting to the public that they have been authorized to do so, and that the Countdown Discount Card they offer are valid and binding against [respondents]. These acts of [petitioners], including their continued use of "Countdown" and "MBf" in the corporate name and business of MCA-MBF, are in violation of [respondent's] lawful and exclusive proprietary rights to such names. Furthermore, they are in fraud of the public and constitute unfair competition which should be enjoined and for which [petitioners] are liable to [respondents] in damages.[6]

Respondents prayed before the trial court that petitioners be enjoined from promoting, marketing and selling Countdown Discount Cards and from using the "MBf" and "Countdown" names, logos and trademarks. They also prayed that petitioners be ordered to refund to respondent MBf Card the sum of US$74,074.04, and to pay ₱2,000,000.00 as moral damages, and ₱500,000.00 as attorney's fees and expenses of litigation.

On April 22, 1994, the trial court issued a temporary restraining order enjoining petitioners, particularly MCA-MBF, to refrain and desist from promoting, marketing and selling Countdown Discount Cards and from using the "MBf" and "Countdown" names, logos and trademarks.

After hearings on April 28 and 29, and March 4, 1994, the trial court, in an Order dated May 6, 1994, granted respondents' prayer for a preliminary injunction.

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[6] *Id.* at 87-89.

On August 8, 1994, petitioner MCA-MBF filed its Answer with Counterclaim, claiming that the contract between the parties had already been perfected. The parties allegedly agreed that (1) they jointly undertook the task of marketing the MBf Discount Card in the Philippines; (2) MBf Card was solely responsible for securing the necessary selling paraphernalia from the main Licensor, Countdown of London, England; and (3) Gordon Yuen and T.K. Wong were elected as members of the Board of Directors of the Joint Venture Corporation. Petitioner MCA-MBF asserted that MBf Card did not suffer any damage from the introduction and marketing of the MBf Countdown Discount Card in the Philippines since all acts pertaining to the business were jointly undertaken by the parties. In its Counterclaim, petitioner MCA-MBF prayed for damages in the amount of ₱22,500,000.00, and an order directing respondents to execute, sign and submit the form of the Joint Venture Agreement as allegedly approved and accepted by petitioners on March 16, 1994.

On August 10, 1994, the trial court issued the Writ of Preliminary Injunction on account of the posting by the respondents of the required bond.

On October 18, 1996, petitioners Vicente R. Acsay, Amable R. Aguiluz V, Amable C. Aguiluz IX, Cielo C. Aguiluz, Alberto Buenviaje and MCA Holdings filed their Answer, alleging practically the same defenses as those raised by petitioner MCA-MBF.

On June 8, 1998, the law firm of Castillo Laman Tan Pantaleon & San Jose (CLTPSJ) filed a Motion to Record Attorney's Lien. However, while CLTPSJ did not withdraw its appearance in the case, the law firm of Poblador Bautista & Reyes (PBR) entered its appearance in October 1994 and has since then been the firm representing respondents. On August 27, 1998, the trial court noted the prayer to record attorney's lien and held that the same shall be considered in the adjudication of the case.

On March 8, 2000, the trial court rendered its Decision in favor of respondents. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered permanently enjoining the [petitioners] from promoting, marketing

and selling Countdown Discount Cards, and from using "MBf" and "Countdown" names, logos and trademarks; ordering [petitioners] to jointly and severally refund to [respondent] MBf Card the sum of US$74,074.04 or its equivalent in Philippine currency, with legal interest thereon from date of demand until full payment; and ordering [petitioners] to jointly and severally pay [respondents] the amount of TWO HUNDRED THOUSAND (₱200,000.00) PESOS as attorney's fees and expenses of litigation.

As regards CLTPSJ's claim, [respondents] are ordered to pay the amount of FIFTY THOUSAND (₱50,000.00) PESOS, as attorney's fees.[7]

On August 15, 2003, petitioners filed a Notice of Appeal. On September 28, 2005, petitioners received an Order from the Court of Appeals requiring them to file their Appellant's Brief within 45 days from receipt of said notice.

Petitioners failed to file the Brief within the period allotted by the Court of Appeals. Thus, on March 20, 2006, the Court of Appeals issued the first assailed Resolution dismissing petitioners' appeal on the ground of abandonment of the same:

For failure of defendants-appellants to file the required brief within the prescribed period as per report of the Judicial Records Division dated March 1, 2006, their appeal is considered ABANDONED and consequently, ordered DISMISSED pursuant to Section 1(e), Rule 50 of the 1997 Rules of Civil Procedure.[8]

Petitioners filed a Motion for Reconsideration with Motion to Admit Appellant's Brief, wherein they claimed that the lawyer who was handling the case suddenly resigned from the law firm in October 2005, shortly after they received the notice to file the Brief. The other counsels allegedly had been handling voluminous cases and attending to numerous court appearances and out of town hearings.

On July 6, 2006, the Court of Appeals issued the second assailed Resolution denying petitioners' Motion for Reconsideration. According to the Court of Appeals, the reason

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[7] *Id.* at 259-260.

[8] *Id.* at 53.

given by the counsels is not substantial or meritorious to merit the relaxation of the rules. The Court of Appeals also noted that there was no action on the part of the petitioners from the time they received the notice to file their Brief on September 28, 2005 until the Resolution of the appellate court on March 20, 2006.[9]

Hence, the present Petition for Review, wherein petitioners rely on the following grounds:

A.

The Court of Appeals grievously committed a reversible error in dismissing the case based on procedural technicalities without considering at all whether or not petitioners' appeal deserved full consideration on the merits.

B.

In the interest of substantial justice, petitioners' appeal should be reinstated considering that the errors of the trial court in rendering its appealed decision are evident on the face of the said decision and more so after an examination of the evidence on record.

1. The Trial Court erred in perfunctorily disregarding corporate fiction and adjudging individual petitioners personally liable in its Decision.
2. The Trial Court erred when it disregarded basic principles of contract law when it ruled that there was no joint venture agreement yet between respondent MBf Card and petitioner MCA because they have not yet executed the documents formalizing said contract.
3. The Trial Court erred in finding that petitioners have not proven Tan Sri's authority to represent and bind the respondents to the joint venture agreement.
4. The Trial Court's award of attorney's fees is devoid of legal basis.[10]

Petitioners pray before this Court that their appeal before the Court of Appeals, CA-G.R. CV No. 84370, be reinstated.[11]

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[9] *Id.* at 57.

[10] *Id.* at 23.

[11] *Id.* at 40.

We resolve to deny the present petition.

Confronted with the necessity to justify their failure to file their Appellants' Brief before the Court of Appeals, all that the petitioners could offer was that the lawyer who was handling the case resigned from the law firm shortly after they received the notice to file the Brief, while other counsels have been handling voluminous cases, numerous court appearances, and out of town hearings. Petitioners did not allege that the other lawyers of the firm were not informed of the appellate court's notice to file the Brief. Petitioners did not even ask the court for an extension. Instead, petitioners claim that the rules concerning the filing of the Appellant's Brief are mere "insignificant and harmless technicalities"[12] and argue that because of the alleged merits of their case, they do not have to prove that their failure to file the said brief was excusable:

> In light of the merits of petitioners' appeal as will be further discussed below, and in accordance with the jurisprudence discouraging dismissal of appeals grounded on pure technicalities, **whether or not the inadvertence resulting in the late filing of the appellant's brief is excusable is already beside the point**. The focus should have been on whether or not the appeal deserved full consideration on the merits, and this can only be determined if a preliminary consideration of the merits is made.[13] (Emphasis added.)

This contention, which in effect advances that the appellate court does not even deserve a valid explanation for the appellant's failure to its Brief, cannot be countenanced. Liberality is given to litigants who are worthy of the same, and not to ones who flout the rules, give explanations to the effect that the counsels are busy with other things, and expect the court to disregard the procedural lapses on the mere self-serving claim that their case is meritorious.

In *Rural Bankers Association of the Philippines v. Tanghal-Salvaña*,[14] this Court held:

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[12] *Id.* at 29; Petition, p. 20.

[13] *Id.* at 26; *id*. at 17.

[14] G.R. No. 175020, October 4, 2007, 534 SCRA 721.

Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction. Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.[15]

Furthermore, petitioners' characterization of the rules concerning the filing of the Appellant's Brief as "insignificant and harmless technicalities" is downright improper as it is contrary to established jurisprudence. In *Casim v. Flordeliza*,[16] this Court particularly held that:

It would be incorrect to perceive the procedural requirements of the rules on appeal as being merely "harmless and trivial technicalities" that can just be discarded. As this Court so explained in *Del Rosario vs. Court of Appeals*—

> "Petitioners' plea for liberality in applying these rules in preparing Appellants' Brief does not deserve any sympathy. Long ingrained in our jurisprudence is the rule that the right to appeal is a statutory right and a party who seeks to avail of the right must faithfully comply with the rules. In *People vs. Marong*, we held that deviations from the rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate. These rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, these rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants."[17]

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[15] *Id.* at 741-742.

[16] 425 Phil. 210 (2002).

[17] *Id.* at 220-221.

Petitioners' claim that the trial court Decision was erroneous on its face and that even a cursory reading of the same would show *prima facie* merit in the appeal is in itself a grave exaggeration. In alleging the *prima facie* merit of its appeal, petitioners rely on two main grounds: (1) the RTC allegedly disregarded the basic principles of contract law when it ruled that the joint venture agreement had not yet been perfected; and (2) the RTC allegedly disregarded corporate fiction in adjudging individual petitioners personally liable to respondents.

The basic principles of contract law referred to by petitioners are those enshrined in Article 1315[18] of the Civil Code, which provides that contracts are perfected by mere consent, and in Article 1356,[19] which states that contracts shall be obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity is present.

It is clear from a reading of the RTC Decision that the above principles were not disregarded. On the contrary, the RTC went beyond the fact that the Joint Venture and Licensing Agreement has yet to be signed, and carefully weighed the evidence in order to determine whether or not there was a perfected oral joint venture agreement:

1. The trial court had to look into whether Tan Sri had the authority to bind respondents in the alleged oral agreement. In this regard, the trial court found no evidence proving the same. The RTC instead considered the admission of Aguiluz V that he neither knew nor inquired whether Tan Sri was an officer or director of the plaintiff corporations.[20]

[18] Art. 1315. Contracts are 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.

[19] Art. 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised.

[20] *Rollo*, p. 256.

2. Despite the absence of a written contract, the RTC discussed whether or not the remittance of US$74,074.04 and conveyance of trade secrets and advice should be considered partial execution of the Joint Venture Agreement.[21] However, the trial court apparently found the testimony of the respondents' witness to be credible and believed that the respondents were assured that the money will only be applied to its proposed 40% shareholding upon the execution and approval of the Joint Venture Licensing Agreements.[22] Furthermore, it appeared to the RTC that the advice and suggestions from respondents for the sale, promotion and marketing of the discount cards are merely preparatory acts and does not necessarily indicate the existence of a perfected contract.[23]

3. It was shown that the RTC sought to determine the existence of a Joint Venture and Licensing Agreement despite the absence of a written contract evidencing the same when it considered therefor the letter of witness Luis Pangulayan in behalf of petitioner Aguiluz V. The RTC quoted Pangulayan's April 14, 1994 letter wherein it was admitted that (a) the signing of the Joint Venture Agreement is required to finalize the formation of the JVC since the provisions of the contract shall be incorporated in the JVC's By-Laws; and (2) even the formation of the JVC does not necessarily complete the process since a Licensing Agreement still needs to be executed between the JVC and respondents.[24]

In addition to the above, while we agree with petitioners that the absence of a *written* Joint Venture and Licensing Agreement does not necessarily negate the perfection of a contract, we nevertheless find that this very lack of a written contract constitutes convincing circumstantial proof that said parties were

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[21] *Id.*

[22] *Id.*, citing TSN, April 23, 1994, pp. 47-49.

[23] *Id.* at 257.

[24] *Id.*

indeed in the process of negotiating the contract's terms. When there is as of yet no meeting of the minds as to the subject matter or the cause or consideration of the contract being negotiated, the same cannot be considered to have been perfected.

In ruling in favor of respondents, the RTC made a factual finding that the Joint Venture and Licensing Agreement being negotiated between petitioners and respondents was never perfected. Respondents are neither incorporators nor stockholders of MCA-MBF, the company that was supposedly intended to be converted into the Joint Venture Company. It must be stressed that MCA-MBF has not yet been converted into the Joint Venture Company as no shares of stock have been delivered to respondents. As alleged by respondents and found by the RTC, the respondents were assured that the money remitted by them will only be applied to its proposed 40% shareholding in the JVC upon the execution and approval of the Joint Venture and Licensing Agreements. Therefore, while the US$74,074.04 was remitted to the account of MCA-MBF as requested by Aguiluz V, said money was, insofar as respondents are concerned, with the persons they are negotiating with for the creation of the JVC. Consequently, respondents cannot be said to be suing the natural persons among the petitioners as officers of the yet-to-be-created JVC. They were instead held liable for the US$74,074.04 in their individual capacities as the persons negotiating with respondents for the creation of the JVC and, thus, there was no need to pierce the corporate fiction of MCA-MBF.

IN VIEW OF THE FOREGOING, the instant Petition for Review on *Certiorari* is hereby **DISMISSED.**

SO ORDERED.

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

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[*] Per Special Order No. 1207 dated February 23, 2012.

SECOND DIVISION

[G.R. No. 175263. March 14, 2012]

MANUEL H. NIETO, JR., *petitioner, vs.* **SECURITIES AND EXCHANGE COMMISSION (SEC), ATTY. VERNETTE G. UMALI-PACO in her capacity as General Counsel of the SEC and in her personal capacity, and JOHN/ JANE DOES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; THE MEMORANDUM OF UNDERSTANDING MOOTED THE ISSUE IN CASE AT BAR.—** The core issue is the authority of the SEC to call a stockholders' meeting. The MOU mooted that issue. It mooted the case before the Court of Appeals. It mooted likewise the present petition questioning the authority of the Court of Appeals to decide the case in spite of petitioner's motion to withdraw petition. By the explicit terms of the MOU, the parties to the MOU which include Pablo L. Lobregat, representing the Nieto Family and Victor V. Africa, representing the Africa Family, have decided to end their dispute. x x x The main point of Nieto's petition before the Court of Appeals was to oppose the calling of the annual stockholder's meeting. By signing the MOU, Nieto agreed to the convening of the annual stockholders' meeting. As a consequence of the MOU, Nieto no longer had any actual relief forthcoming from the case he filed with the Court of Appeals. The basic questions subject of the MOU and that of the case before the Court of Appeals, overlap. The parties, specifically Nieto, effectively removed the issues from the courts. While the courts can go ahead and render a decision, as did the Court of Appeals, Nieto has divested himself of interest therein and as to him, mooted the case. Nieto could not stop the Court of Appeals from proceeding until rendition of judgment, and he cannot now question such judgment.

2. **ID.; ID.; ID.; A CASE BECOMES MOOT AND ACADEMIC WHEN THERE IS NO MORE ACTUAL CONTROVERSY BETWEEN THE PARTIES OR NO USEFUL PURPOSE CAN**

BE SERVED IN PASSING UPON THE MERITS OF THE CASE.— A case becomes moot and academic when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case. In such cases, there is no actual substantial relief to which petitioner would be entitled to and which would be negated by the dismissal of the petition.

APPEARANCES OF COUNSEL

M.M. Lazaro & Associates for petitioner.

Vernette Umali-Paco for SEC.

Tolentino Corvera Macasaet & Reig for intervenor.

R E S O L U T I O N

PEREZ, *J.*:

This petition for review on *certiorari* seeks the reversal of the Decision[1] dated 30 October 2006 of the Court of Appeals in CA-G.R. SP. No. 94038, which annulled the Orders of the Securities and Exchange Commission (SEC) directing Philcomsat Holdings Corporation (PHC) to convene its annual stockholders' meeting.

The instant case is an offshoot of an intra-corporate dispute among contending groups, *i.e.*, Manuel H. Nieto, Jr. (Nieto) and Africa Groups (headed by Victor Africa), in PHC.

The factual antecedents are as follow:

The voting shares of PHC were 80.5% owned by Philcomsat, which in turn, was wholly owned by the Philippine Overseas Telecommunications Corporation (POTC).

The PHC Board of Directors (Board) informed the SEC that they had decided not to convene the stockholders' meeting for 2005 pending results of the 2004 election, which was then the

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[1] Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Edgardo P. Cruz and Ramon M. Bato, Jr., concurring. *Rollo*, pp. 48-64.

subject of various court litigations. Jose Ozamiz (Ozamiz), a minority stockholder of PHC, wrote to SEC and requested the issuance of a cease and desist order from SEC against the group of Nieto, consisting of directors and officers of PHC, in order to prevent the latter from allegedly dissipating the corporate assets; and that a stockholders' meeting be convened.

In response to Ozamiz's letter, Nieto alleged that Ozamiz was attempting to pre-empt any judgment in cases pending before the various courts involving the stockholders of Philcomsat, POTC and PHC.

Another letter was filed by Ozamiz to SEC urging the latter to order PHC to hold a stockholders' meeting to elect a new set of directors and officers and to form the NOMELEC (A Nomination's Committee).

On 26 February 2006, the SEC promulgated an Order in SEC Case No. 02-06-113, thus:

> IN VIEW OF THE FOREGOING, the Commission hereby resolves to:
>
> 1. Direct the directors and responsible officers of PHC and the concerned parties to submit to the Commission, within ten (10) days from receipt of this Order, the names of their nominees to the NOMELEC to be composed of five (5) members, namely:
>
> a) One (1) from the Africa group;
>
> b) One (1) from Nieto group;
>
> c) A representative from the minority group, Mr. Jose Ozamiz, who petitioned the calling of the annual stockholders' meeting of PHC;
>
> d) A representative of the Republic of the Philippines; and
>
> e) A common neutral party to be chosen by the other (4) members of the NOMELEC.
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> 2. Direct the directors and responsible officers of PHC, within the same period to submit the preferred date of annual meeting of PHC which should be held not later than 17 April 2006; and

3. Direct the directors and responsible officers of PHC to comply with all the requirements for the conduct of meetings for publicly listed companies including the posting of notices for two (2) consecutive weeks prior to the date of meeting in strategic places within the premises of PHC.

SEC issued another Order on 5 April 2006 reiterating the demand that PHC convene its annual stockholders' meeting. The third Order issued on even date denied Nieto's motion for reconsideration of the 26 February 2006 Order.

On 11 April 2006, Nieto filed a petition for *certiorari* and prohibition to enjoin the SEC from calling the PHC's annual stockholder's meeting.

During the pendency of the petition before the Court of Appeals or on 1 July 2006, the majority stockholders of PHC entered into a Memorandum of Understanding (MOU) agreeing to unite and form a common slate for the Board in POTC, Philcomsat and PHC. They requested the SEC to set a date for the annual stockholders' meeting. The group of Nieto was a party to the MOU.

Four (4) days after the execution of the MOU, the Court of Appeals issued a Temporary Restraining Order (TRO) enjoining SEC from implementing its orders.

On 7 August 2006, the SEC filed its Comment to the petition and defended the order calling of the stockholders' meeting of PHC as within its power and jurisdiction to issue.

On 1 September 2006, petitioner filed a Motion to Withdraw Petition in view of the MOU. This action notwithstanding, the Court of Appeals proceeded to render a Decision annulling the assailed orders of the SEC and directing it to cease exercising its regulatory powers. In other words, the Court of Appeals granted Nieto's petition, *viz*:

WHEREFORE, premises considered, petition is hereby GRANTED. The February 26, 2006 and the two (2) April 4, 2006 Orders of the SEC in SEC Case No. 02-06-133 are hereby ANNULLED. The Securities and Exchange Commission is hereby

DIRECTED to stay its hand and cease in the exercise of its regulatory powers, as in this case, when they interfere with or render moot the exercise of the adjudicative powers already transferred from the SEC to the regular courts.[2]

In this petition with prayer for a TRO and preliminary injunction, petitioner anchors its argument mainly on the view that the Court of Appeals should have granted the withdrawal of the petition and should not have proceeded to decide the case. The SEC agreed with petitioner that the Court of Appeals is duty bound to grant the withdrawal of the petition.

The core issue is the authority of the SEC to call a stockholders' meeting. The MOU mooted that issue. It mooted the case before the Court of Appeals. It mooted likewise the present petition questioning the authority of the Court of Appeals to decide the case in spite of petitioner's motion to withdraw petition.

By the explicit terms of the MOU, the parties to the MOU which include Pablo L. Lobregat, representing the Nieto Family and Victor V. Africa, representing the Africa Family, have decided to end their dispute.[3] Thus, the contending parties agreed on the following terms and conditions:

1. The parties warrant that they represent and/or have secured authority to represent the interests of the private stockholder-families and their successors and assigns in POTC, and shall do all acts that may be necessary to enable them to continue representing such interests;

2. The parties have agreed in principle to unite and form a common slate for the Boards of Directors in POTC, Philcomsat and PHC. The names of the persons to be in the said common slate shall be indicated in the Stockholders' Agreement that the parties shall hereafter execute;

3. The parties have agreed that each of the six stockholder-families shall be appoint[ed] a representative who[m] the

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[2] *Id.* at 64.

[3] The other parties to the MOU are Erlinda I. Bildner, Honorio A. Poblador III, Katrina C. Ponce-Enrile, and Francisca Benedicto-Paulino. *Id.* at 65-67.

parties shall cause to be elected as director of Philcomsat and PHC; while five of such representatives shall be elected as directors of POTC, the sixth to be elected immediately after the number of POTC directors as stated in the Articles of Incorporation has been increased to nine (9);

4. The parties have agreed that, with the execution of this Memorandum of Understanding where the six stockholder-families are represented, they shall hereafter be called the "Owners' Group" and henceforth no reference to the "Nieto Group" or the "Africa Group" shall be made;

5. The parties have agreed that Ambassador Manuel H. Nieto, Jr., as one of the two (2) remaining living incorporators of POTC, will assume the position of Chairman Emeritus of POTC, Philcomsat and PHC.

6. The parties have agreed that they shall not, individually or collectively, publish or cause to be published any press release against any party to this Memorandum of Understanding, nor against any of the stockholders the parties herein represent. The parties have likewise agreed that they shall not do nor cause to be done any act that will undermine the discussions of the parties, this Memorandum of Understanding or the Stockholders' Agreement or attack any of the parties hereto or any of the stockholders they represent.

7. The parties have agreed that, upon execution of the Stockholders' Agreement, all cases pending between the parties or the stockholders they represent shall, insofar as practicable, be dropped and/or withdrawn.

8. **The parties have agreed that this Memorandum of Understanding as well as the discussions between them shall lead to a Stockholders' Agreement between them which shall include, among others, the matters herein described, the calling of stockholders' meetings of POTC, Philcomsat and PHC and the reorganization of the Boards of Directors of the said corporations.**[4] [Emphasis Supplied]

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[4] *Id.* at 66-67.

The main point of Nieto's petition before the Court of Appeals was to oppose the calling of the annual stockholder's meeting. By signing the MOU, Nieto agreed to the convening of the annual stockholders' meeting. As a consequence of the MOU, Nieto no longer had any actual relief forthcoming from the case he filed with the Court of Appeals.

The basic questions subject of the MOU and that of the case before the Court of Appeals, overlap. The parties, specifically Nieto, effectively removed the issues from the courts. While the courts can go ahead and render a decision, as did the Court of Appeals, Nieto has divested himself of interest therein and as to him, mooted the case. Nieto could not stop the Court of Appeals from proceeding until rendition of judgment, and he cannot now question such judgment.

At any rate, whichever way the Court of Appeals decides the case would not have any effect on Nieto. The nullification of the SEC's decision to call for a stockholders' meeting is a decision on the SEC's authority to call for a meeting. It was not about, and would not result into, a prohibition against an agreement by the parties to, in fact and of their own accord, call for a stockholder's meeting.

A case becomes moot and academic when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case.[5] In such cases, there is no actual substantial relief to which petitioner would be entitled to and which would be negated by the dismissal of the petition.[6]

Parenthetically, almost a year from the filing of the parties' respective Memorandum, Roberto L. Abad (Abad), claiming to

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[5] *Office of the Ombudsman v. Andutan, Jr.*, G.R. No. 164679, 27 July 2011, 654 SCRA 539, 554 citing *Tantoy, Sr. v. Abrogar*, G.R. No. 156128, 9 May 2005, 458 SCRA 301, 305.

[6] *Bangko Sentral ng Pilipinas v. Orient Commercial Banking Corporation,* G.R. No. 148483, 29 June 2011, 653 SCRA 1, 9 citing *Chuidian v. Sandiganbayan*, 529 Phil. 318, 337 (2006).

be an independent director of PHC, filed an urgent motion for leave to intervene. Abad asserts that "to allow Mr. Nieto to seek the reversal of a Decision that is proper and in conformity with law and jurisprudence would adversely affect herein movant-intervenor's rights and interests as PHC director and stockholder."[7]

Abad's motion for leave to intervene, as an independent director of PHC, was intended to sustain the Decision of the Court of Appeals in nullifying the SEC orders calling for stockholders' meeting. Abad is apparently opposed to the holding of the stockholders' meeting and the decision that favors his position may be reversed by this Court. Abad's position as an independent director contradicts that of Nieto and the parties to the MOU, who all had agreed to call for a stockholder's meeting.

The rendering of the instant petition as moot also forecloses any interest on the part of Abad to intervene.

WHEREFORE, this petition is hereby **DISMISSED FOR BEING MOOT AND ACADEMIC**.

SO ORDERED.

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

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[7] *Rollo*, p. 184.

FIRST DIVISION

[G.R. No. 175924. March 14, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERLAND SABADLAB *Y* BAYQUEL,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; SHOULD NOT BE ADVERSELY AFFECTED BY BASIC INCONSISTENCIES BEARING ON MINOR DETAILS OR COLLATERAL MATTERS.—** Our review reveals x x x that Sabadlab has not tendered any clear and persuasive reasons that may warrant the reversal or modification of the findings of both lower courts on the credibility of AAA and his criminal liability. The supposed inconsistencies dwelled on minor details or collateral matters that the CA precisely held to be badges of veracity and manifestations of truthfulness due to their tendency of demonstrating that the testimony had not been rehearsed or concocted. It is also basic that inconsistencies bearing on minor details or collateral matters should not adversely affect the substance of the witness' declaration, veracity, or weight of testimony. The only inconsistencies that might have discredited the victim's credible testimony were those that affected or related to the elements of the crime.

2. **ID.; ID.; ID.; FINDINGS AND CONCLUSIONS THEREON BY THE TRIAL JUDGE ARE ACCORDED UTMOST RESPECT ON APPEAL.—** We hardly need to remind that the task of assigning values to the testimonies of witnesses and of weighing their credibility is best left to the trial judge by virtue of the first-hand impressions he derives while the witnesses testify before him. The demeanor on the witness chair of persons sworn to tell the truth in judicial proceedings is a significant element of judicial adjudication because it can draw the line between fact and fancy. Their forthright answers or hesitant pauses, their quivering voices or angry tones, their flustered looks or sincere gazes, their modest blushes or guilty blanches - all these can reveal if the witnesses are telling the

truth or lying in their teeth. As the final appellate reviewer in this case, then, we bow to the age-old norm to accord the utmost respect to the findings and conclusions on the credibility of witnesses reached by the trial judge on account of his unmatched opportunity to observe the witnesses and on account of his personal access to the various indicia available but not reflected in the record.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 8353 (THE ANTI-RAPE ACT OF 1997); DEGREE OF RESISTANCE IN RAPE CASES.—** Sabadlab's allegation that AAA did not sustain any bodily injuries was actually contrary to the medical certification showing her several physical injuries and the penetration of her female organ. This should debunk without difficulty his submission that she did not offer any resistance to the sexual assaults she suffered. Her resistance to Sabadlab's order for her to go with him was immediately stifled by his poking of the gun at her throat and by appearance of his two cohorts. At any rate, it is notable that among the amendments of the law on rape introduced under Republic Act No. 8353 (*The Anti-Rape Act of 1997*) is Section 266-D, which adverts to the degree of resistance that the victim may put up against the rapist, *viz*: "Article 266-D. *Presumptions*. — Any physical overt act manifesting resistance against the act of rape **in any degree** from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A."

4. **ID.; RAPE; WHEN THE OBJECTIVE OF THE ABDUCTION IS TO COMMIT RAPE, THE RAPE ABSORBS THE FORCIBLE ABDUCTION; CASE AT BAR.—** The principal objective of Sabadlab and his two cohorts in abducting AAA from Dapitan Street and in bringing her to another place was to rape and ravish her. This objective became evident from the successive acts of Sabadlab immediately after she had alighted from the car in completely undressing her as to expose her whole body (except the eyes due to the blindfold), in kissing her body from the neck down, and in having carnal knowledge of her (in that order). Although forcible abduction was seemingly committed, we cannot hold him guilty of the complex crime of forcible abduction with rape when the objective of

the abduction was to commit the rape. Under the circumstances, the rape absorbed the forcible abduction. The penalty of *reclusion perpetua* was correctly prescribed. Article 266-A and Article 266-B of the *Revised Penal Code*, as amended by Republic Act No. 8353, respectively define and punish simple rape x x x.

5. **CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; MAY BE IMPOSED IN A CRIMINAL CASE AS PART OF THE CIVIL LIABILITY WHEN THE CRIME IS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES.—** Although the CA deleted the RTC's award of exemplary damages because of the "absence of aggravating circumstance," we reinstate the award in view of the attendance of the aggravating circumstance of use of a deadly weapon in the commission of the crime. The *Civil Code* provides that exemplary damages may be imposed in a criminal case as part of the civil liability "when the crime was committed with one or more aggravating circumstances." The *Civil Code* allows 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." Present here was the need for exemplarity. Thus, the CA should have recognized the entitlement to exemplary damages of AAA on account of the attendance of use of a deadly weapon. It was of no moment that the use of a deadly weapon was not specifically alleged in the information.

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.*:

On October 28, 2003, the Regional Trial Court (RTC), Branch 140, in Makati City pronounced Erland Sabadlab *y* Bayquel guilty of forcible abduction with rape committed against

AAA,[1] a 16-year old domestic helper, and penalized him with *reclusion perpetua*.[2] On April 26, 2006, the Court of Appeals (CA) affirmed the conviction and the penalty, but modified the civil damages.[3] Hence, Sabadlab appeals.

Antecedents

Both the RTC and the CA agreed on the factual antecedents.

AAA was then walking at around noon of March 12, 2002 on Dapitan Street in Makati City, proceeding towards MA Montessori to fetch her employer's son who was studying there. Suddenly, a man (later identified as Sabadlab) grabbed her by the shoulder and ordered her to go with him. She recognized him to be the man who had persistently greeted her every time she had bought *pandesal* at 5 o'clock am near her employer's house in the past two weeks. Alarmed, she refused to do his bidding, but Sabadlab poked a gun at her throat. Two other men whom she did not recognize joined Sabadlab at that point. They forced her into the backseat of a parked car, and one of Sabadlab's cohorts blindfolded her with a handkerchief. The car moved forward, and stopped after twenty minutes of travel. Still blindfolded, she was brought out of the car. Sabadlab said that he would remove her clothes. Sabadlab then undressed her, leaving only the blindfold on her. One of them tied her hands behind her back. Sabadlab began kissing her body from the neck downwards. Although blindfolded, she knew that it was Sabadlab because his cohorts were calling out his name as he was kissing her body. Then they made her lie flat on the ground with her hands still tied behind her back. Sabadlab raped

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[1] The real name of the victim is being withheld pursuant to Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*) and Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*). See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2] Records, pp, 108-114.

[3] CA *rollo,* pp. 93-100; penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justice Godardo A. Jacinto (retired) and Associate Justice Vicente Q. Roxas, concurring.

her in that position. The others took their turns in raping her after Sabadlab. To prevent her from shouting for help, Sabadlab stuffed her mouth with crumpled newspapers. The three ravished her again and again, that she could not remember the number of times they did so.

At around 3:00 o'clock pm, Sabadlab and his cohorts returned a blindfolded AAA by car back to Dapitan Street, but let her go only after sternly warning that they would surely kill her if she told anyone about the rapes. Once they left, she proceeded to MA Montessori to fetch her ward. She waited there until 5:30 pm.

Upon her arrival at the house, AAA's employer noticed the kiss marks on her neck. AAA at first lied about the kiss marks, but she ultimately disclosed the rapes because her irritated employer slapped and boxed her on the stomach to force her to disclose.

On March 13, 2002, her employer brought AAA to the Makati Police Station to report the rapes. AAA underwent medico-legal examination later that day at the PNP Crime Laboratory in Camp Crame Quezon City. The results of the medico-legal examination were embodied in Medico-Legal Report No. M-797-02 issued by medico-legal officer Dr. Mary Ann P. Gajardo, *viz*:

PHYSICAL INJURIES:

1. Ecchymosis, right mandibular region, measuring 2.5 x 2.5 cm, 8 cms from the anterior midline.

2. Ecchymosis, neck, measuring 3 x 2.5 cms, 6 cms right of the anterior midline.

3. Ecchymosis, neck, measuring 3 x 2.5 cms, 4.5 cms left of the anterior midline.

4. Ecchymosis, nape, measuring 3.5 x 2.5 cms, 4 cms right of the posterior midline.

5. Ecchymosis, nape, measuring 4.5 x 3 cms, 4 cms left of the posterior midline.

6. Ecchymosis, right breast, measuring 4 x 3.5 cms, 10 cms from the anterior midline.

7. Ecchymosis, sternal region, measuring 9 x 3 cms, bissecting the anterior midline.

8. Ecchymosis, left breast, measuring 3.5 x 2.5 cms, 9 cms from the anterior midline.

9. Ecchymosis, left breast, measuring 3.5 x 3 cms, 11 cms from the anterior midline.

10. Abrasion, left scapular region, measuring 3.5 x 0.5 cms, 14 cms from the posterior midline

GENITAL:

PUBIC HAIR: Moderate

LABIA MAJORA: Full, convex and slightly gaping.

LABIA MINORA: Pinkish brown slightly hypertrophied labia minora in between.

HYMEN: Presence of shallow fresh lacerations at 7 o'clock position and deep fresh lacerations at 6 and 9 o'clock position. Congested.

POSTERIOIR FOURCHETTE: Abraded/Congested

EXTERNAL VAGINAL ORIFICE: Offers strong resistance upon introduction of the examiner's index finger.

VAGINAL CANAL: Narrow with prominent rugosities.

CERVIX: Soft and close

PERIURETHRAL AND VAGINAL SMEARS: Negative for spermatozoa and negative for gram (-) diploxocci.

CONCLUSION: Findings are compatible with recent loss of virginity. Barring unforeseen complications, it is estimated that the above injuries will heal within 3-5 days.[4]

Afterwards, AAA and the policemen went to the vicinity where she had usually bought *pandesal* to look for the suspects. She spotted Sabadlab in one of the nearby restaurants and pointed to him. The policemen apprehended Sabadlab and brought him

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[4] Records, p. 59.

to the station, where he gave his name as Erland Sabadlab *y* Bayquel. That was her first time to know the name of Sabadlab.

These antecedents impelled the Office of the City Prosecutor of Makati to immediately charge Sabadlab and two John Does with forcible abduction with rape *via* the information dated March 13, 2002, alleging:

That on or about the 12th day of March of 2002, in the City of Makati, Philippines a place within the jurisdiction of this Honorable Court, the above-named accused together with two (2) John Does whose names and whereabouts are still unknown, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously take and carry away AAA, 16 years of age, against her will from Dapitan St., Barangay Guadalupe, Makati City and brought her to an undisclosed place, where accused by means of force, violence and intimidation had carnal knowledge of complainant against her will.

CONTRARY TO LAW.[5]

In his defense, Sabadlab denied the charge and asserted *alibi*, claiming that on March 12, 2002, he was at Billiard M where he worked as a spotter; that he stayed there until noon, leaving the place only to have lunch; and that he returned to Billiard M at 12:30 pm and stayed there until he was arrested at 7:00 pm of March 12, 2002. Frederick Dionisio and Nathaniel Salvacion corroborated Sabadlab's *alibi*.

As stated, the RTC convicted Sabadlab for forcible abduction with rape as charged based on AAA's positive identification of him as one of the rapists, observing that her physical injuries and fresh hymenal lacerations were consistent with her account of the rapes, decreeing:

WHEREFORE, finding accused ERLAND SABADLAB *y* BAYQUEL GUILTY BEYOND REASONABLE DOUBT as principal of the crime of forcible abduction with rape charged in this case, he is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* and to pay the costs.

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[5] Records, p. 1.

On the civil aspect, the accused is ordered to pay AAA the sum of FIFTY THOUSAND PESOS (₱50,000.00) as EXEMPLARY DAMAGES and ONE HUNDRED THOUSAND PESOS (₱100,000.00) as MORAL DAMAGES.

SO ORDERED.[6]

On appeal in the CA, Sabadlab assigned the following errors,[7] to wit:

I.

THE TRIAL COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE HIGHLY INCREDIBLE AND INCONSISTENT TESTIMONY OF THE PRIVATE COMPLAINANT.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Nonetheless, the CA sustained his conviction and the penalty of *reclusion perpetua*, holding that the supposed inconsistencies referred to trivial matters or innocent lapses that did not affect the credibility of AAA as a witness but were instead badges of veracity or manifestations of truthfulness of the material points of her testimony. The CA thus disposed:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision of the RTC dated October 28, 2003 is AFFIRMED with MODIFICATION as follows:

1. The award of moral damages is REDUCED to ₱50,000.00;

2. The award of exemplary damages is DELETED;

3. Appellant is ordered to pay the amount of ₱50,000.00 as civil indemnity.

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[6] Records, pp. 113-114.

[7] CA *rollo*, pp. 37-47.

Pursuant to *Section 13 (C), Rule 124 of the Revised Rules of Criminal Procedure,* appellant may appeal this case to the Supreme Court *via* a Notice of Appeal filed before this Court.

SO ORDERED.[8]

Upon the denial of his motion for reconsideration on August 2, 2006, Sabadlab is now before the Court to seek the final review.

In addition to the arguments and submissions made in his appellant's brief in the CA, Sabadlab indicates in his supplemental brief[9] that AAA's version was ambiguous and implausible, and conflicted with human experience as borne by the following, namely: (*a*) the State did not present any torn apparel; (*b*) no bodily injuries were shown to prove that AAA had resisted the sexual intercourse; (*c*) AAA did not cry for help; and (*d*) AAA did not escape despite several opportunities to do so. He contends, moreover, that the State's evidence established only simple seduction.[10]

Ruling

We affirm the conviction.

First of all, Sabadlab continues to assail the credibility of AAA's recollections. We understand why he does so, because the credibility of the victim's testimony is a primordial consideration in rape.[11] Yet, because both the RTC and the CA unanimously regarded AAA as a credible and spontaneous witness, he has now to present clear and persuasive reasons to convince us to reverse both lower courts' determination of credibility and to resolve the appeal his way.

Our review reveals, however, that Sabadlab has not tendered any clear and persuasive reasons that may warrant the reversal

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[8] CA *rollo*, pp. 99-100.

[9] *Rollo*, pp. 14-20.

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

[11] *People v. Quiachon*, G.R. No. 170236, 31 August 2006, 500 SCRA 704, 714.

or modification of the findings of both lower courts on the credibility of AAA and his criminal liability. The supposed inconsistencies dwelled on minor details or collateral matters that the CA precisely held to be badges of veracity and manifestations of truthfulness due to their tendency of demonstrating that the testimony had not been rehearsed or concocted. It is also basic that inconsistencies bearing on minor details or collateral matters should not adversely affect the substance of the witness' declaration, veracity, or weight of testimony.[12] The only inconsistencies that might have discredited the victim's credible testimony were those that affected or related to the elements of the crime. Alas, that was not true herein.

The supposed inconsistencies were inconsequential to the issue of guilt. For one, the matter of who of the three rapists had blindfolded and undressed AAA was trifling, because her confusion did not alter the fact that she had been really blindfolded and rendered naked. Nor did the failure to produce any torn apparel of AAA disprove the crime charged, it being without dispute that the tearing of the victim's apparel was not necessary in the commission of the crime charged. In fact, she did not even state that her clothes had been torn when Sabadlab had forcibly undressed her. Verily, details and matters that did not detract from the commission of the crime did not diminish her credibility.

We hardly need to remind that the task of assigning values to the testimonies of witnesses and of weighing their credibility is best left to the trial judge by virtue of the first-hand impressions he derives while the witnesses testify before him.[13] The demeanor on the witness chair of persons sworn to tell the truth in judicial proceedings is a significant element of judicial adjudication because it can draw the line between fact and fancy. Their forthright answers or hesitant pauses, their quivering voices or angry tones, their flustered looks or sincere gazes, their modest blushes or

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[12] *People v. Castro*, G.R. No. 172370, October 06, 2008, 567 SCRA 586.

[13] *People v. Del Rosario*, G.R. No. 189580, February 9, 2011, 642 SCRA 625.

guilty blanches - all these can reveal if the witnesses are telling the truth or lying in their teeth.[14] As the final appellate reviewer in this case, then, we bow to the age-old norm to accord the utmost respect to the findings and conclusions on the credibility of witnesses reached by the trial judge on account of his unmatched opportunity to observe the witnesses and on account of his personal access to the various indicia available but not reflected in the record.[15]

Secondly, AAA's recollection of the principal occurrence and her positive identification of the rapists, particularly Sabadlab, were firm. It is reassuring, too, that her trustworthiness in identifying Sabadlab as one of the rapists rested on her recognition of him as *the man* who had frequently flirted with her at the store where she had usually bought *pandesal* for her employer's table. As such, the identification of him as one of the rapists became impervious to doubt.

Thirdly, AAA's failure to shout for help and her failure to escape were not factors that should diminish credibility due to their being plausibly explained, the first by the fact that her mouth had been stuffed by Sabadlab with crumpled newspaper, preventing her from making any outcry, and the second by the fact that the culprits had blindfolded her and had also tied her hands behind her back.

And, lastly, Sabadlab's allegation that AAA did not sustain any bodily injuries was actually contrary to the medical certification showing her several physical injuries and the penetration of her female organ.[16] This should debunk without difficulty his submission that she did not offer any resistance to the sexual assaults she suffered. Her resistance to Sabadlab's order for her to go with him was immediately stifled by his poking of the gun at her throat and by appearance of his two cohorts. At any

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[14] *Id*.

[15] *People v. Sanchez,* G.R. Nos. 121039-45, January 25, 1999, 302 SCRA 21.

[16] *People v. Bation*, G.R. No. 123160, March 25, 1999, 305 SCRA 253, 269.

rate, it is notable that among the amendments of the law on rape introduced under Republic Act No. 8353 (*The Anti-Rape Act of 1997*) is Section 266-D, which adverts to the degree of resistance that the victim may put up against the rapist, *viz*:

> Article 266-D. *Presumptions*.— Any physical overt act manifesting resistance against the act of rape **in any degree** from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A.

We next deal with the characterization of the crime as forcible abduction with rape. The principal objective of Sabadlab and his two cohorts in abducting AAA from Dapitan Street and in bringing her to another place was to rape and ravish her. This objective became evident from the successive acts of Sabadlab immediately after she had alighted from the car in completely undressing her as to expose her whole body (except the eyes due to the blindfold), in kissing her body from the neck down, and in having carnal knowledge of her (in that order). Although forcible abduction was seemingly committed,[17] we cannot hold him guilty of the complex crime of forcible abduction with rape when the objective of the abduction was to commit the rape. Under the circumstances, the rape absorbed the forcible abduction.[18]

The penalty of *reclusion perpetua* was correctly prescribed. Article 266-A and Article 266-B of the *Revised Penal Code*, as

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[17] Article 342, *Revised Penal Code*, provides:

> Article 342. *Forcible abduction*. – The abduction of any woman against her will and with lewd designs shall be punished by *reclusion temporal*.
>
> The same penalty shall be imposed in every case, if the female abducted be under twelve years of age.

[18] *Garces v. People*, G.R. No. 173858, July 17, 2007, 527 SCRA 827; *People v. Muros*, G.R. No. 142511, February 16, 2004, 423 SCRA 69; *People v. Egan*, G.R. No. 139338, May 28, 2002, 382 SCRA 326; *People v. Mejorada*, G.R. No. 102705, July 30, 1993, 224 SCRA 837, 852; *People v. Godines*, G.R. No. 93410, May 7, 1991, 196 SCRA 765, 773.

amended by Republic Act No. 8353,[19] respectively define and punish simple rape as follows:

Article 266-A. *Rape; When and How Committed. – Rape is committed –*

1) By a man who shall have carnal knowledge of a woman under any of the circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machinations or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Article 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

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Although the CA deleted the RTC's award of exemplary damages because of the "absence of aggravating circumstance (*sic*),"[20] we reinstate the award in view of the attendance of the aggravating circumstance of use of a deadly weapon in the commission of the crime. The *Civil Code* provides that exemplary damages may be imposed in a criminal case as part of the civil liability "when the crime was committed with one or more aggravating circumstances."[21] The *Civil Code* allows such

[19] Effective October 22, 1997.

[20] CA *rollo*, p. 99. The use of a deadly weapon is a qualifying circumstance in rape pursuant to the second paragraph of Article 266-B of the *Revised Penal Code*.

[21] Article 2230, *Civil Code,* states:

Article 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

damages to be awarded "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."[22] Present here was the need for exemplarity. Thus, the CA should have recognized the entitlement to exemplary damages of AAA on account of the attendance of use of a deadly weapon. It was of no moment that the use of a deadly weapon was not specifically alleged in the information. As fittingly explained in *People v. Catubig*:[23]

> 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*.**

Accordingly, the Court grants the amount of ₱30,000.00 as exemplary damages in addition to the civil indemnity of ₱50,000.00 and the moral damages of ₱50,000.00 the CA awarded to AAA.

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[22] Article 2229, *Civil Code*.

[23] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

Sabadlab is further liable for interest of 6% *per annum* on all the civil damages.

WHEREFORE, we **AFFIRM** decision of the Court of Appeals promulgated on April 26, 2006, with the **MODIFICATION** that **ERLAND SABADLAB *y* BAYQUEL** is: (*a*) **DECLARED GUILTY BEYOND REASONABLE DOUBT** of **SIMPLE RAPE** as defined under Article 266-A and as penalized with *reclusion perpetua* pursuant to Article 266-B of the *Revised Penal Code*, as amended by Republic Act No. 8353; and (*b*) **ORDERED TO PAY** to the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, plus interest of 6% *per annum* on each of the amounts reckoned from the finality of this decision.

The accused shall pay the costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183367. March 14, 2012]

AUSTRALIAN PROFESSIONAL REALTY, INC., JESUS GARCIA, and LYDIA MARCIANO, *petitioners, vs.* **MUNICIPALITY OF PADRE GARCIA, BATANGAS PROVINCE,** *respondent.*

[*] Vice Associate Justice Mariano C. Del Castillo, who is on sick leave, per Special Order No. 1203 dated February 17, 2012.

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND/OR PROHIBITION; PROPER REMEDY TO ASSAIL AN INTERLOCUTORY ORDER.—** Under Section 1 (c) of Rule 41 of the Rules of Court, no appeal may be taken from an interlocutory order. An interlocutory order is one that does not dispose of the case completely but leaves something to be decided upon. An order granting or denying an application for preliminary injunction is interlocutory in nature and, hence, not appealable. Instead, the proper remedy is to file a Petition for *Certiorari* and/or Prohibition under Rule 65. While the Court may dismiss a petition outright for being an improper remedy, it may in certain instances proceed to review the substance of the petition. Thus, this Court will treat this Petition as if it were filed under Rule 65.

2. **ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; TEMPORARY RESTRAINING ORDER; REQUISITES.—** A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests. An application for the issuance of a writ of preliminary injunction and/or TRO may be granted upon the filing of a verified application showing facts entitling the applicant to the relief demanded. Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A TRO issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately. Under Section 5, Rule 58 of the Rules of Court, a TRO may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would be inflicted on the applicant before the writ of preliminary injunction could be heard. Thus, to be entitled to the injunctive writ, petitioners must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.

3. ID.; ID.; ID.; THE EXERCISE OF JUDICIAL DISCRETION BY A COURT IN INJUNCTIVE MATTERS MUST NOT BE INTERFERED WITH; EXCEPTION.— The grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED.— Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. The burden is thus on petitioner to show in his application that there is meritorious ground for the issuance of a TRO in his favor.

5. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; THE ISSUANCE THEREOF CONSTITUTES GRAVE ABUSE OF DISCRETION IN THE ABSENCE OF A CLEAR LEGAL RIGHT.— A clear legal right means one clearly founded in or granted by law or is enforceable as a matter of law. In the absence of a clear legal right, the issuance of the writ constitutes grave abuse of discretion. The possibility of irreparable damage without proof of an actual existing right is not a ground for injunction.

6. ID.; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF JUDGMENTS; THE EXECUTION OF A JUDGMENT WHICH HAS ATTAINED FINALITY CANNOT BE RESTRAINED BY INJUNCTION; EXCEPTIONS.— The general rule is that after a judgment has gained finality, it becomes the ministerial duty of the court to order its execution. No court should interfere, by injunction or otherwise, to restrain such execution. The rule, however, admits of exceptions, such as the following: (1) when facts and circumstances later transpire that would render execution inequitable or unjust;

or (2) when there is a change in the situation of the parties that may warrant an injunctive relief.

APPEARANCES OF COUNSEL

Contreras Law Office for petitioners.

Ariel M. Reyes for respondent.

D E C I S I O N

SERENO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to annul the Court of Appeals (CA) Resolutions in CA-G.R. SP No. 102540 dated 26 March 2008[1] and 16 June 2008, which denied petitioners' Motion for the issuance of a status quo order and Motion for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction.

Statement of the Facts and the Case

In 1993, fire razed to the ground the old public market of respondent Municipality of Padre Garcia, Batangas. The municipal government, through its then Municipal Mayor Eugenio Gutierrez, invited petitioner Australian Professional Realty, Inc. (APRI) to rebuild the public market and construct a shopping center.

On 19 January 1995, a Memorandum of Agreement (MOA)[2] was executed between petitioner APRI and respondent, represented by Mayor Gutierrez and the members of the *Sangguniang Bayan*. Under the MOA, APRI undertook to construct a shopping complex in the 5,000-square-meter area. In return, APRI acquired the exclusive right to operate, manage, and lease stall spaces for a period of 25 years.

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[1] Penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Remedios A. Salazar-Fernando and Rosalinda Asuncion-Vicente.

[2] *Rollo*, pp. 61-65.

In May 1995, Victor Reyes was elected as municipal mayor of respondent. On 6 February 2003, respondent, through Mayor Reyes, initiated a Complaint for Declaration of Nullity of Memorandum of Agreement with Damages before the Regional Trial Court (RTC) of Rosario, Batangas, Fourth Judicial Region, Branch 87. The Complaint was docketed as Civil Case No. 03-004.

On 12 February 2003, the RTC issued summons to petitioners, requiring them to file their Answer to the Complaint. However, the summons was returned unserved, as petitioners were no longer holding office in the given address.

On 2 April 2003, a Motion for Leave of Court to Effect Service by Publication was filed by respondent before the RTC and subsequently granted by the trial court.

On 24 November 2003, the RTC issued an Order declaring petitioners in default and allowing respondent to present evidence *ex parte*.

On 6 October 2004, a Decision was rendered by the RTC, which, after narrating the testimonial evidence for respondent, stated:

> After the completion of the testimony of Victor M. Reyes, counsel for the petitioner manifested that he will file the formal offer of evidence in writing.
>
> On July 19, 2004, counsel for the petitioner filed before this Court his Formal Offer of Documentary Exhibits consisting of Exhibits "A" to "H", inclusive of submarkings.
>
> On August 18, 2004 an order was issued by the Court admitting all the exhibits formally offered by the petitioner thru counsel and this case was ordered submitted for resolution of the Court.
>
> There is no opposition in the instant petition.
>
> WHEREFORE, in view thereof, and finding the petition to be sufficient in form and substance, it being supported by sufficient evidence, judgement (sic) is hereby rendered in favor of the plaintiff as against the respondents as follows:

(a) The Memorandum of Agreement is hereby declared null and void for being contrary to law and public policy, particularly R.A. 6957 and R.A. 7718;

(b) The respondents are hereby ordered to pay the amount of FIVE MILLION PESOS (5,000,000.00) in favor of the plaintiff for damages caused to the latter;

(c) The structures found within the unfinished PADRE GARCIA SHOPPING CENTER are hereby declared forfeited in favor of the Municipality of Padre Garcia.

SO ORDERED.[3]

There having been no timely appeal made, respondent filed a Motion for Execution of Judgment, which was granted by the RTC. A Writ of Execution was thus issued on 15 July 2005.

After learning of the adverse judgment, petitioners filed a Petition for Relief from Judgment dated 18 July 2005. This Petition was denied by the RTC in an Order dated 15 June 2006. In another Order dated 14 February 2008, the trial court denied the Motion for Reconsideration.

Petitioners later filed before the CA a Petition for *Certiorari* and Prohibition dated 28 February 2008, docketed as CA-G.R. SP No. 102540. On 7 March 2008, petitioners filed before the CA a Motion for the Issuance of Status Quo Order and Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.[4] The motion prayed for an order to restrain the RTC from "further proceeding and issuing any further Order, Resolution, Writ of Execution, and any other court processes"[5] in the case before it.

On 26 March 2008, the CA issued a Resolution denying the said motion, stating thus:

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[3] *Rollo*, pp. 58-59.

[4] *Rollo*, pp. 15-24.

[5] *Id.* at 15.

After a careful evaluation of petitioners' Motion for Issuance of Status Quo Order and Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction, We find that the matter is not of extreme urgency and that there is no clear and irreparable injury that would be suffered by the petitioners if the prayer for the issuance of a Status Quo Order, Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction is not granted. In Ong Ching Kian Chuan v. Court of Appeals, it was held that, to be entitled to injunctive relief, the petitioner must show, *inter alia*, the existence of a clear and unmistakable right and an urgent and paramount necessity for the writ to prevent serious damage.

WHEREFORE, petitioners' prayer for the issuance of a Status Quo Order, Temporary Restraining Order and/or Writ of Preliminary Injunction is hereby DENIED for lack of merit.[6]

On 17 June 2008, the CA denied the Motion for Reconsideration of the 26 March 2008 Resolution, stating that the mere preservation of the *status quo* is not sufficient to justify the issuance of an injunction.

On 8 July 2008, petitioners filed the instant Petition for Review on Certiorari dated 6 July 2008.

Petitioners claim that the amount of APRI's investment in the Padre Garcia Shopping Center is estimated at 30,000,000, the entirety of which the RTC declared forfeited to respondent without just compensation. At the time of the filing of the Petition, APRI had 47 existing tenants and lessees and was deriving an average monthly rental income of 100,000. The Decision of the RTC was allegedly arrived at without first obtaining jurisdiction over the persons of petitioners. The execution of the allegedly void judgment of the RTC during the pendency of the Petition before the CA would probably work injustice to the applicant, as the execution would result in an arbitrary declaration of nullity of the MOA without due process of law.

Petitioners further allege that respondent did not exercise reasonable diligence in inquiring into the former's address in the case before the RTC. The Process Server Return, with

[6] *Rollo*, p. 26.

respect to the unserved summons, did not indicate the impossibility of a service of summons within a reasonable time, the efforts exerted to locate APRI, or any inquiry as to the whereabouts of the said petitioner.

On 6 August 2008, this Court required respondent to file its Comment. On 13 February 2009, the Comment was filed, alleging among others that despite the RTC's issuance of a Writ of Execution, respondent did not move to implement the said writ out of administrative comity and fair play. Even if the writ were implemented, petitioners failed to state in categorical terms the serious injury they would sustain.

Respondent further argues that it is now in possession of the contracts that the lessees of the Padre Garcia Shopping Center executed with APRI. Thus, there are "actions [that militate] against the preservation of the present state of things,"[7] as sought to be achieved with the issuance of a status quo order.

On 2 June 2009, petitioners filed their Reply to respondent's Comment.

On 3 March 2010, this Court issued a Resolution requiring the parties to inform the Court of the present status of CA-G.R. SP No. 102540. On 15 April 2010, respondent manifested that after the parties filed their respective Memoranda, the CA considered the case submitted for decision. On 12 May 2010, petitioners filed their Compliance, stating that the appellate court, per its Resolution dated 7 August 2008, held in abeyance the resolution of CA-G.R. SP No. 102540, pending resolution of the instant Petition.

The Court's Ruling

The Petition is denied for failure to show any grave abuse of discretion on the part of the CA.

Procedural Issue: Propriety of a Petition for Review under Rule 45

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[7] *Id.* at 144.

Before proceeding to the substantive issues raised, we note that petitioners resorted to an improper remedy before this Court. They filed a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court to question the denial of their Motion for the issuance of an injunctive relief.

Under Section 1 (c) of Rule 41 of the Rules of Court, no appeal may be taken from an interlocutory order. An interlocutory order is one that does not dispose of the case completely but leaves something to be decided upon.[8] An order granting or denying an application for preliminary injunction is interlocutory in nature and, hence, not appealable.[9] Instead, the proper remedy is to file a Petition for *Certiorari* and/or Prohibition under Rule 65.[10]

While the Court may dismiss a petition outright for being an improper remedy, it may in certain instances proceed to review the substance of the petition.[11] Thus, this Court will treat this Petition as if it were filed under Rule 65.

Substantive Issue: Grave abuse of discretion on the part of the CA

The issue that must be resolved by this Court is whether the CA committed grave abuse of discretion in denying petitioners' Motion for the Issuance of Status Quo Order and Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction (Motion for Injunction).

A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive

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[8] *Denso (Phils.) Inc. v. Intermediate Appellate Court*, 232 Phil. 256 (1987).

[9] *City of Naga v. Asuncion*, G.R. No. 174042, 9 July 2008, 557 SCRA 528; *Tambaoan v. Court of Appeals*, 417 Phil. 683 (2001).

[10] *Id.*

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

rights and interests.[12] An application for the issuance of a writ of preliminary injunction and/or TRO may be granted upon the filing of a verified application showing facts entitling the applicant to the relief demanded.

Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A TRO issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately.[13] Under Section 5, Rule 58 of the Rules of Court,[14] a TRO may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would be inflicted on the applicant before the writ of preliminary injunction could be heard.

Thus, to be entitled to the injunctive writ, petitioners must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[15]

The grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of

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[12] *Brizuela v. Dingle*, G.R. No. 175371, 30 April 2008, 553 SCRA 662, citing *Philippine National Bank v. Court of Appeals*, 353 Phil. 473, 479 (1998).

[13] *Id.*, citing *Abundo v. Manio, Jr.,* 370 Phil. 850, 869 (1999).

[14] Section 5 provides:

Sec. 5. *Preliminary injunction not granted without notice; exception.* — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided x x x

[15] *Medina v. City Sheriff of Manila*, 342 Phil. 90 (1997).

evidence towards that end involves findings of fact left to the said court for its conclusive determination.[16] Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.[17]

Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[18] The burden is thus on petitioner to show in his application that there is meritorious ground for the issuance of a TRO in his favor.[19]

In this case, no grave abuse of discretion can be imputed to the CA. It did not exercise judgment in a capricious and whimsical manner or exercise power in an arbitrary or despotic manner.

No clear legal right

A clear legal right means one clearly founded in or granted by law or is enforceable as a matter of law.[20] In the absence of a clear legal right, the issuance of the writ constitutes grave abuse of discretion.[21] The possibility of irreparable damage without proof of an actual existing right is not a ground for injunction.[22]

A perusal of the Motion for Injunction and its accompanying Affidavit filed before the CA shows that petitioners rely on

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[16] *Barbieto v. Court of Appeals*, G.R. No. 184645, 30 October 2009, 604 SCRA 825.

[17] *Id.*

[18] *Overseas Workers Welfare Administration v. Chavez*, G.R. No. 169802, 8 June 2007, 524 SCRA 451.

[19] *Brizuela v. Dingle*, *supra* note 11.

[20] *Soriano v. People*, G.R. No. 162336, 1 February 2010, 611 SCRA 191.

[21] *Id.*

[22] *Id.*

their alleged right to the full and faithful execution of the MOA. However, while the enforcement of the Writ of Execution, which would nullify the implementation of the MOA, is manifestly prejudicial to petitioners' interests, they have failed to establish in their Petition that they possess a clear legal right that merits the issuance of a writ of preliminary injunction. Their rights under the MOA have already been declared inferior or inexistent in relation to respondent in the RTC case, under a judgment that has become final and executory.[23] At the very least, their rights under the MOA are precisely disputed by respondent. Hence, there can be no "clear and unmistakable" right in favor of petitioners to warrant the issuance of a writ of injunction. Where the complainant's right or title is doubtful or disputed, injunction is not proper.[24]

The general rule is that after a judgment has gained finality, it becomes the ministerial duty of the court to order its execution. No court should interfere, by injunction or otherwise, to restrain such execution.[25] The rule, however, admits of exceptions, such as the following: (1) when facts and circumstances later transpire that would render execution inequitable or unjust; or (2) when there is a change in the situation of the parties that may warrant an injunctive relief.[26] In this case, after the finality of the RTC Decision, there were no supervening events or changes in the situation of the parties that would entail the injunction of the Writ of Execution.

No irreparable injury

Damages are irreparable where there is no standard by which their amount can be measured with reasonable accuracy.[27] In

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[23] See *Medina v. City Sheriff, Manila*, *supra* note 15.

[24] *Ocampo v. Sison vda. de Fernandez*, G.R. No. 164529, 19 June 2007, 525 SCRA 79.

[25] *Bachrach Corporation v. Court of Appeals*, 357 Phil. 483 (1998).

[26] *Id.*

[27] *Social Security Commission v. Bayona*, 115 Phil. 105 (1962).

this case, petitioners have alleged that the loss of the public market entails costs of about ₱30 million in investments, 100,000 monthly revenue in rentals, and amounts as yet unquantified – but not unquantifiable – in terms of the alleged loss of jobs of APRI's employees and potential suits that may be filed by the leaseholders of the public market for breach of contract. Clearly, the injuries alleged by petitioners are capable of pecuniary estimation. Any loss petitioners may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thus, a preliminary injunction is not warranted.[28] With respect to the allegations of loss of employment and potential suits, these are speculative at best, with no proof adduced to substantiate them.

The foregoing considered, the CA did not commit grave abuse of discretion in denying the Motion for Injunction. In any case, petitioners may still seek recourse in their pending Petition before the Court of Appeals.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Resolutions dated 26 March 2008 and 16 June 2008 in CA-G.R. SP No. 102540 are **AFFIRMED**. The Court of Appeals is directed to proceed with dispatch to dispose of the case before it.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184406. March 14, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **PERFECTO OBIAS, *ET AL.*,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; ADMINISTRATIVE ISSUANCES; ENJOY THE PRESUMPTION OF LEGALITIES BUT ARE STILL SUBJECT TO THE INTERPRETATION BY THE SUPREME COURT PURSUANT TO ITS POWER TO INTERPRET THE LAW.—** It is correct that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. And a literal reading of A.O. No. 13, as amended, will be in favor of the LBP. However, these administrative issuances or orders, though they enjoy the presumption of legalities, are still subject to the interpretation by the Supreme Court pursuant to its power to interpret the law. While rules and regulation issued by the administrative bodies have the force and effect of law and are entitled to great respect, courts interpret administrative regulations in harmony with the law that authorized them and avoid as much as possible any construction that would annul them as invalid exercise of legislative power.

2. **ID.; ID.; ID.; ID.; DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO. 13, AS AMENDED; JUST COMPENSATION; THE PAYMENT OF INTEREST SHALL BE UP TO THE TIME OF FULL PAYMENT AND NOT UP TO ACTUAL PAYMENT; RATIONALE.—** The rationale for the interpretation that the payment of interest shall be up to the time of full payment and not up to actual payment as defined by the Administrative Order is well pronounced in the case of *Land Bank of the Philippines v. Soriano,* we quote: "The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the

land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. To condition the payment upon LBP's approval and its release upon compliance with some documentary requirements would render nugatory the very essence of "prompt payment." **Therefore, to expedite the payment of just compensation, it is logical to conclude that the 6% interest rate be imposed from the time of taking up to the time of full payment of just compensation."**

3. ID.; SOCIAL JUSTICE AND HUMAN RIGHTS; AGRARIAN REFORM; THE LANDOWNER'S RIGHT TO JUST COMPENSATION SHOULD BE BALANCED WITH AGRARIAN REFORM.— Section 4, Article XIII of the 1987 Constitution mandates that the State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. It also provides that the State shall encourage and undertake the just distribution of all agricultural lands subject to the payment of just compensation. Further, the deliberations of the 1986 Constitutional Commission on this subject reveal that just compensation should not do violence to the Bill of Rights, but should also not make an insurmountable obstacle to a successful agrarian reform program. Hence, the landowner's right to just compensation should be balanced with agrarian reform.

4. ID.; ID.; ID.; JUST COMPENSATION; THE DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION.— The mandate of determination of just compensation is a judicial function, hence, we exert all efforts to consider and interpret all the applicable laws and issuances in order to balance the right of the farmers to own a land subject to the award the proper and just compensation due to the landowners.

APPEARANCES OF COUNSEL

LBP Legal Services Group for Land Bank of the Phils.
Fe Rosario Pejo-Buelva for respondents.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] of the Decision[2] dated 31 January 2008 and Resolution[3] dated 8 September 2008 of the Ninth Division of the Court of Appeals (CA) in CA-G.R. CV No. 69644, vacating the Decision of the Regional Trial Court (RTC) of Naga City. The dispositive portion of the assailed decision reads:

> **WHEREFORE,** the appealed decision of the Regional Trial Court of Naga City (Branch 21) is **VACATED** and **SET ASIDE** and a new one rendered fixing the just compensation for the subject land at ₱371,015.20 and ordering the defendant-appellant Land Bank of the Philippines to pay said amount to plaintiffs-appellants plus interest thereon at the rate of 6% per *annum*, compounded annually, from October 21, 1972 until fully paid.[4]

The facts as gathered by this Court follow:

Pursuant to the Operation Land Transfer (OLT) Program of Presidential Decree (P.D.) No. 27, an aggregate area of 34.6958 hectares composing three parcels of agricultural land located at Himaao, Pili, Camarines Sur owned by Perfecto, Nellie, O'Fe, Gil, Edmundo and Nelly, all surnamed Obias, (landowners) were distributed to the farmers-beneficiaries (farmers) namely: Victor Bagasina, Sr., Elena Benosa, Sergio Nagrampa, Claudio Galon,

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[1] *Rollo*, pp. 19-36.

[2] *Id.* at 42-51. Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro concurring.

[3] *Id.* at 52-54.

[4] *Id.* at 50.

Prudencio Benosa, Santos Parro, Guillermo Breboneria, Flora Villamer, Felipe de Jesus, Mariano Esta, Benjamin Bagasina, Andres Tagum, Pedro Galon, Clara Padua, Rodolfo Competente, Roberto Parro, Melchor Brandes, Antonio Buizon, Rogelio Montero, Maria Villamer, Claudio Resari, Victor Bagasina, Jr., Francisco Montero and Pedro Montero.

As a result, the owners had to be paid just compensation for the property taken. The Department of Agrarian Reform (DAR), using the formula under P.D. 27 and Executive Order (E.O.) 228, came up with a computation of the value of the acquired property at ₱1,397,578.72. However, the amount was contested by the landowners as an inadequate compensation for the land. Thus did they filed a complaint for determination of just compensation before the RTC of Naga City, the assigned Special Agrarian Court (SAC) which has jurisdiction over the complaint.

To ascertain the amount of just compensation, a committee was formed by the trial court. The Provincial Assessor of Camarines Sur was appointed as the Chairman and the representatives from the Land Bank of the Philippines (LBP), DAR, the landowners and farmers, were appointed as the Members.

The Provincial Assessor recommended the "above average value of ₱40,065.31 per hectare" as just compensation; LBP Representative Edgardo Malazarte recommended the amount of ₱38,533.577 per hectare; and the representative of the landowners, Atty. Fe Rosario P. Bueva[5] submitted a ₱180,000.00 per hectare valuation of the land.[6]

None of these recommendations was adopted in the 3 October 2000 judgment[7] of the trial court. The dispositive portion reads:

Wherefore, judgment is rendered ordering the following:

(1) Fixing the Just Compensation of the 34.6958 [hectares] has to be at Ninety One Thousand Six Hundred Fifty Seven

[5] Records, p. 139. As per Order dated 3 October 1995.

[6] *Rollo*, p. 44. CA Decision.

[7] Records, pp. 381-391

and 50/100 (₱91,657.50) per hectare or in the total amount of Three Million One Hundred Eighty Thousand One Hundred Thirty and 29/100 (₱3,180,130.29);

(2) Directing the Respondent Land Bank to pay the Plaintiffs the amount of Three Million One Hundred Eighty Thousand One Hundred Thirty and 29/100 (₱3,180,130.29) in the manner provided for under R.A. 6657.

No pronouncement as to costs.[8]

Both the landowners and LBP appealed the trial court's decision before the CA.

On 31 January 2008, the appellate court vacated the decision of the trial court. It relied heavily on *Gabatin v. Land Bank of the Philippines*[9] ruling wherein this Court fixed the rate of the government support price (GSP) for one cavan of palay at ₱35.00, the price of the palay at the time of the taking of the land. Following the formula, *"Land Value= 2.5 multiplied by the Average Gross Production (AGP) multiplied by the Government Support Price (GSP),"* provided by P.D. No. 27 and E.O. 228, the value of the total area taken will be ₱371,015.20 plus interest thereon at the rate of 6% interest per annum, compounded annually, starting 21 October 1972, **until fully paid**.[10]

The Court's Ruling

In their petition, LBP does not contest the valuation of the property and the amount to be paid as just compensation. It raised only the issue of "Whether or not the provisions of DAR Administrative Order (A.O.) No. 13,[11] series of 1994, as amended

[8] *Id.* at 391.

[9] G.R. No. 148223, 25 November 2004, 444 SCRA 176, 178.

[10] *Rollo*, p. 50

[11] Rules and Regulations Governing the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by Presidential Decree No. 27 and Executive Order No. 228.

by DAR A.O. No. 2, series of 2004, as further amended by DAR A.O. No. 6, series of 2008, are mandatory insofar as the computation of interest for P.D. 27-acquired properties is concerned."[12]

To put it simply, LBP is alleging error on the part of the appellate court when it ruled that the payment of interest shall be made until full payment thereof. The bank contends that it should have been until the time of actual payment as defined by the DAR A.O. No. 13, as amended.

LBP's main contention rests upon the strict application of Item III, No. 3 of DAR A.O. No. 13, series of 1994, as amended, by A.O. No. 2, series of 2004 as further amended by A.O. No. 6, series of 2008, with regard to the extent of the period of application of the incremental interest. We quote the relevant portion of the Administrative Order, as amended:

3. The grant of six percent (6%) yearly interest compounded annually shall be reckoned as follows:

3.1 Tenanted as of 21 October 1972 and covered under OLT

- From 21 October 1972 **up to the time of actual payment** but not later than December 2009.

3.2 Tenanted after 21 October 1972 and covered under OLT

-From the date when the land was actually tenanted (by virtue of Regional Order of Placement issued prior to August 18, 1987) up to the time of actual payment but not later than December 2009.

Time of actual payment – is the date when the Land Bank of the Philippines (LBP) approves payment of the land transfer claim and deposits the compensation proceeds in the name of the landowner (LO) in cash and in bonds. The release of payment can be claimed by the landowner upon compliance with the documentary requirements for release of payment.

This case does not present a novel issue.

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[12] *Rollo*, pp. 26-27.

It is correct that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality.[13] And a literal reading of A.O. No. 13, as amended, will be in favor of the LBP.

However, these administrative issuances or orders, though they enjoy the presumption of legalities, are still subject to the interpretation by the Supreme Court pursuant to its power to interpret the law. While rules and regulation issued by the administrative bodies have the force and effect of law and are entitled to great respect, courts interpret administrative regulations in harmony with the law that authorized them and avoid as much as possible any construction that would annul them as invalid exercise of legislative power.[14]

The rationale for the interpretation that the payment of interest shall be up to the time of full payment and not up to actual payment as defined by the Administrative Order is well pronounced in the case of *Land Bank of the Philippines v. Soriano,*[15] we quote:

> The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[16]

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[13] *Allied Banking Corporation v. Land Bank of the Philippines*, G.R. No. 175422, 13 March 2009, 581 SCRA 301, 314.

[14] *Philippine Bank of Communications v. Commissioner of Internal Revenue,* G.R. No. 112024, 28 January 1999, 302 SCRA 241, 252.

[15] G.R. Nos. 180772 and 180776, 6 May 2010, 620 SCRA 347.

[16] *Id.* at 356 citing *Land Bank of the Philippines v. Orilla*, G.R. No. 157206, 27 June 2008, 556 SCRA 103, 117.

To condition the payment upon LBP's approval and its release upon compliance with some documentary requirements would render nugatory the very essence of "prompt payment." **Therefore, to expedite the payment of just compensation, it is logical to conclude that the 6% interest rate be imposed from the time of taking up to the time of full payment of just compensation.** (Emphasis supplied)[17]

The LBP sought support in the 19 December 2007 Resolution of the Court in the case of *APO Fruits Corporation v. Court of Appeals*[18] wherein the Court declared that the payment of interest for delay of payment cannot be applied where there is prompt and valid payment of just compensation even if the amount of just compensation was later on increased pursuant to the Court's judgment.[19] A review of this Resolution will reveal that this Court, through the Third Division, deleted the 12% interest on the balance of the awarded just compensation due to the finding that the LBP did not delay the payment of just compensation as it had deposited the pertinent amounts due to AFC and HPI within fourteen months after they filed their complaints for just compensation with the RTC.

However, this Resolution has already been overturned by an En Banc ruling of the Court in its 12 October 2010 Resolution.[20] The dispositive portion states:

WHEREFORE, premises considered, we GRANT the petitioners' motion for reconsideration. The Court En Banc's Resolution dated December 4, 2009, as well as the **Third Division's Resolutions** dated April 30, 2008 and **December 19, 2007, are hereby REVERSED and SET ASIDE.** (Emphasis supplied)

The respondent Land Bank of the Philippines is hereby ORDERED to pay petitioners Apo Fruits Corporation and Hijo Plantation, Inc.

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[17] *Id.* at 356-357.

[18] G.R. No. 164195, 19 December 2007, 541 SCRA 117.

[19] *Rollo*, p. 31. Petition for Review on *Certiorari* of Land Bank of the Philippines.

[20] *APO Fruits Corporation v. Land Bank of the Philippines*, 12 October 2010, 632 SCRA 727.

interest at the rate of 12% per annum on the unpaid balance of the just compensation, computed from the date the Government took the properties on December 9, 1996, until the respondent Land Bank of the Philippines paid on May 9, 2008 the balance on the principal amount.[21]

To answer the contention of LBP that there should be no payment of interest when there is already a prompt payment of just compensation, the High Court discussed that even though the LBP immediately paid the remaining balance on the just compensation due to the petitioners after this Court had fixed the value of the expropriated properties, it overlooks one essential fact – from the time that the State took the petitioners' properties until the time that the petitioners were fully paid, almost 12 long years passed. This is the rationale for imposing the 12% interest – in order to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking.

This Court is not oblivious of the purpose of our agrarian laws particularly P.D. No. 27,[22] that is, to emancipate the tiller of the soil from his bondage; to be lord and owner of the land he tills.

Section 4, Article XIII of the 1987 Constitution mandates that the State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. It also provides that the State shall encourage and undertake the just distribution of all agricultural lands subject to the payment of just compensation.

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[21] *Id.* at 764.

[22] Entitled, **"DECREEING THE EMANCIPATION OFTENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR," October 21, 1972.**

Further, the deliberations of the 1986 Constitutional Commission on this subject reveal that just compensation should not do violence to the Bill of Rights, but should also not make an insurmountable obstacle to a successful agrarian reform program. Hence, the landowner's right to just compensation should be balanced with agrarian reform.[23]

The mandate of determination of just compensation is a judicial function,[24] hence, we exert all efforts to consider and interpret all the applicable laws and issuances in order to balance the right of the farmers to own a land subject to the award the proper and just compensation due to the landowners.

WHEREFORE, the appeal is **DENIED**. The 31 January 2008 Decision of the Court of Appeals in CA-G.R. CV No. 69644, vacating the Decision of the Regional Trial Court of Naga City acting as Special Agrarian Court is hereby **AFFIRMED**. No cost.

SO ORDERED.

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

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[23] *Land Bank of the Philippines v. Soriano*, *supra* note 15 at 355.

[24] *Heirs of Lorenzo and Carmen Vidad and Agvid Construction Co., Inc. v. Land Bank of the Philippines*, G.R. No. 166461, 30 April 2010, 619 SCRA 609, 630.

FIRST DIVISION

[G.R. No. 185255. March 14, 2012]

NORKIS DISTRIBUTORS, INC. and ALEX D. BUAT, *petitioners, vs.* **DELFIN S. DESCALLAR,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; THE BASIC PREMISE FOR DISMISSAL ON THE GROUND OF LOSS OF CONFIDENCE IS THAT THE EMPLOYEE CONCERNED HOLDS A POSITION OF TRUST AND CONFIDENCE.—** Loss of trust and confidence as a ground for termination of an employee under Article 282 of the Labor Code requires that the breach of trust be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse. The basic premise for dismissal on the ground of loss of confidence is that the employee concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee.

2. **ID.; ID.; ID.; THE EMPLOYER HAS THE BURDEN TO PROVE BY SUBSTANTIAL EVIDENCE THAT THE DISMISSAL IS FOR A JUST AND VALID CAUSE.—** [I]n termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. Thus,

it is incumbent upon petitioners to prove by substantial evidence that valid grounds exist for terminating respondent's employment on the ground of loss of trust and confidence. However, our review of the records of this case reveals that the CA correctly held that petitioners failed to discharge this burden.

3. **ID.; ID.; ID.; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; MUST BE BASED ON A WILLFUL BREACH.—** [T]he failure to reach the monthly sales quota cannot be considered an intentional and unjustified act of respondent amounting to a willful breach of trust on his part that would call for his termination based on loss of confidence. This is simply not the willful breach of trust and confidence contemplated in Article 282(c) of the Labor Code. Indeed, the low sales performance could be attributed to several factors which are beyond respondent's control. To be a valid ground for an employee's dismissal, loss of trust and confidence must be based on a willful breach. To repeat, a breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse.

4. **ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO BACK WAGES AND REINSTATEMENT; EXPLAINED.—** An illegally dismissed employee is entitled to two reliefs: back wages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement if such is viable, or separation pay if reinstatement is no longer viable, and to back wages.

APPEARANCES OF COUNSEL

R.R. Go Law Office and *Dumon & Fernandez* for petitioners.

Abragan & Abragan Law Offices for respondent.

DECISION

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* assailing the March 31, 2008 Decision[1] and October 24, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 00363. The CA had set aside the Resolution[3] of the National Labor Relations Commission (NLRC) and reinstated the decision of the Labor Arbiter holding petitioners liable for illegally dismissing respondent.

The facts are as follows.

On April 26, 1993, respondent Delfin S. Descallar was assigned at the Iligan City Branch of petitioner Norkis Distributors, Inc., a distributor of Yamaha motorcycles. He became a regular employee on February 1, 1994 and was promoted as Branch Manager on June 30, 1997. He acted as branch administrator and had supervision and control of all the employees. Respondent was also responsible for sales and collection.

In a memorandum dated June 20, 2002, petitioners required respondent to explain in writing within forty-eight (48) hours why he should not be penalized or terminated for being absent without official leave (AWOL) or rendering under-time service on certain dates from April 3, 2002 to June 11, 2002.[4] On June 21, 2002, respondent submitted his written explanation wherein he stated that he reported to the office on those dates, but he either went to the bank or followed-up on prospects. As he was still within city limits, he did not file any official leave or travel record. He added that on June 11, 2002, he was at the pier pulling out ten units of MC stocks.[5]

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[1] *Rollo*, pp. 49-72. Penned by Associate Justice Romulo V. Borja with Associate Justices Mario V. Lopez and Elihu A. Ybañez concurring.

[2] *Id.* at 73-74.

[3] CA *rollo*, pp. 31-34.

[4] *Id.* at 70.

[5] *Id.* at 71.

On July 5, 2002, Norkis conducted an investigation through Mr. Edmund Y. Pingkian. Finding that respondent was not able to prove that he was really in the branch or on official travel, petitioners suspended him for fifteen (15) days without pay beginning July 8, 2002. According to petitioners, respondent admitted during the investigation that he used company time for his personal affairs, but only for a few hours and not the whole day.[6]

While respondent was still serving his suspension, the Internal Auditor of the company made a random operational review and audit of the Iligan City Branch. Several findings against respondent were noted by the auditor, to wit:

1. Refusal to accept redemption payment from customer Gamboa on their deposited motorcycle unit and unauthorized use of said deposited motorcycle unit;
2. Requiring customer Amy Pastor to pay an amount in excess of her account balance;
3. Disbursement of sales commissions to unauthorized persons;
4. Application of sales commission on the down payments of several walk-in customers.[7]

On July 20, 2002, petitioners asked respondent to explain the findings against him within four (4) hours from receipt of notice. Respondent found the time given to be cruel but nevertheless submitted his written explanation on the same day.[8]

Later, respondent and Branch Control Officer Rosanna Lanzador received a memorandum dated July 23, 2002, informing them that during a cash count conducted on July 12, 2002, a shortage of ₱800 in the company's TNT fund was discovered. Likewise, an irregularity was found in the disbursement of sales commissions amounting to ₱1,700. These amounts were charged equally to the accounts of respondent and Lanzador.[9]

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[6] *Id.* at 72.

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

[8] *Id.* at 76-78.

[9] *Id.* at 80.

Thereafter, in another memorandum dated July 25, 2002, respondent was placed under preventive suspension for fifteen (15) working days without pay.[10]

On August 12, 2002, petitioners issued a "Notice to Show Cause" to respondent. The notice reads:

xxx xxx xxx

It has been reported that during the audit of your branch last July 2002, serious adverse findings were noted against you as follows:

a) Refusal to accept redemption payment made by customer Gamboa on their deposited motorcycle unit which was traced later sold to one Marvin Joseph Gealon allegedly your nephew;

b) Unauthorized use of deposited motorcycle unit owned by Ludy Gamboa;

c) Requiring customer Amy Pastor to pay excessive amount over her account balance;

d) Disbursement of sales commissions to unauthorized persons;

e) Doing personal business of selling safety helmets using the facility of the branch.

Further, it is so disappointing to note that despite management support and cooperation, your branch performance continuously failed to reach to an acceptable level as illustrated below:

YEAR	SALES QUOTA	ACTUAL AVERAGE SALES	ACCEPTABLE COLLEX	ACTUAL AVERAGE COLLEX
2001 (Jan-Dec)	13 units	5 only	70%	43% only
2002 (Jan-Jun)	13 units	5 only	70%	39% only

Please take note that adverse audit findings above coupled with inefficiency are sufficient grounds for termination. In this light

[10] *Id.* at 79.

therefore, you are commanded to explain in writing within 24 hours upon receipt of this notice to show cause why you will not be terminated from your service with the company. Failure on your part to response shall be construed as waiver of your right to be heard.

xxx xxx xxx[11]

On August 21, 2002, petitioners terminated respondent's services for loss of trust and confidence and gross inefficiency.[12]

Aggrieved, respondent filed a complaint for illegal suspension and illegal dismissal before the Sub-Regional Arbitration Branch X in Iligan City.

On March 14, 2003, Labor Arbiter Quintin B. Cueto III rendered a Decision,[13] finding respondent to have been illegally dismissed. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, in the light of all the foregoing, judgment is hereby rendered declaring the termination of complainant Delfin Descallar to be illegal and respondent NORKIS Distributor, Inc. is ordered to pay complainant separation pay equivalent to one (1) month for every year of service plus backwages from the time he was illegally suspended until the promulgation of this decision computed as follows:

Unpaid Wages:
July 1-6, 2002
July 24, 2002
Aug. 13-22, 2002

₱8,773.00/mo. @ 17days --------------------- ₱ 5,736.19

Backwages:
July 8, 2002 to July 23, 2002
July 25, 2002 to Aug. 10, 2002
Aug. 11, 2002 to March 10, 2003

₱8,773 x 8 mos. -------------------------------- ₱70,184.00

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[11] *Id.* at 228.

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

[13] *Id.* at 40-50.

13th Month Pay:
₱70,184.00 + ₱5,736.19 x 1/12 ------------------ ₱ 6,326.68

Separation Pay (April 26, 1993 – March 10, 2003)
₱8,773 x 10 yrs. ---------------------------------- ₱ 87,730.00

Or in the total amount of ₱169,976.87.

Respondent is likewise ordered to pay ten (10%) percent of the total award representing attorney's fees.

Other claims are hereby ordered dismissed for lack of merit.

SO ORDERED.[14]

Not satisfied, petitioners appealed to the NLRC. In a Resolution[15] dated November 30, 2004 the NLRC reversed the Labor Arbiter's decision and found respondent to have been validly dismissed. The NLRC, however, upheld the Labor Arbiter's finding that petitioners are liable to respondent for unpaid wages. The NLRC held:

WHEREFORE, foregoing considered, the questioned decision is MODIFIED in favor of the finding that complainant was validly suspended, thence, dismissed for just cause and after due process. Accordingly, he is not entitled to awards of back wages, separation pay and even 13th month pay. Respondent is only ordered to pay the complainant the unpaid wages as stated above in the amount of ₱5,736.19.

SO ORDERED.[16]

Respondent's motion for reconsideration having been denied, he filed with the CA a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

In a Decision dated March 31, 2008, the appellate court reinstated with modification the decision of the Labor Arbiter, to wit:

WHEREFORE, the assailed Resolution dated November 30, 2004 of public respondent is hereby SET ASIDE. The Decision of the

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

[15] *Supra* note 3.

[16] *Id.* at 33.

Labor Arbiter is hereby REINSTATED with the MODIFICATION that the following be DELETED:

1. The award of 13th month pay.
2. The award of backwages for the period July 8, 2002 to July 23, 2002.

All other awards in the Decision of the Labor Arbiter are affirmed.

SO ORDERED.[17]

Respondent filed a motion for clarification as to the awards of separation pay and back wages while petitioners filed a motion for reconsideration.

On October 24, 2008, the CA issued a Resolution stating that as regards respondent's motion for clarification, the separation pay and back wages shall be reckoned from the time respondent was illegally suspended until finality of the March 31, 2008 Decision. The CA likewise denied petitioners' motion for reconsideration in the same resolution.

Hence, petitioners filed the present petition.

Essentially, petitioners argue that the CA gravely erred in not giving weight to the affidavits and sworn certifications of their witnesses, and in finding that they relied entirely on the affidavits of their witnesses in terminating respondent. Likewise, petitioners claim that the CA committed grave error in holding that the failure of respondent to reach his monthly sales quota is not a valid basis for loss of trust and confidence.

On the other hand, respondent points out that the issues raised in this petition are factual as they are solely focused on the probative value of the affidavits of petitioners' witnesses. He contends that questions of fact cannot be raised in this mode of appeal considering that the Supreme Court is not a trier of facts. Thus, respondent submits that the instant petition deserves outright denial.

We dismiss the petition for lack of merit.

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[17] *Rollo*, p. 71.

Loss of trust and confidence as a ground for termination of an employee under Article 282[18] of the Labor Code requires that the breach of trust be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse.[19] The basic premise for dismissal on the ground of loss of confidence is that the employees concerned holds a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee.

Here, there is no question that as petitioners' Branch Manager in Iligan City, respondent was holding a position of trust and confidence. He was responsible for the administration of the branch, and exercised supervision and control over all the employees. He was also incharge of sales and collection.

Now, petitioners terminated his employment on the ground of loss of trust and confidence for supposedly committing acts inimical to the company's interests. However, in termination cases, the burden of proof rests upon the employer to show that the dismissal is for a just and valid cause and failure to do so would necessarily mean that the dismissal was illegal.[20] The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt

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[18] ART. 282. *Termination by employer*.–An employer may terminate an employment for any of the following causes:

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

xxx xxx xxx

[19] *Philippine National Construction Corporation v. Matias,* G.R. No. 156283, May 6, 2005, 458 SCRA 148, 159, citing *Gonzales v. National Labor Relations Commission,* G.R. No. 131653, March 26, 2001, 355 SCRA 195, 207; *P.J. Lhuillier, Inc. v. National Labor Relations Commission*, G.R. No. 158758, April 29, 2005, 457 SCRA 784, 798, citing *Tiu v. National Labor Relations Commission*, G.R. No. 83433, November 12, 1992, 215 SCRA 540, 547; *Felix v. National Labor Relations Commission*, G.R. No. 148256, November 17, 2004, 442 SCRA 465, 485, citing *Dela Cruz v. National Labor Relations Commission*, G.R. No. 119536, February 17, 1997, 268 SCRA 458, 470.

[20] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761, 771.

exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. Moreover, the quantum of proof required in determining the legality of an employee's dismissal is only substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[21] Thus, it is incumbent upon petitioners to prove by substantial evidence that valid grounds exist for terminating respondent's employment on the ground of loss of trust and confidence. However, our review of the records of this case reveals that the CA correctly held that petitioners failed to discharge this burden.

In terminating respondent's services, petitioners relied on several grounds. First, petitioners relied on the affidavit of customer Ludy Gamboa. In her affidavit, Ludy Gamboa accused respondent of refusing to accept payment of ₱7,000 to redeem a motorcycle unit sometime on May 21-23, 2001.[22] However, respondent was able to prove by submitting the Monthly Inventory Report[23] that the motorcycle unit had already been repossessed by the company due to Gamboa's failure to settle her account. Respondent's refusal to receive the partial payment was therefore undeniably justified. And the motorcycle already having been repossessed, it could also be sold to any person who might like to buy it including respondent's nephew.

Second, petitioners also allege that respondent charged customer Amy Pastor an excessive amount. In her affidavit, Pastor claimed that sometime on January 2002, respondent required her to pay the amount of ₱5,566, while her outstanding balance was only ₱378.[24] However, a closer look at the audit report conducted by the internal auditor of petitioner Norkis, Joelito L. Florenosos, would show that there was no over-collection.[25] Said exculpatory

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[21] *Id.*

[22] CA *rollo*, p. 215.

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

[24] *Id.* at 216.

[25] *Id.* at 135.

finding was also made after the internal auditor noted that the official receipt respondent issued to cover the said collection showed no such over-collection. Why petitioners chose to believe Pastor's affidavit over the findings of its own internal auditor which was duly supported by documentary evidence is perplexing.

Third, petitioners accuse respondent of giving unauthorized commissions to Mr. Gary Bellen. Respondent however asserted, and petitioners did not rebut, that Bellen is a legitimate Personalized Sales Representative of Norkis Distributors, as evidenced by the contract they signed.[26] Respondent also explained, and petitioners again did not rebut, that Bellen tutored the staff in computer programming and operation free of charge, on the condition that he may entertain customers and receive commissions. Clearly, therefore, the arrangement made with Bellen was even beneficial to the company. Hence, in giving commissions to Bellen, as sales representative, it cannot be said that respondent willfully breached petitioners' trust and confidence in him.

Fourth, petitioners argue that respondent's failure to reach his monthly sales quota is a valid basis for loss of trust and confidence. In his explanation, respondent asserted that certain factors were to be considered for the low sales performance in their branch such as the existence of other competitors which offered low down payments, low monthly installments, and other promotional items. Respondent also emphasized that the customers' capacity to pay had been affected by the financial crisis at the time, thus making it more difficult to collect from them.

To our mind, the failure to reach the monthly sales quota cannot be considered an intentional and unjustified act of respondent amounting to a willful breach of trust on his part that would call for his termination based on loss of confidence. This is simply not the willful breach of trust and confidence contemplated in Article 282(c) of the Labor Code. Indeed, the low sales performance could be attributed to several factors which are beyond respondent's control. To be a valid ground for an employee's dismissal, loss of trust and confidence must

[26] Records, Vol. III, p. 51.

be based on a willful breach.[27] To repeat, a breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse.[28]

Petitioners having failed to establish by substantial evidence any valid ground for terminating respondent's services, we uphold the finding of the Labor Arbiter and the CA that respondent was illegally dismissed.

But did the CA award correct reliefs to respondent? We likewise rule in the affirmative.

An illegally dismissed employee is entitled to two reliefs: back wages and reinstatement. The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement if such is viable, or separation pay if reinstatement is no longer viable, and to back wages.

The normal consequences of respondent's illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of back wages computed from the time compensation was withheld from him up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of back wages.[29]

Petitioners question the CA Resolution dated October 24, 2008, arguing that it modified its March 31, 2008 Decision which has already attained finality insofar as respondent is

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[27] *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, December 15, 2005, 478 SCRA 102, 111, citing *Asia Pacific Chartering (Phils.), Inc. v. Farolan*, 441 Phil. 776, 792 (2002) and *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235, 246 (2002).

[28] *National Bookstore, Inc. v. Court of Appeals*, *id.*

[29] *Mt. Carmel College v. Resuena*, G.R. No. 173076, October 10, 2007, 535 SCRA 518, 541.

concerned. Petitioners point out that the October 24, 2008 CA Resolution clarified that the payment of separation pay and back wages shall be reckoned from the time respondent was illegally suspended until finality of the March 31, 2008 CA Decision. But petitioners point out that when the Labor Arbiter declared that the payment of back wages shall be "*until the promulgation of this Decision,*" he was referring to his own Decision promulgated on March 14, 2003.

We do not agree.

Such contention is misplaced. The CA merely clarified the period of payment of back wages and separation pay up to the finality of its decision (March 31, 2008) *modifying* the Labor Arbiter's decision. In view of the modification of monetary awards in the Labor Arbiter's decision, the time frame for the payment of back wages and separation pay is accordingly modified to the finality of the CA decision. The clarification thus made on motion of the respondent was not an amendment of the March 31, 2008 Decision. Even assuming that the CA indeed corrected or amended the dispositive portion of its decision, it is well within its appellate jurisdiction to treat respondent's motion for clarification as a partial motion for reconsideration[30] insofar only as to declare until when the payment of such back wages and separation pay shall be made.

WHEREFORE, the petition for review on *certiorari* is **DENIED**. The Decision dated March 31, 2008 and the Resolution dated October 24, 2008 of the Court of Appeals in CA-G.R. SP No. 00363 are **AFFIRMED**.

Costs against petitioners.

SO ORDERED.

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

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[30] See *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, July 25, 2006, 496 SCRA 453.

[*] Designated additonal member per Special Order No. 1207 dated February 23, 2012

FIRST DIVISION

[G.R. No. 187073. March 14, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDUARDO CASTRO *Y* PERALTA and RENERIO DELOS REYES *Y* BONUS,** *appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE EVALUATION THEREOF IN CRIMINAL CASES IS ADDRESSED TO THE SOUND DISCRETION OF THE TRIAL JUDGE.—** We have carefully reviewed the evidence in this case and the parties' submissions and find no showing of any errors in law and in findings of fact by the courts *a quo*. It has been consistently held that in criminal cases the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge. The rule finds an even more stringent application where said findings are sustained by the CA. Everything considered, there is no doubt in our mind that the positive identification of herein appellants by Austria is credible and sufficient for conviction.

2. **CRIMINAL LAW; ROBBERY WITH HOMICIDE; COMMITTED IN CASE AT BAR.—** Appellants and their co-accused killed the victim in the course of the robbery. As such, contrary to appellants' contentions, the exact identity of the one who actually shot Benedicto and took the bag from him is not material. The appellants are liable for the special complex crime of robbery with homicide since the existence of conspiracy among them in the commission of the robbery makes the act of one the act of all. All those who took part in the robbery are liable as principals even though they did not actually take part in the killing. Case law establishes that whenever homicide has been committed by reason of or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of robbery with homicide although they did not take part in the homicide, unless it appears that they sought to prevent the killing.

3. ID.; CONSPIRACY; ONCE CONSPIRACY IS SHOWN, THE EXTENT OR MODALITY OF PARTICIPATION OF EACH OF THE ACCUSED BECOMES SECONDARY, SINCE ALL THE CONSPIRATORS ARE PRINCIPALS.— Taken together, the appellants' actions proved beyond reasonable doubt that they acted in concert to attain a common purpose. The evidence does not show that any of the appellants sought to avert the killing of Benedicto. In *People v. Ebet*, we ruled that once conspiracy is shown, the act of one is the act of all. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.

4. REMEDIAL LAW; EVIDENCE; ALIBI; THE REQUIREMENTS OF TIME AND PLACE MUST BE STRICTLY MET FOR THE DEFENSE OF ALIBI TO PROSPER.— Time and again this Court has ruled that alibi is the weakest of all defenses, for it is easy to fabricate and difficult to prove; it cannot prevail over the positive identification of the accused by the witnesses. Moreover, for the defense of alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed, but he must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime at the time the same was committed. Such physical impossibility was not shown to have existed in this case where appellants' testimonies confirmed they were in the same locality (*Bagong Silang*) when the robbery-killing took place.

5. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND TEMPERATE DAMAGES; AWARDED IN CASE AT BAR.— As to the award of damages, we sustain the award made by the CA as the amounts are correct and in accordance with law for in robbery with homicide, civil indemnity and moral damages in the amount of ₱50,000 each is granted automatically in the absence of any qualifying aggravating circumstances. However, an award of ₱25,000 for temperate damages may be allowed under Article 2224 of the Civil Code, since the victim's family undeniably incurred expenses in his burial.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

VILLARAMA, JR., ***J.*****:**

On appeal is the August 28, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02928. The CA had affirmed the Decision[2] of the Regional Trial Court (RTC) Branch 128, of Caloocan City finding the appellants guilty of the crime of robbery with homicide.

Appellants, together with Larry San Felipe Perito (Perito) and one *alias* Leng-leng, were charged with the crime of robbery with homicide under the following Information:

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[1] *Rollo*, pp. 2-15. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Magdangal M. De Leon and Ramon R. Garcia concurring. The dispositive portion reads:

> WHEREFORE, the foregoing considered, the instant appeal is hereby DISMISSED and the assailed Decision AFFIRMED *in toto*. No costs.
>
> SO ORDERED.

[2] CA *rollo*, pp. 41-51. Penned by Judge Eleanor R. Kwong. The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, the accused EDUARDO CASTRO *y* PERALTA and RENERIO DELOS REYES y BONUS are hereby found GUILTY of the crime of ROBBERY WITH HOMICIDE as charged. They are hereby sentenced to suffer the imprisonment of *Reclusion Perpetua*.
>
> Accused are likewise directed to pay the private complainant Virginia F. Benedicto as follows:
>
> 1. Fifty Thousand pesos, as civil indemnity and
>
> 2. Fifty Thousand pesos, as moral damages.
>
> SO ORDERED.

That on or about the 9th day of September 2002[,] in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the said accused confederating together and mutually aiding each other, with intent of gain, and armed with guns, by means of force and violence upon one RICARDO PACHECO BENEDICTO, forcibly [took] and [carried] away the amount of more or less ₱100,000.00, and in the course of the commission of ROBBERY, [shot] and kill[ed] Ricardo Pacheco Benedi[c]to which caused the latter's immediate death.

CONTRARY TO LAW.[3]

On arraignment, both appellants, with the assistance of the Public Attorney's Office (PAO), entered a plea of not guilty. Trial ensued without the presence of the other two accused, Perito and *alias* Leng-leng who remained at large.

As summarized by the CA, the factual antecedents of the case are as follows:

On 9 September 2002, [around] seven o'clock in the evening, [the] victim Ricardo Pacheco Benedicto ("Benedicto"), a merchant and owner of a store selling bakery supplies and pastries in Bagong Silang, Caloocan City, was tending his store along with his helpers, one of whom was Emily Austria ("Austria"), when four (4) armed men entered the store and announced a hold-up. Two (2) of the armed men proceeded to the table of Benedicto asking the latter to bring out his gun. One (1) of the armed men stayed outside the store while the other one (1) guarded Austria. Since Benedicto resisted the assault, a commotion ensued prompting the armed man guarding Austria and the lookout stationed outside the store to join and help their other companions. Taking advantage of said commotion, Austria ran outside the store and crossed the street. Immediately after crossing the street, Austria heard three (3) gunshots and saw the four (4) assailants walking out of the store, one of them carrying Benedicto's belt bag.

Austria then returned to the store and saw Benedicto lying in a pool of blood. She immediately sought the help of their neighbors and the Barangay Captain, who responded to the scene, and summoned the police authorities. When the police officers arrived at the store,

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[3] Records, p. 25.

they checked the body of Benedicto. Sadly though, Benedicto was already dead.

Consequently, the police officers conducted an investigation… [and] gathered that one of the assailants was herein accused-appellant Eduardo Castro ("Appellant Castro"). Follow-up and surveillance operations were…conducted leading to the apprehension of appellant Castro at about 9:15 in the evening of 10 September 2002. Austria along with her co-helpers, May Villanueva and Aldryn Sartyn, identified appellant Castro from the line-up as one of the two (2) assailants who approached the table of Benedicto. On the other hand, accused-appellant Renerio Delos Reyes ("Appellant Delos Reyes") was likewise identified as one of the assailants, particularly as the one who guarded Austria during the incident. The other assailants were later identified as Larry San Felipe Perito ("Perito") and a certain *alias* Leng-leng ("Leng-leng").

xxx xxx xxx

During the trial, the prosecution presented the testimonies of (1) Police Senior Inspector Filemon C. Porciuncula, Jr. ("Police Senior Inspector Porciuncula"), the Medico Legal of the Northern Police District (NPD) Crime Laboratory (Caloocan City Police Station), (2) Austria and (3) Virginia F. Benedicto, the surviving spouse of Benedicto.

Police Senior Inspector Porciuncula testified that upon written request, an autopsy was conducted on Benedicto's cadaver and that such examination showed two (2) gunshot wounds at the back of the victim's head and the neck region. The results also showed external injuries on the body, two (2) hematomas on the upper and lower lips and two (2) abrasions on the right thigh. He also confirmed that the cause of death of the victim was hemorrhagic shock secondary to said gunshot wounds.

Witness Austria, in her testimony, narrated the sequence of events that transpired during the incident. She confirmed that she had recognized the appellants as among the armed men who robbed the store and killed her employer and that she had later been informed by the policemen that their names were Eduardo Castro and Renerio Delos Reyes. She identified appellant Castro as the one who approached the table of the victim while appellant Delos Reyes was the one who guarded her. She testified that appellant Delos Reyes said, "*HOLD UP ITO, DAPA*," while holding a gun. Thereafter, they

heard appellant Castro shouting that Benedicto was resisting. Appellant Delos Reyes and the other assailant then ran towards the table of the victim and at that juncture, she had run outside the store. Afterwards, she heard three (3) gun shots.

Continuing with her testimony, Austria testified that she saw the armed men walking outside the store and that she noticed appellant Delos Reyes carrying the belt bag belonging to Benedicto. She further testified that when she went back to the store, she saw the bloodied body of her employer on the floor. She sought help from the neighbors, and the *barangay* captain of their place responded.

Witness Virginia Benedicto, wife of the victim, testified on how she had learned of the events that transpired on the fateful day of 9 September 2002. She was only able to see her husband the following day when he was already inside the casket. She was invited to the police station for her to see appellant Castro, one of the suspects apprehended by the police officers. She further testified that the proceeds of the sale of the store on that day, which amounted to, more or less, One Hundred Thousand Pesos (₱100,000.00) had been taken by the robbers.

The testimony of Police Officer 3 Leonilo Padulaga, who attested to the conduct of the investigation and the execution of affidavits by witnesses in connection with this case, was stipulated upon by the prosecution and the defense. The prosecution also offered the sworn statements of May Villanueva and Aldryn Sartyn, as well as the Police Transmittal as documentary evidence.

On the other hand, aside from the separate testimonies of the appellants, the defense also presented the testimonies of Alejo Castillo ("Castillo") and Francisco Beltran ("Beltran"), both neighbors of appellant Castro.

Witness Castillo testified that he was at their outpost on the day of the incident, at around 6:30 o'clock in the evening, as he was a Purok leader at that time. He was preparing for their usual roving activities and was making entries in the blotter notebook when appellant Castro, known to him as Edong, approached them and conversed with them until 8:00 o'clock in the evening. During that time, he noticed that three (3) persons carrying bags walked past the outpost, who even told him that they would be having a long vacation. He recognized the accused Perito, the brother-in-law of appellant Castro, and Leng-leng as two (2) of the said three (3) persons.

Thereafter, some persons arrived at the outpost and informed them that there was a killing incident in the market.

Witness Beltran, in his testimony, corroborated, in essence, the account given by witness Castillo on what transpired on the day of the crime. On cross-examination, he testified that he had found it unusual that appellant Castro did not utter a word when his brother-in–law Perito and co-accused Leng-leng walked past the outpost telling them that they were headed for a long vacation. He also stated that the distance between the barangay outpost and the scene of the crime would only take five (5) to seven (7) minutes commute if one takes a tricycle ride.

Denying any involvement or participation in the robbery and killing in this case, appellant Delos Reyes claimed that prior to the commission of said crime, he did not know appellant Castro, co-accused Perito or even the victim Benedicto. Posing an alibi as a defense, he claimed that on 9 September 2002, at around 6:30 in the evening, he was inside the house of his in-laws at Phase 8-B, Package 4, Lot 1416, Bagong Silang, Caloocan City, where he had been staying since July 2002. He admitted that he was a tricycle driver plying the route covering all phases of Bagong Silang and that from the scene of the crime, it would only take an eight (8) minute tricycle ride for him to reach his in-laws' house. He further admitted that he had been arrested in connection with this crime only after he had been arrested for another murder case.

Appellant Castro, in turn, testified that while co-accused Perito is his brother-in-law, he did not know appellant Delos Reyes and that he had only heard of the name Leng-leng since the latter is a friend of Perito. He also claimed that he did not know the victim Benedicto. He asserted that, as narrated by witnesses Castillo and Beltran, he was at the barangay outpost at the time of the commission of the crime. He arrived thereat before 6:00 o'clock in the evening and left at around 8:00 o'clock in the evening. He also testified that they had noticed Perito and three (3) or four (4) companions walk past the outpost and when asked, Perito had retorted, "*DITO LANG PO PUROK*, I will just have a vacation." After 15 minutes, a neighbor informed Castillo that there had been a killing incident in the market.

Appellant Castro further narrated that between 11:00 to 12:00 o'clock in the evening of the same day, while he was sleeping, he had heard a commotion outside his house as police officers arrived

at the house of Perito, which was only two (2) houses away from his place. The following day, some police officers went to his house and inquired as to the whereabouts of Perito. Since he could not answer the inquiries of the police officers, he was brought to and detained at the police precinct. During his detention, the private complainant and the witnesses, including Austria, identified him as one of the armed men who had robbed the store of Benedicto. On cross-examination, he admitted that he also stands as a co-accused of appellant Delos Reyes in another pending robbery case.

xxx xxx xxx[4]

The RTC found appellants guilty of the offense charged and imposed on them the penalty of *reclusion perpetua*. The RTC held that all the evidence pointed to the appellants as the perpetrators of the crime, and the existence of conspiracy was sufficiently alleged and proven during trial. The appellants acted in concert at the time of the robbery towards the same purpose or design. And the rule is that whenever a homicide is committed as a consequence or on the occasion of a robbery, all those who took part as principals in the robbery would also be held guilty as principals of the special complex crime of robbery with homicide. Therefore, it was of no moment that none of the prosecution witnesses saw who actually shot the victim to death.

As regards appellants' defense of alibi, the RTC held that their alibi cannot prosper since both admitted that they were just a few minutes away from the scene of the crime; thus, it was not physically impossible for them to be at the scene of the crime. Also, the RTC cited that Austria positively identified appellants as two of the four assailants. Such positive identification prevails over the negative and self-serving denials of the appellants, added the RTC.

On appeal, the CA affirmed the decision of the RTC. The CA did not give credence to appellants attempt to assail Austria's testimony. The appellate court held that it is well settled that positive identification, where categorical, consistent and not

[4] *Rollo*, pp. 3-9.

attended by any showing of ill motive on the part of the eyewitnesses, prevails over alibi and denial, particularly where the appellant had not shown the physical impossibility of his access to the victim at the time and place of the crime, as in this case, where both appellants admitted being only five to eight minutes from the scene of the crime. The CA added that even if Austria did not know appellants' names prior to the incident, she was able to identify them by their faces during the police line-up and in open court. Appellants' denial therefore cannot prevail over the positive declaration of the prosecution's witness, the CA concluded.

Aggrieved, appellants elevated the case to this Court.[5]

We have carefully reviewed the evidence in this case and the parties' submissions and find no showing of any errors in law and in findings of fact by the courts *a quo*. It has been consistently held that in criminal cases the evaluation of the credibility of witnesses is addressed to the sound discretion of the trial judge. The rule finds an even more stringent application where said findings are sustained by the CA.[6] Everything considered, there is no doubt in our mind that the positive identification of herein appellants by Austria is credible and sufficient for conviction.

Appellants and their co-accused killed the victim in the course of the robbery. As such, contrary to appellants' contentions, the exact identity of the one who actually shot Benedicto and took the bag from him is not material. The appellants are liable for the special complex crime of robbery with homicide since the existence of conspiracy among them in the commission of the robbery makes the act of one the act of all. All those who took part in the robbery are liable as principals even though they did not actually take part in the killing. Case law establishes

[5] *Id.* at 16-18.

[6] *People v. Obina*, G.R. No. 186540, April 14, 2010, 618 SCRA 276, 281; *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 697, citing *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.

that whenever homicide has been committed by reason of or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of robbery with homicide although they did not take part in the homicide, unless it appears that they sought to prevent the killing.[7]

Here, evidence shows that appellants and their two co-accused entered the store and declared a robbery. Austria positively identified appellant Castro as one of the two assailants who proceeded to Benedicto's table and asked him to give them his gun, while appellant Delos Reyes, who declared the robbery, guarded her and the other store helpers as the fourth assailant served as the lookout. Austria testified that she was able to escape and that she heard three gunshots immediately after crossing the street opposite the store. She also saw the assailants leaving the store with Benedicto's bag.

Taken together, the appellants' actions proved beyond reasonable doubt that they acted in concert to attain a common purpose. The evidence does not show that any of the appellants sought to avert the killing of Benedicto. In *People v. Ebet*,[8] we ruled that once conspiracy is shown, the act of one is the act of all. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.

We concur with the trial and appellate courts in rejecting appellants' defenses of denial and alibi. Time and again this Court has ruled that alibi is the weakest of all defenses, for it is easy to fabricate and difficult to prove; it cannot prevail over the positive identification of the accused by the witnesses.[9] Moreover, for the defense of alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove

[7] *People v. Latam*, G.R. No. 192789, March 23, 2011, 646 SCRA 406, 410-411; *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 631.

[8] G.R. No. 181635, November 15, 2010, 634 SCRA 689, 706.

[9] *People v. Florida*, G.R. No. 90254, September 24, 1992, 214 SCRA 227, 239.

that the accused was somewhere else when the crime was committed, but he must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime at the time the same was committed.[10] Such physical impossibility was not shown to have existed in this case where appellants' testimonies confirmed they were in the same locality (Bagong Silang) when the robbery-killing took place.

As to the award of damages, we sustain the award made by the CA as the amounts are correct and in accordance with law for in robbery with homicide, civil indemnity and moral damages in the amount of ₱50,000 each is granted automatically in the absence of any qualifying aggravating circumstances.[11] However, an award of ₱25,000 for temperate damages may be allowed under Article 2224[12] of the Civil Code, since the victim's family undeniably incurred expenses in his burial.[13]

WHEREFORE, the appeal is **DISMISSED**. The August 28, 2008 Court of Appeals' Decision in CA-G.R. CR-H.C. No. 02928 finding appellants Eduardo Castro *y* Peralta and Renerio Delos Reyes *y* Bonus guilty is **AFFIRMED with MODIFICATION** that appellants further pay the heirs of Ricardo Pacheco Benedicto ₱25,000 as temperate damages.

With costs against appellants.

SO ORDERED.

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[10] *People v. Dela Cruz*, G.R. No. 108180, February 8, 1994, 229 SCRA 754, 765.

[11] *Crisostomo v. People*, G.R. No. 171526, September 1, 2010, 629 SCRA 590, 603.

[12] Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.

[13] See *People v. Lee,* G.R. No. 116326, April 30, 2003, 402 SCRA 124, 132-133.

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

SECOND DIVISION

[G.R. No. 187521. March 14, 2012]

F.F. CRUZ & CO., INC., *petitioner, vs.* **HR CONSTRUCTION CORP.,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; STATUTES; EXECUTIVE ORDER NO. 1008 (CONSTRUCTION INDUSTRY ARBITRATION LAW); CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); THE ARBITRAL AWARD OF CIAC SHALL BE FINAL AND UNAPPEALABLE EXCEPT ON QUESTIONS OF LAW.—** Executive Order (E.O.) No. 1008 vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. Under Section 19 of E.O. No. 1008, the arbitral award of CIAC "shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court."

2. **ID.; ID.; ID.; ID.; FACTUAL FINDINGS OF CONSTRUCTION ARBITRATORS ARE FINAL AND CONCLUSIVE AND NOT REVIEWABLE ON APPEAL; EXCEPTIONS.—** [I]n cases assailing the arbitral award rendered by the CIAC, this Court may only pass upon questions of law. Factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal. This rule, however, admits

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[*] Designated additional member per Special Order No. 1207 dated February 23, 2012.

of certain exceptions. In *Spouses David v. Construction Industry and Arbitration Commission*, we laid down the instances when this Court may pass upon the factual findings of the CIAC, thus: "We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made. x x x"

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.—** 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.

4. **ID.; ID.; ID.; QUESTION OF LAW; WHERE AN INTERPRETATION OF THE TRUE AGREEMENT BETWEEN THE PARTIES IS INVOLVED IN AN APPEAL, THE APPEAL IS IN EFFECT AN INQUIRY OF THE LAW BETWEEN THE PARTIES, ITS INTERPRETATION NECESSARILY INVOLVES A QUESTION OF LAW.—** FFCCI primarily seeks from this Court a determination of whether amount claimed by HRCC in its progress billing may

be enforced against it in the absence of a joint measurement of the former's completed works. Otherwise stated, the main question advanced by FFCCI is this: in the absence of the joint measurement agreed upon in the Subcontract Agreement, how will the completed works of HRCC be verified and the amount due thereon be computed? The determination of the foregoing question entails an interpretation of the terms of the Subcontract Agreement *vis-à-vis* the respective rights of the parties herein. On this point, it should be stressed that where an interpretation of the true agreement between the parties is involved in an appeal, the appeal is in effect an inquiry of the law between the parties, its interpretation necessarily involves a question of law. Moreover, we are not called upon to examine the probative value of the evidence presented before the CIAC. Rather, what is actually sought from this Court is an interpretation of the terms of the Subcontract Agreement as it relates to the dispute between the parties.

5. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; IF THE TERMS OF A CONTRACT ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATION SHALL CONTROL.—** In resolving the dispute as to the proper valuation of the works accomplished by HRCC, the primordial consideration should be the terms of the Subcontract Agreement. It is basic that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. x x x Pursuant to the terms of payment agreed upon by the parties, FFCCI obliged itself to pay the monthly progress billings of HRCC within 30 days from receipt of the same. Additionally, the monthly progress billings of HRCC should indicate the extent of the works completed by it, the same being essential to the valuation of the amount that FFCCI would pay to HRCC. The parties further agreed that the extent of HRCC's completed works that would be indicated in the monthly progress billings should be determined through a joint measurement conducted by FFCCI and HRCC together with the representative of DPWH and the consultants. x x x It bears stressing that the joint measurement contemplated under the Subcontract Agreement

should be conducted by the parties herein together with the representative of the DPWH and the consultants. Indubitably, FFCCI, being the main contractor of DPWH, has the responsibility to request the representative of DPWH to conduct the said joint measurement.

6. ID.; ID.; DOCTRINE OF WAIVER; ELUCIDATED.— In *People of the Philippines v. Donato*, this Court explained the doctrine of waiver in this wise: "Waiver is defined as "a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; x x x or **such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it**." As to what rights and privileges may be waived, the authority is settled: x x x **it is the general rule that a person may waive any matter which affects his property, and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract,** x x x **provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of others, and further provided the waiver of the right or privilege is not forbidden by law, and does not contravene public policy** x x x."

7. ID.; ID.; ID.; APPLIED IN CASE AT BAR.— Here, it is undisputed that the joint measurement of HRCC's completed works contemplated by the parties in the Subcontract Agreement never materialized. Indeed, HRCC, on separate occasions, submitted its monthly progress billings indicating the extent of the works it had completed *sans* prior joint measurement. x x x FFCCI did not contest the said progress billings submitted by HRCC despite the lack of a joint measurement of the latter's completed works as required under the Subcontract Agreement. Instead, FFCCI proceeded to conduct its own verification of the works actually completed by HRCC and, on separate dates, made the x x x payments to HRCC x x x. FFCCI's voluntary payment in favor of HRCC, albeit in amounts substantially different from those claimed by the latter, is a glaring indication that it had effectively waived its right to demand for the joint measurement of the completed works. FFCCI's failure to

demand a joint measurement of HRCC's completed works reasonably justified the inference that it had already relinquished its right to do so. Indeed, not once did FFCCI insist on the conduct of a joint measurement to verify the extent of HRCC's completed works despite its receipt of the four monthly progress billings submitted by the latter. x x x [T]he joint measurement requirement is a mechanism essentially granting FFCCI the opportunity to verify and, if necessary, contest HRCC's valuation of its completed works prior to the submission of the latter's monthly progress billings. In the final analysis, the joint measurement requirement seeks to limit the dispute between the parties with regard to the valuation of HRCC's completed works. Accordingly, any issue which FFCCI may have with regard to HRCC's valuation of the works it had completed should be raised and resolved during the said joint measurement instead of raising the same after HRCC had submitted its monthly progress billings. Thus, having relinquished its right to ask for a joint measurement of HRCC's completed works, FFCCI had necessarily waived its right to dispute HRCC's valuation of the works it had accomplished.

8. **ID.; ID.; RECIPROCAL OBLIGATIONS; RESCISSION; THE RIGHT TO RESCIND MAY BE WAIVED, EXPRESSLY AND IMPLIEDLY.—** The right of rescission is statutorily recognized in reciprocal obligations. x x x The rescission referred to in x x x [Article 1191 of the Civil Code], more appropriately referred to as resolution is on the breach of faith by the defendant which is violative of the reciprocity between the parties. The right to rescind, however, may be waived, expressly or impliedly. While the right to rescind reciprocal obligations is implied, that is, that such right need not be expressly provided in the contract, nevertheless the contracting parties may waive the same.

9. **ID.; ID.; ID.; ID.; ID.; THE RIGHT TO RESCIND HAS BEEN WAIVED IN CASE AT BAR.—** [W]e find that HRCC had no right to rescind the Subcontract Agreement in the guise of a work stoppage, the latter having waived such right. x x x Hence, in spite of the existence of dispute or controversy between the parties during the course of the Subcontract Agreement, HRCC had agreed to continue the performance of its obligations pursuant to the Subcontract Agreement. In view of the provision

of the Subcontract Agreement x x x, HRCC is deemed to have effectively waived its right to effect extrajudicial rescission of its contract with FFCCI. Accordingly, HRCC, in the guise of rescinding the Subcontract Agreement, was not justified in implementing a work stoppage.

10. **LEGAL ETHICS; COSTS; GENERALLY ADJUDGED AGAINST THE LOSING PARTY, BUT COURTS HAVE DISCRETION, FOR SPECIAL REASONS, TO DECREE OTHERWISE; CASE AT BAR.—** Although, generally, costs are adjudged against the losing party, courts nevertheless have discretion, for special reasons, to decree otherwise. Here, considering that the work stoppage of HRCC is not justified, it is only fitting that both parties should share in the burden of the cost of arbitration equally. HRCC had a valid reason to institute the complaint against FFCCI in view of the latter's failure to pay the full amount of its monthly progress billings. However, we disagree with the CIAC and the CA that only FFCCI should shoulder the arbitration costs. The arbitration costs should be shared equally by FFCCI and HRCC in view of the latter's unjustified work stoppage.

APPEARANCES OF COUNSEL

Vincent S. Tagoc for petitioner.
Rodolfo B. Ta-asan for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner F.F. Cruz & Co., Inc. (FFCCI) assailing the Decision[1] dated February 6, 2009 and Resolution[2] dated April 13, 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 91860.

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[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok, concurring; *rollo*, pp. 47-69.

[2] *Id.* at 78.

The Antecedent Facts

Sometime in 2004, FFCCI entered into a contract with the Department of Public Works and Highways (DPWH) for the construction of the Magsaysay Viaduct, known as the Lower Agusan Development Project. On August 9, 2004, FFCCI, in turn, entered into a Subcontract Agreement[3] with HR Construction Corporation (HRCC) for the supply of materials, labor, equipment, tools and supervision for the construction of a portion of the said project called the East Bank Levee and Cut-Off Channel in accordance with the specifications of the main contract.

The subcontract price agreed upon by the parties amounted to ₱31,293,532.72. Pursuant to the Subcontract Agreement, HRCC would submit to FFCCI a monthly progress billing which the latter would then pay, subject to stipulated deductions, within 30 days from receipt thereof.

The parties agreed that the requests of HRCC for payment should include progress accomplishment of its completed works as approved by FFCCI. Additionally, they agreed to conduct a joint measurement of the completed works of HRCC together with the representative of DPWH and consultants to arrive at a common quantity.

Thereafter, HRCC commenced the construction of the works pursuant to the Subcontract Agreement.

On September 17, 2004, HRCC submitted to FFCCI its first progress billing in the amount of ₱2,029,081.59 covering the construction works it completed from August 16 to September 15, 2004.[4] However, FFCCI asserted that the DPWH was then able to evaluate the completed works of HRCC only until July 25, 2004. Thus, FFCCI only approved the gross amount of ₱423,502.88 for payment. Pursuant to the Subcontract Agreement, FFCCI deducted from the said gross amount ₱42,350.29 for retention and ₱7,700.05 for expanded withholding tax leaving

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[3] *Id.* at 85-92.

[4] *Id.* at 93.

a net payment in the amount of ₱373,452.54. This amount was paid by FFCCI to HRCC on December 3, 2004.[5]

FFCCI and the DPWH then jointly evaluated the completed works of HRCC for the period of July 26 to September 25, 2004. FFCCI claimed that the gross amount due for the completed works during the said period was ₱2,008,837.52. From the said gross amount due, FFCCI deducted therefrom ₱200,883.75 for retention and ₱36,524.07 for expanded withholding tax leaving amount of ₱1,771,429.45 as the approved net payment for the said period. FFCCI paid this amount on December 21, 2004.[6]

On October 29, 2004, HRCC submitted to FFCCI its second progress billing in the amount of ₱1,587,760.23 covering its completed works from September 18 to 25, 2004.[7] FFCCI did not pay the amount stated in the second progress billing, claiming that it had already paid HRCC for the completed works for the period stated therein.

On even date, HRCC submitted its third progress billing in the amount of ₱2,569,543.57 for its completed works from September 26 to October 25, 2004.[8] FFCCI did not immediately pay the amount stated in the third progress billing, claiming that it still had to evaluate the works accomplished by HRCC.

On November 25, 2004, HRCC submitted to FFCCI its fourth progress billing in the amount of ₱1,527,112.95 for the works it had completed from October 26 to November 25, 2004.

Subsequently, FFCCI, after it had evaluated the completed works of HRCC from September 26 to November 25, 2004, approved the payment of the gross amount of ₱1,505,570.99 to HRCC. FFCCI deducted therefrom ₱150,557.10 for retention and ₱27,374.02 for expanded withholding tax leaving a net

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[5] *Id.* at 109.

[6] *Id.* at 111.

[7] *Id.* at 94.

[8] *Id.* at 95.

payment of ₱1,327,639.87, which amount was paid to HRCC on March 11, 2005.[9]

Meanwhile, HRCC sent FFCCI a letter[10] dated December 13, 2004 demanding the payment of its progress billings in the total amount of ₱7,340,046.09, plus interests, within three days from receipt thereof. Subsequently, HRCC completely halted the construction of the subcontracted project after taking its Christmas break on December 18, 2004.

On March 7, 2005, HRCC, pursuant to the arbitration clause in the Subcontract Agreement, filed with the Construction Industry Arbitration Commission (CIAC) a Complaint[11] against FFCCI praying for the payment of the following: (1) overdue obligation in the reduced amount of ₱4,096,656.53 as of December 15, 2004 plus legal interest; (2) ₱1,500,000.00 as attorney's fees; (3) ₱80,000.00 as acceptance fee and representation expenses; and (4) costs of litigation.

In its Answer,[12] FFCCI claimed that it no longer has any liability on the Subcontract Agreement as the three payments it made to HRCC, which amounted to ₱3,472,521.86, already represented the amount due to the latter in view of the works actually completed by HRCC as shown by the survey it conducted jointly with the DPWH. FFCCI further asserted that the delay in the payment processing was primarily attributable to HRCC inasmuch as it presented unverified work accomplishments contrary to the stipulation in the Subcontract Agreement regarding requests for payment.

Likewise, FFCCI maintained that HRCC failed to comply with the condition stated under the Subcontract Agreement for the payment of the latter's progress billings, *i.e.* joint measurement of the completed works, and, hence, it was justified in not paying the amount stated in HRCC's progress billings.

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[9] *Id.* at 113.

[10] *Id.* at 96.

[11] *Id.* at 79-84.

[12] *Id.* at 97-105.

On June 16, 2005, an Arbitral Tribunal was created composed of Engineer Ricardo B. San Juan, Joven B. Joaquin and Attorney Alfredo F. Tadiar, with the latter being appointed as the Chairman.

In a Preliminary Conference held on July 5, 2005, the parties defined the issues to be resolved in the proceedings before the CIAC as follows:

1. What is the correct amount of [HRCC's] unpaid progress billing?
2. Did [HRCC] comply with the conditions set forth in subparagraph 4.3 of the Subcontract Agreement for the submission, evaluation/processing and release of payment of its progress billings?
3. Did [HRCC] stop work on the project?
   3.1 If so, is the work stoppage justified?
   3.2 If so, what was the percentage and value of [HRCC's] work accomplishment at the time it stopped work on the project?
4. Who between the parties should bear the cost of arbitration or in what proportion should it be shared by the parties?[13]

Likewise, during the said Preliminary Conference, HRCC further reduced the amount of overdue obligation it claimed from FFCCI to ₱2,768,916.66. During the course of the proceedings before the CIAC, HRCC further reduced the said amount to ₱2,635,397.77 – the exact difference between the total amount of HRCC's progress billings (₱6,107,919.63) and FFCCI's total payments in favor of the latter (₱3,472,521.86).

The CIAC Decision

On September 6, 2005, after due proceedings, the CIAC rendered a Decision[14] in favor of HRCC, the decretal portion of which reads:

[13] *Id.* at 124.

[14] *Id.* at 116-135.

WHEREFORE, judgment is hereby rendered in favor of the Claimant **HR CONSTRUCTION CORPORATION** and **AWARD** made on its monetary claim against Respondent **F.F. CRUZ & CO., INC.**, as follows:

[₱]2,239,452.63	as the balance of its unpaid billings and
101,161.57	as reimbursement of the arbitration costs.
[₱]2,340,614.20	**Total due the Claimant**

Interest on the foregoing amount **[₱]2,239,452.63** shall be paid at the rate of 6% per annum from the date of this Decision. After finality of this Decision, interest at the rate of 12% per annum shall be paid thereon until full payment of the awarded amount shall have been made x x x.

SO ORDERED.[15]

The CIAC held that the payment method adopted by FFCCI is actually what is known as the "back-to-back payment scheme" which was not agreed upon under the Subcontract Agreement. As such, the CIAC ruled that FFCCI could not impose upon HRCC its valuation of the works completed by the latter. The CIAC gave credence to HRCC's valuation of its completed works as stated in its progress billings. Thus:

During the trial, [FFCCI's] Aganon admitted that [HRCC's] accomplishments are included in its own billings to the DPWH together with a substantial mark-up to cover overhead costs and profit. He further admitted that it is only when DPWH approves its (Respondent's) billings covering [HRCC's] scope of work and pays for them, that [FFCCI] will in turn pay [HRCC] for its billings on the sub-contracted works.

On clarificatory questioning by the Tribunal, [FFCCI] admitted that there is no "**back-to-back**" provision in the sub-contract as basis for this **sequential payment arrangement** and, therefore, [FFCCI's] imposition thereof by withholding payment to [HRCC] until it is first paid by the project owner on the Main Contract, clearly violates said sub-contract. It [is] this unauthorized implementation of a back-to-back payment scheme that is seen to be the reason for [FFCCI's] non-payment of the third progress billings.

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[15] *Id.* at 134.

It is accordingly the **holding** of this Arbitral Tribunal that [FFCCI] is not justified in withholding payment of [HRCC's] third progress billing for this scheme that [HRCC] has not agreed to in the sub-contract agreement x x x.

xxx xxx xxx

The total retention money deducted by [FFCCI] from [HRCC's] three progress billings, amounts to **[₱]395,945.14** x x x. The retention money is part of [HRCC's] progress billings and must, therefore, be credited to this account. The two amounts (deductions and net payments) total [₱]3,868,467.00 x x x. This represents the total gross payments that should be credited and deducted from the total gross billings to arrive at what has not been paid to the [HRCC]. This results in the amount of **[₱]2,239,452.63** ([₱]6,107,919.63 - [₱]3,868,467.00) as the correct balance of [HRCC's] unpaid billings.[16]

Further, the CIAC ruled that FFCCI had already waived its right under the Subcontract Agreement to require a joint measurement of HRCC's completed works as a condition precedent to the payment of the latter's progress billings. Hence:

[FFCCI] admits that in all three instances where it paid [HRCC] for its progress billings, it never required compliance with the aforequoted contractual provision of a prior joint quantification. Such **repeated omission** may reasonably be construed as a **waiver** by [FFCCI] of its contractual right to require compliance of said condition and it is now too late in the day to so impose it. Article 6 of the Civil Code expressly provides that "rights may be waived unless the waiver is contrary to law, public order, public policy, morals or good customs." The tribunal cannot see any such violation in this case.

xxx xxx xxx

[FFCCI's] omission to enforce the contractually required condition of payment, has led [HRCC] to believe it to be true that indeed [FFCCI] has waived the condition of joint quantification and, therefore, [FFCCI] may not be permitted to falsify such resulting position.[17]

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[16] *Id.* at 127-128.

[17] *Id.* at 130-131.

Likewise, the CIAC held that FFCCI's non-payment of the progress billings submitted by HRCC gave the latter the right to rescind the Subcontract Agreement and, accordingly, HRCC's work stoppage was justified. It further opined that, in effect, FFCCI had ratified the right of HRCC to stop the construction works as it did not file any counterclaim against HRCC for liquidated damages arising therefrom.

FFCCI then filed a petition for review with CA assailing the foregoing disposition by the CIAC.

The CA Decision

On February 6, 2009, the CA rendered the herein assailed Decision[18] denying the petition for review filed by FFCCI. The CA agreed with the CIAC that FFCCI had waived its right under the Subcontract Agreement to require a joint quantification of HRCC's completed works.

The CA further held that the amount due to HRCC as claimed by FFCCI could not be given credence since the same was based on a survey of the completed works conducted without the participation of HRCC. Likewise, being the main contractor, it ruled that it was the responsibility of FFCCI to include HRCC in the joint measurement of the completed works. Furthermore, the CA held that HRCC was justified in stopping its construction works on the project as the failure of FFCCI to pay its progress billings gave the former the right to rescind the Subcontract Agreement.

FFCCI sought a reconsideration[19] of the said February 6, 2009 Decision but it was denied by the CA in its Resolution[20] dated April 13, 2009.

Issues

In the instant petition, FFCCI submits the following issues for this Court's resolution:

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[18] *Supra* note 1.

[19] *Rollo*, pp. 70-77.

[20] *Supra* note 2.

[I.]

x x x *First*, [d]oes the act of [FFCCI] in conducting a verification survey of [HRCC's] billings in the latter's presence amount to a waiver of the right of [FFCCI] to verify and approve said billings? What, if any, is the legal significance of said act?

[II.]

x x x *Second*, [d]oes the payment of [FFCCI] to [HRCC] based on the results of the above mentioned verification survey result in the former being obliged to accept whatever accomplishment was reported by the latter?

[III.]

x x x *Third*, [d]oes the mere comparison of the payments made by [FFCCI] with the contested progress billings of [HRCC] amount to an adjudication of the controversy between the parties?

[IV.]

x x x *Fourth*, [d]oes the failure of [FFCCI] to interpose a counterclaim against [HRCC] for liquidated damages due to the latter's work stoppage, amount to a ratification of such work stoppage?

[V.]

x x x *Fifth*, [d]id the [CA] disregard or overlook significant and material facts which would affect the result of the litigation?[21]

In sum, the crucial issues for this Court's resolution are: *first*, what is the effect of FFCCI's non-compliance with the stipulation in the Subcontract Agreement requiring a joint quantification of the works completed by HRCC on the payment of the progress billings submitted by the latter; and *second*, whether there was a valid rescission of the Subcontract Agreement by HRCC.

The Court's Ruling

The petition is not meritorious.

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[21] *Rollo*, pp. 21-22.

Procedural Issue:

Finality and Conclusiveness of the CIAC's Factual Findings

Before we delve into the substantial issues raised by FFCCI, we shall first address the procedural issue raised by HRCC. According to HRCC, the instant petition merely assails the factual findings of the CIAC as affirmed by the CA and, accordingly, not proper subjects of an appeal under Rule 45 of the Rules of Court. It likewise pointed out that factual findings of the CIAC, when affirmed by the CA, are final and conclusive upon this Court.

Generally, the arbitral award of CIAC is final and may not be appealed except on questions of law.

Executive Order (E.O.) No. 1008[22] vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. Under Section 19 of E.O. No. 1008, the arbitral award of CIAC "shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court."[23]

In *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*,[24] we explained *raison d' etre* for the rule on finality of the CIAC's arbitral award in this wise:

> Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy

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[22] Creating an Arbitration Machinery in the Construction Industry of the Philippines, otherwise known as the "Construction Industry Arbitration Law."

[23] SC Circular No. 1-91 and Revised Administrative Circular No. 1-95 provides that appeal from the arbitral award of the CIAC must first be brought to the CA on questions of fact, law or mixed questions of fact and law.

[24] G.R. No. 110434, December 13, 1993, 228 SCRA 397.

and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. The Executive Order was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. x x x[25] (Citation omitted)

Thus, in cases assailing the arbitral award rendered by the CIAC, this Court may only pass upon questions of law. Factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal. This rule, however, admits of certain exceptions.

In *Spouses David v. Construction Industry and Arbitration Commission*,[26] we laid down the instances when this Court may pass upon the factual findings of the CIAC, thus:

We reiterate the rule that factual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of

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[25] *Id.* at 405.

[26] 479 Phil. 578 (2004).

them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made. x x x[27] (Citation omitted)

Issues on the proper interpretation of the terms of the Subcontract Agreement involve questions of law.

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.[28]

On the surface, the instant petition appears to merely raise factual questions as it mainly puts in issue the appropriate amount that is due to HRCC. However, a more thorough analysis of the issues raised by FFCCI would show that it actually asserts questions of law.

FFCCI primarily seeks from this Court a determination of whether amount claimed by HRCC in its progress billing may be enforced against it in the absence of a joint measurement of the former's completed works. Otherwise stated, the main question advanced by FFCCI is this: in the absence of the joint measurement agreed upon in the Subcontract Agreement, how

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[27] *Id.* at 590-591.

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

will the completed works of HRCC be verified and the amount due thereon be computed?

The determination of the foregoing question entails an interpretation of the terms of the Subcontract Agreement *vis-à-vis* the respective rights of the parties herein. On this point, it should be stressed that where an interpretation of the true agreement between the parties is involved in an appeal, the appeal is in effect an inquiry of the law between the parties, its interpretation necessarily involves a question of law.[29]

Moreover, we are not called upon to examine the probative value of the evidence presented before the CIAC. Rather, what is actually sought from this Court is an interpretation of the terms of the Subcontract Agreement as it relates to the dispute between the parties.

First Substantive Issue: Effect of Non-compliance with the Joint Quantification Requirement on the Progress Billings of HRCC

Basically, the instant issue calls for a determination as to which of the parties' respective valuation of accomplished works should be given credence. FFCCI claims that its valuation should be upheld since the same was the result of a measurement of the completed works conducted by it and the DPWH. On the other hand, HRCC maintains that its valuation should be upheld on account of FFCCI's failure to observe the joint measurement requirement in ascertaining the extent of its completed works.

The terms of the Subcontract Agreement should prevail.

In resolving the dispute as to the proper valuation of the works accomplished by HRCC, the primordial consideration should be the terms of the Subcontract Agreement. It is basic that if the terms of a contract are clear and leave no doubt

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[29] See *Philippine National Construction Corporation v. Court of Appeals*, G.R. No. 159417, January 25, 2007, 512 SCRA 684, 695.

upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[30]

In *Abad v. Goldloop Properties, Inc.*,[31] we stressed that:

> A **court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them.** The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. **Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law.** If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.[32] (Emphasis supplied and citation omitted)

Article 4 of the Subcontract Agreement, in part, contained the following stipulations:

ARTICLE 4

SUBCONTRACT PRICE

4.1 The total SUBCONTRACT Price shall be THIRTY ONE MILLION TWO HUNDRED NINETY-THREE THOUSAND FIVE HUNDRED THIRTY-TWO PESOS & 72/100 ONLY ([₱]31,293,532.72) inclusive of Value Added Tax x x x.

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4.3 Terms of Payment

FFCCI shall pay [HRCC] within thirty (30) days upon receipt of the [HRCC's] Monthly Progress Billings subject to deductions due to ten percent (10%) retention, and any other sums that may be due and recoverable by FFCCI from [HRCC] under this SUBCONTRACT. In all cases, however, two percent (2%) expanded withholding tax on the [HRCC's] income will be deducted from the monthly payments.

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[30] Civil Code of the Philippines, Article 1370.

[31] G.R. No. 168108, April 13, 2007, 521 SCRA 131.

[32] *Id.* at 144.

> **Requests for the payment by the [HRCC] shall include progress accomplishment of completed works** (unit of work accomplished x unit cost) **as approved by [FFCCI]**. Cut-off date of monthly billings shall be every 25th of the month **and joint measurement shall be conducted with the DPWH's representative, Consultants, FFCCI and [HRCC] to arrive at a common/agreed quantity**.[33] (Emphasis supplied)

Pursuant to the terms of payment agreed upon by the parties, FFCCI obliged itself to pay the monthly progress billings of HRCC within 30 days from receipt of the same. Additionally, the monthly progress billings of HRCC should indicate the extent of the works completed by it, the same being essential to the valuation of the amount that FFCCI would pay to HRCC.

The parties further agreed that the extent of HRCC's completed works that would be indicated in the monthly progress billings should be determined through a joint measurement conducted by FFCCI and HRCC together with the representative of DPWH and the consultants.

It is the responsibility of FFCCI to call for the joint measurement of HRCC's completed works.

It bears stressing that the joint measurement contemplated under the Subcontract Agreement should be conducted by the parties herein together with the representative of the DPWH and the consultants. Indubitably, FFCCI, being the main contractor of DPWH, has the responsibility to request the representative of DPWH to conduct the said joint measurement.

On this score, the testimony of Engineer Antonio M. Aganon, Jr., project manager of FFCCI, during the reception of evidence before the CIAC is telling, thus:

MR. J. B. JOAQUIN:

Engr. Aganon, earlier there was a stipulation that in all the four billings, there never was a joint quantification.

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[33] *Rollo*, p. 87.

PROF. A. F. TADIAR:

He admitted that earlier. *Pinabasa ko sa kanya*.

ENGR. R. B. SAN JUAN:

The joint quantification was done only between them and DPWH.

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ENGR. AGANON:

Puwede ko po bang i-explain sandali lang po regarding lang po doon sa quantification na iyon? Basically po **as main contractor of DPWH, we are the ones who [are] requesting for joint survey quantification with the owner, DPWH**. *Ngayon po, although wala sa papel na nag-witness* and *[HRCC] still the same po, nandoon din po sila during that time, kaya lang ho . . .*

MR. J. B. JOAQUIN:

Hindi pumirma?

ENGR. AGANON:

Hindi sila puwede pumirma kasi ho kami po ang contractor ng DPWH hindi sila.[34] (Emphasis supplied)

FFCCI had waived its right to demand for a joint measurement of HRCC's completed works under the Subcontract Agreement.

The CIAC held that FFCCI, on account of its failure to demand the joint measurement of HRCC's completed works, had effectively waived its right to ask for the conduct of the same as a condition *sine qua non* to HRCC's submission of its monthly progress billings.

We agree.

In *People of the Philippines v. Donato*,[35] this Court explained the doctrine of waiver in this wise:

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[34] *Id.* at 330-331.

[35] G.R. No. 79269, June 5, 1991, 198 SCRA 130.

Waiver is defined as "a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or **such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it**."

As to what rights and privileges may be waived, the authority is settled:

x x x the doctrine of waiver extends to rights and privileges of any character, and, since the word 'waiver' covers every conceivable right, **it is the general rule that a person may waive any matter which affects his property, and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract**, conferred with statute, *or guaranteed by constitution,* **provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of others, and further provided the waiver of the right or privilege is not forbidden by law, and does not contravene public policy**; and the principle is recognized that everyone has a right to waive, and agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right, and without detriment to the community at large. x x x[36] (Emphasis supplied and citations omitted)

Here, it is undisputed that the joint measurement of HRCC's completed works contemplated by the parties in the Subcontract Agreement never materialized. Indeed, HRCC, on separate occasions, submitted its monthly progress billings indicating the extent of the works it had completed *sans* prior joint measurement. Thus:

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[36] *Id.* at 154.

Progress Billing	Period Covered	Amount
1st Progress Billing dated September 17, 2004[37]	August 16 to September 15, 2004	₱2,029,081.59
2nd Progress Billing dated October 29, 2004[38]	September 18 to 25, 2004	₱1,587,760.23
3rd Progress Billing dated October 29, 2004[39]	September 26 to October 25, 2004	₱2,569,543.57
4th Progress Billing dated November 25, 2004	October 26 to November 25, 2004	₱1,527,112.95

FFCCI did not contest the said progress billings submitted by HRCC despite the lack of a joint measurement of the latter's completed works as required under the Subcontract Agreement. Instead, FFCCI proceeded to conduct its own verification of the works actually completed by HRCC and, on separate dates, made the following payments to HRCC:

Date of Payment	Period Covered	Amount
December 3, 2004[40]	April 2 to July 25, 2004	₱373,452.24
December 21, 2004[41]	July 26 to September 25, 2004	1,771,429.45
March 11, 2005[42]	September 26 to November 25, 2004	1,327,639.87

FFCCI's voluntary payment in favor of HRCC, albeit in amounts substantially different from those claimed by the latter, is a glaring indication that it had effectively waived its right to demand for the joint measurement of the completed works. FFCCI's failure to demand a joint measurement of HRCC's completed works reasonably justified the inference that it had already relinquished its right to do so. Indeed, not once did FFCCI

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[37] *Supra* note 4.

[38] *Supra* note 7.

[39] *Supra* note 8.

[40] *Supra* note 5.

[41] *Supra* note 6.

[42] *Supra* note 9.

insist on the conduct of a joint measurement to verify the extent of HRCC's completed works despite its receipt of the four monthly progress billings submitted by the latter.

FFCCI is already barred from contesting HRCC's valuation of the completed works having waived its right to demand the joint measurement requirement.

In view of FFCCI's waiver of the joint measurement requirement, the CA, essentially echoing the CIAC's disposition, found that FFCCI is obliged to pay the amount claimed by HRCC in its monthly progress billings. The CA reasoned thus:

> Verily, the joint measurement that [FFCCI] claims it conducted without the participation of [HRCC], to which [FFCCI] anchors its claim of full payment of its obligations to [HRCC], cannot be applied, nor imposed, on [HRCC]. In other words, [HRCC] cannot be made to accept a quantification of its works when the said quantification was made without its participation. As a consequence, [FFCCI's] claim of full payment cannot be upheld as this is a result of a quantification that was made contrary to the express provisions of the Subcontract Agreement.
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> The Court is aware that by ruling so, [FFCCI] would seem to be placed at a disadvantage because it would result in [FFCCI] having to pay exactly what [HRCC] was billing the former. If, on the other hand, the Court were to rule otherwise[,] then [HRCC] would be the one at a disadvantage because it would be made to accept payment that is less than what it was billing.
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> Circumstances considered, however, the Court deems it proper to rule in favor of [HRCC] because of the explicit provision of the Subcontract Agreement that requires the participation of the latter in the joint measurement. If the Court were to rule otherwise, then the Court would, in effect, be disregarding the explicit agreement of the parties in their contract.[43]

Essentially, the question that should be resolved is this: In view of FFCCI's waiver of its right to demand a joint measurement

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[43] *Rollo*, pp. 65-66.

of HRCC's completed works, is FFCCI now barred from disputing the claim of HRCC in its monthly progress billings?

We rule in the affirmative.

As intimated earlier, the joint measurement requirement is a mechanism essentially granting FFCCI the opportunity to verify and, if necessary, contest HRCC's valuation of its completed works prior to the submission of the latter's monthly progress billings.

In the final analysis, the joint measurement requirement seeks to limit the dispute between the parties with regard to the valuation of HRCC's completed works. Accordingly, any issue which FFCCI may have with regard to HRCC's valuation of the works it had completed should be raised and resolved during the said joint measurement instead of raising the same after HRCC had submitted its monthly progress billings. Thus, having relinquished its right to ask for a joint measurement of HRCC's completed works, FFCCI had necessarily waived its right to dispute HRCC's valuation of the works it had accomplished.

Second Substantive Issue:

Validity of HRCC's Rescission of the Subcontract Agreement

Both the CA and the CIAC held that the work stoppage of HRCC was justified as the same is but an exercise of its right to rescind the Subcontract Agreement in view of FFCCI's failure to pay the former's monthly progress billings. Further, the CIAC stated that FFCCI could no longer assail the work stoppage of HRCC as it failed to file any counterclaim against HRCC pursuant to the terms of the Subcontract Agreement.

For its part, FFCCI asserted that the work stoppage of HRCC was not justified and, in any case, its failure to raise a counterclaim against HRCC for liquidated damages before the CIAC does not amount to a ratification of the latter's work stoppage.

The determination of the validity of HRCC's work stoppage depends on a determination of the following: *first,* whether HRCC has the right to extrajudicially rescind the Subcontract Agreement;

and *second*, whether FFCCI is already barred from disputing the work stoppage of HRCC.

HRCC had waived its right to rescind the Subcontract Agreement.

The right of rescission is statutorily recognized in reciprocal obligations. Article 1191 of the Civil Code pertinently reads:

> Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
>
> This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

The rescission referred to in this article, more appropriately referred to as resolution is on the breach of faith by the defendant which is violative of the reciprocity between the parties.[44] The right to rescind, however, may be waived, expressly or impliedly.[45]

While the right to rescind reciprocal obligations is implied, that is, that such right need not be expressly provided in the contract, nevertheless the contracting parties may waive the same.[46]

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[44] *Pryce Corp. v. Phil. Amusement and Gaming Corp.*, 497 Phil. 490, 505 (2005), citing the Concurring Opinion of Mr. Justice J.B. L. Reyes in *Universal Food Corp. v. CA*, 144 Phil. 1, 21 (1970).

[45] *Francisco v. DEAC Construction, Inc.*, G.R. No. 171312, February 4, 2008, 543 SCRA 644, 655.

[46] Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, Vol. IV (1991).

Contrary to the respective dispositions of the CIAC and the CA, we find that HRCC had no right to rescind the Subcontract Agreement in the guise of a work stoppage, the latter having waived such right. *Apropos* is Article 11.2 of the Subcontract Agreement, which reads:

11.2 Effects of Disputes and Continuing Obligations

> **Notwithstanding any dispute, controversy, differences or arbitration proceedings relating directly or indirectly to this SUBCONTRACT Agreement** and without prejudice to the eventual outcome thereof, **[HRCC] shall at all times proceed with the prompt performance of the Works in accordance with the directives of FFCCI and this SUBCONTRACT Agreement**.[47] (Emphasis supplied)

Hence, in spite of the existence of dispute or controversy between the parties during the course of the Subcontract Agreement, HRCC had agreed to continue the performance of its obligations pursuant to the Subcontract Agreement. In view of the provision of the Subcontract Agreement quoted above, HRCC is deemed to have effectively waived its right to effect extrajudicial rescission of its contract with FFCCI. Accordingly, HRCC, in the guise of rescinding the Subcontract Agreement, was not justified in implementing a work stoppage.

The costs of arbitration should be shared by the parties equally.

Section 1, Rule 142 of the Rules of Court provides:

> Section 1. Costs ordinarily follow results of suit. – Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the **same be divided, as may be equitable**. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law. (Emphasis supplied)

[47] *Rollo*, p. 91.

Although, generally, costs are adjudged against the losing party, courts nevertheless have discretion, for special reasons, to decree otherwise.

Here, considering that the work stoppage of HRCC is not justified, it is only fitting that both parties should share in the burden of the cost of arbitration equally. HRCC had a valid reason to institute the complaint against FFCCI in view of the latter's failure to pay the full amount of its monthly progress billings. However, we disagree with the CIAC and the CA that only FFCCI should shoulder the arbitration costs. The arbitration costs should be shared equally by FFCCI and HRCC in view of the latter's unjustified work stoppage.

WHEREFORE, in consideration of the foregoing disquisitions, the Decision dated February 6, 2009 and Resolution dated April 13, 2009 of the Court of Appeals in CA-G.R. SP No. 91860 are hereby **AFFIRMED** with **MODIFICATION** that the arbitration costs shall be shared equally by the parties herein.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 193279. March 14, 2012]

ELEANOR DE LEON LLENADO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and EDITHA VILLAFLORES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ALLOWED; CASE AT BAR.—** It is an established rule that the remedy of appeal through a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court contemplates only questions of law and not questions of fact. The issue in the case at bar is clearly a question of fact that rightfully belonged to the proper determination of the MeTC, the RTC and the CA. All these lower courts found the elements of a violation of B.P. 22 present. Petitioner failed to provide any cogent reason for us to overturn these findings, or to consider this case as an exception to this general rule.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; NATURE AND EFFECT OF OBLIGATIONS; INTEREST; IN THE ABSENCE OF STIPULATION, THE RATE OF INTEREST SHALL BE 12% PER ANNUM COMPUTED FROM DEFAULT; CASE AT BAR.—** It has been established that in the absence of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, that is, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. In *Ongson v. People*, we held that interest began to run from the time of the extrajudicial demand, as duly proved by the creditor. Thus, petitioner should also be held liable for the amount of the dishonored check, which is 1,500,000, plus 12% legal interest covering the period from the date of the receipt of the demand letter on 14 May 1999 to the finality of this Decision. The total amount due in the dispositive portion of the CA's Decision, inclusive of interest, shall further earn 12% interest per annum from the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Evaristo P. Velicaria for petitioner.

The Solicitor General for public respondent.

People's Law Office for private respondent.

DECISION

SERENO, *J.*:

Petitioner was convicted by the Metropolitan Trial Court (MeTC) of Valenzuela City, Branch 82 in Criminal Case No. 54905 for violating *Batasang Pambansa Blg.* 22 (B.P. 22) or the Bouncing Checks Law.

It appears that petitioner issued checks to secure the loans obtained from private respondent. Upon presentment, the checks were dishonored, leading to the filing with the MeTC of criminal cases docketed as Criminal Case Nos. 54905, 54906, 54907, and 54908 for four (4) counts of violation of B.P. 22.

Subsequently, petitioner settled the loans subject of Criminal Case Nos. 54906, 54907 and 54908 using the funds of the Children of Mary Immaculate College, of which she was president. Private respondent executed an Affidavit of Desistance for the three cases;[1] thus, only Criminal Case No. 54905 covering a check worth, 1,500,000, proceeded to trial.

The MeTC found that all the following elements of a violation of B.P. 22 were present in the last check subject of the criminal proceedings: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he or she does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the drawee bank's subsequent dishonor of the check for insufficiency of funds or credit, or dishonor of the check for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[2] In ruling against petitioner, the MeTC took note that petitioner admitted knowledge of the check's dishonor, and that the demand letter with Notice of Dishonor mailed to petitioner's residence on 10 May 1999 was received by one Alfredo Abierra on 14 May 1999. Thus, petitioner

[1] CA Decision, *rollo*, p. 22.

[2] *Tan v. Mendez*, 432 Phil. 760 (2002).

was sentenced to pay 1,500,000, the amount of the dishonored check, and a fine of 200,000 with subsidiary imprisonment in case of insolvency.

The MeTC also held the Children of Mary Immaculate College liable for the value of the check for being the drawer thereof. Finally, the court ordered the payment of attorney's fees and litigation expenses.

On appeal with the Regional Trial Court (RTC), petitioner alleged that the receipt of the Notice of Dishonor was not sufficiently proven, and that the notice received by Abierra should not be held to be binding on her. However, on 26 November 2006, the RTC affirmed the Decision of the MeTC.

Petitioner subsequently filed a Petition for Review with the Court of Appeals (CA) under Rule 42 of the Rules of Court. In her Petition, she alleged that the trial court erred in ruling that she had received a notice of dishonor and in holding the school also liable for the value of the check.

The CA ruled that the elements of a violation of B.P. 22 were established.[3] However, it held that the trial court erred in holding Children of Mary Immaculate College civilly liable.

Applying *Lunaria v. People*,[4] the CA modified the appealed judgment by imposing legal interest of 12% on the amount of the dishonored check. The dispositive portion of the CA Decision states:

> **WHEREFORE**, the appeal is **GRANTED in part.** The Decision dated November 26, 2006 of the Regional Trial Court, Branch 75 of Valenzuela City, is **MODIFIED** in that petitioner is **SENTENCED** to pay a fine of 200,000.00 with subsidiary imprisonment in case of insolvency. Petitioner is **ORDERED** to indemnify private complainant in the amount of 1,500,000.00, the amount of the dishonored check, with 12% interest per annum from the date of judicial demand until the finality of this Decision plus attorney's

[3] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Japar B. Dimaampao and Jane Aurora C. Lantion concurring.

[4] G.R. No. 160127, 11 November 2008, 570 SCRA 572.

fees of 20,000.00 and litigation expenses of 16,860.00. The civil liability adjudged against Children of Mary Immaculate College is **REVERSED** and **SET ASIDE**.

SO ORDERED.[5]

Petitioner thereafter filed a Motion for Reconsideration.[6] Finding no merit in the motion, it was denied by the CA through its assailed Resolution[7] promulgated on 10 August 2010.

Hence, this Rule 45 Petition.

Petitioner now alleges that respondent failed to prove that there was actual receipt of the notice of dishonor. She also alleges, without expounding, that the ruling of the CA was not in accordance with laws and jurisprudence.

It is an established rule that the remedy of appeal through a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court contemplates only questions of law and not questions of fact.[8] The issue in the case at bar is clearly a question of fact that rightfully belonged to the proper determination of the MeTC, the RTC and the CA. All these lower courts found the elements of a violation of B.P. 22 present. Petitioner failed to provide any cogent reason for us to overturn these findings, or to consider this case as an exception to this general rule.

However, conforming to prevailing jurisprudence, we find the need to modify the ruling of the CA with regard to the imposition of interest on the judgment. It has been established that in the absence of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, that is, from judicial or extrajudicial demand under and subject to the provisions

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[5] *Rollo*, p. 33.

[6] *Id.* at 35-45.

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

[8] *Spouses Batingal v. Court of Appeals*. G.R. No. 128636, 1 February 2001, 351 SCRA 60.

of Article 1169 of the Civil Code.[9] In *Ongson v. People*,[10] we held that interest began to run from the time of the extrajudicial demand, as duly proved by the creditor. Thus, petitioner should also be held liable for the amount of the dishonored check, which is 1,500,000, plus 12% legal interest covering the period from the date of the receipt of the demand letter on 14 May 1999 to the finality of this Decision. The total amount due in the dispositive portion of the CA's Decision, inclusive of interest, shall further earn 12% interest per annum from the finality of this Decision until fully paid.

WHEREFORE, in view of the foregoing, the Decision dated 27 April 2010 of the Court of Appeals in CA-G.R. CR No. 31349 is hereby **AFFIRMED** with **MODIFICATIONS**. Petitioner is ordered to indemnify private respondent the amount of the dishonored check, which is 1,500,000, with 12% interest *per annum* from the date of receipt of the extrajudicial demand on 14 May 1999 to the finality of this Decision. This total amount inclusive of interest shall further earn 12% interest *per annum* from the finality of the Decision until it is fully paid.

Petitioner is sentenced to pay a fine of 200,000 with subsidiary imprisonment in case of insolvency, plus attorney's fees of 20,000 and litigation expenses of 16,860.

SO ORDERED.

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

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[9] *Eastern Shipping Lines v. Court of Appeals*, G.R. No. 97412, 234 SCRA 78.

[10] 504 Phil. 214 (2005).

SECOND DIVISION

[G.R. No. 193861. March 14, 2012]

PAULITA "EDITH" SERRA,[1] *petitioner, vs.* **NELFA T. MUMAR,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ALLOWED.—** A petition for review on *certiorari* should raise only questions of law. In resolving a petition for review, the Court "does not sit as an arbiter of facts for it is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below."

2. **ID.; APPEALS; FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THOSE OF THE TRIAL COURT, RESPECTED.—** When supported by substantial evidence, the factual findings of the CA affirming those of the trial court are final and conclusive on this Court and may not be reviewed on appeal, unless petitioner can show compelling or exceptional reasons for this Court to disregard, overturn or modify such findings.

3. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ELUCIDATED. —** The Court has previously held that evidence to be worthy of credit, must not only proceed from a credible source but must, in addition, be credible in itself. The evidence must be natural, reasonable and probable as to make it easy to believe. No better test has yet been found to determine the value of the testimony of a witness than its conformity to the knowledge and common experience of mankind.

4. **CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; RULE THAT EMPLOYERS ARE LIABLE FOR DAMAGES CAUSED BY THEIR EMPLOYEES ACTING**

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[1] Identified in some parts of the records as Paulita "Edith" Sierra or Editha Serra.

WITHIN THE SCOPE OF THEIR ASSIGNED TASKS; ELUCIDATED.— Under Article 2180 of the Civil Code, employers are liable for the damages caused by their employees acting within the scope of their assigned tasks. Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption that the employer failed to exercise the due diligence of a good father of the family in the selection or supervision of its employees. The liability of the employer is direct or immediate. It is not conditioned upon prior recourse against the negligent employee and a prior showing of insolvency of such employee. Moreover, under Article 2184 of the Civil Code, if the causative factor was the driver's negligence, the owner of the vehicle who was present is likewise held liable if he could have prevented the mishap by the exercise of due diligence.

5. **ID.; DAMAGES; ACTUAL DAMAGES; LOSS OF EARNING CAPACITY MUST BE ESTABLISHED BY DOCUMENTARY EVIDENCE; EXCEPTION.— Damages for loss of earning capacity is in the nature of actual damages**, which as a rule must be duly proven by documentary evidence, not merely by the self-serving testimony of the widow. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.

APPEARANCES OF COUNSEL

Lagare Law Office for petitioner.

Johnny P. Landero for respondent.

DECISION

CARPIO, *J.*:

Before the Court is a petition for review under Rule 45 of the Revised Rules of Court, assailing the 31 July 2009 Decision[2] and 27 July 2010 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 00023-MIN.

The Facts

At around 6:30 in the evening of 3 April 2000, there was a vehicular accident along the National Highway in Barangay Apopong, General Santos City, which resulted in the death of Armando Mumar (Mumar), husband of respondent Nelfa T. Mumar (respondent).

Based on the evidence presented before the Regional Trial Court (RTC) of General Santos City, one Armando Tenerife (Tenerife) was driving his Toyota Corolla sedan on the National Highway heading in the direction of Polomolok, South Cotabato. Tenerife noticed the van owned by petitioner Paulita "Edith" Serra (petitioner) coming from the opposite direction, which was trying to overtake a passenger jeep, and in the process encroached on his lane. The left side of the sedan was hit by the van, causing the sedan to swerve to the left and end up on the other side of the road. The van collided head on with the motorcycle, which was about 12 meters behind the sedan on the outer lane, causing injuries to Mumar, which eventually led to his death.

On the other hand, petitioner denied that her van was overtaking the jeepney at the time of the incident. She claimed that the left tire of Tenerife's sedan burst, causing it to sideswipe her van.

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[2] *Rollo*, pp. 39-47. Penned by Associate Justice Edgardo T. Lloren, with Associate Justice Romulo V. Borja and Associate Justice Jane Aurora C. Lantion concurring.

[3] *Id.* at 48. Penned by Associate Justice Edgardo T. Lloren, with Associate Justice Romulo V. Borja and Associate Justice Ramon Paul L. Hernando, concurring.

Consequently, the left front tire of the van also burst and the van's driver, Marciano de Castro (de Castro), lost control of the vehicle. The van swerved to the left towards Mumar's motorcycle. The impact resulted in the death of Mumar.

Subsequently, respondent filed a complaint against petitioner for Damages by Reason of Reckless Imprudence resulting to Homicide and Attachment before the General Santos City RTC.

Ruling of the Regional Trial Court

On 20 November 2003, the General Santos City RTC promulgated a judgment,[4] the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered against defendant Paulita Sierra, her co-defendant not having been served with summons because he could no longer be found, finding her liable for damages by reason of reckless imprudence, and she is hereby ordered to pay plaintiff the sum of:
>
> 1. ₱65,000.00 for burial damages;
> 2. ₱300,000.00 for loss of income;
> 3. ₱50,000.00 as moral damages; and
> 4. ₱50,000.00 as exemplary damages.
>
> SO ORDERED.[5]

The RTC found that, based on the evidence presented at the trial, at the time of impact "the van was overtaking another vehicle without due regard for the safety of others, bumped the Toyota Car (sic) and the motorcycle traveling in the right lane going to Polomolok, South Cotabato." The RTC noted that the damage to the van was located at the bumper, evincing a frontal collision, while the damage to the sedan was on the left side door and window, evincing that the van sideswiped the sedan. Likewise, the RTC found that the van encroached on the sedan

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[4] *Id.* at 65-70.

[5] *Id.* at 70.

and motorcycle's lane, in the process hitting the motorcycle, causing the injuries and subsequent death of Mumar.[6]

As to the claim for damages, the RTC said that Nelfa testified that her husband was earning about ₱6,000.00 a month without presenting any documentary evidence to prove her claim, but nonetheless awarded her ₱300,000.00 for damages due to loss of income.

Petitioner appealed the RTC ruling to the CA.

Ruling of the Court of Appeals

In its 31 July 2009 Decision, the CA denied the appeal and affirmed with modification the RTC's ruling:

> **FOR REASONS STATED**, the appeal is DENIED. The assailed Decision of the Regional Trial Court of General Santos City, 11th Judicial Region, Branch 23, in Civil Case No. 6764 is AFFIRMED with MODIFICATION in that the appellant is ordered to pay appellee the following:
>
> 1. Civil indemnity in the amount of ₱50,000.00;
>
> 2. Indemnity for loss of earning capacity in the amount of ₱1,224,000.00;
>
> 3. Temperate damages amounting to ₱25,000.00 in lieu of the award for burial expenses;
>
> 4. Moral damages in the amount of ₱50,000.00.
>
> 5. The total amount of damages shall bear an interest of 12% *per annum* from the finality of this Decision until fully paid.
>
> The awards for burial expenses and exemplary damages are deleted.
>
> SO ORDERED.[7]

The CA adopted the factual findings of the RTC. It also ruled that the RTC erred in awarding burial expenses and actual damages for loss of earning capacity despite lack of proof. Based

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[6] *Id.* at 69.

[7] *Id.* at 47.

on the wife's claim that the victim earned not less than ₱6,000.00 a month and his age at the time of death, based on his birth certificate (29), the CA applied the formula:

> Net earning capacity = 2/3 x (80 less the age of the victim at time of death) x [Gross Annual Income less the Reasonable and Necessary Living Expenses (50% of gross income)]

Using the foregoing formula, the CA awarded damages due to loss of earning capacity in the amount of ₱1,224,000.00.[8]

Likewise, the CA said that the RTC erred in not awarding civil indemnity in the amount of ₱50,000.00. The CA also awarded temperate damages of ₱25,000.00 finding that respondent spent for her husband's burial although the exact amount could not be proven.

Petitioner's Arguments

Petitioner raises the following issues:

> I. Whether or not the (sic) both the lower court and the Court of Appeals committed reversible error in finding that the incident which killed Armando Mumar was not purely accidental for which defendants may not be held liable[;]
>
> II. Whether or not both the lower court and the Court of Appeals committed reversible error in holding Editha Serra as liable for damages and in not appreciating that she was not negligent in the selection and supervision of the driver of the van, Marciano de Castro[;]
>
> III. Whether or not the Court of Appeals erred in awarding to herein respondent "loss of earning capacity" despite complete absence of documentary evidence that the deceased Mumar was self-employed and earning less than the minimum wage under current labor laws in force at the time of his death, following the ruling in *People v. Mallari, G.R. No. 145993, June 17, 2003*[.][9]

Petitioner maintains that it was Tenerife's sedan that encroached on the lane of the van after the sedan's left front tire blew out.

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[8] *Id.* at 46.

[9] *Id.* at 27.

Petitioner points out that Tenerife himself admitted that what happened was merely a "sliding collision."[10] She points out that the sedan not only cut across two lanes headed in the opposite direction, it also made a half-circle such that it stopped on the shoulder of the left side of the road (opposite its original lane), and then faced towards its origin, General Santos City. This could be for no other reason than that Tenerife completely lost control of his vehicle because the tire burst. Then, the sedan rammed into the van causing the latter's front tire to tear; thus, the van's driver also lost control of the vehicle and headed towards the opposite lane and hit Mumar. Yet, the van was still facing its destination – General Santos City. The greater damage to the van was from hitting the signboard on the side of the road and not from hitting the sedan.

Petitioner argues that the foregoing description of the events proves that it is purely accidental and without negligence on her driver's part.

Petitioner also insists that she was not negligent in the selection and supervision of the driver of the van. Respondent had the burden to prove that petitioner was negligent but failed to do so, petitioner claims.

As to the CA's award of damages due to loss of earning capacity, petitioner argues that the same has no basis. She points out that there was no documentary evidence presented or formally offered at the trial to substantiate the claim for damages due to loss of earning capacity. Likewise, petitioner further argues that, based on Nelfa's testimony that her husband was earning "not less than ₱6,000 a month," the conclusion was that he was earning not less than the minimum wage at the time of the accident.

Petitioner counters that in 2005 the minimum wage in Region XII, where the accident occurred, was ₱200.00 per day plus a cost of living allowance of ₱13.50, or ₱5,558.00 per month. Petitioner posits that it was safe to assume that at the

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[10] *Id.* at 31.

time of the accident on 3 April 2000, the minimum wage was lower than the rate in 2005.

Petitioner also argues that in Mumar's line of work – contracting and manufacturing steel grills, fences and gates – some form of documentary evidence would be available to support his widow's claim. That these were not presented in evidence would remove the claim from the exceptions to the requirement that the amount of actual damages must be duly proved.[11]

Thus, petitioner prays that the assailed CA decision and resolution be reversed and set aside. In the alternative, petitioner prays that, should the Court sustain the finding of negligence, that the award of damages for loss of earning capacity in the sum of ₱1,224,000.00 be completely deleted for lack of evidentiary basis.[12]

Respondent's Argument

In her Comment, respondent counters that petitioner raises no new matter, and the arguments are merely a rehash of those raised before the lower courts, which had already ruled on these.[13]

The Court's Ruling

The petition is partly granted. The Court affirms the decision of the CA, but modifies the award for damages.

Uniform Findings of Fact by the RTC and CA

A petition for review on *certiorari* should raise only questions of law. In resolving a petition for review, the Court "does not sit as an arbiter of facts for it is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below."[14]

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[11] *Id.* at 35.

[12] *Id.* at 36.

[13] *Id.* at 98.

[14] *Marcelo v. Bungubung*, G.R. No. 175201, 23 April 2008, 552 SCRA 589, 606 (Citations omitted); *Local Superior of the Servants of Charity (Guanellians), Inc. v. Jody King Construction & Development Corporation*, 509 Phil. 426, 431 (2005).

When supported by substantial evidence, the factual findings of the CA affirming those of the trial court[15] are final and conclusive on this Court and may not be reviewed on appeal,[16] unless petitioner can show compelling or exceptional reasons[17] for this Court to disregard, overturn or modify such findings.

In the present case, the Court notes the uniform factual findings by the RTC and CA, and petitioner has not shown compelling or exceptional reasons warranting deviation from these findings.

Both the trial court and the CA found that it was petitioner's van, then being driven by de Castro, that encroached on the sedan's lane, then hit the latter and, eventually, Mumar's motorcycle.

The Court has previously held that evidence to be worthy of credit, must not only proceed from a credible source but must, in addition, be credible in itself. The evidence must be natural, reasonable and probable as to make it easy to believe. No better test has yet been found to determine the value of the testimony of a witness than its conformity to the knowledge and common experience of mankind.[18]

Petitioner's testimony is not credible considering that she admitted that she did not see the actual bumping of the van with the sedan because "it was dark and showering."[19] When she came out of the van, she said she did not notice the sedan. She then left the scene to ask help from her brother, without even coming to the aid of her driver.[20]

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[15] *Gold Loop Properties, Inc. v. Court of Appeals*, 403 Phil. 280, 291 (2001).

[16] *Larena v. Mapili*, 455 Phil. 944, 950 (2003).

[17] *Spouses Francisco v. Court of Appeals*, 449 Phil. 632, 647 (2003).

[18] *People v. Alba*, 326 Phil. 520, 527 (1996); *Digitel Telecommunications Philippines, Inc. v. Soriano*, 525 Phil. 765, 794 (2006) citing *Daggers v. Van Dyck*, 37 N.J. Eq. 130, 132.

[19] TSN (Editha Serra), 31 October 2001, p. 8.

[20] *Id.* at 11.

Moreover, the traffic investigator's findings are more consistent with human experience.

As found by the investigator, the van ended up on the other side of the road, opposite the lane it was originally traversing. The van's forward momentum was going towards the opposite side. If indeed the van stayed on its proper lane when the sedan's tire blew out and lost control, the sedan would have bumped into the van on the latter's lane and the van would have ended up on the side of the road with the sedan. Likewise, if the van had stayed on its lane, and the impact of the sedan propelled it forward, the van would have hit the jeepney in front of it, not Mumar's motorcycle, which was on the opposite lane to the right of the sedan. The only plausible explanation is it was the van, while trying to overtake the jeepney in front of it at a fast speed, that bumped into the sedan and subsequently, Mumar's motorcycle.

Petitioner insists that the traffic investigator SPO3 Haron Abdullatip's report should be disregarded because he was not at the scene when the accident happened.

Rarely does it happen that the investigating officer personally witnesses an accident that he investigates, yet this does not mean that his observations are not valid. A traffic investigator's training and experience allow him to determine how an accident occurred even without witnessing the accident himself.

In this case, Abdullatip had been a traffic investigator for nine years.[21] Even if he arrived at the scene after the accident, he saw the vehicles in their relative positions as a result of the accident. His experience, as well as his evaluation of the statements from various witnesses, guided him in assessing who was at fault. In any case, the presumption of regularity in the exercise of functions is in his favor and therefore his report must be given credence.

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[21] TSN (Haron Abdullatip), 6 August 2001, p. 52.

Liability for Damages of Petitioner

Under Article 2180 of the Civil Code, employers are liable for the damages caused by their employees acting within the scope of their assigned tasks. Whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption that the employer failed to exercise the due diligence of a good father of the family in the selection or supervision of its employees.[22] The liability of the employer is direct or immediate. It is not conditioned upon prior recourse against the negligent employee and a prior showing of insolvency of such employee.[23]

Moreover, under Article 2184 of the Civil Code,[24] if the causative factor was the driver's negligence, the owner of the vehicle who was present is likewise held liable if he could have prevented the mishap by the exercise of due diligence.

Petitioner failed to show that she exercised the level of diligence required in supervising her driver in order to prevent the accident. She admitted that de Castro had only been her driver for one year and she had no knowledge of his driving experience or record of previous accidents. She also admitted that it was de Castro who maintained the vehicle and would even remind her "to pay the installment of the car."[25]

Petitioner also admitted that, at the time of the accident, she did not know what was happening and only knew they bumped

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[22] *Philippine Hawk Corporation v. Lee*, G.R. No. 166869, 16 February 2010, 612 SCRA 576, 588 citing *Macalinao v. Ong*, 514 Phil. 127, 142-143 (2005).

[23] *L.G. Foods Corporation v. Judge Pagapong-Agraviador*, G.R. No. 158995, 26 September 2006, 503 SCRA 170, 179 citing *Kapalaran Bus Lines v. Coronado*, 257 Phil. 797, 807 (1989).

[24] Art. 2184. In motor vehicle mishaps, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have, by the use of due diligence, prevented the misfortune. It is disputably presumed that a driver was negligent, if he had been found guilty of reckless driving or violating traffic regulations at least twice within the next preceding two months.

If the owner was not in the motor vehicle, the provisions of Article 2180 are applicable.

[25] TSN (Editha Serra), 31 October 2001, pp. 5-6.

into another vehicle when the driver shouted. She then closed her eyes and a moment later felt something heavy fall on the roof of the car. When the vehicle stopped, petitioner left the scene purportedly to ask help from her brother, leaving the other passengers to come to the aid of her injured driver.

Damages for Loss of Earning Capacity

Next, the Court holds that the CA erred in awarding damages for loss of earning capacity in the absence of documentary evidence to support the claim.

Damages for loss of earning capacity is in the nature of actual damages,[26] which as a rule must be duly proven[27] by documentary evidence, not merely by the self-serving testimony of the widow.

By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[28]

Based solely on Nelfa's testimony, the CA determined that the deceased falls within one of these exceptions. Nelfa testified that her husband was in the business of contracting and manufacturing grills, fences and gates,[29] and his earnings "exceed ₱6,000.00"[30] per month prior to his death. She presented no documentary proof of her claims.

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[26] Article 2205, Civil Code of the Philippines; *People v. Cuenca*, 425 Phil. 722, 743 (2002) citing *People v. Panabang*, 424 Phil. 596, 614 (2002).

[27] Article 2199, Civil Code of the Philippines.

[28] *Victory Liner, Inc. v. Gammad*, 486 Phil. 574, 590 (2004) citing *People v. Oco*, 458 Phil. 815, 855 (2003).

[29] TSN (Nelfa Mumar), 8 August 2001, p. 77.

[30] *Id.* at 78.

It was error for the CA to have awarded damages for loss of earning capacity based on Nelfa's testimony alone.

First, while it is conceded that the deceased was self-employed, the Court cannot accept that in his line of work there was no documentary proof available to prove his income from such occupation. There would have been receipts, job orders, or some form of written contract or agreement between the deceased and his clients when he is contracted for a job.

Second, and more importantly, decedent was not earning "less than the minimum wage" at the time of his death.

Wage Order No. RTWPB-XI-07,[31] issued by the Regional Tripartite Wages and Productivity Board-XI of the National Wages and Productivity Commission, under the Department of Labor and Employment, took effect on 1 November 1999 and mandated the minimum wage rate in Region XI, including General Santos City, at the time of the accident. Section 1 provides:

SECTION 1. NEW MINIMUM WAGE RATES. Effective November 1, 1999, the new minimum wage rates in Region XI shall be as follows:

SECTOR/INDUSTRY	Davao City General Santos City Island Garden City of Samal Tagum City	Provinces of: Davao del Norte Davao del Sur Davao Oriental Compostela Valley South Cotabato
NON-AGRICULTURE	148.00	146.00
AGRICULTURE - Plantation (*i.e.* more than 24 Hectares or employing at least 20 workers)	138.00	136.00

[31] <http://www.nwpc.dole.gov.ph/pages/download/reg_11/reg%2011% 0-%20wo%207.pdf> Accessed on 1 March 2012.

- Non-Plantation	117.00	115.00
RETAIL/SERVICE		
- Employing more than 10 workers	148.00	146.00
- Employing not more than 10 workers	117.00	115.00

Respondent testified that her husband was earning not less than ₱6,000.00 per month. On the other hand, the highest minimum wage rate at the time of the accident, based on Wage Order No. RTWPB-XI-07, was ₱148.00. At that rate, the monthly minimum wage would be ₱3,256.00,[32] clearly an amount less than what respondent testified to as her husband's monthly earnings. The deceased would not fall within the recognized exceptions.

There is therefore no basis for the CA's computation for Mumar's supposed net earning capacity and the subsequent award of damages due to loss of earning capacity.

WHEREFORE, we **GRANT IN PART** the petition. We **AFFIRM WITH MODIFICATION** the Decision of the Court of Appeals dated 31 July 2009 and Resolution dated 27 July 2010 in CA-G.R. CV No. 00023-MIN. We **ORDER** petitioner to pay respondent the following:

1. Civil indemnity of ₱50,000.00;
2. Temperate damages of ₱25,000.00, in lieu of the award for burial expenses;
3. Moral damages of ₱50,000.00; and
4. Interest on the total monetary award at the rate of 12% *per annum* from the finality of this decision until the award is fully satisfied.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

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[32] This figure was obtained by multiplying the highest minimum wage rate, ₱148, by 22, the average number of working days per month.

SECOND DIVISION

[G.R. No. 193983. March 14, 2012]

VICTORY M. FERNANDEZ, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, FORMER GOVERNOR OF THE PROVINCE OF AKLAN FLORENCIO T. MIRAFLORES, INCUMBENT GOVERNOR CARLITO MARQUEZ, and SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RONALDO V. PUNO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; GROSS NEGLIGENCE, DEFINED.—** In *Brucal v. Desierto*, we held that *gross negligence* refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.

2. **ID.; ID.; ID.; LIABILITY OF PROVINCIAL ENGINEER FOR GROSS NEGLECT OF DUTY, UPHELD; CASE AT BAR. —** Petitioner, as the provincial engineer who oversees all the infrastructure projects of the province, has direct knowledge of the status of each project's progress. Clearly, he was in a position to inform the PBAC that Jireh Construction not only had not met the required deadline of the completion of the AB Bridge Project but also had abandoned the project, with only 22.89% completion and not the 48.57% completion that petitioner had certified. Petitioner gave a false report to the PBAC when he attested that Jireh Construction had no abandoned project at the time of the bidding of the Four Projects. x x x Given the short time frame of 45 to 90 days for the completion of the projects, petitioner should have immediately reported

the poor performance of Jireh Construction to the governor. Moreover, petitioner could have recommended the take over of the construction of the projects and the termination of the contracts to prevent further loss of funds to the province. x x x In sum, the decision of the Office of the Ombudsman, as affirmed by the CA, finding petitioner equally responsible with the members of PBAC for gross neglect of duty, is correct.

3. **ID.; ID.; ID.; ID.; PROPER PENALTY.—** Pursuant to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 or the Administrative Code of 1987, gross negligence in the performance of duty is classified as a grave offense for which the penalty of dismissal is imposed. Section 9 of the said Rule likewise provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of leave credits and retirement benefits and disqualification from re-employment in government service.

APPEARANCES OF COUNSEL

Kapunan Tamano Javier & Associates for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition[1] for review on *certiorari* with application for the issuance of a temporary restraining order and writ of preliminary injunction assailing the Decision[2] dated 9 July 2010 and Resolution[3] dated 30 September 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 112515.

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

[2] *Rollo*, pp. 57-70. Penned by Justice Remedios A. Salazar-Fernando with Justices Celia C. Librea-Leagogo and Michael P. Elbinias, concurring.

[3] *Id.* at 71-72.

The Facts

On 25 November 1994, the Province of Aklan, represented by then provincial governor Corazon L. Cabagnot (Gov. Cabagnot), entered into a contract with Jireh Construction and Supply (Jireh Construction), represented by Delia Legaspi. The contract pertained to the construction of the Alibagon-Baybay Bridge (Phase II) situated in Makato, Aklan for a total contract price of ₱933,335.90 (AB Bridge Project). The contract also provided for the completion of the AB Bridge Project within 90 calendar days or on 25 February 1995. On 28 November 1994, Jireh Construction started the AB Bridge Project.

On 15 February 1995, petitioner Victory M. Fernandez (Fernandez), in his capacity as Provincial Engineer of the Province of Aklan, endorsed[4] to Gov. Cabagnot for her approval, a letter[5] dated 14 February 1995 from Jireh Construction. Jireh Construction requested for a contract time extension of 30 calendar days to complete the AB Bridge Project since the original contract period did not take into account the work stoppage caused by tide variations of the river. Basically, work on the substructure of the bridge stops temporarily when high tide comes and operations only resume after the water recedes.

On 16 February 1995, Gov. Cabagnot approved[6] the requested 30-day extension and directed Jireh Construction to exert utmost effort to complete the AB Bridge Project not later than the revised expiry date.

Meanwhile, the provincial government of Aklan launched four government infrastructure projects: (1) Alibagon-Baybay Bridge (Phase III); (2) Buruanga Fishing Port; (3) Irrigation Canal Access Road, Buruanga; and (4) Navitas Barangay Health Center, collectively known as the Four Projects.

Public bidding for the Four Projects was conducted sometime in the months of February and March 1995. Three contractors

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[4] *Id.* at 132.

[5] *Id.* at 131.

[6] *Id.* at 133.

participated in the public bidding: (1) Jireh Construction, (2) Geovan Marketing, and (3) Interior Construction. After the submission and evaluation of the bids, the Pre-Qualification Bids and Awards Committee (PBAC) awarded the construction of the Four Projects to Jireh Construction, as the best qualified bidder with the bid most advantageous to the government. The details of the public bidding are as follows:

Name of Project	Date of bidding	Date of award	Contract Cost (₱)
Alibagon-Baybay Bridge (Phase III)	24 February 1995	24 February 1995	975,151.38
Buruanga Fishing Port	28 February 1995	1 March 1995	965,420.49
Irrigation Canal Access Road, Buruanga	7 March 1995	8 March 1995	956,733.92
Navitas Barangay Health Center	15 March 1995	16 March 1995	294,469.45

After the 1995 local elections, respondent Governor Florencio T. Miraflores (Gov. Miraflores) replaced Gov. Cabagnot. Gov. Miraflores issued Memorandum No. 004[7] dated 5 July 1995 addressed to Fernandez:

Having just assumed office as chief executive of the Province, it is imperative that the undersigned should take an inventory of the financial condition of the provincial government. This includes, among others, being oriented and apprised of the status of all infrastructure projects being implemented by the province through that department.

In view hereof, you are hereby directed to temporarily suspend the implementation of all infrastructure projects under your department's supervision and control, until such time when their status shall have been appropriately assessed by the undersigned, and an order to resume work to such projects shall have been issued by this office.

For strict compliance.

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[7] *Id.* at 134.

The implementation of the AB Bridge Project and the Four Projects awarded to Jireh Construction was suspended as a result of the Memorandum issued by Gov. Miraflores.

On 8 and 10 November 1995, the Commission on Audit (COA) conducted an audit and ocular inspection of Aklan's pending government projects. The COA auditors found that Jireh Construction had abandoned the construction of the AB Bridge Project and the Four Projects. All five projects were incomplete and could not be used for their designated purpose at their current state of completion. The details[8] are as follows:

Name of Project	Number of Days to be Completed	Date Started	Expected Date of Completion	Accomplishment as of	Percentage of Completion
Alibagon-Baybay Bridge (Phase II)	90	11/28/94	02/25/95	12/19/94	22.89
Alibagon-Baybay Bridge (Phase III)	90	05/12/95	06/13/95	11/08/95	0
Buruanga Fishing Port	75	03/02/95	05/15/95	03/14/95	58.09
Irrigation Canal Access Road, Buruanga	90	03/10/95	06/07/95	04/25/95	81.70
Navitas Barangay Health Center	45	03/17/95	04/30/95	03/23/95	45.27

The Summary of Actual Accomplishment and Costing[9] as of 30 June 1995 submitted and certified by Fernandez showed that the AB Bridge Project was already almost halfway completed with an accomplishment rating of 48.57%. However, the COA auditors found the AB Bridge Project to be only 22.89%[10] completed based on the Statement of Time Elapsed and Percentage Accomplishment dated 20 December 1994. The

[8] CA *rollo*, p. 66.

[9] *Rollo*, p. 137.

[10] CA *rollo*, p. 66.

auditors stated that about nine months after the AB Bridge Project was supposed to have been completed on 25 February 1995, the project: (1) had an unaccomplished portion of 77.11%, and (2) no further work was made after 19 December 1994. The auditors added that despite the unsatisfactory performance of Jireh Construction on the AB Bridge Project, the PBAC still recommended the awarding of the Four Projects to the same contractor.

Moreover, the COA auditors found that the provincial government did not take any action against Jireh Construction. The COA stated that the officers in charge of the AB Bridge Project and the Four Projects failed to: (1) make an inventory of the project accomplishments; (2) take over the construction and complete the unfinished portion to preserve the accomplishments already made; (3) forfeit the performance bonds; and (4) serve notices of rescission or termination of the contracts awarded to Jireh Construction.

At the time of the COA audit, the Province of Aklan had already paid ₱1,624,255.61[11] to Jireh Construction for the five projects. The COA auditors recommended the filing of a case for neglect of duty against: (1) the PBAC officers who awarded the Four Projects to Jireh Construction despite their knowledge that Jireh Construction had already abandoned the construction of the AB Bridge Project; and (2) other responsible government officers who were remiss in their duties to report the matter of abandonment of all five projects and to take any action against Jireh Construction.

On 10 November 2003, Gov. Miraflores, in his capacity as then provincial governor of Aklan and relying on the findings of the COA auditors, filed with the Office of the Ombusman (Visayas) an administrative complaint[12] for gross neglect of duty against Evan L. Timtiman (Timtiman), as Provincial Treasurer and regular member of the PBAC. In the Complaint, Gov. Miraflores stated that Timtiman's acts: (1) of awarding the Four

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[11] *Rollo*, p. 111.

[12] CA *rollo*, pp. 75-77.

Projects to a contractor who had abandoned the AB Bridge Project; and (2) of participating in the payment of government funds amounting to ₱1,624,255.61 to the same contractor for the five projects, caused undue injury to the provincial government. Gov. Miraflores stated that such acts are punishable under Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt and Practices Act.[13]

Aside from Timtiman, the Office of the Ombudsman impleaded in the criminal case[14] six other persons working under the provincial government: (1) Liberato R. Ibadlit, PBAC member and former Vice-Governor; (2) Aniceto A. Fernandez, PBAC member and former *Sangguniang Panlalawigan* member; (3) Victory M. Fernandez, Provincial Engineer; (4) Felicisimo Y. Tanumtanum, Jr., Engineer IV; (5) Reynaldo B. Dionisio, Engineer II and Project Engineer handling the construction of the Buruanga Fishing Port and Irrigation Canal Access Road; and (6) Jose Amboboyong, Project Engineer handling the construction of the Alibagon-Baybay Bridge (Phases II and III).

The PBAC members as well as the other government officers were impleaded as respondents for (1) awarding the Four Projects to Jireh Construction despite their knowledge that Jireh Construction poorly performed and had abandoned the AB Bridge Project, and (2) not taking any action against Jireh Construction and not compelling it to continue and complete the projects.

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[13] Section 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[14] Docketed as OMB-V-A-03-0676-K.

The COA submitted the following documentary evidence: (1) certified true copy of SAO Report No. 95-45 dated 23 June 1997, the complete report on the results of the audit of the Province of Aklan; (2) copy of the Joint Affidavit of the COA Auditors who conducted the audit attesting to the audit findings embodied in SAO Report No. 95-45; and (3) certified true copies of disbursement vouchers for all five projects.

In a Decision dated 31 March 2006, the Office of the Ombudsman (Visayas) found Fernandez and his co-respondents administratively liable. The Ombudsman stated that the complaint was premised on the respondents' act of awarding government projects to an incompetent contractor, who at the time of the bidding had an unsatisfactory performance on another project with the same local government and had abandoned such project. This act amounted to manifest partiality or gross inexcusable negligence, or both.

The Ombudsman also found that Fernandez was the one who presented documents to the PBAC showing that Jireh Construction did not have any abandoned project at the time of the bidding for the Four Projects. Thus, the Ombudsman held Fernandez equally liable with the members of the PBAC for gross neglect of duty. Further, the Ombudsman stated that Fernandez and his fellow engineers did not bring to the attention of the provincial governor that Jireh Construction had already abandoned the construction of the five projects. The Ombudsman added that they were duty-bound not only to implement the projects assigned to them but also to protect the interest of the government. The dispositive portion of the decision states:

> WHEREFORE, premises considered, respondents ANICETO A. FERNANDEZ, LIBERATO R. IBADLIT and EVAN L. TIMTIMAN, PBAC members, VICTORY M. FERNANDEZ, Provincial Engineer, and JOSE AMBOBOYONG, Project Engineer (Construction of Alibagon-Baybay Bridge Phases II & III), all of the Provincial Government, Province of Aklan, are hereby found guilty of GROSS NEGLECT OF DUTY and meted the penalty of DISMISSAL FROM SERVICE with all the accessory penalties attached thereto.

Respondents FELICISIMO Y. TANUMTANUM, Engineer IV and REYNALDO B. DIONISIO, Project Engineer (Construction of Irrigation Canal Access Road and Construction of Buruanga Fishing Port), of the same office, are found guilty of SIMPLE NEGLECT OF DUTY and meted the penalty of ONE (1) MONTH SUSPENSION WITHOUT PAY.

Considering, however, that respondents LIBERATO R. IBADLIT, FELICISIMO Y. TANUMTANUM and JOSE AMBOBOYONG (deceased), as records reveal, are no longer connected with the government service, the penalty of Dismissal from Service shall be considered as already implemented. Respondent Ibadlit's term as Vice-Governor of the Province of Aklan ended in the year 1995. Respondent Tanumtanum retired from the government service on September 30, 1995. While the orders/notices addressed to respondent Amboboyong were returned to this Office with a notation "Addressee Deceased." This notation was verified by Mr. Federico C. Peare, Jr., Postmaster, Kalibo, Aklan.

Let a copy of this Decision form part of the service record of the said respondents.

SO DECIDED.[15]

Fernandez, Timtiman and Dionisio filed a Motion for Reconsideration[16] dated 4 October 2007 with the Office of the Ombudsman (Visayas). In an Order dated 11 August 2008, the Office of the Ombudsman denied the motion.

Fernandez filed a petition[17] for review under Rule 43 with the Court of Appeals (CA).

In a Decision dated 9 July 2010, the CA found no reversible error by the Office of the Ombudsman in finding Fernandez guilty of gross neglect of duty. The dispositive portion states:

WHEREFORE, premises considered, the instant petition for review is hereby DENIED and ordered DISMISSED.

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[15] *Rollo*, pp. 123-124.

[16] CA *rollo*, pp. 81-91.

[17] *Id.* at 3-25.

SO ORDERED.[18]

Fernandez filed a motion for reconsideration which the CA denied in a Resolution dated 30 September 2010.

Fernandez then filed a petition for review with this Court. In a Resolution[19] dated 13 December 2010, we issued a temporary restraining order, effective immediately and continuing until further orders from this Court, enjoining respondents, their representatives or other persons acting on their behalf from proceeding with the execution of the Decision dated 31 March 2006 and Order dated 11 August 2008 of the Office of the Ombudsman (Visayas).

The Issue

The main issue is whether the CA committed a reversible error in affirming the decision of the Office of the Ombudsman in finding petitioner guilty of gross neglect of duty and dismissing him from service.

The Court's Ruling

The petition lacks merit.

Petitioner Fernandez insists that he was administratively charged for stating in the report he submitted to the PBAC that "Jireh Construction had no abandoned project" at the time of the bidding for the Four Projects. Petitioner states that he cannot be faulted for issuing such a statement since the bidding for the Four Projects occurred in the months of February and March 1995. At the time, the construction of the AB Bridge Project was still ongoing based on the request for extension by Jireh Construction and later approved by the provincial governor. Petitioner asserts that he was not in a position to say that Jireh Construction was not eligible to bid and to be awarded the Four Projects. Further, petitioner maintains that the COA auditors failed to consider that the provincial governor, in issuing Memorandum Order No. 004, ordered the temporary suspension of all infrastructure projects handled by the provincial government.

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[18] *Rollo*, pp. 69-70.

[19] *Id.* at 146.

As a result, the implementation of all projects including the AB Bridge Project and the Four Projects had to stop.

In the present case, Jireh Construction started work on the AB Bridge Project on 28 November 1994. The contract provided that the bridge should be completed within 90 calendar days or specifically on 25 February 1995. However, due to some unforeseen circumstances, Jireh Construction requested for an extension of 30 calendar days to complete the project. The provincial governor promptly approved the 30-day extension. At the time of the bidding for the Four Projects, held on 24 February, 28 February, 7 March and 15 March 1995, the completion period for the AB Bridge Project had not yet expired due to the 30-day extension. The 30-day extension meant that the construction of the bridge was supposed to have been completed on 27 March 1995, twelve days after the completion of all the bidding for the Four Projects.

However, petitioner based his premise that the construction of AB Bridge Project was ongoing during the bidding of the Four Projects on two grounds: (1) the request for 30-day extension by Jireh Construction, and (2) the approval of the extension by the governor. Petitioner did not submit any other evidence to show that the construction of the AB Bridge Project took place continuously and without interruption. It must be remembered that when the COA auditors inspected and audited the AB Bridge Project in November 1995, they found that only 22.89% of the bridge had been constructed based on the Statement of Time Elapsed and Percentage Accomplishment dated 20 December 1994. **From 20 December 1994, the COA auditors found that no further work was made**. Thus, regardless of the 30-day extension to complete the AB Bridge Project, it is clear that Jireh Construction abandoned the construction of the AB Bridge Project since 20 December 1994.

Petitioner, as the provincial engineer who oversees all the infrastructure projects of the province, has direct knowledge of the status of each project's progress. Clearly, he was in a position to inform the PBAC that Jireh Construction not only had not met the required deadline of the completion of the AB Bridge

Project but also had abandoned the project, with only 22.89% completion and not the 48.57% completion that petitioner had certified. Petitioner gave a false report to the PBAC when he attested that Jireh Construction had no abandoned project at the time of the bidding of the Four Projects. As correctly observed by the CA in its 9 July 2010 decision:

> As provincial engineer, petitioner Fernandez could not have been unaware of the fact that no further work had been conducted at the Alibagon-Baybay Bridge Project (Phase II) after December 19, 1994. That no further work was conducted thereon after that date could only mean that the project was already deemed abandoned. Considering petitioner Fernandez's claim that he had been regularly performing his assigned tasks by supervising the implementation of the project, he cannot feign ignorance about the fact that Jireh Construction had an ongoing abandoned project at the time of the conduct of the bidding of the four projects.
>
> Even with the approved extension, petitioner's unusual silence in not informing the PBAC about the fact that only 22.89% of the ongoing project of Jireh Construction was completed and that no further work was conducted therein after December 19, 1994 could amount to no other but gross negligence. With only 22.89% of the project completed as of March 1995, petitioner Fernandez, as provincial engineer, could not have been ignorant about the necessity of such information to the PBAC in evaluating the qualifications of Jireh Construction. Indeed, as found by respondent Office of the Ombudsman, petitioner Fernandez supplied documents to the PBAC which were relied upon by its members in evaluating the qualifications of Jireh Construction. In giving Jireh Construction a "clean bill," so to speak, petitioner Fernandez committed a flagrant and palpable omission which caused undue injury to the government.[20]

It is sufficiently evident that petitioner was grossly negligent in failing to give a complete and truthful report to the PBAC of Jireh Construction's actual progress and abandonment of the AB Bridge Project, which could have been a crucial element in awarding the Four Projects to a qualified and capable contractor. Also, petitioner had been remiss in his duties to monitor slippages of Jireh Construction's performance and to take the necessary

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

steps to ensure minimal loss to the provincial government. Given the short time frame of 45 to 90 days for the completion of the projects, petitioner should have immediately reported the poor performance of Jireh Construction to the governor. Moreover, petitioner could have recommended the take over of the construction of the projects and the termination of the contracts to prevent further loss of funds to the province.

In *Brucal v. Desierto*,[21] we held that *gross negligence* refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.[22] In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[23]

Petitioner further asserts that Memorandum No. 004 was the reason for the non-completion of the projects and not because of the abandonment of the projects by Jireh Construction.

Petitioner's contention must fail.

Gov. Miraflores issued Memorandum No. 004 on 5 July 1995 or more than 3 months after the AB Bridge Project was supposed to have been completed on 27 March 1995, the extended completion date. The report submitted by the COA indicated the following expected dates of completion for the five projects:

Project	Expected Date of Completion
Alibagon-Baybay Bridge (Phase II)	25 February 1995
Alibagon-Baybay Bridge (Phase III)	13 June 1995
Buruanga Fishing Port	15 May 1995
Irrigation Canal Access Road, Buruanga	7 June 1995
Navitas Barangay Health Center	30 April 1995

[21] 501 Phil. 453, 465-466 (2005).

[22] *Id.*, citing *De la Victoria v. Mongaya*, 404 Phil. 609, 619-620 (2001).

[23] *Id.*, citing *Quibal v. Sandiganbayan*, 314 Phil. 66, 77 (1995).

The AB Bridge Project and the Four Projects were supposed to be completed before July 1995. Thus, even before the issuance of Memorandum Order No. 004, all five projects of Jireh Construction were still unfinished and in various stages of completion to the detriment of the Province of Aklan.

In sum, the decision of the Office of the Ombudsman, as affirmed by the CA, finding petitioner equally responsible with the members of PBAC for gross neglect of duty, is correct. Pursuant to Section 23, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 or the Administrative Code of 1987, gross negligence in the performance of duty is classified as a grave offense for which the penalty of dismissal is imposed. Section 9 of the said Rule likewise provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of leave credits and retirement benefits and disqualification from re-employment in government service.[24]

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 9 July 2010 and Resolution dated 30 September 2010 of the Court of Appeals in CA-G.R. SP No. 112515. The temporary restraining order issued on 13 December 2010 is hereby lifted.

SO ORDERED.

Brion, Perez, Sereno, and *Reyes, JJ.,* concur.

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[24] *Astillazo v. Jamlid*, 342 Phil. 219, 237-238 (1997).

FIRST DIVISION

[G.R. No. 195546. March 14, 2012]

GOODLAND COMPANY, INC., *petitioner, vs.* **ASIA UNITED BANK, CHRISTINE T. CHAN, FLORANTE DEL MUNDO, ENGRACIO M. ESCASINAS, JR., in his official capacity as Clerk of Court & Ex-Officio Sheriff in the Regional Trial Court of Makati City, NORBERTO B. MAGSAJO, in his official capacity as Sheriff IV of the Regional Trial Court of Makati City, and RONALD A. ORTILE, in his official capacity as the Register of Deeds for Makati City,** *respondents.*

[G.R. No. 195561. March 14, 2012]

GOODLAND COMPANY, INC., *petitioner, vs.* **ASIA UNITED BANK, ABRAHAM CO, ATTY. JOEL T. PELICANO and THE REGISTER OF DEEDS OF MAKATI CITY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELEMENTS.—** There is forum shopping when the following elements 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[,] such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites [are] also constitutive of the requisites for *auter action pendant* or *lis pendens.*" The essence of forum shopping is the filing of *multiple suits* involving the same parties for the same cause of action, *either simultaneously or successively,* for the purpose of obtaining a favorable judgment, through means other than by appeal or *certiorari*.

2. ID.; ID.; ID.; IDENTITY OF CAUSE OF ACTION; EXISTS WHERE THE SAME EVIDENCE WOULD SUPPORT AND ESTABLISH BOTH THE PRESENT AND FORMER ACTION; CASE AT BAR.— [A] cause of action, a cause of action is defined in Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another. This Court has laid down the test in determining whether or not the causes of action in the first and second cases are identical, to wit: would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action. In the first case, petitioner alleged the fraudulent and irregular execution and registration of the REM which violated its right as owner who did not consent thereto, while in the second case petitioner cited further violation of its right as owner when AUB foreclosed the property, consolidated its ownership and obtained a new TCT in its name. Considering that the aforesaid violations of petitioner's right as owner in the two cases both hinge on the binding effect of the REM, *i.e.,* both cases will rise or fall on the issue of the validity of the REM, it follows that the same evidence will support and establish the first and second causes of action. The procedural infirmities or non-compliance with legal requirements for extrajudicial foreclosure raised in the second case were but additional grounds in support of the injunctive relief sought against the foreclosure which was, in the first place, illegal on account of the mortgage contract's nullity. Evidently, petitioner never relied solely on the alleged procedural irregularities in the extrajudicial foreclosure when it sought the reliefs in the second case.

3. ID.; ID.; ID.; EXISTS WHERE THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT.— Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the action under consideration. *Litis pendentia* is a Latin term, which literally means "a pending suit" and is variously referred to in some decisions as *lis pendens* and *auter action pendant.* As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against

multiplicity of suits. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. x x x What is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different *fora* upon the same issues.

APPEARANCES OF COUNSEL

Belo Gozon Parel Asuncion & Lucila and *Mondragon & Montoya Law Offices* for Goodland Company, Inc.

Zamora Poblador Vasquez & Bretaña for Asia United Bank, Abraham Co, *et al*.

D E C I S I O N

VILLARAMA, JR., *J*.:

These consolidated petitions for review on *certiorari* filed under Rule 45 by one and the same party (Goodland Company, Inc.) both assail the Decision[1] dated September 15, 2010 and Resolution[2] dated January 31, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 90418.

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[1] *Rollo* (G.R. No. 195546), pp. 60-79. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon concurring.

[2] *Id.* at 81-82.

Factual Antecedents

Sometime in July 1999, petitioner Goodland Company, Inc. (petitioner) mortgaged its two parcels of land situated in Sta. Rosa, Laguna and covered by Transfer Certificate of Title (TCT) Nos. 321672 and 321673 ("Laguna Properties"). The Third Party Real Estate Mortgage (REM) secured the loans extended by respondent Asia United Bank ("AUB") to Radio Marine Network (Smartnet), Inc. (RMNSI), doing business as Smartnet Philippines,[3] under the latter's Php250 million Omnibus Credit Line with AUB.

In addition to the aforesaid collaterals, petitioner executed a Third Party REM over its 5,801-square meter property located at Pasong Tamo St., Makati City ("Makati Property") covered by TCT No. 114645. The REMs, both signed by Gilbert G. Guy, President of Goodland Company, Inc., were duly registered by AUB with the Registry of Deeds for Calamba, Laguna and Registry of Deeds for Makati City, and annotated on the said titles.

Subsequently, however, petitioner repudiated the REMs by claiming that AUB and its officers unlawfully filled up the blank mortgage forms and falsified the entries therein. The Laguna properties were the subject of two suits filed by petitioner to forestall their imminent foreclosure, and similar actions were likewise instituted by petitioner involving the Makati property which is the subject of the present case.

Laguna Properties[4]

On January 16, 2003, petitioner filed a complaint for annulment of mortgage before the Regional Trial Court (RTC) of Biñan,

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[3] Business name registered with the Department of Trade and Industry (DTI), *rollo* (G.R. No. 195561), pp. 159-160.

[4] Factual antecedents with respect to the Laguna Properties were culled from this Court's Decisions in *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 190231, December 8, 2010, 637 SCRA 691 and *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011, 645 SCRA 205.

Laguna, Branch 25, docketed as **Civil Case No. B-6242**, on the ground that said REM was falsified and in contravention of the parties' agreement that the blank mortgage form would merely serve as "comfort document" and not to be registered by AUB. While said case was pending, RMNSI/Smartnet defaulted on its loan obligation, which prompted AUB to exercise its right under the REM by filing on October 19, 2006 an application for extrajudicial foreclosure of real estate mortgage under Act 3135, as amended, with the Office of the Executive Judge of the RTC of Biñan, Laguna. In the public auction sale, AUB emerged as the highest bidder and was issued a Certificate of Sale which was registered with the Registry of Deeds of Calamba on November 23, 2006.

Prior to the consolidation of title in the foreclosing mortgagee (AUB), petitioner commenced a second suit on November 28, 2006 in the RTC of Biñan, Branch 25, docketed as **Civil Case No. B-7110**. The complaint sought to annul the foreclosure sale and enjoin the consolidation of title in favor of AUB, on the ground of alleged falsification of the REM.

On December 11, 2006, respondents moved to dismiss Civil Case No. B-7110, calling the attention of the RTC to petitioner's forum shopping in view of the pendency of Civil Case No. B-6242. They argued that the two cases were anchored on the alleged falsification of the REM as basis for the reliefs sought. The RTC granted the said motion on March 15, 2007 and dismissed with prejudice Civil Case No. B-7110 on grounds of forum shopping and *litis pendentia.* Said court explained that the injunction case (B-7110) and annulment case (B-6242) were founded on the same transactions, same essential facts and circumstances, and raise substantially the same issues. That petitioner additionally prayed for a writ of preliminary injunction did not affect the similarity of the two cases; petitioner could have prayed for injunctive relief as ancillary remedy in the annulment case. It was also stated that the judgment in the annulment case on the validity of the REM would constitute *res judicata* on the injunction case.

On March 15, 2007, the RTC granted AUB a writ of possession over the foreclosed properties. The writ was issued on March 26, 2007 and AUB obtained possession of the properties on April 2, 2007.

On August 16, 2007, the RTC dismissed Civil Case No. B-6242 on motion of respondents. Said court likewise noted that the allegations and reliefs sought by petitioner were identical with those in Civil Case No. B-7110, and that petitioner did not inform the court that it filed Civil Case No. B-7110.

Petitioner appealed both dismissals to the CA, the separate appeals it filed were docketed as **CA-G.R. CV No. 90114** (injunction case) and **CA-G.R. CV No. 91269** (annulment case).

On June 5, 2009, the CA granted the appeal in CA-G.R. CV No. 90114 and reversed the RTC's order dated March 15, 2007. It ordered the reinstatement of petitioner's complaint in Civil Case No. B-7110.[5] Respondents filed a motion for reconsideration which was denied in a resolution[6] dated February 17, 2010.

In a decision dated August 11, 2009, petitioner's appeal in CA-G.R. CV No. 91269 was likewise granted, which effectively reinstated Civil Case No. B-6242. Respondents moved for reconsideration but the same was denied in a resolution dated November 10, 2009.

Respondents elevated to this Court the CA's reversal of the RTC's dismissal orders, in separate petitions for review under Rule 45, docketed as **G.R. No. 190231** (CA-G.R. CV No. 91269) and **G.R. No. 191388** (CA-G.R. CV No. 90114).

On December 8, 2010, this Court's First Division granted the petition in **G.R. No. 190231**, reversing and setting aside

[5] *Rollo* (G.R. No. 195546), pp. 689-705. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr. concurring.

[6] *Id.* at 707-712. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Japar B. Dimaampao and Normandie B. Pizarro concurring.

the decision dated August 11, 2009 and resolution dated November 10, 2009 of the CA, and reinstating the August 16, 2007 and December 5, 2007 orders of the RTC which dismissed Civil Case No. B-6242. Petitioner filed a motion for reconsideration but the same was denied with finality in the Court's Resolution[7] dated January 19, 2011.

On March 9, 2011, this Court's First Division likewise granted the petition in **G.R. No. 191388** (CA-G.R. CV No. 90114), reversing and setting aside the decision dated June 5, 2009 and resolution dated February 17, 2010 of the CA. The Court ordered the reinstatement of the March 15, 2007 order of the RTC dismissing Civil Case No. B-7110.

Makati Property

Petitioner filed the first suit assailing the REM over its property covered by TCT No. 114645 on January 17, 2003, docketed as **Civil Case No. 03-045** of the RTC of Makati City, Branch 56. The Complaint[8] against AUB, Abraham Co (AUB President), Atty. Joel T. Pelicano and the Register of Deeds of Makati City alleged that sometime in March 2000, in compliance with the requirements of AUB, and by way of accommodation as security for the loan of Smartnet Philippines, Inc. (SPI), Mr. Gilbert G. Guy signed the blank REM deed with the understanding that the document shall not be completed and not to be registered with the Register of Deeds as it would only serve as comfort document to prove petitioner's willingness to execute a REM in the future if so demanded by AUB and agreed upon by Smartnet. In contravention of such agreement and despite the fact that no notary public was present when Mr. Guy signed the REM, AUB and its officers made it appear that the REM dated February 29, 2000 with the stated consideration of Php202 million was duly completed and notarized, and was subsequently registered with the Register of Deeds. Disparities in the copy of the REM on file with the Office of the Clerk of Court of

[7] *Id.* at 1108.

[8] *Id.* at 241-256.

Pasig City were likewise discovered by petitioner (community tax certificates used were issued in 2001). On January 29, 2002, petitioner sent its written objections to the spurious REM and demanded from AUB its immediate cancellation. Upon request of petitioner, the National Bureau of Investigation also investigated the falsification and found forgery in the signature of respondent Pelicano (Notary Public).

Petitioner further claimed that it learned from Smartnet that the latter never obtained any peso-denominated loan from AUB, as all its loans for working capital were in clean Japanese Yen loans. Being a falsified document, the subsequent annotation of the REM on the title of petitioner subjected the latter to an encumbrance never intended nor consented to by petitioner as owner, and consequently to the risk of foreclosure at the behest of AUB. Petitioner also alleged bad faith on the part of AUB and Co in the fraudulent execution and registration of the REM without its knowledge and consent, while respondent Pelicano's acknowledgment on the spurious REM is a violation of his duties as a notary public and made him a party to the fraudulent act.

Petitioner thus prayed for the following reliefs:

1. the Deed of Real Estate Mortgage dated February 29, 2000 be declared null and void, and accordingly cancelled;

2. the annotation of real estate mortgage on TCT-114645 under Entry No. 53584 be cancelled, and that defendants AUB and Co be ordered to surrender the said titles to plaintiff Goodland;

3. defendants AUB, Abraham Co, and Joel T. Pelicano be adjudged jointly and severally liable to plaintiff Goodland the sum of PhP5,000,000.00 as actual damages, PhP1,000,000.00 as attorney's fees and PhP1,000,000.00 as expenses of litigation;

4. defendants AUB and Abraham Co be adjudged jointly and severally liable to pay plaintiff Goodland the sum of PhP2,000,000.00 as exemplary damages; and

5. defendant Joel T. Pelicano, be adjudged liable to pay plaintiff Goodland the sum of ₱1,000,000.00 as exemplary damages;

Plaintiff prays for cost of suit and for such further or other reliefs and remedies just or equitable under the premises.[9]

On November 30, 2006, petitioner filed the second case against herein respondents AUB and its officers Christine T. Chan, Florante Del Mundo, Engracio M. Escasinas, Jr. (RTC of Makati City Clerk of Court and Ex-Officio Sheriff), Norberto B. Magsajo (Sheriff IV) and Ronald A. Ortile (Register of Deeds for Makati City), docketed as **Civil Case No. 06-1032** of RTC of Makati City, Branch 145. Whereas the earlier case (Civil Case No. 03-045) sought the annulment of the REM based on alleged irregularities in its execution, Civil Case No. 06-1032 prayed for injunctive relief and/or nullification of the extrajudicial foreclosure sale which petitioner alleged to be procedurally and legally defective on account of the following:

1. The annotation of the falsified Third Party MORTGAGE was contrary to and in violation of the express agreement of defendant AUB and plaintiff GOODLAND;
2. The Extra-Judicial Foreclosure is **null and void** as it is based on a null and void registration/annotation of a **falsified** Real Estate Mortgage;
3. Defendant AUB's insistence on conducting the foreclosure despite the pendency of the annulment case betrays the utter bad faith and malicious intent of defendant AUB;
4. The foreclosure is for an alleged unpaid obligation of RMNI which is **not secured** by the subject Third Party MORTGAGE;
5. **No demands** for payment were made by defendant AUB on SPI;
6. The publication of the subject *"Notice of Sheriff's Sale"* in "**The Foreign Post**", which is **not** a *"newspaper of general circulation"*, is **null** and **void** as it does not comply with the strict and mandatory requirements of the law (Section 3 Act No. 3135, as amended).
7. The provision on redemption in the General Banking Law of 2000 (R.A. No. 8791), that is, Section 47 (par. 2) thereof,

[9] *Id.* at 254-255.

> is unconstitutional on the ground that it violates the constitutional right of plaintiff GOODLAND to equal protection of the laws under Sec. 1, Art. III of the Constitution. It also violates the prohibition against impairment of the obligations of contracts stipulated in Sec. 10, Art. III of the Constitution because it takes away from plaintiff GOODLAND the vested one-year redemption period under the existing law (Sec. 6 of Act No. 3135) at the time of the delivery of the subject Third Party MORTGAGE to defendant AUB in June 1999. The **one (1) year** redemption period of plaintiff GOODLAND under Sec. 6 of Act No. 3135 was drastically reduced to a **maximum** of **three (3) months** only to as short as **twenty-four (24) hours**, as what happened in the other foreclosure conducted by defendant AUB on the Sta. Rosa, Laguna properties of plaintiff GOODLAND.[10] (Emphasis and italics in the original.)

In addition to the issuance of a temporary restraining order (TRO) and writ of preliminary injunction to be made permanent after trial, petitioner specifically prayed that judgment be rendered in its favor and against the respondents, as follows:

> (1) Declaring the *annotation* and *registration* of the subject Third Party MORTGAGE with the Registry of Deeds of Makati City as *null* and *void* and of no legal force and effect;
>
> (2) In the event that a valid and legal auction sale be already conducted, declaring that the foreclosure proceeding/sale of the subject mortgaged property and/or the Certificate of Sale issued in favor of the winning bidder, as *null* and *void* and of no legal force and effect;
>
> (3) In the event that plaintiff GOODLAND's title to the subject property be already cancelled and the title was already consolidated or a new title already issued in favor of the winning bidder, declaring the said cancellation of title and consolidation of title and issuance of new title in the name of the winning bidder, as *null* and *void,* and ordering the *cancellation* of the said invalidly issued new title in the name of the winning bidder and likewise ordering the *issuance* of new title in the name of plaintiff GOODLAND;

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[10] *Id.* at 102-103.

(3) *In the alternative*, in the event that the Honorable Court finds the foreclosure proceedings as proper, valid and legal, declaring that Section 47 (par. 2) of the General Banking Law of 2000 (R.A. No. 8791) is *unconstitutional*, and granting plaintiff GOODLAND the right to redeem the mortgaged properties in accordance with the provisions of Sec. 6 of Act No. 3135;

(4) Ordering defendants AUB, Christine T. Chan and Florante del Mundo to, jointly and severally, pay plaintiff GOODLAND the following amounts, to wit:

(A) Actual and compensatory damages in the amount of not less than Four Million Pesos (₱4,000,000.00);

(B) Exemplary damages in the amount of not less than One Million Pesos (₱1,000,000.00);

(C) Attorney's fees in the amount of Five Hundred Thousand Pesos (₱500,000.00);

(D) Litigation expenses; and,

(E) Costs of suit.[11]

On December 13, 2006, the RTC issued an Order[12] denying petitioner's application for the issuance of a writ of preliminary injunction, as well as respondents' motion to dismiss based on forum shopping, non-payment of correct docket fees and failure to state a cause of action. However, the court reserved the issuance of the corresponding order requiring petitioner to pay the appropriate docket fees after respondents shall have submitted what they believed should have been the correct computation thereof.

Respondents filed their Answer *Ad Cautelam*[13] denying the allegations of the complaint regarding the fraudulent execution and registration of the REM and the loan obligation it secured, irregularities in the conduct of the extrajudicial foreclosure sale,

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[11] *Id.* at 104-105.

[12] *Id.* at 323-325. Penned by Judge Cesar D. Santamaria.

[13] *Id.* at 258-321.

and that their acts were done in bad faith. They asserted that: (1) Based on representations by Mr. Gilbert Guy, RMNSI, Smartnet Philippines and SPI operate under one and the same entity, all being businesses of Mr. Guy and hence, "Smartnet Philippines" undoubtedly refers to RMNSI which has an authorized capital stock of Php400 million and an Omnibus Credit Line with AUB, while SPI, a corporate shell created by Mr. Guy, has an authorized capital stock of only Php1 million and has not been granted any credit facility by AUB; (2) the mortgage deed states that the debtor is Smartnet Philippines, the DTI-registered name of RMNSI, as also with the Secretary's Certificate of petitioner in connection with the authority to use the Makati property as security for the loan obligation of RMNSI, and the promissory notes involved in the foreclosure application; (3) There was never any understanding not to complete or register the REM document as AUB would not have approved the loans if not for the security offered by petitioner; Mr. Guy himself transmitted the REM he signed, which was not a blank document, and petitioner knew from the start the registration of the REM was forthcoming after its due execution by Mr. Guy, as the same would be in the normal course of business of AUB; (4) The same facts obtain in connection with the mortgage of petitioner's Laguna Properties; (5) The REM was valid and binding, the property covered thereby may be validly foreclosed; respondents have not performed any irregularity or violation of law, and have neither engaged in any fraudulent, malicious and abusive conduct or transaction; it was petitioner and Mr. Guy who had conspired to defraud AUB by, among others, denying the validity and due execution of the REM; (6) AUB complied with the legal requirements for the extrajudicial foreclosure of the subject property including the public auction held on December 4, 2006 conducted by Sheriff Magsajo in the presence of a representative of petitioner who did not bid, and accordingly AUB consolidated its ownership over the foreclosed property sold to it as the highest bidder, with the issuance of TCT No. 223120 in its name as the new absolute owner; and (7) Considering that the extrajudicial foreclosure

was admittedly an exercise by AUB of its right as an unpaid and aggrieved creditor-mortgagee, the same may not legally rise to any liability for damages in favor of petitioner, in the exercise of such right, AUB committed no irregularity, bad faith, fraud or malicious action.

Respondents contended that petitioner is guilty of forum shopping, as it has previously filed a case for the annulment of the REM (Civil Case No. 03-045) which is pending before Branch 56. Said case was based on the same cause of action, that is, petitioner's perceived irregularities in the execution and registration of the REM. The injunctive relief sought by petitioner against the foreclosure is properly a provisional and ancillary remedy in the annulment case; the institution of the injunction case was therefore not compelled by respondents' acts but by petitioner's own negligence and contempt.

The following affirmative and special defenses were likewise raised by respondents: (1) the RTC has no jurisdiction over the subject matter considering petitioner's fraudulent failure to pay the correct amount of docket fees, as it deliberately concealed the fair market value of the subject property; (2) without prejudice to other sanctions, the complaint should be summarily dismissed considering that petitioner engaged in a willful, deliberate and contumacious act of forum shopping; the certificate of non-forum shopping it submitted was false and perjurious; (3) the case should also be dismissed on the ground of *litis pendentia* as the issues herein are already subsumed in the annulment case pending with another branch; (4) the court has not validly acquired jurisdiction over the persons of respondents for lack of service of summons, the Officer's Return dated December 4, 2006 clearly stated that the summons were unserved and which failed to state the facts and circumstances showing the impossibility of personal service of summons upon the respondents, and neither did petitioner seek the issuance of an *alias* summons; (5) the case is already moot because title had already been consolidated in the name of AUB which may no longer be restrained from exercising rights of ownership over the foreclosed

property; the pendency of a civil case for the nullity of the mortgage document is not a legal bar to foreclosure by the creditor-mortgagee upon the default of the debtor-mortgagor; (6) even assuming there was a defect in the notarization of the REM, it is not a ground to invalidate the foreclosure sale or hold in abeyance the consolidation of title in favor of AUB; (7) based on the facts alleged in the complaint, it is clear that AUB did not act in bad faith nor abused its rights when it caused the foreclosure of the subject property; (8) petitioner's claims that the unpaid obligations of RMNSI is not secured by the REM and that no demand for payment was made on SPI, are both irrelevant and downright perjurious and misleading; and (9) even on the basis of the allegations in the complaint and its annexes, the same fail to state a cause of action, individual respondents cannot be held liable for damages as they have not acted with bad faith or fraud in connection with the REM; in any event, apart from the demand letter sent to RMNSI, a demand letter was also sent to SPI at the address indicated by petitioner itself in the complaint, a copy of said demand letter addressed to "Radiomarine Network (Smartnet), Inc. doing business as Smartnet Philippines and Smartnet Philippines, Inc." at Building 8359, Zambales Hi-way cor. Bataan Rd., Upper Cubi, Subic Bay Freeport Zone.

Respondents further averred that contrary to petitioner's allegation, "The Foreign Post" is a newspaper of general circulation, having been accredited as such by the Office of the Executive Judge in the Order dated June 17, 2002 issued by Executive Judge Leticia P. Morales. Mr. Dante Ofianga, Circulation Manager of "The Foreign Post", also testified during the hearing held on December 8, 2006, that said publication is a weekly newspaper of general circulation, printed and published in the City of Manila, Philippines.

Finally, respondents argued that the three (3) months period prescribed by the General Banking Law of 2000 is a valid limitation on the right of redemption, which is the exception rather than the general rule. This Court has already upheld the restriction

on the exercise of the right of redemption in *Landrito, Jr. v. Court of Appeals.*[14]

On motion of respondents, Civil Case No. 06-1032 was consolidated with Civil Case No. 03-045. Prior to the consolidation, respondents moved to dismiss[15] with prejudice the two cases on the grounds of forum shopping, and that no jurisdiction was acquired by the RTC in Civil Case No. 03-045 for failure to pay the proper docket and other legal fees.

In a Joint Order[16] dated July 10, 2007, the RTC (Branch 56) dismissed with prejudice the complaints in both cases. Petitioner filed *two* separate motions for reconsideration, which the RTC likewise denied on October 16, 2007.[17]

Petitioner again filed separate appeals before the CA, which were docketed under only one case (**CA-G.R. CV No. 90418**).

By Decision[18] dated September 15, 2010, the CA's Fifth Division dismissed petitioner's appeal. While the CA disagreed with the RTC's dismissal of Civil Case No. 06-1032 on the ground of non-payment of correct docket fees, it nevertheless sustained the dismissal with prejudice of both Civil Case No. 03-045 and Civil Case No. 06-1032 on the ground of forum shopping.

The CA found that the twin complaints asked for a common relief: nullification of the REM over the Makati property, cancellation of its annotation, and return of the property to petitioner. It also ruled that a decision in either Civil Case No. 03-045 and Civil Case No. 06-1032 will certainly amount to *res judicata* in the other; both courts were called upon to rule on the issue of whether the REM was falsified, thus rendering it and all related transactions and proceedings invalid. The court

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[14] G.R. No. 133079, August 9, 2005, 466 SCRA 107.

[15] *Rollo* (G.R. No. 195546) pp. 380-402.

[16] *Id.* at 522-529.

[17] *Id.* at 531-532.

[18] *Id.* at 60-79.

to render a later judgment will find itself in an awkward predicament whether to decide on said issue in the same way the court which first ruled on the same issue, or to decide it the other way. The CA concluded that a malicious situation therefore presents itself because the twin fora are being pitted against each other, hence a case of plain and simple forum shopping.

The CA also concurred with the RTC Branch 56 in finding that petitioner inexplicably failed to inform said court of petitioner's subsequent filing of Civil Case No. 06-1032 despite its undertaking to do so in the first case (Civil Case No. 03-045), which fatal omission similarly reeks of forum shopping which is deliberate and malicious. The appellate court further said that the supervening event of the extrajudicial foreclosure did not justify the filing of a separate case, which on its face simply reiterated the same facts. The foreclosure of the mortgage was a mere continuation of the material facts presented in the first case, and thus petitioner's remedy arising therefrom is deemed subsumed in its prayer for nullification of the REM in the first case because such nullity of the mortgage contract invalidates everything else including the extrajudicial foreclosure. The CA opined that petitioner should have just amended its first complaint for the purpose of pleading the supervening event of extrajudicial foreclosure and perhaps adding in its prayer the nullification of the said foreclosure.

Petitioner filed two separate motions for reconsideration which the CA likewise denied in its Resolution[19] dated January 31, 2011. The CA further noted this Court's decision in G.R. No. 190231 which reinstated the dismissal of Civil Case No. B-6242 involving exactly the same parties, issues and subject matter.

<u>The Consolidated Petitions and Parties' Arguments</u>

Petitioner filed before this Court *two* separate petitions through different counsels assailing the same CA decision dismissing their two appeals and resolution denying their twin motions for reconsideration.

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[19] *Id.* at 81-82.

The core issue presented is whether petitioner was guilty of forum shopping when it successively filed Civil Case No. 03-045 and Civil Case No. 06-1032.

Petitioner argues that there was no forum shopping involved because contrary to the CA's view, a judgment in either of the two cases will not amount to *res judicata* in the other, stating that there are two probable outcomes for each case; thus, the REM may be declared either null and void or valid, and the extrajudicial foreclosure may likewise be declared either null and void or valid. Petitioner then posits that a judgment in Civil Case No. 03-045 that the REM is valid will not preclude it from filing a separate case for the annulment of the foreclosure proceeding; petitioner's claims on the irregularities in the extrajudicial foreclosure when proven would still result in its nullification, even if the REM is declared valid in the first case. Similarly, a judgment annulling the extrajudicial foreclosure would not bar a separate complaint for the annulment of a spurious and falsified mortgage.

Petitioner further notes that it did not fail to disclose as in fact it asserted the pendency of Civil Case No. 03-045 in Civil Case No. 06-1032 when it alleged the surreptitious foreclosure by the respondents during the pendency of Civil Case No. 03-045. The first case (Civil Case No. 03-045) was also disclosed by petitioner in the Certificate of Non-Forum Shopping appended to its complaint in Civil Case No. 06-1032. Moreover, petitioner pointed out that the consolidation of the two cases has eliminated the possibility of conflicting decisions. The filing of the second case to enjoin the foreclosure was justified since petitioner has no other sufficient and effective remedy under the circumstances. In the absence of malicious intent in the mere filing of Civil Case No. 06-1032, petitioner contends that the CA erred in finding it guilty of forum shopping.

On the other hand, respondents maintain that the CA was correct in holding that petitioner is guilty of forum shopping as any ruling of either court on the identical issue of falsity of the REM would amount to *res judicata* in the other case. They

also stress that forum shopping already exists when the cases involve the same or related causes and the same or substantially the same reliefs. Invoking *stare decisis*, respondents cite the final judgment rendered by this Court in G.R. No. 190231 involving the Laguna Properties which also involved the same parties and transactions as in the instant case. But even before the said ruling, respondents point out that it was already settled that there is forum shopping if two actions boil down to a single issue, although the issues and reliefs prayed for were stated differently, because the final disposition of one would constitute *res judicata* in the other, citing *Prubankers Association v. Prudential Bank & Trust Company.*[20] Another case[21] was cited by respondents holding that there is forum shopping when the remedies sought by the petitioner had the possibility of resulting in conflicting rulings, which supports the CA's observations.

Respondents underscore the deliberate and contumacious forum shopping committed by petitioner not only before the trial courts but also before the CA and this Court. They called attention to petitioner's filing of two notices of appeal, institution of two appeals and submission of two appeal briefs from one and the same RTC decision; two motions for reconsideration and; now, the herein identical petitions filed in this Court against the same principal party, AUB. Just like in the identical actions before the RTC, petitioner did not seasonably report the second petition in G.R. No. 195561. In fact, G.R. No. 195546 was consolidated with G.R. No. 195561 because this Court already found that "they arose from the same essential facts and assail the same decision and resolution of the Court of Appeals to avoid conflicting decisions."[22]

The Court's Ruling

The petitions must fail.

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[20] G.R. No. 131247, January 25, 1999, 302 SCRA 74.

[21] *Madara v. Perello*, G.R. No. 172449, August 20, 2008, 562 SCRA 638.

[22] *Rollo* (G.R. No. 195546), p. 728.

There is forum shopping when the following elements 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[,] such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration; said requisites [are] also constitutive of the requisites for *auter action pendant* or *lis pendens.*"[23] The essence of forum shopping is the filing of *multiple suits* involving the same parties for the same cause of action, *either simultaneously or successively,* for the purpose of obtaining a favorable judgment, through means other than by appeal or *certiorari*.[24]

All the foregoing elements are present in this case.

There can be no dispute that the prayer for relief in the two cases was based on the same attendant facts in the execution of REMs over petitioner's properties in favor of AUB. While the extrajudicial foreclosure of mortgage, consolidation of ownership in AUB and issuance of title in the latter's name were set forth only in the second case (Civil Case No. 06-1032), these were simply the expected consequences of the REM transaction in the first case (Civil Case No. 03-045). These eventualities are precisely what petitioner sought to avert when it filed the first case. Undeniably then, the injunctive relief sought against the extrajudicial foreclosure, as well as the cancellation of the new title in the name of the creditor-mortgagee AUB, were all premised on the alleged nullity of the REM due to its allegedly fraudulent

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[23] *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank,* G.R. No. 154187, April 14, 2004, 427 SCRA 585, 590, citing *Saura v. Saura, Jr.,* 372 Phil. 337, 349 (1999).

[24] *Melo v. Court of Appeals,* G.R. No. 123686, November 16, 1999, 318 SCRA 94, 100; *Ligon v. Court of Appeals,* G.R. No. 127683, August 7, 1998, 294 SCRA 73, 88, citing *Washington Distillers, Inc. v. Court of Appeals,* G.R. No. 118151, August 22, 1996, 260 SCRA 821, 835.

and irregular execution and registration – the same facts set forth in the first case. In both cases, petitioner asserted its right as owner of the property subject of the REM, while AUB invoked the rights of a foreclosing creditor-mortgagee.

There is also identity of parties notwithstanding that in the first case, only one bank officer (Co), the notary public (Pelicano) and the Register of Deeds were impleaded along with AUB as defendants, whereas in the second case, AUB and its two officers (Chan and Del Mundo), along with the RTC Clerk of Court (Escasinas, Jr.), Sheriff (Magsajo) and the Register of Deeds of Makati City (Ortile) were the named defendants. The parties in both cases are substantially the same as they represent the same *interests* and offices/positions, and who were impleaded in their respective capacities with corresponding liabilities/duties under the claims asserted.

With respect to identity of cause of action, a cause of action is defined in Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another. This Court has laid down the test in determining whether or not the causes of action in the first and second cases are identical, to wit: would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action.[25]

In the first case, petitioner alleged the fraudulent and irregular execution and registration of the REM which violated its right as owner who did not consent thereto, while in the second case petitioner cited further violation of its right as owner when AUB foreclosed the property, consolidated its ownership and obtained a new TCT in its name. Considering that the aforesaid violations of petitioner's right as owner in the two cases both hinge on the binding effect of the REM, *i.e.,* both cases will rise or fall on

[25] *Villanueva v. Court of Appeals,* G.R. No. 163433, August 22, 2011, 655 SCRA 707, 714, citing *Government Service Insurance System (GSIS) v. Group Management Corporation (GMC),* G.R. Nos. 167000 & 169971, June 8, 2011, 651 SCRA 279, 313.

the issue of the validity of the REM, it follows that the same evidence will support and establish the first and second causes of action. The procedural infirmities or non-compliance with legal requirements for extrajudicial foreclosure raised in the second case were but additional grounds in support of the injunctive relief sought against the foreclosure which was, in the first place, illegal on account of the mortgage contract's nullity. Evidently, petitioner never relied solely on the alleged procedural irregularities in the extrajudicial foreclosure when it sought the reliefs in the second case.

On this point, it is relevant to quote similar findings of this Court in G.R. No. 191388, which case involved, contrary to petitioner's asseveration and as clearly shown in the factual antecedents herein set forth, the same parties, issues and causes of action founded on the same real estate mortgage transaction albeit covering properties of petitioner located in another province (Laguna), to wit:

The cause of action in the earlier Annulment Case is the alleged nullity of the REM (due to its allegedly falsified or spurious nature) which is allegedly violative of Goodland's right to the mortgaged property. It serves as the basis for the prayer for the nullification of the REM. The Injunction Case involves the same cause of action, inasmuch as it also invokes the nullity of the REM as the basis for the prayer for the nullification of the extrajudicial foreclosure and for injunction against consolidation of title. **While the main relief sought in the Annulment Case (nullification of the REM) is ostensibly different from the main relief sought in the Injunction Case (nullification of the extrajudicial foreclosure and injunction against consolidation of title), the cause of action which serves as the basis for the said reliefs remains the same — the alleged nullity of the REM.** Thus, what is involved here is the third way of committing forum shopping, *i.e.*, filing multiple cases based on the same cause of action, but with different prayers. As previously held by the Court, **there is still forum shopping even if the reliefs prayed for in the two cases are different, so long as both cases raise substantially the same issues.**

There can be no determination of the validity of the extrajudicial foreclosure and the propriety of injunction in the Injunction Case without necessarily ruling on the validity of the REM, which is already the subject of the Annulment Case. The identity of the causes of action in the two cases entails that the validity of the mortgage will be ruled upon in both, and creates a possibility that the two rulings will conflict with each other. This is precisely what is sought to be avoided by the rule against forum shopping.

The substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of the REM or should alter the designation or form of the action. The 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.[26] (Emphasis supplied.)

In the above-cited case, the Court also called attention to its earlier ruling in G.R. No. 190231 which involved substantially the same parties, and which constitutes another reason why the petition must fail, stating that "[t]he issue that Goodland committed deliberate forum shopping when it successively filed the Annulment and Injunction Cases against AUB and its officer was decided with finality therein. This ruling is conclusive on the petitioners and Goodland considering that they are substantially the same parties in that earlier case."[27]

Given the similar factual circumstances in the institution by herein petitioner of Civil Case Nos. 03-045 and 06-1032 (Makati Property case) before the RTC, with those two cases (Civil Case Nos. B-6242 and B-7110) subject of the petitions in G.R. Nos. 190231 and 191388 involving the Laguna Properties covered by the same real estate mortgage transaction between AUB and petitioner, the findings and conclusion of this Court in G.R. No.190231 on the factual issue of whether the petitioner engaged in willful and deliberate forum shopping should be controlling,

[26] *Asia United Bank v. Goodland Company, Inc.,* G.R. No. 191388, March 9, 2011, 645 SCRA 205, 216-217.

[27] *Id.* at 217.

to wit:

Rule 7, Section 5 of the Rules of Court requires every litigant to notify the court of the filing or pendency of a complaint involving the same or similar action or claim within five days of learning of that fact. While both Civil Case Nos. B-6242 and B-7110 were raffled to the same court, the RTC of Biñan, Laguna, Branch 25**, respondent did not report the filing of Civil Case No. B-7110 in the proceedings of Civil Case No. 6242. This fact clearly established respondent's furtive intent to conceal the filing of Civil Case No. B-7110 for the purpose of securing a favorable judgment**. For this reason, Civil Case No. 6242 was correctly dismissed with prejudice.[28] (Emphasis supplied.)

Petitioner, however, insists that the above ruling is inapplicable to it considering that the pendency of Civil Case No. 06-1032 was in fact disclosed in the Verification and Certification of Non-Forum Shopping appended to its complaint in Civil Case No. 06-1032. The said certification reads:

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3. The plaintiff **has not heretofore commenced any other action or filed any claim, involving the same issues in any court,** tribunal or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein**. There are however pending cases related** to the instant case, namely: *"Goodland Company, Inc. vs. Asia United Bank, et al.,"* Civil Case No. 03-045, Regional Trial Court, Branch 133, Makati City; *"Goodland Company, Inc. vs. Asia United Bank, et al."* Civil Case No. B-6242, Regional Trial Court, Branch 25,Biñan, Laguna, *"People of the Philippines vs. Christine Chan, et al.,"* Crim. Case No. 332313 , Metropolitan Trial Court, Branch 64, Makati City; and *"Rafael H. Galvez vs. Christine Chan, et al.,"* I.S. No. 03-73, Department of Justice, Manila.

xxx xxx xxx[29]

We find that the above certification still fell short of the

[28] *Asia United Bank v. Goodland Company, Inc.,* G.R. No. 190231, December 8, 2010, 637 SCRA 691, 696-697.

[29] *Rollo* (G.R. No. 195546), p. 106.

requirement of the rule on forum shopping. While petitioner disclosed the pendency of Civil Case No. 03-045 it filed earlier, it qualified the nature of the said case by lumping it together with other *pending related cases*. Petitioner's simultaneous attestation that it has **not** commenced "any other action or filed any claim, involving **the same issues** in any court" implies that the pending related cases mentioned therein *do not involve the same issues* as those raised by it in the subsequently filed Civil Case No. 06-1032. Consequently, petitioner has filed a certificate that is *partly false* and *misleading* because Civil Case No. 06-1032 squarely raised the issue of the nullity of the REM, which was in fact the principal issue in Civil Case No. 03-045.

Moreover, there was no showing that petitioner promptly reported to the RTC Branch 133 in which Civil Case No. 03-045 was pending, its subsequent filing of Civil Case No. 06-1032, as required by the Rules. It was at the instance of AUB that the two cases were consolidated. This fact did not escape the attention of the RTC which also found petitioner's act of forum shopping willful and deliberate, as stated in its Joint Order dated July 10, 2007, to wit:

> On a last note, the Court cannot countenance plaintiff's violation of its undertaking as regards compliance of the prohibition against forum shopping. In plaintiff's Certification as to Non-Forum Shopping embodied in its Complaint in Civil Case No. 03-045, plaintiff is duty bound to report, within five days from knowledge, the fact that a similar action or proceeding involving the same issues have been filed or is pending. **The records are barren of any showing that plaintiff reported in Civil Case No. 03-045 the fact that it subsequently filed Civil Case No. 06-1032.** Under Section 5, Rule 7 of the 1997 Rules of Civil Procedure, the plaintiff is required under oath to certify, among others, his undertaking to report to the court the fact of filing of a similar case, failing which shall be cause for the dismissal of the case, to wit:
>
>> "(c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

> …non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."

The totality of circumstances considered, plaintiff's forum shopping committed in multifarious fashion cannot but be willful and deliberate. Hence, consistent with established rule and jurisprudence, the same is punishable by and results in the summary dismissal of the actions filed. **Both Civil Case No. 03-045 and Civil Case No.06-1032 are therefore dismissed with prejudice**. x x x[30] (Emphasis supplied.)

The CA concurred with the RTC that petitioner's act of forum shopping was deliberate and malicious considering that it knowingly filed Civil Case No. 06-1032 despite the pendency of Civil Case No. 03-045. The appellate court said that petitioner unscrupulously took advantage of the availability of competent tribunals and tried its luck in different fora for a favorable result.

We concur with the CA's finding that a decision in either case will amount to *res judicata* in the other considering that both courts were called upon to rule on the same issue of whether the REM was falsified. Indeed, the possibility of conflicting rulings or decisions rendered by different courts on such issue militates against petitioner's posture that it never intended to conceal the subsequent filing of Civil Case No. 06-1032.

Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the action under consideration.[31] *Litis pendentia* is a Latin term, which literally means "a pending suit" and is

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[30] *Id.* at 527-528.

[31] *Spouses Marasigan v. Chevron Phils., Inc.,* G.R. No. 184015, February 8, 2012, p. 12, citing *Benedicto v. Lacson,* G.R. No. 141508, May 5, 2010, 620 SCRA 82, 98.

variously referred to in some decisions as *lis pendens* and *auter action pendant.* As a ground for the dismissal of a civil action, it refers to the situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.[32] *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[33]

All the elements of *litis pendentia* are present in this case. As correctly found by both RTC and CA, any judgment rendered either in Civil Case No. 03-045 or Civil Case No. 06-1032 on the principal issue regarding the validity of the REM would amount to *res judicata* on the other. Contrary to petitioner's submissions, a determination by the RTC of whether petitioner is entitled to the injunctive relief in Civil Case No. 06-1032 necessarily entails a ruling on the validity of the REM raised therein by petitioner, which pronouncement may run counter to the separate findings and conclusion in Civil Case No. 03-045 on the same issue. In the same manner, the reliefs prayed for in Civil Case No. 03-045 for the cancellation of the REM and its registration cannot be granted without the court first ruling on the validity of the REM; if the court rules in the affirmative, it would in turn defeat the injunctive relief sought in Civil Case No. 06-1032.

The foregoing scenario is precisely what the prohibition on forum shopping seeks to avoid. What is truly important to consider in determining whether forum shopping exists or not is the vexation

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[32] *Id.,* citing *Dotmatrix Trading v. Legaspi*, G.R. No. 155622, October 26, 2009, 604 SCRA 431, 436.

[33] *Id.*

caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different *fora* upon the same issues.[34]

The Court need not say more. Petitioner's brazen and deliberate acts of *repeated* forum shopping in all stages of litigation are written all over this case, as well as in the two other identical cases already decided by this Court. No reversible error was thus committed by the CA when it affirmed the RTC's joint order of dismissal with prejudice.

WHEREFORE, the petitions for review on *certiorari* in G.R. Nos. 195546 and 195561 are both **DENIED**. The Decision dated September 15, 2010 and Resolution dated January 31, 2011 of the Court of Appeals in CA-G.R. CV No. 90418 are hereby **AFFIRMED**.

With double costs against the petitioner.

SO ORDERED.

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

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[34] *Municipality of Taguig v. Court of Appeals,* G.R. No. 142619, September 13, 2005, 469 SCRA 588, 595, citing *First Philippine International Bank v. Court of Appeals*, G.R. No. 115849, January 24, 1996, 252 SCRA 259, 289 and *Borromeo v. Intermediate Appellate Court*, G.R. No. 73592, March 15, 1996, 255 SCRA 75, 84.

[*] Designated additional member per Special Order No. 1207 dated February 23, 2012.

THIRD DIVISION

[A.C. No. 9154. March 19, 2012]
(Formerly CBD No. 07-1965)

AURORA D. CERDAN, *petitioner, vs.* **ATTY. CARLO GOMEZ,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; HIGHLY FIDUCIARY IN NATURE.—** A lawyer-client relationship is highly fiduciary in nature and it requires a high standard of conduct and demands utmost fidelity, candor, fairness, and good faith. Once a lawyer agrees to handle a case, he is required by the Canons of Professional Responsibility to undertake the task with zeal, care and utmost devotion. x x x Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code of Professional Responsibility. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, every lawyer should act and comport himself in a manner that would promote public confidence in the integrity of the legal profession.

2. **ID.; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY OF LAWYER TO HOLD IN TRUST ALL MONEYS OF HIS CLIENT THAT COME INTO HIS POSSESSION; VIOLATED IN CASE AT BAR.—** Atty. Gomez failed to account for the money he received for complainant as a result of the compromise agreement. Worse, he remitted the amount of ₱290,000.00 only, an amount substantially less than the share of complainant. Records reveal that complainant's share from the FCB savings accounts amounted to ₱442,547.88 but only ₱290,000.00 was remitted by Atty. Gomez after deducting his share. This Court will not tolerate such acts. Atty. Gomez has no right to unilaterally retain his lawyer's lien. Having obtained the funds in the course of his professional employment, Atty. Gomez had the obligation to account and deliver such funds to his client when they became due, or upon demand. Moreover, there was no agreement between him and complainant

that he could deduct therefrom his claimed attorney's fees. The Code of Professional Responsibility specifically Section 16, provides: CANON 16 – A lawyer shall hold in trust all moneys and properties of his client that may come into his possession. Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client. x x x x

3. **ID.; ID.; ID.; ID.; PROPER PENALTY.—** The penalty for violation of Canon 16 of the Code of Professional Responsibility usually ranges from suspension for six months, to suspension for one year, or two years and even disbarment depending on the amount involved and the severity of the lawyer's misconduct. Considering that this is Atty. Gomez's first offense, the penalty of suspension for one (1) year is a sufficient sanction.

RESOLUTION

MENDOZA, *J.*:

Before the Court is the undated Resolution[1] of the Board of Governors of the Integrated Bar of the Philippines *(IBP)* finding Atty. Carlo Gomez *(Atty. Gomez)* liable for violating Canon 16 of the Code of Professional Responsibility and recommending that he be suspended from the practice of law for six (6) months.

The case stemmed from the affidavit-complaint[2] of Aurora D. Cerdan *(complainant)*, filed before the Committee on Bar Discipline of the IBP on April 16, 2007. The complaint alleged that complainant and widower Benjamin Rufino *(Rufino)* lived together as husband and wife; that during their cohabitation, they purchased several real properties; that they maintained savings accounts at First Consolidated Bank *(FCB)*, at the Quezon and Narra branches in Palawan, all of which were in the name of Rufino; that when Rufino died on December 28, 2004, complainant sought the legal advice of Atty. Gomez as to what

[1] *Rollo*, p. 433.

[2] *Id.* at 2-3.

to do with the properties left by Rufino; and that she paid Atty. Gomez attorney's fees in the amount of ₱152,000.00 but only the amount of ₱100,000.00 was reflected in the receipt.

Complainant claimed that she authorized Atty. Gomez, thru a special power of attorney *(SPA)*, to settle Rufino's savings account in FCB-Quezon branch; that the original agreement of a 50-50 sharing between complainant and the children of Rufino, as proposed by the FCB counsel, was replaced by the Compromise Agreement entered into by Atty. Gomez, wherein the heirs of Rufino got 60% of the share while she only received 40%; that Atty. Gomez included in the Compromise Agreement the savings account in FCB-Narra Branch when the scope of the SPA was only the account in FCB-Quezon branch; that Atty. Gomez took her bank book for the FCB account in Narra Branch containing deposits in the amount of more or less ₱165,000.00 and never returned it to her; and that Atty. Gomez withdrew from her FCB accounts and thereafter gave the amount of ₱290,000.00 and uttered, *"ITO NA LAHAT ANG PERA MO AT ANG SA AKIN NAKUHA KO NA."*

Complainant also narrated that sometime in 2000, Atty. Gomez was her counsel in a case against a certain Romeo Necio *(Necio)* and paid him attorney's fees and judicial fee in the amount of ₱15,000.00, and ₱8,000.00, respectively; that the parties agreed to settle amicably and decided that Atty. Gomez would collect from Necio the amount agreed upon; and that as of the filing of the complaint, Atty. Gomez has yet to remit to complainant the amount of ₱12,000.00.

On April 16, 2007, the IBP required Atty. Gomez to file his answer.[3]

In his Answer,[4] Atty. Gomez admitted that Rufino engaged his legal services in various cases. He, however, denied the accusations stated in the complaint-affidavit filed by complainant.

Atty. Gomez averred that he was not aware that Rufino and

[3] *Id.* at 29.

[4] *Id.* at 33-40.

complainant were not legally married because they represented themselves as husband and wife so the cases filed in court were under the names of spouses Benjamin and Aurora Rufino and that he only learned of said fact upon the death of Rufino in December 2004. Atty. Gomez claimed that when he had learned that complainant was not the legal wife, he exerted earnest effort to locate the surviving heirs of Rufino and substitute them in the cases filed in court; that he informed complainant of the consequences of her status and relationship with the late Rufino including her possible denial of any share from his estate; and that he advised complainant that he would make extra effort to persuade the legitimate heirs of Rufino to discuss a possible settlement and share in the estate or ask for compassion if she would be denied her share in the estate.

With respect to the uncollected amounts, Atty. Gomez denied the same and said that all the documents relating to the indebtedness were in the name of Rufino and that he could not do anything if the legitimate heirs of Rufino collected the same from the debtors.

As to the savings account in FCB-Quezon branch, Atty. Gomez explained that said account was in the name of Rufino; that he negotiated with the legitimate heirs of Rufino for the share of the complainant; and that the proceeds thereof, in the amount of 442,547.88, were properly turned over to complainant as evidenced by an acknowledgment receipt.

Thereafter, the Commission of Bar Discipline through Commissioner Jose Dela Rama, Jr. *(Commissioner Dela Rama)* conducted a mandatory conference and thereafter required the parties to submit their verified position papers. Upon filing of their respective position papers, the case was submitted for resolution.

In his Report and Recommendation,[5] Commissioner Dela Rama wrote his findings as follows:

That it appears on record that complainant granted the respondent a Special Power of Attorney the specific powers of

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[5] *Id.* at 434-452.

which are as follows:

1. To enter into amicable settlement of my account with the First Consolidated Bank, Quezon Branch with Savings Account No. 30-0201-01020-0. (Underlining supplied)

2. To agree to such matters as they may deem fit and proper to be done in connection with the said savings account

3. To withdraw the said amount as agreed on the settlement, receive and sign for and in my behalf.

The Special Power of Attorney appears to have been signed and notarized on February 28, 2008 at Puerto Princesa City.

It appears further that as alleged, the complainant maintains two accounts at First Consolidated Bank. One is in Quezon, Palawan Branch in the amount of ₱442,547.88. The other account being maintained at FBC Narra Branch contains an amount equivalent to ₱165,000.00, more or less.

According to the complainant, she did not authorize the respondent to enter into a settlement with respect to the properties left by Benjamin Rufino.

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To begin with, respondent was given a Special Power of Attorney with respect to FCB Quezon account. That as far as the respondent can recall the account with FCB Quezon Branch had ₱1 million, more or less.

COMM. DE LA RAMA: At that time, how much is the amount of deposit in FCB Quezon?

Atty. Gomez: I believe, Your Honor, its Php1 million.

COMM. DE LA RAMA: How much is the Narra Branch?

Atty. Gomez: I am not aware, Your Honor. In fact, I have not even seen the bank account passbook.

(TSN pages 30-31, September 7, 2007)

Based on the Compromise Agreement marked as Annex "F", with respect to Quezon Branch with account No. 3030-0201-0102-0, the same shall be divided as follows: 60 percent goes to the heirs

of Benjamin Rufino, Jr. and 40 percent goes to Aurora Cerdan who was then presented by the respondent. This time, it was Atty. Gomez who signed the said agreement by virtue of the Special Power of Attorney dated February 28, 2005.

While it is clear that in the Compromise Agreement where the complainant was supposed to receive 40% refers to FCB Quezon Branch, it cannot also be denied that in the same Compromise Agreement it speaks of FCB Narra Branch which, as admitted by the respondent, he has no authority to bind the complainant.

But in the said Compromise Agreement, it cannot be denied that the respondent entered into an agreement with respect to FCB Narra Branch. Portion of the agreement reads as follows:

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The first question is, when the respondent entered into a Compromise Agreement on March 1, 2005, was he acting within the powers granted to him in the Special Power of Attorney.

The undersigned Commissioner believes that the respondent acted beyond the powers granted to him by virtue of the Special Power of Attorney.

It is very specific that the respondent was only authorized to enter into an amicable settlement with respect to FCB Quezon Branch and not with the account in FCB Narra Branch.

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The respondent, despite the fact that he was not armed with a particular document authorizing him to enter into an agreement with respect to Narra account, entered and signed a compromise agreement to the prejudice and surprise of his client. In effect, he forfeited the lawful share of his client with respect to FCB Narra Branch.

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According to the complainant, the amount of cash that was given to the respondent amounted to ₱152,000.00 as attorney's fees. The respondent got the money at her house in Quezon, Palawan and the following week, the complainant went to the office of the respondent at Puerto Princesa to get receipt of the ₱152,000.00. It was at this point when the respondent allegedly stated that he only received

₱100,000.00 and for this reason, an Acknowledgement Receipt (Annex "C") was issued by the law office of the respondent.

Respondent on the other hand, during the preliminary conference stated the following:

> COMM. DE LA RAMA, JR.: What I am asking you is did you receive Php100,000.00 from the services rendered from Mrs. Cerdan?
>
> Atty. Gomez: Your Honor, please. That is the reason why I likewise fired out my secretary.
>
> COMM. DE LA RAMA, JR.: Why, did you not receive Php 100,000.00?
>
> Atty. Gomez: I deny that I received Php100,000.00, Your Honor.
>
> COMM. DE LA RAMA, JR.: So you are telling us that it was your secretary who received the ₱100,000.00.
>
> Atty. Gomez: Probably, Your Honor.
>
> COMM. DE LA RAMA, JR.: Did you file any action against your secretary?
>
> Atty. Gomez: I cannot locate her anymore.
>
> COMM. DE LA RAMA, JR.: You know what to do, you are a lawyer. And did you file any civil case?
>
> Atty. Gomez: None, Your Honor because the family went to my office asking for compassion.
>
> (TSN pages 107-109, October 5, 2007)

What puzzles the undersigned Commissioner is the complainant even stated that she did not give ₱100,000.00 to the secretary.

> COMM. DE LA RAMA, JR.: Ma'am Cerdan, when you went to the office of Atty. Gomez, did you give ₱100,000.00 to the secretary?
>
> Mrs. Cerdan: No.
>
> (TSN Page 110, October 5, 2007)

Further, Mrs. Cerdan did not promise anything to Atty. Gomez by of way of compensation. The complaint stated the following:

COMM. DE LA RAMA, JR.: *Okay. Liliwanagin ko lang para sa kapakanan ng lahat, meron po ba kayong ipinangako naman kay* Atty. Gomez *na kung maiaayos niya ang usaping ito ay magkakaroon siya ng* attorney's fees?

Mrs. Cerdan: *Wala po*.

Likewise, on the part of the respondent, he claims that he has no agreement with respect to his professional fees.

COMM. DE LA RAMA, JR.: How about you Atty. Gomez, any agreement with complainant?

Atty. Gomez: None, Your Honor. I volunteer myself to assist Mrs. Cerdan.

COMM. DE LA RAMA, JR.: Without expecting anything?

Atty. Gomez: Yes, Your Honor, in fact, I spent money to assist her.

(TSN Page 111, October 5, 2007)

xxx xxx xxx

Although the respondent is denying that he received a compensation for the services rendered, we cannot deny the fact that his own law office issued an acknowledgement receipt on March 9, 2005 in the amount of ₱100,000.00. Although the respondent is blaming the secretary, the undersigned is not convinced that his law office did not receive certain consideration for the services rendered. Unless this case is really under the IBP Legal Aid Program. There is nothing wrong with a lawyer receiving reasonable compensation for the services rendered. In fact, under Canon 20 of the Code of Professional Responsibility, a lawyer shall charge only fair and reasonable fees. Whether the lawyer's services were solicited or they were offered to the client for his assistance, in as much as these services were accepted and made use of the latter, there is a tacit and mutual consent as to the rendition of the services, which gives rise to the obligation upon the person benefited by the services to make compensation therefore. Lawyers are thus as much entitled to judicial protection against injustice on the part of their clients as the clients are against abuses on the part of the counsel. The duty of the court is not only to see that lawyers act in a proper and lawful manner, and also see that lawyers are paid their just and lawful fees (*Camacho vs. Court*

[6] *Id.* at 439-450.

of Appeals, et al. G.R. No. 127520, February 9, 2007, 515 SCRA 242)."[6]

Commissioner Dela Rama found that Atty. Gomez violated Canon 16 of the Code of Professional Responsibility and recommended that he be suspended from the practice of law for six (6) months.

On June 5, 2006, the IBP Board of Governors passed its Resolution[7] adopting and approving the Report and Recommendation of the Investigating Commissioner.

Atty. Gomez moved for reconsideration,[8] but in its Resolution No. XIX-2011-415 dated June 26, 2011, the IBP Board of Governors denied his motion for reconsideration.

The Court agrees with the findings of the IBP.

A lawyer-client relationship is highly fiduciary in nature and it requires a high standard of conduct and demands utmost fidelity, candor, fairness, and good faith.[9] Once a lawyer agrees to handle a case, he is required by the Canons of Professional Responsibility to undertake the task with zeal, care and utmost devotion.[10]

In the case at bench, Atty. Gomez failed to observe the utmost good faith, loyalty, candor, and fidelity required of an attorney in his dealings with complainant. Atty. Gomez exceeded his authority when he entered into a compromise agreement with regard to the FCB account in Quezon Branch, where he agreed that complainant shall receive 40 percent of the proceeds while the heirs of Rufino shall get the 60 percent, which was contrary to the original agreement of 50-50 sharing. Atty. Gomez likewise acted beyond the scope of the SPA when he included in the compromise agreement the FCB account in Narra branch when it was issued only with respect to the FCB account, Quezon

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[7] *Id.* at 433.

[8] *Id.* at 380-388.

[9] *Macarilay v. Seriña*, 497 Phil. 348, 356 (2005).

[10] *Rollon v. Naraval*, 493 Phil. 24, 29 (2005).

branch. Moreover, Atty. Gomez entered into a compromise agreement with respect to the other properties of Rufino without authority from complainant.

Furthermore, Atty. Gomez failed to account for the money he received for complainant as a result of the compromise agreement. Worse, he remitted the amount of ₱290,000.00 only, an amount substantially less than the share of complainant. Records reveal that complainant's share from the FCB savings accounts amounted to ₱442,547.88 but only ₱290,000.00 was remitted by Atty. Gomez after deducting his share.

This Court will not tolerate such acts. Atty. Gomez has no right to unilaterally retain his lawyer's lien.[11] Having obtained the funds in the course of his professional employment, Atty. Gomez had the obligation to account and deliver such funds to his client when they became due, or upon demand. Moreover, there was no agreement between him and complainant that he could deduct therefrom his claimed attorney's fees.

The Code of Professional Responsibility specifically Section 16, provides:

CANON 16 – A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

xxx xxx xxx

The fiduciary nature of the relationship between counsel and client imposes on a lawyer the duty to account for the money or property collected or received for or from the client.[12] He is obliged to render a prompt accounting of all the property and money he has collected for his client.[13]

Lawyers should always live up to the ethical standards of

[11] *Aldovino v. Pujalte*, 467 Phil. 556, 561 (2004).

[12] *Belleza v. Macasa*, A.C. No. 7815, July 23, 2009, 593 SCRA 549, 560.

[13] *Bayonla v. Reyes*, A.C. No. 4808, November 22, 2011.

the legal profession as embodied in the Code of Professional Responsibility. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, every lawyer should act and comport himself in a manner that would promote public confidence in the integrity of the legal profession.[14]

The penalty for violation of Canon 16 of the Code of Professional Responsibility usually ranges from suspension for six months,[15] to suspension for one year,[16] or two years[17] and even disbarment[18] depending on the amount involved and the severity of the lawyer's misconduct. Considering that this is Atty. Gomez's first offense, the penalty of suspension for one (1) year is a sufficient sanction.

WHEREFORE, respondent Atty. Carlo Gomez is hereby declared **GUILTY** of violation of Canon 16 of the *Code of Professional Responsibility* and is SUSPENDED from the practice of law for a period of one (1) year effective upon receipt of this Resolution, with a **WARNING** that a repetition of the same or similar acts will be dealt with severely.

Let a copy of this decision be furnished the Court Administrator for distribution to all courts of the land, the IBP, the Office of the Bar Confidant, and entered into the personal records of Atty. Gomez as an attorney and as a member of the Philippine Bar.

SO ORDERED.

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

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[14] *Belleza v. Macasa*, *supra* note 12 at 562.

[15] *Espiritu v. Ulep*, 497 Phil. 339, (2005).

[16] *Villanueva v. Atty. Ishiwata*, 486 Phil. 1 (2004); *Aldovino v. Pujalte*, *supra* note 11.

[17] *Mortera v. Atty. Pagatpatan*, 499 Phil. 93 (2005).

[18] *Hernandez v. Atty. Go*, 490 Phil. 420 (2005).

SECOND DIVISION

[G.R. No. 176628. March 19, 2012]

PHILIPPINE TOURISM AUTHORITY, *petitioner, vs.* **PHILIPPINE GOLF DEVELOPMENT & EQUIPMENT, INC.,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; CLIENT BOUND BY THE NEGLIGENCE OF HIS COUNSEL IN SUBMITTING THE REQUIRED PLEADINGS WITHIN THE PERIOD THAT THE RULES MANDATED.** — The Rules of Court specifically provides for deadlines in actions before the court to ensure an orderly disposition of cases. Petitioner PTA cannot escape these legal technicalities by simply invoking the negligence of its counsel. This practice, if allowed, would defeat the purpose of the Rules on periods since every party would merely lay the blame on its counsel to avoid any liability. The rule is that "a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique[,]and unless such acts involve gross negligence that the claiming party can prove, the acts of a counsel bind the client as if it had been the latter's acts." In *LBC Express - Metro Manila, Inc. v. Mateo,* the Court held that [g]ross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected." This cannot be invoked in cases where the counsel is merely negligent in submitting his required pleadings within the period that the rules mandate. It is not disputed that the summons together with a copy of the complaint was personally served upon, and received by PTA through its Corporate Legal Services Department, on October 10, 2003. Thus, in failing to submit a responsive pleading within the required time despite sufficient notice, the RTC was correct in declaring PTA in default.
2. **ID.; ID.; ID.; NO EXTRINSIC FRAUD PRESENT TO STOP THE RTC FROM DECLARING PTA IN DEFAULT.—**

"Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent." Under the doctrine of this cited case, we do not see the acts of PTA's counsel to be constitutive of extrinsic fraud. The records reveal that the judgment of default was sent via registered mail to PTA's counsel. However, PTA never availed of the remedy of a motion to lift the order of default. Since the failure of PTA to present its evidence was not a product of any fraudulent acts committed outside trial, the RTC did not err in declaring PTA in default.

3. **REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT; NOT PROPER REMEDY WHERE APPEAL IS THE APPROPRIATE AND AVAILABLE REMEDY.—** PTA's appropriate remedy was only to appeal the RTC decision. "Annulment of Judgment under Rule 47 of the Rules of Court is a recourse equitable in character and allowed only in exceptional cases where the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner." In this case, appeal was an available remedy. There was also no extraordinary reason for a petition for annulment of judgment, nor was there any adequate explanation on why the remedy for new trial or petition for relief could not be used. The Court is actually at a loss why PTA had withdrawn a properly filed appeal and substituted it with another petition, when PTA could have merely raised the same issues through an ordinary appeal.

4. **POLITICAL LAW; STATE IMMUNITY; PROPER ONLY WHEN PROCEEDINGS ARISE OUT OF SOVEREIGN TRANSACTIONS, NOT COMMERCIAL ACTIVITIES.—** PTA also erred in invoking state immunity simply because it is a government entity. The application of state immunity is proper only when the proceedings arise out of sovereign transactions and not in cases of commercial activities or economic affairs. The State, in entering into a business contract, descends to the level of an individual and is deemed to have tacitly given its consent to be sued. Since the Intramuros Golf Course Expansion Projects partakes of a proprietary character entered into between PTA and PHILGOLF, PTA cannot avoid its financial liability by merely invoking immunity from suit.

5. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER WHERE APPEAL IS AVAILABLE. –** [A] special civil action under Rule 65 of the Rules of Court is only available in cases when a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and *there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law*. It is not a mode of appeal, and cannot also be made as a substitute for appeal. It will not lie in cases where other remedies are available under the law.

APPEARANCES OF COUNSEL

Teodoro M. Hernandez for petitioner.
Jose Valentino Dave for respondent.

R E S O L U T I O N

BRION, *J*.:

Before this Court is a petition for *certiorari,* under Rule 65 of the 1997 Rules of Civil Procedure, to annul the decision[1] dated December 13, 2006 of the Court of Appeals *(CA)* in CA G.R. SP No. 90402. This CA decision dismissed the petition for annulment of judgment which sought to set aside the decision[2] of the Regional Trial Court *(RTC)* of Muntinlupa City, Branch 203, in Civil Case No. 03-212. The RTC held the Philippine Tourism Authority *(PTA)* liable for its unpaid obligation to Philippine Golf Development & Equipment, Inc. *(PHILGOLF).*

FACTUAL BACKGROUND

On April 3, 1996, PTA, an agency of the Department of Tourism, whose main function is to bolster and promote tourism,

[1] Penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Monina Arevalo-Zenarosa; *rollo,* pp. 86-95.

[2] Dated April 6, 2004; *id.* at 26-33.

entered into a contract with Atlantic Erectors, Inc. *(AEI)* for the construction of the Intramuros Golf Course Expansion Projects (PAR 60-66) for a contract price of Fifty-Seven Million Nine Hundred Fifty-Four Thousand Six Hundred Forty-Seven and 94/100 Pesos (₱57,954,647.94).

The civil works of the project commenced. Since AEI was incapable of constructing the golf course aspect of the project, it entered into a sub-contract agreement with PHILGOLF, a duly organized domestic corporation, to build the golf course amounting to Twenty-Seven Million Pesos (₱27,000,000.00). The sub-contract agreement also provides that PHILGOLF shall submit its progress billings directly to PTA and, in turn, PTA shall directly pay PHILGOLF.[3]

On October 2, 2003, PHILGOLF filed a collection suit against PTA amounting to Eleven Million Eight Hundred Twenty Thousand Five Hundred Fifty and 53/100 Pesos (₱11,820,550.53), plus interest, for the construction of the golf course. Within the period to file a responsive pleading, PTA filed a motion for extension of time to file an answer.

On October 30, 2003, the RTC granted the motion for extension of time. PTA filed another motion for extension of time to file an answer. The RTC again granted the motion.

Despite the RTC's liberality of granting two successive motions for extension of time, PTA failed to answer the complaint. Hence, on April 6, 2004, the RTC rendered a judgment of default, ruling as follows:

> WHEREFORE, judgment is hereby rendered, ordering the defendant to pay plaintiff:
>
> 1. The amount of Eleven Million, Eight Hundred Twenty Thousand, Five Hundred Fifty Pesos and Fifty Three Centavos (₱11,820,550.53), representing defendant's outstanding obligation, plus interest thereon of twelve percent (12%) per annum from the time the unpaid billings of plaintiff were due for payment by the defendant, until they are fully paid.

[3] *Id.* at 88.

2. The amount of Two Hundred Thousand Pesos (₱200,000.00), as attorney's fees.

3. The amount of One Hundred Twenty Eight Thousand, Five Hundred Twenty Nine Pesos and Fourteen Centavos (₱128,529.14), as filing fees and other costs of litigation.

4. The amount of Three Hundred Thousand Pesos (₱300,000.00), as moral damages.

5. The amount of One Hundred Fifty Thousand (Pesos (₱150,000.00), as nominal damages, and

6. The amount of Two Hundred Fifty Thousand Pesos (₱250,000.00), as exemplary damages.

SO ORDERED.[4]

On July 11, 2005, PTA seasonably appealed the case to the CA. But before the appeal of PTA could be perfected, PHILGOLF already filed a motion for execution pending appeal with the RTC. The RTC, in an Order dated June 2, 2004, granted the motion and a writ of execution pending appeal was issued against PTA. On June 3, 2004, a notice of garnishment was issued against PTA's bank account at the Land Bank of the Philippines, NAIA-BOC Branch to fully satisfy the judgment.

PTA filed a petition for *certiorari* with the CA, imputing grave abuse of discretion on the part of the RTC for granting the motion for execution pending appeal. The CA ruled in favor of PTA and set aside the order granting the motion for execution pending appeal.

On July 11, 2005, PTA withdrew its appeal of the RTC decision and, instead, filed a petition[5] for annulment of judgment under Rule 47 of the Rules of Court. The petition for annulment of judgment was premised on the argument that the gross negligence of PTA's counsel prevented the presentation of evidence before the RTC.

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[4] *Id.* at 33.

[5] Dated July 5, 2005.

On December 13, 2006, the CA dismissed the petition for annulment of judgment for lack of merit. PTA questions this CA action in the present petition for *certiorari*.

THE PETITION

The petition cites three arguments: *first*, that the negligence of PTA's counsel amounted to an extrinsic fraud warranting an annulment of judgment; *second*, that since PTA is a government entity, it should not be bound by the inactions or negligence of its counsel; and *third*, that there were no other available remedies left for PTA but a petition for annulment of judgment.

OUR RULING

We find the petition unmeritorious.

The Rules of Court specifically provides for deadlines in actions before the court to ensure an orderly disposition of cases. PTA cannot escape these legal technicalities by simply invoking the negligence of its counsel. This practice, if allowed, would defeat the purpose of the Rules on periods since every party would merely lay the blame on its counsel to avoid any liability. The rule is that "a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique[,]and unless such acts involve gross negligence that the claiming party can prove, the acts of a counsel bind the client as if it had been the latter's acts."[6]

In *LBC Express - Metro Manila, Inc. v. Mateo,*[7] the Court held that "[g]ross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected." This cannot be invoked in cases where the counsel is merely negligent in submitting his required pleadings within the period that the rules mandate.

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[6] *Labao v. Flores*, G.R. No. 187984, November 15, 2010, 634 SCRA 723, 733.

[7] G.R. No. 168215, June 9, 2009, 589 SCRA 33, 37.

It is not disputed that the summons together with a copy of the complaint was personally served upon, and received by PTA through its Corporate Legal Services Department, on October 10, 2003.[8] Thus, in failing to submit a responsive pleading within the required time despite sufficient notice, the RTC was correct in declaring PTA in default.

There was no extrinsic fraud

"Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent."[9] Under the doctrine of this cited case, we do not see the acts of PTA's counsel to be constitutive of extrinsic fraud.

The records reveal that the judgment of default[10] was sent via registered mail to PTA's counsel. However, PTA never availed of the remedy of a motion to lift the order of default.[11] Since the failure of PTA to present its evidence was not a product of any fraudulent acts committed outside trial, the RTC did not err in declaring PTA in default.

Annulment of judgment is not the proper remedy

PTA's appropriate remedy was only to appeal the RTC decision. "Annulment of Judgment under Rule 47 of the Rules of Court is a recourse equitable in character and allowed only in exceptional cases where the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner."[12]

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[8] *Rollo,* p. 28.

[9] *City Government of Tagaytay v. Guerrero,* G.R. Nos. 140743, 140745 and 141451-52, September 17, 2009, 600 SCRA 33, 61.

[10] Dated February 17, 2004.

[11] *Rollo*, p. 46.

[12] *City Government of Tagaytay v. Guerrero*, *supra* note 8, at 51.

In this case, appeal was an available remedy. There was also no extraordinary reason for a petition for annulment of judgment, nor was there any adequate explanation on why the remedy for new trial or petition for relief could not be used. The Court is actually at a loss why PTA had withdrawn a properly filed appeal and substituted it with another petition, when PTA could have merely raised the same issues through an ordinary appeal.

PTA was acting in a proprietary character

PTA also erred in invoking state immunity simply because it is a government entity. The application of state immunity is proper only when the proceedings arise out of sovereign transactions and not in cases of commercial activities or economic affairs. The State, in entering into a business contract, descends to the level of an individual and is deemed to have tacitly given its consent to be sued.[13]

Since the Intramuros Golf Course Expansion Projects partakes of a proprietary character entered into between PTA and PHILGOLF, PTA cannot avoid its financial liability by merely invoking immunity from suit.

A special civil action for certiorari under Rule 65 is proper only when there is no other plain, speedy, and adequate remedy

Lastly, a special civil action under Rule 65 of the Rules of Court is only available in cases when a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and *there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law*. It is not a mode of appeal, and cannot also be made as a substitute for appeal. It will not lie in cases where other remedies are available under the law.

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[13] *United States of America v. Ruiz,* No. L-35645, May 22, 1985, 136 SCRA 487.

In *Land Bank of the Philippines v. Court of Appeals*,[14] the Court had the occasion to state:

> The general rule is that a [*certiorari*] will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in the ordinary course of law and that of *certiorari* under Rule 65 of the Revised Rules of Court are mutually exclusive and not alternative or cumulative. Hence, the special civil action for *certiorari* under Rule 65 is not and cannot be a substitute for an appeal, where the latter remedy is available. xxx
>
> xxx xxx xxx
>
> The proper recourse of the aggrieved party from a decision of the CA is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court. On the other hand, if the error subject of the recourse is one of jurisdiction, or the act complained of was perpetrated by a quasi-judicial officer or agency with grave abuse of discretion amounting to lack or excess of jurisdiction, the proper remedy available to the aggrieved party is a petition for *certiorari* under Rule 65 of the said Rules. [emphases supplied; citations omitted]

In sum, PTA had the remedy of appealing the RTC decision to the CA and, thereafter, to us. Under the circumstances, we find no adequate reason to justify the elevation of this case to the CA and then to us, under Rule 65 of the Rules of Court.

WHEREFORE, premises considered, we hereby **DISMISS** the petition for *certiorari.* No costs.

SO ORDERED.

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

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[14] 456 Phil. 755, 785-787 (2003).

SECOND DIVISION

[G.R. No. 178367. March 19, 2012]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **CASTALLOY TECHNOLOGY CORPORATION, ALLIED INDUSTRIAL CORPORATION, ALINSU STEEL FOUNDRY CORPORATION, GLORIA C. NGO and TOMAS C. NGO, JR.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PROPRIETY THEREOF.—** The grounds for the issuance of a preliminary injunction are enumerated in Section 3, Rule 58 of the Rules of Court, which reads: x x x In a line of cases, this Court has explained this rule and emphasized that a writ of preliminary injunction is issued to preserve the *status quo ante*, upon the applicant's showing of two important requisite conditions, namely: (1) the right to be protected exists *prima facie*, and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injustice.

2. **ID.; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; A NECESSARY CONSEQUENCE OF NON-PAYMENT OF MORTGAGE INDEBTEDNESS.—** Foreclosure is but a necessary consequence of non-payment of mortgage indebtedness. In a real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation. Availment of said remedy cannot be deemed violative of the mortgagors' right over the mortgaged properties. The respondents, as mortgagors, should be mindful of the effects and implications of a mortgage on their rights over the properties given as collaterals, especially when the loan secured thereby remains unpaid.

3. **ID.; ID.; ID.; WHEN WRIT AGAINST FORECLOSURE OF**

MORTGAGE MAY BE ISSUED.— [The] *En Banc* Resolution in A.M. No. 99-10-05-0, *Re: Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgages* embodies the additional guidelines intended to aid courts in foreclosure proceedings, specifically limiting the instances, and citing the conditions, when a writ against foreclosure of a mortgage may be issued, to wit: x x x From these guidelines, it is evident that a disagreement between the parties as to the amount of the secured loan that remains unpaid shall not, by itself, warrant the issuance of an injunctive writ to enjoin foreclosure. The guidelines speak of strict exceptions and conditions. Even an allegation of unconscionable interest being imposed on the loan by the mortgagee shall no longer suffice to support an injunction. Furthermore, if under this resolution a debtor can no longer seek an injunctive writ by the unsubstantiated claim of full payment, there is even more reason for a court not to issue an injunctive writ when the debtors or mortgagors readily admit default in the payment of the secured loan, as in this case.

4. **ID.; ID.; ID.; ID.; ON ELEMENT OF IRREPARABLE INJURY; NOT APPRECIATED IN CASE AT BAR.—** As regards to the element of irreparable injury which was determined by the trial court in view of the difference of ₱57,249,912.08 in the parties' respective computations, this Court finds the same insufficient to support the requirement of injury in the issuance of injunctive writs. An injury is considered irreparable if it is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation. The provisional remedy of preliminary injunction may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation. The injury being feared by the herein respondents is not of such nature. Ultimately, the amount to which the mortgagee-bank shall be entitled will be determined by the disposition of the trial court in the main issue of the case. We have explained in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.* that all is not lost for defaulting mortgagors whose properties were foreclosed by creditors-mortgagees. The respondents will not

be deprived outrightly of their property, given the right of redemption granted to them under the law. Moreover, in extrajudicial foreclosures, mortgagors have the right to receive any surplus in the selling price. Thus, if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but will give the mortgagor a cause of action to recover such surplus.

5. **ID.; ID.; ID.; ID.; ID.; ISSUES RE DIFFERING LOAN COMPUTATIONS, CAN BE REASONABLY DETERMINED AFTER TRIAL ON THE MERITS.—** [T]he issues being linked to the parties' differing loan computations, which difference was found by the trial court as likely to cause the irreparable injury to the respondents, can only be reasonably determined after a trial on the merits. These issues include the effect of the loan proceeds' release in US dollars and the existence, authenticity or validity of the two promissory notes disputed by the respondents. In *Searth Commodities Corporation v. Court of Appeals*, we held: "**The prevailing rule is that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial**. x x x In the case at bar, if the lower court issued the desired writ to enjoin the sale of the properties premised on the aforementioned justification of the petitioners, **the issuance of the writ would be a virtual acceptance of their claim that the foreclosure sale is null and void**. (See *Ortigas and Co., Ltd. Partnership v. Court of Appeals*, supra). **There would in effect be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioners are inceptively bound to prove.**"

APPEARANCES OF COUNSEL

Teofilo C. Arnado, Jr. for petitioner.

Zosa & Quijano Law Offices for respondents.

D E C I S I O N

REYES, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court, which seeks to annul and set aside the Decision[1] dated February 28, 2007 and Resolution[2] dated May 24, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 02056, affirming the Regional Trial Court (RTC), Branch 56 of Mandaue City's issuance of a writ of preliminary injunction in Civil Case No. MAN-5081.

The Factual Antecedents

On August 26, 1996, respondent Castalloy Technology Corporation (Castalloy) was granted by petitioner Philippine National Bank (PNB) a credit line in the amount of ₱4,000,000.00, later increased to ₱45,000,000.00 on October 15, 1996. Pursuant to said credit line, Castalloy borrowed from PNB the following amounts, covered by three separate promissory notes executed by Castalloy in favor of PNB, to wit: (1) Promissory Note (PN) No. 404/96 dated August 29, 1996, in the amount of US$190,910.00, (2) PN No. 451/96 dated September 24, 1996, in the amount of US$381,650.26, and (3) PN No. 473/96 dated October 8, 1996 in the amount of US$495,426.83. While the promissory notes indicate the amounts thereof in US dollars, the net proceeds of the loan were released in Philippine currency, in the following amounts: (1) ₱4,992,442.00 for PN No. 404/96, (2) ₱9,985,000.00 for PN No. 451/96, and (3) ₱12,980,487.10 for PN No. 473/96.

To secure payment of the loans obtained by Castalloy, respondents Alinsu Steel Foundry Corporation (Alinsu) and Allied Industrial Corporation (Allied) constituted in favor of PNB a real estate mortgage over four parcels of land covered by the

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[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Agustin S. Dizon and Francisco P. Acosta, concurring; *rollo*, pp. 267-274.

[2] *Id.* at 287-288.

following land titles, all issued by the Register of Deeds of Mandaue City: Transfer Certificate of Title (TCT) No. 8516, TCT No. 1676, TCT No. 30722, and TCT No. 30721. To further secure the loan, respondents Gloria C. Ngo (Gloria) and Tomas C. Ngo, Jr.[3] (Tomas) executed a joint and solidary agreement in favor of PNB.

In addition to the three aforementioned promissory notes, PNB claimed that Castalloy had executed two other promissory notes with the following details: (1) PN No. 539/96 dated November 27, 1996, in the amount of ₱3,000,000.00, and (2) PN No. 365-9701DL-037 dated January 29, 1997 in the amount of ₱2,000,000.00. These two loans were denied by Castalloy, which argued that the signature of Gloria in the two notes was forged, and that the proceeds thereof were not deposited to the corporation's bank account.

After Castalloy defaulted in the payment of its obligations under the promissory notes, PNB filed a petition for extrajudicial foreclosure of real estate mortgage against Castalloy, Allied and Alinsu.

In the meantime, a complaint[4] for determination of correct obligation and injunction with application for writ of preliminary injunction/temporary restraining order was filed with the RTC by Castalloy, Allied, Alinsu, Gloria and Tomas against PNB and Sheriff Julbert E. Opada, arguing, among other matters, that:

> 13. Because of the disagreements brought about by the allegations of this complaint, that [respondent] Castalloy never borrowed the amount of [₱]5,000,000.00 and that the dollar loans of [respondent] Castalloy Technology Corp. were already converted by [petitioner] into pesos at the time of their release and should not be converted again by [petitioner] into pesos at the rate of [₱]56.20 to $1.00 x x x.
>
> 14. There is a need for judicial a determination as to how much is the real obligation of [respondent] Castalloy Technology Corp.

[3] Also known as Thomas C. Ngo, Jr. in other documents.

[4] *Rollo*, pp. 77-87.

to [petitioner]. Converting the dollar loans of said [respondent] at the rate of [₱]56.20 to $1.00 and adding interest, **the [petitioner] claims** that on the dollar loan, the total obligation of [respondent] Castalloy Technology Corp. is [₱]88,642,207.64 while on the peso loan, [petitioner] claims **that the obligation of [respondent] Castalloy Technology Corp. is [₱]9,644,994.44 or a total of [₱]98,287,101.94**;

15. On the other hand, because what were released to [respondent] Castalloy Technology Corp. at the time of the execution of the promissory notes were pesos and not dollars and [respondents] deny that Castalloy Technology Corp. borrowed [₱]5,000,000.00 from [petitioner], **the [respondents] claim that what is owing to [petitioner] is the amount of [₱]41,037,189.86**.[5] (Emphasis supplied)

In their application for preliminary injunction/temporary restraining order, the respondents claimed that the sale at the public auction of the mortgaged properties had to be held in abeyance pending judicial determination of the correct amount of Castalloy's obligation to PNB.

In its opposition to the application for injunction, PNB argued that the parties' dispute on the loan's computation was not a valid ground to restrain the mortgage's foreclosure.

The Order of the RTC

On April 27, 2006, the RTC, issued an Order[6] granting the respondents' application for a writ of preliminary injunction, subject to the posting of a bond in the amount of ₱5,000,000.00. The Court held that the difference in the outstanding loan amounts being claimed by the parties was "extremely extensive such that if a foreclosure would be allowed at this point in time, the same would probably result in irreparable injury"[7] to the herein respondents.

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[5] *Id.* at 81.

[6] *Id.* at 235-239.

[7] *Id.* at 237.

PNB filed a motion for reconsideration, but the same was denied for lack of merit in an Order[8] dated May 31, 2006. Unsatisfied, PNB questioned the RTC's orders before the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

The Ruling of the CA

On February 28, 2007, the CA rendered its decision[9] denying the petition, finding no grave abuse of discretion on the part of the RTC. The decision's dispositive portion then reads:

> **WHEREFORE**, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the petition filed in this case and **AFFIRMING** the assailed Orders dated April 27, 2006 and May 31, 2006, respectively, issued by the respondent judge of the RTC, Branch 56, in Mandaue City in Civil Case No. MAN-5081.
>
> **SO ORDERED.**[10]

Citing the case of *Sps. Almeda v. CA*,[11] the CA ruled that when the exact amount of the loan obligation has not yet been determined, the bank cannot arbitrarily invoke its right of collection through extrajudicial foreclosure proceedings.[12]

PNB's motion for reconsideration was denied by the CA *via* its resolution[13] dated May 24, 2007.

Hence, the present petition.

The Issue

The issue for this Court's determination is: Whether or not the CA erred in finding no grave abuse of discretion on the part

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[8] *Id.* at 254-256.

[9] *Supra* note 1.

[10] *Id.* at 273.

[11] 326 Phil. 309 (1996).

[12] *Supra* note 1, at 272.

[13] *Supra* note 2.

of the RTC when it granted the respondents' application for the issuance of a writ of preliminary injunction.

This Court's Ruling

The petition is meritorious.

The grounds for the issuance of a preliminary injunction are enumerated in Section 3, Rule 58 of the Rules of Court, which reads:

Sec. 3. *Grounds for issuance of preliminary injunction.* – A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

In a line of cases, this Court has explained this rule and emphasized that a writ of preliminary injunction is issued to preserve the *status quo ante*, upon the applicant's showing of two important requisite conditions, namely: (1) the right to be protected exists *prima facie*, and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injustice.[14]

In the instant case, the respondents admit that to secure the loan obligations of Castalloy, Alinsu and Allied constituted a

[14] *Los Baños Rural Bank, Inc. v. Africa*, 433 Phil. 930, 935 (2002); See also *Power Sites and Signs, Inc. v. United Neon*, G.R. No. 163406, November 24, 2009, 605 SCRA 196.

real estate mortgage on their properties in favor of PNB. The respondents also do not dispute that they were unable to fully settle their loan obligation to the mortgagee-bank. There is an unpaid obligation to PNB, even granting that we disregard the disputed promissory notes dated November 27, 2006 and January 29, 2007, or consider the variance in the parties' respective formula for the loan's computation. This failure to pay has given PNB, as the mortgagee, the clear right to foreclose the mortgage constituted to secure the loan. Foreclosure is but a necessary consequence of non-payment of mortgage indebtedness. In a real estate mortgage, when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation.[15] Availment of said remedy cannot be deemed violative of the mortgagors' right over the mortgaged properties. The respondents, as mortgagors, should be mindful of the effects and implications of a mortgage on their rights over the properties given as collaterals, especially when the loan secured thereby remains unpaid. In *China Banking Corporation v. CA*,[16] where the lower court also issued an order to enjoin a foreclosure sale, we explained:

> On the last issue, we find that the issuance of the writ of injunction by the trial court unjustified. A writ of preliminary injunction, as an ancillary or preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action. But **before a writ of preliminary injunction may be issued, there must be a clear showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of the said right.** In the case at bench, we fail to see any reason why the foreclosure of the mortgages should be enjoined. **On the face of the clear admission by private respondents that they were unable to settle their obligations which were secured by the mortgages, petitioners have a clear right to foreclose**

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[15] *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc*., G.R. No. 165950, August 11, 2010, 628 SCRA 79, 91. (Citations omitted)

[16] 333 Phil. 158 (1996).

the mortgages which is a remedy provided by law.[17] (Emphasis supplied and citations omitted)

The ruling in *Almeda*[18] cited by the CA in its decision is inapplicable in this case, considering that in *Almeda*, the debtors were found to have made a valid consignation of what they, in good faith and in compliance with the loan documents, honestly believed to be the real amount of their indebtedness. Furthermore, the mortgagee in said case appeared to have unilaterally increased the loan's interest rates to amounts that were excessive and unconscionable, without valid and reasonable standards upon which the increases were based.

Further to this, the Court's intent to depart from the broad application of the *Almeda* ruling to foreclosure proceedings is clear from its issuance on February 20, 2007 of an *En Banc* Resolution in A.M. No. 99-10-05-0, *Re: Procedure in Extrajudicial or Judicial Foreclosure of Real Estate Mortgages*. The resolution embodies the additional guidelines intended to aid courts in foreclosure proceedings, specifically limiting the instances, and citing the conditions, when a writ against foreclosure of a mortgage may be issued, to wit:

(1) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the loan secured by the mortgage has been paid or is not delinquent unless the application is verified and supported by evidence of payment.

(2) No temporary restraining order or writ of preliminary injunction against the extrajudicial foreclosure of real estate mortgage shall be issued on the allegation that the interest on the loan is unconscionable, unless the debtor pays the mortgagee at least twelve percent per annum interest on the principal obligation as stated in the application for foreclosure sale, which shall be updated monthly while the case is pending.

(3) Where a writ of preliminary injunction has been issued against a foreclosure of mortgage, the disposition of the case shall be speedily

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

[18] *Supra* note 11.

resolved. To this end, the court concerned shall submit to the Supreme Court, through the Office of the Court Administrator, quarterly reports on the progress of the cases involving ten million pesos and above.

(4) All requirements and restrictions prescribed for the issuance of a temporary restraining order/writ of preliminary injunction, such as the posting of a bond, which shall be equal to the amount of the outstanding debt, and the time limitation for its effectivity, shall apply as well to a *status quo* order.

From these guidelines, it is evident that a disagreement between the parties as to the amount of the secured loan that remains unpaid shall not, by itself, warrant the issuance of an injunctive writ to enjoin foreclosure. The guidelines speak of strict exceptions and conditions. Even an allegation of unconscionable interest being imposed on the loan by the mortgagee shall no longer suffice to support an injunction. Furthermore, if under this resolution a debtor can no longer seek an injunctive writ by the unsubstantiated claim of full payment, there is even more reason for a court not to issue an injunctive writ when the debtors or mortgagors readily admit default in the payment of the secured loan, as in this case.

As regards to the element of irreparable injury which was determined by the trial court in view of the difference of ₱57,249,912.08 in the parties' respective computations, this Court finds the same insufficient to support the requirement of injury in the issuance of an injunctive writs. An injury is considered irreparable if it is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation.[19] The provisional remedy of preliminary injunction may only be resorted to when there is a pressing necessity to avoid injurious

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[19] *Philippine Virginia Tobacco Administration v. Judge Delos Angeles*, 247 Phil. 506, 518-519 (1988). (Citations omitted)

consequences which cannot be remedied under any standard of compensation.[20]

The injury being feared by the herein respondents is not of such nature. Ultimately, the amount to which the mortgagee-bank shall be entitled will be determined by the disposition of the trial court in the main issue of the case. We have explained in *Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc.*[21] that all is not lost for defaulting mortgagors whose properties were foreclosed by creditors-mortgagees. The respondents will not be deprived outrightly of their property, given the right of redemption granted to them under the law. Moreover, in extrajudicial foreclosures, mortgagors have the right to receive any surplus in the selling price. Thus, if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but will give the mortgagor a cause of action to recover such surplus.[22]

Lastly, the issues being linked to the parties' differing loan computations, which difference was found by the trial court as likely to cause the irreparable injury to the respondents, can only be reasonably determined after a trial on the merits. These issues include the effect of the loan proceeds' release in US dollars and the existence, authenticity or validity of the two promissory notes disputed by the respondents. In *Searth Commodities Corporation v. Court of Appeals*,[23] we held:

The prevailing rule is that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. (*Rivas v. Securities and Exchange Commission*, 190 SCRA 295 [1990]; *Government Service and*

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[20] *G.G. Sportswear Manufacturing Corporation v. Banco de Oro Unibank, Inc.*, G.R. No. 184434, February 8, 2010, 612 SCRA 47, 53. (Citation omitted)

[21] G.R. No. 165950, August 11, 2010, 628 SCRA 79.

[22] *Id.* at 94-95, citing *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 146.

[23] G.R. No. 64220, March 31, 1992, 207 SCRA 622.

Insurance System v. Florendo, 178 SCRA 76 [1989]; and *Ortigas & Co. Ltd. Partnership v. Court of Appeals*, 162 SCRA 165 [1988]) In the case at bar, if the lower court issued the desired writ to enjoin the sale of the properties premised on the aforementioned justification of the petitioners, **the issuance of the writ would be a virtual acceptance of their claim that the foreclosure sale is null and void**. (See *Ortigas and Co., Ltd. Partnership v. Court of Appeals*, supra). **There would in effect be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioners are inceptively bound to prove.**[24] (Emphasis supplied)

Given these circumstances, we reverse the CA's ruling that the trial court did not commit grave abuse of discretion when it issued the subject writ of preliminary injunction, considering that said writ was issued in the absence of sufficient factual and legal justifications, even contrary to law and established jurisprudence.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Decision dated February 28, 2007 and Resolution dated May 24, 2007 of the Court of Appeals in CA-G.R. SP No. 02056 are hereby **REVERSED** and **SET ASIDE.** In lieu thereof, a new one is entered declaring null and void the Regional Trial Court, Branch 56 of Mandaue City's Orders dated April 27, 2006 and May 31, 2006, and the Writ of Preliminary Injunction issued pursuant thereto, in Civil Case No. MAN-5081.

SO ORDERED.

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

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[24] *Id.* at 629-630.

SECOND DIVISION

[G.R. No. 197124. March 19, 2012]

ALPA-PCM, INC., *petitioner, vs.* **VINCENT BULASAO, JULIET BULASAO and SUSANA BULASAO, HONORABLE JUDGE DANILO F. CAMACHO, and THE DEPUTY SHERIFF OF THE REGIONAL TRIAL COURT, LA TRINIDAD, BENGUET,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL TO THE COURT OF APPEALS (CA) OF REGIONAL TRIAL COURT (RTC) DECISION RENDERED IN THE EXERCISE OF ITS APPELLATE JURISDICTION; WHEN RTC MAY ORDER EXECUTION PENDING APPEAL.—** Rule 42 of the Rules of Court governs the appeal of a decision of the RTC rendered in the exercise of its appellate jurisdiction; the appeal is made by filing a petition for review with the CA. Despite the filing of a petition with the CA, however, Rule 42 grants the RTC residual jurisdiction to order execution pending appeal, so long as (1) **the CA has not yet given due course to the petition,** and (2) the requirements of Section 2, Rule 39 are observed. x x x The RTC, however, is precluded from acting on the motion for execution until it has resolved the motion for reconsideration [already filed].

2. **ID.; ID.; ID.; WHEN THE CA CAN GIVE DUE COURSE TO AN APPEAL OF THE RTC DECISION.—** Under Section 6, Rule 42 of the Rules of Court, the CA can give due course to a petition for review when it finds *prima facie* that the lower court has committed an error of fact or law that will warrant a reversal or modification of the appealed decision. This initial determination by the CA can take place only when the proper pleadings have actually been filed before the CA, enabling it to study the facts of the case and the alleged errors of the assailed ruling.

3. **ID.; RULE ON SUMMARY PROCEDURE; THE DECISION OF THE RTC IN UNLAWFUL DETAINER CASE IN THE**

EXERCISE OF ITS APPELLATE JURISDICTION IS IMMEDIATELY EXECUTORY.— Actions for unlawful detainer are governed primarily by the Revised Rules on Summary Procedure and suppletorily by the Rules of Court. Section 21 of the Revised Rules on Summary Procedure x x x without any qualification whatsoever, has decreed the immediately executory nature of decisions of the RTC rendered in the exercise of its appellate jurisdiction, involving cases falling under the Revised Rules on Summary Procedure. **It requires no further justification or even "good reasons" for the RTC to authorize execution, even if an appeal has already been filed before the CA.**

4. **ID.; MISUSE OF JUDICIAL REMEDIES; COSTS WHEN APPEAL IS FRIVOLOUS.—** When judicial remedies are misused to delay the resolution of cases, the Rules of Court authorizes the imposition of sanctions. Section 3, Rule 142 of the Rules of Court states: Sec. 3. *Costs when appeal frivolous.*—Where an action or an appeal is found to be frivolous, double or treble costs may be imposed on the plaintiff or appellant, which shall be paid by his attorney, if so ordered by the court.

APPEARANCES OF COUNSEL

Guillermo R. Bandonil, Jr. for petitioner.
Julio Rafael Gayaman for respondents.

R E S O L U T I O N

BRION, *J.*:

The petitioner, ALPA-PCM, Inc. (*ALPA-PCM*), filed with the Court a petition for review on *certiorari* under Rule 45 of the Rules of Court, praying for the reversal of the decision[1] dated January 6, 2011 and the resolution[2] dated May 19, 2011

[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, and concurred in by Associate Justices Fernanda Lampas Peralta and Samuel H. Gaerlan; *rollo*, pp. 45-55.

[2] *Id.* at 85-86.

of the Court of Appeals (*CA*) in CA G.R. SP No. 102417. On July 6, 2011, the Court denied the petition for failure to find any reversible error in the assailed CA rulings.[3] ALPA-PCM filed the present motion seeking a reconsideration of the Court's Resolution.

BACKGROUND FACTS

In 2004, the private respondents, Vincent, Juliet and Susana, all surnamed Bulasao (*the Bulasaos*) filed an **action for unlawful detainer** against ALPA-PCM before the Municipal Trial Court (*MTC*) of La Trinidad, Benguet.[4] The MTC ruled in favor of the Bulasaos and ordered ALPA-PCM to vacate the subject property in a decision dated May 31, 2006.[5] On appeal, the Regional Trial Court (*RTC*) of La Trinidad, Benguet, Branch 62, affirmed the MTC's ruling in a decision dated July 31, 2007.[6]

On August 13, 2007, the Bulasaos filed a motion for the issuance of a writ of execution. Three days after or on August 16, 2007, ALPA-PCM filed its motion for reconsideration of the RTC decision dismissing its appeal, which the RTC denied on October 25, 2007. Intending to seek recourse against the RTC rulings via an appeal, ALPA-PCM initially filed a *Motion*

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[3] *Id*. at 88-89.

[4] Docketed as Civil Case No. R-937; *id*. at 6.

[5] *Id*. at 7. The dispositive portion of the MTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendant, ordering the latter, its agents and/or persons acting for and in its behalf, to vacate the subject leased premises and peacefully turn over the same to the plaintiffs.

No pronouncement as to damages and costs.

SO ORDERED.

[6] *Ibid*. The dispositive portion of the RTC ruling reads:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered dismissing the appeal for lack of merit.

for Extension of Time to File Petition/Appeal on November 13, 2007.[7]

In the meantime, **the RTC granted the Bulasaos' motion for execution** through an order dated November 21, 2007. ALPA-PCM sought reconsideration of the November 21, 2007 order, but the RTC denied the motion in an order dated February 5, 2008. The RTC subsequently issued a writ of execution on February 12, 2008. **ALPA-PCM questioned the RTC orders granting execution of the decision, as well as the writ of execution itself, before the CA by filing a separate *certiorari* petition.** ALPA-PCM alleged that the RTC's orders authorizing the execution of the decision in favor of the Bulasaos are null and void, since the filing of its appeal with the CA deprived the RTC of jurisdiction to issue the orders.

In a decision dated January 6, 2011, the CA dismissed ALPA-PCM's petition,[8] finding no grave abuse of discretion on the part of the RTC in granting the Bulasaos' motion for execution. The CA declared that the RTC had power to grant execution pending appeal as part of its residual jurisdiction under Section 8, Rule 42 of the Rules of Court.

As stated earlier, ALPA-PCM took exception from the CA's ruling by filing a petition for review on *certiorari* with this Court. It argued that there must be good reasons to justify execution pending appeal and cited as basis Section 2, Rule 39 of the Rules of Court. It pointed out that the RTC failed to state good reasons that justified the writ of execution. We denied ALPA-PCM's petition in our Resolution of July 6, 2011.

In support of its motion for reconsideration of the Court's Resolution, ALPA-PCM reiterated the above arguments and added that the RTC acted with undue haste in granting the Bulasaos' motion for writ of execution. It alleged that the filing of a motion for execution by the Bulasaos (August 13, 2007) preceded its filing of a motion for reconsideration of the RTC

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[7] *Id*. at 47.

[8] *Id*. at 45-55.

decision (August 16, 2007); hence, the motion for execution was premature since the decision sought to be executed was still for further review by the RTC. It cited the Court's ruling in *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.*,[9] which said that "[w]here there is a pending motion for reconsideration of the RTC decision, an order execution (sic) pending appeal is improper and premature."

THE COURT'S RULING

The Court fails to find any substantial argument raised by ALPA-PCM that merits a reconsideration of our earlier Resolution.

Execution pending appeal of decisions in ejectment cases

Rule 42 of the Rules of Court governs the appeal of a decision of the RTC rendered in the exercise of its appellate jurisdiction; the appeal is made by filing a petition for review with the CA.[10] Despite the filing of a petition with the CA, however, Rule 42 grants the RTC residual jurisdiction to order execution pending appeal, so long as (1) **the CA has not yet given due course to the petition,** and (2) the requirements of Section 2, Rule 39 are observed. The relevant portion of Section 8, Rule 42 of the Rules of Court states:

> Section 8. *Perfection of appeal; effect thereof* — (a) x x x
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> However, **before the Court of Appeals gives due course to the petition, the Regional Trial Court may** issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, **order execution pending appeal in accordance with Section 2 of Rule 39**, and allow withdrawal of the appeal.
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> xxx xxx xxx

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[9] G.R. No. 177121, March 16, 2009, 581 SCRA 553, 563.

[10] RULES OF COURT, Rule 42, Section 1.

Under Section 6, Rule 42 of the Rules of Court, the CA can give due course to a petition for review when it finds *prima facie* that the lower court has committed an error of fact or law that will warrant a reversal or modification of the appealed decision.[11] This initial determination by the CA can take place only when the proper pleadings have actually been filed before the CA, enabling it to study the facts of the case and the alleged errors of the assailed ruling. In other words, the CA can give due course to an appeal of the RTC decision only (1) after the filing of a petition for review, and (2) upon the filing of the comment or other pleading required by the CA, or the expiration of the period for the filing thereof without such comment or pleading having been submitted.

When the RTC granted the Bulasaos' motion for execution pending appeal on November 21, 2007, ALPA-PCM has not yet filed its petition for review with the CA; what ALPA-PCM filed on November 13, 2007 was only a motion for extension of time to file its petition. In the absence of any petition for review actually filed with the CA, the CA could clearly not have given due course to ALPA-PCM's appeal. The RTC, thus, retained its residual jurisdiction over the case to authorize execution of the decision.

The Court also fails to find anything irregular in the filing by the Bulasaos of a motion for execution ahead of the filing by ALPA-PCM of its motion for reconsideration of the RTC decision. ALPA-PCM misconstrues our ruling in *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.*[12] The ruling does not prevent the prevailing party from filing a motion for execution until after the adverse party has filed a motion for reconsideration of the judgment. The RTC, however, is precluded from acting

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[11] Section 6. *Due course*.—If upon the filing of the comment or such other pleadings as the court may allow or require, or after the expiration of the period for the filing thereof without such comment or pleading having been submitted, the Court of Appeals finds *prima facie* that the lower court has committed an error of fact or law that will warrant a reversal or modification of the appealed decision, it may accordingly give due course to the petition. (n)

[12] *Supra* note 9.

on the motion for execution until it has resolved the motion for reconsideration. In the present case, the RTC heeded this rule, as it granted the Bulasaos' motion for execution only after it has resolved to deny ALPA-PCM's motion for reconsideration of its decision.

Immediate execution of the RTC decision on appeal to CA or SC

After affirming the RTC's power to allow execution, we now consider ALPA-PCM's claim that the RTC must nonetheless cite good reasons justifying execution, citing as basis Section 2, Rule 39 of the Rules of Court.

The Court reminds ALPA-PCM, particularly its counsel, Atty. Guillermo R. Bandonil, Jr., that this case originated from the complaint for unlawful detainer filed by the Bulasaos against it. Actions for unlawful detainer are governed primarily by the Revised Rules on Summary Procedure[13] and suppletorily by the Rules of Court.[14] Section 21 of the Revised Rules on Summary Procedure states that:

> Sec. 21. *Appeal*. — The judgment or final order shall be appealable to the appropriate regional trial court which shall decide the same in accordance with Section 22 of Batas Pambansa Blg. 129. **The decision of the regional trial court in civil cases governed by this Rule, including forcible entry and unlawful detainer, shall be immediately executory,** without prejudice to a further appeal that may be taken therefrom. Section 10 of Rule 70 shall be deemed repealed. [emphasis and underscoring ours]

The above rule, without any qualification whatsoever, has decreed the immediately executory nature of decisions of the RTC rendered in the exercise of its appellate jurisdiction, involving cases falling under the Revised Rules on Summary Procedure. **It requires no further justification or even "good reasons" for the RTC to authorize execution, even if an appeal has already been**

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[13] REVISED RULES ON SUMMARY PROCEDURE, Section 1.

[14] *Id*., Section 22.

filed before the CA. Indeed, the provision does not even require a bond to be filed by the prevailing party to allow execution to proceed.[15] The rationale for this is the objective of the Revised Rules on Summary Procedure to achieve an expeditious and inexpensive determination of cases governed by it. **This objective provides the "good reason" that justifies immediate execution of the decision**, if the standards of Section 2, Rule 39 of the Rules of Court on execution pending appeal, as what ALPA-PCM insists, are considered.

Notwithstanding the rule's objective and clear mandate, losing litigants and their lawyers are determined to stall execution by misusing judicial remedies, putting forth arguments that, by simple logic, can easily be resolved by a basic reading of the applicable laws and rules. When judicial remedies are misused to delay the resolution of cases, the Rules of Court authorizes the imposition of sanctions. Section 3, Rule 142 of the Rules of Court states:

> Sec. 3. *Costs when appeal frivolous.*—Where an action or an appeal is found to be frivolous, double or treble costs may be imposed on the plaintiff or appellant, which shall be paid by his attorney, if so ordered by the court.

WHEREFORE, the Court resolves to **DENY** the ALPA-PCM, Inc.'s motion for reconsideration of our Resolution dated July 6, 2011. For instituting a frivolous appeal manifestly intended for delay, the Court **imposes treble costs** against ALPA-PCM, Inc., to be paid by its counsel, Atty. Guillermo R. Bandonil, Jr.

SO ORDERED.

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

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[15] See in contrast Section 19, Rule 70 of the Rules of Court which, despite authorizing the immediate execution of the judgment of the MTC in unlawful detainer cases, may be stayed by the filing of a supersedeas bond.

THIRD DIVISION

[G.R. No. 197987. March 19, 2012]

MARITER MENDOZA, *petitioner, vs.* **ADRIANO CASUMPANG, JENNIFER ADRIANE and JOHN ANDRE, all surnamed CASUMPANG,** *respondents.*

SYLLABUS

1. **CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES PROPER IN CASE OF GROSS NEGLIGENCE IN RENDERING MEDICAL SERVICES.—** The Court held in *Professional Services, Inc. v. Agana*: **An operation requiring the placing of sponges in the incision is not complete until the sponges are properly removed, and it is settled that the leaving of sponges or other foreign substances in the wound after the incision has been closed is at least *prima facie* negligence by the operating surgeon. To put it simply, such act is considered so inconsistent with due care as to raise an inference of negligence. There are even legions of authorities to the effect that such act is negligence per se.** The Court notes, however, that neither the CA nor the RTC awarded exemplary damages against Dr. Mendoza when, under Article 2229 of the Civil Code, exemplary damages are imposed by way of example or correction for the public good, in addition to moral damages. Exemplary damages may also be awarded in cases of gross negligence. A surgical operation is the responsibility of the surgeon performing it. He must personally ascertain that the counts of instruments and materials used before the surgery and prior to sewing the patient up have been correctly done. To provide an example to the medical profession and to stress the need for constant vigilance in attending to a patient's health, the award of exemplary damages in this case is in order.

2. **ID.; ID.; CIVIL INDEMNITY PROPER FOR DEATH RESULTING FROM NEGLIGENCE.—** In view of Josephine's death resulting from petitioner's negligence, civil indemnity under Article 2206 of the Civil Code should be given to respondents as heirs. The amount of ₱50,000.00 is fixed by

prevailing jurisprudence for this kind. The Court also deems it just and equitable under Article 2208 of the Civil Code to increase the award of attorney's fees from ₱20,000.00 to ₱50,000.00.

APPEARANCES OF COUNSEL

Jagna-an Belloga Agot and Associates for petitioner.

Manuel M. Cagampang for respondents.

D E C I S I O N

ABAD, *J*.:

Josephine Casumpang, substituted by her respondent husband Adriano and their children Jennifer Adriane and John Andre, filed an action for damages against petitioner Dr. Mariter Mendoza in 1993 before the Regional Trial Court (RTC) of Iloilo City.

On February 13, 1993 Josephine underwent hysterectomy and myomectomy that Dr. Mendoza performed on her at the Iloilo Doctors' Hospital. After her operation, Josephine experienced recurring fever, nausea, and vomiting. Three months after the operation, she noticed while taking a bath something protruding from her genital. She tried calling Dr. Mendoza to report it but the latter was unavailable. Josephine instead went to see another physician, Dr. Edna Jamandre-Gumban, who extracted a foul smelling, partially expelled rolled gauze from her cervix.

The discovery of the gauze and the illness she went through prompted Josephine to file a damage suit against Dr. Mendoza before the RTC of Iloilo City. Because Josephine died before trial could end, her husband and their children substituted her in the case. She was a housewife and 40 years old when she died.

On March 7, 2005 the RTC rendered judgment, finding Dr. Mendoza guilty of neglect that caused Josephine's illness and eventual death and ordering her to pay plaintiff's heirs actual

damages of ₱50,000.00, moral damages of ₱200,000.00, and attorney's fees of ₱20,000.00 plus costs of suit.

On motion for reconsideration, however, the RTC reversed itself and dismissed the complaint in an order dated June 23, 2005.

On appeal, the Court of Appeals (CA) rendered a decision on March 18, 2011,[1] reinstating the RTC's original decision. The CA held that Dr. Mendoza committed a breach of her duty as a physician when a gauze remained in her patient's body after surgery. The CA denied her motion for reconsideration on July 18, 2011, prompting her to file the present petition.

Petitioner claims that no gauze or surgical material was left in Josephine's body after her surgery as evidenced by the surgical sponge count in the hospital record.

But she raises at this Court's level a question of fact when parties may raise only questions of law before it in petitions for review on *certiorari* from the CA. With few exceptions, the factual findings of the latter court are generally binding. None of those exceptions applies to this case.[2]

As the RTC pointed out, Josephine did not undergo any other surgical operation. And it would be much unlikely for her or for any woman to inject a roll of gauze into her cervix. As the Court held in *Professional Services, Inc. v. Agana*:[3]

An operation requiring the placing of sponges in the incision is not complete until the sponges are properly removed, and it is settled that the leaving of sponges or other foreign substances in the wound after the incision has been closed is at least *prima facie* negligence by the operating surgeon. To put it simply, such act is considered so inconsistent with due care as to raise

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[1] Penned by Associate Justice Portia Aliño-Hormachuelos with the concurrence of Associate Justices Edwin D. Sorongon and Socorro B. Inting, *rollo*, pp. 30-43.

[2] *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.

[3] G.R. No. 126297, January 31, 2007, 513 SCRA 478, 490.

an inference of negligence. There are even legions of authorities to the effect that such act is negligence per se.

The Court notes, however, that neither the CA nor the RTC awarded exemplary damages against Dr. Mendoza when, under Article 2229 of the Civil Code, exemplary damages are imposed by way of example or correction for the public good, in addition to moral damages. Exemplary damages may also be awarded in cases of gross negligence.[4]

A surgical operation is the responsibility of the surgeon performing it. He must personally ascertain that the counts of instruments and materials used before the surgery and prior to sewing the patient up have been correctly done. To provide an example to the medical profession and to stress the need for constant vigilance in attending to a patient's health, the award of exemplary damages in this case is in order.

Further, in view of Josephine's death resulting from petitioner's negligence, civil indemnity under Article 2206[5] of the Civil Code should be given to respondents as heirs. The amount of ₱50,000.00 is fixed by prevailing jurisprudence for this kind.[6]

The Court also deems it just and equitable under Article 2208 of the Civil Code to increase the award of attorney's fees from ₱20,000.00 to ₱50,000.00.

WHEREFORE, the Court entirely **AFFIRMS** the decision of the Court of Appeals dated March 18, 2011 with the **MODIFICATION** ordering petitioner Mariter Mendoza to pay respondents Adriano, Jennifer Adriane and John Andre, all surnamed Casumpang, an additional ₱50,000.00 as exemplary damages, additional ₱30,000.00 as attorney's fees and civil indemnity arising from death in the amount of ₱50,000.00.

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[4] CIVIL CODE, Article 2231.

[5] Art. 2206. The amount of damages for death caused by a crime or *quasi-delic*t shall be at least three thousand pesos, even though there may have been mitigating circumstances. x x x

[6] *Philippine Hawk Corporation v. Lee*, G.R. No. 166869, February 16, 2010, 612 SCRA 576, 594.

SO ORDERED.

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

EN BANC

[A.C. No. 7591. March 20, 2012]

CORAZON T. NEVADA, *complainant, vs.* **ATTY. RODOLFO D. CASUGA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; GROSS MISCONDUCT; DEFINED.—** *In re Horrilleno* defined "gross misconduct" in the following wise: x x x "serious misconduct." The adjective is "serious;" that is, important, weighty, momentous, and not trifling. The noun is "misconduct;" that is, a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The word "misconduct" implies a wrongful intention and not a mere error or judgment. For serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules. x x x

2. **ID.; ID.; MISREPRESENTATION; PRESENT WHEN RESPONDENT LAWYER REPRESENTED HIMSELF AS DULY-AUTHORIZED REPRESENTATIVE WHEN IN FACT HE WAS NOT.—** Respondent Casuga represented himself as a duly-authorized representative of Nevada when in fact he was

not. Casuga admitted signing the subject contract of lease, but claimed that he was duly authorized to do so by Nevada. However, Casuga failed to adduce an iota of evidence to prove that he was indeed so authorized. One who alleges the existence of an agency relationship must prove such fact. The Court ruled in *Yun Kwan Byung v. Philippine Amusement and Gaming Corporation*, "The law makes no presumption of agency and proving its existence, nature and extent is incumbent upon the person alleging it." Plainly enough, Casuga is guilty of misrepresentation. x x x Furthermore, the records reveal that Casuga received the rentals by virtue of the contract of lease, benefitting from his misrepresentation. x x x Casuga's misrepresentation properly constitutes gross misconduct for which he must be disciplined.

3. **ID.; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY OF LAWYER TO HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS PROFESSION; THAT THERE IS NO LAWYER-CLIENT RELATIONSHIP, NOT AN EXONERATING FACTOR FOR VIOLATION THEREOF.—** Casuga's admission that the valuables are indeed in his possession, without any adequate reason, supports Nevada's version of the story. Casuga's failure to return such property or remit the proceeds of the sale is a blatant violation of Canon 16 of the Code of Professional Responsibility (the Code). The Code's Canon 16 and Rule 16.3 state: "CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his profession. Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court." Having been tasked to sell such valuables, Casuga was duty-bound to return them upon Nevada's demand. His failure to do so renders him subject to disciplinary action. To be sure, he cannot use, as a defense, the lack of a lawyer-client relationship as an exonerating factor. In *Barcenas v. Alvero*, the Court suspended a lawyer from the practice of law for two (2) years

after he failed to account for or return PhP 300,000 that was entrusted to him for deposit with the courts. The Court ruled: "x x x **Even if it were true that no attorney-client relationship existed between them, case law has it that an attorney may be removed, or otherwise disciplined, not only for malpractice and dishonesty in the profession, but also for gross misconduct not connected with his professional duties, making him unfit for the office and unworthy of the privileges which his license and the law confer upon him.**

4. **ID.; NOTARIAL RULES; WHEN A NOTARY PUBLIC MAY SIGN A DOCUMENT IN BEHALF OF ANOTHER PERSON; AND THAT A NOTARY PUBLIC IS DISQUALIFIED FROM NOTARIZING IF HE/SHE IS A PARTY TO THE DOCUMENT TO BE NOTARIZED; CASE AT BAR.—** The Notarial Rules, A.M. No. 02-8-13-SC, provides in its Rule IV, Section 1(c) and Sec. 3(a) when a notary public may sign a document in behalf of another person, thus: SEC. 1. *Powers*. – x x x (c) A notary public is authorized to sign on behalf of a person who is physically unable to sign or make a mark on an instrument or document if: (1) the notary public is directed by the person unable to sign or make a mark to sign on his behalf; (2) the signature of the notary public is affixed in the presence of two disinterested and unaffected witnesses to the instrument or document; (3) both witnesses sign their own names; (4) the notary public writes below his signature: "Signature affixed by notary in presence of (names and addresses of person and two (2) witnesses)"; (5) the notary public notarizes his signature by acknowledgment or jurat. On the other hand, the succeeding Sec. 3(a) disqualifies a notary public from performing a notarial act if he or she "is a party to the instrument or document that is to be notarized." None of the requirements contained in Rule IV, Sec. 1(c), as would justify a notary signing in behalf of a contracting party, was complied with in this case. Moreover, Casuga's act of affixing his signature above the printed name "Edwin T. Nevada," without any qualification, veritably made him a party to the contract of lease in question. Thus, his act of notarizing a deed to which he is a party is a plain violation of the aforequoted Rule IV, Sec. 3(a) of the Notarial Rules, for which he can be disciplinarily sanctioned provided under Rule XI, Sec. 1(b)(10) of the Notarial Rules.

5. **ID.; ID.; VIOLATION IN CASE AT BAR PARTAKES OF MALPRACTICE OF LAW AND MISCONDUCT PUNISHABLE UNDER SEC. 27, RULE 138 OF THE RULES OF COURT.—** Aside from being a violation of the Notarial Rules, Casuga's aforementioned act partakes of malpractice of law and misconduct punishable under the ensuing Sec. 27, Rule 138 of the Rules of Court: SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any **deceit, malpractice, or other gross misconduct in such office**, x x x or for any violation of the oath which he is required to take before admission to practice x x x.

6. **ID.; LAWYER; CANON 16 OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE NOTARIAL RULES; VIOLATION HEREIN WARRANTED SUSPENSION FROM THE PRACTICE OF LAW FOR FOUR YEARS AND DISQUALIFICATION AS NOTARY PUBLIC ALSO FOR FOUR YEARS.—** Considering the various infractions Casuga committed, as discussed above, the aggregate penalty recommended by the IBP Board of Governors of suspension from the practice of law for four (4) years was correct. It hews with prevailing jurisprudence as cited above. However, Casuga's disqualification from reappointment as notary public for two (2) years should match his suspension from the practice of law. The disqualification should accordingly be increased to four (4) years, since only a lawyer in good standing can be granted the commission of a notary public. The desired disbarment of Casuga, however, is too severe a sanction to impose under the premises; it cannot be granted. The penalty of disbarment shall be meted out only when the lawyer's misconduct borders on the criminal and/or is committed under scandalous circumstance.

D E C I S I O N

VELASCO, JR., ***J.*****:**

Corazon T. Nevada (Nevada) seeks the disbarment of Atty. Rodolfo D. Casuga (Casuga) for alleged violation of his lawyer's oath and the 2004 Rules on Notarial Practice (Notarial Rules).

The Facts

Nevada is the principal stockholder of C.T. Nevada & Sons, Inc., a family corporation which operates the Mt. Crest Hotel located at Legarda Road, Baguio City (the Hotel).

In her affidavit-complaint[1] dated June 28, 2007, with annexes, Nevada alleges that she and Casuga are members of the One in Jesus Christ Church, a religious group which counts the latter as one of its "elders." According to Nevada, she has allowed the use of one of the Hotel's functions rooms for church services. And in time, Casuga was able to gain her trust and confidence.

Nevada further alleges that unbeknownst to her, Casuga, sometime in 2006, started to represent himself as the administrator of the Hotel. In fact, on March 1, 2006, he entered into a contract of lease[2] with a certain Jung Jong Chul (Chul) covering an office space in the Hotel. Notably, Casuga signed the lease contract over the printed name of one Edwin T. Nevada and notarized the document himself.

Annex "B"[3] of the affidavit-complaint is a notarized letter dated May 15, 2007, wherein Chul attested that he gave Casuga, upon contract signing, the amount of ninety thousand pesos (PhP 90,000) as rental deposit for the office space. The amount thus deposited, so Nevada claims, was never turned over to her or to C.T. Nevada & Sons, Inc.

Nevada adds that, in the course of their acquaintanceship, Casuga was able to acquire from her several pieces of jewelry: a ¾ K diamond solitaire ring, earrings with three (3) diamonds each and a ring with three (3) diamonds, with an aggregate value of three hundred thousand pesos (PhP300,000), and a solid gold Rolex watch with diamond dials valued at twelve thousand US dollars (USD 12,000). Casuga took possession of the valuables purportedly with the obligation of selling them

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[1] *Rollo*, pp. 16-17.

[2] *Id.* at 18-26, Annex "A" to Complaint.

[3] *Id.* at 27.

and to remit any proceeds to Nevada. However, despite repeated demands by Nevada for Casuga to return the valuables or otherwise remit the proceeds of the sale, no jewelry or money was ever returned.

In compliance with a directive from the Court, Casuga submitted an Affidavit[4] dated December 5, 2007, as comment on the administrative complaint. In it, Casuga claims that Nevada informally instituted him as the administrator of the Hotel in a limited capacity but denied receiving the PhP 90,000 from Chul. With regard to the pieces of jewelry and the Rolex watch, Casuga stated that Nevada actually pawned them in a pawnshop and that she later asked his wife to redeem them using their own money. Thereafter, Nevada asked Casuga's wife to sell the valuables and reimburse herself from the proceeds of the sale.

By Resolution of July 2, 2008, the Court, thru the Office of the Bar Confidant, referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation/ decision. The case was docketed as CBD Case No. 7591 entitled *Corazon T. Nevada v. Atty. Rodolfo D. Casuga*.

On September 22, 2008, the IBP Commission on Bar Discipline (CBD), thru Commisioner Norberto B. Ruiz, issued and sent out a Notice of Mandatory Conference directing the parties to appear before it on October 23, 2008. On that date, only Nevada showed up, prompting the designated commissioner to reset the conference to November 25, 2008, with a warning that he, Casuga, will be declared in default and the case submitted for resolution should he again fail to appear. November 25, 2008 came, but only Nevada was present at the conference. Thus, CBD Case No. 7591 was submitted for resolution on the basis of Nevada's Position Paper dated December 3, 2008 and the evidence she submitted consisting of, among others, twenty-one (21) official rental receipts Casuga issued to at least two (2) lessors of the Hotel.

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

Results of the Investigation

In its Report and Recommendation[5] dated January 14, 2009, the IBP CBD found Casuga guilty of the charges against him, disposing as follows:

WHEREFORE, premises considered it is hereby recommended that Casuga be suspended for one (1) year for gross misconduct, violation of the notarial law and infidelity in the custody of monies, jewelries and a Rolex watch which pertain to the complainant and the family corporation.

The IBP Board of Governors later adopted and approved the CBD's Report and Recommendation, with modification, as indicated in Resolution No. XIX-2010-461 dated August 28, 2010, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above entitled case x x x; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Casuga's violation of Canon 16 of the Code of Professional Responsibility, for misappropriation of his client['s] funds and jewelries, for violation of the Notarial Law when he signed as a party to a lease contract and notarized the same and also taking into consideration the gravity of the offense committed, Atty. Rodolfo D. Casuga is hereby SUSPENDED from the practice of law for four (4) years. In addition, Atty. Casuga is Suspended or Disqualified from reappointment as Notary Public for two (2) years and Ordered to Return the amount of ₱90,000.00, jewelries amounting to ₱300,000.00 and the Rolex watch valued at $12,000.00 or its equivalent to Mr. Jung Jong Chul, otherwise his Suspension shall continue.

The CBD Report and Recommendation and a copy of Resolution No. XIX-2010-461 were subsequently forwarded to the Court along with the records of the case.

In the meantime, Nevada, upon receipt of a copy of Resolution No. XIX-2010-461, wrote and asked the IBP Board of Governors

[5] Penned by Commissioner Norberto B. Ruiz.

to rectify said resolution. Instead of the return of the amount of PhP 90,000, the jewelry and the Rolex watch or their monetary value to Chul, as directed in the resolution, Nevada requested the return to be made in her favor. The letter-request of Nevada had remained not acted upon owing obviously to the fact that the records of the case have been transmitted to the Court in the interim.

The Issues

The principal but simple issues in this case pivot on the guilt of Casuga for the charges detailed or implied in the basic complaint; and the propriety of the return to Nevada of the items, or their money value, and the amount subject of the case.

The Court's Ruling

We agree with the CBD's inculpatory findings, as endorsed by the IBP Board of Governors, and the recommended upgrading of penalties, as shown in Resolution No. XIX-2010-461, but subject to the modification as shall be discussed.

Casuga is guilty of gross misconduct for misrepresenting himself

In re Horrilleno[6] defined "gross misconduct" in the following wise:

> The grounds for removal of a judge of first instance under Philippine law are two: (1) Serious misconduct and (2) inefficiency. The latter ground is not involved in these proceedings. As to the first, the law provides that "sufficient cause" must exist in the judgment of the Supreme Court involving "serious misconduct." **The adjective is "serious;" that is, important, weighty, momentous, and not trifling. The noun is "misconduct;" that is, a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The word "misconduct" implies a wrongful intention and not a mere error or judgment. For serious misconduct to exist, there must be reliable evidence showing that the judicial acts**

[6] 43 Phil. 212, 214 (1922).

complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules. (*Lawlor vs. People [1874], 74 Ill., 228; Citizens' Insurance Co. vs. Marsh [1861], 41 Pa., 386; Miller vs. Roby [1880], 9 Neb., 471; Smith vs. Cutler [1833], 10 Wend. [N.Y.], 590; U.S. vs. Warner [1848], 28 Fed. Cas. No. 16643; In re Tighe [1904], 89 N.Y. Supra., 719.*) (Emphasis supplied.)

The above definition was to be reiterated in *Ajeno v. Judge Inserto*,[7] where the Court wrote:

In the case of *In re [Horrilleno]*, 43 Phil. 212, this Court previously ruled that "For serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules."

Of similar tenor is the definition provided in *Jamsani-Rodriguez v. Ong*:[8]

x x x The respondent Justices were not liable for gross misconduct – defined as the transgression of some established or definite rule of action, more particularly, unlawful behavior or gross negligence, or the corrupt or persistent violation of the law or disregard of well-known legal rules x x x.

Respondent Casuga represented himself as a duly-authorized representative of Nevada when in fact he was not. Casuga admitted signing the subject contract of lease, but claimed that he was duly authorized to do so by Nevada. However, Casuga failed to adduce an iota of evidence to prove that he was indeed so authorized. One who alleges the existence of an agency relationship must prove such fact. The Court ruled in *Yun Kwan Byung v. Philippine Amusement and Gaming Corporation*,[9] "The law makes no presumption of agency and proving its existence, nature and extent is incumbent upon the person alleging it."

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[7] A.M. No. 1098-CFI, May 31, 1976, 71 SCRA 166, 171-172.

[8] A.M. No. 08-19-SB-J, August 24, 2010, 628 SCRA 626, 648-649; citations omitted.

[9] G.R. No. 163553, December 11, 2009, 608 SCRA 107, 129.

Plainly enough, Casuga is guilty of misrepresentation, when he made it appear that he was authorized to enter into a contract of lease in behalf of Nevada when, in fact, he was not. Furthermore, the records reveal that Casuga received the rentals by virtue of the contract of lease, benefitting from his misrepresentation. Chul's notarized letter of May 15, 2007 sufficiently shows that Casuga indeed received PhP 90,000 as rental deposit from Chul. In his affidavit-comment dated December 5, 2007, Casuga denied having received such amount, alleging that a certain Pastor Oh, who purportedly introduced him to Chul, received the money. However, Casuga again failed to adduce a single piece of evidence to support his contention. A bare denial must fail in light of the positive assertion of Chul, who appears to have no ulterior motive to incriminate Casuga.

In *Tan v. Gumba*,[10] the respondent lawyer similarly misrepresented herself to have been authorized to sell a parcel of land by virtue of a Special Power of Attorney (SPA). By virtue of the SPA, the lawyer was able to obtain a loan from the complainant, secured by the said parcel of land through an "open" deed of sale. When the respondent lawyer defaulted in the payment of the loan, it turned out that the SPA only authorized the lawyer to mortgage the property to a bank. Thus, the complainant could not register the deed of sale with the register of deeds and could not recover the amount that he loaned to the lawyer. In that case, the Court ruled:

> Here, respondent's actions clearly show that she deceived complainant into lending money to her through the use of documents and false representations and taking advantage of her education and complainant's ignorance in legal matters. As manifested by complainant, he would have never granted the loan to respondent were it not for respondent's misrepresentation that she was authorized to sell the property and if respondent had not led him to believe that he could register the "open" deed of sale if she fails to pay the loan. By her misdeed, respondent has eroded not only complainant's perception of the legal profession but the public's perception as well. **Her actions constitute gross misconduct for which she**

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[10] A.C. No. 9000, October 5, 2011.

may be disciplined, following Section 27, Rule 138 of the Revised Rules of Court, as amended x x x. (Emphasis supplied.)

In the instant case, by maintaining an office within the Hotel, taking advantage of his apparent close relationship to Nevada, and through the use of false representations, Casuga led Chul to believe that he was the administrator of the Hotel, when in fact he was not. By doing so, he made it appear that he was duly authorized to enter into contracts for the Hotel and to receive rentals from its occupants. His fraudulent scheme enabled Casuga to collect rentals from the occupants of the Hotel, Chul in particular, which he did not transmit to Nevada. Worse still, Casuga obtained money belonging to the Hotel. Following the principle laid down in *Tan*, Casuga's misrepresentation properly constitutes gross misconduct for which he must be disciplined.

Notably, in *Tan*, the respondent lawyer was held guilty of misconduct and suspended from the practice of law for six (6) months.

Casuga also violated Canon 16 of the Code of Professional Responsibility

With regard to the jewelry and watch entrusted to him, Casuga alleged that Nevada pawned them and thereafter instructed Casuga's wife to redeem them with the latter's money. He added that Nevada then instructed his wife to sell the valuables and use the proceeds to reimburse herself for the redemption price. Again, however, Casuga's allegations are unsupported by a single shred of evidence. Pawnshop receipts would have provided the best evidence under the circumstances. But they were not presented, too.

Moreover, Casuga's admission that the valuables are indeed in his possession, without any adequate reason, supports Nevada's version of the story. Casuga's failure to return such property or remit the proceeds of the sale is a blatant violation of Canon 16 of the Code of Professional Responsibility (the Code). The Code's Canon 16 and Rule 16.3 state:

CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his profession.

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

Having been tasked to sell such valuables, Casuga was duty-bound to return them upon Nevada's demand. His failure to do so renders him subject to disciplinary action. To be sure, he cannot use, as a defense, the lack of a lawyer-client relationship as an exonerating factor. In *Barcenas v. Alvero*,[11] the Court suspended a lawyer from the practice of law for two (2) years after he failed to account for or return PhP 300,000 that was entrusted to him for deposit with the courts. The Court ruled:

From the records of the case, there is likewise a clear breach of lawyer-client relations. When a lawyer receives money from a client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for a particular purpose. And if he does not use the money for the intended purpose, the lawyer must immediately return the money to his client. x x x

Jurisprudence dictates that a lawyer who obtains possession of the funds and properties of his client in the course of his professional employment shall deliver the same to his client (a) when they become due, or (b) upon demand. x x x

[Respondent] Atty. Alvero cannot take refuge in his claim that there existed no attorney-client relationship between him and Barcenas. **Even if it were true that no attorney-client relationship existed between them, case law has it that an attorney may be removed, or otherwise disciplined, not only for malpractice and dishonesty in the profession, but also for gross misconduct not connected with his professional duties, making him unfit for the office and unworthy of the privileges which his license and the law confer upon him.**

[11] A.C. No. 8159, April 23, 2010, 619 SCRA 1, 9-10.

Atty. Alvero's failure to immediately account for and return the money when due and upon demand violated the trust reposed in him, demonstrated his lack of integrity and moral soundness, and warranted the imposition of disciplinary action. It gave rise to the presumption that he converted the money for his own use, and this act constituted a gross violation of professional ethics and a betrayal of public confidence in the legal profession**. They constitute gross misconduct and gross unethical behavior for which he may be suspended, following Section 27, Rule 138 of the Rules of Court** x x x. (Emphasis supplied.)

Having failed to return, upon demand, the items entrusted to him by Nevada or remit the proceeds of the sale, Casuga violated Canon 16 and Rule 16.03 of the Code.

In *Almendarez, Jr. v. Langit*,[12] the Court suspended a lawyer from the practice of law for two (2) years for failing to account for the money and properties of his client. Similarly, in *Small v. Banares*,[13] a lawyer was also suspended from the practice of law for two (2) years, as he failed to return the money of his client that he was holding in trust and for failing to file an answer to the complaint and his refusal to appear at the mandatory conference before the IBP. Thus, the same penalty should be imposed upon Casuga.

Casuga violated the Notarial Rules

The Notarial Rules, A.M. No. 02-8-13-SC, provides in its Rule IV, Section 1(c) and Sec. 3(a) when a notary public may sign a document in behalf of another person, thus:

SEC. 1. *Powers*. – x x x

xxx xxx xxx

(c) A notary public is authorized to sign on behalf of a person who is physically unable to sign or make a mark on an instrument or document if:

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[12] A.C. No. 7057, July 25, 2006, 496 SCRA 402.

[13] A.C. No. 7021, February 21, 2007, 516 SCRA 323.

(1) the notary public is directed by the person unable to sign or make a mark to sign on his behalf;

(2) the signature of the notary public is affixed in the presence of two disinterested and unaffected witnesses to the instrument or document;

(3) both witnesses sign their own names;

(4) the notary public writes below his signature: "Signature affixed by notary in presence of (names and addresses of person and two (2) witnesses);"

(5) the notary public notarizes his signature by acknowledgment or jurat.

On the other hand, the succeeding Sec. 3(a) disqualifies a notary public from performing a notarial act if he or she "is a party to the instrument or document that is to be notarized."

None of the requirements contained in Rule IV, Sec. 1(c), as would justify a notary signing in behalf of a contracting party, was complied with in this case. Moreover, Casuga's act of affixing his signature above the printed name "Edwin T. Nevada," without any qualification, veritably made him a party to the contract of lease in question. Thus, his act of notarizing a deed to which he is a party is a plain violation of the aforequoted Rule IV, Sec. 3(a) of the Notarial Rules, for which he can be disciplinarily sanctioned provided under Rule XI, Sec. 1(b)(10) of the Notarial Rules, which provides:

SECTION 1. Revocation and Administrative Sanctions. – x x x.

(b) In addition, the Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:

(10) knowingly performs or fails to perform any other act prohibited or mandated by these Rules;

Aside from being a violation of the Notarial Rules, Casuga's aforementioned act partakes of malpractice of law and misconduct punishable under the ensuing Sec. 27, Rule 138 of the Rules of Court:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any **deceit, malpractice, or other gross misconduct in such office**, x x x or for any violation of the oath which he is required to take before admission to practice x x x. (Emphasis supplied.)

So it was that in *Lanuzo v. Bongon*[14] the Court suspended a notary public from the practice of law for one (1) year for violation of the Notarial Rules. This was on top of the penalty of disqualification from being commissioned as a notary public for two (2) years.

In *Dela Cruz v. Zabala*,[15] the Court adjudged the respondent notary public guilty of gross negligence for failing to require the parties to be physically present before him. In revoking the erring notary's commission, the Court, in *Dela Cruz*, stressed the significance of notarization and proceeded to define the heavy burden that goes when a lawyer is commissioned as a notary public. The Court wrote:

x x x [N]otarization is not an empty, meaningless routinary act. It is invested with substantive public interest. It must be underscored that x x x notarization x x x converts a private document into a public document making that document admissible in evidence without further proof of authenticity thereof. A notarial document is, by law, entitled to full faith and credit upon its face. For this reason, a notary public must observe with utmost care the basic requirements in the performance of x x x duties; otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

xxx xxx xxx

A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. These acts of

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[14] A.C. No. 6737, September 23, 2008, 566 SCRA 214, 217-218.

[15] A.C. No. 6294, November 17, 2004, 442 SCRA 407.

the affiants cannot be delegated because what are stated therein are facts they have personal knowledge of and are personally sworn to. Otherwise, their representative's names should appear in the said documents as the ones who executed the same.

The function of a notary public is, among others, to guard against any illegal or immoral arrangements. By affixing his notarial seal on the instrument, he converted the Deed of Absolute Sale, from a private document into a public document. x x x As a lawyer commissioned to be a notary public, respondent is mandated to discharge his sacred duties with faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment or jurat. Simply put, such responsibility is incumbent upon him, he must now accept the commensurate consequences of his professional indiscretion.[16] x x x (Emphasis supplied.)

The recommended penalty must be modified

Considering the various infractions Casuga committed, as discussed above, the aggregate penalty recommended by the IBP Board of Governors of suspension from the practice of law for four (4) years was correct. It hews with prevailing jurisprudence as cited above. However, Casuga's disqualification from reappointment as notary public for two (2) years should match his suspension from the practice of law. The disqualification should accordingly be increased to four (4) years, since only a lawyer in good standing can be granted the commission of a notary public.

The desired disbarment of Casuga, however, is too severe a sanction to impose under the premises; it cannot be granted. The penalty of disbarment shall be meted out only when the lawyer's misconduct borders on the criminal and/or is committed under scandalous circumstance.[17]

The money, jewelry and Rolex watch should be returned to Nevada

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[16] *Id.* at 412-413.

[17] *Dantes v. Dantes*, A.C. No. 6486, September 22, 2004, 438 SCRA 582, 588, 590.

Nevada's plea that the rental deposit of PhP 90,000, the pieces of jewelry worth PhP 300,000, and the Rolex watch valued at USD 12,000 or its equivalent in Philippine Peso should be ordered returned to her instead of to Jung Jong Chul is well-taken. We need not belabor the fact that Chul has no right whatsoever over the amount or property mentioned above.

WHEREFORE, the Court finds Atty. Rodolfo D. Casuga **GUILTY** of gross misconduct for violation of Canon 16 of the Code of Professional Responsibility and the Notarial Rules. He is hereby **SUSPENDED** for a period of four (4) years from the practice of law. The notarial commission of Atty. Casuga, if still existing, is hereby **REVOKED** and he is **DISQUALIFIED** from being commissioned as Notary Public also for four (4) years. Additionally, he is ordered to return the amount of PhP 90,000, the pieces of jewelry subject of this case or their equivalent of PhP 300,000, and the Rolex watch valued at USD 12,000 or its equivalent in Philippine Peso to Corazon T. Nevada within thirty (30) days from finality of this Decision; otherwise, he shall be cited for contempt. Lastly, Atty. Casuga is warned that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Bar Confidant, to be appended to the personal record of Atty. Rodolfo D. Casuga as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for dissemination to all trial courts for their information and guidance.

SO ORDERED.

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

Del Castillo, J., on official leave.

EN BANC

[A.M. No. CA-12-25-P. March 20, 2012]
(Formerly A.M. OCA IPI No. 11-183-CA-P)

RE: COMPLAINT FILED BY (RET.) MCTC JUDGE RODOLFO B. GARCIA AGAINST 18TH DIVISION CLERK OF COURT ATTY. MAY FAITH L. TRUMATA-REBOTIACO, COURT OF APPEALS, CEBU CITY

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; WRIT OF EXECUTION; SHOULD STRICTLY CONFORM TO EVERY ESSENTIAL PARTICULAR OF THE PROMULGATED JUDGMENT AS INDICATED IN THE DISPOSITIVE PORTION THEREOF; IN CASE OF CONFLICT BETWEEN THE DISPOSITIVE PORTION AND OPINION OF A COURT CONTAINED IN THE BODY OF THE DECISION, THE DISPOSITIVE PORTION IS CONTROLLING.— It is a settled rule that a writ of execution should strictly conform to every essential particular of the promulgated judgment – as indicated in the dispositive portion (*fallo*) thereof – since it is that portion of the decision that actually constitutes the resolution of the court. Consequently, even if there is a conflict between the dispositive portion and the opinion of a court contained in the body of the decision, it would be the dispositive portion that would be controlling, regardless of what was stated in the opinion. This principle is based on the theory that the dispositive portion is the final order, while the opinion is merely a statement ordering nothing. A writ of execution would be rendered void if it is in excess of and beyond the original judgment or award spelled out in the dispositive portion of the decision. We do not find any "incompetence, inefficiency, negligence, ignorance of the law, or abuse of authority" on the part of respondent when she (a) addressed the Writ of Execution solely to GSIS and (b) did not direct a sheriff to enforce the writ. She merely issued the Writ of Execution according to the literal text of the dispositive portion of the 20 February 2007 CA Decision. Since

only the GSIS was directed to pay the remaining balance of complainant's life insurance proceeds, respondent cannot be faulted for issuing the writ *sans* an order against GSIS officers.

2. **ID.; ID.; ID.; ISSUANCE OF A WRIT OF EXECUTION IS MINISTERIAL; NO ONE BUT THE COURT CAN AMEND WHAT WAS GRANTED IN AN ORDER OF EXECUTION, AND ITS CLERK OF COURT HAS NO OTHER DUTY BUT TO ISSUE A WRIT IN ACCORDANCE WITH THE DISPOSITIVE PORTION OF THE GRANT.—** Neither can we condemn the Clerk of Court for her failure to direct a sheriff to enforce the writ. x x x. It was only upon the issuance of a Verification Report finding that the GSIS had continued to fail to comply with the writ that the CA promulgated the x x x September 2011 Resolution. The Resolution ordered the issuance of an Alias Writ of Execution and directed the Executive Judge of the Pasay City RTC to designate a special sheriff who would enforce the *Alias* Writ of Execution. As we reiterated in *Viray v. Court of Appeals*, the order of execution by a court is the foundation of a writ of execution. No one but the court can amend what was granted in an order of execution, and its clerk of court has no other duty but to issue a writ in accordance with the dispositive portion of the grant. Accordingly, it is imperative that before the Clerk of Court can amend a writ of execution, the order of execution should first be amended. In this case, had respondent exceeded the terms of the order – as expressed in the dispositive portion of the CA Decision – the writ would have been held null and void. We emphasize that the issuance of a writ of execution is ministerial, as it is founded on the judicial act of awarding or ordering an execution. Thus, to have expected respondent to include the GSIS officers in the writ and to direct the appointment of a special sheriff who would enforce the writ would have had the effect of the Clerk of Court's arrogation unto herself of the power to exercise a judicial act in violation of the law.

APPEARANCES OF COUNSEL

Villanueva Tabucanon and Associates Law Offices for Atty. May Faith Trumata-Rebotiaco

RESOLUTION

SERENO, *J.*:

Before the Court is an administrative complaint filed by Retired Judge Rodolfo B. Garcia (Ret. Judge Garcia) of the Municipal Circuit Trial Court (MCTC) of Calatrava-Toboso, Negros Occidental, against respondent Atty. May Faith L. Trumata-Rebotiaco (Rebotiaco), Court of Appeals (CA) 18th Division Clerk of Court. The core issue at bench is whether respondent should be dismissed from service for allegedly issuing an irregular Writ of Execution.

Facts

The case stemmed from the Petition for Mandamus filed by Ret. Judge Garcia with the CA against the Government Service and Insurance System (GSIS), Winston F. Garcia, Jessie A. Mauricio, and Mila E. Santarromana (collectively GSIS, *et al.*). The Petition was to compel GSIS, *et al.* to pay in full the face value of complainant's life insurance policy.[1] On 20 February 2007, the 19th Division of the CA rendered a Decision, which stated the following in the dispositive portion:

> ***WHEREFORE***, the instant petition for mandamus is ***GRANTED***. Respondent Government Service Insurance System (GSIS) is hereby ***DIRECTED*** to pay petitioner Rodolfo B. Garcia the unpaid balance of his life insurance proceeds in the sum of Thirty-six Thousand Three Hundred Ninety-three Pesos and Eighty-one centavos (₱36,393.81). No pronouncement as to costs.[2] (Underlining supplied.)

The CA denied the Motion for Reconsideration of GSIS, *et al.* on 14 September 2007.[3] The Decision eventually became

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[1] The 20 February 2007 Decision in CA-G.R. CEB SP No. 82552 was penned by CA Associate Justice Agustin S. Dizon and concurred in by Associate Justices Isaias P. Dicdican and Francisco P. Acosta.

[2] CA Decision of 20 February 2007 at 10 (*Garcia v. Government Service Insurance System*, CA-G.R. CEB SP No. 82552), *rollo*, p. 47.

[3] Writ of Execution at 1 (issued on 2 August 2010) (*Garcia v. Government Service Insurance System*, CA-G.R. CEB SP No. 82552, decided on 2 August 2010), *rollo*, p. 4.

final, which led complainant to allegedly file a Motion to Issue Writ of Execution dated 22 November 2007.[4] He asserts that he filed three more motions thereafter. On 29 May 2008, the CA promulgated a Resolution directing the issuance of an Entry of Judgment of its 20 February 2007 Decision.[5]

Complainant posits[6] that it was only when he filed his fourth Motion to Issue Writ of Execution dated 11 July 2010 that the 18th Division of the CA promulgated its 2 August 2010 Resolution directing respondent – in her capacity as the Division Clerk of Court – to issue a corresponding writ of execution in order to enforce and carry out the pronouncements in the 20 February 2007 CA Decision.[7] Accordingly, she issued the writ, which quoted verbatim the dispositive portion of the 20 February 2007 CA Decision directing only the GSIS to pay the remaining balance of complainant's life insurance proceeds. Thus, Rebotiaco addressed the writ only to GSIS.[8] On 24 August 2010, complainant filed yet another Motion to Issue Writ of Execution.[9]

As the GSIS continued with its failure to comply with the 20 February 2007 CA Decision,[10] Ret. Judge Garcia lodged the present administrative complaint against CA 18th Division Clerk of Court Rebotiaco on 7 June 2011. Complainant faults her for the unsuccessful enforcement of the Writ of Execution, which was allegedly irregular. According to complainant, it was defective, as it was addressed only to a juridical person – GSIS – and not

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[4] Complaint at 1 (filed on 7 June 2011), *rollo*, p. 1.

[5] Writ of Execution, *supra* note 3.

[6] Complaint, *supra* note 4.

[7] CA Resolution of 2 August 2010 at 2 (*Garcia v. Government Service Insurance System*, CA-G.R. CEB SP No. 82552), *rollo*, p. 6. The Resolution was penned by CA Associate Justice Socorro B. Inting and concurred in by Associate Justices Portia A. Hormachuelos and Edwin D. Sorongon.

[8] Writ of Execution, *supra* note 3 at 2, *rollo*, p. 5.

[9] CA Resolution of 13 September 2011 at 2 (*Garcia v. Government Service Insurance System*, CA-G.R. CEB SP No. 82552), *rollo*, p. 58.

[10] *Id.*

to the appropriate officers thereof, in violation of Section 11, Rule 51 of the Rules of Court. Complainant also posits that respondent failed to direct a sheriff to enforce the Writ of Execution. He claims that these are, *inter alia*, the reasons why the writ was not enforced.[11] Thus, he seeks the dismissal of respondent from service because of her "incompetence, inefficiency, negligence, ignorance of the law, or abuse of authority," which allegedly "made her unfit for her position."[12]

On 22 August 2011, while the present Complaint was pending before this Court, Ret. Judge Garcia filed a motion for the issuance of another writ of execution or to amend the earlier Writ of Execution.[13] On 13 September 2011, the CA 19th Division issued a Resolution,[14] which noted the noncompliance of GSIS with the Writ of Execution and directed the 19th Division Clerk of Court to issue an *Alias* Writ of Execution against specific officers of the GSIS. The pertinent portion of the 13 September 2011 CA Resolution states the following:

> **1.** **ISSUE, with dispatch,** the corresponding *ALIAS* WRIT OF EXECUTION directing The President and General Manager, The Chief, Claims and Loans Division, The Manager, and/or Any Appropriate Officer of the Government Service Insurance System, Pasay City, to enjoin and enforce the Decision dated February 20, 2007, the dispositive portion of which reads as follows:
>
> xxx xxx xxx
>
> **2.** **DIRECT** the Executive Judge of the Regional Trial Court, Pasay City to:
>
> (a) **Designate a special sheriff** to enforce the *ALIAS* WRIT OF EXECUTION against the GOVERNMENT SERVICE and

[11] Complaint, *supra* note 4 at 2, *rollo*, p. 2.

[12] *Id.*

[13] CA Resolution of 13 September 2011, *supra* note 9.

[14] The 13 September 2011 Resolution in CA-G.R. CEB SP No. 82552 was penned by CA Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Edgardo L. delos Santos and Ramon Paul L. Hernando.

INSURANCE SYSTEM, Head Office, Financial Center, Reclamation Area, Roxas Boulevard, Pasay City;

(b) **Require** the special sheriff to make a Return of the *Alias* Writ of Execution immediately but not later than ten (10) days from its implementation, enforcement and service; and

(c) **Submit** the originals of the pertinent documents to this Court.[15] (Underlining supplied.)

Accordingly, 19th Division Clerk of Court, Atty. Joseph Stephen A. Ygnacio, issued an Alias Writ of Execution on 13 September 2011 commanding the GSIS and its above-mentioned officers to cause the execution of the 20 February 2007 CA Decision "conformably with the dispositive portion thereof and as ordered in the Resolutions dated August 2, 2010 and September 13, 2011."[16]

Issue

The main issue presented before this Court is whether or not the CA 18th Division Clerk of Court committed an administrative offense when she (a) addressed the Writ of Execution solely to GSIS and (b) failed to direct a sheriff to enforce the writ.

Discussion

Complainant argues that the Writ of Execution issued by Rebotiaco, in her capacity as the CA 18th Division Clerk of Court, was irregular for violating Section 11, Rule 51 of the Rules of Court. The pertinent provision of the Rules of Court reads as follows:

SEC. 11. *Execution of judgment*. — Except where the judgment or final order or resolution, or a portion thereof, is ordered to be immediately executory, the motion for its execution may only be filed in the proper court after its entry.

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[15] CA Resolution of 13 September 2011, *supra* note 9 at 2-3, *rollo*, pp. 58-59.

[16] *Alias* Writ of Execution at 3 (issued on 13 September 2011) (*Garcia v. Government Service Insurance System*, CA-G.R. SP No. 82552, decided on 13 September 2011), *rollo*, p. 63.

In original actions in the Court of Appeals, its **writ of execution shall be** accompanied by a certified true copy of the entry of judgment or final resolution and **addressed to any appropriate officer for its enforcement.**

In appealed cases, where the motion for execution pending appeal is filed in the Court of Appeals at a time that it is in possession of the original record or the record on appeal, the resolution granting such motion shall be transmitted to the lower court from which the case originated, together with a certified true copy of the judgment or final order to be executed, with a directive for such court of origin to issue the proper writ for its enforcement. (n) (Emphasis supplied.)

This aforecited provision must be read in conjunction with Section 8, Rule 39, *viz*:

SEC. 8. *Issuance, form and contents of a writ of execution.* — The **writ of execution shall**: (1) issue in the name of the Republic of the Philippines from the court which granted the motion; (2) **state** the name of the court, the case number and title, **the dispositive part of the subject judgment or order**; and (3) **require the sheriff or other proper officer to whom it is directed to enforce the writ according to its terms, in the manner hereinafter provided**: x x x (Emphasis supplied.)

It is a settled rule that a writ of execution should strictly conform to every essential particular of the promulgated judgment – as indicated in the dispositive portion (*fallo*) thereof[17] – since it is that portion of the decision that actually constitutes the resolution of the court.[18] Consequently, even if there is a conflict between the dispositive portion and the opinion of a court contained in the body of the decision, it would be the dispositive portion that would be controlling, regardless of what was stated in the

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[17] *Ex-Bataan Veterans Security Agency, Inc. v. National Labor Relations Commission*, 320 Phil. 517 (1995); *Banquerigo v. Court of Appeals*, 529 Phil. 826 (2006).

[18] *Olac v. Court of Appeals*, G.R. No. 84256, 12 September 1992, 213 SCRA 321; WILLLARD B. RIANO, *CIVIL PROCEDURE* – A RESTATEMENT FOR THE BAR, 494 (2009) *citing* RULES OF COURT, Rule 39, Sec. 8.

opinion.[19] This principle is based on the theory that the dispositive portion is the final order, while the opinion is merely a statement ordering nothing.[20] A writ of execution would be rendered void if it is in excess of and beyond the original judgment or award spelled out in the dispositive portion of the decision.[21]

We do not find any "incompetence, inefficiency, negligence, ignorance of the law, or abuse of authority" on the part of respondent when she (a) addressed the Writ of Execution solely to GSIS and (b) did not direct a sheriff to enforce the writ. She merely issued the Writ of Execution according to the literal text of the dispositive portion of the 20 February 2007 CA Decision. Since only the GSIS was directed to pay the remaining balance of complainant's life insurance proceeds, respondent cannot be faulted for issuing the writ *sans* an order against GSIS officers.

Neither can we condemn the Clerk of Court for her failure to direct a sheriff to enforce the writ. In a letter-reply dated 30 September 2010, the CA, through Executive Justice Portia Aliño-Hormachuelos, explained:

> **The Writ was directed to the GSIS there being no Sheriff designated in the Court of Appeals.**
>
> In case of non-compliance, the general procedure observed is for this Court to issue the appropriate legal process against GSIS, and exercise its power of contempt to ensure enforcement.
>
> It is highly recommended that you confer with the Legal Office of the GSIS Cebu City for the purpose of coordinating with the main branch in GSIS-Manila for the release of the amount awarded in your favor.
>
> It is hoped that the foregoing clarifies your concern.[22] (Emphasis supplied.)

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[19] *Olac v. Court of Appeals*, *supra*; *Pelejo v. Court of Appeals*, 201 Phil. 873 (1982), *citing Robles v. Timario*, 107 Phil. 809 (1960).

[20] *Olac v. Court of Appeals*, *supra*.

[21] *Ex-Bataan Veterans Security Agency, Inc. v. National Labor Relations Commission*, *supra* note 17.

[22] Letter of CA Executive Justice Portia Aliño-Hormachuelos, Annex 2 of Respondent's Comment, *rollo*, p. 57.

It was only upon the issuance of a Verification Report finding that the GSIS had continued to fail to comply with the writ that the CA promulgated the afore-quoted 13 September 2011 Resolution. The Resolution ordered the issuance of an *Alias* Writ of Execution and directed the Executive Judge of the Pasay City RTC to designate a special sheriff who would enforce the *Alias* Writ of Execution.[23]

As we reiterated in *Viray v. Court of Appeals*, the order of execution by a court is the foundation of a writ of execution. No one but the court can amend what was granted in an order of execution, and its clerk of court has no other duty but to issue a writ in accordance with the dispositive portion of the grant.[24] Accordingly, it is imperative that before the Clerk of Court can amend a writ of execution, the order of execution should first be amended.[25]

In this case, had respondent exceeded the terms of the order – as expressed in the dispositive portion of the CA Decision – the writ would have been held null and void.[26] We emphasize that the issuance of a writ of execution is ministerial, as it is founded on the judicial act of awarding or ordering an execution.[27] Thus, to have expected respondent to include the GSIS officers in the writ and to direct the appointment of a special sheriff who would enforce the writ would have had the effect of the Clerk of Court's arrogation unto herself of the power to exercise a judicial act in violation of the law.

WHEREFORE, the administrative complaint is hereby **DISMISSED.**

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[23] CA Resolution of 13 September 2011, *supra* note 9 at 2-3, *rollo*, pp. 59-60.

[24] 350 Phil. 107 (1998).

[25] *Id.*

[26] *Foremost Farms Incorporated v. Department of Labor and Employment*, 321 Phil. 487 (1995).

[27] *Viray v. Court of Appeals*, *supra* note 24.

SO ORDERED.

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

Del Castillo, J., on leave.

EN BANC

[A.M. No. 10-1-13-SC. March 20, 2012]

RE: SUBPOENA *DUCES TECUM* DATED JANUARY 11, 2010 OF ACTING DIRECTOR ALEU A. AMANTE, PIAB-C, OFFICE OF THE OMBUDSMAN.

[A.M. No. 10-9-9-SC. March 20, 2012]

RE: ORDER OF THE OFFICE OF THE OMBUDSMAN REFERRING THE COMPLAINT OF ATTYS. OLIVER O. LOZANO and EVANGELINE J. LOZANO-ENDRIANO AGAINST CHIEF JUSTICE REYNATO S. PUNO [RET.].

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; GRAVE PROFESSIONAL MISCONDUCT; PROFESSIONAL MISCONDUCT INVOLVING THE MISUSE OF CONSTITUTIONAL PROVISIONS FOR THE PURPOSE OF INSULTING MEMBERS OF THE SUPREME COURT IS A SERIOUS BREACH OF THE RIGID STANDARDS THAT A MEMBER

OF GOOD STANDING OF THE LEGAL PROFESSION MUST FAITHFULLY COMPLY WITH.— In our Resolution of June 15, 2010, we found Atty. Lozano and Atty. Evangeline Lozano-Endriano guilty of grave professional misconduct when they misquoted or misused constitutional provisions in their pleadings in order to impute unjust acts to members of this Court. Subsequently, we have reinstated Atty. Lozano-Endriano in our August 23, 2011 Resolution, because of circumstances indicating lesser culpability on her part. Professional misconduct involving the misuse of constitutional provisions for the purpose of insulting Members of this Court is a serious breach of the rigid standards that a member of good standing of the legal profession must faithfully comply with. Thus, the penalty of indefinite suspension was imposed. However, in the past two years during which Atty. Lozano has been suspended, he has repeatedly expressed his willingness to admit his error, to observe the rules and standards in the practice of law, and to serve the ends of justice if he should be reinstated. And in these two years, this Court has not been informed of any act that would indicate that Atty. Lozano had acted in any unscrupulous practices unsuitable to a member of the bar.

2. ID.; ID.; ID.; WHILE THE SUPREME COURT WILL NOT HESITATE TO DISCIPLINE ITS ERRING OFFICERS, IT WILL NOT PROLONG A PENALTY AFTER IT HAS BEEN SHOWN THAT THE PURPOSE FOR IMPOSING IT HAD ALREADY BEEN SERVED.— While this Court will not hesitate to discipline its erring officers, it will not prolong a penalty after it has been shown that the purpose for imposing it had already been served. From Atty. Lozano's letters-petitions, we discern that his suspension had already impressed upon him the need for care and caution in his representations as an officer of this Court. Under these circumstances, this Court decides to grant Atty. Lozano's letters-petitions with the expectation that he shall now avoid going to the extreme of employing contortions of and misusing legal provisions and principles to justify his positions, and instead focus his energies and talents towards a lawyer's primary aim of promoting the speedy and efficient administration of justice.

RESOLUTION

***PER CURIAM*:**

We resolve the separate successive letter-petitions[1] of Atty. Oliver O. Lozano, addressed to the Supreme Court *en banc*, for the lifting of the indefinite suspension from the practice of law imposed by the Court in its Resolution of June 15, 2010.

In our Resolution of June 15, 2010, we found Atty. Lozano and Atty. Evangeline Lozano-Endriano guilty of grave professional misconduct when they misquoted or misused constitutional provisions in their pleadings[2] in order to impute unjust acts to members of this Court. Subsequently, we have reinstated Atty. Lozano-Endriano in our August 23, 2011 Resolution, because of circumstances indicating lesser culpability on her part.

Professional misconduct involving the misuse of constitutional provisions for the purpose of insulting Members of this Court is a serious breach of the rigid standards that a member of good standing of the legal profession must faithfully comply with. Thus, the penalty of indefinite suspension was imposed. However, in the past two years during which Atty. Lozano has been suspended, he has repeatedly expressed his willingness to admit his error, to observe the rules and standards in the practice of law, and to serve the ends of justice if he should be reinstated. And in these two years, this Court has not been informed of any act that would indicate that Atty. Lozano had acted in any unscrupulous practices unsuitable to a member of the bar.

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[1] Letters-Petitions of Oliver Lozano, addressed to the Supreme Court *En Banc*, dated February 20, 2012, December 2, 2011, September 27, 2011, June 27, 2011 and May 30, 2011.

[2] A criminal complaint before the Office of the Ombudsman, entitled "*Oliver Lozano, et al. v. Hilario Davide Jr., et al.,*" OMB-C-C-09-0527, against Retired Chief Justice Hilario G. Davide and Retired Justice Alicia Austria-Martinez; and the Complaint for Impeachment filed before the House of Representatives, entitled "*Lawyers League of the Philippines v. Supreme Court Chief Justice Reynato S. Puno,*" dated September 8, 2009.

While this Court will not hesitate to discipline its erring officers, it will not prolong a penalty after it has been shown that the purpose for imposing it had already been served. From Atty. Lozano's letters-petitions, we discern that his suspension had already impressed upon him the need for care and caution in his representations as an officer of this Court.

Under these circumstances, this Court decides to grant Atty. Lozano's letters-petitions with the expectation that he shall now avoid going to the extreme of employing contortions of and misusing legal provisions and principles to justify his positions, and instead focus his energies and talents towards a lawyer's primary aim of promoting the speedy and efficient administration of justice.

WHEREFORE, premises considered, we hereby LIFT the indefinite suspension from the practice of law of Atty. Oliver Lozano and REINSTATE him to the status of a member in good standing in so far as the suspension imposed him by this Court is concerned.

SO ORDERED.

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

EN BANC

[A.M. No. P-11-3019. March 20, 2012]

SHERYLL C. DELA CRUZ, *complainant, vs.* **PAMELA P. MALUNAO, Clerk III, Regional Trial Court, Branch 28, Bayombong, Nueva Vizcaya,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ADMINISTRATIVE CHARGE; THE WEIGHT OF EVIDENCE REQUIRED IN ADMINISTRATIVE INVESTIGATIONS IS SUBSTANTIAL EVIDENCE; THE COURT IS NOT BOUND BY TECHNICAL RULES OF PROCEDURE AND EVIDENCE.— The Uniform Rules on Administrative Cases in the Civil Service govern the conduct of disciplinary and non-disciplinary proceedings in administrative cases. In Section 3, it provides that, "Administrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings." In *Office of the Court Administrator v. Canque*, the Court held: "The essence of due process is that a party be afforded a reasonable opportunity to be heard and to present any evidence he may have in support of his defense. Technical rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process cannot be fully equated with due process in its strict judicial sense. A formal or trial-type hearing is not required." The weight of evidence required in administrative investigations is substantial evidence. "In Rule 133, Section 5 of the Rules of Court, substantial evidence is defined: In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable man might accept as adequate to justify a conclusion." Consequently, in the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, then by preponderance of evidence, and lastly by substantial evidence,

in that order. For these reasons, only substantial evidence is required to find Malunao guilty of the administrative offense. In the hierarchy of evidentiary values, substantial evidence, or that amount of relevant evidence which a reasonable man might accept as adequate to justify a conclusion, is the lowest standard of proof provided under the Rules of Court. In assessing whether there is substantial evidence in administrative investigations such as this case, the Court is not bound by technical rules of procedure and evidence.

2. **ID.; ID.; ID.; GRAVE MISCONDUCT, EXPLAINED; PROPER PENALTY IS DISMISSAL EVEN FOR THE FIRST OFFENSE.—** "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer." "The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules." "Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his position or office to procure some benefit for himself or for another person, contrary to duty and the rights of others." Section 2, Canon 1 of the Code of Conduct for Court Personnel states: "Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions." In Rule IV, Section 52(A)(11) of the Uniform Rules on Administrative Cases in the Civil Service, soliciting or accepting, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of an employee's official duties may affect the functions of his office merits the penalty of dismissal for the first offense. Grave misconduct under Section 52(A)(3) of Rule IV is also punishable by dismissal for the first offense.

3. **ID.; ID.; ID.; ID.; SOLICITING MONEY FROM LITIGANTS WITH A PROMISE OF A FAVORABLE DECISION CONSTITUTES GRAVE MISCONDUCT WHICH MERITS THE PENALTY OF DISMISSAL.—** In the present case, Malunao clearly used her position as Clerk III in Branch 28 to solicit money from Dela Cruz with the promise of a favorable

decision. This violation of Section 2, Canon 1 of the Code of Conduct for Court Personnel constitutes the offense of grave misconduct meriting the penalty of dismissal. Dela Cruz's Sinumpaang Salaysay, the joint affidavit of arrest executed by the NBI agents, the Booking Sheet and Arrest Report, photocopy of the marked money, the Complaint Sheet, and the photographs of Malunao entering Dela Cruz's house, and the contents of Malunao's bag after receipt of the money, all prove by substantial evidence the guilt of Malunao for the offense of grave misconduct. What is more alarming and disconcerting is the fact that Malunao has continued to solicit money from litigants, even after she had been preventively suspended as Clerk III. Malunao has the propensity to abuse a position of public service and is not fit to remain in the civil service.

APPEARANCES OF COUNSEL

Emmanuel Cacho Rasing for complainant.
Virgil R. Castro for respondent.

D E C I S I O N

***PER CURIAM*:**

This administrative matter originated from a criminal complaint (I.S. No. 5519-E-2008) filed by complainant Sheryll C. Dela Cruz (Dela Cruz) against respondent Pamela P. Malunao (Malunao), Clerk III of Branch 28 of the Regional Trial Court of Bayombong, Nueva Vizcaya (Branch 28) for the crime of robbery with extortion. The Office of the Provincial Prosecutor of Bayombong, Nueva Vizcaya forwarded the records of the case to the Supreme Court since Malunao is a trial court employee under the exclusive administrative supervision of the Supreme Court.[1] The case was then docketed as A.M. OCA I.P.I. No. 08-2972-P with the Office of the Court Administrator.

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[1] *Rollo*, p. 3.

The report of the National Bureau of Investigation dated 8 May 2008 summarizes the facts of the case as follows:

Investigation disclosed that on 06 May 2008, Subject PAMELA MALUNAO *y* PASCUA (Subject Malunao for brevity) through several calls and text messages informed Complainant SHERYLL DELA CRUZ *y* CEBALLOS (Complainant Dela Cruz for brevity) that ALAY KAPWA Cooperative had given bribe money in the amount of TWENTY THOUSAND PESOS (PHP20,000.00) to HONORABLE JUDGE FERNANDO F. FLOR JR. (JUDGE FLOR for brevity), Regional Trial Court, Branch 29, Bayombong, Nueva Vizcaya through an unidentified individual in exchange of fixing the case in favor of the said cooperative against ERNESTO ROXAS, a business partner of complainant.

Subject Malunao further informed Complainant DELA CRUZ that JUDGE FLOR was willing to return the money to ALAY KAPWA Cooperative if the latter will give THIRTY-FIVE THOUSAND PESOS (PHP35,000.00) to Judge Flor through the former (Subject Malunao). Subject Malunao also intimidated Complainant Dela Cruz that if the latter will not give the said amount to Judge Flor, the said judge will rule in favor of ALAY KAPWA Cooperative.

Intimidated of the heavy damage that will arise from losing the case against ALAY KAPWA, Complainant Dela Cruz agreed to pay the amount of THIRTY-FIVE THOUSAND PESOS (PHP35,000.00) but in installment basis. Subject Malunao demanded the amount of FIFTEEN THOUSAND PESOS (PHP15,000.00) to be paid on 2:00PM, 08 May 2008.

At about 10:00AM 08 May 2008, the Complainant, wanting to confirm whether or not the transaction brokered by Subject Malunao will push through, personally approached Judge Flor at the Hall of Justice parking lot. However, when asked by Complainant Dela Cruz regarding the amount of THIRTY-FIVE THOUSAND PESOS (PHP35,000.00) that Subject Malunao asked of her, Judge Flor denied any knowledge of said transaction.

Judge Flor referred Complainant Dela Cruz to the NBI-Bayombong District Office (NBI-BAYDO) in order for the latter to file the necessary complaint against the Subject Malunao.

At about 10:30AM, Judge Flor arrived at the NBI-BAYDO to make sure that Complainant Dela Cruz had already filed a complaint before this office and that an entrapment operation will be later on set up at 2:00PM 08 May 2008.

At about 1:00PM 08 May 2008, the operatives of the NBI-BAYDO proceeded to No. 45 Espino St., Brgy. Quirino, Poblacion South, Solano, Nueva Vizcaya, complainant's residence, to conduct an entrapment operation against Subject Malunao.

Upon Subject Malunao's receipt of the marked money, the entrapment operation was announced and Subject Malunao was arrested and informed of her constitutional rights.

Subject Malunao was brought to the NBI-BAYDO where she was booked, photographed and fingerprinted.

In support of our recommendation, we are submitting the following pieces of evidence, to wit:

1. Complaint Sheet;
2. Sinumpaang Salaysay ni Sheryll Dela Cruz *y* CEBALLOS;
3. Affidavit of Arrest;
4. Booking Sheet and Arrest Report;
5. Photocopy of the marked money
6. others to follow.[2]

On 23 May 2008, Malunao filed an Affidavit[3] denying the accusations against her. Malunao claimed that Dela Cruz framed her into making it appear that she committed the offense for which she is now being charged. Malunao claims that she personally knows Dela Cruz as an employee of the Rural Bank of Solano and a businesswoman connected with ER Agro-Trading.[4] Malunao and her mother-in-law purchased piglets from ER Agro-Trading and learned that Dela Cruz was engaged

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

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

[4] *Id.* at 46.

in the business of lending money.[5] When Malunao inquired from Dela Cruz about a loan, Dela Cruz asked how much she needed.[6] Malunao told Dela Cruz she needed 15,000.00 to pay for the tuition fee of her daughter.[7] When Malunao followed up the loan, Dela Cruz instructed her to come to her house on 8 May 2008 at 2:00 p.m.[8] When Malunao arrived, Dela Cruz invited Malunao inside the house and offered her a seat in the living room. Dela Cruz left the living room to get the money, and when she returned, gave Malunao 15,000.00.[9] After receiving the money, Malunao asked for the promissory note she needed to sign evidencing the loan.[10] However, a tall woman emerged from the kitchen and took her bag, announced "*NBI ito*." At the same time, two men entered the house, opened and took pictures of the contents of her bag, and arrested Malunao.[11] Malunao was then brought to the Office of the Provincial Prosecutor of Nueva Vizcaya where she was charged.[12]

Malunao further claims that Dela Cruz knows her as employed in Branch 28 with Judge Flor as presiding judge, and not in Branch 29, as stated in Dela Cruz's Sinumpaang Salaysay.[13] In addition, Dela Cruz knows that Malunao has been suspended from office since July 2007, long before Civil Case No. 6875 entitled *Alay Kapwa Multi-Purpose Cooperative, Inc. v. Engr. Nestor A. Gonzaga and Ernesto Roxas (E.R. Agro-Trading)* was filed and raffled on 24 January 2008 to Branch 28.[14] Malunao further emphasizes that from the time she was suspended, she

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[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.* at 47.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 48.

[14] *Id.*

has not gone inside the office of Branch 28.[15] For these reasons, Malunao denies the accusations against her and claims she was framed.[16]

On 14 August 2008, the Office of the Provincial Prosecutor issued a Joint-Resolution forwarding the records of the case to the Supreme Court since Malunao is a trial court employee under the exclusive administrative supervision of the Supreme Court.[17]

On 17 August 2009, the Court referred the instant administrative complaint to Executive Judge Merianthe Pacita M. Zuraek, Branch 29, Bayombong, Nueva Vizcaya for her investigation, report and recommendation.[18]

On 12 April 2011, Executive Judge Zuraek submitted her Report/Recommendation[19] recommending the dismissal of the case for clear lack of evidence, stating:

In the instant case, complainant Sheryll C. Dela Cruz testified on direct examination on December 3, 2009. Instead of returning for the continuation of her direct examination, she filed on August 16, 2010 a manifestation expressing her desire not to pursue her case on account of her sensitive medical condition, which to her, affects her capability to actively prosecute her complaint. According to her, she would not object to the eventual dismissal of the case for lack of evidence arising from her inability to testify and produce witnesses and other evidence.

Having sensed that complainant was merely having second thoughts and was finally ready to testify, since she testified as a witness in OCA IPI No. 08-2971 entitled Judge Fernando F. Flor, Jr. *versus* Pamela Malunao, the undersigned set the instant case for hearing on January 20, 2011 for her to continue her direct examination. This was resorted to since the two (2) cases arose from the same

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[15] *Id.*

[16] *Id.* at 47.

[17] *Id.* at 2-3.

[18] *Id.* at 55.

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

transaction, which is the extortion of money from complainant. However, complainant chose not to appear.

To the mind of the undersigned, her failure to appear is a clear affirmation / confirmation of her lack of interest to prosecute her case.

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In so far as the complainant is concerned, she was heard when she testified. However, the same is not true with the defendant, who because of the decision of the complainant not to appear any more, was not able to controvert her testimony by cross-examining her.

Since the testimony of the complainant was not covered by cross-examination, which is a fundamental and essential right of the respondent, the undersigned orders the evidence of complainant, both testimonial and documentary, expunged from the records. Moreover, documentary evidence to be appreciated should be formally offered in evidence. The complainant of her own volition, chose not to complete her presentation of evidence, which explains why there was no such formal offer. The rule is, evidence not offered is no evidence at all. Thus, to give it weight would be in violation of the defendant's right to due process and fair trial.

There being no evidence, the undersigned has nothing to evaluate vis a vis the facts of the case. As a result, it has no power to make conclusions of fact because it has not heard both parties.[20]

The Office of the Court Administrator (OCA), on the other hand, in its Memorandum dated 5 October 2011, recommended that: (a) the matter be re-docketed as a regular administrative matter; (b) Malunao be adjudged guilty of grave misconduct; and (c) the accrued leave credits of Malunao be forfeited, in lieu of dismissal from the service, should OCA's recommendation in A.M. OCA IPI No. 08-2974-P to dismiss her from the service be adopted by the Court.[21]

The OCA recommended the dismissal of Malunao with forfeiture of retirement benefits and accrued leave credits, contrary

[20] *Id.*

[21] *Id.* at 109-117.

to the recommendation of the Executive Judge Zuraek, because technical rules of procedure and evidence, the legal basis of Executive Judge Zuraek's recommendation, should not be strictly applied in administrative proceedings.[22] Although Dela Cruz was not able to complete the presentation of her evidence before Executive Judge Zuraek, Dela Cruz's Sinumpaang Salaysay, the joint affidavit of arrest executed by the NBI agents, the Booking Sheet and Arrest Report, the photocopy of the marked money, the Complaint Sheet, and the photographs of Malunao entering Dela Cruz's house and the contents of Malunao's bag after receipt of the money, can all be considered in the appreciation of evidence to determine if there is substantial evidence to show that Malunao committed the acts alleged in the administrative complaint.[23] Moreover, Malunao submitted an Affidavit contradicting the allegations of Dela Cruz.[24]

In addition, the OCA provided additional information that Malunao has three (3) other pending administrative matters against her, aside from the present case, namely: (a) A.M. No. P-09-2732 (Formerly OCA IPI No. 08-2971-P) for violation of R.A. No. 3019 and R.A. No. 6723; (b) OCA IPI No. 08-2974-P for Extortion and Grave Misconduct; and (c) A.M. No. P-07-2324 (Formerly OCA IPI No. 07-2-119-RTC) for Extortion and Illegal Solicitation. In fact, in A.M. No. P-07-2324, Malunao was placed under preventive suspension pursuant to the Court's Resolution dated 18 June 2007.[25]

The OCA recommended the dismissal of Malunao with forfeiture of retirement benefits and accrued leave credits, with prejudice to re-employment in any government office including government-owned and controlled corporations, contrary to the recommendation of Executive Judge Zuraek.[26]

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[22] *Id.* at 113.

[23] *Id.* at 114.

[24] *Id.*

[25] *Id.* at 116.

[26] *Id.* at 116-117.

We find the recommendation of the OCA in order.

The Uniform Rules on Administrative Cases in the Civil Service[27] govern the conduct of disciplinary and non-disciplinary proceedings in administrative cases. In Section 3, it provides that, "Administrative investigations shall be conducted without necessarily adhering strictly to the technical rules of procedure and evidence applicable to judicial proceedings."

In *Office of the Court Administrator v. Canque*,[28] the Court held:

> The essence of due process is that a party be afforded a reasonable opportunity to be heard and to present any evidence he may have in support of his defense. Technical rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process cannot be fully equated with due process in its strict judicial sense. A formal or trial-type hearing is not required.

The weight of evidence required in administrative investigations is substantial evidence. In Rule 133, Section 5 of the Rules of Court, substantial evidence is defined:

> In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable man might accept as adequate to justify a conclusion.

Consequently, in the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, then by preponderance of evidence, and lastly by substantial evidence, in that order.[29]

For these reasons, only substantial evidence is required to find Malunao guilty of the administrative offense. In the hierarchy

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[27] CSC MC No. 19, s. 1999.

[28] A.M. No. P-04-1830, 4 June 2009, 588 SCRA 226, 236.

[29] *Manalo v. Roldan-Confesor*, G.R. No. 102358, 19 November 1992, 215 SCRA 808, 819.

of evidentiary values, substantial evidence, or that amount of relevant evidence which a reasonable man might accept as adequate to justify a conclusion, is the lowest standard of proof provided under the Rules of Court. In assessing whether there is substantial evidence in administrative investigations such as this case, the Court is not bound by technical rules of procedure and evidence.

Dela Cruz, in her *Sinumpaang Salaysay* dated 8 May 2008, claimed that Malunao tried to extort money from her in exchange for a favorable resolution in the case pending before Judge Flor in Branch 28. In the entrapment operation conducted by the NBI, Malunao was arrested when she received 15,000.00 from Dela Cruz.

A criminal complaint for robbery with extortion was filed against Malunao with attached supporting documents such as the Complaint Sheet, Sinumpaang Salaysay of Dela Cruz, Affidavit of Arrest, Booking Sheet and Arrest Report, photocopy of the marked money, photos of Malunao entering the house of Dela Cruz and while in the house of Dela Cruz, and photos of the contents of her bag after Malunao received the marked money. As a consequence of this case, Judge Flor filed a criminal complaint against Malunao for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) and Section 7(d) of the Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713), which complaint was referred to this Court by the Office of the Provincial Prosecutor and now docketed as A.M. No. P-09-2732.

Malunao, on the other hand, claims that she was framed by Dela Cruz, and that she received ₱15,000.00 as a loan. Malunao, however, did not impute any ill-motive to Dela Cruz on why the latter would frame her.

Malunao has three administrative cases filed against her, aside from the present case, all alleging the same conduct of extortion and solicitation. In *Estabillo v. Malunao,* docketed as A.M. OCA IPI No. 08-2974-P, Estabillo, in her Affidavit, claims

that Malunao, in July 2006, asked money from her in exchange for a favorable decision in a case pending before Judge Flor of Branch 28 where Estabillo was a defendant. Estabillo gave Malunao ₱10,000.00. On November 2007, Estabillo learned that an administrative case was filed against Malunao due to her practice of collecting money from litigants. After Estabillo confronted Malunao, Malunao promised to return the ₱10,000.00. However, the amount remains unpaid, so Estabillo filed the complaint against Malunao in A.M. No. OCA IPI No. 08-2974-P.

In *Office of the Court Administrator v. Malunao*, docketed as A.M. No. P-07-2324, Malunao was once again being investigated for alleged extortions and solicitations from litigants, which resulted in Malunao's preventive suspension in the Court's Resolution dated 18 June 2007.

The third case, *Judge Fernando F. Flor v. Malunao* (A.M. No. P-09-2732), is an offshoot of this case. Judge Flor of Branch 28 where Malunao is employed as Clerk III filed an administrative complaint against Malunao for soliciting money from Dela Cruz with the promise of a favorable decision from Judge Flor.

To date, none of these three administrative cases against Malunao has finally been resolved by this Court.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.[30] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules.[31] Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his position or office to procure some benefit for himself or for another person, contrary to duty and the rights of others.[32]

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[30] *Arcenio v. Pagorogon*, A.M. Nos. MTJ-89-270 and MTJ-92-637, 5 July 1993, 224 SCRA 246, 254.

[31] *Roque v. Court of Appeals*, G.R. No. 179245, 23 July 2008, 559 SCRA 660, 674.

[32] *Vertudes v. Buenaflor*, 514 Phil. 399, 424 (2005).

Section 2, Canon 1 of the Code of Conduct for Court Personnel states: "Court personnel shall not solicit or accept any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions."

In Rule IV, Section 52(A)(11) of the Uniform Rules on Administrative Cases in the Civil Service, soliciting or accepting, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of an employee's official duties may affect the functions of his office merits the penalty of dismissal for the first offense. Grave misconduct under Section 52(A)(3) of Rule IV is also punishable by dismissal for the first offense.

In the present case, Malunao solicited ₱35,000.00 and received ₱15,000.00 as first installment from Dela Cruz in exchange for a favorable decision in Civil Case No. 6875 entitled *Alay Kapwa Multi-Purpose Cooperative, Inc. v. Engr. Nestor A. Gonzaga and Ernesto Roxas (E.R. Agro-Trading)* pending before Judge Flor in Branch 28. Malunao was arrested in an entrapment operation upon receipt of the first installment of ₱15,000.00.

At the time of the solicitation, Malunao was already preventively suspended as Clerk III in Branch 28 by virtue of the Court's Resolution dated 18 June 2007 in another case, *Office of the Court Administrator v. Malunao* (A.M. No. P-07-2324), due to allegations of the same conduct of extortion and solicitation. As a consequence of such solicitation from Dela Cruz, Judge Flor also filed a case against Malunao docketed as A.M. No. P-09-2732. In addition, Malunao has a pending administrative case in *Estabillo v. Malunao* docketed as A.M. OCA IPI No. 08-2974-P, where Estabillo, a defendant in a criminal case pending before Branch 28, alleges that Malunao solicited and received ₱10,000.00 in exchange for a favorable decision.

In the present case, Malunao clearly used her position as Clerk III in Branch 28 to solicit money from Dela Cruz with the promise of a favorable decision. This violation of Section 2,

Canon 1 of the Code of Conduct for Court Personnel constitutes the offense of grave misconduct meriting the penalty of dismissal. Dela Cruz's Sinumpaang Salaysay, the joint affidavit of arrest executed by the NBI agents, the Booking Sheet and Arrest Report, photocopy of the marked money, the Complaint Sheet, and the photographs of Malunao entering Dela Cruz's house, and the contents of Malunao's bag after receipt of the money, all prove by subsantial evidence the guilt of Malunao for the offense of grave misconduct.

What is more alarming and disconcerting is the fact that Malunao has continued to solicit money from litigants, even after she had been preventively suspended as Clerk III. Malunao has the propensity to abuse a position of public service and is not fit to remain in the civil service.

WHEREFORE, respondent Pamela P. Malunao, Clerk III of Branch 28 of the Regional Trial Court, Bayombong, Nueva Vizcaya is found **GUILTY** of **GRAVE MISCONDUCT**. She is hereby **DISMISSED** from the service, with forfeiture of retirement benefits except accrued leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations and financial institutions.

SO ORDERED.

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

Del Castillo, J., on leave.

EN BANC

[G.R. No. 175781. March 20, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANCISCA TALARO,[*] GREGORIO TALARO,[**] NORBERTO (JUN) ADVIENTO, RENATO RAMOS, RODOLFO DUZON,[***] RAYMUNDO ZAMORA,[**] and LOLITO AQUINO,** *accused.* **NORBERTO (JUN) ADVIENTO, RENATO RAMOS, and LOLITO AQUINO,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; MURDER; DEFINED; PRESENCE OF TREACHERY AND EVIDENT PREMEDITATION IN THE KILLING OF THE VICTIM PROVED IN THE CASE AT BAR.—** Murder under Article 248 of the Revised Penal Code is defined as the unlawful killing of a person, which is not parricide or infanticide, attended by circumstances such as treachery or evident premeditation. The presence of any one of the circumstances enumerated in Article 248 of the Code is sufficient to qualify a killing as murder. In *People v. Sanchez*, the Court held that "[t]he essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor." There can be no cavil that the evidence on record shows treachery in the killing of Atty. Alipio, thus qualifying the crime as murder. The assailant, identified as accused-appellant Renato Ramos, just suddenly fired upon Atty. Alipio at a very close distance, without any provocation from said unarmed victim, who was then just

[*] In a Resolution dated July 10, 2001, the Court GRANTED accused-appellant Francisca Talaro's Motion for Withdrawal of Appeal, so she can avail of executive clemency. See CA *rollo*, p. 252.

[**] Acquitted by the Regional Trial Court.

[***] Acquitted by the Court of Appeals.

conversing with some other people. There is also evident premeditation because the evidence shows that a couple of days before the actual shooting of Atty. Alipio, Raymundo Zamora already saw and heard accused-appellants Norberto (Jun) Adviento, Renato Ramos, and Lolito Aquino, talking to Francisca Talaro and coming to an agreement to kill Atty. Alipio.

2. **REMEDIAL LAW; EVIDENCE; CONSPIRACY; EXPLAINED; EXISTENCE OF CONSPIRACY ESTABLISHED IN CASE AT BAR.—** Pitted against the prosecution evidence, accused-appellants' only defense is that the evidence is insufficient to prove they are part of the conspiracy to commit the murder. Said defense is sorely wanting when pitted against the prosecution evidence. In *People v. Bautista*, the Court reiterated the hornbook principle of conspiracy, to wit: **Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.** Where all the accused acted in concert at the time of the commission of the offense, and it is shown by such acts that they had the same purpose or common design and were united in its execution, conspiracy is sufficiently established. It must be shown that all participants performed specific acts which such closeness and coordination as to indicate a common purpose or design to commit the felony. x x x **Each conspirator is responsible for everything done by his confederates** which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design. x x x [In this case], all the proven circumstances point to the conclusion that accused-appellants acted in concert to assure the success of the execution of the crime; hence, the existence of a conspiracy is firmly established.

3. **ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE WITNESS' POSITIVE IDENTIFICATION OF THE ACCUSED-APPELLANTS AS THE PERPETRATORS OF THE CRIME.—** Lolito Aquino's admission, and accused-appellants' positive identification of Raymundo Zamora and Rodolfo Duzon cannot be belied by accused-appellants' mere denial. It is established jurisprudence that denial and alibi cannot prevail over the witness' positive identification of the accused-appellants. Moreover, accused-appellants could not

give any plausible reason why Raymundo Zamora would testify falsely against them. In *People v. Molina*, the Court expounded, thus: **In light of the positive identification of appellant by the prosecution witnesses and since no ill motive on their part or on that of their families was shown that could have made either of them institute the case against the appellant and falsely implicate him in a serious crime he did not commit, appellant's defense of alibi must necessarily fail**. It is settled in this jurisdiction that the **defense of alibi**, being inherently weak, **cannot prevail over the clear and positive identification of the accused as the perpetrator of the crime.**

4. **ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION OF THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES IS CONCLUSIVE ON THE SUPREME COURT AS IT IS THE TRIAL COURT WHICH HAD THE OPPORTUNITY TO CLOSELY OBSERVE THE DEMEANOR OF WITNESSES; RATIONALE.—** Accused-appellant Lolito Aquino claimed he merely admitted his participation in the crime out of fear of the police authorities who allegedly manhandled him, however, the trial court did not find his story convincing. The trial court's evaluation of the credibility of witnesses and their testimonies is conclusive on this Court as it is the trial court which had the opportunity to closely observe the demeanor of witnesses. The Court again explained the rationale for this principle in *Molina*, to wit: As oft repeated by this Court, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case. The Court cannot find anything on record to justify deviation from said rule.

5. **ID.; ID.; FLIGHT BETRAYS A DESIRE TO EVADE RESPONSIBILITY AND IS, THEREFORE, A STRONG INDICATION OF GUILT.—** Another strong indication of Lolito Aquino's and Renato Ramos' guilt is the fact that they escaped from detention while the case was pending with the trial court. Renato Ramos escaped from prison on December 20, 1994, while Lolito Aquino escaped on May 5, 1996. It has been repeatedly held that flight betrays a desire to evade responsibility and is, therefore, a strong indication of guilt. Thus, this Court finds no reason to overturn their conviction.

6. **CRIMINAL LAW; MURDER; PROPER PENALTY.—** Nevertheless, this Court must modify the penalty imposed on accused-appellants Norberto (Jun) Adviento, Lolito Aquino, and Renato Ramos. In *People v. Tinsay*, the Court explained that: On June 30, 2006, Republic Act No. 9346 (R.A. 9346), entitled *An Act Prohibiting the Imposition of Death Penalty in the Philippines,* took effect. Pertinent provisions thereof provide as follows: x x x. Section 2. In lieu of the death penalty, the following shall be imposed: (a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or x x x SECTION 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. It has also been held in *People vs. Quiachon* that R.A. No. 9346 has retroactive effect, to wit: The aforequoted provision of R.A. No. 9346 is applicable in this case pursuant to the principle in criminal law, *favorabilia sunt amplianda adiosa restrigenda*. Penal laws which are favorable to accused are given retroactive effect. x x x. **Hence, in accordance with the foregoing, appellant should only be sentenced to suffer *reclusion perpetua* without eligibility for parole.**

7. **ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANTS.—** The awards for damages also need to be modified. In *People v. Alberto Anticamara y Cabillo, et al.,* the Court held that in accordance with prevailing jurisprudence on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the award of moral damages

should be increased from ₱50,000.00 to ₱75,000.00, while the award for exemplary damages, in view of the presence of aggravating circumstances, should be ₱30,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Aceron Punzalan Vehemente Avila & Del Prado Law Offices for Renato Ramos and Lolito Aquino.

Justinian E. Adviento and *Jose Antonio M. Guillermo* for Norberto Adviento.

D E C I S I O N

PERALTA, *J*.:

This is an automatic review of the Decision[1] of the Court of Appeals (CA) promulgated on December, 15, 2005, in accordance with Section 2 of Rule 125, in relation to Section 3 of Rule 56, of the Rules of Court. The CA affirmed with modification the judgment rendered by the Regional Trial Court (RTC), Branch 38 of Lingayen, Pangasinan, thereby finding accused-appellants Norberto (Jun) Adviento, Renato Ramos and Lolito Aquino, guilty beyond reasonable doubt of the crime of Murder and sentencing them to death, but acquitting accused Rodolfo Duzon.

Accused-appellants were charged before the RTC of Urdaneta, Pangasinan, with the crime of murder under an Information reading as follows:

That on or about the 26th day of April 1994, in the Poblacion of the Municipality of Laoac, Province of Pangasinan, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating with each other, with intent to kill, and with treachery, and evident premeditation, in consideration of a price, and by means of motor vehicle, did then and there, willfully, unlawfully and feloniously attack and shoot one MELVIN ALIPIO, with a handgun

[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo*, pp. 3-24.

hitting the latter in the different parts of his body and the wounds being mortal caused directly the death of said MELVIN ALIPIO, to the damage and prejudice of his heirs.

CONTRARY to Article 248, Revised Penal Code.[2]

The testimonies of prosecution witnesses showed the sequence of events shortly before and after the killing of victim Melvin Alipio to be as follows.

Raymundo Zamora is the nephew of Gregorio Talaro, the husband of Francisca Talaro. In the morning of April 24, 1994, when Zamora went home for breakfast after driving his tricycle, he found Francisca Talaro, Lolito Aquino, Renato "Atong" Ramos, and Norberto "Jun" Adviento conversing among themselves under a santol tree in front of his (Zamora's) house. He went near the group to find out what they were talking about and he learned that his aunt, Francisca Talaro, was transacting with the other three accused-appellants for the killing of Atty. Melvin Alipio. He was merely a meter away from the group so he heard the group's conversation. He learned that Francisca Talaro would give the three accused-appellants an advance payment of ₱30,000.00 and then another ₱30,000.00 after Atty. Melvin Alipio is killed, with said last payment to be delivered in *Barangay* (*Brgy.*) Bactad. The three accused-appellants then nodded their heads in agreement. After learning of the group's plan, Zamora got scared and stayed away from the group, but three days after that meeting in front of his house, he was asked by Francisca Talaro to drive her and her husband Gregorio to *Brgy.* Bactad. The Talaro spouses alighted at a place in *Brgy*. Bactad, while Zamora stayed in his tricycle and merely waited for them. He assumed that the couple delivered the payment of ₱30,000.00 to someone in *Brgy*. Bactad.[3]

Accused-appellant Lolito Aquino, when questioned during preliminary investigation, admitted that he and co-accused Renato

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[2] Records, p. 4.

[3] TSN, December 8, 1994.

Ramos conducted a surveillance on Atty. Alipio in the afternoon of April 25, 1994.[4]

Around 6 o'clock in the morning of April 26, 1994, tricycle driver Rodolfo Duzon was at the parking area in the *poblacion* of Urdaneta waiting for passengers, when accused-appellant Renato Ramos approached him. Accused-appellant Ramos offered to pay Rodolfo Duzon ₱200.00 for the latter to drive Ramos' motorcycle to Laoac, Pangasinan to take some onions and turnips there. Duzon agreed, so after bringing his own tricycle home to his house in Bactad, Urdaneta, he then drove Ramos' motorcycle to the *poblacion* of Urdaneta. At the *poblacion*, Ramos bought a basket where he placed the onions and turnips. Ramos then told Duzon to drive the motorcycle to Laoac, but they first passed by Garcia Street in Urdaneta. At a house along Garcia Street, Ramos alighted and talked to someone whom Rodolfo Duzon later came to know as accused-appellant Lolito Aquino. Ramos then told Duzon that after coming from Laoac, Duzon should leave the motorcycle at that house on Garcia Street with Lolito Aquino. Ramos and Duzon then proceeded to Laoac, stopping at a gas station where they fueled up. Ramos alighted from the motorcycle at the gas station and, taking along the basket of onions and turnips, walked towards Guardian Angel Hospital (the clinic owned by the Alipios). Five minutes after Ramos alighted, Duzon heard three gunshots coming from the west, and moments later, he saw Ramos, who was coming toward him, being chased by another man. When Ramos got to the motorcycle, he ordered Duzon to immediately drive away, and poked a gun at Duzon's back. Ramos then instructed Duzon as to the route they should take until they reached Urdaneta where Ramos alighted, leaving Duzon with instructions to bring the motorcycle to Garcia Street, leave it with Lolito Aquino, then meet him (Ramos) again at the *poblacion* where he (Duzon) will be paid ₱200.00 for his services. Duzon did as he was told, but when he met with Ramos at the *poblacion* and asked for the ₱200.00, Ramos got mad and shouted invectives at

[4] Exhibit "K", TSN taken on August 12, 1994, during the Preliminary Investigation, records, pp. 252-253.

him. A few days later, he again ran into Ramos who warned him to keep his silence, threatening to kill him (Duzon) too if he tells anyone about the killing. Accused-appellant Norberto (Jun) Adviento also threatened him not to reveal to anyone whatever he knows about the crime. That was why Duzon decided to keep quiet. Later, however, he revealed the matter to his brother, Victoriano Duzon, who accompanied him to the Criminal Investigation Services (CIS) Office in Urdaneta so he could give his statement. He executed affidavits, assisted by a lawyer from the Public Attorney's Office (PAO), attesting to what he knew about the crime, in his desire to be a state witness.[5]

Witness Rene Balanga, who was the helper of the spouses Atty. Melvin and Dr. Lina Alipio, was cleaning the windows at the clinic of Dr. Alipio around 8 o'clock in the morning of April 26, 1994. He heard three gunshots coming from the garage of the clinic, which was around ten meters away from where he was. Immediately after the gunshots, he saw a man quickly walking out from the garage, going towards the main gate, but he was not able to clearly see the face of the man. He merely observed that the man was around 5'4" to 5'5" in height, medium-built, wearing a blue jacket and faded *maong* (denim) pants. He ran towards the garage and there, he saw Atty. Melvin Alipio lying dead. He then chased after the man so he could identify him better but he did not succeed in doing so because the driver of the motorcycle that the gunman was boarding was already drawing something out from the rear portion of the motorcycle. After the assailant sped off, Balanga went to the police station in Laoac to report the crime and give his statement before the CIS. Sometime later, at the CIS Office, he identified Rodolfo Duzon as the driver of the motorcycle used by the gunman to get away.[6]

Another eyewitness, Eusebio Hidalgo, whose son was confined at the clinic, was sitting at a bench in the garage of the clinic on the morning of April 26, 1994. Two other women who were

[5] TSN, March 20, 1995.

[6] TSN, March 15, 1995.

looking for Atty. Alipio also sat at the bench with him after he told them that Atty. Alipio was still having his breakfast. After a few minutes, a man arrived looking for Dr. Alipio, and also sat at the bench. Thereafter, Atty. Alipio came out to the garage and talked to the two women. When Atty. Alipio finished talking to them, the man sitting with them on the bench suddenly stood up and shot Atty. Alipio three times. Atty. Alipio was merely one meter away from the assailant when the latter shot him. After the shooting, the assailant walked away. Hidalgo then saw the helper at the clinic, Reny Balanga, run after the assailant, but the latter had whistled to his companion who was waiting on his motorcycle and the two were able to speed away aboard said vehicle. Hidalgo identified the assailant from a picture[7] shown to him.[8] The picture was that of Renato Ramos.[9]

A few weeks after Atty. Melvin Alipio had been killed, Zamora was in the parking lot in Sta. Maria Norte in Binalonan, when accused-appellant Aquino approached him and told him to remind Francisca Talaro that she still has to pay him (Aquino) ₱10,000.00. Zamora then immediately told his uncle Gregorio Talaro about Aquino's message and the very next day, Gregorio went to Zamora's house with the ₱10,000.00. Gregorio could no longer wait for Aquino so he just left the money with Zamora, instructing him to hand it over to Aquino when the latter arrives. Later that day, Zamora saw Aquino so he told him (Aquino) to just get the money from his house. About three weeks later, Aquino again went to Zamora's house, this time saying he needs another ₱5,000.00 just in case he needs to escape. Zamora then contacted Francisca Talaro and conveyed Aquino's message to her. The following day, Gregorio again went to Zamora's house and left the ₱3,000.00 for Aquino. That afternoon, Zamora again told Aquino to just pick up the money from his house. Zamora observed that Aquino seemed happy enough with the ₱3,000.00 he received.[10]

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[7] Exhibit "M", records, p. 254.

[8] TSN, March 15, 1995.

[9] See Prosecution's Formal Offer of Evidence, records, p. 237.

[10] TSN, December 8, 1994.

Zamora said that he thinks the Talaros had Atty. Alipio killed because the latter was not able to comply with his contractual obligations to the Talaros to complete the construction of a building. Dr. Lina Alipio, the wife of the victim Atty. Melvin Alipio, confirmed that indeed, the victim entered into an agreement with Rodolfo Talaro, the Talaro spouses' son, for the construction of a building, but the construction was not finished within the agreed one-year period because of the sudden rise of prices for materials. Atty. Alipio asked Rodolfo for additional payment so he could finish construction, but the latter refused to pay more. Dr. Alipio stated that eventually, Atty. Alipio and Rodolfo agreed that Atty. Alipio would return all the money he received from Rodolfo and the whole property would, in turn, be turned over to Atty. Alipio. Atty. Alipio was unable to return the money despite several demands made by Rodolfo, and Dr. Alipio believes this is the reason why the Talaros had her husband killed. Dr. Alipio further testified on matters regarding expenses for the wake and burial, and the earnings of her husband.[11]

Dr. Arnulfo Bacarro conducted the autopsy on the victim and stated that three slugs were taken from the body of the victim, and the cause of death was internal hemorrhage.[12] Police officers testified on how they conducted the investigation, stating that accused-appellant Aquino and Zamora's statements were taken in the presence of their respective lawyers. They maintain that no bodily harm was inflicted on the accused-appellants while they were being investigated.[13]

On the other hand, accused-appellant Lolito Aquino stated that he was taken by CIS men without a warrant of arrest; that he was mauled by police authorities while under detention, but could not undergo a medical check-up due to fear from threats that he would be killed by police authorities if he did so; that he was assisted by a PAO lawyer when he made his confession, but he did not read the contents of the document, Sgt. Tomelden

[11] TSN, April 3, 1995.

[12] TSN, January 17, 1995.

[13] TSN, April 18, 1995.

just ordered him to sign the same; that the PAO lawyer is not his own choice; that he does not know Rodolfo Duzon and Raymundo Zamora; and that he was not present at the meeting held in Raymundo Zamora's yard. He admitted, however, that the motorcycle used by the gunman belongs to him; and that he first agreed to be a state witness because he was promised to be paid ₱20,000.00 and that he would be placed in the witness protection program.[14]

Accused-appellant Norberto (Jun) Adviento's defense is denial and alibi. He claimed that he was not present during the April 24, 1994 meeting held to plan the killing of Atty. Alipio, because on said date and time, he was in the house of Congressman Amadito Perez, for whom he works as driver-messenger, and that morning, he also drove the Congressman's family to church to hear mass. On April 26, 1994, he also reported for work at the house of the Congressman from 8 o'clock in the morning until 5 o'clock in the afternoon. He likewise denied personally knowing any of his co-accused except for Duzon whose face is familiar to him.[15]

After trial, the RTC rendered judgment as follows:

> Wherefore, in the light of all the considerations discussed above, this court hereby finds and holds the accused Francisca Talaro, Norberto (Jun) Adviento, Renato Ramos, Rodolfo Duzon and Lolito Aquino, guilty beyond reasonable doubt of the crime of Murder defined and penalized under the provisions of Article 248 of the Revised Penal Code as amended by Republic Act No. 7659 and conformable thereto, pursuant to law, hereby imposes on each of the accused the death penalty and to pay proportionately the costs of the proceedings.
>
> The court further orders the accused to indemnify, jointly and severally, the heirs of the deceased the sum of ₱83,000.00 as actual damages; ₱100,000.00 as moral damages; ₱50,000.00 as death indemnity; ₱10,000.00 as [attorney's fees] paid to their private prosecutor and ₱2,400,000.00 as loss in the earning capacity of the deceased without subsidiary imprisonment in case of insolvency.

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[14] TSN, August 16, 1995.

[15] TSN, November 8, 1995.

Taking into consideration that accused Francisca Talaro is already 75 years old, the death penalty meted upon her shall be commuted to *reclusion perpetua* with the accessory penalties provided in Article 40 of the Revised Penal Code.

And considering that the evidence adduced by the prosecution against the accused Gregorio Talaro is not sufficient to sustain his conviction of the offense filed against him, the court hereby declares accused Gregorio Talaro not guilty. The court likewise declares Raymundo Zamora acquitted of the offense filed against him.

Let an order of arrest be issued against accused Renato Ramos who escaped from jail during the pendency of this case, to be served by the NBI, CIC and PNP of Urdaneta, Pangasinan.

SO ORDERED.[16]

The case was then brought to this Court for automatic review in view of the penalty of death imposed on accused-appellants. However, in accordance with the ruling in *People v. Mateo*,[17] and the amendments made to Sections 3 and 10 of Rule 122, Section 13 of Rule 124, and Section 3 of Rule 125 of the Revised Rules on Criminal Procedure, the Court transferred this case to the CA for intermediate review.

On December 15, 2005, the CA rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 38 of Lingayen, Pangasinan in Criminal Case No. U-8239, is hereby AFFIRMED with the MODIFICATION that accused-appellant Rodolfo Duzon is ACQUITTED on reasonable doubt and his release is hereby ordered unless he is being held for some other legal cause.

Further, in lieu of the awards made by the trial court in favor of the heirs of deceased Atty. Melvin Alipio, accused-appellants are ordered to pay, jointly and severally, the heirs of the victim the following amounts: (1) ₱25,000.00 as temperate damages; (2) ₱75,000.00 as civil indemnity; (3) ₱50,000.00 as moral damages; and (4) ₱25,000.00 as exemplary damages;

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[16] Records, p. 445.

[17] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

SO ORDERED.[18]

The case is now before this Court on automatic review. The prosecution opted not to file a supplemental brief with this Court. Accused-appellants Lolito Aquino and Renato Ramos jointly filed their supplemental brief where it is argued that the two should be acquitted because (1) the prosecution evidence is insufficient to prove that Lolito Aquino was part of the conspiracy to kill Atty. Melvin Alipio; and (2) the identity of Renato Ramos was never established. Accused-appellant Noberto (Jun) Adviento argued in his Appellant's Brief filed with the CA, that the prosecution's evidence is insufficient to establish conspiracy, and there are no aggravating circumstances to justify the imposition of the death penalty.

The Court agrees with the CA's conclusion that the evidence on record proves beyond reasonable doubt that accused-appellants Lolito Aquino, Renato Ramos, and Norberto (Jun) Adviento, together with Francisca Talaro, conspired to kill Atty. Melvin Alipio.

Murder under Article 248 of the Revised Penal Code is defined as the unlawful killing of a person, which is not parricide or infanticide, attended by circumstances such as treachery or evident premeditation. The presence of any one of the circumstances enumerated in Article 248 of the Code is sufficient to qualify a killing as murder.[19]

In *People v. Sanchez*,[20] the Court held that "[t]he essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor." There can be no cavil that the evidence on record shows treachery in the killing of Atty. Alipio, thus qualifying the crime as murder.

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[18] *Rollo*, p. 23.

[19] *People v. Sanchez*, G.R. No. 188610, June 29, 2010, 622 SCRA 548, 559.

[20] *Id.* at 560.

The assailant, identified as accused-appellant Renato Ramos, just suddenly fired upon Atty. Alipio at a very close distance, without any provocation from said unarmed victim, who was then just conversing with some other people.

There is also evident premeditation because the evidence shows that a couple of days before the actual shooting of Atty. Alipio, Raymundo Zamora already saw and heard accused-appellants Norberto (Jun) Adviento, Renato Ramos, and Lolito Aquino, talking to Francisca Talaro and coming to an agreement to kill Atty. Alipio.

Pitted against the prosecution evidence, accused-appellants' only defense is that the evidence is insufficient to prove they are part of the conspiracy to commit the murder. Said defense is sorely wanting when pitted against the prosecution evidence.

In *People v. Bautista*,[21] the Court reiterated the hornbook principle of conspiracy, to wit:

> **Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.** Where all the accused acted in concert at the time of the commission of the offense, and it is shown by such acts that they had the same purpose or common design and were united in its execution, conspiracy is sufficiently established. It must be shown that all participants performed specific acts which such closeness and coordination as to indicate a common purpose or design to commit the felony.
>
> xxx xxx xxx
>
> **Each conspirator is responsible for everything done by his confederates** which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design. x x x[22] (Emphasis supplied)

In this case, the existence of a conspiracy has been established by the testimony of Raymundo Zamora, positively identifying

[21] G.R. No. 188601, June 29, 2010, 622 SCRA 524.

[22] *Id.* at 540-542.

all three accused-appellants as the ones he saw and heard transacting with Francisca Talaro on April 24, 1994 to kill Atty. Melvin Alipio for the price of ₱60,000.00, and pointing to Lolito Aquino as the one who demanded and received part of the payment after Atty. Alipio had been killed. The credibility of Raymundo Zamora's testimony is further bolstered by Lolito Aquino's admission[23] that he and Renato Ramos even conducted surveillance on the victim a day before Renato Ramos carried out the shooting, and that the motorcycle used as a getaway vehicle belonged to him. Rodolfo Duzon also pointed to Renato Ramos as the gunman; he also pointed to Renato Ramos and Norberto (Jun) Adviento as the ones who threatened to kill him if he talks to anyone about the shooting. All the proven circumstances point to the conclusion that accused-appellants acted in concert to assure the success of the execution of the crime; hence, the existence of a conspiracy is firmly established.

Lolito Aquino's admission, and accused-appellants' positive identification of Raymundo Zamora and Rodolfo Duzon cannot be belied by accused-appellants' mere denial. It is established jurisprudence that denial and alibi cannot prevail over the witness' positive identification of the accused-appellants.[24] Moreover, accused-appellants could not give any plausible reason why Raymundo Zamora would testify falsely against them. In *People v. Molina*,[25] the Court expounded, thus:

> **In light of the positive identification of appellant by the prosecution witnesses and since no ill motive on their part or on that of their families was shown that could have made either of them institute the case against the appellant and falsely implicate him in a serious crime he did not commit, appellant's defense of alibi must necessarily fail**. It is settled in this jurisdiction that the **defense of alibi**, being inherently weak, **cannot prevail over the clear and positive identification of the accused as the**

[23] Exhibit "K", records, pp. 252-253.

[24] *Lumanog v. People*, G.R. Nos. 182555, 185123 & 187745, September 7, 2010, 630 SCRA 42, 130.

[25] G.R. No. 184173, March 13, 2009, 581 SCRA 519.

perpetrator of the crime. x x x[26] (Emphasis supplied)

Accused-appellant Lolito Aquino claimed he merely admitted his participation in the crime out of fear of the police authorities who allegedly manhandled him, however, the trial court did not find his story convincing. The trial court's evaluation of the credibility of witnesses and their testimonies is conclusive on this Court as it is the trial court which had the opportunity to closely observe the demeanor of witnesses.[27] The Court again explained the rationale for this principle in *Molina*,[28] to wit:

> As oft repeated by this Court, the trial court's evaluation of the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.[29]

The Court cannot find anything on record to justify deviation from said rule.

Accused-appellant Renato Ramos insisted that he was not properly identified in open court, and considering that there are so many persons named "Renato Ramos," then there can be some confusion regarding his identity. There is no truth to this claim. Ramos was properly identified in open court by Raymundo Zamora, as one of the men he saw and heard transacting with

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[26] *Id.* at 538.

[27] *People v. Flores*, G.R. No. 188315, August 25, 2010, 629 SCRA 478, 488.

[28] *Supra* note 25.

[29] *Id.* at 535-536.

Francisca Talaro for the killing of Atty. Alipio.[30] Hence, there can be no doubt as to which Renato Ramos is being convicted for the murder of Atty. Alipio.

Another strong indication of Lolito Aquino's and Renato Ramos' guilt is the fact that they escaped from detention while the case was pending with the trial court. Renato Ramos escaped from prison on December 20, 1994,[31] while Lolito Aquino escaped on May 5, 1996.[32] It has been repeatedly held that flight betrays a desire to evade responsibility and is, therefore, a strong indication of guilt.[33] Thus, this Court finds no reason to overturn their conviction.

Nevertheless, this Court must modify the penalty imposed on accused-appellants Norberto (Jun) Adviento, Lolito Aquino, and Renato Ramos. In *People v. Tinsay*,[34] the Court explained that:

> On June 30, 2006, Republic Act No. 9346 (R.A. 9346), entitled *An Act Prohibiting the Imposition of Death Penalty in the Philippines,* took effect. Pertinent provisions thereof provide as follows:
>
>> Section 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659) otherwise known as the Death Penalty Law and all other laws, executive orders and decrees insofar as they impose the death penalty are hereby repealed or amended accordingly.

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[30] TSN, December 8, 1994, p. 7.

[31] See Letter of Provincial Warden Pedro M. Belen dated May 22, 1996, records, p. 417.

[32] *Id.* at 415.

[33] *People v. Cenahonon*, G.R. No. 169962, July 12, 2007, 527 SCRA 542, 558; *People v. Lara*, G.R. No. 171449, October 23, 2006, 505 SCRA 137, 152.

[34] G.R. No. 167383, September 23, 2008, 566 SCRA 170.

> Section 2. In lieu of the death penalty, the following shall be imposed:
>
> (a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
>
> xxx xxx xxx
>
> SECTION 3. Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

It has also been held in *People vs. Quiachon* that R.A. No. 9346 has retroactive effect, to wit:

> The aforequoted provision of R.A. No. 9346 is applicable in this case pursuant to the principle in criminal law, *favorabilia sunt amplianda adiosa restrigenda*. Penal laws which are favorable to accused are given retroactive effect. This principle is embodied under Article 22 of the Revised Penal Code, which provides as follows:
>
> Retroactive effect of penal laws. - Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same.
>
> However, appellant is not eligible for parole because Section 3 of R.A. No. 9346 provides that "persons convicted of offenses pushed with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua* by reason of the law, shall not be eligible for parole."
>
> **Hence, in accordance with the foregoing, appellant should only be sentenced to suffer *reclusion perpetua* without eligibility for parole.**[35]

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[35] *Id.* at 183-184. (Emphasis supplied; citations omitted)

The awards for damages also need to be modified. In *People v. Alberto Anticamara y Cabillo, et al.*,[36] the Court held that in accordance with prevailing jurisprudence on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00, while the award for exemplary damages, in view of the presence of aggravating circumstances, should be ₱30,000.00.

WHEREFORE, the Decision of the Court of Appeals dated December 15, 2005 in CA-G.R. CR-H.C. No. 00071 is hereby **AFFIRMED** with the **MODIFICATION** that the penalty of death imposed on accused-appellants is **REDUCED** to *reclusion perpetua* without possibility of parole in accordance with R.A. No. 9346; and **INCREASING** the award of moral damages from ₱50,000.00 to ₱75,000.00, and the award of exemplary damages from ₱25,000.00 to ₱30,000.00. The rest of the award of the Court of Appeals is hereby maintained.

SO ORDERED.

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

Del Castillo, J., on leave.

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[36] G.R. No. 178771, June 8, 2011.

EN BANC

[G.R. No. 190293. March 20, 2012]

PHILIP SIGFRID A. FORTUN and ALBERT LEE G. ANGELES, *petitioners, vs.* **GLORIA MACAPAGAL-ARROYO, as Commander-in-Chief and President of the Republic of the Philippines, EDUARDO ERMITA, Executive Secretary, ARMED FORCES OF THE PHILIPPINES (AFP), or any of their units, PHILIPPINE NATIONAL POLICE (PNP), or any of their units, JOHN DOES and JANE DOES acting under their direction and control,** *respondents.*

[G.R. No. 190294. March 20, 2012]

DIDAGEN P. DILANGALEN, *petitioner, vs.* **EDUARDO R. ERMITA in his capacity as Executive Secretary, NORBERTO GONZALES in his capacity as Secretary of National Defense, RONALDO PUNO in his capacity as Secretary of Interior and Local Government,** *respondents.*

[G.R. No. 190301. March 20, 2012]

NATIONAL UNION OF PEOPLES' LAWYERS (NUPL) SECRETARY GENERAL NERI JAVIER COLMENARES, BAYAN MUNA REPRESENTATIVE SATUR C. OCAMPO, GABRIELA WOMEN'S PARTY REPRESENTATIVE LIZA L. MAZA, ATTY. JULIUS GARCIA MATIBAG, ATTY. EPHRAIM B. CORTEZ, ATTY. JOBERT ILARDE PAHILGA, ATTY. VOLTAIRE B. AFRICA, BAGONG ALYANSANG MAKABAYAN (BAYAN) SECRETARY GENERAL RENATO M. REYES, JR. and ANTHONY IAN CRUZ, *petitioners, vs.* **PRESIDENT GLORIA MACAPAGAL-ARROYO, EXECUTIVE SECRETARY EDUARDO R. ERMITA,**

ARMED FORCES OF THE PHILIPPINES CHIEF OF STAFF GENERAL VICTOR S. IBRADO, PHILIPPINE NATIONAL POLICE DIRECTOR GENERAL JESUS A. VERZOSA, DEPARTMENT OF JUSTICE SECRETARY AGNES VST DEVANADERA, ARMED FORCES OF THE PHILIPPINES EASTERN MINDANAO COMMAND CHIEF LIEUTENANT GENERAL RAYMUNDO B. FERRER, *respondents.*

[G.R. No. 190302. March 20, 2012]

JOSEPH NELSON Q. LOYOLA, *petitioner, vs.* **HER EXCELLENCY PRESIDENT GLORIA MACAPAGAL-ARROYO, ARMED FORCES CHIEF OF STAFF GENERAL VICTOR IBRADO, PHILIPPINE NATIONAL POLICE (PNP), DIRECTOR GENERAL JESUS VERZOSA, EXECUTIVE SECRETARY EDUARDO ERMITA,** *respondents.*

[G.R. No. 190307. March 20, 2012]

JOVITO R. SALONGA, RAUL C. PANGALANGAN, H. HARRY L. ROQUE, JR., JOEL R. BUTUYAN, EMILIO CAPULONG, FLORIN T. HILBAY, ROMEL R. BAGARES, DEXTER DONNE B. DIZON, ALLAN JONES F. LARDIZABAL and GILBERT T. ANDRES, suing as taxpayers and as CONCERNED Filipino citizens, *petitioners, vs.* **GLORIA MACAPAGAL-ARROYO, in his (sic) capacity as President of the Republic of the Philippines, HON. EDUARDO ERMITA, JR., in his capacity as Executive Secretary, and HON. ROLANDO ANDAYA in his capacity as Secretary of the Department of Budget and Management, GENERAL VICTOR IBRADO, in his capacity as Armed Forces of the Philippines Chief of Staff, DIRECTOR JESUS VERZOSA, in his capacity as Chief of the Philippine National Police,** *respondents.*

[G.R. No. 190356. March 20, 2012]

BAILENG S. MANTAWIL, DENGCO SABAN, Engr. OCTOBER CHIO, AKBAYAN PARTY LIST REPRESENTATIVES WALDEN F. BELLO and ANA THERESIA HONTIVEROS-BARAQUEL, LORETTA ANN P. ROSALES, MARVIC M.V.F. LEONEN, THEODORE O. TE and IBARRA M. GUTIERREZ III, *petitioners, vs.* **THE EXECUTIVE SECRETARY, THE SECRETARY OF NATIONAL DEFENSE, THE SECRETARY OF JUSTICE, THE SECRETARY OF INTERIOR AND LOCAL GOVERNMENT, THE SECRETARY OF BUDGET AND MANAGEMENT, and THE CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES, THE DIRECTOR GENERAL OF THE PHILIPPINE NATIONAL POLICE,** *respondents.*

[G.R. No. 190380. March 20, 2012]

CHRISTIAN MONSOD and CARLOS P. MEDINA, JR., *petitioners, vs.* **EDUARDO R. ERMITA, in his capacity as Executive Secretary,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; THE POWER TO PROCLAIM MARTIAL LAW OR SUSPEND THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IS EXERCISED NOT ONLY SEQUENTIALLY, BUT JOINTLY, BY THE PRESIDENT AND THE CONGRESS; ELABORATED.— President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* before the joint houses of Congress could fulfil their automatic duty to review and validate or

invalidate the same. x x x. Although Section 18, Article VII of the 1987 Constitution vests in the President the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*, he shares such power with the Congress. Thus: 1. The President's proclamation or suspension is temporary, good for only 60 days; 2. He must, within 48 hours of the proclamation or suspension, report his action in person or in writing to Congress; 3. Both houses of Congress, if not in session must jointly convene within 24 hours of the proclamation or suspension for the purpose of reviewing its validity; and 4. The Congress, voting jointly, may revoke or affirm the President's proclamation or suspension, allow their limited effectivity to lapse, or extend the same if Congress deems warranted. It is evident that under the 1987 Constitution the President and the Congress act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*. They exercise the power, not only sequentially, but in a sense jointly since, after the President has initiated the proclamation or the suspension, only the Congress can maintain the same based on its own evaluation of the situation on the ground, a power that the President does not have.

2. **ID.; JUDICIAL DEPARTMENT; SUPREME COURT; JUDICIAL REVIEW; THE CONSTITUTIONAL VALIDITY OF THE PRESIDENT'S PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF *HABEAS CORPUS* IS FIRST A POLITICAL QUESTION IN THE HANDS OF CONGRESS BEFORE IT BECOMES A JUSTICIABLE ONE IN THE HANDS OF THE COURT.—** [A]lthough the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of *habeas corpus* is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court.

3. ID.; ID.; ID.; ID.; THE LIFTING OF MARTIAL LAW AND THE RESTORATION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN MAGUINDANAO WAS A SUPERVENING EVENT THAT OBLITERATED ANY JUSTICIABLE CONTROVERSY.— President Arroyo withdrew Proclamation 1959 before the joint houses of Congress, which had in fact convened, could act on the same. Consequently, the petitions in these cases have become moot and the Court has nothing to review. The lifting of martial law and restoration of the privilege of the writ of *habeas corpus* in Maguindanao was a supervening event that obliterated any justiciable controversy.

4. ID.; ID.; ID.; ID.; THE COURT DOES NOT RESOLVE PURELY ACADEMIC QUESTIONS TO SATISFY SCHOLARLY INTEREST, HOWEVER INTELLECTUALLY CHALLENGING THESE ARE, ESPECIALLY WHERE THE ISSUES REACH CONSTITUTIONAL DIMENSION.— The Court does not resolve purely academic questions to satisfy scholarly interest, however intellectually challenging these are. This is especially true, said the Court in *Philippine Association of Colleges and Universities v. Secretary of Education*, where the issues "reach constitutional dimensions, for then there comes into play regard for the court's duty to avoid decision of constitutional issues unless avoidance becomes evasion." The Court's duty is to steer clear of declaring unconstitutional the acts of the Executive or the Legislative department, given the assumption that it carefully studied those acts and found them consistent with the fundamental law before taking them. "To doubt is to sustain."

5. ID.; ID.; ID.; ID.; THE SUPREME COURT MAY REVIEW, IN AN APPROPRIATE PROCEEDING FILED BY ANY CITIZEN, THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* OR THE EXTENSION THEREOF, AND MUST PROMULGATE ITS DECISION THEREON WITHIN THIRTY (30) DAYS FROM ITS FILING.— [U]nder Section 18, Article VII of the 1987 Constitution, the Court has only 30 days from the filing of an appropriate proceeding to review the sufficiency of the factual basis of the

proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*. Thus — The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, and **must promulgate its decision thereon within thirty days from its filing.** More than two years have passed since petitioners filed the present actions to annul Proclamation 1959. When the Court did not decide it then, it actually opted for a default as was its duty, the question having become moot and academic.

6. ID.; ID.; ID.; ID.; THE COURT CAN STEP IN, HEAR THE PETITIONS CHALLENGING THE PRESIDENT'S PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE WRIT OF *HABEAS CORPUS* AND ASCERTAIN IF IT HAS A FACTUAL BASIS WHEN THE CONGRESS FAILS TO FULFILL ITS DUTY RESPECTING THE PROCLAMATION OR SUSPENSION WITHIN THE SHORT TIME EXPECTED OF IT.— But those 30 days, fixed by the Constitution, should be enough for the Court to fulfill its duty without pre-empting congressional action. Section 18, Article VII, requires the President to report his actions to Congress, in person or in writing, within 48 hours of such proclamation or suspension. In turn, the Congress is required to convene without need of a call within 24 hours following the President's proclamation or suspension. Clearly, the Constitution calls for quick action on the part of the Congress. Whatever form that action takes, therefore, should give the Court sufficient time to fulfill its own mandate to review the factual basis of the proclamation or suspension within 30 days of its issuance. If the Congress procrastinates or altogether fails to fulfill its duty respecting the proclamation or suspension within the short time expected of it, then the Court can step in, hear the petitions challenging the President's action, and ascertain if it has a factual basis. If the Court finds none, then it can annul the proclamation or the suspension. But what if the 30 days given it by the Constitution proves inadequate? Justice Carpio himself offers the answer in his dissent: that 30-day period does not operate to divest this Court of its jurisdiction over the case. The settled rule is that jurisdiction once acquired is not lost until the case has been terminated.

7. **ID.; ID.; ID.; ID.; THE COURT HAS IN EXCEPTIONAL CASES PASSED UPON ISSUES THAT ORDINARILY WOULD HAVE BEEN REGARDED AS MOOT; NOT APPLICABLE WHERE THERE IS NO SUFFICIENT BASIS FOR THE EXERCISE OF THE COURT'S POWER OF JUDICIAL REVIEW.—** [T]he Court has in exceptional cases passed upon issues that ordinarily would have been regarded as moot. But the present cases do not present sufficient basis for the exercise of the power of judicial review. The proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in this case, unlike similar Presidential acts in the late 60s and early 70s, appear more like saber-rattling than an actual deployment and arbitrary use of political power.

PEREZ, *J.*, *seperate opinion*:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; THE SUPREME COURT MUST PROMULGATE ITS DECISION WITHIN THIRTY DAYS FROM THE FILING OF THE PROCEEDING QUESTIONING THE SUFFICIENCY OF THE FACTUAL BASIS OF THE PROCLAMATION OF MARTIAL BY THE PRESIDENT OR ITS EXTENSION BY CONGRESS.—** The authority of this Court to act on the petitions is embodied in the third paragraph of Section 18, Article VII of the 1987 Constitution which states: The Supreme Court may review in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. Clearly, the mandate is both grant and limitation of authority. For while the Court, upon a proceeding filed by any citizen, may review the sufficiency of the factual basis of the proclamation of martial law by the President, or even its extension by Congress, it can only do so within thirty days from filing of the proceeding, the period within which it MUST PROMULGATE its decision. Over two (2) years have passed since the seven petitions at bar were filed. Today, unquestionably, the Constitutional authority granted to the Court to decide the petitions had lapsed.

2. ID.; ID.; THE PRESENT LIMITATIONS OF THE POWER TO DECLARE MARTIAL LAW INCLUDING THE CONSEQUENT CIRCUMSCRIPTION OF THE LEGISLATIVE AND JUDICIAL PARTICIPATION IN THE EXERCISE OF THE POWER, THEMSELVES LIMIT THE OCCASION AND NEED FOR FORMULATION OF CONTROLLING PRINCIPLES TO GUIDE THE EXECUTIVE, LEGISLATIVE AND THE PUBLIC.— [E]ach and every exercise by the President of his commander-in-chiefship must, if review by this Court be asked and called for, be examined under the current events and the present affairs that determine the presence of the necessity of such exercise. All the decisions of the actors covered by Section 18 of Article VII must be done within the tight and narrow time frames in the provision. These framed periods, [E]mphasize the imperative for currency of the decision that each must make, as indeed, the presidential proclamation, aside from having been subjected to constitutional checks, has been given limited life. The present limitations of the power to declare martial law, including the consequent circumscription of the legislative and judicial participation in the exercise of the power, themselves limit the occasion and need for "formulation of controlling principles to guide the Executive, Legislative and the public." The way and manner by which the Constitution provided for the commander-in-chief clause require decisions for the present, not guidelines for the future. [T]he Court cannot now define for the future the "sufficiency of the factual basis" of the possibly coming proclamations of martial law. I cannot see how such a pre-determination can prevent an unconstitutional imposition of martial law better than the requirement, already constitutionalized, that the President must within forty-eight hours, submit a report in person or in writing to Congress which can, by a majority of all its members revoke, the imposition.

CARPIO, J., **dissenting opinion:**

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; *LOCUS STANDI*; DEFINED; CITIZEN WHO CAN CHALLENGE THE DECLARATION OF MARTIAL LAW OR SUSPENSION

OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* NEED NOT BE A TAXPAYER; RATIONALE.— "Legal standing" or *locus standi* has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. In case of a suit questioning the sufficiency of the factual basis of the proclamation of martial law or suspension of the writ, such as here, Section 18, Article VII of the Constitution expressly provides: The Supreme Court may review, in an appropriate proceeding filed by ***any citizen***, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. It is clear that the Constitution explicitly clothes "***any citizen***" with the legal standing to challenge the constitutionality of the declaration of martial law or suspension of the writ. The Constitution does not make any distinction as to who can bring such an action. As discussed in the deliberations of the Constitutional Commission, the "citizen" who can challenge the declaration of martial law or suspension of the writ need not even be a taxpayer. This was deliberately designed to arrest, without further delay, the grave effects of an illegal declaration of martial law or suspension of the writ, and to provide immediate relief to those aggrieved by the same. Accordingly, petitioners, being Filipino citizens, possess legal standing to file the present petitions assailing the sufficiency of the factual basis of Proclamation No. 1959.

2. ID.; ID.; ID.; ID.; WHEN THE ISSUES RAISED ARE OF TRANSCENDENTAL IMPORTANCE, THE COURT MAY RELAX THE STANDING REQUIREMENT AND ALLOW A SUIT TO PROSPER EVEN WHERE THERE IS NO DIRECT INJURY TO THE PARTY CLAIMING THE RIGHT OF JUDICIAL REVIEW.— [G]iven the transcendental importance of the issues raised in the present petitions, the Court may relax the standing requirement and allow a suit to prosper even where there is no direct injury to the party claiming the right of judicial review. The Court has held: Notwithstanding, in view of the paramount importance and the constitutional significance of the issues raised in the petitions, this Court, in the exercise of its sound discretion,

brushes aside the procedural barrier and takes cognizance of the petitions, as we have done in the early Emergency Powers Cases, where we had occasion to rule: 'x x x ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders issued by President Quirino although they [involved] only an indirect and general interest shared in common with the public. The Court dismissed the objection that they were not proper parties and ruled that '**transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure.'** We have since then applied the exception in many other cases.

3. **REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; COURTS GENERALLY DECLINE JURISDICTION OVER A MOOT AND ACADEMIC CASE OR OUTRIGHTLY DISMISS IT ON THE GROUND OF MOOTNESS; EXCEPTIONS; PRESENT.—** As a rule, courts may exercise their review power only when there is an actual case or controversy, which involves a conflict of legal claims susceptible of judicial resolution. Such a case must be "definite and concrete, touching the legal relations of parties having conflicting legal interests;" a real, as opposed to an imagined, controversy calling for a specific relief. Corollarily, courts generally decline jurisdiction over a moot and academic case or outrightly dismiss it on the ground of mootness. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that assuming jurisdiction over the same, and eventually deciding it, would be of no practical use or value. In *David v. Arroyo*, this Court held that the "moot and academic" principle is not a magical formula that automatically dissuades courts in resolving a case. Courts are not prevented from deciding cases, otherwise moot and academic, if (1) there is a grave violation of the Constitution; (2) the situation is of exceptional character and of paramount public interest; (3) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review. In *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, the Court ruled that once a suit is filed, the Court cannot automatically be deprived of its jurisdiction over a case by the

mere expedient of the doer voluntarily ceasing to perform the challenged conduct. Otherwise, the doer would be dictating when this Court should relinquish its jurisdiction over a case. Further, a case is not mooted when the plaintiff seeks damages or prays for injunctive relief against the possible recurrence of the violation. [T]he present petitions fall squarely under these exceptions, justifying this Court's exercise of its review power.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; ANY DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF *HABEAS CORPUS* FALLING SHORT OF THE CONSTITUTIONAL REQUIREMENTS MUST BE STRICKEN DOWN AS A MATTER OF CONSTITUTIONAL DUTY BY THE SUPREME COURT.—** [W]hether Proclamation No. 1959 complied with the requirements under Section 18, Article VII of the Constitution is without doubt an extremely serious constitutional question. In order to forestall any form of abuse in the exercise of the President's extraordinary emergency powers, as what happened during the Martial Law regime under former President Ferdinand Marcos (President Marcos), the 1987 Constitution has carefully put in place specific safeguards, which the President must strictly observe. Any declaration of martial law or suspension of the writ falling short of the constitutional requirements must be stricken down as a matter of constitutional duty by this Court.

5. **ID.; ID.; ID.; WHETHER THE PRESIDENT EXERCISED HER COMMANDER-IN-CHIEF POWERS IN ACCORDANCE WITH THE CONSTITUTION PRESENTS A TRANSCENDENTAL ISSUE FULLY IMBUED WITH PUBLIC INTEREST.—** [W]hether the President exercised her Commander-in-Chief powers in accordance with the Constitution indisputably presents a transcendental issue fully imbued with public interest. [The Ponente agrees] with *amicus curiae* Father Joaquin Bernas' opinion: "The practice of martial rule can have a profoundly disturbing effect on the life, liberty and fortunes of people. Likewise, the actions taken by the police and military during the period when martial law is in effect can have serious consequences on fundamental rights."

6. ID.; ID.; ID.; THE ISSUE ON THE CONSTITUTIONALITY OF THE PRESIDENT'S DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE WRIT OF *HABEAS CORPUS* PURSUANT TO PROCLAMATION NO. 1959 REQUIRES THE FORMULATION OF CONTROLLING PRINCIPLES FOR THE GUIDANCE OF ALL SECTORS CONCERNED, MOST ESPECIALLY THE EXECUTIVE WHICH IS IN CHARGE OF ENFORCING THE EMERGENCY MEASURES.— [T]he issue on the constitutionality of Proclamation No. 1959 unquestionably requires formulation of controlling principles to guide the Executive, Legislature, and the public. The President's issuance of Proclamation No. 1959 generated strong reactions from various sectors of society. This, of course, is an expected response from a nation whose painful memory of the dark past remains fresh. The nation remembers that martial law was the vehicle of President Marcos to seize unlimited State power, which resulted in gross and wanton violations of fundamental human rights of the people. That era saw the collapse of the rule of law and what reigned supreme was a one man-rule for the dictator's own personal benefit. The present controversy, being the first case under the 1987 Constitution involving the President's exercise of the power to declare martial law and suspend the writ, provides this Court with a rare opportunity, which it must forthwith seize, to formulate controlling principles for the guidance of all sectors concerned, most specially the Executive which is in charge of enforcing the emergency measures. Dismissing the petitions on the ground of mootness will most certainly deprive the entire nation of instructive and valuable principles on this extremely crucial national issue.

7. ID.; ID.; ID.; THE IMPOSITION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* ARE CAPABLE OF REPETITION YET EVADING REVIEW.— [T]he present case is capable of repetition yet evading review. [The Ponente agrees] with Father Bernas' view: "[H]istory clearly attests that the events that can lead to martial law, as well as the imposition of martial law itself, and the suspension of the privilege together with actions taken by military and police during a period of martial law are capable of repetition and are too important to allow

to escape review through the simple expedient of the President lifting a challenged proclamation."

8. **ID.; ID.; ID.; ID.; THE DOER'S VOLUNTARY CESSATION OR WITHDRAWAL OF THE QUESTIONED ACT DOES NOT BY ITSELF DEPRIVE THE COURT OF ITS JURISDICTION ONCE THE SUIT IS FILED.—** [T]he respondent's or doer's voluntary cessation of the questioned act does not by itself deprive the Court of its jurisdiction once the suit is filed. In this case, President Arroyo, after eight days from the issuance of Proclamation No. 1959, issued Proclamation No. 1963 revoking Proclamation No. 1959. President Arroyo's lifting of martial law and restoration of the writ translate to a voluntary cessation of the very acts complained of in the present petitions. However, the present petitions were filed with this Court while Proclamation No. 1959 was still in effect and before Proclamation No. 1963 was issued, thus foreclosing any legal strategy to divest this Court of its jurisdiction by the mere cessation or withdrawal of the challenged act.

9. **ID.; ID.; ID.; THE FACT THAT EVERY DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* WILL INVOLVE ITS OWN SET OF CIRCUMSTANCES PECULIAR TO THE NECESSITY OF TIME, EVENTS OR PARTICIPANTS SHOULD NOT PRECLUDE THE COURT FROM REVIEWING THE PRESIDENT'S USE OF SUCH EMERGENCY POWERS.—** Moreover, the fact that every declaration of martial law or suspension of the writ will involve its own set of circumstances peculiar to the necessity of time, events or participants should not preclude this Court from reviewing the President's use of such emergency powers. Whatever are the circumstances surrounding each declaration of martial law or suspension of the writ, the declaration or suspension will always be governed by the same safeguards and limitations prescribed in the same provisions of the Constitution. Failing to determine the constitutionality of Proclamation No. 1959 by dismissing the cases on the ground of mootness sets a very dangerous precedent to the leaders of this country that they could easily impose martial law or suspend the writ without any factual or legal basis at all, and before

this Court could review such declaration, they would simply lift the same and escape possible judicial rebuke.

10. **ID.; ID.; TERM "REBELLION" IN SECTION 18, ARTICLE VII OF THE 1987 CONSTITUTION HAS THE SAME MEANING AS THE CRIME OF "REBELLION" THAT IS DEFINED IN ARTICLE 134 OF THE REVISED PENAL CODE, AS AMENDED.—** The term "rebellion" in Section 18, Article VII of the 1987 Constitution must be understood as having the same meaning as the crime of "rebellion" that is defined in Article 134 of the Revised Penal Code, as amended. *First*, this is the clear import of the last two paragraphs of Section 18, Article VII of the Constitution, which explicitly state: The suspension of the privilege of the writ of *habeas corpus* shall apply only to **persons judicially charged for rebellion** or offenses inherent in, or directly connected with, invasion. During the suspension of the privilege of the writ of *habeas corpus*, **any person thus arrested or detained shall be judicially charged** within three days, otherwise he shall be released. For a person to be judicially charged for rebellion, there must necessarily be a statute defining rebellion. There is no statute defining rebellion other than the Revised Penal Code. Hence, "one can be 'judicially charged' with rebellion only if one is suspected of having committed acts defined as rebellion in Article 134 of the Revised Penal Code." *Second*, the Revised Penal Code definition of rebellion is the only legal definition of rebellion known and understood by the Filipino people when they ratified the 1987 Constitution. Indisputably, the Filipino people recognize and are familiar with only one meaning of rebellion, that is, the definition provided in Article 134 of the Revised Penal Code. To depart from such meaning is to betray the Filipino people's understanding of the term "rebellion" when they ratified the Constitution. There can be no question that "the Constitution does not derive its force from the convention which framed it, but from the people who ratified it." *Third*, one of the Whereas clauses of Proclamation No. 1959 expressly cites the Revised Penal Code definition of rebellion, belying the government's claim that the Revised Penal Code definition of rebellion merely guided the President in issuing Proclamation No. 1959.

11. CRIMINAL LAW; REBELLION; ELEMENTS.— In exercising the Commander-in-Chief powers under the Constitution, every President must insure the existence of the elements of the crime of rebellion, which are: (1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (1) the territory of the Philippines or any part thereof; or (2) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives. To repeat, the term "rebellion" in Section 18, Article VII of the Constitution must be understood to have the same meaning as the crime of rebellion defined in Article 134 of the Revised Penal Code. Ascribing another meaning to the term "rebellion" for constitutional law purposes, more specifically in imposing martial law and suspending the writ, different from the definition in Article 134 of the Revised Penal Code, overstretches its definition without any standards, invites unnecessary confusion, and undeniably defeats the intention of the Constitution to restrain the extraordinary Commander-in-Chief powers of the President.

12. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; PROBABLE CAUSE OF THE EXISTENCE OF EITHER INVASION OR REBELLION SATISFIES THE STANDARD OF PROOF FOR A VALID DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; PROBABLE CAUSE, DEFINED AND EXPLAINED.— While the Constitution expressly provides strict safeguards against any potential abuse of the President's emergency powers, the Constitution does not compel the President to produce such amount of proof as to unduly burden and effectively incapacitate her from exercising such powers. Definitely, the President need not gather proof beyond reasonable doubt, which is the standard of proof required for convicting an accused charged with a criminal offense. x x x. Neither clear and convincing evidence, which is employed in either criminal or civil cases, is indispensable for a lawful declaration of martial law or suspension of the writ. Not even preponderance of evidence, which is the degree of proof necessary in civil cases, is demanded for a lawful declaration of martial law.

x x x. Similarly, substantial evidence constitutes an unnecessary restriction on the President's use of her emergency powers. x x x. [P]robable cause of the existence of either invasion or rebellion suffices and satisfies the standard of proof for a valid declaration of martial law and suspension of the writ. Probable cause is the same amount of proof required for the filing of a criminal information by the prosecutor and for the issuance of an arrest warrant by a judge. Probable cause has been defined as a "set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested." **In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge.** He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction. Probable cause, basically premised on common sense, is the most reasonable, most practical, and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion, necessary for a declaration of martial law or suspension of the writ. Therefore, lacking probable cause of the existence of rebellion, a declaration of martial law or suspension of the writ is without any basis and thus, unconstitutional. The requirement of probable cause for the declaration of martial law or suspension of the writ is consistent with Section 18, Article VII of the Constitution. It is only upon the existence of probable cause that a person can be "judicially charged" under the last two paragraphs of Section 18, Article VII.

13. ID.; ID.; ID.; A DECLARATION OF MARTIAL LAW DOES NOT AUTHORIZE WARRANTLESS ARRESTS, SEARCHES AND SEIZURES.— The Constitution now expressly declares, "A state of martial law does not suspend the operation of the Constitution." Neither does a state of martial law supplant the functioning of the civil courts or legislative assemblies. Nor does it authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts

are able to function, or automatically suspend the writ. There is therefore no dispute that the constitutional guarantees under the Bill of Rights remain fully operative and continue to accord the people its mantle of protection during a state of martial law. In case the writ is also suspended, the suspension applies only to those judicially charged for rebellion or offenses directly connected with invasion. Considering the non-suspension of the operation of the Constitution during a state of martial law, a declaration of martial law does not authorize warrantless arrests, searches and seizures, in derogation of Section 2, Article III of the Constitution x x x. Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. Warrantless arrests, search and seizure are valid only in instances where such acts are justified, *i.e.,* those enumerated in Section 5, Rule 113 of the Rules of Court.

14. ID.; ID.; ID.; THE PRESIDENT'S POWER TO DECLARE MARTIAL LAW OR SUSPEND THE WRIT IS INDEPENDENT, SEPARATE, AND DISTINCT FROM ANY CONSTITUTIONALLY MANDATED ACT TO BE PERFORMED BY EITHER THE LEGISLATURE OR THE JUDICIARY; CONGRESS' INACTION ON THE DECLARATION OR SUSPENSION IS NOT DETERMINATIVE OF THE COURT'S EXERCISE OF ITS REVIEW POWER.— The Constitution vests exclusively in the President, as Commander-in-Chief, the emergency powers to declare martial law or suspend the writ in cases of rebellion or invasion, when the public safety requires it. The imposition of martial law or suspension of the writ takes effect the moment it is declared by the President. No other act is needed for the perfection of the declaration of martial law or the suspension of the writ. x x x. It is clear, therefore, that the President's power to declare martial law or suspend the writ is independent, separate, and distinct from any constitutionally mandated act to be performed by either the Legislature or the Judiciary. It

is neither joint nor sequential with Congress' power to revoke the declaration or suspension or to extend it upon the initiative of the President. Accordingly, even if Congress has not acted upon the President's declaration or suspension, the Court may review the declaration or suspension in an appropriate proceeding filed by any citizen. Otherwise stated, Congress' inaction on the declaration or suspension is not determinative of the Court's exercise of its review power under Section 18, Article VII of the Constitution.

15. ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE SUPREME COURT'S REVIEW POWER IS NEITHER SEQUENTIAL NOR JOINT WITH THE REVIEW POWER OF CONGRESS.— To hold that the power of this Court to review the President's declaration of martial law or suspension of the writ is **sequential, or joint**, with the review power of Congress is to make it impossible for this Court to decide a case challenging the declaration or suspension "**within thirty days from its filing,**" as mandated by the Constitution. Congress has no deadline when to revoke the President's declaration or suspension. Congress may not even do anything with the President's declaration or suspension and merely allow it to lapse after 60 days. On the other hand, the Constitution mandates that this Court "**must promulgate its decision thereon within thirty days from [the] filing**" of the case. Clearly, the Court's review power is neither sequential nor joint with the review power of Congress.

16. ID.; ID.; ID.; THE PRESIDENT'S LIFTING OF THE DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF *HABEAS CORPUS* BEFORE THE SUPREME COURT COULD DECIDE THE CASE WITHIN 30-DAY PERIOD DOES NOT OPERATE TO DIVEST THE LATTER OF ITS JURISDICTION OVER THE CASE.— [T]he President's lifting of the declaration or suspension before this Court could decide the case within the 30-day period does not operate to divest this Court of its jurisdiction over the case. A party cannot simply oust the Court's jurisdiction, already acquired, by a party's own unilateral act. The President's lifting of the declaration or suspension merely means that this Court does not have to decide the case within the 30-day period, as the urgency of deciding has ceased. Certainly, the Court is

not divested of its jurisdiction simply because the urgency of deciding a case has ceased.

17. ID.; ID.; ID.; WHERE NO CONFLICT ENSUES, CONGRESS' INACTION ON THE PRESIDENT'S DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE WRIT OF *HABEAS CORPUS* DOES NOT PRECLUDE THE COURT FROM RULING ON THE SUFFICIENCY OF THE FACTUAL BASIS THEREOF.— The President has the sole and exclusive power to declare martial law or suspend the writ. This power of the President is subject to review separately by Congress and the Supreme Court. Justice Mendoza stresses, "Thus, Congress and this Court have separate spheres of competence. They do not act 'jointly and sequentially' but independently of each other." Father Bernas points out, "Since the powers of Congress and the Court are independent of each other, there is nothing to prevent Congress and the Court from simultaneously exercising their separate powers." In the exercise by the Court and Congress of their separate "review powers" under Section 18, Article VII of the Constitution, three possible scenarios may arise. *First*, the President's martial law declaration or suspension of the writ is questioned in the Supreme Court without Congress acting on the same. Such a situation generates no conflict between the Supreme Court and Congress. There is no question that the Supreme Court can annul such declaration or suspension if it lacks factual basis. Congress, whose only power under Section 18, Article VII of the Constitution is to revoke the declaration or suspension on any ground, is left with nothing to revoke if the Court has already annulled the declaration or suspension. *Second*, Congress decides first to revoke the martial law declaration or suspension of the writ. Since the Constitution does not limit the grounds for congressional revocation, Congress can revoke the declaration or suspension for policy reasons, or plainly for being insignificant, as for instance it involves only one *barangay* rebelling, or if it finds no actual rebellion. In this case, the Supreme Court is left with nothing to act on as the revocation by Congress takes effect immediately. The Supreme Court must respect the revocation by Congress even if the Court believes a rebellion exists because Congress has the unlimited power to revoke the declaration or suspension. *Third*, the Supreme Court decides first and rules that there is factual basis for the declaration of martial law or suspension of the writ. In

such a situation, Congress can still revoke the declaration or suspension as its power under the Constitution is broader insofar as the declaration or suspension is concerned. "Congress cannot be prevented by the Court from revoking the President's decision because it is not for the Court to determine what to do with an existing factual situation. x x x Congress has been given unlimited power to revoke the President's decision." In short, even if there is an actual rebellion, whether affirmed or not by the Supreme Court, Congress has the power to revoke the President's declaration or suspension. In the present controversy, Congress failed to act on Proclamation No. 1959 when it commenced its Joint Session on 9 December 2009 until the lifting of the martial law declaration and restoration of the writ on 12 December 2009. Congress' non-revocation of Proclamation No. 1959 categorizes the present case under the first scenario. In such a situation, where no conflict ensues, Congress' inaction on Proclamation No. 1959 does not preclude this Court from ruling on the sufficiency of the factual basis of the declaration of martial law and suspension of the writ.

18. ID.; ID.; ID.; THE DETERMINATION BY THE SUPREME COURT OF THE SUFFICIENCY OF THE FACTUAL BASIS OF THE DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF *HABEAS CORPUS* IS NOT ESSENTIAL TO THE RESOLUTION OF ISSUES CONCERNING THE VALIDITY OF RELATED ACTS THAT GOVERNMENT FORCES MAY HAVE COMMITTED DURING THE EMERGENCY.— Indisputably, unlawful acts may be committed during martial law or suspension of the writ, not only by the rebels, but also by government forces who are duty bound to enforce the declaration or suspension and immediately put an end to the root cause of the emergency. Various acts carried out by government forces during martial law or suspension of the writ in the guise of protecting public safety may in reality amount to serious abuses of power and authority. Whatever the Court's decision will be on the sufficiency of the factual basis of the President's declaration or suspension does not preclude those aggrieved by such illegal acts from pursuing any course of legal action available to them. Therefore, the determination by this Court of the sufficiency of the factual basis of the declaration or suspension is not essential to the

resolution of issues concerning the validity of related acts that government forces may have committed during the emergency.

19. ID.; EXECUTIVE DEPARTMENT; PRESIDENT; DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF *HABEAS CORPUS*; SAFEGUARDS.— [T]he 1935 and 1973 Constitutions only specify the instances when martial law may be declared or when the writ may be suspended. The 1987 Constitution, on the other hand, not only explicitly includes the specific grounds for the activation of such emergency powers, but also imposes express limitations on the exercise of such powers. Upon the President's declaration of martial law or suspension of the writ, the following safeguards are automatically set into motion: (1) the duration of martial law or suspension of the writ is limited to a period not exceeding sixty days; (2) the President is mandated to submit a report to Congress within forty-eight hours from the declaration or suspension; and (3) the declaration or suspension is subject to review by Congress, which may revoke such declaration or suspension. If Congress is not in session, it shall convene within 24 hours without need for call. In addition, the sufficiency of the factual basis of the declaration, suspension, or their extension is subject to review by the Supreme Court in an appropriate proceeding. The mechanism and limitations laid down in Section 18, Article VII of the Constitution in declaring martial law or suspending the writ were introduced precisely to preclude a repetition of the kind of martial law imposed by President Marcos, which ushered in a permanent authoritarian regime.

20. ID.; ID.; ID.; ID.; TWO CONDITIONS.— Consistent with the framers' intent to reformulate the Commander-in-Chief powers of the President, the 1987 Constitution requires the concurrence of two conditions in declaring martial law or suspending the writ, namely, (1) an actual invasion or rebellion, and (2) public safety requires the exercise of such power.[55] The Constitution no longer allows imminent danger of rebellion or invasion as a ground for the declaration or suspension, which the 1935 and 1973 Constitutions expressly permitted.

21. ID.; ID.; ID.; ID.; ID.; A MERE THREAT, OR AN IMMINENT THREAT OF REBELLION, OR A REBELLION "IN THE OFFING" NOT VALID GROUND FOR THE DECLARATION OF MARTIAL LAW OR SUSPENSION

OF THE WRIT OF *HABEAS CORPUS*.— In the present case, President Arroyo grounded the declaration of martial law and suspension of the writ on the existence of rebellion in Maguindanao. x x x. The contemporaneous public statements made by the President's alter egos explaining the grounds for the issuance of Proclamation No. 1959 negate rather than establish the existence of an actual rebellion in Maguindanao. During the interpellations in the Joint Session of Congress, convened pursuant to the provisions of Section 18, Article VII of the Constitution, then Executive Secretary Eduardo Ermita admitted the absence of an actual rebellion in Maguindanao x x x. Also, during the Joint Session, then Senator (now President) Benigno S. Aquino III pointed out the public statements made by former Department of Interior and Local Government Secretary Ronaldo V. Puno, then Armed Forces of the Philippines spokesperson Lt. Col. Romeo Brawner, and former Defense Secretary Norberto Gonzales admitting there was no need for martial law x x x. Even before the interpellations in Congress, then Executive Secretary Ermita publicly confirmed the inadequacies of Proclamation No. 1959 x x x. [T]he Department of Justice Secretary, who is the principal legal officer of the Arroyo administration, publicly admitted that there was only a "looming" rebellion, a "rebellion in the offing," in Maguindanao. x x x. The admissions and public statements made by members of the Cabinet, who are the President's alter egos, as well as the public assessments made by the highest ranking military officials, clearly demonstrate that instead of being anchored on the existence of an actual rebellion, Proclamation No. 1959 was based on a mere threat, or at best an imminent threat of rebellion, or a rebellion "in the offing." This undeniably runs counter to the letter and intent of the Constitution. A looming rebellion is analogous to imminent danger of rebellion, which was deliberately eliminated by the framers of the 1987 Constitution as a ground for the declaration of martial law precisely to avoid a repetition of the misguided and oppressive martial law imposed by former President Marcos.

22. **ID.; ID.; ID.; ID.; ONLY IN CASE OF ACTUAL INVASION OR REBELLION, WHEN PUBLIC SAFETY REQUIRES IT, MAY THE PRESIDENT DECLARE MARTIAL LAW OR SUSPEND THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.—** There is **absolutely nothing** which

shows that the Ampatuans and their armed followers, at any point in time, intended to overthrow the government. On the contrary, the Ampatuans were publicly known as very close political allies of President Arroyo. There is not a single instance where the Ampatuans denounced, expressly or impliedly, the government, or attempted to remove allegiance to the government or its laws or to deprive the President or Congress of any of their powers. Based on the records, what the government clearly established, among others, were (1) the existence of the Ampatuans' private army; and (2) the Ampatuans' vast collection of high powered firearms and ammunitions. These shocking discoveries, however, do not amount to rebellion as defined in Article 134 of the Revised Penal Code. Based on the statements made by ranking government and military officials, and as clearly found by the RTC-Quezon City in Criminal Case No. Q-10-162667 and affirmed by the Court of Appeals, **there was no public uprising and taking arms against the government for the purpose of removing from the allegiance to the government or its laws the territory of the Philippines or any part thereof, or depriving the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.** The Ampatuans' amassing of weaponry, including their collection of armored cars, tanks and patrol cars, merely highlights this political clan's unbelievably excessive power and influence under the Arroyo administration. To repeat, only in case of actual invasion or rebellion, when public safety requires it, may the President declare martial law or suspend the writ. In declaring martial law and suspending the writ in Maguindanao in the absence of an actual rebellion, President Arroyo indisputably violated the explicit provisions of Section 18, Article VII of the Constitution.

23. ID.; ID.; ID.; ID.; MOUNTING PRESSURE TO BRING THE MURDERERS TO JUSTICE, WITHOUT ANY INVASION OR REBELLION, DOES NOT WARRANT THE IMPOSITION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*.— In issuing Proclamation No. 1959, President Arroyo exercised the most awesome and powerful among her graduated Commander-in-Chief powers to suppress a supposed rebellion

in Maguindanao, following the massacre of 57 civilians in the worst election-related violence in the country's history. Since then, the government branded the Ampatuans, the alleged masterminds of the massacre, as rebels orchestrating the overthrow of the Arroyo administration. However, the events before, during, and after the massacre negate the existence of an armed uprising aimed at bringing down the government, but rather point to a surfeit of impunity and abuse of power of a political clan closely allied with the Arroyo administration. In short, Proclamation No. 1959 was issued without an actual rebellion justifying the same. Apparently, President Arroyo resorted to martial law and suspension of the writ, not to quell a purported rebellion because there was absolutely none, but to show her indignation over the gruesome massacre and her swift response in addressing the difficult situation involving her close political allies. She was reported to be "under pressure to deliver, amid rising public outrage and international condemnation of the massacre." However, mounting pressure to bring the murderers to justice, without any invasion or rebellion in Maguindanao, does not warrant the imposition of martial law or suspension of the writ. Rather, what the nation expects, and what the victims and their families truly deserve, is the speedy and credible investigation and prosecution, and eventually the conviction, of the merciless killers.

24. ID.; ID.; ID.; ID.; NEITHER THE DISCOVERY OF PRIVATE ARMY AND MASSIVE WEAPONRY NOR DO THE CLOSURE OF GOVERNMENT OFFICES AND THE RELUCTANCE OF THE LOCAL GOVERNMENT OFFICIALS AND EMPLOYEES TO REPORT FOR WORK INDICATE A REBELLION; PROCLAMATION NO. 1959 DECLARED UNCONSTITUTIONAL FOR LACK OF FACTUAL BASIS.— Proclamation No. 1959 was anchored on a non-existent rebellion. Based on the events before, during and after the Maguindanao massacre, there was obviously no rebellion justifying the declaration of martial law and suspension of the writ. The discovery of the Ampatuans' private army and massive weaponry does not establish an armed public uprising aimed at overthrowing the government. Neither do the closure of government offices and the reluctance of the local government officials and employees to report for work indicate a rebellion. The Constitution is clear. Only in case of

actual invasion or rebellion, when public safety requires it, can a state of martial law be declared or the privilege of the writ of *habeas corpus* be suspended. Proclamation No. 1959 cannot be justified on the basis of a threatened, imminent, or looming rebellion, which ground was intentionally deleted by the framers of the 1987 Constitution. Considering the non-existence of an actual rebellion in Maguindanao, Proclamation No. 1959 is unconstitutional for lack of factual basis as required under Section 18, Article VII of the Constitution for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*.

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

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; MOOT AND ACADEMIC RULE; THE COURT IS NOT EMPOWERED TO DECIDE MOOT QUESTIONS OR ABSTRACT PROPOSITIONS, OR TO DECLARE PRINCIPLES OR RULES OF LAW WHICH CANNOT AFFECT THE RESULT AS TO THE THING IN ISSUE IN THE CASE BEFORE IT; EXCEPTIONS; PRESENT.—** Indeed, it is a well-settled rule that this Court may only adjudicate actual and current controversies. This is because the Court is "not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it." Nonetheless, this "moot and academic" rule admits of exceptions. As We wrote in *David v. Arroyo*: The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. **Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.** All the aforementioned exceptions are present in this case. *First*, in the instant petitions, it was alleged that the issuance of Proclamation No. 1959 is violative of the Constitution. *Second*, it is indubitable that the issues raised affect the public's interest as they may have

an unsettling effect on the fundamental rights of the people. *Third*, the Court has the duty to formulate controlling principles concerning issues which involve the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* to guide the bench, the bar, and the public. And *fourth*, the assailed proclamation is capable of repetition yet evading review. Considerably, the instant petitions are subject to judicial review.

2. **ID.; ID.; ID.; COURTS OF JUSTICE WILL TAKE COGNIZANCE ONLY OF JUSTICIABLE CONTROVERSIES WHEREIN ACTUAL AND NOT MERELY HYPOTHETICAL ISSUES ARE INVOLVED; RATIONALE.—** With the exception of the first, the two other possible scenarios adverted to that may arise from the action or inaction of the two co-equal branches of the government upon the declaration by the President of martial law or suspension of the writ cannot be resolved in the present case. Otherwise, this Court would, in effect, be making a ruling on a hypothetical state of facts which the Court is proscribed from doing. As We have mentioned in *Albay Electric Cooperative, Inc. v. Santelices*, "[i]t is a rule almost unanimously observed that courts of justice will take cognizance only of justiciable controversies wherein actual and **not merely hypothetical issues** are involved." The reason behind this requisite is "to prevent the courts through avoidance of premature adjudication from entangling themselves in abstract disagreements, and for us to be satisfied that the case does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire."

3. **ID.; ID.; ID.; THE COURT IS NOT POWERLESS TO REVIEW THE LEGALITY OF THE MANNER BY WHICH CONGRESSIONAL ACTS HAVE BEEN ARRIVED AT IN ORDER TO DETERMINE WHETHER CONGRESS HAS TRANSGRESSED THE REASONABLE BOUNDS OF ITS POWER.—** Indeed, the Court does not have the authority to pass upon the wisdom behind the acts of the Congress. Nonetheless, the Court is not powerless to review the legality of the manner by which such acts have been arrived at in order to determine whether Congress has transgressed the reasonable bounds of its power. This is an obligation which the Court cannot, and should not, abdicate. Moreover, by indicating that

Congress, if it so decides to act, has an unlimited power to revoke the declaration of a state of martial law or suspension of the privilege of the writ unfettered by this Court's power to review, We are treading on treacherous grounds by handing over such an unbridled discretion to Congress. Such statement, x x x partakes of an *obiter* without precedential value, being unnecessary to resolve the issues and arrive at a proper decision in the present case. This matter should instead be addressed at the proper case and at the proper time.

4. ID.; EXECUTIVE DEPARTMENT; PRESIDENT; POWERS; PRECISION IN ESTABLISHING THE FACT OF REBELLION BEFORE DECLARING MARTIAL LAW OR SUSPENDING THE WRIT OF *HABEAS CORPUS*, NOT REQUIRED; THE PRESIDENT IS CALLED TO ACT AS PUBLIC SAFETY REQUIRES.— When We speak of "violation" in reference to a law, it pertains to an act of breaking or dishonoring the law. The use of said word, coupled with the ascription of the term "indisputable," somehow implies that an act was done intentionally or wilfully. At worst, its use can even be suggestive of bad faith on the part of the doer. In the case at bar, there is neither any allegation nor proof that President Arroyo acted in bad faith when she declared martial law and suspended the writ of *habeas corpus* in Maguindanao. There was also no showing that there was a deliberate or intentional attempt on the part of President Arroyo to break or dishonor the Constitution by issuing the assailed proclamation. On the contrary, what is extant from the records is that President Arroyo made such declaration and suspension on the basis of intelligence reports that lawless elements have taken up arms and committed public uprising against the government and the people of Maguindanao for the purpose of depriving the Chief Executive of her powers and prerogatives to enforce the laws of the land and to maintain public order and safety, to the great damage, prejudice and detriment of the people in Maguindanao and the nation as a whole. President Arroyo cannot be blamed for relying upon the information given to her by the Armed Forces of the Philippines and the Philippine National Police, considering that the matter of the supposed armed uprising was within their realm of competence, and that a state of emergency has also been declared in Central Mindanao to prevent lawless violence similar to the

"Maguindanao massacre," which may be an indication that there is a threat to the public safety warranting a declaration of martial law or suspension of the writ. Certainly, the President cannot be expected to risk being too late before declaring martial law or suspending the writ of *habeas corpus*. The Constitution, as couched, does not require precision in establishing the fact of rebellion. The President is called to act as public safety requires.

5. **ID.; ID.; ID.; ID.; ID.; IT IS PREPOSTEROUS TO IMPOSE UPON THE PRESIDENT TO BE PHYSICALLY PRESENT AT THE PLACE WHERE A THREAT TO PUBLIC SAFETY IS ALLEGED TO EXIST AS A CONDITION TO MAKE A DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE WRIT OF *HABEAS CORPUS*; REPORTORIAL REQUIREMENT AFTER DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE WRIT OF *HABEAS CORPUS,* COMPLIED WITH.—** [T]he President has the discretion to make a declaration of martial law or suspension of the writ of *habeas corpus* based on information or facts available or gathered by the President's office. It would be preposterous to impose upon the President to be physically present at the place where a threat to public safety is alleged to exist as a condition to make such declaration or suspension. In the present case, it should not escape the attention of the Court that President Arroyo complied with the reportorial requirement in Sec. 18, Art. VII of the Constitution, which states that "within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress." Further, it appearing thereafter that when President Arroyo subsequently received intelligence reports on the advisability of lifting martial law or restoring the writ of *habeas corpus* in Maguindanao, she immediately issued the corresponding proclamation.

6. **ID.; ID.; ID.; ID.; PROCLAMATION NO. 1959 DECLARED UNCONSTITUTIONAL.—** [H]owever, it is one thing to declare a decree issued by the President as unconstitutional, and it is another to pronounce that she **indisputably** violated the Constitution. Notably, the power to issue the subject decree is expressly granted the President. There is also compliance

> with the report required after the issuance of said decree. However, the issuance of the subject decree may not be sustained after due consideration of the circumstances which may or may not support such decree. This dissent fears that overbearing declarations may later create an unwarranted limitation on the power of a President to respond to exigencies and requirements of public safety. We must recognize that as society progresses, then so may the manner and means of endangering the very existence of our society develop. This Court is fortunate for having the benefit of hindsight. This benefit may not be equally shared by the President, who is tasked to act with a sense of urgency based on best judgment as facts develop and events unfold. We may only be judges of the past. But history will be harsh on a President who is not up to the challenge and declines, or worse, fails to act when so required.

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D E C I S I O N

ABAD, *J.*:

These cases concern the constitutionality of a presidential proclamation of martial law and suspension of the privilege of *habeas corpus* in 2009 in a province in Mindanao which were withdrawn after just eight days.

The Facts and the Case

The essential background facts are not in dispute. On November 23, 2009 heavily armed men, believed led by the ruling Ampatuan family, gunned down and buried under shoveled dirt 57 innocent civilians on a highway in Maguindanao. In response to this carnage, on November 24 President Arroyo issued Presidential Proclamation 1946, declaring a state of emergency in Maguindanao, Sultan Kudarat, and Cotabato City to prevent and suppress similar lawless violence in Central Mindanao.

Believing that she needed greater authority to put order in Maguindanao and secure it from large groups of persons that have taken up arms against the constituted authorities in the province, on December 4, 2009 President Arroyo issued Presidential Proclamation 1959 declaring martial law and suspending the privilege of the writ of *habeas corpus* in that province except for identified areas of the Moro Islamic Liberation Front.

Two days later or on December 6, 2009 President Arroyo submitted her report to Congress in accordance with Section 18, Article VII of the 1987 Constitution which required her, within 48 hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, to submit to that body a report in person or in writing of her action.

In her report, President Arroyo said that she acted based on her finding that lawless men have taken up arms in Maguindanao and risen against the government. The President described the scope of the uprising, the nature, quantity, and quality of the rebels' weaponry, the movement of their heavily armed units in strategic positions, the closure of the Maguindanao Provincial Capitol, Ampatuan Municipal Hall, Datu Unsay Municipal Hall, and 14 other municipal halls, and the use of armored vehicles, tanks, and patrol cars with unauthorized "PNP/Police" markings.

On December 9, 2009 Congress, in joint session, convened pursuant to Section 18, Article VII of the 1987 Constitution to review the validity of the President's action. But, two days later

or on December 12 before Congress could act, the President issued Presidential Proclamation 1963, lifting martial law and restoring the privilege of the writ of *habeas corpus* in Maguindanao.

Petitioners Philip Sigfrid A. Fortun and the other petitioners in G.R. 190293, 190294, 190301,190302, 190307, 190356, and 190380 brought the present actions to challenge the constitutionality of President Arroyo's Proclamation 1959 affecting Maguindanao. But, given the prompt lifting of that proclamation before Congress could review it and before any serious question affecting the rights and liberties of Maguindanao's inhabitants could arise, the Court deems any review of its constitutionality the equivalent of beating a dead horse.

Prudence and respect for the co-equal departments of the government dictate that the Court should be cautious in entertaining actions that assail the constitutionality of the acts of the Executive or the Legislative department. The issue of constitutionality, said the Court in *Biraogo v. Philippine Truth Commission of 2010*,[1] must be the very issue of the case, that the resolution of such issue is unavoidable.

The issue of the constitutionality of Proclamation 1959 is not unavoidable for two reasons:

One. President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* before the joint houses of Congress could fulfill their automatic duty to review and validate or invalidate the same. The pertinent provisions of Section 18, Article VII of the 1987 Constitution state:

> Sec. 18. The President shall be the Commander inChief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion,

[1] G.R. Nos. 192935 & 193036, December 7, 2010, 637 SCRA 78, 147-148.

when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

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Although the above vests in the President the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*, he shares such power with the Congress. Thus:

1. The President's proclamation or suspension is temporary, good for only 60 days;

2. He must, within 48 hours of the proclamation or suspension, report his action in person or in writing to Congress;

3. Both houses of Congress, if not in session must jointly convene within 24 hours of the proclamation or suspension for the purpose of reviewing its validity; and

4. The Congress, voting jointly, may revoke or affirm the President's proclamation or suspension, allow their limited effectivity to lapse, or extend the same if Congress deems warranted.

It is evident that under the 1987 Constitution the President and the Congress act in tandem in exercising the power to proclaim martial law or suspend the privilege of the writ of *habeas corpus*. They exercise the power, not only sequentially, but in a sense jointly since, after the President has initiated the proclamation or the suspension, only the Congress can maintain the same

based on its own evaluation of the situation on the ground, a power that the President does not have.

Consequently, although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of *habeas corpus* is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court.

Here, President Arroyo withdrew Proclamation 1959 before the joint houses of Congress, which had in fact convened, could act on the same. Consequently, the petitions in these cases have become moot and the Court has nothing to review. The lifting of martial law and restoration of the privilege of the writ of *habeas corpus* in Maguindanao was a supervening event that obliterated any justiciable controversy.[2]

Two. Since President Arroyo withdrew her proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in just eight days, they have not been meaningfully implemented. The military did not take over the operation and control of local government units in Maguindanao. The President did not issue any law or decree affecting Maguindanao that should ordinarily be enacted by Congress. No indiscriminate mass arrest had been reported. Those who were arrested during the period were either released or promptly charged in court. Indeed, no petition for *habeas corpus* had been filed with the Court respecting arrests made in those eight days. The point is that the President intended by her action to address an uprising in a relatively small and sparsely populated province. In her

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[2] See *Funa v. Ermita*, G.R. No. 184740, February 11, 2010, 612 SCRA 308, 319.

judgment, the rebellion was localized and swiftly disintegrated in the face of a determined and amply armed government presence.

In *Lansang v. Garcia*,[3] the Court received evidence in executive session to determine if President Marcos' suspension of the privilege of the writ of *habeas corpus* in 1971 had sufficient factual basis. In *Aquino, Jr. v. Enrile*,[4] while the Court took judicial notice of the factual bases for President Marcos' proclamation of martial law in 1972, it still held hearings on the petitions for *habeas corpus* to determine the constitutionality of the arrest and detention of the petitioners. Here, however, the Court has not bothered to examine the evidence upon which President Arroyo acted in issuing Proclamation 1959, precisely because it felt no need to, the proclamation having been withdrawn within a few days of its issuance.

Justice Antonio T. Carpio points out in his dissenting opinion the finding of the Regional Trial Court (RTC) of Quezon City that no probable cause exist that the accused before it committed rebellion in Maguindanao since the prosecution failed to establish the elements of the crime. But the Court cannot use such finding as basis for striking down the President's proclamation and suspension. For, firstly, the Court did not delegate and could not delegate to the RTC of Quezon City its power to determine the factual basis for the presidential proclamation and suspension. Secondly, there is no showing that the RTC of Quezon City passed upon the same evidence that the President, as Commander-in-Chief of the Armed Forces, had in her possession when she issued the proclamation and suspension.

The Court does not resolve purely academic questions to satisfy scholarly interest, however intellectually challenging these are.[5] This is especially true, said the Court in *Philippine Association of Colleges and Universities v. Secretary of Education*,[6] where

[3] 149 Phil. 547 (1971).

[4] 158-A Phil. 1 (1974).

[5] *Sec. Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 426 (1998).

[6] 97 Phil. 806, 811 (1955), citing *Rice v. Sioux City*, U.S. Sup. Ct. Adv. Rep., May 23, 1955, Law Ed., Vol. 99, p. 511.

the issues "reach constitutional dimensions, for then there comes into play regard for the court's duty to avoid decision of constitutional issues unless avoidance becomes evasion." The Court's duty is to steer clear of declaring unconstitutional the acts of the Executive or the Legislative department, given the assumption that it carefully studied those acts and found them consistent with the fundamental law before taking them. "To doubt is to sustain."[7]

Notably, under Section 18, Article VII of the 1987 Constitution, the Court has only 30 days from the filing of an appropriate proceeding to review the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*. Thus –

> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, and **must promulgate its decision thereon within thirty days from its filing**. (Emphasis supplied)

More than two years have passed since petitioners filed the present actions to annul Proclamation 1959. When the Court did not decide it then, it actually opted for a default as was its duty, the question having become moot and academic.

Justice Carpio of course points out that should the Court regard the powers of the President and Congress respecting the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* as sequential or joint, it would be impossible for the Court to exercise its power of review within the 30 days given it.

But those 30 days, fixed by the Constitution, should be enough for the Court to fulfill its duty without pre-empting congressional action. Section 18, Article VII, requires the President to report his actions to Congress, in person or in writing, within 48 hours

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[7] *Board of Optometry v. Colet*, 328 Phil. 1187, 1207 (1996), citing *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140.

of such proclamation or suspension. In turn, the Congress is required to convene without need of a call within 24 hours following the President's proclamation or suspension. Clearly, the Constitution calls for quick action on the part of the Congress. Whatever form that action takes, therefore, should give the Court sufficient time to fulfill its own mandate to review the factual basis of the proclamation or suspension within 30 days of its issuance.

If the Congress procrastinates or altogether fails to fulfill its duty respecting the proclamation or suspension within the short time expected of it, then the Court can step in, hear the petitions challenging the President's action, and ascertain if it has a factual basis. If the Court finds none, then it can annul the proclamation or the suspension. But what if the 30 days given it by the Constitution proves inadequate? Justice Carpio himself offers the answer in his dissent: that 30-day period does not operate to divest this Court of its jurisdiction over the case. The settled rule is that jurisdiction once acquired is not lost until the case has been terminated.

The problem in this case is that the President aborted the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in Maguindanao in just eight days. In a real sense, the proclamation and the suspension never took off. The Congress itself adjourned without touching the matter, it having become moot and academic.

Of course, the Court has in exceptional cases passed upon issues that ordinarily would have been regarded as moot. But the present cases do not present sufficient basis for the exercise of the power of judicial review. The proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in this case, unlike similar Presidential acts in the late 60s and early 70s, appear more like saber-rattling than an actual deployment and arbitrary use of political power.

WHEREFORE, the Court *DISMISSES* the consolidated petitions on the ground that the same have become moot and academic.

SO ORDERED.

Leonardo-de Castro, Brion, Peralta, Bersamin, Villarama, Jr., and *Mendoza, JJ.,* concur.

Perez, J., see separate opinion.

Corona, C.J., joins the dissent of Mr. Justice Velasco, Jr.

Carpio and *Velasco, Jr., JJ.,* see dissenting opinions.

Sereno, Reyes and *Perlas-Bernabe, JJ.,* join the dissent of Justice Carpio.

Reyes, J., I join the dissent of J. A.T. Carpio.

Del Castillo, J., on leave.

SEPARATE OPINION

PEREZ, *J.*:

I concur in the resulting dismissal of these petitions, more than by reason of their mootness but because I find our action overdue, it being my well-thought-out position that the constitutional authority of the Supreme Court to review the sufficiency of the factual basis of Proclamation No. 1959 has expired and is no more.

Proclamation No. 1959 declaring martial law and suspending the privilege of the writ of *habeas corpus* in the Province of Maguindanao was issued by then President Gloria Macapagal Arroyo on 4 December 2009. In compliance with the mandate of Section 18, Article VII of the present Constitution, she submitted her Report to Congress on 6 December 2009 or "within forty-eight hours from the proclamation."

Seven petitions, now before the Court, were filed disputing the constitutionality of the Proclamation. In the Resolutions of 8 and 15 December 2009, the Court consolidated the petitions and required the Office of the Solicitor General to comment on the petitions. By that time, 15 December 2009, President Arroyo

has, on 12 December 2009, already issued Proclamation No. 1963 lifting martial law and restoring the privilege of the writ of *habeas corpus* in Maguindanao.[1]

The authority of this Court to act on the petitions is embodied in the third paragraph of Section 18, Article VII of the 1987 Constitution which states:

> The Supreme Court may review in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

Clearly, the mandate is both grant and limitation of authority. For while the Court, upon a proceeding filed by any citizen, may review the sufficiency of the factual basis of the proclamation of martial law by the President, or even its extension by Congress, it can only do so within thirty days from filing of the proceeding, the period within which it MUST PROMULGATE its decision.

Over two (2) years have passed since the seven petitions at bar were filed. Today, unquestionably, the Constitutional authority granted to the Court to decide the petitions had lapsed.

It must be made clear that I do not rely, for my position, on the act of the doer[2] "voluntarily ceasing to perform the challenged conduct" or, precisely, on the lifting of martial law by Proclamation No. 1963. Indeed, from the time of lifting on 12 December 2009 up to the thirtieth day following the filing of the instant petitions, Proclamation No. 1959 may be reviewed for all the reasons mentioned in the *ponencia* against which I do not now dissent. The Court did not say during the permitted time of pronouncement what the majority now deems needed

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[1] This and the immediately preceding paragraph were taken from the *ponencia* of Justice Antonio T. Carpio.

[2] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 568 SCRA 402, cited by Justice Antonio T. Carpio, p. 27 of *ponencia*.

saying. Thereafter, and today, no opinion as judgment is constitutionally permissible.

Neither can I join the submission that the question of constitutionality of Proclamation No. 1959 requires formulation of controlling principles to guide the Executive, Legislative and the public.

Respectfully, I submit that each and every exercise by the President of his commander-in-chiefship[3] must, if review by this Court be asked and called for, be examined under the current events and the present affairs that determine the presence of the necessity of such exercise.

All the decisions of the actors covered by Section 18 of Article VII must be done within the tight and narrow time frames in the provision. These framed periods, I submit, emphasize the imperative for currency of the decision that each must make, as indeed, the presidential proclamation, aside from having been subjected to constitutional checks, has been given limited life.

The present limitations of the power to declare martial law, including the consequent circumscription of the legislative and judicial participation in the exercise of the power, themselves limit the occasion and need for "formulation of controlling principles to guide the Executive, Legislative and the public." The way and manner by which the Constitution provided for the commander-in-chief clause require decisions for the present, not guidelines for the future. I respectfully submit that the Court cannot now define for the future the "sufficiency of the factual basis" of the possibly coming proclamations of martial law. I cannot see how such a pre-determination can prevent an unconstitutional imposition of martial law better than the requirement, already constitutionalized, that the President must within forty-eight hours, submit a report in person or in writing to Congress which can, by a majority of all its members revoke, the imposition.

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[3] Term used by Bernas, S.J., *The 1987 Constitution of the Philippines and Commentary*, 2003 Ed., p. 865.

WHEREFORE, the cases are declared closed and terminated by constitutional rescript.

DISSENTING OPINION

CARPIO, *J*.:

I dissent.

The Cases

These are consolidated petitions for the writs of *certiorari* and prohibition challenging the constitutionality of Presidential Proclamation No. 1959, which declared a state of martial law and suspended the privilege of the writ of *habeas corpus* in the Province of Maguindanao, except for identified areas of the Moro Islamic Liberation Front.

The Antecedents

In the morning of 23 November 2009, fifty-seven (57) innocent civilians met their tragic and untimely death in a gruesome massacre unequaled in recent history,[1] considered to be the

[1] Presidential Adviser for Mindanao Jesus Dureza's statement reported in Philippine Daily Inquirer on 23 November 2009 (http://newsinfo.inquirer.net/breakingnews/nation/view/20091123-237934/Wife-of-gubernatorial-bet-35-killed-in-Maguindanao [accessed on 4 November 2011], Wife of gubernatorial bet, 35 killed in Maguindanao Palace adviser calls for state of emergency) and in Philippine Star on 24 November 2009 (http://www.philstar.com/article.aspx?articleid=526314 [accessed on 4 November 2011]; Maguindanao massacre).

The mass murder of the journalists was tagged "as the darkest point of democracy and free press in this recent time." (Statement of NUJP Cebu Chapter President Rico Lucena reported in philstar.com with title Maguindanao death toll now 46: Emergency rule in two provinces (http://www.philstar.com/article.aspx?articleid=526616 [accessed on 4 November 2011]).

The massacre was considered "one of the deadliest single events for the press in memory" and the Philippines the world's worst place to be a journalist, according to international press freedom watchdog Committee to Protect Journalists (CPJ). (http://www.gmanews.tv/story/

Philippines' worst case of election-related violence. Brutally killed were female family members of then Buluan Vice Mayor Esmael "Toto" Mangudadatu (Mangudadatu), including his wife and sisters, and members of the press who were part of a convoy on the way to Shariff Aguak in Maguindanao. Mangudadatu's wife was bringing with her Mangudadatu's certificate of candidacy for Governor of Maguindanao for filing with the Provincial Office of the Commission on Elections in Shariff Aguak. Five of the victims were not part of the convoy but happened to be traveling on the same highway.[2]

177821/the-ampatuan-massacre-a-map-and-timeline [accessed on 4 November 2011])

[2] Fifty-five of the casualties were identified as follows:

1. Bai Genelyn T. Mangudadatu	Wife of Mangudadatu
2. Bai Eden Mangudadatu	Sister/Vice Mayor, Mangudadatu, Maguindanao
3. Pinky Balaiman	Cousin of Mangudadatu
4. Mamotavia Mangudadatu	Aunt
5. Bai Farida Mangudadatu	Youngest sister
6. Rowena Ante Mangudadatu	Relative
7. Faridah Sabdula	Sister
8. Soraida Vernan	Cousin
9. Raida Sapalon Abdul	Cousin
10. Rahima Puto Palawan	Relative
11. Lailan "Ella" Balayman	Relative
12. Walida Ali Kalim	Relative
13. Atty. Concepcion Brizuela	Lawyer
14. Atty. Cynthia Oquendo Ogano	Lawyer
15. Cataleno Oquendo	Father of Atty. Cynthia Oquendo
16. Marife Montano	Saksi News, Gensan
17. Alejandro Bong Reblando	Manila Bulletin, Gensan
18. Mc Delbert "Mac Mac" Areola	UNTV Gensan
19. Rey Marisco	Periodico Ini, Koronadal City
20. Bienvenido Jun Lagarta	Prontierra News, Koronadal City
21. Napoleon Salaysay	Mindanao Gazette
22. Eugene Depillano	UNTV Gen San
23. Rosell Morales	News Focus
24. Arturo Betia	Periodico Ini, Gen San
25. Noel Decena	Periodico Ini
26. John Caniba	Periodico Ini

In its Consolidated Comment dated 14 December 2009, the Office of the Solicitor General (OSG), representing public respondents, narrated the harrowing events which unfolded on that fateful day of 23 November 2009, to wit:

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3. Vice Mayor Mangudadatu confirmed having received reports that his political rivals (Ampatuans) were planning to kill him upon his filing of a certificate of candidacy (COC) for the gubernatorial seat in Maguindanao. Believing that the presence of women and media

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27. Junpee Gatchalian	DXGO, Davao City
28. Victor Nunez	UNTV Gen San
29. Andres Teodoro	Central Mindanao Inquirer
30. Romeo Capelo	Midland Review, Tacurong City
31. Joy Duhay	Gold Star Daily
32. Ronnie Perante	Gold Star Daily, Koronadal City
33. Benjie Adolfo	Gold Star Daily, Koronadal City
34. Ian Subang	Socsargen Today, Gen San
35. Joel Parcon	Prontiera News, Koronadal City
36. Robello Bataluna	Gold Star Daily, Koronadal City
37. Lindo Lipugan	Mindanao Daily Gazette, Davao City
38. Ernesto Maravilla	Bombo Radyo, Koronadal City
39. Henry Araneta	Radio DZRH, Gen San
40. Fernando Razon	Periodico Ini, Gen San
41. Hannibal Cachuela	Punto News, Koronadal City
42. Lea Dalmacio	Socsargen News, Gensan
43. Marites Cablitas	News Focus, Gensan
44. Gina Dela Cruz	Saksi News, Gensan
45. Anthony Ridao	Government employee
46. Mariam Calimbol	Civilian
47. Norton “Sidic” Edza	Driver
48. Jephon C. Cadagdagon	Civilian
49. Abdillah Ayada	Driver
50. Joselito Evardo	Civilian
51. Cecille Lechonsito	Civilian
52. Wilhelm Palabrica	Government Employee
53. Mercy Palabrica	Government Employee
54. Daryll Vincent Delos Reyes	Government Employee
55. Eduardo “Nonie” Lechonsito	Government Employee

personalities would deter any violent assault, he asked his wife and female relatives to file his COC and invited several media reporters to cover the event.

4. At around 10 a.m., the convoy stopped at a designated PNP checkpoint along the highway of Ampatuan, Maguindanao manned by the Maguindanao 1508th Provincial Mobile Group, particularly, Eshmail Canapia and Takpan Dilon. While at a stop, they were approached by about one hundred (100) armed men. The armed men pointed their weapons at the members of the 1508th Provincial Mobile Group manning the check point, and threatened them to refrain from interfering. The members of the convoy were then ordered to alight from their vehicles and to lie face down on the ground, as the armed men forcibly took their personal belongings. Subsequently, all members of the convoy were ordered to board their vehicles. They were eventually brought by the armed men to the hills in Barangay Masalay, Ampatuan, about 2.5 kilometers from the checkpoint.

5. At about the same time, Vice Mayor Mangudadatu received a call from his wife Genelyn who, in a trembling voice, told him that a group of more or less 100 armed men stopped their convoy, and that Datu Unsay Mayor Andal Ampatuan, Jr. was walking towards her, and was about to slap her face. After those last words were uttered, the phone line went dead and her cellphone could not be contacted any longer. Alarmed that his wife and relatives, as well as the media personalities were in grave danger, Vice Mayor Mangudadatu immediately reported the incident to the Armed Forces of the Philippines.

6. In the afternoon of the same day, soldiers – aboard two army trucks led by Lt. Col. Rolando Nerona, Head of the Philippine Army's 64th Infantry Battalion – went to the town of Ampatuan to confirm the report. At around 3 p.m., they passed by the checkpoint along the highway in Ampatuan manned by the 1508th Provincial Mobile Group and asked whether they were aware of the reported abduction. Members of the 1508th Provincial Mobile Group denied having knowledge of what they have witnessed at around 10 in the morning purportedly out of fear of retaliation from the powerful Ampatuan clan. Nevertheless, P/CI Sukarno Adil Dicay, the head of the Mobile Group, instructed P/INSP Diongon to accompany the military on foot patrol as they conduct their operation relative to the reported abduction.

7. Upon reaching Barangay Masalay, Ampatuan, the soldiers on foot patrol found dead bodies, bloodied and scattered on the ground and inside the four (4) vehicles used by the convoy. Three (3) newly covered graves and a back hoe belonging to the Maguindanao Provincial Government parked nearby with its engine still running were found at the site. When the graves were dug up by the soldiers, twenty four (24) dead bodies were found in the first grave; six (6) dead bodies with three (3) vehicles, particularly a Toyota Vios with the seal of the Tacurong City Government, a Tamaraw FX and an L300 owned by the media outfit UNTV were found in the second grave; and five (5) more dead bodies were recovered from the third grave, yielding 35 buried dead bodies and, together with other cadavers, resulted in a total of fifty seven (57) fatalities.

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9. Examination of the bodies revealed that most, if not all, of the female victims' pants were found unzipped, and their sexual organs mutilated and mangled. Five (5) of them were tested positive for traces of semen, indicative of sexual abuse while some of the victims were shot in the genital area. The genitalia of Genelyn Mangudadatu was lacerated four (4) times, and blown off by a gun fire, and her body horrifyingly mutilated. Two of the women killed were pregnant, while another two were lawyers. Twenty-nine (29) of the casualties were media personnel. Almost all gun shot injuries were on the heads of the victims, rendering them unrecognizable albeit two (2) bodies remain unidentified. Those found in the graves were coarsely lumped like trash, and some of the victims were found hogtied. All the dead bodies bear marks of despicable torture, contempt and outrageous torment.[3]

A day after the carnage, on 24 November 2009, former President Gloria Macapagal-Arroyo (President Arroyo) issued Proclamation No. 1946, declaring a state of emergency in the provinces of Maguindanao and Sultan Kudarat, and in the City of Cotabato, "to prevent and suppress the occurrence of similar other incidents of lawless violence in Central Mindanao." The full text of Proclamation No. 1946 reads:

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[3] *Rollo* (G.R. No. 190293), pp. 105-109.

DECLARING A STATE OF EMERGENCY IN CENTRAL MINDANAO

WHEREAS, on November 23, 2009, several persons, including women and members of media were killed in a violent incident which took place in Central Mindanao;

WHEREAS, there is an urgent need to prevent and suppress the occurrence of similar other incidents of lawless violence in Central Mindanao;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby proclaim, as follows:

SECTION 1. The Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato are hereby placed under a state of emergency for the purpose of preventing and suppressing lawless violence in the aforesaid jurisdiction.

SECTION 2. The Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) are hereby ordered to undertake such measures as may be allowed by the Constitution and by law to prevent and suppress all incidents of lawless violence in the said jurisdiction.

SECTION 3. The state of emergency covering the Provinces of Maguindanao and Sultan Kudarat and the City of Cotabato shall remain in force and effect until lifted or withdrawn by the President.[4]

On 4 December 2009, President Arroyo issued Proclamation No. 1959, declaring martial law and suspending the *privilege of the writ of habeas corpus* (writ) in the Province of Maguindanao, except for the identified areas of the Moro Islamic Liberation Front (MILF). The full text of Proclamation No. 1959, signed by President Arroyo and attested by Executive Secretary Eduardo Ermita, reads:

PROCLAMATION NO. 1959

PROCLAIMING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE

[4] *Id.* at 185.

PROVINCE OF MAGUINDANAO, EXCEPT FOR CERTAIN AREAS

WHEREAS, Proclamation No. 1946 was issued on 24 November 2009 declaring a state of emergency in the provinces of Maguindanao, Sultan Kudarat and the City of Cotabato for the purpose of preventing and suppressing lawless violence in the aforesaid areas;

WHEREAS, Section 18, Art.VII of the Constitution provides that "x x x In case of invasion or rebellion, when the public safety requires it, (the President) may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. x x x"

WHEREAS, R.A. No. 6986[5] provides that the crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of x x x depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives."

WHEREAS, heavily armed groups in the province of Maguindanao have established positions to resist government troops, thereby depriving the Executive of its powers and prerogatives to enforce the laws of the land and to maintain public order and safety;

WHEREAS, the condition of peace and order in the province of Maguindanao has deteriorated to the extent that the local judicial system and other government mechanisms in the province are not functioning, thus endangering public safety;

WHEREAS, the Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities dated 14 November 1997 provides that the following is considered a prohibited hostile act: "x x x establishment of checkpoints except those necessary for the GRP's enforcement and maintenance of peace and order; and, for the defense and security of the MILF in their identified areas, as jointly determined by the GRP and MILF. x x x"

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[5] Should be Republic Act No. 6968, which is "An Act Punishing the Crime of Coup D'état by Amending Articles 134, 135 and 136 of Chapter One, Title Three of Act Numbered Thirty-Eight Hundred and Fifteen, Otherwise Known as the Revised Penal Code, and for Other Purposes." Republic Act No. 6986 is titled "An Act Establishing a High School in Barangay Dulop, Municipality of Dumingag, Province of Zamboanga Del Sur, to be Known as the Dulop High School, and Appropriating Funds Therefor."

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby proclaim, as follows:

SECTION 1. There is hereby declared a state of martial law in the province of Maguindanao, except for the identified areas of the Moro Islamic Liberation Front as referred to in the Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities.

SECTION 2. The privilege of the writ of *habeas corpus* shall likewise be suspended in the aforesaid area for the duration of the state of martial law.[6]

On 6 December 2009, President Arroyo submitted her Report to Congress in accordance with the provision in Section 18, Article VII of the 1987 Constitution, which states that "within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress." In her Report, President Arroyo presented the following justifications for imposing martial law and suspending the writ in Maguindanao, to wit:

Pursuant to the provision of Section 18, Article VII of the 1987 Constitution, the President of the Republic of the Philippines is submitting the hereunder Report relative to Proclamation No. 1959 "Proclaiming a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Province of Maguindanao, except for Certain Areas," which she issued on 04 December 2009, as required by public safety, **after finding that lawless elements have taken up arms and committed public uprising against the duly constituted government and against the people of Maguindanao, for the purpose of removing from the allegiance to the Government or its laws, the Province of Maguindanao, and likewise depriving the Chief Executive of her powers and prerogatives to enforce the laws of the land and to maintain public order and safety, to the great damage, prejudice and detriment of the people in Maguindanao and the nation as a whole.**

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[6] *Rollo* (G.R. No. 190293), pp. 186-187.

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The capture of identified leader Mayor Andal Ampatuan, Jr. would have resulted in the expeditious apprehension and prosecution of all others involved in the gruesome massacre, but the situation proved the contrary. The Ampatuan group backed by formidable group of armed followers, have since used their strength and political position to deprive the Chief Executive of her power to enforce the law and to maintain public order and safety. More importantly, a separatist group based in Maguindanao has joined forces with the Ampatuans for this purpose. These are the facts:

1. Local government offices in the province of Maguindanao were closed and ranking local government officials refused to discharge their functions, which hindered the investigation and prosecution team from performing their tasks;

2. The Local Civil Registrar of Maguindanao refused to accept the registration of the death certificates of the victims purportedly upon the orders of Andal Ampatuan Sr.;

3. The local judicial system has been crippled by the absence or non-appearance of judges of local courts, thereby depriving the government of legal remedies in their prosecutorial responsibilities (*i.e.* issuance of warrants of searches, seizure and arrest). While the Supreme Court has designated an Acting Presiding Judge from another province, the normal judicial proceedings could not be carried out in view of threats to their lives or safety, prompting government to seek a change of venue of the criminal cases after informations have been filed.

Duly verified information disclosed that the Ampatuan group is behind the closing down of government offices, the refusal of local officials to discharge their functions and the simultaneous absence or non-appearance of judges in local courts.

Detailed accounts pertaining to the rebel armed groups and their active movements in Maguindanao have been confirmed:

I. As of November 29, 2009, it is estimated that there are about 2,413 armed combatants coming from the municipalities of Shariff Aguak, Datu Unsay, Datu Salibo, Mamasapano, Datu Saudi Ampatuan (Dikalungan), Sultan Sa Barungis, Datu Piang, Guindulungan, and Talayan, who are in possession of around 2,000 firearms/armaments.

II. The Ampatuan group has consolidated a group of rebels consisting of 2,413 heavily armed men, with 1,160 of them having been strategically deployed in Maguindanao. Validated information on the deployment of rebels are as follows:

I. Around five hundred (500) armed rebels with 2 "Sanguko" armored vehicles are in offensive position in the vicinity of Kakal, Ampatuan, Dimampao, Mamasapano and Sampao Ampatuan.

II. A group with more or less 200 armed rebels has moved from Old Maganoy into an offensive position.

III. More or less 80 fully armed rebels remain in Tuka, Mamasapano.

IV. More or less 50 fully armed rebels led by a former MNLF Commander are in offensive position in Barangay Baital, Rajah Buayan.

V. More or less 70 fully armed rebels with two (2) M60 LMG remain in offensive position in the vicinity of Barangay Kagwaran, Barangay Iginampong, Datu Unsay (right side of Salvo-General Santos City national highway).

VI. More or less 60 fully armed rebels with four (4) M60 LMG remain in offensive position in the vicinity of Kinugitan, the upper portion of Barangay Maitumaig, Datu Unsay.

VII. Kagui Akmad Ampatuan was sighted in Sultan Sa Barongis with 400 armed rebels. Locals heard him uttered "*PATAYAN NA KUNG PATAYAN*."

VIII. More or less 100 armed rebels led by one of the identified leaders in the massacre have been sighted at the quarry of Barangay Lagpan, boundary of Rajah Buayan and Sultan Sa Barongis. The group is armed with one (1) 90RR, one (1) cal 50 LMG, two (2) cal 30 LMG, two (2) 60 mm mortar and assorted rifles.

The strength of the rebels is itself estimated to be around 800 with about 2,000 firearms (Fas). These forces are concentrated in the following areas in Maguindanao which are apparently also their political stronghold:

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The existence of this armed rebellion is further highlighted by the recent recovery of high powered firearms and ammunitions from the 400 security escorts of Datu Andal Ampatuan Sr.

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Indeed, the nature, quantity and quality of their weaponry, the movement of heavily armed rebels in strategic positions, the closure of the Maguindanao Provincial Capitol, Ampatuan Municipal Hall, Datu Unsay Municipal Hall, and fourteen other municipal halls, and the use of armored vehicles, tanks and patrol cars with unauthorized "PNP/Police" markings, all together confirm the existence of armed public uprising for the political purpose of:

1. removing allegiance from the national government of the Province of Maguindanao; and,

2. depriving the Chief Executive of her powers and prerogatives to enforce the laws of the land and to maintain public order and safety.

While the government is at present conducting legitimate operations to address the on-going rebellion, public safety still requires the continued implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the Province of Maguindanao until the time that such rebellion is completely quelled.[7] (Emphasis supplied)

In the meantime, the present petitions were filed impugning the constitutionality of Proclamation No. 1959.

1. *G.R. No. 190293* is a petition "for the issuance of a temporary restraining order and writs of prohibition and preliminary prohibitory injunction (1) to declare Proclamation No. 1959 or any act, directive or order arising from or connected to it as unconstitutional, and (2) to enjoin public respondents from further enforcing the same."

2. *G.R. No. 190294* is a petition for *certiorari* assailing the constitutionality of Proclamation No. 1959 "for gross insufficiency of the factual basis in proclaiming a state of martial law and suspending the [writ] in the Province of Maguindanao." It prayed for the issuance of a writ of prohibition under Section 2 of Rule 65 to enjoin and prohibit respondents from enforcing Proclamation No. 1959.

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[7] *Id.* at 163-164, 173-177, 182.

3. *G.R. No. 190301* is a petition seeking "the nullification of Proclamation No. 1959, proclaiming a state of martial law and suspending the [writ] in the province of Maguindanao, except for certain areas, as it is patently illegal and unconstitutional for lack of any factual basis."

4. *G.R. No. 190302* is a petition for *certiorari* to declare Proclamation No. 1959 as null and void for being unconstitutional, and for prohibition to enjoin respondents from further actions or proceedings in enforcing or implementing Proclamation No. 1959.

5. *G.R. No. 190307* is a petition for *certiorari*, prohibition, and mandamus with a prayer for a preliminary prohibitory injunction and/or a temporary restraining order, and/or a petition for review pursuant to Article VII, Section 18, paragraph 3 of the 1987 Constitution, asking the Court to declare that then Executive Secretary Eduardo Ermita committed grave abuse of discretion amounting to lack or excess of jurisdiction when he signed, in the name of President Arroyo, Proclamation No. 1959. The petition also prayed for the issuance of a Temporary Restraining Order and/or preliminary prohibitory injunction, prohibiting respondents, and anyone acting under their authority, stead, or behalf, from implementing Proclamation No. 1959 during the pendency of the case.

6. *G.R. No. 190356* is a petition for prohibition, with an application for the issuance of a temporary restraining order and/or a writ of preliminary injunction, assailing the constitutionality and the sufficiency of the factual basis of Proclamation No. 1959, declaring a state of martial law in the province of Maguindanao (except for identified areas of the MILF) and suspending the writ in the same area.

7. *G.R. No. 190380* is a petition for *certiorari* assailing the validity of Proclamation No. 1959, declaring a state of martial law in the province of Maguindanao, except for the identified areas of the MILF, and suspending the writ in the same area.

On 9 December 2009, Congress convened in joint session pursuant to Section 18, Article VII of the 1987 Constitution, which provides, "The Congress, if not in session, shall, within twenty-four hours following such proclamation [of martial law] or suspension [of the writ], convene in accordance with its rules without need of a call."

Meanwhile, eight days after the declaration of martial law, on 12 December 2009, President Arroyo issued Proclamation No. 1963 lifting martial law and restoring the writ in Maguindanao. The full text of Proclamation No. 1963, signed by President Arroyo and attested by Executive Secretary Eduardo Ermita, reads:

PROCLAMATION NO. 1963

PROCLAIMING THE TERMINATION OF THE STATE OF MARTIAL LAW AND THE RESTORATION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE PROVINCE OF MAGUINDANAO

WHEREAS, Proclamation No. 1946 was issued on 24 November 2009 declaring a state of emergency in the provinces of Maguindanao, Sultan Kudarat and the City of Cotabato for the purpose of preventing and suppressing lawless violence in the aforesaid areas;

WHEREAS, by virtue of the powers granted under Section 18, Article VII of the Constitution, the President of the Philippines promulgated Proclamation No. 1959 on December 4, 2009, proclaiming a state of martial law and suspending the privilege of the writ of *Habeas Corpus* in the province of Maguindanao, except for certain areas;

WHEREAS, the Armed Forces of the Philippines and the Philippine National Police have reported that over six hundred (600) persons who allegedly rose publicly and took up arms against the Government have surrendered or have been arrested or detained;

WHEREAS, the Armed Forces of the Philippines and the Philippine National Police have reported that the areas where heavily armed groups in the province of Maguindanao established positions to resist government troops have been cleared;

WHEREAS, the court and prosecutors' offices of Cotabato City have resumed normal working hours, paving the way for the criminal justice system in Maguindanao to be restored to normalcy;

WHEREAS, the Vice-Governor of the Autonomous Region of Muslim Mindanao has assumed as Acting Governor, paving the way for the restoration of the functioning of government mechanisms in the province of Maguindanao;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby revoke Proclamation No. 1959 and proclaim the termination of the state of martial law and the restoration of the privilege of the writ of *habeas corpus* in the province of Maguindanao; provided that Proclamation No. 1946 shall continue to be in force and effect.[8]

In the Resolutions dated 8 and 15 December 2009,[9] the Court consolidated the petitions and required the Office of the Solicitor General and the respondents to comment on the petitions.

In a Resolution dated 12 January 2010, the Court resolved "to appoint as *amici curiae* Justice Vicente Mendoza, Senator Joker Arroyo, and Father Joaquin Bernas, [S.J.] and request them to submit their respective Amicus Brief on the questions to be addressed by the parties."[10]

Meanwhile, on 9 December 2009, an Information for rebellion was filed before the Regional Trial Court, Branch 15, Cotabato City (RTC-Cotabato), against Ampatuan, *et al*.[11] The information reads:

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[8] *Rollo* (G.R. No. 190293), pp. 190-191.

[9] *Rollo* (G.R. No. 190293), pp. 83-84; *rollo* (G.R. No. 190356), p. 55.

[10] *Rollo* (G.R. No. 190293), p. 407.

[11] The accused are: Datu Andal Ampatuan, Sr., Datu Zaldy Uy Ampatuan, Datu Akmad Tato Ampatuan, Datu Anwar Ampatuan, and Datu Sajid Islam Uy Ampatuan, as persons who allegedly promoted, maintained or headed the rebellion; and Kusain Akmad Sakilan, Jovel Vista Lopez, Rommy Gimba Mamay, Sammy Duyo Villanueva, Ibrahim Tukya Abdulkadir, Samil Manalo Mindo, Goldo B. Ampatuan, Amaikugao Obab Dalgan, Billy Cabaya Gabriel, Jr., Abdulla Kaliangat Ampatuan, Moneb Smair Ibrahim, Umpa Ugka Yarka,

That on or about 27th day of November, 2009, and continuously thereafter, until the present time, in Maguindanao Province and within the jurisdiction of this Honorable Court, accused Datu Andal Ampatuan, Sr., Datu Zaldy Uy Ampatuan, Datu Akmad Tato Ampatuan, Datu Anwar Ampatuan and Datu Sajid Islam Uy Ampatuan as heads of the rebellion, conspiring, confederating and cooperating with each other, as well as with the other accused as participants or executing the commands of others in the rebellion and also with other John Does whose whereabouts and identities are still unknown, the said accused, who are heads of the rebellion, did then and there willfully, unlawfully and feloniously help, support, promote, maintain, cause, direct and/or command their co-accused who are their followers to rise publicly and take arms against the Republic of the Philippines, or otherwise participate in such armed public uprising, for the purpose of removing allegiance to the government or its laws, the territory of the Republic of the Philippines or any part thereof or depriving the Chief Executive of any of her powers or prerogatives as in fact they have been massing up armed men and organizing assemblies, as a necessary means to commit the crime of rebellion, and in furtherance thereof, have then and there committed acts preventing public prosecutors from being available to conduct inquest and preliminary investigations. There were massive formations of numerous armed civilians supported by armored vehicles and under the command of the Ampatuans who have formed a private army to resist government troops; that the local provincial government of Maguindanao could not function with their employees going on mass leave and their respective offices were closed and not functioning. The Regional Trial Courts of the area are not functioning, refused to accept the application for search warrants for violation of PD 1866 to authorize the search of the properties of the heads of the rebellion; and that there was undue delay in the issuance of court processes despite the exigency of the situation.

CONTRARY TO LAW.[12]

Manding Abdulkadir, Dekay Idra Ulama, Kapid Gabriel Cabay, Koka Batong Managilid, Sammy Ganda Macabuat, Duca Lendungan Amban, Akmad Abdullah Ulilisen and several John Does, as participants or the persons executing the commands of others in a rebellion or insurrection. (RTC-Quezon City Order dated 26 March 2010, pp. 3-4).

[12] RTC-Quezon City Order dated 26 March 2010, p. 4.

On the next day, 10 December 2009, accused Ampatuan, *et al.* filed an *Urgent Omnibus Motion*, which included a motion for judicial determination of probable cause for the offense charged. On the same day, the Acting Presiding Judge of RTC-Cotabato issued an Order, stating that "the Court needs time to go over the resolution finding probable cause against the accused Datu Andal Ampatuan, Sr., [*et al.*]."

On 1 February 2010, the Regional Trial Court of Quezon City received the records of the case, pursuant to the Supreme Court's *En Banc* Resolution, dated 12 January 2010, which ordered the transfer of venue of the rebellion case to Quezon City. The case, docketed as Criminal Case No. Q-10-162667 and entitled *People of the Philippines v. Datu Andal Ampatuan, Sr., et al.*, was raffled to Branch 77 of the Regional Trial Court of Quezon City (RTC-Quezon City) on 2 February 2010.

On 3 February 2010, the accused filed an *Urgent Motion* praying for the issuance of an order suspending the transfer of custody of all the accused pending the resolution of their motion for judicial determination of probable cause.

On 26 March 2010, the RTC-Quezon City dismissed the charge of rebellion for lack of probable cause, to wit:

> After a careful and judicious scrutiny of the evidence forming part of the records and those adduced by the prosecution during the hearing on the motion for judicial determination of probable cause, the Court is convinced that there exist[s] no probable cause to hold under detention and to indict the accused for rebellion.
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> xxx xxx xxx
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> Rebellion under Article 134 of the Revised Penal Code is committed—
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> [B]y rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, or any body of land, naval, or other armed forces or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

The elements of the offense are:

1. That there be a (a) public uprising and (b) taking arms against the Government; and

2. That the purpose of the uprising or movement is either–

(a) to remove from the allegiance to said Government or its laws:

(1) the territory of the Philippines or any part thereof; or

(2) any body of land, naval, or other armed forces; or

(b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.

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The essential element of public armed uprising against the government is lacking. There were no masses or multitudes involving crowd action done in furtherance of a political end. So, even assuming that there was uprising, there is no showing that the purpose of the uprising is political, that is, to overthrow the duly constituted government in order to establish another form of government. In other words, the second element is also absent.

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x x x It is quite interesting that the prosecution failed to present any particular instance where the accused had directly or indirectly prevented government prosecutors from performing their job relative to the prosecution of the suspects in the infamous Maguindanao massacre.

On the contrary, documentary evidence on record shows that the alleged principal suspect in the mass killings, Datu Andal Ampatuan, Jr., was made to undergo inquest proceedings at General Santos City, immediately after he was taken into custody by law enforcement authorities. This alone belies the prosecution's theory that the prosecutors were not available to conduct inquest and preliminary investigations relative to the mass killings in the Municipality of Ampatuan, Province of Maguindanao.

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x x x [T]he intelligence reports presented by the military and police are unfounded. The reports do not suggest that the alleged armed groups loyal to the accused are initiating violent and hostile actions, whether directly or indirectly, against government security forces. Even the discovery and confiscation of large cache of firearm and ammunitions, allegedly belonging to the Ampatuans, cannot be considered as an act of rebellion. In fact, the firearms and ammunitions were subsequently unearthed, recovered and confiscated from different places. The government security forces should have been able to engage and neutralize the reported armed groups on the basis of its intelligence reports confirming their size, strength and whereabouts.

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The statements of prosecution witnesses Mangacop and Dingcong are general allegations. Their statements do not show that the accused were responsible for the mass leave of officials and employees of the local government units. There is no evidence to show that the accused actually prevented the local officials and employees from reporting to their offices.

The evidence will show that the Department of Interior and Local Government and the Philippine National Police closed down these offices, without any justifiable reasons. In fact, there were news footages which showed that many employees were caught by surprise on the unexpected closure of their offices.

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It is alleged in the Information that the courts were no longer functioning in Cotabato City and in Maguindanao province, which have jurisdiction over the place of the commission of the massacre. The factual circumstances, however, belie said allegation. This Court takes judicial notice of the fact that no less than the Supreme Court of the Republic of the Philippines had denied the allegation that civilian courts were or are no longer functioning in Maguindanao.

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WHEREFORE**,** premises considered, the Court finds that there exists no probable cause to indict and hold under detention the accused for rebellion. Accordingly, the instant case is hereby dismissed and the accused-movants are hereby ordered released from further

detention, unless they are held by a court of law for other lawful cause/s.

Let this Order be served personally upon the accused-movants, through the responsible officers of the law having custody over them, who are hereby directed to release the accused from detention immediately upon receipt hereof.

SO ORDERED.[13]

In an Order dated 28 May 2010, the RTC-Quezon City denied the prosecution's motion for reconsideration of the Order dated 26 March 2010.

The DOJ filed a petition for *certiorari*[14] before the Court of Appeals assailing the dismissal of the rebellion charges against accused Ampatuan, *et al*.

In a Decision promulgated on 15 December 2011,[15] the Court of Appeals denied the petition for *certiorari*. Quoting the findings of the RTC-Quezon City, the Court of Appeals held that there is no probable cause as there is no showing that all the elements of the crime of rebellion are present. The Court of Appeals stated that "a review of its own narration of events only lends to the belief that the rebellion existed only in the minds of the complainants." The Court of Appeals ruled that there was no armed public uprising, finding "no proof that armed groups were massing up and were planning to instigate civil disobedience and to challenge the government authorities for political ends."

The Issues

The crux of the present controversy is the constitutionality of Proclamation No. 1959, declaring martial law and suspending the writ in Maguindanao. The threshold issue before this Court

[13] RTC-Quezon City Order dated 26 March 2010, pp. 10-13, 15-16, 18. Penned by Presiding Judge Vivencio S. Baclig.

[14] Under Rule 65 of the 1997 Rules of Procedure. Docketed as CA-G.R. SP No. 115168.

[15] Penned by Associate Justice Elihu A. Ybañez, and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta.

is whether there is sufficient factual basis for the issuance of Proclamation No. 1959 based on the stringent requirements set forth in Section 18, Article VII of the 1987 Constitution.

In its 15 December 2009 Resolution, the Court additionally posed the following questions for resolution:

1. Whether the issuance of Proclamation No. 1963, lifting martial law and restoring the writ in Maguindanao, rendered the issues raised in the present petitions moot and academic;

2. Whether the term "rebellion" in Section 18, Article VII of the 1987 Constitution has the same meaning as the term "rebellion" that is defined in Article 134 of the Revised Penal Code;

3. Whether the declaration of martial law or the suspension of the writ authorizes warrantless arrests, searches and seizures;

4. Whether the declaration of martial law or the suspension of the writ is a joint and sequential function of the President and Congress such that, without Congressional action on the proclamation either affirming or revoking it, the President having in the meantime lifted the declaration and restored the writ, this Court has nothing to review;

5. If the constitutional power of this Court to review the factual basis of the declaration of martial law or suspension of the writ can be exercised simultaneously with the constitutional power of Congress to revoke the declaration or suspension, and the decision of this Court conflicts with the decision of Congress, which decision shall prevail; and

6. Whether this Court's determination of the sufficiency of the factual basis of the declaration of martial law or suspension of the writ, which in the meantime has been lifted and restored, respectively, would be essential to the resolution of issues concerning the validity of related acts that the government committed during the time martial law was in force.

In its *Comment Re: Resolution dated 15 December 2009*, the OSG raised the issue of whether petitioners possess legal

standing to challenge the constitutionality of Proclamation No. 1959.

Discussion

I dissent from the majority's dismissal of the petitions as moot. I find Proclamation No. 1959 unconstitutional *for lack of factual basis* as required in Section 18, Article VII of the 1987 Constitution for the declaration of martial law and suspension of the writ. The majority in effect refuses to exercise this Court's constitutional power in Section 18 of Article VII, to "review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof."

Before proceeding to the substantive issues, I shall first discuss the issue on *locus standi*.

In its *Comment Re: Resolution dated 15 December 2009*, the OSG questioned the legal standing of petitioners in challenging the constitutionality of Proclamation No. 1959. The OSG argued that the phrase "any citizen" in Section 18, Article VII of the 1987 Constitution must be read in conjunction with the phrase "appropriate proceeding." Since petitioners deemed the original actions for *certiorari* and prohibition as the appropriate proceeding referred to in Section 18, Article VII of the Constitution, petitioners must satisfy the requirements under Rule 65 of the Rules of Court, one of which is the institution of the action by the aggrieved party. The OSG pointed out that none of the petitioners qualify as an aggrieved party.

This is error.

"Legal standing" or *locus standi* has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.[16] In case of a suit questioning the

[16] *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482, 507 (2004), citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618 (2000).

sufficiency of the factual basis of the proclamation of martial law or suspension of the writ, such as here, Section 18, Article VII of the Constitution expressly provides:

> The Supreme Court may review, in an appropriate proceeding filed by ***any citizen***, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, and must promulgate its decision thereon within thirty days from its filing. (Emphasis supplied)

It is clear that the Constitution explicitly clothes "***any citizen***" with the legal standing to challenge the constitutionality of the declaration of martial law or suspension of the writ. The Constitution does not make any distinction as to who can bring such an action. As discussed in the deliberations of the Constitutional Commission, the "citizen" who can challenge the declaration of martial law or suspension of the writ need not even be a taxpayer.[17] This was deliberately designed to arrest, without further delay, the grave effects of an illegal declaration of martial law or suspension of the writ, and to provide immediate relief to those aggrieved by the same. Accordingly, petitioners, being Filipino citizens, possess legal standing to file the present petitions assailing the sufficiency of the factual basis of Proclamation No. 1959.

Moreover, given the transcendental importance of the issues raised in the present petitions, the Court may relax the standing requirement and allow a suit to prosper even where there is no direct injury to the party claiming the right of judicial review.[18] The Court has held:

> Notwithstanding, in view of the paramount importance and the constitutional significance of the issues raised in the petitions, this Court, in the exercise of its sound discretion, brushes aside the procedural barrier and takes cognizance of the petitions, as we have

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[17] BERNAS, *THE INTENT OF THE 1986 CONSTITUTION WRITERS*, 1995 Edition, p. 474.

[18] *David v. Arroyo*, 522 Phil. 705, 757-759 (2006). See *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002), *Bagong Alyansang Makabayan v. Zamora*, 396 Phil. 623 (2000).

done in the early Emergency Powers Cases, where we had occasion to rule:

'x x x ordinary citizens and taxpayers were allowed to question the constitutionality of several executive orders issued by President Quirino although they [involved] only an indirect and general interest shared in common with the public. The Court dismissed the objection that they were not proper parties and ruled that '**transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure.'** We have since then applied the exception in many other cases.[19] (Emphasis supplied)

I.
Whether the issuance of Proclamation No. 1963, lifting martial law and restoring the writ in the province of Maguindanao, rendered the issues raised in the petitions moot and academic.

The majority dismisses the petitions on mootness, agreeing with respondents' contention that the issuance of Proclamation No. 1963, lifting martial law and restoring the writ in the province of Maguindanao, rendered the issues raised in the present petitions moot and academic. Respondents maintain that the petitions have ceased to present an "actual case or controversy" with the lifting of martial law and the restoration of the writ, the sufficiency of the factual basis of which is the subject of these petitions. Proclamation No. 1963 is allegedly a "supervening event" that rendered of no practical use or value the consolidated petitions.

As a rule, courts may exercise their review power only when there is an actual case or controversy, which involves a conflict of legal claims susceptible of judicial resolution. Such a case must be "definite and concrete, touching the legal relations of parties having conflicting legal interests;" a real, as opposed to an imagined, controversy calling for a specific relief.[20]

[19] *Lim v. Executive Secretary*, 430 Phil. 555, 570-571 (2002) citing *Bagong Alyansang Makabayan v. Zamora*, *supra*.

[20] David v. Arroyo, *supra* note 18 at 753.

Corollarily, courts generally decline jurisdiction over a moot and academic case or outrightly dismiss it on the ground of mootness. A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that assuming jurisdiction over the same, and eventually deciding it, would be of no practical use or value.[21]

In *David v. Arroyo*,[22] this Court held that the "moot and academic" principle is not a magical formula that automatically dissuades courts in resolving a case. Courts are not prevented from deciding cases, otherwise moot and academic, if (1) there is a grave violation of the Constitution;[23] (2) the situation is of exceptional character and of paramount public interest;[24] (3) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public;[25] and (4) the case is capable of repetition yet evading review.[26]

In *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*,[27] the Court ruled that once a suit is filed, the Court cannot automatically be deprived of its jurisdiction over a case by the mere expedient of the doer voluntarily ceasing to perform the challenged conduct. Otherwise, the doer would be dictating when this Court should relinquish its jurisdiction over a case. Further, a case is not mooted when the plaintiff seeks damages or prays for injunctive relief against the possible recurrence of the violation.[28]

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[21] *Id.* at 753.

[22] *Id.* at 754.

[23] *Id.*, citing *Province of Batangas v. Romulo*, 473 Phil. 806 (2004).

[24] *Id.*, citing *Lacson v. Perez*, 410 Phil. 78 (2001).

[25] *Id.*, citing *Province of Batangas v. Romulo*, *supra*.

[26] *Id.*, citing *Albaña v. Commission on Elections*, 478 Phil. 941 (2004); *Acop v. Guingona, Jr.*, 433 Phil. 62 (2002); *SANLAKAS v. Executive Secretary Reyes*, *supra* note 16.

[27] G.R. Nos. 183591, 183752, 183893, 183951, 183962, 14 October 2008, 568 SCRA 402.

[28] *Id.*

Contrary to the majority opinion, the present petitions fall squarely under these exceptions, justifying this Court's exercise of its review power.

First, whether Proclamation No. 1959 complied with the requirements under Section 18, Article VII of the Constitution is without doubt an extremely serious constitutional question. In order to forestall any form of abuse in the exercise of the President's extraordinary emergency powers, as what happened during the Martial Law regime under former President Ferdinand Marcos (President Marcos), the 1987 Constitution has carefully put in place specific safeguards, which the President must strictly observe. Any declaration of martial law or suspension of the writ falling short of the constitutional requirements must be stricken down as a matter of constitutional duty by this Court.

Second, whether the President exercised her Commander-in-Chief powers in accordance with the Constitution indisputably presents a transcendental issue fully imbued with public interest. I agree with *amicus curiae* Father Joaquin Bernas' opinion: "The practice of martial rule can have a profoundly disturbing effect on the life, liberty and fortunes of people. Likewise, the actions taken by the police and military during the period when martial law is in effect can have serious consequences on fundamental rights."[29]

Third, the issue on the constitutionality of Proclamation No. 1959 unquestionably requires formulation of controlling principles to guide the Executive, Legislature, and the public.

The President's issuance of Proclamation No. 1959 generated strong reactions from various sectors of society. This, of course, is an expected response from a nation whose painful memory of the dark past remains fresh. The nation remembers that martial law was the vehicle of President Marcos to seize unlimited State power, which resulted in gross and wanton violations of fundamental human rights of the people. That era saw the collapse

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[29] *Rollo* (G.R. No. 190293), p. 508; Brief of *Amicus Curiae* Father Joaquin Bernas, S.J.

of the rule of law and what reigned supreme was a one man-rule for the dictator's own personal benefit.

The present controversy, being the first case under the 1987 Constitution involving the President's exercise of the power to declare martial law and suspend the writ, provides this Court with a rare opportunity,[30] which it must forthwith seize, to formulate controlling principles for the guidance of all sectors concerned, most specially the Executive which is in charge of enforcing the emergency measures. Dismissing the petitions on the ground of mootness will most certainly deprive the entire nation of instructive and valuable principles on this extremely crucial national issue.

Fourth, the present case is capable of repetition yet evading review. I agree with Father Bernas' view: "[H]istory clearly attests that the events that can lead to martial law, as well as the imposition of martial law itself, and the suspension of the privilege together with actions taken by military and police during a period of martial law are capable of repetition and are too important to allow to escape review through the simple expedient of the President lifting a challenged proclamation."[31]

Fifth, the respondent's or doer's voluntary cessation of the questioned act does not by itself deprive the Court of its jurisdiction once the suit is filed. In this case, President Arroyo, after eight days from the issuance of Proclamation No. 1959, issued Proclamation No. 1963 revoking Proclamation No. 1959.

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[30] Retired Chief Justice Panganiban called this a historic moment and reminded the Court of its duty to uphold the Constitution. He writes:

The Court faces a historic moment. It cannot cower or cop-out or hide behind legalisms. Worse, in a false sense of gratitude, it should not invent legal excuses to justify or cover plainly unconstitutional acts. Rare is the opportunity for greatness. Let the Court not squander the moment. Let it perform its duty forthrightly and uphold the Constitution.

(http://opinion.inquirer.net/inquireropinion/columns/view/20091220-243027/Uphold-the-Constitution [accessed on 4 November 2011], With Due Respect: Uphold the Constitution)

[31] *Rollo* (G.R. No. 190293), p. 509; Brief of *Amicus Curiae* Father Joaquin Bernas, S.J.

President Arroyo's lifting of martial law and restoration of the writ translate to a voluntary cessation of the very acts complained of in the present petitions. However, the present petitions were filed with this Court while Proclamation No. 1959 was still in effect and before Proclamation No. 1963 was issued, thus foreclosing any legal strategy to divest this Court of its jurisdiction by the mere cessation or withdrawal of the challenged act.

Moreover, the fact that every declaration of martial law or suspension of the writ will involve its own set of circumstances peculiar to the necessity of time, events or participants should not preclude this Court from reviewing the President's use of such emergency powers. Whatever are the circumstances surrounding each declaration of martial law or suspension of the writ, the declaration or suspension will always be governed by the same safeguards and limitations prescribed in the same provisions of the Constitution. Failing to determine the constitutionality of Proclamation No. 1959 by dismissing the cases on the ground of mootness sets a very dangerous precedent to the leaders of this country that they could easily impose martial law or suspend the writ without any factual or legal basis at all, and before this Court could review such declaration, they would simply lift the same and escape possible judicial rebuke.

II.
Whether the term "rebellion" in Section 18, Article VII of the 1987 Constitution has the same meaning as the term "rebellion" that is defined in Article 134 of the Revised Penal Code.

Article 134 of the Revised Penal Code, as amended by Republic Act No. 6968,[32] defines the crime of rebellion, thus:

Art. 134. *Rebellion or insurrection; How committed.* — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the

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[32] An Act Punishing the Crime of *Coup D'état* by Amending Articles 134, 135 and 136 of Chapter One, Title Three of Act Numbered Thirty-Eight Hundred and Fifteen, Otherwise Known as The Revised Penal Code, and for Other Purposes.

allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

The Constitution, however, does not provide any definition of the term "rebellion." Portions of the first paragraph of Section 18, Article VII of the Constitution, where the term "rebellion" appears, read:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law.

Respondents submit that the term "rebellion" must, "for constitutional law purposes, be applied in such manner as to be amply responsive to the call of the times." Respondents point out that the deliberations of the 1986 Constitutional Commission reveal that the concept of the term "rebellion" depends much on its magnitude and scope, as determined by the President based on prevailing circumstances.[33]

I disagree. The term "rebellion" in Section 18, Article VII of the 1987 Constitution must be understood as having the same meaning as the crime of "rebellion" that is defined in Article 134 of the Revised Penal Code, as amended.

First, this is the clear import of the last two paragraphs of Section 18, Article VII of the Constitution, which explicitly state:

The suspension of the privilege of the writ of *habeas corpus* shall apply only to **persons judicially charged for rebellion** or offenses inherent in, or directly connected with, invasion.

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[33] *Rollo* (G.R. No. 190293), p. 138.

During the suspension of the privilege of the writ of *habeas corpus*, **any person thus arrested or detained shall be judicially charged** within three days, otherwise he shall be released. (Emphasis supplied)

For a person to be judicially charged for rebellion, there must necessarily be a statute defining rebellion. There is no statute defining rebellion other than the Revised Penal Code. Hence, "one can be 'judicially charged' with rebellion only if one is suspected of having committed acts defined as rebellion in Article 134 of the Revised Penal Code."[34]

Second, the Revised Penal Code definition of rebellion is the only legal definition of rebellion known and understood by the Filipino people when they ratified the 1987 Constitution. Indisputably, the Filipino people recognize and are familiar with only one meaning of rebellion, that is, the definition provided in Article 134 of the Revised Penal Code. To depart from such meaning is to betray the Filipino people's understanding of the term "rebellion" when they ratified the Constitution. There can be no question that "the Constitution does not derive its force from the convention which framed it, but from the people who ratified it."[35]

Third, one of the Whereas clauses of Proclamation No. 1959 expressly cites the Revised Penal Code definition of rebellion, belying the government's claim that the Revised Penal Code definition of rebellion merely guided the President in issuing Proclamation No. 1959.

In *SANLAKAS v. Executive Secretary*,[36] where the Court regarded President Arroyo's declaration of a state of rebellion

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[34] *Id.* at 493, *Amicus* Memorandum of Justice Vicente V. Mendoza.

[35] See retired Chief Justice Puno's separate concurring opinion in *United Pepsi-Cola Supervisory Union v. Judge Laguesma*, 351 Phil. 244, 292 (1998), citing Cooley, Treatise on Constitutional Limitations, Vol. 1, pp. 142-143 [1927]; also cited in Willoughby, The Constitutional Law of the United States, Sec. 32, pp. 54-55, Vol. 1 [1929].

[36] *Supra* note 16.

in Proclamation No. 427 a superfluity,[37] the term "rebellion" in said proclamation referred to the crime of rebellion as defined in Article 134 of the Revised Penal Code. Proclamation No. 427 pertinently reads:

DECLARING A STATE OF REBELLION

WHEREAS, certain elements of the Armed Forces of the Philippines, armed with high-powered firearms and explosives, acting upon the instigation and command and direction of known and unknown leaders, have seized a building in Makati City, put bombs in the area, publicly declared withdrawal of support for, and took arms against the duly constituted Government, and continue to rise publicly and show open hostility, **for the purpose of removing allegiance to the Government certain bodies of the Armed Forces of the Philippines and the Philippine National Police, and depriving the President of the Republic of the Philippines, wholly or partially, of her powers and prerogatives which constitute the crime of rebellion punishable under Article 134 of the Revised Penal Code, as amended;** x x x (Emphasis supplied)

In issuing Proclamation No. 427, President Arroyo relied on the Revised Penal Code definition of rebellion in declaring a state of rebellion. In other words, President Arroyo understood that, for purposes of declaring a state of rebellion, the term "rebellion" found in the Constitution refers to the crime of rebellion defined in Article 134 of the Revised Penal Code.

In exercising the Commander-in-Chief powers under the Constitution, every President must insure the existence of the elements of the crime of rebellion, which are: (1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (1) the territory of the Philippines or any part thereof; or (2) any body of land, naval, or other armed forces; or (b) to deprive

[37] *Id.* at 520. The Court stated that "[a] declaration of a state of rebellion is an utter superfluity. At most, it only gives notice to the nation that such a state exists and that the armed forces may be called to prevent or suppress it."

the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.[38]

To repeat, the term "rebellion" in Section 18, Article VII of the Constitution must be understood to have the same meaning as the crime of rebellion defined in Article 134 of the Revised Penal Code. Ascribing another meaning to the term "rebellion" for constitutional law purposes, more specifically in imposing martial law and suspending the writ, different from the definition in Article 134 of the Revised Penal Code, overstretches its definition without any standards, invites unnecessary confusion, and undeniably defeats the intention of the Constitution to restrain the extraordinary Commander-in-Chief powers of the President.

Since the term "rebellion" in Section 18, Article VII of the Constitution pertains to the crime of rebellion as defined in Article 134 of the Revised Penal Code, the next question turns on the kind of proof required for a valid declaration of martial law and suspension of the writ.

While the Constitution expressly provides strict safeguards against any potential abuse of the President's emergency powers, the Constitution does not compel the President to produce such amount of proof as to unduly burden and effectively incapacitate her from exercising such powers.

Definitely, the President need not gather proof beyond reasonable doubt, which is the standard of proof required for convicting an accused charged with a criminal offense. Section 2, Rule 133 of the Rules of Court defines proof beyond reasonable doubt as follows:

> Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Proof beyond reasonable doubt is the highest quantum of evidence, and to require the President to establish the existence

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[38] See *Ladlad v. Velasco*, G.R. Nos. 172070-72, 1 June 2007, 523 SCRA 318, 336.

of rebellion or invasion with such amount of proof before declaring martial law or suspending the writ amounts to an excessive restriction on "the President's power to act as to practically tie her hands and disable her from effectively protecting the nation against threats to public safety."[39]

Neither clear and convincing evidence, which is employed in either criminal or civil cases, is indispensable for a lawful declaration of martial law or suspension of the writ. This amount of proof likewise unduly restrains the President in exercising her emergency powers, as it requires proof greater than preponderance of evidence although not beyond reasonable doubt.[40]

Not even preponderance of evidence,[41] which is the degree of proof necessary in civil cases, is demanded for a lawful declaration of martial law.

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[39] *Rollo* (G.R. No. 190293), p. 512, Brief of *Amicus Curiae* Father Joaquin Bernas, S.J.

[40] *Manalo v. Roldan-Confesor*, G.R. No. 102358, 19 November 1992, 215 SCRA 808, 819. The Court held therein:

Clear and convincing proof is "xxx more than mere preponderance, but not to extent of such certainty as is required beyond reasonable doubt as in criminal cases xxx" while substantial evidence "xxx consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance xxx" Consequently, in the hierarchy of evidentiary values, We find proof beyond reasonable doubt at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order. (Citations omitted)

[41] Section 1, Rule 133 of the Rules of Court provides:

SECTION 1. *Preponderance of evidence, how determined*. — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

By preponderance of evidence is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence". It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[42]

Weighing the superiority of the evidence on hand, from at least two opposing sides, before she can act and impose martial law or suspend the writ unreasonably curtails the President's emergency powers.

Similarly, substantial evidence constitutes an unnecessary restriction on the President's use of her emergency powers. Substantial evidence is the amount of proof required in administrative or quasi-judicial cases, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[43]

I am of the view that probable cause of the existence of either invasion or rebellion suffices and satisfies the standard of proof for a valid declaration of martial law and suspension of the writ.

Probable cause is the same amount of proof required for the filing of a criminal information by the prosecutor and for the issuance of an arrest warrant by a judge. Probable cause has been defined as a "set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense

[42] *Raymundo v. Lunaria*, G.R. No. 171036, 17 October 2008, 569 SCRA 526.

[43] Section 5, Rule 133 of the Rules of Court provides:

SECTION 5. *Substantial evidence*. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

charged in the Information or any offense included therein has been committed by the person sought to be arrested."[44]

In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.[45] (Emphasis supplied)

Probable cause, basically premised on common sense, is the most reasonable, most practical, and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion, necessary for a declaration of martial law or suspension of the writ. Therefore, lacking probable cause of the existence of rebellion, a declaration of martial law or suspension of the writ is without any basis and thus, unconstitutional.

The requirement of probable cause for the declaration of martial law or suspension of the writ is consistent with Section 18, Article VII of the Constitution. It is only upon the existence of probable cause that a person can be "judicially charged" under the last two paragraphs of Section 18, Article VII, to wit:

The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons **judicially charged** for rebellion or offenses inherent in, or directly connected with, invasion.

During the suspension of the privilege of the writ of *habeas corpus*, any person thus arrested or detained shall be **judicially charged** within three days, otherwise he shall be released. (Emphasis supplied)

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[44] *Santos v. Orda, Jr.*, G.R. No. 189402, 6 May 2010, 620 SCRA 375, 384.

[45] *Viudez II v. Court of Appeals*, G.R. No. 152889, 5 June 2009, 588 SCRA 345, 357.

III.
Whether the declaration of martial law or the suspension of the writ authorizes warrantless arrests, searches and seizures.

Section 18, Article VII of the Constitution partially states:

> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ of *habeas corpus*.
>
> The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with, invasion.

The 1935 and 1973 Constitutions did not contain a similar provision. Obviously, this new provision in the 1987 Constitution was envisioned by the framers of the Constitution to serve as an essential safeguard against potential abuses in the exercise of the President's emergency powers.

The Constitution now expressly declares, "A state of martial law does not suspend the operation of the Constitution." Neither does a state of martial law supplant the functioning of the civil courts or legislative assemblies. Nor does it authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, or automatically suspend the writ. There is therefore no dispute that the constitutional guarantees under the Bill of Rights remain fully operative and continue to accord the people its mantle of protection during a state of martial law. In case the writ is also suspended, the suspension applies only to those judicially charged for rebellion or offenses directly connected with invasion.

Considering the non-suspension of the operation of the Constitution during a state of martial law, a declaration of martial law does not authorize warrantless arrests, searches and seizures, in derogation of Section 2, Article III of the Constitution, which provides:

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Warrantless arrests, search and seizure are valid only in instances where such acts are justified, *i.e.,* those enumerated in Section 5, Rule 113 of the Rules of Court.[46]

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[46] Sec. 5. *Arrest without warrant; when lawful*. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

In addition, jurisprudence tells us that in the following instances, a warrantless search and seizure is valid.

(1) search incidental to a lawful arrest,
(2) search of moving vehicles,
(3) seizure in plain view,
(4) customs search, and
(5) waiver by the accused themselves of their right against unreasonable search and seizure.

See *Manalili v. Court of Appeals*, 345 Phil. 632, 645-646 (1997), citing *People v. Lacerna*, 344 Phil. 100 (1997).

Stop-and-frisk is also another exception to the general rule against a search without a warrant (*Posadas v. Court of Appeals*, G.R. No. 89139, 2 August 1990, 188 SCRA 288, 292-293, cited in *Manalili*).

In *Pequet v. Tangonan*,[47] decided during the Martial Law regime under former President Marcos, the Court stressed that military personnel, in effecting arrests, must strictly observe the applicable Rules of Court and settled jurisprudence, thus:

Martial law has precisely been provided in both the 1935 Charter and the present Constitution to assure that the State is not powerless to cope with invasion, insurrection or rebellion or any imminent danger of its occurrence. When resort to it is therefore justified, it is precisely in accordance with and not in defiance of the fundamental law. There is all the more reason then for the rule of law to be followed. For as was so eloquently proclaimed in *Ex parte* Milligan: "The Constitution is a "law for rulers and for people equally in war and in peace and covers with the shield of its protection all classes of men at all times and under all circumstances." It is true, of course, as admitted by Willoughby, who would limit the scope of martial law power, that the military personnel are called upon to assist in the maintenance of peace and order and the enforcement of legal norms. They can therefore act like ordinary peace officers. **In effecting arrests, however, they are not free to ignore, but are precisely bound by, the applicable Rules of Court and doctrinal pronouncements.** (Emphasis supplied)

In *Aberca v. Ver*,[48] the Court emphasized that the suspension of the writ does not give imprimatur to warrantless arrests in violation of the Constitution. In that case, which involved the issue of whether the suspension of the writ bars a civil action for damages for illegal searches and for other human rights violations committed by the military, the Court held:

At the heart of petitioners' complaint is Article 32 of the Civil Code which provides:

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It is obvious that the purpose of the above codal provision is to provide a sanction to the deeply cherished rights and freedoms enshrined in the Constitution. Its message is clear; no man may seek to violate those sacred rights with impunity. In times of great

[47] 160 Phil. 906, 909 (1975); citations omitted.

[48] 243 Phil. 735 (1988).

upheaval or of social and political stress, when the temptation is strongest to yield — borrowing the words of Chief Justice Claudio Teehankee — to the law of force rather than the force of law, it is necessary to remind ourselves that certain basic rights and liberties are immutable and cannot be sacrificed to the transient needs or imperious demands of the ruling power. The rule of law must prevail, or else liberty will perish. x x x

xxx xxx xxx

It may be that the respondents, as members of the Armed Forces of the Philippines, were merely responding to their duty, as they claim, "to prevent or suppress lawless violence, insurrection, rebellion and subversion" in accordance with Proclamation No. 2054 of President Marcos, despite the lifting of martial law on January 27, 1981, and in pursuance of such objective, to launch pre-emptive strikes against alleged communist terrorist underground houses. **But this cannot be construed as a blanket license or a roving commission untramelled by any constitutional restraint, to disregard or transgress upon the rights and liberties of the individual citizen enshrined in and protected by the Constitution. The Constitution remains the supreme law of the land to which all officials, high or low, civilian or military, owe obedience and allegiance at all times.**

xxx xxx xxx

This is not to say that military authorities are restrained from pursuing their assigned task or carrying out their mission with vigor. We have no quarrel with their duty to protect the Republic from its enemies, whether of the left or of the right, or from within or without, seeking to destroy or subvert our democratic institutions and imperil their very existence. **What we are merely trying to say is that in carrying out this task and mission, constitutional and legal safeguards must be observed, otherwise, the very fabric of our faith will start to unravel.** x x x

We do not agree. We find merit in petitioners' contention that **the suspension of the privilege of the writ of** *habeas corpus* **does not destroy petitioners' right and cause of action for damages for illegal arrest and detention and other violations of their constitutional rights. The suspension does not render valid an otherwise illegal arrest or detention. What is suspended is merely the right of the individual to seek release from detention through**

the writ of habeas corpus as a speedy means of obtaining his liberty.[49] (Emphasis supplied)

IV.
Whether the declaration of martial law or suspension of the writ is a joint and sequential function of the President and Congress such that, without Congressional action on the proclamation or suspension either affirming or revoking it,the President having in the meantime lifted the same, this Court has nothing to review.

Section 18, Article VII of the 1987 Constitution provides:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

[49] *Id.* at 743-745, 748-749.

The Constitution vests exclusively in the President, as Commander-in-Chief, the emergency powers to declare martial law or suspend the writ in cases of rebellion or invasion, when the public safety requires it. The imposition of martial law or suspension of the writ takes effect the moment it is declared by the President. No other act is needed for the perfection of the declaration of martial law or the suspension of the writ. As *amicus curiae* retired Justice Mendoza states:

> A declaration of martial law by the President alone is complete by itself and does not require for its validity the approval or concurrence of Congress. It is a power placed solely in the keeping of the President to enable him to secure the people from harm and restore the public order so that they can enjoy their freedoms. Because it is liable to abuse, it is made subject to check by Congress and/or the [Supreme Court].
>
> The power of Congress is to revoke – not to confirm or ratify, much less to approve, – the President's action declaring martial law or suspending the privilege of the writ of *habeas corpus*. It is a veto power, just as the power of the judiciary to review the President's action is a veto power on the Executive's action.

It is clear, therefore, that the President's power to declare martial law or suspend the writ is independent, separate, and distinct from any constitutionally mandated act to be performed by either the Legislature or the Judiciary. It is neither joint nor sequential with Congress' power to revoke the declaration or suspension or to extend it upon the initiative of the President. Accordingly, even if Congress has not acted upon the President's declaration or suspension, the Court may review the declaration or suspension in an appropriate proceeding filed by any citizen. Otherwise stated, Congress' inaction on the declaration or suspension is not determinative of the Court's exercise of its review power under Section 18, Article VII of the Constitution.

To hold that the power of this Court to review the President's declaration of martial law or suspension of the writ is **sequential, or joint**, with the review power of Congress is to make it impossible for this Court to decide a case challenging the

declaration or suspension "**within thirty days from its filing,**" as mandated by the Constitution. Congress has no deadline when to revoke the President's declaration or suspension. Congress may not even do anything with the President's declaration or suspension and merely allow it to lapse after 60 days. On the other hand, the Constitution mandates that this Court "**must promulgate its decision thereon within thirty days from [the] filing**" of the case. Clearly, the Court's review power is neither sequential nor joint with the review power of Congress.

Moreover, the President's lifting of the declaration or suspension before this Court could decide the case within the 30-day period does not operate to divest this Court of its jurisdiction over the case. A party cannot simply oust the Court's jurisdiction, already acquired, by a party's own unilateral act. The President's lifting of the declaration or suspension merely means that this Court does not have to decide the case within the 30-day period, as the urgency of deciding has ceased. Certainly, the Court is not divested of its jurisdiction simply because the urgency of deciding a case has ceased.

V.

If the constitutional power of this Court to review the factual basis of the declaration of martial law or suspension of the writ can be exercised simultaneously with the constitutional power of Congress to revoke the declaration or suspension, and the decision of this Court conflicts with the decision of Congress, which decision shall prevail.

The President has the sole and exclusive power to declare martial law or suspend the writ. This power of the President is subject to review separately by Congress and the Supreme Court. Justice Mendoza stresses, "Thus, Congress and this Court have separate spheres of competence. They do not act 'jointly and sequentially' but independently of each other."[50] Father Bernas points out, "Since the powers of Congress and the Court are

[50] *Id.* at 497, Brief of *Amicus Curiae* Retired Associate Justice Vicente V. Mendoza.

independent of each other, there is nothing to prevent Congress and the Court from simultaneously exercising their separate powers."[51]

In the exercise by the Court and Congress of their separate "review powers" under Section 18, Article VII of the Constitution, three possible scenarios may arise.

First, the President's martial law declaration or suspension of the writ is questioned in the Supreme Court without Congress acting on the same. Such a situation generates no conflict between the Supreme Court and Congress. There is no question that the Supreme Court can annul such declaration or suspension if it lacks factual basis. Congress, whose only power under Section 18, Article VII of the Constitution is to revoke the declaration or suspension on any ground, is left with nothing to revoke if the Court has already annulled the declaration or suspension.

Second, Congress decides first to revoke the martial law declaration or suspension of the writ. Since the Constitution does not limit the grounds for congressional revocation, Congress can revoke the declaration or suspension for policy reasons, or plainly for being insignificant, as for instance it involves only one *barangay* rebelling, or if it finds no actual rebellion. In this case, the Supreme Court is left with nothing to act on as the revocation by Congress takes effect immediately. The Supreme Court must respect the revocation by Congress even if the Court believes a rebellion exists because Congress has the unlimited power to revoke the declaration or suspension.

Third, the Supreme Court decides first and rules that there is factual basis for the declaration of martial law or suspension of the writ. In such a situation, Congress can still revoke the declaration or suspension as its power under the Constitution is broader insofar as the declaration or suspension is concerned. "Congress cannot be prevented by the Court from revoking the President's decision because it is not for the Court to determine what to do with an existing factual situation. x x x Congress

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[51] *Id.* at 523, Brief of *Amicus Curiae* Father Joaquin Bernas, S.J.

has been given unlimited power to revoke the President's decision."[52] In short, even if there is an actual rebellion, whether affirmed or not by the Supreme Court, Congress has the power to revoke the President's declaration or suspension.

In the present controversy, Congress failed to act on Proclamation No. 1959 when it commenced its Joint Session on 9 December 2009 until the lifting of the martial law declaration and restoration of the writ on 12 December 2009. Congress' non-revocation of Proclamation No. 1959 categorizes the present case under the first scenario. In such a situation, where no conflict ensues, Congress' inaction on Proclamation No. 1959 does not preclude this Court from ruling on the sufficiency of the factual basis of the declaration of martial law and suspension of the writ.

VI.
Whether this Court's determination of the sufficiency of the factual basis of the declaration of martial law and suspension of the writ, which in the meantime have been lifted, would be essential to the resolution of issues concerning the validity of related acts that the government committed during the time that martial law and the suspension of the writ were in force.

Indisputably, unlawful acts may be committed during martial law or suspension of the writ, not only by the rebels, but also by government forces who are duty bound to enforce the declaration or suspension and immediately put an end to the root cause of the emergency. Various acts carried out by government forces during martial law or suspension of the writ in the guise of protecting public safety may in reality amount to serious abuses of power and authority. Whatever the Court's decision will be on the sufficiency of the factual basis of the President's declaration or suspension does not preclude those aggrieved by such illegal acts from pursuing any course of legal action available to them. Therefore, the determination by this Court of the sufficiency of the factual basis of the declaration

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[52] *Id.* at 524, Brief of *Amicus Curiae* Father Joaquin Bernas, S.J.

or suspension is not essential to the resolution of issues concerning the validity of related acts that government forces may have committed during the emergency.

VII.
Whether Proclamation No. 1959 has sufficient factual basis.

The full text of Section 18, Article VII of the 1987 Constitution reads:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ of *habeas corpus*.

The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with, invasion.

During the suspension of the privilege of the writ of *habeas corpus*, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The Commander-in-Chief provisions of the 1935 and 1973 Constitutions, on the other hand, respectively state:

Section 10(2), Article VII of the 1935 Constitution

2. The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under Martial Law.

Section 12, Article IX of the 1973 Constitution

SEC. 12. The Prime Minister shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under Martial Law.

Notably, the 1935 and 1973 Constitutions only specify the instances when martial law may be declared or when the writ may be suspended.

The 1987 Constitution, on the other hand, not only explicitly includes the specific grounds for the activation of such emergency powers, but also imposes express limitations on the exercise of such powers. Upon the President's declaration of martial law or suspension of the writ, the following safeguards are automatically set into motion: (1) the duration of martial law or suspension of the writ is limited to a period not exceeding sixty days; (2) the President is mandated to submit a report to

Congress within forty-eight hours from the declaration or suspension; and (3) the declaration or suspension is subject to review by Congress, which may revoke such declaration or suspension. If Congress is not in session, it shall convene within 24 hours without need for call.[53] In addition, the sufficiency of the factual basis of the declaration, suspension, or their extension is subject to review by the Supreme Court in an appropriate proceeding.

The mechanism and limitations laid down in Section 18, Article VII of the Constitution in declaring martial law or suspending the writ were introduced precisely to preclude a repetition of the kind of martial law imposed by President Marcos, which ushered in a permanent authoritarian regime. As Father Bernas wrote in his book:

> The Commander-in-Chief provisions of the 1935 Constitution had enabled President Ferdinand Marcos to impose authoritarian rule on the Philippines from 1972 to 1986. Supreme Court decisions during that period upholding the actions taken by Mr. Marcos made authoritarian rule part of Philippine constitutional jurisprudence. The members of the Constitutional Commission, very much aware of these facts, went about reformulating the Commander-in-Chief powers with a view to dismantling what had been constructed during the authoritarian years. The new formula included revised grounds for the activation of emergency powers, the manner of activating them, the scope of the powers, and review of presidential action.[54]

Consistent with the framers' intent to reformulate the Commander-in-Chief powers of the President, the 1987 Constitution requires the concurrence of two conditions in declaring martial law or suspending the writ, namely, (1) an actual invasion or rebellion, and (2) public safety requires the exercise of such power.[55] The Constitution no longer allows

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[53] See Senate P.S. Resolution No. 1522.

[54] BERNAS, *THE INTENT OF THE 1986 CONSTITUTION WRITERS*, 1995 Edition, p. 456.

[55] *SANLAKAS v. Executive Secretary*, *supra* note 16. See Section 15, Article III of the 1987 Constitution. In *Velasco v. Court of Appeals*, 315

imminent danger of rebellion or invasion as a ground for the declaration or suspension, which the 1935 and 1973 Constitutions expressly permitted.

In the present case, President Arroyo grounded the declaration of martial law and suspension of the writ on the existence of rebellion in Maguindanao. In her Report submitted to Congress, President Arroyo cited the following instances as constitutive of rebellion:

1. Local government offices in the province of Maguindanao were closed and ranking local government officials refused to discharge their functions, which hindered the investigation and prosecution team from performing their tasks;

2. The Local Civil Registrar of Maguindanao refused to accept the registration of the death certificates of the victims purportedly upon the orders of Andal Ampatuan Sr.;

3. The local judicial system has been crippled by the absence or non-appearance of judges of local courts, thereby depriving the government of legal remedies in their prosecutorial responsibilities (*i.e*. issuance of warrants of searches, seizure and arrest). While the Supreme Court has designated an Acting Presiding Judge from another province, the normal judicial proceedings could not be carried out in view of threats to their lives or safety, prompting government to seek a change of venue of the criminal cases after informations have been filed.

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Indeed, the nature, quantity and quality of their weaponry, the movement of heavily armed rebels in strategic positions, the closure of the Maguindanao Provincial Capitol, Ampatuan Municipal Hall, Datu Unsay Municipal Hall, and fourteen other municipal halls, and the use of armored vehicles, tanks and patrol cars with unauthorized "PNP/Police" markings, all together confirm the existence of armed public uprising for the political purpose of:

Phil. 757 (1995), the Court declared that the privilege of the writ of *habeas corpus* cannot be suspended except in cases of invasion or rebellion when the public safety requires it.

(1) removing allegiance from the national government of the Province of Maguindanao; and,

(2) depriving the Chief Executive of her powers and prerogatives to enforce the laws of the land and to maintain public order and safety.

While the government is at present conducting legitimate operations to address the on-going rebellion, public safety still requires the continued implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the Province of Maguindanao until the time that such rebellion is completely quelled.[56] (Emphasis supplied)

The question now is whether there was probable cause, which is the required quantum of proof, to declare the existence of rebellion justifying the President's declaration of martial law and suspension of the writ.

The answer is in the negative.

The contemporaneous public statements made by the President's alter egos explaining the grounds for the issuance of Proclamation No. 1959 negate rather than establish the existence of an actual rebellion in Maguindanao.

During the interpellations in the Joint Session of Congress, convened pursuant to the provisions of Section 18, Article VII of the Constitution, then Executive Secretary Eduardo Ermita admitted the absence of an actual rebellion in Maguindanao, to wit:

REP. LAGMAN. Mr. Speaker, Mr. President, a perusal of the text of Proclamation No. 1959 would show the absence of a clear and categorical finding or determination that actual rebellion is occurring in Maguindanao. Would that be an accurate observation of a reading of the text of Proclamation No. 1959?

MR. ERMITA. Your Honor, you may be correct that there was no actual rebellion going on. However, all the indicators that rebellion is, indeed, being committed and happening on the ground is because of the presence of the armed groups that prevent authorities from

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[56] *Rollo* (G.R. No. 190293), pp. 163-164, 173-177, 182.

being able to do its duty of even effecting the arrest of those who should be arrested in spite of the testimonies of witnesses.

REP. LAGMAN. Well, we are happy to note that there is an admission that there was no actual rebellion in Maguindanao. But the presence of armed groups would be indicative of lawless violence which is not synonymous to rebellion. As a matter of fact, the Maguindanao situationer which was made by Police Director Andres Caro was premised on a statement that this was the worst election-related violence – an act of gross lawlessness but definitely not related to rebellion.

xxx xxx xxx[57] (Emphasis supplied)

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[57] Transcript of Plenary Proceedings, Joint Session of the Congress of the Republic of the Philippines, 9 December 2009. See also "Ermita: ML proclaimed without actual rebellion," The Philippine Star, 11 December 2009 (http://www.philstar.com/Article.aspx? articleId=531416& publication Sub CategoryId=63 [accessed on 4 November 2011], where the following report appeared:

> Executive Secretary Eduardo Ermita admitted Wednesday night that President Arroyo proclaimed martial law in Maguindanao without an "actual" rebellion taking place in the province as required by the Constitution.
>
> But in response to questions raised by Albay Rep. Edcel Lagman, Ermita pointed to the presence of armed groups supporting the Ampatuan family that were preventing the authorities from enforcing the law, which, he added, was frustrating the ends of justice.
>
> Ermita said the government considered the "presence" or "massing" of the Ampatuans' armed followers as "rebellion," one of only two grounds under the Constitution, aside from invasion, for the imposition of martial law.
>
> Ermita though conceded there was no actual rebellion taking place, in the sense of people taking up arms to withdraw allegiance from the central government or prevent it from enforcing the law.
>
> Lagman said that Ermita's answers to his questions and Justice Secretary Agnes Devanadera's statement that there was rebellion in Maguindanao was only "looming" prove that Mrs. Arroyo received "bad legal advice" in imposing martial rule in the province.
>
> "The President has enough powers under the commander-in-chief provision of the Constitution to quell a 'looming' rebellion or neutralize the 'presence' or 'massing' of armed loyalists of the Ampatuans. She is authorized to call on the Armed Forces to accomplish that objective," Lagman said.

Also, during the Joint Session, then Senator (now President) Benigno S. Aquino III pointed out the public statements made by former Department of Interior and Local Government Secretary Ronaldo V. Puno, then Armed Forces of the Philippines spokesperson Lt. Col. Romeo Brawner, and former Defense Secretary Norberto Gonzales admitting there was no need for martial law:

THE SENATE PRESIDENT. With the indulgence of the Chamber and the Speaker, may we request now to allow the distinguished Gentleman from Tarlac, Senator Benigno "Noynoy" Aquino III the floor.

SEN. AQUINO. Thank you, Mr. President. May I direct my first question to Secretary Puno. And this is to lay the proper predicate for our first question. The newspaper has been quoting Secretary Puno as not having recommended the imposition of martial law prior to its imposition in Maguindanao. May we know if this was a correct attribution to the Honorable Secretary.

MR. PUNO. Until, Your Honor, Mr. Speaker, Mr. Senate President, until the situation developed where police officers went absent on leave and joined the rebel forces, and a significant segment of the civilian armed volunteers of the local governments constituted themselves into a rebel group, until that time I did not believe that it was necessary that martial law be declared. But upon receipt of a report from the Armed Forces of the Philippines and the briefing conducted with the National Security Council, where it was made clear that a separate rebel armed group had already been organized, we concurred, Your Honor, with the recommendation on martial law.

SEN. AQUINO. For the record, Mr. Senate President and Mr. Speaker, the AFP, we understand, through the spokesperson, Lt. Col. Romeo Brawner, declared on 13 November 2009 that there is no need for the declaration of martial law in Maguindanao or elsewhere in the country because the AFP and PNP are on top of the situation. He was quoted as saying, and we quote: "We now have a level of normalcy

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Lagman pointed out the absence of rebellion in Maguindanao as defined under the Revised Penal Code.

"What happened there was lawlessness. It was just a partisan conflict that did not require the imposition of martial law," he said.

in the Province of Maguindanao, primarily because of the occupation by our government forces and our law enforcement agencies of the seats of government." Secretary Norberto Gonzales, who unfortunately is not present, declared on December 1, 2009 that the government's effort to contain the tension in the province is holding ground. We also have now the admission by the honorable Secretary Puno that prior to the undated national security briefing, he was also of the opinion that martial law was not necessary in Maguindanao. xxx[58]

Even before the interpellations in Congress, then Executive Secretary Ermita publicly confirmed the inadequacies of Proclamation No. 1959:

> We'll have to get the report from the field from the AFP and PNP that the conditions that prompted the President to issue the proclamation, have improved, and therefore, **the threat of further lawlessness and probability of rebellion is already down.**[59] (Emphasis supplied)

Significantly, at a press conference, then Secretary of Justice Agnes Devanadera declared, "**We noticed and observed there was a rebellion in the offing**." In another press briefing, Devanadera stated that "**rebellion** which does not necessarily involve a physical takeover by armed elements as argued by some critics of the President's order, **was "looming in Maguindanao."**[60] In short, the Department of Justice Secretary, who is the principal legal officer of the Arroyo administration, publicly admitted that there was only a "looming" rebellion, a "rebellion in the offing," in Maguindanao.

Likewise, in a press conference, "the AFP Chief of Staff claimed that armed groups, numbering between 40 to 400 men

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[58] Transcript of Plenary Proceedings, Joint Session of the Congress of the Republic of the Philippines, 9 December 2009.

[59] Quoted in the Petition in G.R. No. 190307, p. 15, citing http://www.abs-cbnnews.com/nation/12/04/09/arroyo-orders-martial-law-maguindanao [accessed on 10 November 2011], Arroyo proclaims martial law in Maguindanao.

[60] http://www.philstar.com/Article.aspx?articleid=529869 [accessed on 4 November 2011], DOJ: Rebellion was looming.

and spread out in the province, planned to prevent the arrest of members of the Ampatuan family, the prime suspects in the Maguindanao massacre. He stated, "Based on the reports we received, there were a lot of groupings of armed groups in different places. We also received reports that they have plans to undertake hostile action if ever government officials, the Ampatuans particularly, were taken in custody. **We felt this was very imminent threat, that's why we recommended this proclamation**."[61]

Then Defense Secretary Norberto Gonzales was quoted as stating that the "recommendation to declare martial law in Maguindanao is a sensitive matter that needs to be studied."[62] In an interview, Gonzales said, "*titingnan natin* (we will see) how the situation develops there."[63] He further stated, "As of now, I think whatever the government is doing so far is really effective. We will wait for the results of the work of Secretary Devanadera of Justice and also Secretary Puno of DILG. So, so far *maganda naman yun takbo ng ating operation doon*."[64] Gonzales added, "*Yung tungkol sa martial law, alam mo sensitive na bagay yan kaya pag-aaralan natin*."[65]

The admissions and public statements made by members of the Cabinet, who are the President's alter egos, as well as the public assessments made by the highest ranking military officials, clearly demonstrate that instead of being anchored on the existence of an actual rebellion, Proclamation No. 1959 was based on a mere threat, or at best an imminent threat of rebellion, or a rebellion "in the offing."[66] This undeniably runs counter to the

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[61] Mantawil Petition (G.R. No. 190356), pp. 8-9.

[62] http://www.mb.com.ph/node/231907/martial-law-idea-need [accessed on 4 November 2011], Martial law idea needs study — Gonzales.

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] http://newsinfo.inquirer.net/breakingnews/nation/view/20091205-240273/A-rebellion-was-in-the-offingjustice-chief [accessed on 4 November 2011], 'A rebellion was in the offing' — justice chief.

letter and intent of the Constitution. A looming rebellion is analogous to imminent danger of rebellion, which was deliberately eliminated by the framers of the 1987 Constitution as a ground for the declaration of martial law precisely to avoid a repetition of the misguided and oppressive martial law imposed by former President Marcos.

There is **absolutely nothing** which shows that the Ampatuans and their armed followers, at any point in time, intended to overthrow the government. On the contrary, the Ampatuans were publicly known as very close political allies of President Arroyo. There is not a single instance where the Ampatuans denounced, expressly or impliedly, the government, or attempted to remove allegiance to the government or its laws or to deprive the President or Congress of any of their powers. Based on the records, what the government clearly established, among others, were (1) the existence of the Ampatuans' private army; and (2) the Ampatuans' vast collection of high powered firearms and ammunitions.

These shocking discoveries, however, do not amount to rebellion as defined in Article 134 of the Revised Penal Code. Based on the statements made by ranking government and military officials, and as clearly found by the RTC-Quezon City in Criminal Case No. Q-10-162667 and affirmed by the Court of Appeals, **there was no public uprising and taking arms against the government for the purpose of removing from the allegiance to the government or its laws the territory of the Philippines or any part thereof, or depriving the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.** The Ampatuans' amassing of weaponry, including their collection of armored cars, tanks and patrol cars, merely highlights this political clan's unbelievably excessive power and influence under the Arroyo administration.

To repeat, only in case of actual invasion or rebellion, when public safety requires it, may the President declare martial law or suspend the writ. In declaring martial law and suspending the writ in Maguindanao in the absence of an actual rebellion, President Arroyo indisputably violated the explicit provisions of Section 18, Article VII of the Constitution.

Conclusion

Thirty-seven years after President Marcos' Proclamation No. 1081, President Arroyo issued Proclamation No. 1959 declaring martial law and suspending the privilege of the writ of *habeas corpus* in the province of Maguindanao, except in MILF identified areas. President Marcos' martial law, justified to counteract the Communist insurgency in the country,[67] turned out to be a vehicle to establish a one-man authoritarian rule in the country. Expectedly, President Arroyo's Proclamation No. 1959 refreshed the nation's bitter memories of the tyranny during the Martial Law regime of President Marcos, and sparked the public's vigilance to prevent a possible recurrence of that horrible past.

In issuing Proclamation No. 1959, President Arroyo exercised the most awesome and powerful among her graduated Commander-in-Chief powers to suppress a supposed rebellion in Maguindanao, following the massacre of 57 civilians in the worst election-related violence in the country's history. Since then, the government branded the Ampatuans, the alleged masterminds of the massacre, as rebels orchestrating the overthrow of the Arroyo administration. However, the events before, during, and after the massacre negate the existence of an armed uprising aimed at bringing down the government, but rather point to a surfeit of impunity and abuse of power of a political clan closely allied with the Arroyo administration. In short, Proclamation No. 1959 was issued without an actual rebellion justifying the same.

Apparently, President Arroyo resorted to martial law and suspension of the writ, not to quell a purported rebellion because there was absolutely none, but to show her indignation over the gruesome massacre and her swift response in addressing the difficult situation involving her close political allies. She was

[67] Proclamation No. 1081 (PROCLAIMING A STATE OF MARTIAL LAW IN THE PHILIPPINES), 21 September 1972.

reported to be "under pressure to deliver, amid rising public outrage and international condemnation of the massacre."[68] However, mounting pressure to bring the murderers to justice, without any invasion or rebellion in Maguindanao, does not warrant the imposition of martial law or suspension of the writ. Rather, what the nation expects, and what the victims and their families truly deserve, is the speedy and credible investigation and prosecution, and eventually the conviction, of the merciless killers.

In sum, Proclamation No. 1959 was anchored on a non-existent rebellion. Based on the events before, during and after the Maguindanao massacre, there was obviously no rebellion justifying the declaration of martial law and suspension of the writ. The discovery of the Ampatuans' private army and massive weaponry does not establish an armed public uprising aimed at overthrowing the government. Neither do the closure of government offices and the reluctance of the local government officials and employees to report for work indicate a rebellion.

The Constitution is clear. Only in case of actual invasion or rebellion, when public safety requires it, can a state of martial law be declared or the privilege of the writ of *habeas corpus* be suspended. Proclamation No. 1959 cannot be justified on the basis of a threatened, imminent, or looming rebellion, which ground was intentionally deleted by the framers of the 1987 Constitution. Considering the non-existence of an actual rebellion in Maguindanao, Proclamation No. 1959 is unconstitutional for lack of factual basis as required under Section 18, Article VII of the Constitution for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*.

Accordingly, I vote to **GRANT** the petitions and **DECLARE** Proclamation No. 1959 **UNCONSTITUTIONAL** for failure to comply with Section 18, Article VII of the Constitution.

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[68] http://www.time.com/time/world/article/0,8599,1943191,00.html [accessed on 4 November 2011], Behind the Philippines' Maguindanao Massacre, by Alastair McIndoe.

DISSENTING OPINION

VELASCO, JR., *J*.:

The martial law era has left the country with harrowing memories of a dark past, thus invoking passionate sentiments from the people and bringing forth remarkable vigilance as a lesson learned, and only rightfully so. Nonetheless, legal discourse must be made within bounds, as must always be the case in a civilized society governed by the rule of law and not of men. It is on the basis of the foregoing precept that I am constrained to register my dissent in the instant case.

As can be gathered from the *ponencia*, the controversy in the instant case revolves around the issuance by then President Gloria Macapagal-Arroyo (President Arroyo) of Proclamation No. 1959,[1] which declared a state of martial law and suspended the privilege of the writ of *habeas corpus* in the province of Maguindanao, except for certain identified areas of the Moro Islamic Liberation Front.

To recall, the issuance of Proclamation No. 1959 was precipitated by the chilling and loathsome killing, on November 23, 2009, of 57 innocent civilians, including the wife of then Buluan Vice-Mayor Esmail "Toto" Mangudadatu (Mangudadatu), who was supposed to file the latter's certificate of candidacy for Governor of Maguindanao with the Provincial Office of the Commission on Elections in Shariff Aguak, accompanied by Mangudadatu's relatives, lawyers and members of the press, among others. The victims included five others who only happened to be travelling on the same highway traversed by the Mangudadatu convoy.

As a consequence of the detestable killings tagged by media as the "Maguindanao massacre," President Arroyo immediately issued Proclamation No. 1946[2] on the following day, November 24, 2009, by which a state of emergency was

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[1] *Rollo* (G.R. No. 190293), pp. 186-187.

[2] *Id.* at 185.

declared in the provinces of Maguindanao and Sultan Kudarat, and in the City of Cotabato, "to prevent and suppress the occurrence of similar other incidents of lawless violence in Central Mindanao." This was followed with the issuance of the assailed Proclamation No. 1959 on December 4, 2009.

Subsequently, on December 6, 2009, President Arroyo submitted her Report[3] to Congress in compliance with Section 18, Article VII of the 1987 Constitution.

Meanwhile, the instant petitions were filed challenging the constitutionality of Proclamation No. 1959.

Also consonant with Sec. 18, Art. VII of the 1987 Constitution, Congress convened in joint session on December 9, 2009.

Eventually, on December 12, 2009, President Arroyo lifted martial law and restored the privilege of the writ of *habeas corpus* in Maguindanao with the issuance of Proclamation No. 1963.[4]

Justiciability of the instant petitions

In the majority opinion, the Court declined to rule on the constitutionality of Proclamation No. 1959, racionating that "given the prompt lifting of the proclamation before Congress could review it and before any serious question affecting the rights and liberties of Maguindanao's inhabitants could arise, the Court deems any review of its constitutionality the equivalent of beating a dead horse."

It is my view that, despite the lifting of the martial law and restoration of the privilege of the writ, the Court must take the bull by the horn to guide, explain and elucidate to the executive branch, the legislative branch, the bar, and more importantly the public on the parameters of a declaration of martial law.

Indeed, it is a well-settled rule that this Court may only adjudicate actual and current controversies.[5] This is because

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[3] *Id.* at 163-182.

[4] *Id.* at 190-191.

[5] *Pormento v. Estrada*, G.R. No. 191988, August 31, 2010, 629 SCRA 530, 533; citing *Honig v. Doe*, 484 U.S. 305 (1988).

the Court is "not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it."[6] Nonetheless, this "moot and academic" rule admits of exceptions. As We wrote in *David v. Arroyo*:

> The "moot and academic" principle is not a magical formula that can automatically dissuade the courts in resolving a case. **Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.**[7] (Emphasis supplied.)

All the aforementioned exceptions are present in this case. *First*, in the instant petitions, it was alleged that the issuance of Proclamation No. 1959 is violative of the Constitution. *Second*, it is indubitable that the issues raised affect the public's interest as they may have an unsettling effect on the fundamental rights of the people. *Third*, the Court has the duty to formulate controlling principles concerning issues which involve the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* to guide the bench, the bar, and the public. And *fourth*, the assailed proclamation is capable of repetition yet evading review. Considerably, the instant petitions are subject to judicial review.

While I disagree with the majority, I wish, however, to take exception to certain suppositions and discourse made in the dissent of Justice Carpio. In particular, I refer to his discussion on hypothetical situations concerning the simultaneous exercise of the power to review by this Court and by the Congress, as well as to the proposition that "[i]n declaring martial law and suspending the writ in Maguindanao in the absence of an actual

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[6] *Id.*

[7] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160.

rebellion, President Arroyo indisputably violated the explicit provisions of Section 18, Article VII of the Constitution."

Simultaneous exercise by the Court and the Congress of their constitutional power to review

One of the matters traversed by the dissent of Justice Carpio is "[i]f the constitutional power of this Court to review the factual basis of the declaration of martial law or suspension of the writ can be exercised simultaneously with the constitutional power of the Congress to revoke the declaration of martial law or suspension of the writ, and if the decision of this Court conflicts with the decision of Congress, which decision shall prevail[?]"[8]

In addressing this issue, Justice Carpio, in his dissent, considered three scenarios, to wit:

First, the President's martial law declaration or suspension of the writ is questioned in the Supreme Court without Congress acting on the same. Such a situation generates no conflict between the Supreme Court and Congress. There is no question that the Supreme Court can annul such declaration or suspension if it lacks factual basis. Congress, whose only power under Section 18, Article VII of the Constitution is to revoke the initial declaration or suspension on any ground, is left with nothing to revoke if the Court has already annulled the declaration.

Second, Congress decides first to revoke the martial law declaration or suspension of the writ. Since the Constitution does not limit the grounds for congressional revocation, Congress can revoke the declaration or suspension for policy reasons, or plainly for being insignificant, as for instance it involves only one *barangay* rebelling, or if it finds no actual rebellion. In this case, the Supreme Court is left with nothing to act on as the revocation by Congress takes effect immediately. The Supreme Court must respect the revocation by Congress even if the Court believes a rebellion exists because Congress has the unlimited power to revoke the declaration or suspension.

Third, the Supreme Court decides first and rules that there is factual basis for the declaration of martial law or suspension of the

[8] *Rollo* (G.R. No. 190293), pp. 192-194. Resolution dated December 15, 2009.

writ. In such a situation, Congress can still revoke the declaration or suspension as its power under the Constitution is broader insofar as the declaration or suspension is concerned. "Congress cannot be prevented by the Court from revoking the President's decision because it is not for the Court to determine what to do with an existing factual situation. x x x Congress has been given unlimited power to revoke the President's decision." In short, even if there is an actual rebellion, whether affirmed or not by the Supreme Court, Congress has the power to revoke the President's declaration or suspension. (Italics in the original; citations omitted.)

With the exception of the first, the two other possible scenarios adverted to that may arise from the action or inaction of the two co-equal branches of the government upon the declaration by the President of martial law or suspension of the writ cannot be resolved in the present case. Otherwise, this Court would, in effect, be making a ruling on a hypothetical state of facts which the Court is proscribed from doing.

As We have mentioned in *Albay Electric Cooperative, Inc. v. Santelices*, "[i]t is a rule almost unanimously observed that courts of justice will take cognizance only of justiciable controversies wherein actual and **not merely hypothetical issues** are involved."[9] The reason behind this requisite is "to prevent the courts through avoidance of premature adjudication from entangling themselves in abstract disagreements, and for us to be satisfied that the case does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire."[10]

Further, the discussions made in Justice Carpio's dissent, and curiously, even in the majority opinion itself, fail to take

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[9] G.R. No. 132540, April 16, 2009, 585 SCRA 103, 118-119; citing *Jaafar v. Commission on Elections*, 364 Phil. 322, 327-328 (1999); emphasis supplied.

[10] Separate Opinion of Justice Nachura in *De Castro v. Judicial and Bar Council*, G.R. Nos. 191002, 191032, 191057, A.M. No. 10-2-5-SC, G.R. Nos. 191149, 191342 & 191420, March 17, 2010, 615 SCRA 666, 780; citing *Office of the Governor v. Select Committee of Inquiry*, 271 Conn. 540, 570, 858 A. 2d 709 (2004).

into consideration the powers of review by this Court under its expanded jurisdiction as conferred by Sec. 1, Art. VIII of the Constitution, "which includes the authority to determine whether grave abuse of discretion amounting to excess or lack of jurisdiction has been committed by any branch or instrumentality of the government."[11]

In his dissent, Justice Carpio explicitly declares that "Congress has the unlimited power to revoke the declaration or suspension." Similarly, the majority, in justifying the Court's refusal to exercise its judicial power of review, states that "[o]nly when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart." Irresistibly implied in these statements is that once Congress acts and reviews the declaration of martial law and suspension of the privilege of the writ, this Court becomes powerless to make further inquiry on the sufficiency of the factual basis of the proclamation in an appropriate proceeding filed by any citizen as mandated under Sec. 18, Art. VII of the Constitution.

The categorical statements made in both the majority opinion and in Justice Carpio's dissent minimize, if not totally disregard, the power of this Court to pass upon the constitutionality of acts of Congress under its expanded jurisdiction under the Constitution. The significance of this Court's power to review under its "expanded *certiorari* jurisdiction" was extensively discussed in *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*:

As indicated in *Angara v. Electoral Commission*, judicial review is indeed an integral component of the delicate system of checks and balances which, together with the corollary principle of separation of powers, forms the bedrock of our republican form of government x x x.

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the

[11] *Coseteng v. Mitra*, G.R. No. 86649, July 12, 1990, 187 SCRA 377, 383.

government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. **The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.** x x x **And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.**

In the scholarly estimation of former Supreme Court Justice Florentino Feliciano, "x x x judicial review is essential for the maintenance and enforcement of the separation of powers and the balancing of powers among the three great departments of government through the definition and maintenance of the boundaries of authority and control between them." To him, "[j]udicial review is the chief, indeed the only, medium of participation – or instrument of intervention – of the judiciary in that balancing operation."

To ensure the potency of the power of judicial review to curb grave abuse of discretion by "**any branch or instrumentalities of government**," the afore-quoted Section 1, Article VIII of the Constitution engraves, for the first time into its history, into block letter law the so-called "expanded *certiorari* jurisdiction" of this Court x x x.

xxx xxx xxx

There is indeed a plethora of cases in which this Court exercised the power of judicial review over congressional action. Thus, in *Santiago v. Guingona, Jr.,* this Court ruled that it is well within the power and jurisdiction of the Court to inquire whether the Senate or its officials committed a violation of the Constitution or grave abuse of discretion in the exercise of their functions and prerogatives. In *Tanada v. Angara,* in seeking to nullify an act of the Philippine Senate on the ground that it contravened the Constitution, it held that the petition raises a justiciable controversy and that when an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. In *Bondoc v. Pineda*, this Court declared null and void a resolution of the House of Representatives

withdrawing the nomination, and rescinding the election, of a congressman as a member of the House Electoral Tribunal for being violative of Section 17, Article VI of the Constitution. In *Coseteng v. Mitra*, it held that the resolution of whether the House representation in the Commission on Appointments was based on proportional representation of the political parties as provided in Section 18, Article VI of the Constitution is subject to judicial review. In *Daza v. Singson,* it held that the act of the House of Representatives in removing the petitioner from the Commission on Appointments is subject to judicial review. In *Tanada v. Cuenco,* it held that although under the Constitution, the legislative power is vested exclusively in Congress, this does not detract from the power of the courts to pass upon the constitutionality of acts of Congress. In *Angara v. Electoral Commission,* it ruled that confirmation by the National Assembly of the election of any member, irrespective of whether his election is contested, is not essential before such member-elect may discharge the duties and enjoy the privileges of a member of the National Assembly.

Finally, there exists no constitutional basis for the contention that the exercise of judicial review over impeachment proceedings would upset the system of checks and balances. Verily, the Constitution is to be interpreted as a whole and "one section is not to be allowed to defeat another." Both are integral components of the calibrated system of independence and interdependence that insures that no branch of government act beyond the powers assigned to it by the Constitution.[12] (Emphasis in the original; citations omitted.)

Indeed, the Court does not have the authority to pass upon the wisdom behind the acts of the Congress. Nonetheless, the Court is not powerless to review the legality of the manner by which such acts have been arrived at in order to determine whether Congress has transgressed the reasonable bounds of its power.[13] This is an obligation which the Court cannot, and should not, abdicate.

Moreover, by indicating that Congress, if it so decides to act, has an unlimited power to revoke the declaration of a state

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[12] G.R. No. 160261, November 10, 2003, 415 SCRA 44, 123-124, 132-133.

[13] See *Coseteng v. Mitra*, *supra* note 11.

of martial law or suspension of the privilege of the writ unfettered by this Court's power to review, We are treading on treacherous grounds by handing over such an unbridled discretion to Congress. Such statement, to me, partakes of an *obiter* without precedential value, being unnecessary to resolve the issues and arrive at a proper decision in the present case. This matter should instead be addressed at the proper case and at the proper time.

President Arroyo's alleged indisputable violation of the explicit provisions of the Constitution

With due respect to Justice Carpio, I cannot join him in his contention that "President Arroyo **indisputably violated** the explicit provisions of Section 18, Article VII of the Constitution" for declaring martial law and suspending the writ in Maguindanao **in the absence of an actual rebellion**. The magnification is uncalled for.

When We speak of "violation" in reference to a law, it pertains to an act of breaking or dishonoring the law.[14] The use of said word, coupled with the ascription of the term "indisputable," somehow implies that an act was done intentionally or wilfully. At worst, its use can even be suggestive of bad faith on the part of the doer.

In the case at bar, there is neither any allegation nor proof that President Arroyo acted in bad faith when she declared martial law and suspended the writ of *habeas corpus* in Maguindanao. There was also no showing that there was a deliberate or intentional attempt on the part of President Arroyo to break or dishonor the Constitution by issuing the assailed proclamation. On the contrary, what is extant from the records is that President Arroyo made such declaration and suspension on the basis of intelligence reports that lawless elements have taken up arms and committed public uprising against the government and the people of Maguindanao for the purpose of depriving the Chief Executive of her powers and prerogatives to enforce the laws of the land and to maintain public order and safety, to the great

[14] *BLACK'S LAW DICTIONARY* (9th ed., 2010).

damage, prejudice and detriment of the people in Maguindanao and the nation as a whole.

President Arroyo cannot be blamed for relying upon the information given to her by the Armed Forces of the Philippines and the Philippine National Police, considering that the matter of the supposed armed uprising was within their realm of competence, and that a state of emergency has also been declared in Central Mindanao to prevent lawless violence similar to the "Maguindanao massacre," which may be an indication that there is a threat to the public safety warranting a declaration of martial law or suspension of the writ.

Certainly, the President cannot be expected to risk being too late before declaring martial law or suspending the writ of *habeas corpus*. The Constitution, as couched, does not require precision in establishing the fact of rebellion. The President is called to act as public safety requires.

The following excerpts from the *Brief of Amicus Curiae* of Fr. Joaquin Bernas, S.J. is illuminating:

> From all these it is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code. The concern of the Penal Code, after all, is to punish *acts of the past*. But the concern of the Constitution is to counter threat to public safety both *in the present and in the future* arising from present and past acts. Such nuance, it is submitted, gives to the President a degree of flexibility for determining whether rebellion constitutionally exists as basis for martial law even if facts cannot obviously satisfy the requirements of the Penal Code whose concern is about past acts. To require that the President must first convince herself that there can be proof beyond reasonable doubt of the existence of rebellion as defined in the Penal Code and jurisprudence can severely restrict the President's capacity to safeguard public safety for the present and the future and can defeat the purpose of the Constitution.
>
> What all these point to are that the twin requirements of "actual rebellion or invasion" and the demand of public safety are inseparably entwined. But whether there exists a need to take action in favour

of public safety is a factual issue different in nature from trying to determine whether rebellion exists. The need of public safety is an issue whose existence, unlike the existence of rebellion, is not verifiable through the visual or tactile sense. Its existence can only be determined through the application of prudential estimation of what the consequences might be of existing armed movements. Thus, in deciding whether the President acted rightly or wrongly in finding that public safety called for the imposition of martial law, the Court cannot avoid asking whether the President acted wisely and prudently and not in grave abuse of discretion amounting to lack or excess of jurisdiction. Such decision involves the verification of factors not as easily measurable as the demands of Article 134 of the Penal Code and can lead to a prudential judgment in favour of the necessity of imposing martial law to ensure public safety even in the face of uncertainty whether the Penal Code has been violated. This is the reason why courts in earlier jurisprudence were reluctant to override the executive's judgment.

In sum, since the President should not be bound to search for proof beyond reasonable doubt of the existence of rebellion and since deciding whether public safety demands action is a prudential matter, the function of the President is far from different from the function of a judge trying to decide whether to convict a person for rebellion or not. Put differently, looking for rebellion under the Penal Code is different from looking for rebellion under the Constitution.[15]

Significantly, the President has the discretion to make a declaration of martial law or suspension of the writ of *habeas corpus* based on information or facts available or gathered by the President's office. It would be preposterous to impose upon the President to be physically present at the place where a threat to public safety is alleged to exist as a condition to make such declaration or suspension.

In the present case, it should not escape the attention of the Court that President Arroyo complied with the reportorial requirement in Sec. 18, Art. VII of the Constitution, which states that "within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing

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[15] *Rollo* (G.R. No. 190293), pp. 516-518.

to the Congress." Further, it appearing thereafter that when President Arroyo subsequently received intelligence reports on the advisability of lifting martial law or restoring the writ of *habeas corpus* in Maguindanao, she immediately issued the corresponding proclamation.

To a certain extent, I conform to Justice Carpio's dissent as to the unconstitutionality of Proclamation No. 1959. To my mind, however, it is one thing to declare a decree issued by the President as unconstitutional, and it is another to pronounce that she **indisputably** violated the Constitution. Notably, the power to issue the subject decree is expressly granted the President. There is also compliance with the report required after the issuance of said decree. However, the issuance of the subject decree may not be sustained after due consideration of the circumstances which may or may not support such decree.

This dissent fears that overbearing declarations may later create an unwarranted limitation on the power of a President to respond to exigencies and requirements of public safety. We must recognize that as society progresses, then so may the manner and means of endangering the very existence of our society develop. This Court is fortunate for having the benefit of hindsight. This benefit may not be equally shared by the President, who is tasked to act with a sense of urgency based on best judgment as facts develop and events unfold. We may only be judges of the past. But history will be harsh on a President who is not up to the challenge and declines, or worse, fails to act when so required.

I, therefore, vote to declare Proclamation No. 1959 unconstitutional, but as heretofore qualified.

EN BANC

[G.R. No. 195191. March 20, 2012]

CONGRESSWOMAN LUCY MARIE TORRES-GOMEZ, *petitioner, vs.* **EUFROCINO C. CODILLA, JR. and HON. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; OFFICIAL DUTIES ARE DISPUTABLY PRESUMED TO HAVE BEEN REGULARLY PERFORMED.—** With respect to the second alleged defect, there is a presumption that official duty has been regularly performed with respect to the jurat of the Verification, wherein the notary public attests that it was subscribed and sworn to before him or her, on the date mentioned thereon. Official duties are disputably presumed to have been regularly performed. Thus, contrary to petitioner's allegation, there was no need for Codilla to "attach his plane ticket to prove he flew from Ormoc City to Manila."

2. **ID.; ID.; ID.; ID.; ID.; THE BURDEN OF PROOF TO OVERCOME THE PRESUMPTION OF DUE EXECUTION OF A NOTARIZED DOCUMENT LIES ON THE PARTY CONTESTING THE EXECUTION.—** [T]o overcome the presumption of regularity, clear and convincing evidence must be presented. Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarized document lies on the party contesting the execution. Thus, petitioner's contention that she "had reliable information that [Codilla] was in Ormoc City on the date indicated in the Verification" cannot be considered as clear and convincing evidence to rebut the presumption that the document was duly executed and notarized.

3. **LEGAL ETHICS; ATTORNEYS; BAR MATTER NO. 1922; THE REQUIREMENT THAT THE LAWYERS MUST INDICATE IN ALL PLEADINGS FILED BEFORE THE**

COURTS OR QUASI-JUDICIAL BODIES, THE NUMBER AND DATE OF ISSUE OF THEIR MCLE CERTIFICATE OF COMPLIANCE OR CERTIFICATE OF EXEMPTION, FOR THE IMMEDIATELY PRECEDING COMPLIANCE PERIOD, DOES NOT APPLY TO NOTARIAL ACTS.— With respect to the third alleged defect, the fact that some portions of the stamp of the notary public were handwritten and some were stamped does not, in itself, indicate any defect. Further, Bar Matter No. 1922 merely requires lawyers to indicate in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, whichever is applicable – for the immediately preceding compliance period. Clearly, the regulation does not apply to notarial acts. With respect to the PTR number which was dated 5 years prior to the date of notarization, the deficiency merely entails the potential administrative liability of the notary public.

4. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; VERIFICATION; ONLY A FORMAL, NOT A JURISDICTIONAL, REQUIREMENT.— [T]here was no grave abuse of discretion on the part of the HRET in denying petitioner's Motion to Dismiss the Election Protest and directing Codilla to have his Verification properly notarized. It has been consistently held that the verification of a pleading is only a formal, not a jurisdictional, requirement. The purpose of requiring a verification is to secure an assurance that the allegations in the petition are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render the pleading fatally defective.

5. ID.; ID.; ID.; ID.; RULES ON VERIFICATION OF PROTESTS SHOULD BE LIBERALLY CONSTRUED; OBSTACLES AND TECHNICALITIES THAT FETTER THE PEOPLE'S WILL SHOULD NOT STAND IN THE WAY OF A PROMPT TERMINATION OF ELECTION CONTESTS.— This Court has emphasized that in this species of controversy involving the determination of the true will of the electorate, time is indeed of paramount importance. An election controversy, by its very nature, touches upon the ascertainment of the people's choice as gleaned from the medium of the ballot. For this reason,

an election protest should be resolved with utmost dispatch, precedence and regard for due process. Obstacles and technicalities that fetter the people's will should not stand in the way of a prompt termination of election contests. Thus, rules on the verification of protests should be liberally construed.

6. **ID.; ID.; ID.; ID.; A PLEADING WHEREIN THE VERIFICATION IS BASED MERELY ON THE PARTY'S KNOWLEDGE AND BELIEF PRODUCES NO LEGAL EFFECT, SUBJECT TO THE DISCRETION OF THE COURT TO ALLOW THE DEFICIENCY TO BE REMEDIED.—** A perusal of the Verification and Certification attached to this Petition shows she attests that the contents of the Petition "are true and correct of [her] own personal knowledge, belief and based on the records in [her] possession." Section 4, Rule 7 of the Rules of Court provides that a pleading required to be verified which contains a verification based on "information and belief" or "knowledge, information and belief," shall be treated as an unsigned pleading. A pleading, therefore, wherein the verification is based merely on the party's knowledge and belief – such as in the instant Petition – produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied.

7. **POLITICAL LAW; CONSTITUTIONAL LAW; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); HAS THE EXCLUSIVE JURISDICTION TO DETERMINE ITS AUTHORITY AND TO TAKE COGNIZANCE OF THE ELECTION PROTEST FILED BEFORE IT.—** It bears stressing that the HRET is the sole judge of all contests relating to the election, returns, and qualifications of the members of the House of Representatives. This exclusive jurisdiction includes the power to determine whether it has the authority to hear and determine the controversy presented; and the right to decide whether there exists that state of facts that confers jurisdiction, as well as all other matters arising from the case legitimately before it. Accordingly, the HRET has the power to hear and determine, or inquire into, the question of its own jurisdiction – both as to parties and as to subject matter; and to decide all questions, whether of law or of fact, the decision of which is necessary to determine the question of jurisdiction. Thus, the HRET had the exclusive jurisdiction to determine

its authority and to take cognizance of the Election Protest filed before it.

8. **POLITICAL LAW; ELECTIONS; ELECTION PROTEST; STRICTLY A CONTEST BETWEEN THE DEFEATED AND THE WINNING CANDIDATES, BASED ON THE GROUNDS OF ELECTORAL FRAUDS AND IRREGULARITIES.—** An election protest proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds and irregularities. Its purpose is to determine who between them has actually obtained the majority of the legal votes cast and is entitled to hold the office. The foregoing considered, the issues raised in Codilla's Election Protest are proper for such a petition, and is within the jurisdiction of the HRET.

APPEARANCES OF COUNSEL

Alex O. Avisado, Jr., Ronald Michel R. Ubaña & Maria Cristina B. Garcia-Ramirez for petitioner.

The Solicitor General for public respondent.

George Erwin M. Garcia for private respondent.

D E C I S I O N

SERENO, *J.*:

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court, with application for Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction. The Petition seeks to annul and set aside Resolution No. 10-482 of the House of Representatives Electoral Tribunal (HRET) in HRET Case No. 10-009 (EP) entitled "*Eufrocino C. Codilla, Jr. v. Lucy Marie Torres-Gomez (Fourth District, Leyte)*," which denied the Motion for Reconsideration filed by petitioner.

Statement of the Facts and the Case

On 30 November 2009, Richard I. Gomez (Gomez) filed his Certificate of Candidacy for representative of the Fourth Legislative District of Leyte under the Liberal Party of the Philippines. On even date, private respondent Codilla Jr. filed his Certificate of Candidacy for the same position under Lakas Kampi CMD.

On 6 December 2009, Buenaventura O. Juntilla (Juntilla), a registered voter of Leyte, filed a Verified Petition for Gomez's disqualification with the Commission on Elections (COMELEC) First Division on the ground that Gomez lacked the residency requirement for a Member of the House of Representatives.

In a Resolution dated 17 February 2010, the COMELEC First Division granted Juntilla's Petition and disqualified Gomez. On 20 February 2010, the latter filed a Motion for Reconsideration with the COMELEC *En Banc*, which dismissed it on 4 May 2010, six days before the May 2010 national and local elections. The dispositive portion of the COMELEC's Resolution[1] is worded as follows:

> WHEREFORE, premises considered, the motion for reconsideration filed by the Respondent is DISMISSED for lack of merit. The Resolution of the Commission (First Division) is hereby AFFIRMED.
>
> SO ORDERED.[2]

On the same date, Gomez filed a Manifestation with the COMELEC *En Banc*, alleging that, without necessarily admitting the allegations raised by Juntilla, he was accepting the aforementioned Resolution with finality, in order to enable his substitute to facilitate the filing of the necessary documents for substitution.

On 5 May 2010, petitioner Lucy Marie Torres-Gomez filed her Certificate of Candidacy as substitute for the position of

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[1] *Rollo*, pp. 131-142.

[2] *Id.* at 141.

representative of the Fourth Congressional District for the Province of Leyte vice Gomez, her husband.

On 6 May 2010, Juntilla filed a Counter-Manifestation with the COMELEC *En Banc*. At the same time, he wrote a letter to Atty. Ferdinand T. Rafanan, Director of the Law Department of the COMELEC, alleging the invalidity of the proposed substitution of Gomez by petitioner.

On 8 May 2010, the COMELEC *En Banc* issued Resolution No. 8890, which approved and adopted the recommendation of its Law Department to allow petitioner as a substitute candidate for Gomez for representative of the Fourth Legislative District of Leyte.

On 9 May 2010, Juntilla filed an Extremely Urgent Motion for Reconsideration of the above COMELEC Resolution No. 8890. Pending resolution of his motion, the national and local elections were conducted as scheduled.

After the casting, counting and canvassing of votes in the said elections, petitioner emerged as the winner with 101,250 votes or a margin of 24,701 votes over private respondent Codilla, who obtained 76,549 votes.

On 11 May 2010, Codilla filed an Urgent Ex-Parte Motion to Suspend the Proclamation of Substitute Candidate Lucy Marie T. Gomez (vice Richard I. Gomez) as the Winning Candidate of the May 10, 2010 Elections for the Fourth Congressional District of Leyte.

On the same date, Juntilla filed an Extremely Urgent Motion to resolve the pending Motion for Reconsideration filed on 9 May 2010 relative to Resolution No. 8890 and to immediately order the Provincial Board of Canvassers of the Province of Leyte to suspend the proclamation of petitioner as a Member of the House of Representatives, Fourth District, Province of Leyte.

On 12 May 2010, petitioner was proclaimed the winning candidate for the congressional seat of the Fourth District of Leyte.

Accordingly, on 21 May 2010, private respondent Codilla filed a Petition with public respondent HRET against petitioner docketed as HRET Case No. 10-009 (Election Protest).

On 2 July 2010, petitioner filed her Verified Answer to Codilla's Election Protest questioning the alleged lack of the required Verification and praying for its dismissal.

On 8 July 2010, Codilla filed a Reply to petitioner's Verified Answer.

In an Order issued by public respondent HRET, the instant case was set for preliminary conference on 2 September 2010.

On 1 September 2010, unsatisfied with the Order of the HRET, petitioner filed an Urgent Manifestation and Motion, persistent in her position that Codilla's Election Protest should be dismissed based on the grounds raised in her Verified Answer. She also prayed for the deferment of the preliminary conference until after the resolution of the said motion.

On 9 September 2010, the HRET issued the assailed Resolution No. 10-282[3] resolving the Urgent Manifestation and Motion filed by petitioner, the dispositive portion of which provides:

> The Tribunal **NOTES** the *Urgent Manifestation and Motion* filed on September 1, 2010 by the protestee; **REITERATES** its ruling in Resolution No. 10-160 dated July 29, 2010 that the protest cannot be considered insufficient in form, considering that the examination of the original copy of the protest filed before the Tribunal had revealed the existence of the required verification; and **DENIES** the respondent's motion for deferment of the preliminary conference scheduled on September 2, 2010.[4]

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[3] *Rollo*, pp. 29-30. The HRET members who were present when Resolution No. 10-282 was passed were Justice Conchita Carpio Morales, chairperson; and Justice Antonio Eduardo B. Nachura, Representative (Rep.) Franklin P. Bautista, Rep. Rufus B. Rodriguez, Rep. Ma. Theresa B. Bonoan-David, and Rep. Rodolfo B. Albano, Jr., members.

[4] *Id.* at 29; emphasis and italics in the original.

Accordingly, on 30 September 2010, petitioner filed with public respondent HRET a Motion for Reconsideration of the above Resolution No. 10-282.

On 22 November 2010, public respondent HRET issued Resolution No. 10-482[5] denying petitioner's Motion for Reconsideration, ruling as follows:

> WHEREFORE, the Tribunal **DENIES** the instant motion for reconsideration as regards the issues pertaining to absence/defect of the verification and propriety of the election protest; and **DIRECTS** the protestant to have his verification properly notarized.[6]

Thereafter, petitioner filed the instant Petition for *Certiorari*[7] dated 7 February 2011. The Petition raises the following grounds:

A.

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO DISMISS THE ELECTION PROTEST DESPITE AN ADMITTEDLY DEFECTIVE VERIFICATION.

B.

THE PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT ALLOWED THE PROTESTANT TO RAISE ISSUES ON QUALIFICATION OF CANDIDATES IN AN ELECTION PROTEST.[8]

Petitioner claims that there was a material defect in the Verification of the Election Protest, a requirement explicitly

[5] *Id.* at 31-33. The HRET members who were present when Resolution No. 10-482 was passed were Justice Conchita Carpio Morales, chairperson; and Justice Antonio Eduardo B. Nachura, Justice Arturo D. Brion, Rep. Franklin P. Bautista, Rep. Rufus B. Rodriguez, Rep. Justin Marc SB Chipeco, Rep. Ma. Theresa B. Bonoan-David, and Rep. Rodolfo B. Albano, Jr., members.

[6] *Id.* at 33; emphasis and italics in the original.

[7] *Id.* at 3-24.

[8] *Id.* at 10.

provided for in Rule 16 of the 2004 Rules of the House of Representatives Electoral Tribunal (HRET Rules).[9] The verification being a mandatory requirement, the failure to comply therewith is a fatal defect that affects the very jurisdiction of the HRET.

On the second issue, petitioner claims that what is in question in the Election Protest is her qualification as a Member of the House of Representatives, and not the number of votes cast. Her qualification is allegedly not a proper ground for an election protest, in which the issues should be the appreciation of ballots and the correctness and number of votes of each candidate.

On 15 February 2011 this Court required respondents to file their comment on the Petition. Thereafter, Codilla filed his Comment/Opposition dated 28 April 2011. In his Comment, he argues that there was no grave abuse of discretion on the part of the HRET in issuing the assailed Resolutions. He clarifies that the Election Protest that he filed contained a validly executed Verification and Certification of Non-Forum Shopping (Verification).[10] However, the defect that petitioner points to is the portion of the jurat of the Verification, which states:

> Subscribed and sworn to before me this __ day of May 2010 at _____. Affiant personally and exhibited to me his (1) License ID Card with Card No. H03-80-002135 issued by LTO on January 16, 2009 (2) Philippine Passport No. XX4793730 issued on October

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[9] Rule 16 provides:

RULE 16. *Election Protest*. — A verified petition contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten (10) days after the proclamation of the winner. The party filing the protest shall be designated as the protestant while the adverse party shall be known as the protestee.

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An unverified election protest shall not suspend the running of the reglementary period to file the protest.

[10] *Rollo*, p. 93.

20, 2009 valid until October 19, 2014, he, being the same person herein who executed the foregoing document thereof.[11]

The date "May 21 2009" was stamped on the first blank in "__ day of May 2010." "May 21 2010" was written with a pen over the stamped date "May 21 2009" and countersigned by the notary public. Codilla claims that the date of the Verification was a mere innocuous mistake or oversight, which did not warrant a finding that the Verification was defective; much less, fatally defective. He claims he should not be faulted for any alleged oversight that may have been committed by the notary public. Further, the same argument holds true with respect to the absence of the Mandatory Continuing Legal Education (MCLE) Compliance Number of the notary public, as well as the overdue Professional Tax Receipt (PTR) indicated in the notarial stamp. In any case, the insufficiency of the Verification was not fatal to the jurisdiction of the HRET.

With respect to the second issue, Codilla argues that the issues in the Election Protest do not pertain to petitioner's qualification, but to the casting and counting of votes. He claims that his Election Protest contests the declaration by the Board of Canvassers that the 101,250 votes should be counted in favor of petitioner and be credited to him as these should have instead been declared as stray votes.

Thereafter, public respondent HRET filed its Comment[12] on the Petition dated 5 May 2011. In its Comment, the HRET claims that it did not commit grave abuse of discretion when it took cognizance of Codilla's Election Protest despite an alleged absence/defect in the verification. After all, an unverified petition differs from one which contains a defective verification, such as in this case. A defective verification is merely a formal defect which does not affect the jurisdiction of the tribunal. In any case, the summary dismissal of an Election Protest, as well as the allowance of its amendments in matters of form, is sanctioned by the HRET Rules.

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[11] *Id.*

[12] *Rollo*, pp. 201-232.

The HRET further argues that it did not commit grave abuse of discretion when it took cognizance of the Election Protest. The issue raised in the Election Protest was the validity of petitioner's proclamation, in view of her alleged invalid substitution. This is a matter that is addressed to the sound judgment of the HRET.

On 7 June 2011, this Court, among others, required petitioner to file a reply to Codilla's Comment. Petitioner later filed her Reply dated 15 August 2011, citing an additional ground for considering the Verification as defective. She claimed that Codilla, a resident of Ormoc City, could not have possibly appeared before a notary public in Quezon City; and that he failed to prove that he was indeed in Quezon City when he supposedly verified the Election Protest.

The Court's Ruling

The Petition is dismissed for failure to show any grave abuse of discretion on the part of the HRET.

On the Allegedly Defective Verification

While the existence of the Verification is not disputed, petitioner notes three alleged defects. First, the Election Protest was filed on 21 May 2010, but the Verification was allegedly subscribed and sworn to on 21 May 2009.[13] Second, Codilla, a resident of Ormoc City, could not have possibly appeared personally before the notary public in Quezon City.[14] Third, in the notarial stamp, the date of expiration of the notarial commission was handwritten while all other details were stamped; the PTR indicated was issued in 2005; there was no MCLE Compliance Number as required by Bar Matter No. 1922.[15] Petitioner claims that due to the lack of a proper verification, the Election Protest should have been treated as an unsigned pleading and must be dismissed.

[13] Petitioner's Reply dated 15 August 2011, *rollo*, p. 361.

[14] *Rollo*, p. 362.

[15] *Rollo*, pp. 362-363.

The alleged defects of the Verification are more apparent than real.

With respect to the date of the notarization, it is clear that the stamped date "2009" was a mere mechanical error. In fact, the notary public had superimposed in writing the numbers "10" and countersigned the alteration. Thus, this error need not be overly magnified as to constitute a defect in the Verification.

With respect to the second alleged defect, there is a presumption that official duty has been regularly performed with respect to the jurat of the Verification, wherein the notary public attests that it was subscribed and sworn to before him or her, on the date mentioned thereon.[16] Official duties are disputably presumed to have been regularly performed. Thus, contrary to petitioner's allegation, there was no need for Codilla to "attach his plane ticket to prove he flew from Ormoc City to Manila."[17]

Further, to overcome the presumption of regularity, clear and convincing evidence must be presented.[18] Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarized document lies on the party contesting the execution.[19] Thus, petitioner's contention that she "had reliable information that [Codilla] was in Ormoc City on the date indicated in the Verification" cannot be considered as clear and convincing evidence to rebut the presumption that the document was duly executed and notarized.

With respect to the third alleged defect, the fact that some portions of the stamp of the notary public were handwritten and some were stamped does not, in itself, indicate any defect. Further, Bar Matter No. 1922 merely requires lawyers to indicate

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

[17] *Rollo,* p. 362.

[18] *Bote v. Eduardo*, A.M. No. MTJ-04-1524, 11 February 2005, 451 SCRA 9.

[19] *Calma v. Santos*, G.R. No. 161027, 22 June 2009, 590 SCRA 359.

in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, whichever is applicable – for the immediately preceding compliance period. Clearly, the regulation does not apply to notarial acts. With respect to the PTR number which was dated 5 years prior to the date of notarization, the deficiency merely entails the potential administrative liability of the notary public.[20]

In any case, there was no grave abuse of discretion on the part of the HRET in denying petitioner's Motion to Dismiss the Election Protest and directing Codilla to have his Verification properly notarized.

It has been consistently held that the verification of a pleading is only a formal, not a jurisdictional, requirement. The purpose of requiring a verification is to secure an assurance that the allegations in the petition are true and correct, not merely speculative. This requirement is simply a condition affecting the form of pleadings, and noncompliance therewith does not necessarily render the pleading fatally defective.[21]

This Court has emphasized that in this species of controversy involving the determination of the true will of the electorate, time is indeed of paramount importance. An election controversy, by its very nature, touches upon the ascertainment of the people's choice as gleaned from the medium of the ballot. For this reason, an election protest should be resolved with utmost dispatch, precedence and regard for due process. Obstacles and technicalities that fetter the people's will should not stand in the way of a prompt termination of election contests.[22] Thus, rules on the verification of protests should be liberally construed.

At this point, it is pertinent to note that such liberalization of the rules was also extended to petitioner. A perusal of the

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[20] Section 1, Rule XI, 2004 Rules of Notarial Practice.

[21] *Alde v. Bernal*, G.R. No. 169336, 18 March 2010, 616 SCRA 60.

[22] *Panlilio v. COMELEC*, G.R. No. 181478, 15 July 2009, 593 SCRA 139.

Verification and Certification attached to this Petition shows she attests that the contents of the Petition "are true and correct of [her] own personal knowledge, belief and based on the records in [her] possession."[23] Section 4, Rule 7 of the Rules of Court provides that a pleading required to be verified which contains a verification based on "information and belief" or "knowledge, information and belief," shall be treated as an unsigned pleading. A pleading, therefore, wherein the verification is based merely on the party's knowledge and belief – such as in the instant Petition – produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied.[24]

On the Propriety of the Election Protest

Codilla's Election Protest contests the counting of 101,250 votes in favor of petitioner. He claims that the denial of the Certificate of Candidacy of Gomez rendered the latter a non-candidate, who therefore could not have been validly substituted, as there was no candidacy to speak of.

It bears stressing that the HRET is the sole judge of all contests relating to the election, returns, and qualifications of the members of the House of Representatives. This exclusive jurisdiction includes the power to determine whether it has the authority to hear and determine the controversy presented; and the right to decide whether there exists that state of facts that confers jurisdiction, as well as all other matters arising from the case legitimately before it.[25] Accordingly, the HRET has the power to hear and determine, or inquire into, the question of its own jurisdiction – both as to parties and as to subject matter; and to decide all questions, whether of law or of fact, the decision of which is necessary to determine the question of jurisdiction.[26]

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[23] *Rollo*, p. 25.

[24] *Negros Oriental Planters Association, Inc. (NOPA) v. Presiding Judge of RTC-Negros Occidental, Br. 52, Bacolod City*, G.R. No. 179878, 24 December 2008, 575 SCRA 575.

[25] *Roces v. House of Representatives Electoral Tribunal*, 506 Phil. 654 (2005).

[26] *Id.*

Thus, the HRET had the exclusive jurisdiction to determine its authority and to take cognizance of the Election Protest filed before it.

Further, no grave abuse of discretion could be attributed to the HRET on this score. An election protest proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds and irregularities. Its purpose is to determine who between them has actually obtained the majority of the legal votes cast and is entitled to hold the office.[27] The foregoing considered, the issues raised in Codilla's Election Protest are proper for such a petition, and is within the jurisdiction of the HRET.

WHEREFORE, the instant Petition for *Certiorari* is **DISMISSED**. The Application for a Temporary Restraining Order and/or Writ of Preliminary Prohibitory Injunction is likewise **DENIED**. Resolution Nos. 10-282 and 10-482 of the House of Representatives Electoral Tribunal are hereby **AFFIRMED.**

SO ORDERED.

Corona, C.J., Carpio, Leonardo-de Castro, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., J., no part, chairperson of HRET.

Brion, J., no part, previous member of HRET.

Peralta and *Bersamin, JJ.,* no part, members of HRET.

Del Castillo, J., on leave.

[27] *Lokin v. COMELEC*, G.R. Nos. 179431-32, 22 June 2010, 621 SCRA 385.

INDEX

INDEX

ACTIONS

Moot and academic cases — An issue or a case becomes moot and academic when it ceases to present a justiciable controversy, so that a determination of the issue would be without practical use and value; in such cases, there is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition. (Nieto, Jr. *vs*. Securities and Exchange Commission [SEC], G.R. No. 175263, March 14, 2012) p. 261

— Courts generally decline jurisdiction over a moot and academic case or outrightly dismiss it on the ground of mootness; exceptions. (Fortun and Angeles *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Carpio, J., dissenting opinion*) p. 526

ADMINISTRATIVE LAW

Administrative issuances — Enjoy the presumption of legalities but are still subject to the interpretation by the Supreme Court pursuant to its power to interpret the law. (Land Bank of the Phils. *vs*. Obias, G.R. No. 184406, March 14, 2012) p. 296

ADMINISTRATIVE OFFENSES

Grave misconduct — Proper penalty is dismissal even for the first offense. (Dela Cruz *vs*. Malunao, A.M. No. P-11-3019, March 20, 2012) p. 493

— Soliciting money from litigants with a promise of a favorable decision constitutes grave misconduct which merits the penalty of dismissal. *(Id.)*

Gross negligence — Refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected;

it is the omission of that care which even inattentive and thoughtless men never fail to take on their own property; in cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable. (Fernandez *vs*. Office of the Ombudsman, G.R. No. 193983, March 14, 2012) p. 377

ADMINISTRATIVE PROCEEDINGS

Weight of evidence required — In administrative investigations, the weight of evidence required is substantial evidence; the court is not bound by technical rules of procedure and evidence. (Dela Cruz *vs*. Malunao, A.M. No. P-11-3019, March 20, 2012) p. 493

ALIBI

Defense of — The requirements of time and place must be strictly met for the defense of alibi to prosper. (People of the Phils. *vs*. Castro *y* Peralta, G.R. No. 187073, March 14, 2012) p. 319

ANTI-RAPE ACT OF 1997 (R. A. NO. 8353)

Violation of — Degree of resistance in rape cases, discussed. (People of the Phils. *vs*. Sabadlab *y* Bayquel, G.R. No. 175924, March 14, 2012) p. 269

APPEALS

Appeal to the RTC — The decision of the RTC in an unlawful detainer case in the exercise of its appellate jurisdiction is immediately executory. (ALPA-PCM, Inc. *vs*. Bulasao, G.R. No. 197124, March 19, 2012) p. 451

Appeals in labor cases — The decision of the labor arbiter reinstating a dismissed employee, insofar as the reinstatement aspect is concerned, shall immediately be executory pending appeal. (C. Alcantara & Sons, Inc. *vs*. CA, G.R. No. 155109, March 14, 2012) p. 174

Appeals under Rule 42 of the Rules of Court — Governs appeal to the Court of Appeals of the Regional Trial Court's (RTC) decision rendered in the exercise of its appellate jurisdiction; when RTC may order execution pending appeal. (ALPA-PCM, Inc. *vs*. Bulasao, G.R. No. 197124, March 19, 2012) p. 451

Appellant's brief — Characterization of the rules concerning the filing thereof as insignificant and harmless technicalities is downright improper. (MCA-MBF Countdown Cards Phils. Inc. *vs*. MBF Card International Limited, G.R. No. 173586, March 14, 2012) p. 246

Factual findings of construction arbitrators — Final and conclusive and not reviewable on appeal; exceptions. (F.F. Cruz & Co., Inc. *vs*. HR Construction Corp., G.R. No. 187521, March 14, 2012) p. 330

Non-compliance with requirements — Failure to indicate the page references to the records of the case and to pay correct docket fees is fatal to the appeal. (Rizal *vs*. Naredo, G.R. No. 151898, March 14, 2012) p. 154

Petition for review on certiorari to the Supreme Court under Rule 45 — A re-examination of factual findings cannot be done through a petition for review on certiorari under Rule 45 of the Rules of Court; the Supreme Court is not a trier of facts and reviews only questions of law; exception. (Serra *vs*. Mumar, G.R. No. 193861, March 14, 2012) p. 363

(De Leon Llenado *vs*. People of the Phils., G.R. No. 193279, March 14, 2012) p. 357

(Lumayog *vs*. Sps. Leonard and Corazon Pitcock, G.R. No. 169628, March 14, 2012) p. 233

Question of law — Where an interpretation of the true agreement between the parties is involved in an appeal, the appeal is in effect an inquiry of the law between the parties; its interpretation necessarily involves a question of law. (F.F. Cruz & Co., Inc. *vs*. HR Construction Corp., G.R. No. 187521, March 14, 2012) p. 330

ATTORNEYS

Attorney-client relationship — A lawyer-client relationship is highly fiduciary in nature and it requires a high standard of conduct and demands utmost fidelity, candor, fairness, and good faith. (Cerdan *vs*. Atty. Gomez, A.C. No. 9154 [Formerly CBD No. 07-1965], March 19, 2012) p. 418

— Client bound by the negligence of his counsel in submitting the required pleadings within the period that the rules mandated. (Phil. Tourism Authority *vs*. Phil. Golf Devt. & Equipment, Inc., G.R. No. 176628, March 19, 2012) p. 429

Code of Professional Responsibility — Duty of lawyer to hold in trust all moneys and properties of his client that may come into his profession; that there is no lawyer-client relationship, not an exonerating factor for violation thereof. (Nevada *vs*. Atty. Casuga, A.C. No. 7591, March 20, 2012) p. 463

(Cerdan *vs*. Atty. Gomez, A.C. No. 9154. (Formerly CBD No. 07-1965), March 19, 2012) p. 418

Grave professional misconduct — Professional misconduct involving the misuse of constitutional provisions for the purpose of insulting members of the Supreme Court is a serious breach of the rigid standards that a member of good standing of the legal profession must faithfully comply with. (*Re*: Subpoena Duces Tecum dated January 11, 2010 of Acting Director Aleu A. Amante, PIAB-C, Office of the Ombudsman, A.M. No. 10-1-13-SC, March 20, 2012) p. 489

Gross misconduct — Defined. (Nevada *vs*. Atty. Casuga, A.C. No. 7591, March 20, 2012) p. 463

MCLE Certificate of Compliance or Exemption — The requirement that the lawyers must indicate in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE certificate of compliance

or certificate of exemption, for the immediately preceding compliance period, does not apply to notarial acts. (Congresswoman Lucy Marie Torres-Gomez *vs*. Codilla, Jr., G.R. No. 195191, March 20, 2012) p. 632

CERTIORARI

Petition for — Cannot be resorted to when the remedy of appeal is available although there are cases when certiorari may be allowed despite the availability of appeal, such as: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; and (d) when the questioned order amounts to an oppressive exercise of judicial authority. (Phil. Tourism Authority *vs*. Phil. Golf Devt. & Equipment, Inc., G.R. No. 176628, March 19, 2012) p. 429

CERTIORARI AND PROHIBITION

Petition for — Proper remedy to assail an interlocutory order. (Australian Professional Realty, Inc. *vs*. Mun. of Padre Garcia Batangas Province, G. R. No. 183367, March 14, 2012) p. 283

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Chain of custody and integrity of the seized illegal items, duly established. (People of the Phils. *vs*. Posada *y* Urbano, G.R. No. 194445, March 12, 2012) p. 20

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*. Posada *y* Urbano, G.R. No. 194445, March 12, 2012) p. 20

Illegal sale of dangerous drugs — Where the accused was charged of illegal sale of twelve (12) sachets of shabu and what was proved was the sale of only one (1) sachet of shabu, the accused must be acquitted; reasons. (People of the Phils. *vs*. Posada y Urbano, G.R. No. 194445, March 12, 2012) p. 20

CONSPIRACY

Existence of — Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. (People of the Phils. *vs*. Talaro, G.R. No. 175781, March 20, 2012) p. 507

— Once conspiracy is shown, the extent or modality of participation of each of the accused becomes secondary, since all the conspirators are principals. (People of the Phils. *vs*. Castro y Peralta, G.R. No. 187073, March 14, 2012) p. 319

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC)

Arbitration costs — Generally adjudged against the losing party, but courts have discretion, for special reasons, to decree otherwise. (F.F. Cruz & Co., Inc. vs. HR Construction Corp., G.R. No. 187521, March 14, 2012) p. 330

Jurisdiction — Executive Order (E.O.) No. 1008 vests upon the CIAC original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines; the arbitral award of CIAC shall be final and unappealable except on questions of law. (F.F. Cruz & Co., Inc. *vs*. HR Construction Corp., G.R. No. 187521, March 14, 2012) p. 330

CONTRACTS

Doctrine of waiver — Elucidated. (F.F. Cruz & Co., Inc. *vs*. HR Construction Corp., G.R. No. 187521, March 14, 2012) p. 330

Interpretation of — If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control. (F.F. Cruz & Co., Inc. *vs*. HR Construction Corp., G.R. No. 187521, March 14, 2012) p. 330

Perfected contracts — When there is as of yet no meeting of the minds as to the subject matter or the cause of consideration of the contract being negotiated, the same cannot be considered to have been perfected. (MCA-MBF Countdown Cards Phils. Inc. *vs*. MBF Card International Limited, G.R. No. 173586, March 14, 2012) p. 246

COURTS

Jurisdiction of — Jurisdiction once acquired is not lost but continues until the case is finally terminated; even assuming arguendo that some errors attended the assignment of the case, the Court through its second Division cannot be considered by the majority as having lost jurisdiction by that purported lapse and thus, enable a fourth review. (*In Re*: Letters of Atty. Estelito P. Mendoza *re*: G.R. No. 178083–Flight Attendants and Stewards Association of the Philippines [FASAP] *vs*. Philippine Airlines, Inc. [PAL], A.M. No. 11-10-1-SC, March 13, 2012; *Sereno, J., dissenting opinion*) p. 55

Powers — The inherent power of courts to control their proceedings must be exercised without violating court procedure or disregarding one's basic constitutional right to procedural due process. (Aberca *vs*. Maj. Gen. Fabian Ver, G.R. No. 166216, March 14, 2012) p. 207

DAMAGES

Actual damages — Loss of earning capacity is in the nature of actual damages which as a rule must be established by documentary evidence; exception. (Serra *vs*. Mumar, G.R. No. 193861, March 14, 2012) p. 363

Attorney's fees — Awarded in view of the length of time that the case has been pending. (Baño *vs*. Bachelor Express, Inc., G.R. No. 191703, March 12, 2012) p. 12

Civil indemnity — Proper for death resulting from negligence. (Mendoza *vs*. Casumpang, G.R. No. 197987, March 19, 2012) p. 459

Exemplary damages — May be granted if the defendant acted with gross negligence. (Mendoza *vs*. Casumpang, G.R. No. 197987, March 19, 2012) p. 459

(Baño *vs*. Bachelor Express, Inc., G.R. No. 191703, March 12, 2012) p. 12

— May be imposed in criminal cases as part of the civil liability when an aggravating circumstance, whether ordinary or qualifying, attended the commission of the crime. (People of the Phils. *vs*. Sabadlab *y* Bayquel, G.R. No. 175924, March 14, 2012) p. 269

Moral damages — Award thereof not proper where damage to the vehicle was not shown to have been made willfully; temperate damages, awarded. (Baño *vs*. Bachelor Express, Inc., G.R. No. 191703, March 12, 2012) p. 12

DEFAULT

Judgment by default — Generally looked upon with disfavor and are frowned upon as contrary to public policy. (Aberca *vs*. Maj. Gen. Fabian Ver, G.R. No. 166216, March 14, 2012) p. 207

DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO. 13, AS AMENDED

Just compensation — The payment of interest shall be up to the time of full payment and not up to actual payment; rationale. (Land Bank of the Phils. *vs*. Obias, G.R. No. 184406, March 14, 2012) p. 296

ELECTIONS

Automated Election System (AES) Contract — Strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds and irregularities. (Congresswoman Lucy Marie Torres-Gomez *vs*. Codilla, Jr., G.R. No. 195191, March 20, 2012) p. 632

EMINENT DOMAIN

Just compensation — The determination of just compensation is a judicial function. (Land Bank of the Phils. *vs*. Obias, G.R. No. 184406, March 14, 2012) p. 296

EMPLOYMENT, TERMINATION OF

Burden of proof in termination cases — The employer has the burden to prove by substantial evidence that the dismissal is for a just and valid cause. (Norkis Distributors, Inc. *vs*. Descallar, G.R. No. 185255, March 14, 2012) p. 306

Illegal dismissal — An illegally dismissed employee is entitled to back wages and reinstatement; explained. (Norkis Distributors, Inc. *vs*. Descallar, G.R. No. 185255, March 14, 2012) p. 306

Loss of trust and confidence — The basic premise for dismissal on the ground of loss of confidence is that the employee concerned holds a position of trust and confidence; loss of trust and confidence must be based on a willful breach. (Norkis Distributors, Inc. *vs*. Descallar, G.R. No. 185255, March 14, 2012) p. 306

Separation pay — Nature, discussed; cannot be granted when just causes for terminating the services of an employee exist; exceptions. (C. Alcantara & Sons, Inc. *vs*. CA, G.R. No. 155109, March 14, 2012) p. 174

EVIDENCE

Flight of the accused — Flight indicates a guilty conscience and an attempt to evade the arms of the law. (People of the Phils. *vs*. Talaro, G.R. No. 175781, March 20, 2012) p. 507

FORCIBLE ENTRY AND UNLAWFUL DETAINER

Action for — The grant of the certificate of land ownership award to petitioner does not exempt him from the coverage of Rule 70 of the Rules of Court; reason. (Lumayog *vs*. Sps. Leonard and Corazon Pitcock, G.R. No. 169628, March 14, 2012) p. 233

FORUM SHOPPING

Essence — There is forum shopping when the elements of litis pendentia are present, i.e., between actions pending before courts, there exist: (1) identity of parties, or at least such parties as represent the same interests in both actions, (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (3) the identity of the two preceding particulars is such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration. (Goodland Co., Inc. *vs*. Asia United Bank, G.R. No. 195546, March 14, 2012) p. 391

HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET)

Jurisdiction — HRET has the exclusive jurisdiction to determine its authority and to take cognizance of the election protest filed before it. (Congresswoman Lucy Marie Torres-Gomez *vs*. Codilla, Jr., G.R. No. 195191, March 20, 2012) p. 632

INJUNCTIONS

Preliminary injunction — A writ of preliminary injunction is issued to preserve the status quo ante, upon the applicant's showing of two important requisite conditions, namely: (1) the right to be protected exists prima facie, and (2) the acts sought to be enjoined are violative of that right. (PNB *vs*. Castalloy Technology Corp., G.R. No. 178367, March 19, 2012) p. 438

Writ of preliminary injunction and TRO — They are injunctive reliefs and preservative remedies for the protection of substantive rights and interests; requisites. (Australian Professional Realty, Inc. *vs*. Mun. of Padre Garcia Batangas Province, G.R. No. 183367, March 14, 2012) p. 283

INTEREST

Rate of interest — In the absence of stipulation, the rate of interest shall be 12% per annum computed from date of default. (De Leon Llenado *vs*. People of the Phils., G.R. No. 193279, March 14, 2012) p. 357

JUDGMENTS

Annulment of judgment — Not a proper remedy where appeal is the appropriate and available remedy. (Phil. Tourism Authority *vs*. Phil. Golf Dev't. & Equipment, Inc., G.R. No. 176628, March 19, 2012) p. 429

Collegial rulings — In the absence of any clear personal malicious participation, it is neither correct nor proper to hold the Chief Justice, as the presiding officer of the Court en banc, personally accountable for the collegial ruling of the Court. (In Re: Letters of Atty. Estelito P. Mendoza re: G.R. No. 178083 – Flight Attendants and Stewards Association of the Philippines [FASAP] *vs*. Philippine Airlines, Inc. [PAL], A.M. No. 11-10-1-SC, March 13, 2012) p. 55

Effect of — The execution of a judgment which has attained finality cannot be restrained by injunction; exceptions. (Australian Professional Realty, Inc. *vs*. Mun. of Padre Garcia Batangas Province, G. R. No. 183367, March 14, 2012) p. 283

Finality of — The majority's proposition to conduct another raffle and throw the case wide open for another review is not only riddled with operational inefficiency, but likewise opens all final decisions of any Division to second-guessing by members of the two other Divisions. (*In Re*: Letters of Atty. Estelito P. Mendoza *re*: G.R. No. 178083 – Flight Attendants and Stewards Association of the Philippines [FASAP] vs. Philippine Airlines, Inc. [PAL], A.M. No. 11-10-1-SC, March 13, 2012) p. 55

Immutability and inalterability of a final judgment — The principle of immutability of final judgment is better protected and upheld by disallowing review of a final decision by

a Division on a prohibited second motion for reconsideration (MR) based solely on the retirement of the ponente or change in the composition of the Division. (*In Re*: Letters of Atty. Estelito P. Mendoza *re*: G.R. No. 178083–Flight Attendants and Stewards Association of the Philippines [FASAP] vs. Philippine Airlines, Inc. [PAL], A.M. No. 11-10-1-SC, March 13, 2012; *Sereno, J., dissenting opinion*) p. 55

Res judicata — Where an action for partition is dismissible on the ground of res judicata; an approved compromise agreement has the force of *res judicata*. (Rizal *vs*. Naredo, G.R. No. 151898, March 14, 2012) p. 154

Writ of execution — Issuance of a writ of execution is ministerial; no one but the court can amend what was granted in an order of execution, and its Clerk of Court has no other duty but to issue a writ in accordance with the dispositive portion. (*Re*: Complaint filed by [RET.] MCTC Judge Rodolfo B. Garcia against 18th Div. Clerk of Court Atty. May Faith L. Trumata-Rebotiaco, CA, Cebu City, A.M. CA-12-25-P [Formerly A.M. OCA IPI No. 11-183-CA-P], March 20, 2012) p. 480

— Should strictly conform to every essential particular of the promulgated judgment as indicated in the dispositive portion thereof; in case of conflict between the dispositive portion and opinion of a court contained in the body of the decision, the dispositive portion is controlling. *(Id.)*

JUDICIAL REVIEW

Concept — When the issues raised are of transcendental importance, the Court may relax the standing requirement and allow a suit to prosper even where there is no direct injury to the party claiming the right of judicial review. (Fortun and Angeles *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Carpio, J., dissenting opinion*) p. 526

— Where no conflict ensues, Congress' inaction on the President's declaration of martial law and suspension of the writ of habeas corpus does not preclude the Court from ruling on the sufficiency of the factual basis thereof. *(Id.)*

— Whether the President exercised her commander-in-chief powers in accordance with the Constitution presents a transcendental issue fully imbued with public interest. *(Id.)*

Locus standi — Any declaration of martial law or suspension of the writ of habeas corpus falling short of the constitutional requirements must be stricken down as a matter of constitutional duty by the Supreme Court. (Fortun and Angeles *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Carpio, J., dissenting opinion*) p. 526

— Citizen who can challenge the declaration of martial law or suspension of the privilege of the writ of habeas corpus need not be a taxpayer; rationale. *(Id.)*

— Defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. *(Id.)*

— The determination by the Supreme Court of the sufficiency of the factual basis of the declaration of martial law or suspension of the writ of habeas corpus is not essential to the resolution of issues concerning the validity of related acts that government forces may have committed during the emergency. *(Id.)*

— The fact that every declaration of martial law or suspension of the privilege of the writ of habeas corpus will involve its own set of circumstances peculiar to the necessity of time, events or participants should not preclude the Court from reviewing the President's use of such emergency powers. *(Id.)*

— The issue on the constitutionality of the President's declaration of martial law and suspension of the writ of habeas corpus pursuant to Proclamation No. 1959 requires the formulation of controlling principles for the guidance of all sectors concerned, most especially the executive which is in charge of enforcing the emergency measures. *(Id.)*

— The President's lifting of the declaration of martial law or suspension of the writ of habeas corpus before the Supreme Court could decide the case within 30-day period does not operate to divest the latter of its jurisdiction over the case. *(Id.)*

— The Supreme Court's review power is neither sequential nor joint with the review power of Congress. *(Id.)*

Moot and academic rule — The Court is not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it; exceptions. (Fortun and Angeles *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Velasco, Jr., J., dissenting opinion*) p. 526

JUDICIARY REORGANIZATION ACT (B.P. BLG. 129)

Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts — Have delegated jurisdiction in cadastral and land registration cases. (Rep of the Phils. *vs*. Bantigue Point Dev. Corp., G.R. No. 162322, March 14, 2012) p. 192

JURISDICTION

Lack of jurisdiction — Questions of jurisdiction may be cognizable even if raised for the first time on appeal. (Rep of the Phils. *vs*. Bantigue Point Dev. Corp., G.R. No. 162322, March 14, 2012) p. 192

LACHES

Application — Where the parties slept on their rights under the partition agreement, they cannot enforce their rights therein through an entirely new action for partition. (Rizal *vs*. Naredo, G.R. No. 151898, March 14, 2012) p. 154

Principle of — Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it. (Rep of the Phils. *vs*. Bantigue Point Dev. Corp., G.R. No. 162322, March 14, 2012) p. 192

LEGAL FEES

Payment of — The exemption of cooperatives from payment of court and sheriff's fees no longer stands; cooperatives can no longer invoke Republic Act No. 6938, as amended by Republic Act No. 9520, as basis for exemption from the payment of legal fees. (*Re*: In the Matter of Clarification of Exemption from Payment of All Court and Sheriff's Fees of Cooperatives Duly Registered in Accordance with Republic Act No. 9520 Otherwise Known as the Philippine Cooperative Code of 2008, Perpetual Help Community Cooperative [PHCCI], A.m. No. 12-2-03-0, March 13, 2012) p. 48

MORTGAGES

Foreclosure of mortgage — A necessary consequence of non-payment of mortgage indebtedness. (PNB *vs*. Castalloy Technology Corp., G.R. No. 178367, March 19, 2012) p. 438

— When writ against foreclosure of mortgage may be issued. *(Id.)*

MURDER

Commission of — Defined. (People of the Phils. *vs*. Talaro, G.R. No. 175781, March 20, 2012) p. 507

PLEADINGS

Filing and service of pleadings, judgments and other papers — Rules on modes of service are mandatory in nature and, hence, should be strictly followed. (Aberca *vs*. Maj. Gen. Fabian Ver, G.R. No. 166216, March 14, 2012) p. 207

— Service by publication only applies to service of summons and to judgments, final orders and resolutions. *(Id.)*

— Service of notice to file answer by publication is not recognized. *(Id.)*

Verification — A pleading wherein the verification is based merely on the party's knowledge and belief produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied. (Congresswoman Lucy Marie Torres-Gomez *vs*. Codilla, Jr., G.R. No. 195191, March 20, 2012) p. 632

— Only a formal, not a jurisdictional, requirement. *(Id.)*

— Rules on verification of protests should be liberally construed; obstacles and technicalities that fetter the people's will should not stand in the way of a prompt termination of election contests. *(Id.)*

PRELIMINARY INJUNCTION

Grant of — The exercise of judicial discretion by a court in injunctive matters must not be interfered with; exception. (Australian Professional Realty, Inc. *vs*. Mun. of Padre Garcia Batangas Province, G. R. No. 183367, March 14, 2012) p. 283

— The issuance thereof constitutes grave abuse of discretion in the absence of a clear legal right. *(Id.)*

PRESIDENT

Emergency powers of — Declaration of martial law or suspension of the writ of habeas corpus; safeguards, cited. (Fortun and Angeles *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Carpio, J., dissenting opinion*) p. 526

— Probable cause of the existence of either invasion or rebellion satisfies the standard of proof for a valid declaration of martial law and suspension of the privilege of the writ of habeas corpus; probable cause, defined and explained. *(Id.)*

— The President's power to declare martial law or suspend the writ is independent, separate, and distinct from any constitutionally mandated act to be performed by either the legislature or the judiciary; Congress' inaction on the declaration or suspension is not determinative of the Court's exercise of its review power. *(Id.)*

Power to declare martial law — The present limitations of the power to declare martial law including the consequent circumscription of the legislative and judicial participation in the exercise of the power, themselves limit the occasion and need for formulation of controlling principles to guide the executive, legislative and the public. (Fortun and Angeles *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Perez, J., separate opinion*) p. 526

Powers — It is preposterous to impose upon the President to be physically present at the place where a threat to public safety is alleged to exist as a condition to make a declaration of martial law or suspension of the writ of habeas corpus. (Fortun and Angeles *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Velasco, Jr., J., dissenting opinion*) p. 526

— Precision in establishing the fact of rebellion before declaring martial law or suspending the writ of habeas corpus is not required; the President is called to act as public safety requires. *(Id.)*

— The power to proclaim martial law or suspend the privilege of the writ of habeas corpus is exercised not only sequentially, but jointly by the President and Congress; elaborated. (Fortun *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012) p. 526

PRESUMPTIONS

Disputable presumptions — Official duties are disputably presumed to have been regularly performed. (Congresswoman Lucy Marie Torres-Gomez *vs.* Codilla, Jr., G.R. No. 195191, March 20, 2012) p. 632

Presumption on notarized document — The burden of proof to overcome the presumption of due execution of a notarized document lies on the party contesting the execution. (Congresswoman Lucy Marie Torres-Gomez *vs.* Codilla, Jr., G.R. No. 195191, March 20, 2012) p. 632

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application for registration — Application for original registration, requirements. (Rep of the Phils. *vs.* Bantigue Point Dev. Corp., G.R. No. 162322, March 14, 2012) p. 192

— The lapse of time between the issuance of the order setting the date of initial hearing, and the date of the initial hearing itself is not fatal to the application for original registration. *(Id.)*

QUASI-DELICTS

Liability of employers — Rule that employers are liable for damages caused by their employees acting within the scope of their assigned tasks, elucidated. (Serra *vs.* Mumar, G.R. No. 193861, March 14, 2012) p. 363

RAPE

Commission of — When the objective of the abduction is to commit rape, the rape absorbs the forcible abduction. (People of the Phils. *vs.* Sabadlab *y* Bayquel, G.R. No. 175924, March 14, 2012) p. 269

REBELLION

Commission of — Elements. (Fortun and Angeles *vs.* Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Carpio, J., dissenting opinion*) p. 526

RULES OF PROCEDURE

Application — Where strong considerations of substantial justice are manifest in the petition, we may relax the stringent application of technical rules in the exercise of our equity jurisdiction; petition for review filed two days late given due course. (Jaca Montajes *vs*. People of the Phils., G.R. No. 183449, March 12, 2012) p. 1

STATE

Immunity from suit doctrine — Proper only when proceedings arise out of sovereign transactions, not commercial activities or economic affairs. (Phil. Tourism Authority *vs*. Phil. Golf Devt. & Equipment, Inc., G.R. No. 176628, March 19, 2012) p. 429

STATUTES

Interpretation of — The general rule on statutory interpretation is that apparently conflicting provisions should be reconciled and harmonized, as a statute must be so construed as to harmonize and give effect to all its provisions whenever possible; only after the failure at this attempt at reconciliation should one provision be considered the applicable provision as against the other. (In Re: Letters of Atty. Estelito P. Mendoza re: G.R. No. 178083 – Flight Attendants and Stewards Association of the Philippines [FASAP] *vs*. Philippine Airlines, Inc. [PAL], A.M. No. 11-10-1-SC, March 13, 2012) p. 55

STRIKES

Prohibited activities — Liabilities of union officers and members participating in illegal strikes and/or committing illegal acts, cited. (C. Alcantara & Sons, Inc. *vs*. CA, G.R. No. 155109, March 14, 2012) p. 174

SUPREME COURT

Court of last resort — If the Court is to adhere to its character as a Court of last resort, it must stop giving never ending refuge to parties who obstinately seek to resist execution of the Court's final decisions on the sole ground of their

counsel's creativity in re-labelling a prohibited second motion for reconsideration, or the changing composition of the three Divisions of the Court. (*In Re*: Letters of Atty. Estelito P. Mendoza re: G.R. No. 178083–Flight Attendants and Stewards Association of the Philippines [FASAP] *vs*. Philippine Airlines, Inc. [PAL], A.M. No. 11-10-1-SC, March 13, 2012; *Sereno, J., dissenting opinion*) p. 55

Divisions of the Court — The Divisions of the Court are not inferior bodies to the en banc, neither are they independent tribunals, whose decisions can be appealed on a 2nd MR to the other Divisions. (*In Re*: Letters of Atty. Estelito P. Mendoza re: G.R. No. 178083–Flight Attendants and Stewards Association of the Philippines [FASAP] vs. Philippine Airlines, Inc. [PAL], A.M. No. 11-10-1-SC, March 13, 2012; *Sereno, J., dissenting opinion*) p. 55

Judicial review — Courts of justice will take cognizance only of justiciable controversies wherein actual and not merely hypothetical issues are involved; rationale. (Fortun and Angeles *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Velasco, Jr., J., dissenting opinion*) p. 526

— The constitutional validity of the President's proclamation of martial law or suspension of the writ of habeas corpus is first a political question in the hands of Congress before it becomes a justiciable one in the hands of the Court. (Fortun *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012) p. 526

— The Court can step in, hear the petitions challenging the President's proclamation of martial law or the suspension of the writ of habeas corpus and ascertain if it has a factual basis when Congress fails to fulfill its duty respecting the proclamation or suspension within the short time expected of it. *(Id.)*

— The Court does not resolve purely academic questions to satisfy scholarly interest, however intellectually challenging these are, especially where the issues reach a constitutional dimension. *(Id.)*

— The Court is not powerless to review the legality of the manner by which congressional acts have been arrived at in order to determine whether Congress has transgressed the reasonable bounds of its power. (Fortun and Angeles *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Velasco, Jr., J., dissenting opinion*) p. 526

— The lifting of martial law and the restoration of the privilege of the writ of habeas corpus in Maguindanao was a supervening event that obliterated any justiciable controversy; the petitions in these cases have become moot and the Court has nothing to review. (Fortun *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012) p. 526

— The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within thirty (30) days from its filing. *(Id.)*

— The Supreme Court must promulgate its decision within thirty days from the filing of the proceeding questioning the sufficiency of the factual basis of the proclamation of martial law by the President or its extension by Congress. (Fortun and Angeles *vs*. Macapagal-Arroyo, G.R. No. 190293, March 20, 2012; *Perez, J., separate opinion*) p. 526

Power of discipline — While the Supreme Court will not hesitate to discipline its erring officers, it will not prolong a penalty after it has been shown that the purpose for imposing it had already been served. (*Re*: Subpoena *Duces Tecum* dated January 11, 2010 of Acting Director Aleu A. Amante, PIAB-C, Office of the Ombudsman, A.M. No. 10-1-13-SC, March 20, 2012) p. 489

WITNESSES

Credibility — Factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings, are to be given the highest respect;

exceptions. (People of the Phils. *vs*. Talaro, G.R. No. 175781, March 20, 2012) p. 507

(People of the Phils. *vs*. Sabadlab *y* Bayquel, G.R. No. 175924, March 14, 2012) p. 269

— Should not be adversely affected by basic inconsistencies bearing on minor details or collateral matters. *(Id.)*

— The evaluation thereof in criminal cases is addressed to the sound discretion of the trial judge. (People of the Phils. vs. Castro *y* Peralta, G.R. No. 187073, March 14, 2012) p. 319

CITATION

Page

I. LOCAL CASES

Abad *vs*. Goldloop Properties, Inc., G.R. No. 168108,
April 13, 2007, 521 SCRA 131 348
Aberca *vs*. Ver, 243 Phil. 735 (1988) 601
Abundo *vs*. Manio, Jr., 370 Phil. 850, 869 (1999) 292
Acop *vs*. Guingona, Jr., 433 Phil. 62 (2002) 588
Ajeno *vs*. Inserto, A.M. No. 1098-CFI, May 31, 1976,
71 SCRA 166, 171-172 471
Albaña *vs*. Commission on Elections,
478 Phil. 941 (2004) 588
Albay Electric Cooperative, Inc. *vs*. Santelices,
G.R. No. 132540, April 16, 2009,
585 SCRA 103, 118-119 624
Alde *vs*. Bernal, G.R. No. 169336, Mar. 18, 2010,
616 SCRA 60 644
Aldovino *vs*. Pujalte, 467 Phil. 556, 561 (2004) 427-428
Allied Banking Corporation *vs*. Land Bank of the Philippines,
G.R. No. 175422, Mar. 13, 2009, 581 SCRA 301, 314 302
Almendarez, Jr. *vs*. Langit, A.C. No. 7057, July 25, 2006,
496 SCRA 402 475
Aparente, Sr. *vs*. NLRC, 387 Phil. 96 (2000) 190
Apo Fruits Corporation *vs*. CA, 553 SCRA 237 (2008) 130, 150
CA, G.R. No. 164195, Dec. 19, 2007, 541 SCRA 117 303
Land Bank of the Philippines, Oct. 12, 2010,
632 SCRA 727 303
Aquino, Jr. *vs*. Enrile, 158-A Phil. 1 (1974) 559
Arcenio *vs*. Pagorogon, A.M.Nos. MTJ-89-270,
MTJ-92-637, July 5, 1993, 224 SCRA 246, 254 504
Asia Pacific Chartering (Phils.), Inc. *vs*. Farolan,
441 Phil. 776, 792 (2002) 317
Asia United Bank *vs*. Goodland Company, Inc.,
G.R. No. 191388, Mar. 9, 2011, 645 SCRA 205,
216-217 .... 394, 412
Asia United Bank *vs*. Goodland Company, Inc.,
G.R. No. 190231, Dec. 8, 2010, 637 SCRA 691,
696-697 .... 394, 413

Page

B.F. Metal (Corporation) *vs*. Lomotan, G.R. No. 170813, April 16, 2008, 551 SCRA 618, 630-631 18
Bachrach Corporation *vs*. CA, 357 Phil. 483 (1998) 294
Bagong Alyansang Makabayan *vs*. Zamora, 396 Phil. 623 (2000) 586-587
Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) *vs*. Cabato-Cortes, G.R. No. 165922, Feb. 26, 2010, 613 SCRA 733 54
Bangko Sentral ng Pilipinas *vs*. Orient Commercial Banking Corporation, G.R. No. 148483, June 29, 2011, 653 SCRA 1, 9 267
Banquerigo *vs*. CA, 529 Phil. 826 (2006) 486
Barbieto *vs*. CA, G.R. No. 184645, Oct. 30, 2009, 604 SCRA 825 293
Barcenas *vs*. Alvero, A.C. No. 8159, April 23, 2010, 619 SCRA 1, 9-10 474
Bayonla *vs*. Reyes, A.C. No. 4808, Nov. 22, 2011 427
Belleza *vs*. Macasa, A.C. No. 7815, July 23, 2009, 593 SCRA 549, 560, 562 427-428
Benedicto *vs*. Lacson, G.R. No. 141508, May 5, 2010, 620 SCRA 82, 98 415
Bengzon *vs*. Drilon, G.R. No. 103524, April 15, 1992, 208 SCRA 133, 150 53
Biraogo *vs*. Philippine Truth Commission of 2010, G.R. Nos. 192935, 193036, Dec. 7, 2010, 637 SCRA 78, 147-148 556
Board of Optometry *vs*. Colet, 328 Phil. 1187, 1207 (1996) 560
Borromeo *vs*. Intermediate Appellate Court, G.R. No. 73592, Mar. 15, 1996, 255 SCRA 75, 84 417
Bote *vs*. Eduardo, A.M. No. MTJ-04-1524, Feb. 11, 2005, 451 SCRA 9 643
Brizuela *vs*. Dingle, G.R. No. 175371, April 30, 2008, 553 SCRA 662 292-293
Brucal *vs*. Desierto, 501 Phil. 453, 465-466 (2005) .... x 389
Calma *vs*. Santos, G.R. No. 161027, June 22, 2009, 590 SCRA 359 643
Camacho *vs*. CA, et al. G.R. No. 127520, Feb. 9, 2007, 515 SCRA 242 425-426

Page

Casim *vs*. Flordeliza, 425 Phil. 210 (2002) 257
Cebu International Finance Corporation *vs*.
Court of Appeals, 374 Phil. 844, 858 (1999) 168
Chavez *vs*. Public Estates Authority, 433 Phil. 506 (2002)......... 586
China Banking Corporation *vs*. CA, 333 Phil. 158 (1996) 446
Chua *vs*. National Labor Relations Commission,
G.R. No. 105775, Feb. 8, 1993, 218 SCRA 545 191
Chuidian *vs*. Sandiganbayan, 529 Phil. 318, 337 (2006) 267
City Government of Tagaytay *vs*. Guerrero,
G.R. Nos. 140743, 140745, Sept. 17, 2009,
600 SCRA 33, 61 435
City of Naga *vs*. Asuncion, G.R. No. 174042,
July 9, 2008, 557 SCRA 528 291
College of Immaculate Conception *vs*. National Labor
Relations Commission, G.R. No. 167563, Mar. 22, 2010,
616 SCRA 299, 309 187
Coseteng *vs*. Mitra, G.R. No. 86649, July 12, 1990,
187 SCRA 377, 383 .... 625, 627
Crisostomo *vs*. People, G.R. No. 171526, Sept. 1, 2010,
629 SCRA 590, 603 329
Dantes *vs*. Dantes, A.C. No. 6486, Sept. 22, 2004,
438 SCRA 582, 588, 590 478
David *vs*. Arroyo, 522 Phil. 705, 757-759 (2006) 586-588
David *vs*. Arroyo, G.R. Nos. 171396, 171409,
May 3, 2006, 489 SCRA 160 622
De Guzman *vs*. CA, 222 Phil. 236, 242 (1985) 168
De la Cruz *vs*. Cruz, et al., 143 Phil. 230, 234 (1970) 168
De la Cruz *vs*. Maersk Filipinas Crewing, Inc., G.R. No. 172038,
April 14, 2008, 551 SCRA 284 8
De la Victoria *vs*. Mongaya, 404 Phil. 609, 619-620 (2001) 389
De Liano *vs*. CA, 421 Phil. 1033, 1046-1047 (2001) 165
Del Blanco *vs*. Intermediate Appellate Court,
240 Phil. 55, 67 (1987) 167
Dela Chica *vs*. Sandiganbayan, 462 Phil. 712, 723 (2003) 40
Dela Cruz *vs*. National Labor Relations Commission,
G.R. No. 119536, Feb. 17, 1997, 268 SCRA 458, 470 315
Dela Cruz *vs*. Zabala, A.C. No. 6294, Nov. 17, 2004,
442 SCRA 407 477

Page

Demetriou *vs*. Lesaca, 63 Phil. 112 (1936) 171
Denso (Phils.) Inc. *vs*. Intermediate Appellate Court,
232 Phil. 256 (1987) 291
Digitel Telecommunications Philippines, Inc. *vs*. Soriano,
525 Phil. 765, 794 (2006) 371
Dioquino *vs*. Cruz, Jr., G.R. Nos. L-38579, L-39951,
Sept. 9, 1982, 202 Phil. 35 150
Domingo *vs*. CA, G.R. No. 169122, Feb. 2, 2010,
611 SCRA 353, 364-365 223
Dotmatrix Trading *vs*. Legaspi, G.R. No. 155622,
Oct. 26, 2009, 604 SCRA 431, 436 416
Dreamwork Construction, Inc. *vs*. Janiola,
G.R. No. 184861, June 30, 2009, 591 SCRA 466 96
Drilon *vs*. Lim, G.R. No. 112497, Aug. 4, 1994,
235 SCRA 135, 140 560
Eastern Shipping Lines *vs*. CA, G.R. No. 97412,
234 SCRA 78 362
Easycall Communications Phils., Inc. *vs*. King,
G.R. No. 145901, Dec. 15, 2005, 478 SCRA 102, 111 317
Echegaray *vs*. Secretary of Justice, 361 Phil. 73 (1999) 52
Equitable PCI Bank, Inc. *vs*. OJ-Mark Trading, Inc.,
G.R. No. 165950, Aug. 11, 2010, 628 SCRA 79, 91 .... 446, 449
Escario *vs*. National Labor Relations Commission
(Third Division), G.R. No. 160302, Sept. 27, 2010,
631 SCRA 261 187
Espiritu *vs*. Ulep, 497 Phil. 339, (2005) 428
Evangelista *vs*. People, G.R. No.163267, May 5, 2010,
620 SCRA 134, 148 33
Ex-Bataan Veterans Security Agency, Inc. *vs*. National
Labor Relations Commission, 320 Phil. 517 (1995) 486-487
Fabrigar *vs*. People, G.R. No. 150122, Feb. 6, 2004,
422 SCRA 395, 402 10-11
Felix *vs*. National Labor Relations Commission,
G.R. No. 148256, Nov. 17, 2004, 442 SCRA 465, 485 315
Figueroa *vs*. People, G.R. No. 147406, July 14, 2008,
558 SCRA 63 200
Firestone Ceramics *vs*. CA, 334 SCRA 465 (2000) 130, 150

Page

First Philippine International Bank *vs*. CA,
G.R. No. 115849, Jan. 24, 1996, 252 SCRA 259, 289 417
Flight Attendants and Stewards Association of the
Philippines (FASAP) *vs*. Philippine Airlines, Inc.
(PAL), et al., G.R. No. 178083, July 22, 2008,
559 SCRA 252, Res. Oct. 2, 2009, 602 SCRA 473,
Res. Sept. 7, 2011 .... 77, 100-101, 109, 141
Food Corp. *vs*. CA, 144 Phil. 1, 21 (1970) 355
Foremost Farms Incorporated *vs*. Department of Labor
and Employment, 321 Phil. 487 (1995) 488
Francisco *vs*. DEAC Construction, Inc., G.R. No. 171312,
Feb. 4, 2008, 543 SCRA 644, 655 355
Funa *vs*. Ermita, G.R. No. 184740, Feb. 11, 2010,
612 SCRA 308, 319 558
Gabatin *vs*. Land Bank of the Philippines, G.R. No. 148223,
Nov. 25, 2004, 444 SCRA 176, 178 300
Garces *vs*. People, G.R. No. 173858, July 17, 2007,
527 SCRA 827 280
Garcia *vs*. Philippine Airlines, Inc., G.R. No 164856,
Jan. 20, 2009, 576 SCRA 479 186-187
Gold City Integrated Port Service, Inc. *vs*. NLRC,
315 Phil. 698, 711 (1995) 188
Gold Loop Properties, Inc. *vs*. Court of Appeals,
403 Phil. 280, 291 (2001) 371
Gomez-Castillo *vs*. COMELEC, G.R. No. 187231,
June 22, 2010, 621 SCRA 499 199
Gonzales *vs*. National Labor Relations Commission,
G.R. No. 131653, Mar. 26, 2001, 355 SCRA 195, 207 315
Gonzalez *vs*. Calimbas and Poblete,
51 Phil. 355, 358 (1927) 173
Government Service Insurance System (GSIS) *vs*.
Group Management Corporation (GMC), G.R. Nos. 167000,
169971, June 8, 2011, 651 SCRA 279, 313 410
Government Service Insurance System *vs*. Pacific Airways
Corporation, G.R. No. 170414, Aug.25, 2010,
629 SCRA 219, 230 17
Guingona, Jr. *vs*. CA, 354 Phil. 415, 426 (1998) 559

Page

Heirs of Lorenzo and Carmen Vidad and Agvid
Construction Co., Inc. *vs*. Land Bank of the Philippines,
G.R. No. 166461, April 30, 2010, 619 SCRA 609, 630 305
Hernandez *vs*. Go, 490 Phil. 420 (2005) 428
Hi-Precision Steel Center, Inc. *vs*. Lim Kim Steel
Builders, Inc., G.R. No. 110434, Dec. 13, 1993,
228 SCRA 397 244
In Re: Exemption of the National Power Corporation
from Payment of Filing/Docket Fees, A.M. No. 05-10-20-SC,
Mar. 10, 2010, 615 SCRA 1 54
In re Horrilleno, 43 Phil. 212, 214 (1922) 470
Integrated Bar of the Philippines *vs*. Zamora,
392 Phil. 618 (2000) 585
Islriz Trading/Victor Hugo Lu *vs*. Capada, G.R. No. 168501,
Jan. 31, 2011, 641 SCRA 9 186-188
J.G. Summit Holdings, Inc. *vs*. CA, 450 SCRA 169 (2005) 130
Jaafar *vs*. Commission on Elections, 364 Phil. 322,
327-328 (1999) 624
Jamsani-Rodriguez *vs*. Ong, A.M. No. 08-19-SB-J,
Aug. 24, 2010, 628 SCRA 626, 648-649 471
Jeremias *vs*. Estate of the late Irene P. Mariano,
G.R. No. 174649, Sept. 26, 2008, 566 SCRA 539 241
JP Latex Technology, Inc. *vs*. Ballons Granger Balloons, Inc.,
G.R. No. 177121, Mar. 16, 2009, 581 SCRA 553, 563 455-456
Kapalaran Bus Lines *vs*. Coronado,
257 Phil. 797, 807 (1989) 373
Komatsu Industries (Phils.), Inc. *vs*. Court of Appeals,
G.R. No. 127682, April 24, 1998, 352 Phil. 440 111
L.G. Foods Corporation *vs*. Pagapong-Agraviador,
G.R. No. 158995, Sept. 26, 2006, 503 SCRA 170, 179 373
La Naval Drug Corporation *vs*. Court of Appeals,
G.R. No. 103200, Aug. 31, 1994, 236 SCRA 78 199
Labao *vs*. Flores, G.R. No. 187984, Nov. 15, 2010,
634 SCRA 723, 733 434
Lacson *vs*. Perez, 410 Phil. 78 (2001) 588
Ladlad *vs*. Velasco, G.R. Nos. 172070-72, June 1, 2007,
523 SCRA 318, 336 595

Page

Land Bank of the Philippines *vs.* CA, 456 Phil. 755, 785-787 (2003) 437
Orilla, G.R. No. 157206, June 27, 2008, 556 SCRA 103, 117 302
Soriano, G.R. Nos. 180772, 180776, May 6, 2010, 620 SCRA 347 .... 302, 305
Landrito, Jr. *vs.* CA, G.R. No. 133079, Aug. 9, 2005, 466 SCRA 107 405
Lansang *vs.* Garcia, 149 Phil. 547 (1971) 559
Lanuzo *vs.* Bongon, A.C. No. 6737, Sept. 23, 2008, 566 SCRA 214, 217-218 477
Larena *vs.* Mapili, 455 Phil. 944, 950 (2003) 371
LBC Express - Metro Manila, Inc. *vs.* Mateo, G.R. No. 168215, June 9, 2009, 589 SCRA 33, 37 434
Ligon *vs.* CA, G.R. No. 127683, Aug. 7, 1998, 294 SCRA 73, 88 409
Ligon *vs.* CA, G.R. No. 107751, June 1, 1995, 244 SCRA 693 11
Lim *vs.* Executive Secretary, 430 Phil. 555, 570-571 (2002) 587
Local Superior of the Servants of Charity (Guanellians), Inc. *vs.* Jody King Construction & Development Corporation, 509 Phil. 426, 431 (2005) 370
Lokin *vs.* COMELEC, G.R. Nos. 179431-32, 22 June 2010, 621 SCRA 385 646
Los Baños Rural Bank, Inc. *vs.* Africa, 433 Phil. 930, 935 (2002) 445
Lumanog *vs.* People, G.R. Nos. 182555, 185123, Sept. 7, 2010, 630 SCRA 42, 130 521
Lumbre *vs.* CA, G.R. No. 160717, July 23, 2008, 559 SCRA 419, 431, 434 165
Lunaria *vs.* People, G.R. No. 160127, Nov. 11, 2008, 570 SCRA 572 360
Luz *vs.* National Amnesty Commission, G.R. No. 159708, Sept. 24, 2004, 439 SCRA 111, 115 10
Luzon Security Company *vs.* Intermediate Appellate Court, 157 SCRA 652 (1987) 171
Luzon Surety Co., Inc. *vs.* Jesus Panaguiton, G.R. No. L-26054, July 21, 1978, 84 SCRA 148, 153 222

Page

Macalinao *vs*. Ong, 514 Phil. 127, 142-143 (2005) 373
Macarilay *vs*. Seriña, 497 Phil. 348, 356 (2005) 426
Madara *vs*. Perello, G.R. No. 172449, Aug. 20, 2008,
562 SCRA 638 408
Magbanua *vs*. Uy, 497 Phil. 511, 519 (2005) 168
Malillin *vs*. People, G.R. No. 172953, April 30, 2008,
553 SCRA 619, 632-633 39
Manalili vs. CA, 345 Phil. 632, 645-646 (1997) 600
Manalo *vs*. Roldan-Confesor, G.R. No. 102358,
Nov. 19, 1992, 215 SCRA 808, 819 .... 502, 596
Manchester Development Corporation *vs*. CA,
233 Phil. 579 (1987) 162
Manila Diamond Hotel and Resort, Inc. (Manila
Diamond Hotel) *vs*. Manila Diamond Hotel Employees
Union, G.R. No. 158075, June 30, 2006, 494 SCRA 195 190
Marcelo *vs*. Bungubung, G.R. No. 175201, April 23, 2008,
552 SCRA 589, 606 370
Medina *vs*. City Sheriff of Manila,
342 Phil. 90 (1997) 292, 294
Melo *vs*. CA, G.R. No. 123686, Nov. 16, 1999,
318 SCRA 94, 100 409
Mendoza *vs*. United Coconut Planters Bank, Inc.,
G.R. No. 165575, Feb. 2, 2011, 641 SCRA 333 164
Mercado *vs*. CA, G.R. No. L-44001, June 10, 1988,
162 SCRA 75 150
Mondragon Leisure and Resorts Corporation *vs*.
United Coconut Planters Bank, G.R. No. 154187,
April 14, 2004, 427 SCRA 585, 590 409
Mortera *vs*. Pagatpatan, 499 Phil. 93 (2005) 428
Mt. Carmel College *vs*. Resuena, G.R. No. 173076,
Oct. 10, 2007, 535 SCRA 518, 541 317
Municipality of Taguig *vs*. CA, G.R. No. 142619,
Sept. 13, 2005, 469 SCRA 588, 595 417
National Bookstore, Inc. *vs*. CA,
428 Phil. 235, 246 (2002) 317
National Tobacco Administration *vs*. COA,
370 Phil. 793 (1999) 96

Page

Negros Oriental Planters Association, Inc. (NOPA) *vs*. Presiding Judge of RTC-Negros Occidental, Br. 52, Bacolod City, G.R. No. 179878, Dec. 24 2008, 575 SCRA 575 645
Ocampo *vs*. Sison vda. de Fernandez, G.R. No. 164529, June 19, 2007, 525 SCRA 79 294
Office of the Court Administrator *vs*. Canque, A.M. No. P-04-1830, June 4, 2009, 588 SCRA 226, 236 502
Office of the Ombudsman *vs*. Andutan, Jr., G.R. No. 164679, July 27, 2011, 654 SCRA 539, 554 267
Olac *vs*. CA, G.R. No. 84256, Sept. 12, 1992, 213 SCRA 321 486-487
Olympic Mines and Development Corp. *vs*. Platinum Group Metals Corp., G.R. Nos. 178188, 180674, Aug. 15, 2009, 596 SCRA 314 .... 130, 150
OMC Carriers, Inc. *vs*. Nabua, G.R. No. 148974, July 2, 2010, 622 SCRA 624, 639-641 19
Ongson *vs*. People, 504 Phil. 214 (2005) 362
Orata *vs*. Intermediate Appellate Court, G.R. No. 73471, May 8, 1990, 185 SCRA 148, 152 10-11
Ortega *vs*. Social Security Commission, G.R. No. 176150, June 25, 2008, 555 SCRA 353 291
Ortigas and Co. Ltd. Partnership *vs*. Velasco, 324 Phil. 483, 489 (1996) 80, 110
Overseas Workers Welfare Administration *vs*. Chavez, G.R. No. 169802, 8 June 2007, 524 SCRA 451 293
P.J. Lhuillier, Inc. *vs*. National Labor Relations Commission, G.R. No. 158758, April 29, 2005, 457 SCRA 784, 798 315
Pacific Life Assurance Corporation *vs*. Sison, 359 Phil. 332 (1998) 163
Pamintuan, et al. *vs*. Muñoz, et al., 131 Phil. 213, 216 (1968) 169
Panlilio *vs*. COMELEC, G.R. No. 181478, July 15, 2009, 593 SCRA 139 644
Pascual *vs*. CA, 422 Phil. 675, 682 (2001) 240
Pelejo *vs*. CA, 201 Phil. 873 (1982) 487

Page

People *vs*. Alba, 326 Phil. 520, 527 (1996) ... 371
Anticamara y Cabillo, et al., G.R. No. 178771, June 8, 2011 ... 525
Bation, G.R. No. 123160, Mar. 25, 1999, 305 SCRA 253, 269 ... 279
Bautista, G.R. No. 188601, June 29, 2010, 622 SCRA 524 ... 520
Cabalquinto, G.R. No. 167693, Sept. 19, 2006, 502 SCRA 419 ... 272
Cabugatan, G.R. No. 172019, Feb. 12, 2007, 515 SCRA 537, 547 ... 327
Castro, G.R. No. 172370, Oct. 6, 2008, 567 SCRA 586 ... 278
Catubig, G.R. No. 137842, Aug. 23, 2001, 363 SCRA 621, 635 ... 282
Cenahonon, G.R. No. 169962, July 12, 2007, 527 SCRA 542, 558 ... 523
Cuenca, 425 Phil. 722, 743 (2002) ... 374
Del Rosario, G.R. No. 189580, Feb. 9, 2011, 642 SCRA 625 ... 278
Dela Cruz, G.R. No. 108180, Feb. 8, 1994, 229 SCRA 754, 765 ... 329
Dela Cruz, G.R. No. 182348, Nov. 20, 2008, 571 SCRA 469, 474-475 ... 44
Donato, G.R. No. 79269, June 5, 1991, 198 SCRA 130 ... 350
Dumangay, G.R. No. 173483, Sept. 23, 2008, 566 SCRA 290, 298 ... 34, 42
Ebet, G.R. No. 181635, Nov. 15, 2010, 634 SCRA 689, 706 ... 328
Egan, G.R. No. 139338, May 28, 2002, 382 SCRA 326 ... 280
Escote, Jr., G.R. No. 140756, April 4, 2003, 400 SCRA 603, 631 ... 328
Espino, Jr., G.R. No. 176742, June 17, 2008, 554 SCRA 682, 697 ... 327
Flores, G.R. No. 188315, Aug. 25, 2010, 629 SCRA 478, 488 ... 522
Florida, G.R. No. 90254, Sept. 24, 1992, 214 SCRA 227, 239 ... 328

Page

Galido, G.R. Nos. 148689-92, Mar. 30, 2004,
426 SCRA 502 40
Godines, G.R. No. 93410, May 7, 1991,
196 SCRA 765, 773 280
Lacerna, 344 Phil. 100, 121 (1997) 43, 600
Lara, G.R. No. 171449, Oct. 23, 2006,
505 SCRA 137, 152 523
Latam, G.R. No. 192789, Mar. 23, 2011,
646 SCRA 406, 410-411 328
Lee, G.R. No. 116326, April 30, 2003,
402 SCRA 124, 132-133 329
Macatingag, G.R. No. 181037, Jan.19, 2009,
576 SCRA 354, 361-362 41-42
Manalansan, G.R. Nos. 76369-70, Sept. 14, 1990,
189 SCRA 619, 624 25
Mateo, G.R. Nos. 147678-87, July 7, 2004,
433 SCRA 640 518
Mejorada, G.R. No. 102705, July 30, 1993,
224 SCRA 837, 852 280
Molina, G.R. No. 184173, Mar. 13, 2009, 581 SCRA 519 521
Muros, G.R. No. 142511, Feb. 16, 2004, 423 SCRA 69 280
Ng Pek, 81 Phil. 562, 565 (1948) 41
Obina, G.R. No. 186540, April 14, 2010,
618 SCRA 276, 281 327
Oco, 458 Phil. 815, 855 (2003) 374
Paloma, G.R. No. 178544, Feb. 23, 2011 42
Panabang, 424 Phil. 596, 614 (2002) 374
Quiachon, G.R. No. 170236, Aug. 31, 2006,
500 SCRA 704, 714 277
Sanchez, G.R. No. 175832, Oct. 15, 2008,
569 SCRA 194, 216 38
Sanchez, G.R. No. 188610, June 29, 2010,
622 SCRA 548, 559 519
Sanchez, G.R. Nos. 121039-45, Jan. 25, 1999,
302 SCRA 21 279
Tabar, G.R. No. 101124, May 17, 1993,
222 SCRA 144, 152 43
Tinsay, G.R. No. 167383, Sept. 23, 2008, 566 SCRA 170 523

Page

Unisa, G.R. No. 185721, Sept. 28, 2011 34
Pequet *vs*. Tangonan, 160 Phil. 906, 909 (1975) 601
Philippine Amusement and Gaming Corporation *vs*. Angara,
G.R. No. 142937, July 25, 2006, 496 SCRA 453 318
Philippine Association of Colleges and Universities *vs*.
Secretary of Education, 97 Phil. 806, 811 (1955) 559
Philippine Bank of Communications *vs*. Commissioner
of Internal Revenue, G.R. No. 112024, Jan. 28, 1999,
302 SCRA 241, 252 302
Philippine Hawk Corporation *vs*. Lee, G.R. No. 166869,
Feb. 16, 2010, 612 SCRA 576, 588, 591-592, 594 .... 19, 373, 462
Philippine Long Distance Telephone Co. *vs*. NLRC,
247 Phil. 641 (1988) 188
Philippine Long Distance Telephone Company, Inc. *vs*.
Tiamson, G.R. Nos. 164684-85, Nov. 11, 2005,
474 SCRA 761, 771 315
Philippine National Bank *vs*. CA,
353 Phil. 473, 479 (1998) 292
Philippine National Construction Corporation *vs*.
CA, G.R. No. 159417, Jan. 25, 2007,
512 SCRA 684, 695 347
Philippine National Construction Corporation *vs*.
Matias, G.R. No. 156283, May 6, 2005,
458 SCRA 148, 159 315
Philippine Trust Company *vs*. CA, G.R. No. 150318,
Nov. 22, 2010, 635 SCRA 518 643
Philippine Virginia Tobacco Administration *vs*.
Delos Angeles, 247 Phil. 506, 518-519 (1988) 448
Pilipino Telephone Corporation *vs*. Pilipino Telephone
Employees Association (PILTEA), G.R. Nos. 160058,
160094, June 22, 2007, 525 SCRA 361 190
Piñero *vs*. National Labor Relations Commission,
480 Phil. 534 (2004) 189
Planters Association of Southern Negros, Inc. *vs*.
Hon. Ponferrada, 375 Phil. 901 (1999) 96
Pormento *vs*. Estrada, G.R. No. 191988, Aug. 31, 2010,
629 SCRA 530, 533 621

Page

Posadas *vs*. CA, G.R. No. 89139, Aug. 2, 1990,
188 SCRA 288, 292-293 600
Power Sites and Signs, Inc. *vs*. United Neon,
G.R. No. 163406, Nov. 24, 2009, 605 SCRA 196 445
Professional Services, Inc. *vs*. Agana, G.R. No. 126297,
Jan. 31, 2007, 513 SCRA 478, 490 461
Province of Batangas *vs*. Romulo, 473 Phil. 806 (2004) 588
Province of North Cotabato *vs*. Government of the
Republic of the Philippines Peace Panel on
Ancestral Domain (GRP), G.R. Nos. 183591, 183752,
Oct. 14, 2008, 568 SCRA 402 .... 563, 588
Prubankers Association *vs*. Prudential Bank &
Trust Company, G.R. No. 131247, Jan. 25, 1999,
302 SCRA 74 408
Pryce Corp. *vs*. Phil. Amusement and Gaming Corp.,
497 Phil. 490, 505 (2005) 355
Quibal *vs*. Sandiganbayan, 314 Phil. 66, 77 (1995) 389
Ramos *vs*. Bagasao, G.R. No. L-51552, Feb. 28, 1980,
96 SCRA 395 10
Raymundo *vs*. Lunaria, G.R. No. 171036, Oct. 17, 2008,
569 SCRA 526 597
Re: Petition for Recognition of the Exemption
of the Government Service Insurance System (GSIS)
for Payment of Legal Fees, A.M. No. 08-2-01-0,
Feb. 11, 2010, 612 SCRA 193 52
Republic *vs*. CA, 357 Phil. 174, 184 (1998) 168
CA, G.R. No. L-43179, June 27, 1985,
137 SCRA 220, 227 171
Manna Properties, Inc., 490 Phil. 654 (2005) 201
T.A.N. Properties, Inc., G.R. No. 154953,
June 26, 2008, 555 SCRA 477 205
Vega, G.R. No. 177790, Jan. 17, 2011, 639 SCRA 541 206
Rizal Surety & Insurance Company *vs*. Manila Railroad
Company, et al., G.R. No. L-20875, April 30, 1966 150
Robles *vs*. Timario, 107 Phil. 809 (1960) 487
Roces *vs*. House of Representatives Electoral Tribunal,
506 Phil. 654 (2005) 645

Page

Rollon *vs*. Naraval, 493 Phil. 24, 29 (2005) 426
Roque *vs.* CA, G.R. No. 179245, July 23, 2008,
559 SCRA 660, 674 504
Rural Bankers Association of the Philippines *vs*.
Tanghal-Salvaña, G.R. No. 175020, Oct. 4, 2007,
534 SCRA 721 256
Salavarria *vs*. Letran College, G.R. No. 110396,
Sept. 25, 1998, 296 SCRA 184 190
Samartino *vs*. Raon,, G.R. No. 131482, July 3, 2002,
383 SCRA 664, 672-673 230
Samson *vs*. Daway, 478 Phil. 784, 795 (2004) 33
SANLAKAS *vs*. Executive Secretary Reyes,
466 Phil. 482, 507 (2004) 585-588, 593, 610
Santos *vs*. Orda, Jr., G.R. No. 189402, May 6, 2010,
620 SCRA 375, 384 598
Saura *vs*. Saura, Jr., 372 Phil. 337, 349 (1999) 409
Searth Commodities Corporation *vs*. CA,
G.R. No. 64220, Mar. 31, 1992, 207 SCRA 622 449
Secretary of the Department of Environment and
Natural Resources *vs*. Yap, G.R. No. 167707,
Oct. 8, 2008, 568 SCRA 164 205
Selegna Management and Development Corporation *vs*.
United Coconut Planters Bank, G.R. No. 165662,
May 3, 2006, 489 SCRA 125, 146 449
Serrano *vs*. Court of Appeals, G.R. No. L-46357,
Oct. 9, 1985, 139 SCRA 179 10
Siapno *vs*. Manalo, 505 Phil. 430 (2005) 165
Sintos *vs*. CA, 316 Phil. 278, 284 (1995) 238
Small *vs*. Banares, A.C. No. 7021, Feb. 21, 2007,
516 SCRA 323 475
Social Security Commission *vs*. Bayona,
115 Phil. 105 (1962) 294
Soriano *vs*. People, G.R. No. 162336, Feb. 1, 2010,
611 SCRA 191 293
Spouses Almeda *vs*. CA, 326 Phil. 309 (1996) 444
Spouses Batingal *vs*. CA, G.R. No. 128636, Feb. 1, 2001,
351 SCRA 60 361

Page

Spouses David *vs.* Construction Industry and
Arbitration Commission, 479 Phil. 578 (2004) 345
Spouses Del Rosario *vs.* CA, 311 Phil. 630 (1995) 165
Spouses Francisco *vs.* CA, 449 Phil. 632, 647 (2003) 371
Spouses Genato *vs.* Viola, G.R. No. 169706,
Feb. 5, 2010, 611 SCRA 677 .... 199, 202
Spouses Marasigan *vs.* Chevron Phils., Inc.,
G.R. No. 184015, Feb. 8, 2012, p. 12 415
Spouses Pasco *vs.* Pison-Arceo Agricultural and
Development Corp., 520 Phil. 387 (2006) 199
Spouses Si *vs.* CA, 396 Phil. 819, 828 (2000) 168
Sukhotai Cuisine and Restaurant *vs.* CA,
G.R. No. 150437, July 17, 2006, 495 SCRA 336 190
Sun Insurance Office Ltd. *vs.* Judge Asuncion,
252 Phil. 280 (1989) 166
Tambaoan *vs.* CA, 417 Phil. 683 (2001) 291
Tan *vs.* Gumba, A.C. No. 9000, Oct. 5, 2011 472
Mendez, 432 Phil. 760 (2002) 359
OMC Carriers, Inc., G.R. No. 190521, Jan. 12, 2011,
639 SCRA 471, 485 18
Planters Products, Inc., G.R. No. 172239,
Mar. 28, 2008, 550 SCRA 287, 301 163
Tantoy, Sr. *vs.* Abrogar, G.R. No. 156128, May 9, 2005,
458 SCRA 301, 305 267
Tayco *vs.* Heirs of Concepcion Tayco-Flores,
G.R. No. 168692, Dec. 13, 2010, 637 SCRA 742, 747 240
Telefunken Semiconductors Employees Union *vs.*
CA, 401 Phil. 776 (2000) 191
The Insular Life Assurance Company, Ltd. *vs.* CA,
G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86 461
The Pasay City Government, et al., *vs.* CFI of Manila,
Branch X, et al., 217 Phil. 153 (1984) 169
Tijam *vs.* Sibonghanoy, 131 Phil. 556 (1968) 199-200
Tinitigan *vs.* Tinitigan, Sr., 100 SCRA 619, 634 (1980) 150
Tirazona *vs.* Philippine EDS Techno-Service, Inc.
(PET, Inc.), G.R. No. 169712, Jan. 20, 2009,
576 SCRA 625, 628 .... 80, 110-111

Page

Tiu *vs*. National Labor Relations Commission,
G.R. No. 83433, Nov. 12, 1992, 215 SCRA 540, 547 315
Toyota Motor Phils. Corp. Workers Association
(TMPCWA) *vs*. National Labor Relations Commission,
G.R. Nos. 158786, 158789, Oct. 19, 2007,
537 SCRA 171, 207 .... 185, 188-190
Umali *vs*. Judge Coquia, 244 Phil. 159, 164 171
United Pepsi-Cola Supervisory Union *vs*. Laguesma,
351 Phil. 244, 292 (1998) 593
United States *vs*. Juan, 23 Phil. 105 (1912) 45
United States of America *vs*. Ruiz, G.R. No. L-35645,
May 22, 1985, 136 SCRA 487 436
Urbano *vs*. Chavez, G.R. No. 88578, Mar. 19, 1990,
183 SCRA 347, 358 232
Vallacar Transit, Inc. *vs*. Catubig, G.R. No. 175512,
May 30, 2011, 649 SCRA 281 17
Vda. De Formoso *vs*. Philippine National Bank,
G.R. No. 154704, June 1, 2011 346
Velasco *vs*. CA, 315 Phil. 757 (1995) 610-611
Vertudes *vs*. Buenaflor, 514 Phil. 399, 424 (2005) 504
Victory Liner, Inc. *vs*. Gammad, 486 Phil. 574, 590 (2004) 374
Villanueva *vs*. CA, G.R. No. 163433, Aug. 22, 2011,
655 SCRA 707, 714 410
Villanueva *vs*. Ishiwata, 486 Phil. 1 (2004) 428
Villeza *vs*. German Management and Services, Inc.,
G.R. No. 182937, Aug. 9, 2010, 627 SCRA 425, 431 171
Viray *vs*. CA, 350 Phil. 107 (1998) 488
Viudez II *vs*. CA, G.R. No. 152889, June 5, 2009,
588 SCRA 345, 357 598
Washington Distillers, Inc. *vs*. CA, G.R. No. 118151,
Aug. 22, 1996, 260 SCRA 821, 835 409
Yun Kwan Byung *vs*. Philippine Amusement and
Gaming Corporation, G.R. No. 163553, Dec.11, 2009,
608 SCRA 107, 129 471

Page

II. FOREIGN CASES

Daggers *vs*. Van Dyck, 37 N.J. Eq. 130, 132 371
Honig *vs*. Doe, 484 U.S. 305 (1988) 621
Office of the Governor *vs*. Select Committee of Inquiry,
  271 Conn. 540, 570, 858 A. 2d 709 (2004) 624
Rice *vs*. Sioux City, U.S. Sup. Ct. Adv. Rep.,
  May 23, 1955, Law Ed., Vol. 99, p. 511 559

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
  Art. III, Sec. 1 221
    Sec. 2 599
    Sec. 15 610
  Art. VI, Sec. 17 627
  Art. VII, Sec. 18 .... 555, 560, 562-564
  Art. VIII, Sec. 1 625-626
    Sec. 3 .... 53, 81, 94, 96
    Secs. 4 (1-2) 105
    Sec. 5(5) 222
  Art. XII, Sec. 2 205
  Art. XIII, Sec. 4 304
1973 Constitution
  Art. IX, Sec. 12 609
1935 Constitution
  Art. VII, Sec. 10(2) 609

B. STATUTES

Batas Pambansa
  B.P. Blg. 22 359-361
  B.P. Blg. 129 203

Page

Civil Code, New
Art. 484 167
Arts. 494, 1079, 2037-2038 168
Arts. 1144(3), 1152 171
Art. 1169 362
Art. 1191 355
Arts. 1315, 1356 258
Art. 1370 348
Arts. 2180, 2184 373
Arts. 2199, 2205 374
Art. 2206 462
Art. 2224 329
Art. 2229 .... 282, 462
Art. 2230 281
Art. 2231 462
Code of Conduct for Court Personnel
Canon 1, Sec. 2 505-506
Code of Professional Responsibility
Canon 16, Rule 16.01 427
Rule 16.3 473
Executive Order
E.O. No. 228 299-300
E.O. No. 1008, Sec. 19 344
Labor Code
Art. 223 .... 182, 186-188
Art. 254 184
Art. 263 182
Art. 264 (a) 185
Art. 282 314
(c) 316
Penal Code, Revised
Art. 134 .... 584, 591-593, 594
Art. 248 .... 512, 519
Arts. 266-A, 342 280
Art. 266-B 280-281
Presidential Decree
P.D. No. 27 .... 298-301, 304
P.D. No. 1529, Sec. 81 169
P.D. No. 1949, Sec. 1 53

Page

Proclamation
Proc. No. 427 594
Proc. No. 1081 618
Proc. No. 1946 .... 569, 620
Proc. No. 1959 .... 562, 564-565, 585-586
Proc. No. 1963 .... 563, 577, 587, 590-591
Property Registration Decree
Sec. 23 201
Republic Act
R.A. No. 3019 Sec. 3 (e) (Anti-Graft and Corrupt and Practices Act) 383, 503
R. A. No. 4136, Sec. 41 (a) (Land and Transportation and Traffic Code) 18
R.A. No. 6713, Sec. 7 (d) 503
R.A. No. 6938 .... 49-50, 52, 54
Sec. 2, par. 6 51
Sec. 62, par. 6 49
R.A. No. 6968 .... 571, 591
R.A. Nos. 7610, 9262 272
R.A. No. 8291, Sec. 39 53
R.A. No. 8353 281
Sec. 266-D 280
R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002) 24
Art. II, Sec. 5 .... 25, 29, 41
Sec. 11 .... 29, 44
Sec. 12 .... 25, 29
Sec. 21 33
R.A. No. 9227 53
Sec. 1 54
R.A. No. 9346 523-524
R.A. No. 9520 54
Art. 61, Sec. 6 .... 49, 51
Rule on Small Claims
Sec. 8 51
Revised Rule on Summary Procedure
Secs. 1, 21 457

Page

Rules of Court, Revised
Rule 2, Sec. 2 410
Rule 7, Sec. 4 645
Rule 13, Sec. 2 121
Secs. 6-8 227
Sec. 9 228
Sec. 11 223
Rule 14 227
Rule 15, Sec. 3 80
Rule 22, Sec. 1 7-8
Rule 39, Sec. 2 .... 454-456, 458
Sec. 6 170-171
Sec. 8 486
Rule 41, Sec. 1 (c) 291
Rule 42 360
Sec. 1 455
Sec. 6 456
Sec. 8 454-455
Rule 44, Sec. 13 (a) 163
Rule 45 .... 14, 17, 106, 158, 196
Sec. 1 .... 80, 240
Sec. 2 80
Rule 47 .... 433, 435
Rule 48, Secs. 1-2 80
Rule 51, Secs. 5-10 80
Sec.11 .... 80, 484-485
Rule 52, Sec. 2 .... 79-80, 110-111, 114
Secs. 5-11 80
Rule 56, Sec. 2 114
Sec. 3 511
Sec. 4 80
Rule 58, Sec. 3 445
Sec. 5 292
Rule 65 .... 241, 291, 436, 585, 635
Rule 70 240
Sec. 1 .... 237, 240
Sec. 19 458

Page

Rule 112, Sec. 7 600
Rule 113, Sec. 5 600
Rule 120, Sec. 4 43
Rule 125, Sec. 2 511
Rule 133, Sec. 1 596
Sec. 2 595
Sec. 5 597
Rule 135, Sec. 5 137
Rule 138, Sec. 27 476
Rule 141, Sec. 10 51
Sec. 16 167
Rule 142, Sec. 1 356
Sec. 3 458
Rules of Notarial Practice, 2004
Rule IV, Sec. 1 (c) 475-476
Sec. 3 (a) 475-476
Rule XI, Sec. 1 644
Sec. 1 (b) (10) 476
Rules on Civil Procedure, 1997
Rule 1, Sec. 6 163-164
Rule 14, Sec. 6 227
Secs. 7, 14-16 228
Rule 45 378
Rule 65 .... 312, 431, 583
Rules on Criminal Procedure
Rule 122, Secs. 3, 10 518
Rule 124, Sec. 13 518
(c) 277
Rule 125, Sec. 3 518

C. OTHERS

Department of Agrarian Reform (DAR) Administrative Order
A.O. No. 6, series of 2008 301
A.O. No. 13, series of 1994 300-302
A.O. No. 2, series of 1994 300-301
A.O. No. 9, Series of 1993 239

Page

2004 Rules of the House of Representatives Electoral Tribunal (HRET)
Rule 16 640
Internal Rules of the Supreme Court (IRSC)
Rule 2 127
Sec. 3 106
(n) 92
Sec. 4 .... 106, 128
Sec. 7 .... 88-91, 94
par. 2 148
par. 6 119
Sec. 8 106
Sec. 9 .... 85, 107, 119
Sec. 10 (b) 142
Sec. 11 128
Rule 6, Sec. 6 106
Rule 7, Sec. 2 106
Sec. 3 138
Rule 8, Sec. 2 118
Sec. 3 .... 84-85, 88-90
(a) 118, 147, 149
Rule 9, Sec. 4 136
Rule 13, Sec. 9 139
Rule 15 127
Sec. 3 .... 111, 114, 128
par. 2 131
Omnibus Rules Implementing Book V of Executive Order No. 292
Rule XIV, Sec. 23 390
Uniform Rules on Administrative Cases in the Civil Service
Rule IV, Sec. 52 (A) (3), (11) 505

Page

D. BOOKS
(Local)

Bernas, The Intent Of The 1986 Constitution Writers,
1995 Edition, pp. 456, 474 .... 586, 610
Bernas, S.J., The 1987 Constitution of the Philippines
and Commentary, 2003 Ed., p. 865 564
Willlard B. Riano, Civil Procedure – A Restatement
for the Bar, 494 (2009) 486
Tolentino, Commentaries and Jurisprudence on
The Civil Code of the Philippines, Vol. IV (1991) 355

II. FOREIGN AUTHORITIES

BOOKS

Black's Law Dictionary (9th Ed., 2010) 628
Cooley, Treatise on Constitutional Limitations,
Vol. 1, pp. 142-143 (1927) 593