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OF THE

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FROM

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MANILA
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. P-11-3004. April 18, 2012]
(Formerly A.M. OCA I.P.I. No. 10-3483-P)

JUDGE ANDREW P. DULNUAN, *complainant, vs.* **ESTEBAN D. DACSIG, CLERK OF COURT II, MCTC, Maddela-Nagtipunan, Quirino,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT EMPLOYEES; LEAVE OF ABSENCE; ABSENCE UNAUTHORIZED WHEN EMPLOYEE FAILED TO OBTAIN THE NECESSARY LEAVE PERMIT.— Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws (Civil Service rules) provides the rules governing the different forms of leave granted to government employees and officers. Sections 16 and 20 mandate that an employee submit an application for both sick and vacation leaves, *viz*: x x x Under the Civil Service rules, an employee should submit in advance, whenever possible, an application for a vacation leave of absence for action by the proper chief of agency prior to the effective date of the leave. It is clear from the facts that Dacsig had failed to acquire the necessary leave permits. He offers no excuse or explanation for failing to obtain the necessary authorization for his leaves. Thus, he is guilty of taking unauthorized absences. Under Section 50 of Memorandum Circular No. 41, series of 1998, officials or employees who are absent without approved leave

shall not be entitled to receive their salary corresponding to the period of his unauthorized leave of absence.

2. ID.; ID.; ID.; ID.; ID.; PENALTY FOR FREQUENT UNAUTHORIZED ABSENCES.— [We] ruled in *Re: Unauthorized Absences of Karen R. Cuenca, Clerk II, Property Division-Office of Administrative Services* that under Administrative Circular No. 2-99, which took effect on February 1, 1999, "[a]bsenteeism and tardiness, even if such do not qualify as "habitual" or "frequent" under Civil Service Commission Memorandum Circular No. 04, Series of 1991, shall be dealt with severely." x x x Rule IV, Section 52 (A) (17) of the Uniform Rules on Administrative Cases in the Civil Service, provides that the penalty for frequent unauthorized absences of a first offender is suspension for six months and one day to one year.

R E S O L U T I O N

SERENO, *J.*:

In a letter dated 26 April 2010 and addressed to Ms. Hermogena F. Bayani, Chief Judicial Staff Officer of the Leave Division, Office of the Court Administrator (OCA), Presiding Judge Andrew P. Dulnuan (Judge Dulnuan) of Municipal Circuit Trial Court, Madella-Natipunan, Quirino recommended that the salary of his Clerk of Court II, Esteban D. Dacsig (Dacsig), be suspended and that other administrative sanctions be imposed upon the latter for taking absences without leave because of drunkenness.

Dacsig incurred several absences without leave for the years 2009 and 2010, specifically on the following dates:

Month and Year	Number of Times Absent	Specific Dates
December 2009	4 times	7, 8, 9, & 11
April 2010	3 times	21, 22, & 23

In addition, Dacsig failed to enter his name in the office log book from January 2010 to 19 April 2010. Also, the time cards

submitted by Dacsig for March 2010 allegedly came with a notation that the office bundy clock had malfunctioned in the last week of March 2010.

In a letter to the OCA dated 15 May 2010, Dacsig admitted that he had taken those absences without leave and begged the OCA not to impose administrative sanctions upon him, to wit:

> I appeal to your office for understanding and sympathy not to impose administrative sanctions against me for this initial infraction as those times of being absent without leave. I was going through personal crisis making me vulnerable to such behavior (drunkenness). I am working out means to address the matter for my own personal redemption, but in case it fails and such absence will again be committed, I have no recourse but to voluntarily resign or for your office to consider me resigned.

On 5 August 2010, Caridad A. Pabello of the Office of Administrative Services of the OCA referred the matter to Atty. Wilhelmina D. Geronga of the OCA's Legal Office for whatever action the latter's office may deem proper.

On 1 October 2010, Court Administrator Jose Midas P. Marquez referred Judge Dulnuan's 26 April 2010 letter to Dacsig for the latter's comment.

Respondent submitted his Comment on 23 May 2011. He explained that he used his "force leave" from December 7 to 9 to visit his family at Mayoyao, Ifugao. As to his absence on 11 December 2011, he claims that he asked Judge Dulnuan a week in advance for permission to attend a non-government organization event on that day.

He was again in Mayoyao, Ifugao from April 21 to 23 to talk to his wife about their marital problems.

The OCA, in its 7 July 2011 report, recommended that Dacsig, for his first offense of simple misconduct, be fined in the amount of ₱5,000 and warned that a repetition of the same or a similar offense in the future would be dealt with more severely by this Court.

Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws (Civil Service rules) provides the rules governing the different forms of leave granted to government employees and officers. Sections 16 and 20 mandate that an employee submit an application for both sick and vacation leaves, *viz*:

RULE XVI

Leave of Absence

x x x x x x x x x

SECTION 16. All applications for sick leaves of absence for one full day or more shall be on the prescribed form and shall be filed immediately upon the employee's return from such leave. Notice of absence, however, should be sent to the immediate supervisor and/or to the office head. Application for sick leave in excess of five days shall be accompanied by a proper medical certificate.

SECTION 20. Leave of absence for any reason other than illness of an officer or employee or of any member of his immediate family must be contingent upon the needs of the service. Hence, the grant of vacation leave shall be at the discretion of the head of department/agency.

Under the Civil Service rules, an employee should submit in advance, whenever possible, an application for a vacation leave of absence for action by the proper chief of agency prior to the effective date of the leave.[1]

It is clear from the facts that Dacsig had failed to acquire the necessary leave permits. He offers no excuse or explanation for failing to obtain the necessary authorization for his leaves. Thus, he is guilty of taking unauthorized absences.

Under Section 50 of Memorandum Circular No. 41, series of 1998, officials or employees who are absent without approved leave shall not be entitled to receive their salary corresponding to the period of his unauthorized leave of absence.[2]

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[1] *Judge Raphael B.Yrastorza v. Latiza,* 462 Phil. 145 (2003).

[2] *Re: Absence Without Official Leave (AWOL) of Antonio Macalintal, Process Server, Office of the Clerk of Court,* 382 Phil. 314 (2000).

Furthermore, we ruled in *Re: Unauthorized Absences of Karen R. Cuenca, Clerk II, Property Division-Office of Administrative Services*[3] that under Administrative Circular No. 2-99, which took effect on February 1, 1999, "[a]bsenteeism and tardiness, even if such do not qualify as "habitual" or "frequent" under Civil Service Commission Memorandum Circular No. 04, Series of 1991, shall be dealt with severely."

Dacsig has not explained his failure to enter his name in the office log book from January 2010 to 19 April 2010 and his claim that the Office Bundy Clock malfunctioned on the last week of March 2010.

With respect to the charge of drunkenness, although respondent readily admitted this charge, this Court cannot justify charging him with simple misconduct when the records do not even show that he has failed to live up to his duty to observe proper decorum[4] or to live up to the stringent standard of conduct demanded from everyone connected with the administration of justice[5] because of his drunkenness.

Rule IV, Section 52 (A) (17) of the Uniform Rules on Administrative Cases in the Civil Service,[6] provides that the penalty for frequent unauthorized absences of a first offender is suspension for six months and one day to one year.

WHEREFORE, we find respondent Esteban D. Dacsig, Clerk of Court II, Municipal Circuit Trial Court, Madella-Natipunan, Quirino is **GUILTY** of taking frequent unauthorized absences. He is hereby **SUSPENDED** for a period of six (6) months and one (1) day and **WARNED** that a repetition of the same or a similar offense shall warrant the imposition of a more severe penalty.

SO ORDERED.

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

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[3] 493 Phil. 547 (2005).

[4] *Judge Raphael B. Yrastorza v. Latiza, supra* note 1.

[5] *Office of the Court Administrator v. Barnedo,* 483 Phil. 200 (2004).

[6] Resolution No. 991936, 31 August 1999.

SECOND DIVISION

[G.R. No. 163125. April 18, 2012]

JOSE ABELGAS, JR. and LETECIA JUSAYAN DE ABELGAS, *petitioners, vs.* **SERVILLANO COMIA, RURAL BANK OF SOCORRO, INC. and RURAL BANK OF PINAMALAYAN, INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; PUBLIC LAND ACT (CA 141); ALIENATION OF LANDS SUBJECT TO FREE PATENT, PROHIBITED WITHIN FIVE YEARS FROM THE ISSUANCE OF THE GRANT.— Section 118 of CA 141 prohibits the alienation of lands subject to a free patent within five years from the issuance of the grant. Additionally, any disposition made after the prohibited period must be with the consent of the Secretary of Environment and Natural Resources.

2. ID.; ID.; ID.; APPLICATION OF THE FIVE YEAR PROHIBITION REQUIRES ALIENATION OF LAND AFTER THE GRANT OF THE FREE PATENT; CASE AT BAR.— Section 118 of CA 141 requires that before the five year prohibition applies, **there should be an alienation or encumbrance of the land acquired under free patent or homestead.** x x x Thus, x x x there is a need to verify **whether in executing the Deed of Relinquishment, Renunciation of Rights and Quitclaim, Comia alienated the 3,000-sqm portion after the grant of the free patent.** Although this is a finding of fact generally beyond this Court's jurisdiction, this Court will consider the issue, considering the conflicting factual and legal conclusions of the lower courts. In real property law, alienation is defined as the transfer of the property and possession of lands, tenements, or other things from one person to another. It is the "act by which the title to real estate is voluntarily resigned by one person to another and accepted by the latter, in the forms prescribed by law." In this case, Comia did not transfer, convey or cede the property; but rather, he relinquished, renounced and "quitclaimed" the property considering that **the property already belonged to the spouses**. The voluntary renunciation by Comia of that portion was **not**

an act of alienation, but an **act of correcting** the inclusion of the property in his free patent. The evidence on record reveals that prior the grant of the free patent, the spouses already owned the property. x x x [I]n *Heirs of Manlapat v. Court of Appeals,* this Court held that where the alienation or transfer took place before the filing of a free patent application, the prohibition should not be applied. In that situation, "neither the prohibition nor the rationale therefor which is to keep in the family of the patentee that portion of the public land which the government has gratuitously given him, by shielding him from the temptation to dispose of his landholding, could be relevant."

3. REMEDIAL LAW; EVIDENCE; DOCUMENTS OF ENTRIES IN PUBLIC RECORDS MADE IN OFFICIAL FUNCTION OF A PUBLIC OFFICER ARE *PRIMA FACIE* EVIDENCE OF FACTS STATED THEREIN.— Comia failed to dispute by clear and convincing evidence the presumption that the spouses owned the property prior to the grant of his free patent. This presumption is present in this case since the Deed of Relinquishment and Renunciation of Right was annotated in a public document, specifically, the original certificate of title. Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated.

4. POLITICAL LAW; PUBLIC LAND ACT (CA 141); FREE PATENT; PRIOR PRIVATE OWNERSHIP OF LAND, NOT AFFECTED BY ISSUANCE OF A FREE PATENT.— In support of the fact that the alienation transpired prior to the grant of a free patent, it is remarkable that Comia never contested that the spouses had been in actual possession of the subject portion even before his patent application. The private ownership of land – as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession — is not affected by the issuance of a free patent over the same land. A *prima facie* proof of ownership is not necessarily defeated by a free patent, especially if the title covers a portion not belonging to the grantee. Where an applicant has illegally included portions of an adjoining land that does not form part of the applicant's homestead, the title issued by virtue thereof should be cancelled.

5. ID.; ID.; ID.; PROHIBITION ON ALIENATING OR ENCUMBERING LAND WITHIN FIVE YEARS FROM ISSUANCE OF FREE PATENT; RURAL BANKS ACT (RA 720) AS AMENDED BY RA 5939, ALLOWS BANKS TO ACCEPT FREE PATENTS AS SECURITY FOR LOAN OBLIGATIONS.— For the prohibition in Section 118 of CA 141 to apply, the subject property must be acquired by virtue of either a free patent or a homestead patent. x x x [Here] the encumbrances thereon are not null and void, as these do not fall within the ambit of the prohibition. This being the case, it cannot be said that the banks were in bad faith for accepting the encumbered properties that did not originate from a free patent. In any event, at the time of the mortgage, the Rural Banks Act (Republic Act No. 720), as amended by Republic Act No. 5939, already allows banks to accept free patents as security for loan obligations.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Apolonia C. Soguilon for Servillano Comia.
Julio Arsenio R. Larracas for Rural Bank of Socorro Inc. and Rural Bank of Pinamalayan, Inc.

D E C I S I O N

SERENO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, seeking to review the Court of Appeals (CA) 20 March 2003 Decision and 31 March 2004 Resolution in CA-G.R. CV No. 46241. The assailed Decision nullified the Deed of Relinquishment, Renunciation of Rights and Quitclaim executed by respondent Servillano Comia in favor of petitioner spouses Jose Abelgas, Jr. and Letecia Jusayan de Abelgas, as well as the encumbrances executed by the spouses in favor of respondent banks.

The pertinent facts are as follows:

On 4 April 1971, Comia obtained a free patent over Lot No. 919-B situated in Pinamalayan, Oriental Mindoro with an area of 6,790 square meters.[1] Pursuant to this free patent, Lot No. 919-B was originally registered on 26 April 1971 as Original Certificate of Title (OCT) No. P-8553.

Subsequently, on 1 May 1971, by virtue of a notarized Deed of Relinquishment, Renunciation of Rights and Quitclaim, Comia voluntarily conveyed a 3,000-square-meter (3,000-sqm) portion of Lot No. 919-B to the spouses Abelgas. It was stated in the said Deed that the subject portion was the sole property of the spouses; and that it had only been included in the title of Comia for it adjoined his land. Indeed, based on the Subdivision Survey, the 3,000-sqm portion of Lot No. 919-B bordered Lot No. 919-E owned by Jose Abelgas, Jr.[2]

By virtue of this subsequent voluntary dealing over the property, the Register of Deeds cancelled OCT No. P-8553 in the name of Comia and Transfer Certificate of Title (TCT) No. T-46030[3] was issued on 3 May 1971 in the names of "CO-OWNERS, (1) SERVILLANO COMIA, married to Estelita Amaria, and (2) SPS. JOSE ABELGAS, JR. AND LETECIA JUSAYAN DE ABELGAS"[4] as co-owners of Lot No. 919-B. There is no explanation in the records on how TCT No. T-46030 came about to be recorded in the names of these people when the subject portion should have been, as a consequence of the 1971 Deed of Relinquishment, Renunciation of Rights and Quitclaim, in the name of the spouses Abelgas only.

Thereafter, the spouses subdivided their 3,000-sqm portion into twelve (12) lots as evidenced by TCT Nos. T-46364 to 46375.[5]

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[1] Servillano Comia's Memorandum dated 20 June 2005, p. 7; *rollo*, p. 198.

[2] Subdivision Survey dated 13 April 1966; *rollo*, p. 219.

[3] Exhibit C; RTC records, p. 274.

[4] Letecia Jusayan is the spouse of Jose Abelgas, Jr.

[5] CA Decision penned by Associate Justice Marina L. Buzon, with Associate Justices Josefina Guevara-Salonga and Danilo B. Pine, concurring, p. 2; *rollo*, p. 102.

Using their TCTs, they used the lots to secure their loan obligations with Rural Bank of Pinamalayan, Inc. (RBPI), Rural Bank of Socorro, Inc. (RBSI), and the Philippine National Bank (PNB).

Specifically, on 6 July 1971, the spouses Abelgas constituted a mortgage on TCT No. 46366 to secure a loan for ₱1,000. Then, to secure another loan for ₱600, the spouses mortgaged on 23 August 1971 the lot covered by TCT No. T-46367. Petitioners defaulted on their obligations and hence, the lots were sold at a public auction, wherein RBPI prevailed as the winning bidder.[6] After the lapse of the redemption period, TCT Nos. T-17448 and T-17445 were issued in the name of RBPI.[7]

As for the remaining lots, the spouses mortgaged most[8] of these to RBSI in 1971 to 1972 as security for the spouses' various loans. Petitioners defaulted on their obligations, and, thus, the mortgagee bank foreclosed the securities wherein it emerged as the winning bidder. Thus:[9]

TCT Nos.	Security Date	Auction Date	Loan (₱)
46364	04 September 1971	19 December 1974	800
46365	15 June 1971	26 January 1976	1,000
46369 & 46370	13 November 1971	21 December 1973	1,000
46372 & 46373	19 April 1972	21 December 1973	2,000

Of these properties, lots covered by TCT Nos. 46369 and 46370 had certificates that were cancelled and a new one, TCT No. 71198,[10] was issued in RBSI's name.

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[6] RBPI's Memorandum dated 17 April 2009, p. 7; *rollo*, p. 326.

[7] On 9 June 2005, RBPI manifested before this Court that the properties had already been sold for business reasons.

[8] Lots covered by TCT Nos. 46371 and 46375 were mortgaged to PNB, but were later on released by the bank in the name of the Abelgas spouses.

[9] RBSI's Memorandum dated 3 September 2008, pp.7-8; *rollo*, pp. 276-277.

[10] *Id.* at 9; *rollo*, pp. 277.

Comia contested the issuance of these titles. He claimed that he was the sole owner of Lot No. 919-B; and that the Deed of Relinquishment, Renunciation of Rights and Quitclaim, which resulted in the issuance of TCT Nos. T-46030, and T-46364 to 46375, is fictitious and nonexisting.[11] Thus, Comia demanded the recovery of Lot No. 919-B under OCT No. P-8553 and the cancellation of the subsequent titles.[12]

He pursued his action before the Regional Trial Court (RTC) by filing a Complaint for cancellation and recovery of, and/or quieting of title to real property and damages against the Abelgas spouses, RBPI, RBSI, and PNB.[13] For their answer, the spouses asserted that they had been in possession of the 3,000-sqm portion of Lot No. 919-B.[14] During trial, Jose Abelgas Jr. testified that before 1971, he had already purchased the said portion from respondent.[15]

In turn, the mortgagee banks, RBPI and RBSI, filed cross-claims against the spouses for them to pay their obligations in the event that the TCTs offered as security for their loans would be declared as null and void. Respondent assailed the encumbrances in favor of the mortgagee banks as void *ab initio* and obtained in bad faith as these were executed within the period of prohibition to dispose lands subject of a free patent under Section 118 of the Public Land Act (CA 141). Claiming lack of notice of any defect in the certificates, both banks denied Comia's allegations.

Section 118 of CA 141[16] prohibits the alienation of lands subject to a free patent within five years from the issuance of

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[11] *Supra* note 1 at 8; *rollo*, p. 199.

[12] Comia's Amended Complaint dated 12 May 1976, p. 5; RTC records, p. 33.

[13] The Complaint against PNB was dismissed in view of its release of the mortgage.

[14] Spouses Abelgas' Answer to the Amended Complaint dated 15 June 1976, p. 2; RTC records, p. 60.

[15] TSN of Civil Case No. R-444 dated 16 June 1983, pp. 5-9.

[16] An Act to Amend and Compile the Laws Relative to Lands of the Public Domain (1936).

the grant. Additionally, any disposition made after the prohibited period must be with the consent of the Secretary of Environment and Natural Resources. Evidently, the Deed and the mortgages were executed within the prohibited period and without the Secretary's consent.

The RTC dismissed the Complaint of Comia.[17] It found that the Deed as signed by him voluntarily relinquished the subject parcel of land in favor of its rightful owner and possessors — the spouses Abelgas.[18] The trial court also upheld the validity of the mortgages, since encumbrances made in favor of banks are exempted according to the amendatory laws of the Public Land Act.[19] Moreover, based on *Decolongon v. CA*,[20] the approval of the Secretary of Environment and Natural Resources is only directory.

Accordingly, the dispositive portion reads:[21]

WHEREFORE, premises considered, judgment is hereby rendered in favor of defendants spouses JOSE ABELGAS, Jr. and LETECIA JUSAYAN DE ABELGAS; RURAL BANKS OF SOCORRO, INC. and RURAL BANK OF PINAMALAYAN, INC., against plaintiff SERVILLANO COMIA, as follows:

1. Dismissing plaintiff's Amended Complaint;
2. Declaring Transfer Certificate of Title No. T-46030, and Transfer Certificates of Title Nos. T-46364 to T-46375 and subsequent certificates of title thereto in the name of defendants Rural Bank of Socorro, Inc. or defendant Rural Bank of Pinamalayan, Inc. as valid and existing;
3. Ordering the plaintiff to pay the following:

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[17] RTC Decision penned by Judge Manuel A. Roman; *rollo*, p. 56.

[18] *Id.* at 53.

[19] *Id.* at 54 citing Act 3517, An act to Amend Certain Sections of Act Numbered Twenty-Eight Hundred and Seventy-Four, known as "The Public Land Act (1929).

[20] 207 Phil. 718 (1983).

[21] *Supra* note 17, at 56.

(a) Defendants spouse (sic) Jose Abelgas, Jr. and Letecia Jusayan de Abelgas the sum of ₱5,000.00 as attorney's fees;

(b) Defendant Rural Bank of Socorro, Inc., the sum of ₱50,000.00 as damages for besmirched reputation being a bank institution with good standing; ₱2,000.00 as attorney's fee, and ₱1,000.00 as litigation expenses;

(c) Defendant Rural Bank of Pinamalayan, Inc., the sum of ₱50,000.00 as damages for besmirched reputation being a bank institution with good standing; ₱2,000.00 as attorney's fee, and ₱1,000.00 as litigation expenses; and

4. The costs.

SO ORDERED.

Comia appealed to the CA, which modified the RTC's Decision. While the appellate court sustained the due execution of the Deed of Relinquishment, Renunciation of Rights and Quitclaim, it construed the document as an alienation prohibited by CA 141. The CA pronounced that in an attempt to circumvent the law, it was made to appear that the 3,000 square meters adjoining the land of Comia was owned by the spouses. However, based on testimonial evidence, Abelgas purchased the said portion contrary to law.[22]

Likewise, the CA nullified the mortgages, as the exemption of the banks had been removed by Commonwealth Act 456[23] amending Section 118 of Commonwealth Act 141, which took effect on 8 June 1939.[24] Nevertheless, the banks may recover the value of the loans with interest.[25]

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[22] *Supra* note 5, at 17; *rollo*, p. 117.

[23] Commonwealth Act No. 456 — An act to Amend Sections Nineteen, Twenty, and One Hundred and Eighteen of Commonwealth Act numbered One Hundred Forty-One, commonly known as the Public Land Act (1939).

[24] *Supra* note 5, at 18; *rollo*, p. 118.

[25] *Id.* at 19; *rollo*, p. 119.

In view of the Deed's nullity, and in the absence of escheat proceedings, the CA restored to Comia Lot No. 919-B. The appellate court ruled thus:[26]

WHEREFORE, the Decision appealed from is ***REVERSED*** and ***SET ASIDE***, and another one entered as follows:

1. Declaring the deed of relinquishment and renunciation of rights and quitclaim as null and void;

2. Declaring the deeds of real estate mortgage executed by defendants-appellees Jose Abelgas, Jr. and Letecia Jusayan de Abelgas in favor of Rural Bank Pinamalayan, Inc. and Rural Bank of Socorro, Inc., as well as the foreclosure proceedings and certificates of sale, null and void;

3. Ordering the Register of Deeds of the Province of Oriental Mindoro to cancel TCT nos. T-46030, 465364 to 465375, 46821, 71171 and 71198 and to reinstate OCT No. P-8553 in the name of plaintiff-appellant Servillano Comia;

4. Ordering defendants-appellees Jose Abelgas, Jr. and Letecia Jusayan de Abelgas to pay Rural Bank of Pinamalayan, Inc., their indebtedness in the total amount of ₱1,600.00 plus interest thereon at the legal rate from the date of maturity of promissory notes, attached as Annexes "1-A", and "2-A" to its cross-claim, and the amount of ₱3,000.00 as attorney's fees.

5. Ordering defendants-appellees Jose Abelgas, Jr. and Letecia Jusayan de Abelgas to pay Rural Bank of Socorro, Inc. their indebtedness in the total amount of ₱5,600.00, plus interest thereon at the legal rate from the date of maturity of the promissory notes, attached as Annexes "1", "2", "3" and "4" to its cross-claim, and the amount of ₱3,000.00 as attorney's fees.

SO ORDERED.

Hence, the central issue in this Petition filed by the aggrieved spouses is whether the CA gravely erred in declaring the Deed of Relinquishment, Renunciation of Rights and Quitclaim and

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[26] *Id.* at 22; *rollo*, pp. 121-123.

the mortgages in favor of mortgagee banks, as null and void for being contrary to the provisions of CA 141 and its amendatory laws.

Section 118 of CA 141[27] requires that before the five year prohibition applies, **there should be an alienation or encumbrance of the land acquired under free patent or homestead.**

> Section 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent or grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.
>
> No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds.

Thus, to ascertain the correctness of the CA's Decision, there is a need to verify **whether in executing the Deed of Relinquishment, Renunciation of Rights and Quitclaim, Comia alienated the 3,000-sqm portion after the grant of the free patent.** Although this is a finding of fact generally beyond this Court's jurisdiction,[28] this Court will consider the issue, considering the conflicting factual and legal conclusions of the lower courts.

In real property law, alienation is defined as the transfer of the property and possession of lands, tenements, or other things

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[27] As amended by Commonwealth Act No. 456, An Act to Amend Sections Nineteen, Twenty and One Hundred and Eighteen of Commonwealth Act Numbered One Hundred Forty-One, commonly known as The Public Land Act (1939).

[28] *Republic v. Regional Trial Court, Br. 18, Roxas, Capiz*, G.R. No. 172931, 18 June 2009, 589 SCRA 552.

from one person to another. It is the "act by which the title to real estate is voluntarily resigned by one person to another and accepted by the latter, in the forms prescribed by law."[29] In this case, Comia did not transfer, convey or cede the property; but rather, he relinquished, renounced and "quitclaimed" the property considering that **the property already belonged to the spouses**. The voluntary renunciation by Comia of that portion was **not an act of alienation**, but an **act of correcting** the inclusion of the property in his free patent.

The evidence on record reveals that prior the grant of the free patent, the spouses already owned the property. This fact can be inferred from the following testimony of Jose Abelgas, Jr.:[30]

> A: It was in **1971** when he (Servillano Comia) went to our house bringing with him an Original Certificate of Title issued to him by the Bureau of Lands.
>
> Q: What was his purpose of bringing to you Original Certificate of Title (sic) issued by the Bureau of Lands?
>
> A: He wants to segregate the 3,000 square meters out of 6,790 square meters from the Original Certificate of Title **which I bought from him, sir.** (Emphasis supplied.)

This testimony was not contested or objected to by Comia. Neither did he put in evidence that he sold the property during the period of the prohibition as he would have been deemed to be in violation of the law. Rather, his argument has always been the non-existence of the said Deed which both lower courts have already concluded otherwise.[31]

More important, Comia failed to dispute by clear and convincing evidence[32] the presumption that the spouses owned the property prior to the grant of his free patent. This presumption

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[29] BLACK'S *LAW DICTIONARY*, 2nd ed., p. 57.

[30] TSN of Civil Case No. R-444 dated 16 June 1983, pp. 4-5.

[31] *Supra* note 5, at 16; *rollo*, p. 116; *Supra* note 17, at 5, *rollo*, p. 53.

[32] *Thomson Shirts Factory v. Commissioner of Internal Revenue*, 160-A Phil. 140 (1975).

is present in this case since the Deed of Relinquishment and Renunciation of Right was annotated in a public document, specifically, the original certificate of title. Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated.[33] Entry No. 81908 annotating OCT No. P-8553 reads as:[34]

MEMORANDUM OF INCUMBRANCES (sic)

Entry No. 81908; Doc. No. xxx [not legible] RENUNCIATION OF RIGHTS AND QUITCLAIMS – In favor of the espouses (sic): JOSE ABELGAS JR. AND LETECIA JUSAYAN DE ABELGAS, of legal age, filipinos, (sic) and residing at Poblacion, Gloria, Oriental Mindoro, Philippines, - covering this Original Certificate of Title No. P-8553, in conformity with the conditions stipulated in the Deed of Renunciation of Rights and Quitclaim executed by SERVILLANO COMIA married to ESTELITA AIMARIA, of legal age, filipino, (sic) and residing at Socorro, Oriental Mindoro, Philippines, on file in this registry.

Date of Instrument ---------- May 1, 1971
Date of Inscription ---------- May 3, 1971 at 8:10 a.m.

(Sgd.)
REYNALDO M. MAMBIL
REGISTER OF DEEDS

The Deed of Relinquishment, Renunciation of Rights and Quitclaim, as referred in the title, recognizes the ownership of the spouses. Comia explicitly declared in the said Deed that the **subject portion belonging to the spouses Abelgas had been included in his title for it adjoins his land**. The Deed reads thus: [35]

That I hereby **relinquish, renounce, and quitclaim**, and by these presents have RELINQUISHED, RENOUNCED, and QUITCLAIMED,

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[33] Rule 132, Sec. 23. *Public Documents as Evidence.* — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated.

[34] *Supra* note 12, at 37.

[35] Exhibit A; RTC records, p. 131.

all my rights, interests, possession, occupation, and participation of a portion of THREE THOUSAND (3,000) SQUARE METERS, of the parcel of land described above, free from all liens and encumbrances, together with all its existing improvements that may be found there unto the **ESPOUSES (sic) JOSE A. ABELGAS Jr. and LETECIA JUSAYAN DE ABELGAS,** likewise of legal ages, filipinos (sic) and a resident of Poblacion, Gloria, Province of Oriental Mindoro, Philippines, their heirs, executors, administrators, and assigns, and agreeing further to warrant and forever defend the title and peaceful possession of the herein espouses (sic): JOSE A. ABELGAS JR. and LETECIA JUSAYAN DE ABELGAS, their heirs, executors, administrators, and assigns against the just and lawful claims of any or all persons whomsoever.

That the above described property, with an area of THREE THOUSAND (3000) SQ. METERS, is the sole property of the above described espouses (sic) and it had only been included in my title for it adjoins my land situated in the barrio of Quinabigan, Pinamalayan Oriental Mindoro and it was not my fault therefore so it being not mine (sic). I have voluntarily renounced the area of three thousand (3000) square meters, in favor of the said JOSE ABELGAS JR. and LETECIA JUSAYAN DE ABELGAS. (Emphasis and underscoring in the original).

In support of the fact that the alienation transpired prior to the grant of a free patent, it is remarkable that Comia never contested that the spouses had been in actual possession of the subject portion even before his patent application. The private ownership of land – as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession — is not affected by the issuance of a free patent over the same land.[36]

A *prima facie* proof of ownership is not necessarily defeated by a free patent, especially if the title covers a portion not belonging to the grantee. Where an applicant has illegally included portions of an adjoining land that does not form part of the

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[36] *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago*, 452 Phil. 238 (2003).

applicant's homestead, the title issued by virtue thereof should be cancelled.[37] In *Angeles v. Samia*,[38] this Court explained that:

> The Land Registration Act as well as the Cadastral Act protects only the holders of a title in good faith and does not permit its provisions to be used as a shield for the commission of fraud, or that one should enrich himself at the expense of another (Gustilo *vs.* Maravilla, 48 Phil. 442; Angelo *vs.* Director of Lands, 49 Phil. 838). The above-stated Acts do not give anybody, who resorts to the provisions thereof, a better title than he really and lawfully has. **If he happened to obtain it by mistake or to secure, to the prejudice of his neighbor, more land than he really owns, with or without bad faith on his part, the certificate of title, which may have been issued to him under the circumstances, may and should be cancelled or corrected** (Legarda and Prieto *vs.* Saleeby, 31 Phil. 590). (Emphasis supplied.)

Seeing that there is no alienation to begin with, this Court finds that the prohibition is not applicable. Thus, the Deed of Relinquishment, Renunciation of Rights and Quitclaim is not null and void for being contrary to the Public Land Act.

In a similar case, in *Heirs of Manlapat v. Court of Appeals,* this Court held that where the alienation or transfer took place before the filing of a free patent application, the prohibition should not be applied. In that situation, "neither the prohibition nor the rationale therefor which is to keep in the family of the patentee that portion of the public land which the government has gratuitously given him, by shielding him from the temptation to dispose of his landholding, could be relevant."[39]

Consequently, this Court rules against the cancellation of TCT Nos. T-46030, and T-46364 to 46375. Indeed, these subsequent certificates were issued based on a duly executed instrument sanctioned by law.

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[37] *Director of Lands v. Reyes*, 69 Phil. 497 (1940).

[38] 66 Phil. 444, 449 (1938).

[39] *Heirs of Manlapat v. Court of Appeals*, 498 Phil. 453, 478 (2005).

As for the encumbrances, Comia also unsuccessfully assailed the mortgages by virtue of an alleged violation of the Public Land Act.

For the prohibition in Section 118 of CA 141 to apply, the subject property must be acquired by virtue of either a free patent or a homestead patent. In this case, the 3,000-sqm portion subdivided into twelve (12) lots as evidenced by TCT Nos. T-46364 to 46375 has not been shown to be under a free patent. As it appears, what was submitted to the mortgagee banks were TCTs not derived from a free patent.

Thus, the encumbrances thereon are not null and void, as these do not fall within the ambit of the prohibition. This being the case, it cannot be said that the banks were in bad faith for accepting the encumbered properties that did not originate from a free patent. In any event, at the time of the mortgage, the Rural Banks Act (Republic Act No. 720), as amended by Republic Act No. 5939,[40] already allows banks to accept free patents as security for loan obligations.[41]

Absent any finding of nullity, we sustain the RTC's ruling that the alienation and encumbrances are valid. Consequently, there is no cause to cancel the subsequent TCTs and the resulting mortgages thereon.

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[40] An Act Amending Sections Three, Four, Five, Seven, Eleven, Fourteen, Sixteen and Seventeen of Republic Act Numbered Seven Hundred Twenty, as amended, otherwise known as the Rural Banks Act (1969): Sec. 5. x x x

Loans may be granted by rural banks on the security of lands without Torrens title x x x or of **homesteads or free patent lands** pending the issuance of titles but already approved, the provisions of any law or regulations to the contrary notwithstanding: Provided, That when the corresponding titles are issued the same shall be delivered to the register of deeds of the province where such lands are situated for the annotation of the encumbrance: Provided, further, That in the case of lands pending homestead or free patent titles, copies of notices for the presentation of the final proof shall also be furnished the creditor rural bank and, if the borrower applicants fail to present the final proof within thirty days from date of notice, the creditor rural bank may do so for them at their expense: x x x

[41] *Rural Bank of Compostela v. Court of Appeals*, 337 Phil. 521 (1997).

IN VIEW THEREOF, the Petition is **GRANTED** and the assailed 20 March 2003 Decision and 31 March 2004 Resolution of the Court of Appeals in CA-G.R. CV No. 46241 are **REVERSED** and **SET ASIDE.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 163657. April 18, 2012]

INTERNATIONAL MANAGEMENT SERVICES/MARILYN C. PASCUAL, *petitioner, vs.* **ROEL P. LOGARTA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RETRENCHMENT; ELUCIDATED.— Retrenchment is the reduction of work personnel usually due to poor financial returns, aimed to cut down costs for operation particularly on salaries and wages. It is one of the economic grounds to dismiss employees and is resorted by an employer primarily to avoid or minimize business losses. Retrenchment programs are purely business decisions within the purview of a valid and reasonable exercise of management prerogative. It is one way of downsizing an employer's workforce and is often resorted to by the employer during periods of business recession, industrial depression, or seasonal fluctuations, and during lulls in production occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or introduction of new methods or more efficient machinery or automation. It is a valid management prerogative, provided it is done in good faith and the employer faithfully

complies with the substantive and procedural requirements laid down by law and jurisprudence.

2. ID.; OVERSEAS FILIPINO WORKER (OFW); LABOR CODE APPLICABLE TO BOTH OFW AND THEIR EMPLOYERS.— In the case at bar, despite the fact that respondent was employed by Petrocon as an OFW in Saudi Arabia, still both he and his employer are subject to the provisions of the Labor Code when applicable. In the case of *Royal Crown Internationale v. NLRC*, this Court has made the policy pronouncement. x x x Whether employed locally or overseas, all Filipino workers enjoy the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. This pronouncement is in keeping with the basic public policy of the State to afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers.

3. ID.; TERMINATION OF EMPLOYMENT; DISMISSAL; RETRENCHMENT AS A VALID CAUSE THEREFOR.— Philippine Law recognizes retrenchment as a valid cause for the dismissal of a migrant or overseas Filipino worker under Article 283 of the Labor Code. x x x Thus, retrenchment is a valid exercise of management prerogative subject to the strict requirements set by jurisprudence.

4. ID.; ID.; ID.; ID.; NOTICE TO THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) WITHIN 30 DAYS PRIOR TO THE INTENDED DATE OF RETRENCHMENT IS NECESSARY.— As for the notice requirement, x x x proper notice to the DOLE within 30 days prior to the intended date of retrenchment is necessary and must be complied with despite the fact that respondent is an overseas Filipino worker.

5. REMEDIAL LAW; JUDGMENTS; DECISION OF THE NLRC COULD NOT BE CONSIDERED AS A PRECEDENT WARRANTING ITS APPLICATION IN LATER CASES.— [P]etitioner's insistence that the case of *Jariol v. IMS* should be applied in the present case is untenable. Being a mere decision of the NLRC, it could not be considered as a precedent warranting its application in the case at bar. Suffice it to state that although Article 8 of the Civil Code recognizes judicial decisions, applying or interpreting statutes as part of the legal

system of the country, such level of recognition is not afforded to administrative decisions.

6. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RETRENCHMENT; VALID DESPITE FAILURE TO COMPLY WITH THE ONE-MONTH NOTICE TO THE DOLE; SEPARATION PAY AND NOMINAL DAMAGES, PROPER.— In the case at bar, notwithstanding the fact that respondent's termination from his employment was procedurally infirm, x x x the same remains to be for a just, valid and authorized cause, *i.e.*, retrenchment as a valid exercise of management prerogative. x x x Instead, the employer should indemnify the employee for violation of his statutory rights. Consequently, it is Article 283 of the Labor Code x x x that is controlling. Thus, respondent is entitled to payment of separation pay equivalent to one (1) month pay, or at least one-half (½) month pay for every year of service, whichever is higher. In addition, pursuant to current jurisprudence, for failure to fully comply with the statutory due process of sufficient notice, respondent is entitled to nominal damages in the amount of ₱50,000.00.

APPEARANCES OF COUNSEL

Salonga Hernandez & Mendoza for petitioner.
Law Office of Mayol & Mayol for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated January 8, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 58739, and the Resolution[2] dated May 12, 2004 denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Buenaventura J. Guerrero and Juan Q. Enriquez, Jr., concurring; *rollo*, pp. 30-38.

[2] *Id.* at 40-43.

Sometime in 1997, the petitioner recruitment agency, International Management Services (IMS), a single proprietorship owned and operated by Marilyn C. Pascual, deployed respondent Roel P. Logarta to work for Petrocon Arabia Limited (Petrocon) in Alkhobar, Kingdom of Saudi Arabia, in connection with general engineering services of Petrocon for the Saudi Arabian Oil Company (Saudi Aramco). Respondent was employed for a period of two (2) years, commencing on October 2, 1997, with a monthly salary of eight hundred US Dollars (US$800.00). In October 1997, respondent started to work for Petrocon as Piping Designer for works on the projects of Saudi Aramco.

Thereafter, in a letter[3] dated December 21, 1997, Saudi Aramco informed Petrocon that for the year 1998, the former is allotting to the latter a total work load level of 170,850 man-hours, of which 100,000 man-hours will be allotted for cross-country pipeline projects.

However, in a letter[4] dated April 29, 1998, Saudi Aramco notified Petrocon that due to changes in the general engineering services work forecast for 1998, the man-hours that were formerly allotted to Petrocon is going to be reduced by 40%.

Consequently, due to the considerable decrease in the work requirements of Saudi Aramco, Petrocon was constrained to reduce its personnel that were employed as piping designers, instrument engineers, inside plant engineers, *etc*., which totaled to some 73 personnel, one of whom was respondent.

Thus, on June 1, 1998, Petrocon gave respondent a written notice[5] informing the latter that due to the lack of project works related to his expertise, he is given a 30-day notice of termination, and that his last day of work with Petrocon will be on July 1, 1998. Petrocon also informed respondent that all due benefits in accordance with the terms and conditions of his employment contract will be paid to respondent, including his ticket back to the Philippines.

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[3] *Rollo,* p. 51.

[4] *Id*. at 53.

[5] *Id*. at 54.

On June 23, 1998, respondent, together with his co-employees, requested Petrocon to issue them a letter of Intent stating that the latter will issue them a No Objection Certificate once they find another employer before they leave Saudi Arabia.[6] On June 27, 1998, Petrocon granted the request and issued a letter of intent to respondent.[7]

Before his departure from Saudi Arabia, respondent received his final paycheck[8] from Petrocon amounting SR7,488.57.

Upon his return, respondent filed a complaint with the Regional Arbitration Branch VII, National Labor Relations Commission (NLRC), Cebu City, against petitioner as the recruitment agency which employed him for employment abroad. In filing the complaint, respondent sought to recover his unearned salaries covering the unexpired portion of his employment contract with Petrocon on the ground that he was illegally dismissed.

After the parties filed their respective position papers, the Labor Arbiter rendered a Decision[9] in favor of the respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondent Marilyn C. Pascual, doing business under the name and style International Management Services, to pay the complainant Roel Logarta the peso equivalent of US $5,600.00 based on the rate at the time of actual payment, as payment of his wages for the unexpired portion of his contract of employment.
>
> The other claims are dismissed for lack of merit.
>
> So Ordered.[10]

Aggrieved, petitioner filed an Appeal[11] before the NLRC. On October 29, 1999, the NLRC, Fourth Division, Cebu City

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[6] *Id.* at 55.

[7] *Id.* at 57.

[8] *Id.* at 58.

[9] *Id.* at 60-64.

[10] *Id.* at 63-64.

[11] *Id.* at 65-76.

rendered a Decision[12] affirming the decision of the Labor Arbiter, but reduced the amount to be paid by the petitioner, to wit:

> WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby AFFIRMED with MODIFICATION reducing the award to only US $4,800.00 or its peso equivalent at the time of payment.
>
> SO ORDERED.[13]

Petitioner filed a motion for reconsideration, but it was denied in the Resolution[14] dated April 17, 2000.

Not satisfied, petitioner sought recourse before the CA,[15] arguing that the NLRC gravely abused its discretion:

> (a) in holding that *while* Petrocon's retrenchment was justified, Petrocon failed to observe the legal procedure for a valid retrenchment when, in fact, Petrocon did observe the legal procedural requirements for a valid implementation of its retrenchment scheme; and
>
> (b) in making an award under Section 10 of R.A. No. 8042 which is premised on a termination of employment without just, valid or authorized cause as defined by law or contract, notwithstanding that NLRC itself found Petrocon's retrenchment to be justified.[16]

On January 8, 2004, the CA rendered the assailed Decision dismissing the petition, the decretal portion of which reads:

> WHEREFORE, premises considered, the petition is DISMISSED and the impugned Decision dated October 29, 1999 and Resolution dated April 17, 2000 are AFFIRMED. Costs against the petitioner.
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> SO ORDERED.[17]

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[12] *Id*. at 78-83.

[13] *Id*. at 82-83.

[14] *Id*. at 85-86.

[15] Petition, *id*., at 87-101.

[16] *Rollo*, p. 93.

[17] *Id*. at 38.

In ruling in favor of the respondent, the CA agreed with the findings of the NLRC that retrenchment could be a valid cause to terminate respondent's employment with Petrocon. Considering that there was a considerable reduction in Petrocon's work allocation from Saudi Aramco, the reduction of its work personnel was a valid exercise of management prerogative to reduce the number of its personnel, particularly in those fields affected by the reduced work allocation from Saudi Aramco. However, although there was a valid ground for retrenchment, the same was implemented without complying with the requisites of a valid retrenchment. Also, the CA concluded that although the respondent was given a 30-day notice of his termination, there was no showing that the Department of Labor and Employment (DOLE) was also sent a copy of the said notice as required by law. Moreover, the CA found that a perusal of the check payroll details would readily show that respondent was not paid his separation pay.

Petitioner filed a motion for reconsideration, but it was denied in the Resolution[18] dated May 12, 2004.

Hence, the petition assigning the following errors:

I.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT THE 30-DAY NOTICE TO DOLE PRIOR TO RETRENCHMENT IS NOT APPLICABLE IN THIS CASE.

II.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT RESPONDENT EMPLOYEE DID NOT CONSENT TO HIS SEPARATION FROM THE PRINCIPAL COMPANY.

III.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT *JARIOL VS. IMS* IS NOT APPLICABLE TO THE INSTANT CASE.

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[18] *Id*. at 40-43.

IV.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN RULING THAT RESPONDENT DID NOT RECEIVE THE SEPARATION PAY REQUIRED BY LAW.[19]

Petitioner argues that the 30-day notice of termination, as required in *Serrano v. NLRC*,[20] is not applicable in the case at bar, considering that respondent was in fact given the 30-day notice. More importantly, Republic Act (R.A.) No. 8042, or the Migrant Workers and Overseas Filipino Act of 1995 nor its Implementing Rules do not require the sending of notice to the DOLE, 30 days before the effectivity of a retrenchment of an Overseas Filipino Worker (OFW) based on grounds under Article 283 of the Labor Code.

Petitioner maintains that respondent has consented to his termination, since he raised no objection to his retrenchment and actually sought another employer during his 30-day notice of termination. Respondent even requested from Petrocon a No Objection Certificate, which the latter granted to facilitate respondent's application to other Saudi Arabian employers.

Petitioner also posits that the CA should have applied the case of *Jariol v. IMS*[21] even if the said case was only decided by the NLRC, a quasi-judicial agency. The said case involved similar facts, wherein the NLRC categorically ruled that employers of OFWs are not required to furnish the DOLE in the Philippines a notice if they intend to terminate a Filipino employee.

Lastly, petitioner insists that respondent received his separation pay. Moreover, petitioner contends that Section 10 of R.A. No. 8042 does not apply in the present case, since the termination of respondent was due to a just, valid or authorized cause. At best, respondent is only entitled to separation pay in accordance

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[19] *Id.* at 174-175.

[20] G.R. No. 117040, January 27, 2000, 323 SCRA 445.

[21] *Rollo*, pp. 112-117.

with Article 283 of the Labor Code, *i.e.*, one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher.

On his part, respondent maintains that the CA committed no reversible error in rendering the assailed decision.

The petition is partly meritorious.

Retrenchment is the reduction of work personnel usually due to poor financial returns, aimed to cut down costs for operation particularly on salaries and wages.[22] It is one of the economic grounds to dismiss employees and is resorted by an employer primarily to avoid or minimize business losses.[23]

Retrenchment programs are purely business decisions within the purview of a valid and reasonable exercise of management prerogative. It is one way of downsizing an employer's workforce and is often resorted to by the employer during periods of business recession, industrial depression, or seasonal fluctuations, and during lulls in production occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or introduction of new methods or more efficient machinery or automation. It is a valid management prerogative, provided it is done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence.[24]

In the case at bar, despite the fact that respondent was employed by Petrocon as an OFW in Saudi Arabia, still both he and his employer are subject to the provisions of the Labor Code when

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[22] *Hotel Enterprises of the Philippines, Inc. (HEPI) v. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel and Restaurant and Allied Industries (SAMASAH-NUWHRAIN)*, G.R. No. 165756, June 5, 2009, 588 SCRA 497, 509.

[23] *F.F. Marine Corporation v. National Labor Relations Commission, Second Division*, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 166.

[24] *Hotel Enterprises of the Philippines, Inc. (HEPI) v. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel and Restaurant and Allied Industries (SAMASAH-NUWHRAIN)*, *supra* note 22.

applicable. The basic policy in this jurisdiction is that all Filipino workers, whether employed locally or overseas, enjoy the protective mantle of Philippine labor and social legislations.[25] In the case of *Royal Crown Internationale v. NLRC*,[26] this Court has made the policy pronouncement, thus:

> x x x. Whether employed locally or overseas, all Filipino workers enjoy the protective mantle of Philippine labor and social legislation, contract stipulations to the contrary notwithstanding. This pronouncement is in keeping with the basic public policy of the State to afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed, and regulate the relations between workers and employers. x x x[27]

Philippine Law recognizes retrenchment as a valid cause for the dismissal of a migrant or overseas Filipino worker under Article 283 of the Labor Code, which provides:

> *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, *retrenchment* to prevent losses or the closing or cessation of operations of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to at least one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

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[25] *Philippine National Bank v. Cabansag*, G.R. No. 157010, June 21, 2005, 460 SCRA 514, 518.

[26] G.R. No. 78085, October 16, 1989, 178 SCRA 569.

[27] *Id.* at 580.

Thus, retrenchment is a valid exercise of management prerogative subject to the strict requirements set by jurisprudence, to wit:

(1) That the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

(2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

(3) That the employer pays the retrenched employees separation pay equivalent to one month pay or at least ½ month pay for every year of service, whichever is higher;

(4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and

(5) That the employer used fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, x x x efficiency, seniority, physical fitness, age, and financial hardship for certain workers.[28]

Applying the above-stated requisites for a valid retrenchment in the case at bar, it is apparent that the first, fourth and fifth requirements were complied with by respondent's employer. However, the second and third requisites were absent when Petrocon terminated the services of respondent.

As aptly found by the NLRC and justly sustained by the CA, Petrocon exercised its prerogative to retrench its employees in good faith and the considerable reduction of work allotments of Petrocon by Saudi Aramco was sufficient basis for Petrocon to reduce the number of its personnel, thus:

Moreover, from the standard form of employment contract relied upon by the Labor Arbiter, it is clear that unilateral cancellation

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[28] *Shimizu Phils. Contractors, Inc. v. Callanta*, G.R. No. 165923, September 29, 2010, 631 SCRA 529, 540.

(sic) may be effected for "legal, just and valid cause or causes." Clearly, contrary to the Labor Arbiter's perception, the enumerated causes for employment termination by the employer in the standard form of employment contract is not exclusive in the same manner that the listed grounds for termination by the employer is not exclusive. As pointed out above, under Sec. 10 of RA 8042, it is clear that termination of employment may be for just, valid or authorized cause as defined by law or contract. Retrenchment being indubitably a legal and authorized cause may be availed of by the respondent.

From the records, it is clearly shown that there was a drastic reduction in Petrocon's 1998 work allocation from 250,000 man-hours to only 80,000 man-hours. Under these circumstances over which respondent's principal, Petrocon had no control, it was clearly a valid exercise of management prerogative to reduce personnel particularly those without projects to work on. To force Petrocon to continue maintaining all its workers even those without projects is tantamount to oppression. "The determination to cease operation is a prerogative of management which the state does not usually interfere with as no business or undertaking must be required to continue at a loss simply because it has to maintain its employees in employment. Such an act would be tantamount to a taking of property without due process of law. (Industrial Timber Corp. *vs.* NLRC, 273 SCRA 200)[29]

As to complying with the fifth requirement, the CA was correct when it ruled that:

As to the fifth requirement, the NLRC considered the following criteria fair and reasonable in ascertaining who would be dismissed and who would be retained among the employees; (i) less preferred status; (ii) efficiency rating; (iii) seniority; and (iv) proof of claimed financial losses.

The primary reason for respondent's termination is lack of work project specifically related to his expertise as piping designer. Due to the highly specialized nature of Logarta's job, we find that the availability of work and number of allocated man-hours for pipeline projects are sufficient and reasonable criteria in determining who would be dismissed and who would be retained among the employees.

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[29] *Rollo*, p. 80.

Consequently, we find the criterion of less preferred status and efficiency rating not applicable.

The list of terminated employees submitted by Petrocon, shows that other employees, with the same designation as Logarta's (Piping Designer II), were also dismissed. Terminated, too, were employees designated as Piping Designer I and Piping Designer. Hence, employees whose job designation involves pipeline works were without bias terminated.

As to seniority, at the time the notice of termination was given to him, Logarta's employment was eight (8) months, clearly, he has not accumulated sufficient years to claim seniority.

As to proof of claimed financial losses, the NLRC itself has recognized the drastic reduction of Petrocon's work allocation, thereby necessitating the retrenchment of some of its employees.[30]

As for the notice requirement, however, contrary to petitioner's contention, proper notice to the DOLE within 30 days prior to the intended date of retrenchment is necessary and must be complied with despite the fact that respondent is an overseas Filipino worker. In the present case, although respondent was duly notified of his termination by Petrocon 30 days before its effectivity, no allegation or proof was advanced by petitioner to establish that Petrocon ever sent a notice to the DOLE 30 days before the respondent was terminated. Thus, this requirement of the law was not complied with.

Also, petitioner's contention that respondent freely consented to his dismissal is unsupported by substantial evidence. Respondent's recourse of finding a new employer during the 30-day period prior to the effectivity of his dismissal and eventual return to the Philippines is but logical and reasonable under the circumstances. Faced with the eventuality of his termination from employment, it is understandable for respondent to seize the opportunity to seek for other employment and continue working in Saudi Arabia.

Moreover, petitioner's insistence that the case of *Jariol v. IMS* should be applied in the present case is untenable. Being

[30] *Id.* at 37.

a mere decision of the NLRC, it could not be considered as a precedent warranting its application in the case at bar. Suffice it to state that although Article 8 of the Civil Code[31] recognizes judicial decisions, applying or interpreting statutes as part of the legal system of the country, such level of recognition is not afforded to administrative decisions.[32]

Anent the proper amount of separation pay to be paid to respondent, petitioner maintains that respondent was paid the appropriate amount as separation pay. However, a perusal of his Payroll Check Details,[33] clearly reveals that what he received was his compensation for the month prior to his departure, and hence, was justly due to him as his salary. Furthermore, the amounts which he received as his "End of Contract Benefit" and "Other Earning/Allowances: for July 1998"[34] form part of his wages/salary, as such, cannot be considered as constituting his separation pay.

Verily, respondent is entitled to the payment of his separation pay. However, this Court disagrees with the conclusion of the Labor Arbiter, the NLRC and the CA, that respondent should be paid his separation pay in accordance with the provision of Section 10 of R.A. No. 8042. A plain reading of the said provision clearly reveals that it applies only to an illegally dismissed overseas contract worker or a worker dismissed from overseas employment without just, valid or authorized cause, the pertinent portion of which provides:

> Sec. 10. *Money Claims*. — x x x In case of termination of overseas employment *without* just, valid or authorized cause as defined by law or contract, x x x

In the case at bar, notwithstanding the fact that respondent's termination from his employment was procedurally infirm, having

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[31] Sec. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

[32] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999, 302 SCRA 241, 254.

[33] *Rollo*, p. 59.

[34] *Id*.

not complied with the notice requirement, nevertheless the same remains to be for a just, valid and authorized cause, *i.e.*, retrenchment as a valid exercise of management prerogative. To stress, despite the employer's failure to comply with the one-month notice to the DOLE prior to respondent's termination, it is only a procedural infirmity which does not render the retrenchment illegal. In *Agabon v. NLRC*,[35] this Court ruled that when the dismissal is for a just cause, the absence of proper notice should not nullify the dismissal or render it illegal or ineffectual. Instead, the employer should indemnify the employee for violation of his statutory rights.[36]

Consequently, it is Article 283 of the Labor Code and not Section 10 of R.A. No. 8042 that is controlling. Thus, respondent is entitled to payment of separation pay equivalent to one (1) month pay, or at least one-half (½) month pay for every year of service, whichever is higher. Considering that respondent was employed by Petrocon for a period of eight (8) months, he is entitled to receive one (1) month pay as separation pay. In addition, pursuant to current jurisprudence,[37] for failure to fully comply with the statutory due process of sufficient notice, respondent is entitled to nominal damages in the amount of ₱50,000.00.

WHEREFORE, premises considered, the petition is **DENIED.** The Decision dated January 8, 2004 and the Resolution dated May 12, 2004 of the Court of Appeals are **AFFIRMED** with **MODIFICATIONS**. Petitioner is **ORDERED** to pay Roel P. Logarta one (1) month salary as separation pay and ₱50,000.00 as nominal damages.

SO ORDERED.

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

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[35] 485 Phil. 248 (2004).

[36] *Plastimer Industrial Corporation v. Gopo*, G.R. No. 183390, February 16, 2011, 643 SCRA 502, 510.

[37] *Shimizu Phils. Contractors, Inc. v. Callanta*, *supra* note 28, at 543; *Jaka Food Processing Corporation v. Pacot*, 494 Phil. 114, 122 (2005).

FIRST DIVISION

[G.R. No. 163700. April 18, 2012]

CHARLIE JAO, *petitioner, vs.* **BCC PRODUCTS SALES, INC., and TERRANCE TY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF FACTS NOT ALLOWED; EXCEPTIONS; WHERE FINDINGS CONFLICT AMONG THE ADJUDICATING OFFICES.— The existence of an employer-employee relationship is a question of fact. Generally, a re-examination of factual findings cannot be done by the Court acting on a petition for review on *certiorari* because the Court is not a trier of facts but reviews only questions of law. Nor may the Court be bound to analyze and weigh again the evidence adduced and considered in the proceedings below. This rule is not absolute, however, and admits of exceptions. For one, the Court may look into factual issues in labor cases when the factual findings of the Labor Arbiter, the NLRC, and the CA are conflicting.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS. — [I]n determining the presence or absence of an employer-employee relationship, the Court has consistently looked for the following incidents, to wit: (*a*) the selection and engagement of the employee; (*b*) the payment of wages; (*c*) the power of dismissal; and (*d*) the employer's power to control the employee on the means and methods by which the work is accomplished. The last element, the so-called control test, is the most important element.

APPEARANCES OF COUNSEL

Roxas Roxas & Associates for petitioner.
Roland A. Niedo for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The issue is whether petitioner was respondents' employee or not. Respondents denied an employer-employee relationship with petitioner, who insisted the contrary.

Through his petition for review on *certiorari*, petitioner appeals the decision promulgated by the Court of Appeals (CA) on February 27, 2004,[1] finding no employee-employer relationship between him and respondents, thereby reversing the ruling by the National Labor Relations Commission (NLRC) to the effect that he was the employee of respondents.

Antecedents

Petitioner maintained that respondent BCC Product Sales Inc. (BCC) and its President, respondent Terrance Ty (Ty), employed him as comptroller starting from September 1995 with a monthly salary of ₱20,000.00 to handle the financial aspect of BCC's business;[2] that on October 19,1995, the security guards of BCC, acting upon the instruction of Ty, barred him from entering the premises of BCC where he then worked; that his attempts to report to work in November and December 12, 1995 were frustrated because he continued to be barred from entering the premises of BCC;[3] and that he filed a complaint dated December 28, 1995 for illegal dismissal, reinstatement with full backwages, non-payment of wages, damages and attorney's fees.[4]

Respondents countered that petitioner was not their employee but the employee of Sobien Food Corporation (SFC), the major creditor and supplier of BCC; and that SFC had posted him as

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[1] *Rollo*, pp. 38-46; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justice Eloy R. Bello, Jr. (retired) and Associate Justice Magdangal M. De Leon.

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

[3] *Id.*, p. 13.

[4] *Id.*, pp. 236-238.

its comptroller in BCC to oversee BCC's finances and business operations and to look after SFC's interests or investments in BCC.[5]

Although Labor Arbiter Felipe Pati ruled in favor of petitioner on June 24, 1996,[6] the NLRC vacated the ruling and remanded the case for further proceedings.[7] Thereafter, Labor Arbiter Jovencio Ll. Mayor rendered a new decision on September 20, 2001, dismissing petitioner's complaint for want of an employer-employee relationship between the parties.[8] Petitioner appealed the September 20, 2001 decision of Labor Arbiter Mayor.

On July 31, 2002, the NLRC rendered a decision reversing Labor Arbiter Mayor's decision, and declaring that petitioner had been illegally dismissed. It ordered the payment of unpaid salaries, backwages and 13th month pay, separation pay and attorney's fees.[9] Respondents moved for the reconsideration of the NLRC decision, but their motion for reconsideration was denied on September 30, 2002.[10] Thence, respondents assailed the NLRC decision on *certiorari* in the CA.

Ruling of the CA

On February 27, 2004, the CA promulgated its assailed decision,[11] holding:

> After a judicious review of the records *vis-à-vis* the respective posturing of the contending parties, we agree with the finding that no employer-employee relationship existed between petitioner BCC and the private respondent. On this note, the conclusion of the public respondent must be reversed for being issued with grave abuse of discretion.

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[5] *Id.*, p. 179.

[6] *Id.*, p. 178.

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

[8] *Id.*, pp. 105-119.

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

[10] *Id.*, p. 38.

[11] *Id.*, pp. 38-46.

"Etched in an unending stream of cases are the four (4) standards in determining the existence of an employer-employee relationship, namely, (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and, (d) the presence or absence of control of the putative employee's conduct." Of these powers the power of control over the employee's conduct is generally regarded as determinative of the existence of the relationship.

Apparently, in the case before us, all these four elements are absent. First, there is no proof that the services of the private respondent were engaged to perform the duties of a comptroller in the petitioner company. There is no proof that the private respondent has undergone a selection procedure as a standard requisite for employment, especially with such a delicate position in the company. Neither is there any proof of his appointment nor is there any showing that the parties entered into an employment contract, stipulating thereof that he will receive ₱20,000.00/month salary as comptroller, before the private respondent commenced with his work as such. Second, as clearly established on record, the private respondent was not included in the petitioner company's payroll during the time of his alleged employment with the former. True, the name of the private respondent Charlie Jao appears in the payroll however it does not prove that he has received his remuneration for his services. Notably, his name was not among the employees who will receive their salaries as represented by the payrolls. Instead, it appears therein as a comptroller who is authorized to approve the same. Suffice it to state that it is rather obscure for a certified public accountant doing the functions of a comptroller from September 1995 up to December 1995 not to receive his salary during the said period. Verily, such scenario does not conform with the usual and ordinary experience of man. Coming now to the most controlling factor, the records indubitably reveal the undisputed fact that the petitioner company did not have nor did not exercise the power of control over the private respondent. It did not prescribe the manner by which the work is to be carried out, or the time by which the private respondent has to report for and leave from work. As already stated, the power of control is such an important factor that other requisites may even be disregarded. In ***Sevilla v. Court of Appeals***, the Supreme Court emphatically held, thus:

> **"The "control test," under which the person for whom the services are rendered reserves the right to direct not**

only the end to be achieved but also the means for reaching such end, is generally relied on by the courts."

We have carefully examined the evidence submitted by the private respondent in the formal offer of evidence and unfortunately, other than the bare assertions of the private respondent which he miserably failed to substantiate, we find nothing therein that would decisively indicate that the petitioner BCC exercised the fundamental power of control over the private respondent in relation to his employment—not even the ID issued to the private respondent and the affidavits executed by Bertito Jemilla and Rogelio Santias. At best, these pieces of documents merely suggest the existence of employer-employee relationship as intimated by the NLRC. On the contrary, it would appear that the said sworn statement provided a substantial basis to support the contention that the private respondent worked at the petitioner BCC as SFC's representative, being its major creditor and supplier of goods and merchandise. Moreover, as clearly pointed out by the petitioner in his Reply to the private respondent's Comment, it is unnatural for SFC to still employ the private respondent "to oversee and supervise collections of account receivables due SFC from its customers or clients" like the herein petitioner BCC on a date later than December, 1995 considering that a criminal complaint has already been instituted against him.

Sadly, the private respondent failed to sufficiently discharge the burden of showing with legal certainty that employee-employer relationship existed between the parties. On the other hand, it was clearly shown by the petitioner that it neither exercised control nor supervision over the conduct of the private respondent's employment. Hence, the allegation that there is employer-employee relationship must necessarily fail.

Consequently, a discussion on the issue of illegal dismissal therefore becomes unnecessary.

WHEREFORE, premises considered, the petition is GRANTED. The assailed Decision of the public respondent NLRC dated July 31, 2002 and the Resolution dated September 30, 2002 are REVERSED and SET ASIDE. Accordingly, the decision of the Labor Arbiter dated September 20, 2001 is hereby REINSTATED.

SO ORDERED.

After the CA denied petitioner's motion for reconsideration on May 14, 2004,[12] he filed a motion for extension to file petition for review, which the Court denied through the resolution dated July 7, 2004 for failure to render an explanation on why the service of copies of the motion for extension on respondents was not personally made.[13] The denial notwithstanding, he filed his petition for review on *certiorari.* The Court denied the petition on August 18, 2004 in view of the denial of the motion for extension of time and the continuing failure of petitioner to render the explanation as to the non-personal service of the petition on respondents.[14] However, upon a motion for reconsideration, the Court reinstated the petition for review on *certiorari* and required respondents to comment.[15]

Issue

The sole issue is whether or not an employer-employee relationship existed between petitioner and BCC. A finding on the existence of an employer-employee relationship will automatically warrant a finding of illegal dismissal, considering that respondents did not state any valid grounds to dismiss petitioner.

Ruling

The petition lacks merit.

The existence of an employer-employee relationship is a question of fact. Generally, a re-examination of factual findings cannot be done by the Court acting on a petition for review on *certiorari* because the Court is not a trier of facts but reviews only questions of law. Nor may the Court be bound to analyze and weigh again the evidence adduced and considered in the proceedings below.[16] This rule is not absolute, however, and

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[12] *Id.*, pp. 49-50.

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

[14] *Id.*, p. 148.

[15] *Id.*, p. 176.

[16] *Diokno v. Cacdac*, G.R. No. 168475, July 4, 2007, 526 SCRA 440, 460-461.

admits of exceptions. For one, the Court may look into factual issues in labor cases when the factual findings of the Labor Arbiter, the NLRC, and the CA are conflicting.[17]

Here, the findings of the NLRC differed from those of the Labor Arbiter and the CA. This conflict among such adjudicating offices compels the Court's exercise of its authority to review and pass upon the evidence presented and to draw its own conclusions therefrom.

To prove his employment with BCC, petitioner offered the following: (*a*) BCC Identification Card (ID) issued to him stating his name and his position as "comptroller," and bearing his picture, his signature, and the signature of Ty; (*b*) a payroll of BCC for the period of October 1-15, 1996 that petitioner approved as comptroller; (*c*) various bills and receipts related to expenditures of BCC bearing the signature of petitioner; (*d*) various checks carrying the signatures of petitioner and Ty, and, in some checks, the signature of petitioner alone; (*e*) a court order showing that the issuing court considered petitioner's ID as proof of his employment with BCC; (*f*) a letter of petitioner dated March 1, 1997 to the Department of Justice on his filing of a criminal case for *estafa* against Ty for non-payment of wages; (*g*) affidavits of some employees of BCC attesting that petitioner was their co-employee in BCC; and (*h*) a notice of raffle dated December 5, 1995 showing that petitioner, being an employee of BCC, received the notice of raffle in behalf of BCC.[18]

Respondents denied that petitioner was BCC's employee. They affirmed that SFC had installed petitioner as its comptroller in BCC to oversee and supervise SFC's collections and the account of BCC to protect SFC's interest; that their issuance of the ID to petitioner was only for the purpose of facilitating his entry into the BCC premises in relation to his work of overseeing the financial operations of BCC for SFC; that the ID should not be

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[17] *Pagsibigan v. People,* G.R. No. 163868, June 4, 2009, 588 SCRA 249, 257.

[18] *Rollo,* pp. 120-147.

considered as evidence of petitioner's employment in BCC;[19] that petitioner executed an affidavit in March 1996,[20] stating, among others, as follows:

> **1.** **I am a CPA** (Certified Public Accountant) by profession but **presently associated with, or employed by, Sobien Food Corporation** with the same business address as abovestated;
>
> **2.** **In the course of my association with, or employment by, Sobien Food Corporation** (SFC, for short), **I have been entrusted by my employer to oversee and supervise collections on account of receivables due SFC from its customers or clients; for instance, certain checks due and turned over by one of SFC's customers is BCC Product Sales, Inc., operated or run by one Terrance L. Ty, (President and General manager), pursuant to, or in accordance with, arrangements or agreement thereon; such arrangement or agreement is duly confirmed by said Terrance Ty,** as shown or admitted by him in a public instrument executed therefor, particularly par. 2 of that certain Counter-Affidavit executed and subscribed on December 11, 1995, xerox copy of which is hereto attached, duly marked as Annex "A" and made integral part hereof.
>
> **3.** **Despite such admission of an arrangement, or agreement** insofar as BCC-checks were **delivered to, or turned over in favor of SFC**, Mr. Terrance Ty, in a desire to blemish my reputation or to cause me dishonor as well as to impute unto myself the commission of a crime, state in another public instrument executed therefor in that:
>
> > "3. That all the said 158 checks were unlawfully appropriated by a certain Charlie Jao absolutely without any authority from BCC and the same were reportedly turned over by said Mr. Jao to a person who is not an agent or is not authorized representative of BCC."

xerox copy of which document (Affidavit) is hereto attached, duly marked as Annex "B" and made integral part hereof. (emphasis supplied)

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[19] *Id.*, pp. 179-180.

[20] *Id.*, p. 146.

and that the affidavit constituted petitioner's admission of the arrangement or agreement between BCC and SFC for the latter to appoint a comptroller to oversee the former's operations.

Petitioner counters, however, that the affidavit did not establish the absence of an employer-employee relationship between him and respondents because it had been executed in March 1996, or after his employment with respondents had been terminated on December 12, 1995; and that the affidavit referred to his subsequent employment by SFC following the termination of his employment by BCC.[21]

We cannot side with petitioner.

Our perusal of the affidavit of petitioner compels a conclusion similar to that reached by the CA and the Labor Arbiter to the effect that the affidavit actually supported the contention that petitioner had really worked in BCC as SFC's representative. It does seem more natural and more believable that petitioner's affidavit was referring to his employment by SFC even while he was reporting to BCC as a comptroller in behalf of SFC. As respondents pointed out, it was implausible for SFC to still post him to oversee and supervise the collections of accounts receivables due from BCC beyond December 1995 if, as he insisted, BCC had already illegally dismissed him and had even prevented him from entering the premises of BCC. Given the patent animosity and strained relations between him and respondents in such circumstances, indeed, how could he still efficiently perform in behalf of SFC the essential responsibility to "oversee and supervise collections" at BCC? Surely, respondents would have vigorously objected to any arrangement with SFC involving him.

We note that petitioner executed the affidavit in March 1996 to refute a statement Ty himself made in his own affidavit dated December 11, 1995 to the effect that petitioner had illegally appropriated some checks without authority from BCC.[22]

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[21] *Id.,* p. 32.

[22] *Id.,* p. 146.

Petitioner thereby sought to show that he had the authority to receive the checks pursuant to the arrangements between SFC and BCC. This showing would aid in fending off the criminal charge respondents filed against him arising from his mishandling of the checks. Naturally, the circumstances petitioner adverted to in his March 1996 affidavit concerned those occurring before December 11, 1995, the same period when he actually worked as comptroller in BCC.

Further, an affidavit dated September 5, 2000 by Alfredo So, the President of SFC, whom petitioner offered as a rebuttal witness, lent credence to respondents' denial of petitioner's employment. So declared in that affidavit, among others, that he had known petitioner for being "earlier his retained accountant having his own office but did not hold office" in SFC's premises; that Ty had approached him (So) "looking for an accountant or comptroller to be employed by him (Ty) in [BCC's] distribution business" of SFC's general merchandise, and had later asked him on his opinion about petitioner; and that he (So) had subsequently learned that "Ty had already employed [petitioner] as his comptroller as of September 1995."[23]

The statements of So really supported respondents' position in that petitioner's association with SFC prior to his supposed employment by BCC went beyond mere acquaintance with So. That So, who had earlier merely "retained" petitioner as his accountant, thereafter employed petitioner as a "retained" accountant after his supposed illegal dismissal by BCC raised a doubt as to his employment by BCC, and rather confirmed respondents' assertion of petitioner being an employee of SFC while he worked at BCC.

Moreover, in determining the presence or absence of an employer-employee relationship, the Court has consistently looked for the following incidents, to wit: (*a*) the selection and engagement of the employee; (*b*) the payment of wages; (*c*) the power of dismissal; and (*d*) the employer's power to control the employee on the means and methods by which the work is accomplished.

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[23] *Id.*, p. 25.

The last element, the so-called control test, is the most important element.[24]

Hereunder are some of the circumstances and incidents occurring while petitioner was supposedly employed by BCC that debunked his claim against respondents.

It can be deduced from the March 1996 affidavit of petitioner that respondents challenged his authority to deliver some 158 checks to SFC. Considering that he contested respondents' challenge by pointing to the existing arrangements between BCC and SFC, it should be clear that respondents did not exercise the power of control over him, because he thereby acted for the benefit and in the interest of SFC more than of BCC.

In addition, petitioner presented no document setting forth the terms of his employment by BCC. The failure to present such agreement on terms of employment may be understandable and expected if he was a common or ordinary laborer who would not jeopardize his employment by demanding such document from the employer, but may not square well with his actual status as a highly educated professional.

Petitioner's admission that he did not receive his salary for the three months of his employment by BCC, as his complaint for illegal dismissal and non-payment of wages[25] and the criminal case for *estafa* he later filed against the respondents for non-payment of wages[26] indicated, further raised grave doubts about his assertion of employment by BCC. If the assertion was true, we are puzzled how he could have remained in BCC's employ in that period of time despite not being paid the first salary of ₱20,000.00/month. Moreover, his name did not appear in the payroll of BCC despite him having approved the payroll as comptroller.

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[24] *Abante, Jr. v. Lamadrid Bearing & Parts Corp.*, G.R. No. 159890, May 28, 2004, 430 SCRA 368, 379.

[25] *Id.*, pp. 236-238.

[26] *Id.*, p. 325.

Lastly, the confusion about the date of his alleged illegal dismissal provides another indicium of the insincerity of petitioner's assertion of employment by BCC. In the petition for review on *certiorari*, he averred that he had been barred from entering the premises of BCC on October 19, 1995,[27] and thus was illegally dismissed. Yet, his complaint for illegal dismissal stated that he had been illegally dismissed on December 12, 1995 when respondents' security guards barred him from entering the premises of BCC,[28] causing him to bring his complaint only on December 29, 1995, and after BCC had already filed the criminal complaint against him. The wide gap between October 19, 1995 and December 12, 1995 cannot be dismissed as a trivial inconsistency considering that the several incidents affecting the veracity of his assertion of employment by BCC earlier noted herein transpired in that interval.

With all the grave doubts thus raised against petitioner's claim, we need not dwell at length on the other proofs he presented, like the affidavits of some of the employees of BCC, the ID, and the signed checks, bills and receipts. Suffice it to be stated that such other proofs were easily explainable by respondents and by the aforestated circumstances showing him to be the employee of SFC, not of BCC.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

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

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[27] *Id.,* p. 13.

[28] *Id.,* p. 236.

SECOND DIVISION

[G.R. No. 167735. April 18, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF SALVADOR ENCINAS and JACOBA DELGADO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); TAKING OF PRIVATE LANDS PARTAKES OF THE NATURE OF AN EXPROPRIATION PROCEEDING; JUST COMPENSATION SHOULD TAKE INTO CONSIDERATION THE VALUE OF THE LAND AT THE TIME OF THE TAKING.— The "taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding." In computing the just compensation for expropriation proceedings, the RTC should take into consideration the "**value of the land at the time of the taking**, not at the time of the rendition of judgment." "The 'time of taking' is the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred to the Republic."

2. D.; ID.; ID.; ID.; COMPUTATION OF JUST COMPENSATION WITH FACTORS TO CONSIDER TRANSLATED TO A BASIC FORMULA.— In determining the just compensation, the RTC is also required to consider the following factors enumerated in Section 17 of RA 6657: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any. Pursuant to its rule-making power under Section 49 of RA 6657, the DAR translated these factors into the following basic formula in computing just compensation: LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1) Where: LV = Land Value CNI

= Capitalized Net Income CS = Comparable Sales MV = Market Value per Tax Declaration. We have repeatedly stressed that these factors and formula are mandatory and **not mere guides** that the Special Agrarian Court (SAC) may disregard.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Simon D. Encinas for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*,[1] filed by the Land Bank of the Philippines (*petitioner*), that challenges the July 22, 2004 decision[2] and the April 6, 2005 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 78596. The CA decision dismissed the petitioner's petition for review for lack of merit. The CA resolution denied the petitioner's subsequent motion for reconsideration.

The Factual Antecedents

The late Spouses Salvador and Jacoba Delgado Encinas were the registered owners of a 56.2733-hectare agricultural land in Tinago, Juban, Sorsogon, under Original Certificate of Title (*OCT*) No. P-058. When Republic Act No. (RA) 6657[4] took effect,[5] the heirs of the spouses Encinas, Melchor and Simon (*respondents*), voluntarily offered to sell the land to the government through the Department of Agrarian Reform (*DAR*).

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[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure; *rollo*, pp. 20-53.

[2] Penned by Associate Justice Amelita G. Tolentino, with the concurrence of Associate Justices Roberto A. Barrios and Vicente S.E. Veloso; *Id.* at 7-14.

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

[4] The Comprehensive Agrarian Reform Law of 1988.

[5] Effective June 15, 1988.

On August 21, 1992, the DAR conducted a field investigation of the land.[6] On October 27, 1997, the DAR submitted the respondents' claimfolder to the petitioner for computation of the land's valuation.[7] The petitioner valued the land at ₱819,778.30 (or ₱22,718.14 per hectare) for the acquired area of 35.9887 hectares (*subject land*).[8]

Upon the DAR's application, accompanied by the petitioner's certification of deposit of payment,[9] the Register of Deeds of Sorsogon partially cancelled OCT No. P-058 corresponding to the 35.9887-hectare covered area, and issued Transfer Certificate of Title Nos. 49948 and 49949 in the name of the Republic of the Philippines on December 5, 1997.[10]

Meanwhile, since the respondents rejected the petitioner's valuation of ₱819,778.30, the DAR Adjudication Board (*DARAB*) undertook a summary administrative proceeding for the determination of just compensation.[11] On February 6, 2001, Adjudicator Manuel M. Capellan fixed the value of just compensation at ₱3,590,714.00, adopting the DARAB's valuation on the property of Virginia Balane in Rangas, Juban, Sorsogon that fixed the just compensation at ₱99,773.39 per hectare.[12]

Following the denial of its motion for reconsideration,[13] the petitioner filed on September 26, 2003 a petition for determination of just compensation with the Regional Trial Court (*RTC*) of

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[6] *Rollo*, pp. 129-131.

[7] *Id.* at 131 (back).

[8] Pursuant to Executive Order No. 405 (dated June 14, 1990) and DAR Administrative Order (*AO*) No. 11, series of 1994.

[9] *Rollo*, p. 128.

[10] *Id.* at 121-127.

[11] In accordance with Section 16(d) of RA 6657.

[12] *Rollo*, pp. 149-151.

[13] *Id.* at 152-153.

Sorsogon City, Branch 52, sitting as a Special Agrarian Court (*SAC*).[14]

At the trial, the petitioner's witnesses[15] testified on the condition of the subject land when the DAR conducted the field investigation in 1992,[16] and that the petitioner based its ₱819,778.30 valuation on DAR AO No. 11, series of 1994. The petitioner offered as documentary evidence the DAR field investigation report,[17] the claims and processing form, a copy of DAR AO No. 11, series of 1994, and the field investigation report on Balane's property.[18]

On the other hand, the respondents' witnesses[19] testified on the current number of trees in the subject land and the estimated board feet each tree could produce as lumber,[20] the cost of each

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[14] Docketed as Civil Case No. 2001-6911, entitled "*Land Bank of the Philippines, represented by Alex A. Lorayes, Head, Agrarian Operations Center v. Heirs of Salvador Encinas and Jacoba Delgado, namely Melchor Encinas and Simon Encinas, Secretary of Department of Agrarian Reform and Atty. Manuel M. Capellan, in his capacity as Provincial Adjudicator of Sorsogon*"; *id.* at 144-148.

[15] Ferdinand Abraham (Agrarian Affairs Specialist), Sheila Higola (Agrarian Affairs Specialist), Rogelio Erebe, Eduardo Batalesco, Jose Grefalda (Tinago *Barangay* Captain), Renato Gacias, Augusto Dellosa and DARAB Adjudicator Capellan.

[16] That (a) the land is situated in a coastal area; (b) the terrain is mostly hilly and mountainous; (c) the land can be reached by motorized boat or a three (3) kilometer hike; (d) the land has no infrastructure and electricity, and the water is supplied by a deep well; (e) there are 1,400 20-year old coconut trees, 400 7-year old non-fruit bearing trees, 1,000 nipa palms, 20 santol trees, and 2 narra trees; and (f) the land's average annual production is 608.89 kgs. of coconut per hectare and 2,400 nipa shingles; *Rollo*, pp. 109-110.

[17] *Id.* at 129-131.

[18] *Id.* at 131-134.

[19] Romeo Guab (former Mayor of Juban, Sorsogon), Wilfredo Embile, and Rogelio Encinas.

[20] That (a) 100 narra trees can produce 5,000 board feet at ₱55.00 per board foot; (b) 13 dita trees can produce 500 board feet; (c) six antipolo trees can produce 300 board feet; (d) three alaw-haw trees can produce 200 board feet; (e) four mara-mara trees can produce 100 board feet; (f) eight

fruit-bearing tree,[21] and the previous offer to sell the land.[22] The respondents offered as documentary evidence the recent private field investigation report of their witness, Wilfredo Embile, and the Commissioner's Report of Provincial Assessor Florencio Dino in Civil Case No. 6331 (Vivencio Mateo, *et al. v.* DAR, *et al*.) on the just compensation involving another property.

The RTC Ruling

In its April 23, 2003 decision,[23] the RTC fixed the just compensation at ₱4,470,554.00, based on: (1) comparable transactions in the nearby locality; (2) the DARAB's valuation on Balane's property; (3) the updated schedule of fair market value of real properties in the Province of Sorsogon (*Sanggunian Panlalawigan* Resolution No. 73-99); (4) the value and the produce of coconuts, fruits, narra, and other trees, and the number of board feet extractable from said trees; and (5) the land's current condition and potential productivity, thus:

> Taking into consideration x x x the comparable sale transactions of similar nearby places as admissible in evidence (MRR *vs.* Velasco case), the decision of the DARAB on VOS of Virginia Balane located at Rangas, Juban, Sorsogon whereby the Board fixed the valuation at ₱99,773.39 per hectare, the number of nuts produced from the 1500 coconut trees found by the representative of the Petitioner Land Bank as per Field Investigation Report (Exh. "B") so that after ten years since its inspection on August 21, 1992 all coconut trees are fruit bearing now and granting that each tree can produce

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anonang trees can produce 100 board feet; (g) two hagbuyo trees can produce 100 board feet; (h) five tarihan trees can produce 200 board feet; (i) two talisay trees can produce 100 board feet; (j) four tabgon trees can 200 board feet; (k) three amidling trees can produce 100 board feet, all (except narra trees) at ₱27.00 per board feet; *Rollo*, p. 110.

[21] There are six guava trees at ₱430.00 each, 37 santol trees at ₱1,900.00 each, two mango trees at ₱17,000.00 each, three avocado trees at ₱2,000.00 each, 20 langka trees at ₱400.00 each, 300 banana hills at ₱260.00 per hill, and 100 coconut trees per hectare; *ibid*.

[22] From ₱150,000.00, lowered to ₱120,000.00, per hectare in 1970 and 1975; *ibid.*

[23] *Id.* at 108-113.

nuts per 45 days, then 45 nuts can be produced per tree per year, 1500 trees can produce 67,500 nuts in eight harvest per year and when converted to copra can produce 16,750 kilos, 540,000 nuts per year for the 1500 coconut trees on the 35,9887 hectares equals 108,000 kilos at ₱8.00 per kilo, the land can get ₱864,000.00 yearly and one/half of that shall go to landowner which is ₱432,000.00, the Court also considers the value of the fruit bearing trees consisting of 6 guava trees for a total value of ₱34,000.00, 3 avocado trees for a total value of ₱6,000.00, 10 langka trees for a total value of ₱4,000.0 and 300 banana hills for the total value of ₱78,000.00, and or a grand total of ₱194,880.00 and the timber producing trees consisting of 100 narra trees with an extractable lumber of no less 5,000 bd. ft at ₱55.00 per bd. ft or a total value of ₱275,000.00 and other trees with a total bd. ft. of 2,700 bd. ft at ₱27.00 per bd. ft or a total value of ₱172,900.00. The Field Investigation Report (Exh. "B") state also that in the portion for acquisition, there is a hectare of Nipa and according to the Sanggunian Panlalawigan Provincial Ordinance No. 73-99, Sec. 10-Valuation of Perennial Trees, Plants and Other Improvements on Agricultural Land, the value of Nipa Improvement in a 5th class Municipality is ₱13,400.00 per hectare and summing all of the valuation on the above improvements, the Court hereby fixes the just compensation for the area of 35.9887 hectares subject for acquisition in the total value of ₱4,470,554.00.[24]

The RTC did not consider the petitioner's ₱819,778.30 valuation because it was "unrealistically low,"[25] based on a field investigation report made 11 years ago, compared to the report of the respondents' representative on the current condition of the property.[26]

With the denial[27] of its motion for reconsideration,[28] the petitioner elevated its case to the CA via a petition for review under Rule 42 of the Rules of Court.[29]

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[24] *Id.* at 112.

[25] *Id.* at 111.

[26] *Id.* at 111-112.

[27] July 29, 2003 order; *id.* at 114-115.

[28] *Id.* at 116-120.

[29] *Id.* at 87-107.

The CA Ruling

In its July 22, 2004 decision, the CA dismissed the petition for review for lack of merit, recognizing the jurisdiction and supposed expertise of the DARAB and the RTC, as a SAC.[30] It found that the petitioner's ₱819,778.30 valuation for 35.9887 hectares was unconscionably low[31] and that the RTC's ₱4,470,554.00 valuation substantially complied with the factors prescribed by Section 17 of RA 6657.[32]

After the denial[33] of its motion for reconsideration,[34] the petitioner came to this Court.

The Petition

The petitioner argues that the RTC failed to use the formula provided by Section 17 of RA 6657 in fixing the land's valuation at ₱4,470,554.00; the RTC erroneously considered the land's potential, not actual, use, as well as the land's condition in 2003, many years after the DAR conducted the field investigation in 1992.

The Case for the Respondents

The respondents, invoking the RTC's judicial discretion in the determination of just compensation, submit that the RTC's valuation is reasonable, based on the guidelines set by Section 17 of RA 6657.

The Issue

The core issue boils down to whether the CA erred in affirming the RTC decision fixing the just compensation at ₱4,470,554.00 for the respondents' 35.9887-hectare agricultural land.

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[30] *Supra* note 2 at 14.

[31] *Supra* note 2 at 11.

[32] *Supra* note 2 at 13.

[33] April 6, 2005 resolution*; supra* note 3.

[34] *Rollo*, pp. 66-82.

Our Ruling

We find merit in the petition.

The "taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding."[35] In computing the just compensation for expropriation proceedings, the RTC should take into consideration the "**value of the land at the time of the taking**, not at the time of the rendition of judgment."[36] "The 'time of taking' is the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred to the Republic."[37]

In determining the just compensation, the RTC is also required to consider the following factors enumerated in Section 17[38] of RA 6657: (1) the acquisition cost of the land; (2) the current value of the properties; (3) its nature, actual use, and income; (4) the sworn valuation by the owner; (5) the tax declarations; (6) the assessment made by government assessors; (7) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property; and (8) the non-payment of taxes or loans secured from any government financing institution on the said land, if any.

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[35] *Land Bank of the Philippines v. Department of Agrarian Reform*, G.R. No. 171840, April 4, 2011, 647 SCRA 152, 169; and *Land Bank of the Philippines v. Imperial*, G.R. No. 157753, February 12, 2007, 515 SCRA 449, 458.

[36] *Gabatin v. Land Bank of the Philippines*, 486 Phil. 366, 383-384 (2004).

[37] *Land Bank of the Philippines v. Livioco*, G.R. No. 170685, September 22, 2010, 631 SCRA 86, 112-113; see *Eusebio v. Luis*, G.R. No. 162474, October 13, 2009, 603 SCRA 576, 586-587.

[38] Section 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Pursuant to its rule-making power under Section 49 of RA 6657, the DAR translated these factors into the following basic formula in computing just compensation:[39]

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value

CNI = Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration

We have repeatedly stressed[40] that these factors and formula are mandatory and **not mere guides** that the SAC may disregard.

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[39] DAR AO No. 06-92 dated October 30, 1992, as amended by DAR AO No. 11-94 dated September 13, 1994; see also DAR AO No. 05-98 dated April 15, 1998 and DAR AO No. 02-09 dated October 15, 2009.

[40] *Land Bank of the Philippines v. Sps. Banal,* 478 Phil. 701, 715 (2004); *Landbank of the Philippines v. Celada,* 515 Phil. 467 (2006); *Lubrica v. Land Bank of the Philippines,* G.R. No. 170220, November 20, 2006, 507 SCRA 415; *Land Bank of the Philippines v. Lim,* G.R. No. 171941, August 2, 2007, 529 SCRA 129; *Land Bank of the Philippines v. Suntay,* G.R. No. 157903, October 11, 2007, 535 SCRA 605; *Sps. Lee v. Land Bank of the Philippines,* G.R. No. 170422, March 7, 2008, 548 SCRA 52; *Land Bank of the Philippines v. Heirs of Eleuterio Cruz,* G.R. No. 175175, September 29, 2008, 567 SCRA 31; *Land Bank of the Philippines v. Dumlao,* G.R. No. 167809, November 27, 2008, 572 SCRA 108; *Land Bank of the Philippines v. Gallego, Jr.*, G.R. No. 173226, January 20, 2009, 576 SCRA 680; *Allied Banking Corporation v. Land Bank of the Philippines*, G.R. No. 175422, March 13, 2009, 581 SCRA 301; *Land Bank of the Philippines v. Heirs of Honorato de Leon*, G.R. No. 164025, May 8, 2009, 587 SCRA 454; *Land Bank of the Philippines v. Kumassie Plantation Company, Incorporated,* G.R. Nos. 177404 and 178097, June 25, 2009, 591 SCRA 1*; Land Bank of the Philippines v. Rufino,* G.R. Nos. 175644 and 175702, October 2, 2009, 602 SCRA 399; *Land Bank of the Philippines v. Luciano,* G.R. No. 165428, November 25, 2009, 605 SCRA 426; *Land Bank of the Philippines v. Dizon,* G.R. No. 160394, November 27, 2009, 606 SCRA 66; *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines,* G.R. No. 166461, April 30, 2010, 619 SCRA 609; *Land Bank of the Philippines v. Soriano,* G.R. Nos. 180772 and 180776, May 6, 2010, 620 SCRA 347; *Land Bank of the Philippines v. Barrido,* G.R. No. 183688, August 18, 2010, 628 SCRA 454; *Land Bank of the Philippines v. Colarina,*

"While the determination of just compensation is essentially a judicial function vested in the RTC acting as a [SAC], the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. [SACs] are **not at liberty to disregard** the formula laid down [by the DAR], because unless an administrative order is declared invalid, courts have no option but to apply it. The [SAC] cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation."[41]

In this case, we cannot accept the RTC's ₱4,470,554.00 valuation for the respondents' 35.9887-hectare agricultural land as it failed to comply with the mandated requirements of the law and applicable DAR regulation on the fixing of just compensation.

Instead of taking into account the condition of the subject land at the time of taking on December 5, 1997 when the title was transferred to the Republic of the Philippines,[42] the RTC considered the respondents' evidence on the condition of the subject land at the time of rendition of the judgment, as well the updated schedule of fair market value of real properties in the Province of Sorsogon (*Sanggunian Panlalawigan* Resolution No. 73-99). The RTC made use of no computation or formula to arrive at the ₱4,470,554.00 figure. In fact, it simply enumerated the respondents' evidence and plucked out of thin air the amount of ₱4,470,554.00.

In the same vein, we cannot accept the petitioner's ₱819,778.30 valuation since it was based on the condition of the subject

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G.R. No. 176410, September 1, 2010, 629 SCRA 614; *Land Bank of the Philippines v. Livioco, supra* note 37; *Land Bank of the Philippines v. Escandor,* G.R. No. 171685, October 11, 2010, 632 SCRA 504; *Land Bank of the Philippines v. Rivera,* G.R. No. 182431, November 17, 2010, 635 SCRA 285; *Land Bank of the Philippines v. Department of Agrarian Reform, and supra* note 35.

[41] *Land Bank of the Philippines v. Escandor, supra,* at 515, citing *Land Bank of the Philippines v. Barrido, supra,* at 459-460.

[42] *Supra* note 10.

land at the time of the field investigation in 1992, not at the time of the taking of the subject land in 1997. Besides, the petitioner offered no testimony to show how the ₱819,778.30 figure was arrived at; its witness merely stated that the ₱819,778.30 valuation was based on DAR AO No. 11, series of 1994.[43]

In the absence of sufficient evidence for the determination of just compensation, we are constrained to remand the present case to the SAC for the determination of just compensation, in accordance with Section 17 of RA 6657 and DAR AO No. 02-09 dated October 15, 2009, the latest DAR issuance on fixing just compensation.

WHEREFORE, the petition is **GRANTED.** The July 22, 2004 decision and the April 6, 2005 resolution of the Court of Appeals in CA-G.R. SP No. 78596 are hereby **REVERSED** and **SET ASIDE.** The case is **REMANDED** to the Regional Trial Court of Sorsogon City, Branch 52 to determine the just compensation in Civil Case No. 2001-6911, strictly in accordance with Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 02-09 dated October 15, 2009.

No pronouncement as to costs.

SO ORDERED.

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

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[43] Agrarian Affairs Specialist Sheila Higola; *rollo*, p. 110.

THIRD DIVISION

[G.R. No. 171995. April 18, 2012]

STEELCASE, INC., *petitioner, vs.* **DESIGN INTERNATIONAL SELECTIONS, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; FOREIGN CORPORATION DOING BUSINESS IN THE PHILIPPINES WITHOUT A LICENSE; "DOING BUSINESS" NOT APPRECIATED WHERE FOREIGN CORPORATION MERELY APPOINTED A DISTRIBUTOR. — The rule that an unlicensed foreign corporations doing business in the Philippines do not have the capacity to sue before the local courts is well-established. x x x The phrase "doing business" is clearly defined in Section 3(d) of R.A. No. 7042 (Foreign Investments Act of 1991), x x x supplemented by its Implementing Rules and Regulations, Rule I, Section 1(f) which elaborates on the meaning of the same phrase: x x x the appointment of a distributor in the Philippines is not sufficient to constitute "doing business" unless it is under the full control of the foreign corporation. x x x [I]f the distributor is an independent entity which buys and distributes products, other than those of the foreign corporation, for its own name and its own account, the latter cannot be considered to be doing business in the Philippines.

2. ID.; ID.; A CORPORATION HAS A SEPARATE AND DISTINCT PERSONALITY FROM OTHER CORPORATIONS WITH WHICH IT MAY BE CONNECTED; CASE AT BAR.— Another point being raised by DISI is the delivery and sale of Steelcase products to a Philippine client by Modernform allegedly an agent of Steelcase. Basic is the rule in corporation law that a corporation has a separate and distinct personality from its stockholders and from other corporations with which it may be connected. Thus, despite the admission by Steelcase that it owns 25% of Modernform, with the remaining 75% being owned and controlled by Thai stockholders, it is grossly insufficient to justify piercing the veil of corporate fiction and declare that

Modernform acted as the alter ego of Steelcase to enable it to improperly conduct business in the Philippines. The records are bereft of any evidence which might lend even a hint of credence to DISI's assertions. As such, Steelcase cannot be deemed to have been doing business in the Philippines through Modernform.

3. ID.; ID.; FOREIGN CORPORATION DOING BUSINESS IN THE PHILIPPINES WITHOUT A LICENSE; DEFENSE THAT SUCH CORPORATION HAS NO CAPACITY TO SUE BEFORE THE LOCAL COURTS, NOT APPRECIATED IN FAVOR OF ONE WHO HAD BENEFITED THEREFROM.— By acknowledging the corporate entity of Steelcase and entering into a dealership agreement with it and even benefiting from it, DISI is estopped from questioning Steelcase's existence and capacity to sue. This is consistent with the Court's ruling in *Communication Materials and Design, Inc. v. Court of Appeals.*

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Kapunan Lotilla Flores Garcia and Castillo for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 assailing the March 31, 2005 Decision[1] of the Court of Appeals *(CA)* which affirmed the May 29, 2000 Order[2] of the Regional Trial Court, Branch 60, Makati City *(RTC)*, dismissing the complaint for sum of money in Civil Case No. 99-122 entitled "*Steelcase, Inc. v. Design International Selections, Inc.*"

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[1] *Rollo*, pp. 6-17. Penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justice Amelita G. Tolentino and Associate Justice Vicente S.E. Veloso.

[2] *Id.* at 384-386.

The Facts

Petitioner Steelcase, Inc. *(Steelcase)* is a foreign corporation existing under the laws of Michigan, United States of America *(U.S.A.)*, and engaged in the manufacture of office furniture with dealers worldwide.[3] Respondent Design International Selections, Inc. *(DISI)* is a corporation existing under Philippine Laws and engaged in the furniture business, including the distribution of furniture.[4]

Sometime in 1986 or 1987, Steelcase and DISI orally entered into a dealership agreement whereby Steelcase granted DISI the right to market, sell, distribute, install, and service its products to end-user customers within the Philippines. The business relationship continued smoothly until it was terminated sometime in January 1999 after the agreement was breached with neither party admitting any fault.[5]

On January 18, 1999, Steelcase filed a complaint[6] for sum of money against DISI alleging, among others, that DISI had an unpaid account of US$600,000.00. Steelcase prayed that DISI be ordered to pay actual or compensatory damages, exemplary damages, attorney's fees, and costs of suit.

In its Answer with Compulsory Counterclaims[7] dated February 4, 1999, DISI sought the following: (1) the issuance of a temporary restraining order *(TRO)* and a writ of preliminary injunction to enjoin Steelcase from selling its products in the Philippines except through DISI; (2) the dismissal of the complaint for lack of merit; and (3) the payment of actual, moral and exemplary damages together with attorney's fees and expenses of litigation. DISI alleged that the complaint failed to state a cause of action and to contain the required allegations on Steelcase's capacity

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[3] *Id.* at 25.

[4] *Id.* at 1018.

[5] *Id.* at 81.

[6] *Id.* at 95-102.

[7] *Id.* at 103-138.

to sue in the Philippines despite the fact that it (Steelcase) was doing business in the Philippines without the required license to do so. Consequently, it posited that the complaint should be dismissed because of Steelcase's lack of legal capacity to sue in Philippine courts.

On March 3, 1999, Steelcase filed its Motion to Admit Amended Complaint[8] which was granted by the RTC, through then Acting Presiding Judge Roberto C. Diokno, in its Order[9] dated April 26, 1999. However, Steelcase sought to further amend its complaint by filing a Motion to Admit Second Amended Complaint[10] on March 13, 1999.

In his Order[11] dated November 15, 1999, Acting Presiding Judge Bonifacio Sanz Maceda dismissed the complaint, granted the TRO prayed for by DISI, set aside the April 26, 1999 Order of the RTC admitting the Amended Complaint, and denied Steelcase's Motion to Admit Second Amended Complaint. The RTC stated that in requiring DISI to meet the Dealer Performance Expectation and in terminating the dealership agreement with DISI based on its failure to improve its performance in the areas of business planning, organizational structure, operational effectiveness, and efficiency, Steelcase unwittingly revealed that it participated in the operations of DISI. It then concluded that Steelcase was "doing business" in the Philippines, as contemplated by Republic Act *(R.A.)* No. 7042 (The Foreign Investments Act of 1991), and since it did not have the license to do business in the country, it was barred from seeking redress from our courts until it obtained the requisite license to do so. Its determination was further bolstered by the appointment by Steelcase of a representative in the Philippines. Finally, despite a showing that DISI transacted with the local customers in its own name and for its own account, it was of the opinion that any doubt in the factual environment should be resolved in favor

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[8] *Id.* at 139-158.

[9] *Id.* at 180.

[10] *Id.* at 202-207.

[11] *Id.* at 224-229.

of a pronouncement that a foreign corporation was doing business in the Philippines, considering the twelve-year period that DISI had been distributing Steelcase products in the Philippines.

Steelcase moved for the reconsideration of the questioned Order but the motion was denied by the RTC in its May 29, 2000 Order.[12]

Aggrieved, Steelcase elevated the case to the CA by way of appeal, assailing the November 15, 1999 and May 29, 2000 Orders of the RTC. On March 31, 2005, the CA rendered its Decision affirming the RTC orders, ruling that Steelcase was a foreign corporation doing or transacting business in the Philippines without a license. The CA stated that the following acts of Steelcase showed its intention to pursue and continue the conduct of its business in the Philippines: (1) sending a letter to Phinma, informing the latter that the distribution rights for its products would be established in the near future and directing other questions about orders for Steelcase products to Steelcase International; (2) cancelling orders from DISI's customers, particularly Visteon, Phils., Inc. *(Visteon)*; (3) continuing to send its products to the Philippines through Modernform Group Company Limited *(Modernform)*, as evidenced by an Ocean Bill of Lading; and (4) going beyond the mere appointment of DISI as a dealer by making several impositions on management and operations of DISI. Thus, the CA ruled that Steelcase was barred from access to our courts for being a foreign corporation doing business here without the requisite license to do so.

Steelcase filed a motion for reconsideration but it was denied by the CA in its Resolution dated March 23, 2006.[13]

Hence, this petition.

The Issues

Steelcase filed the present petition relying on the following grounds:

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[12] *Id.* at 384-386.

[13] *Id.* at 93-94.

I

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT FOUND THAT STEELCASE HAD BEEN "DOING BUSINESS" IN THE PHILIPPINES WITHOUT A LICENSE.

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT FINDING THAT RESPONDENT WAS ESTOPPED FROM CHALLENGING STEELCASE'S LEGAL CAPACITY TO SUE, AS AN AFFIRMATIVE DEFENSE IN ITS ANSWER.

The issues to be resolved in this case are:

(1) Whether or not Steelcase is doing business in the Philippines without a license; and

(2) Whether or not DISI is estopped from challenging the Steelcase's legal capacity to sue.

The Court's Ruling

The Court rules in favor of the petitioner.

Steelcase is an unlicensed foreign corporation NOT doing business in the Philippines

Anent the first issue, Steelcase argues that Section 3(d) of R.A. No. 7042 or the Foreign Investments Act of 1991 *(FIA)* expressly states that the phrase "doing business" excludes the appointment by a foreign corporation of a local distributor domiciled in the Philippines which transacts business in its own name and for its own account. Steelcase claims that it was not doing business in the Philippines when it entered into a dealership agreement with DISI where the latter, acting as the former's appointed local distributor, transacted business in its own name and for its own account. Specifically, Steelcase contends that it was DISI that sold Steelcase's furniture directly to the end-users or customers who, in turn, directly paid DISI for the furniture they bought. Steelcase further claims that DISI, as a

non-exclusive dealer in the Philippines, had the right to market, sell, distribute and service Steelcase products in its own name and for its own account. Hence, DISI was an independent distributor of Steelcase products, and not a mere agent or conduit of Steelcase.

On the other hand, DISI argues that it was appointed by Steelcase as the latter's exclusive distributor of Steelcase products. DISI likewise asserts that it was not allowed by Steelcase to transact business in its own name and for its own account as Steelcase dictated the manner by which it was to conduct its business, including the management and solicitation of orders from customers, thereby assuming control of its operations. DISI further insists that Steelcase treated and considered DISI as a mere conduit, as evidenced by the fact that Steelcase itself directly sold its products to customers located in the Philippines who were classified as part of their "global accounts." DISI cited other established circumstances which prove that Steelcase was doing business in the Philippines including the following: (1) the sale and delivery by Steelcase of furniture to Regus, a Philippine client, through Modernform, a Thai corporation allegedly controlled by Steelcase; (2) the imposition by Steelcase of certain requirements over the management and operations of DISI; (3) the representations made by Steven Husak as Country Manager of Steelcase; (4) the cancellation by Steelcase of orders placed by Philippine clients; and (5) the expression by Steelcase of its desire to maintain its business in the Philippines. Thus, Steelcase has no legal capacity to sue in Philippine Courts because it was doing business in the Philippines without a license to do so.

The Court agrees with the petitioner.

The rule that an unlicensed foreign corporations doing business in the Philippines do not have the capacity to sue before the local courts is well-established. Section 133 of the Corporation Code of the Philippines explicitly states:

Sec. 133. Doing business without a license. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency

of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

The phrase "doing business" is clearly defined in Section 3(d) of R.A. No. 7042 (Foreign Investments Act of 1991), to wit:

d) The phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, That **the phrase "doing business" shall not be deemed to include** mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor **appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account;** (Emphases supplied)

This definition is supplemented by its Implementing Rules and Regulations, Rule I, Section 1(f) which elaborates on the meaning of the same phrase:

f. "Doing business" shall include soliciting orders, service contracts, opening offices, whether liaison offices or branches; appointing representatives or distributors, operating under full control of the foreign corporation, domiciled in the Philippines or who in any calendar year stay in the country for a period totalling one hundred eighty [180] days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of

some of the functions normally incident to and in progressive prosecution of commercial gain or of the purpose and object of the business organization.

The following acts shall not be deemed "doing business" in the Philippines:

1. Mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor;

2. Having a nominee director or officer to represent its interest in such corporation;

3. Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account;

4. The publication of a general advertisement through any print or broadcast media;

5. Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;

6. Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export;

7. Collecting information in the Philippines; and

8. Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services. (Emphases supplied)

From the preceding citations, the appointment of a distributor in the Philippines is not sufficient to constitute "doing business" unless it is under the full control of the foreign corporation. On the other hand, if the distributor is an independent entity which buys and distributes products, other than those of the foreign corporation, for its own name and its own account, the latter cannot be considered to be doing business in the

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[14] *La Chemise Lacoste, S.A. v. Fernandez*, 214 Phil. 332, 342 (1984).

Philippines.[14] It should be kept in mind that the determination of whether a foreign corporation is doing business in the Philippines must be judged in light of the attendant circumstances.[15]

In the case at bench, it is undisputed that DISI was founded in 1979 and is independently owned and managed by the spouses Leandro and Josephine Bantug.[16] In addition to Steelcase products, DISI also distributed products of other companies including carpet tiles, relocatable walls and theater settings.[17] The dealership agreement between Steelcase and DISI had been described by the owner himself as:

> x x x basically **a buy and sell arrangement** whereby we would inform Steelcase of the volume of the products needed for a particular project and Steelcase would, in turn, give 'special quotations' or discounts after considering the value of the entire package. In making the bid of the project, we would then add out profit margin over Steelcase's prices. After the approval of the bid by the client, we would thereafter place the orders to Steelcase. The latter, upon our payment, would then ship the goods to the Philippines, with us shouldering the freight charges and taxes.[18] [Emphasis supplied]

This clearly belies DISI's assertion that it was a mere conduit through which Steelcase conducted its business in the country. From the preceding facts, the only reasonable conclusion that can be reached is that DISI was an independent contractor, distributing various products of Steelcase and of other companies, acting in its own name and for its own account.

The CA, in finding Steelcase to be unlawfully engaged in business in the Philippines, took into consideration the delivery by Steelcase of a letter to Phinma informing the latter that the distribution rights for its products would be established in the near future, and also its cancellation of orders placed by Visteon. The foregoing acts were apparently misinterpreted by the CA.

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[15] *Top-Weld Manufacturing, Inc. v. ECED, S.A.*, 222 Phil. 424, 431 (1985).

[16] *Rollo*, p. 596.

[17] *Id.* at 626.

[18] *Id.* at 597.

Instead of supporting the claim that Steelcase was doing business in the country, the said acts prove otherwise. It should be pointed out that no sale was concluded as a result of these communications. Had Steelcase indeed been doing business in the Philippines, it would have readily accepted and serviced the orders from the abovementioned Philippine companies. Its decision to voluntarily cease to sell its products in the absence of a local distributor indicates its refusal to engage in activities which might be construed as "doing business."

Another point being raised by DISI is the delivery and sale of Steelcase products to a Philippine client by Modernform allegedly an agent of Steelcase. Basic is the rule in corporation law that a corporation has a separate and distinct personality from its stockholders and from other corporations with which it may be connected.[19] Thus, despite the admission by Steelcase that it owns 25% of Modernform, with the remaining 75% being owned and controlled by Thai stockholders,[20] it is grossly insufficient to justify piercing the veil of corporate fiction and declare that Modernform acted as the alter ego of Steelcase to enable it to improperly conduct business in the Philippines. The records are bereft of any evidence which might lend even a hint of credence to DISI's assertions. As such, Steelcase cannot be deemed to have been doing business in the Philippines through Modernform.

Finally, both the CA and DISI rely heavily on the Dealer Performance Expectation required by Steelcase of its distributors to prove that DISI was not functioning independently from Steelcase because the same imposed certain conditions pertaining to business planning, organizational structure, operational effectiveness and efficiency, and financial stability. It is actually logical to expect that Steelcase, being one of the major manufacturers of office systems furniture, would require its dealers to meet several conditions for the grant and continuation

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[19] *Francisco Motors Corporation v. Court of Appeals*, 368 Phil. 374, 384 (1999).

[20] *Rollo*, p. 987.

of a distributorship agreement. The imposition of minimum standards concerning sales, marketing, finance and operations is nothing more than an exercise of sound business practice to increase sales and maximize profits for the benefit of both Steelcase and its distributors. For as long as these requirements do not impinge on a distributor's independence, then there is nothing wrong with placing reasonable expectations on them.

All things considered, it has been sufficiently demonstrated that DISI was an independent contractor which sold Steelcase products in its own name and for its own account. As a result, Steelcase cannot be considered to be doing business in the Philippines by its act of appointing a distributor as it falls under one of the exceptions under R.A. No. 7042.

DISI is estopped from challenging Steelcase's legal capacity to sue

Regarding the second issue, Steelcase argues that assuming *arguendo* that it had been "doing business" in the Philippines without a license, DISI was nonetheless estopped from challenging Steelcase's capacity to sue in the Philippines. Steelcase claims that since DISI was aware that it was doing business in the Philippines without a license and had benefited from such business, then DISI should be estopped from raising the defense that Steelcase lacks the capacity to sue in the Philippines by reason of its doing business without a license.

On the other hand, DISI argues that the doctrine of estoppel cannot give Steelcase the license to do business in the Philippines or permission to file suit in the Philippines. DISI claims that when Steelcase entered into a dealership agreement with DISI in 1986, it was not doing business in the Philippines. It was after such dealership was put in place that it started to do business without first obtaining the necessary license. Hence, estoppel cannot work against it. Moreover, DISI claims that it suffered as a result of Steelcase's "doing business" and that it never benefited from the dealership and, as such, it cannot be estopped from raising the issue of lack of capacity to sue on the part of Steelcase.

The argument of Steelcase is meritorious.

If indeed Steelcase had been doing business in the Philippines without a license, DISI would nonetheless be estopped from challenging the former's legal capacity to sue.

It cannot be denied that DISI entered into a dealership agreement with Steelcase and profited from it for 12 years from 1987 until 1999. DISI admits that it complied with its obligations under the dealership agreement by exerting more effort and making substantial investments in the promotion of Steelcase products. It also claims that it was able to establish a very good reputation and goodwill for Steelcase and its products, resulting in the establishment and development of a strong market for Steelcase products in the Philippines. Because of this, DISI was very proud to be awarded the "Steelcase International Performance Award" for meeting sales objectives, satisfying customer needs, managing an effective company and making a profit.[21]

Unquestionably, entering into a dealership agreement with Steelcase charged DISI with the knowledge that Steelcase was not licensed to engage in business activities in the Philippines. This Court has carefully combed the records and found no proof that, from the inception of the dealership agreement in 1986 until September 1998, DISI even brought to Steelcase's attention that it was improperly doing business in the Philippines without a license. It was only towards the latter part of 1998 that DISI deemed it necessary to inform Steelcase of the impropriety of the conduct of its business without the requisite Philippine license. It should, however, be noted that DISI only raised the issue of the absence of a license with Steelcase after it was informed that it owed the latter US$600,000.00 for the sale and delivery of its products under their special credit arrangement.

By acknowledging the corporate entity of Steelcase and entering into a dealership agreement with it and even benefiting from it, DISI is estopped from questioning Steelcase's existence and capacity to sue. This is consistent with the Court's ruling in

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[21] *Id.* at 118-120.

Communication Materials and Design, Inc. v. Court of Appeals[22] where it was written:

> Notwithstanding such finding that ITEC is doing business in the country, petitioner is nonetheless estopped from raising this fact to bar ITEC from instituting this injunction case against it.
>
> **A foreign corporation doing business in the Philippines may sue in Philippine Courts although not authorized to do business here against a Philippine citizen or entity who had contracted with and benefited by said corporation. To put it in another way, a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it.** And the doctrine of estoppel to deny corporate existence applies to a foreign as well as to domestic corporations. One who has dealt with a corporation of foreign origin as a corporate entity is estopped to deny its corporate existence and capacity: The principle will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes chiefly in cases where such person has received the benefits of the contract.
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> **The rule is deeply rooted in the time-honored axiom of *Commodum ex injuria sua non habere debet* — no person ought to derive any advantage of his own wrong. This is as it should be for as mandated by law, "every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."**
>
> Concededly, corporations act through agents, like directors and officers. Corporate dealings must be characterized by utmost good faith and fairness. Corporations cannot just feign ignorance of the legal rules as in most cases, they are manned by sophisticated officers with tried management skills and legal experts with practiced eye on legal problems. Each party to a corporate transaction is expected to act with utmost candor and fairness and, thereby allow a reasonable proportion between benefits and expected burdens. This is a norm which should be observed where one or the other is a foreign entity venturing in a global market.
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> x x x x x x x x x

[22] 329 Phil. 487 (1996).

By entering into the "Representative Agreement" with ITEC, petitioner is charged with knowledge that ITEC was not licensed to engage in business activities in the country, and is thus estopped from raising in defense such incapacity of ITEC, having chosen to ignore or even presumptively take advantage of the same.[23] (Emphases supplied)

The case of *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*[24] is likewise instructive:

Respondent's unequivocal admission of the transaction which gave rise to the complaint establishes the applicability of estoppel against it. Rule 129, Section 4 of the Rules on Evidence provides that a written admission made by a party in the course of the proceedings in the same case does not require proof. We held in the case of Elayda *v.* Court of Appeals, that an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to him. Thus, our consistent pronouncement, as held in cases such as *Merril Lynch Futures v. Court of Appeals*, is apropos:

> **The rule is that a party is estopped to challenge the personality of a corporation after having acknowledged the same by entering into a contract with it. And the 'doctrine of estoppel to deny corporate existence applies to foreign as well as to domestic corporations'; "one who has dealt with a corporation of foreign origin as a corporate entity is estopped to deny its existence and capacity." The principle "will be applied to prevent a person contracting with a foreign corporation from later taking advantage of its noncompliance with the statutes, chiefly in cases where such person has received the benefits of the contract . . ."**

All things considered, respondent can no longer invoke petitioner's lack of capacity to sue in this jurisdiction. Considerations of fair play dictate that after having contracted and benefitted from its business transaction with Rimbunan, respondent should be barred from questioning the latter's lack of license to transact business in the Philippines.

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[23] *Id.* at 507-509.

[24] 507 Phil. 631 (2005).

In the case of *Antam Consolidated, Inc. v. CA*, this Court noted that it is a common ploy of defaulting local companies which are sued by unlicensed foreign corporations not engaged in business in the Philippines to invoke the latter's lack of capacity to sue. This practice of domestic corporations is particularly reprehensible considering that in requiring a license, the law never intended to prevent foreign corporations from performing single or isolated acts in this country, or to favor domestic corporations who renege on their obligations to foreign firms unwary enough to engage in solitary transactions with them. Rather, the law was intended to bar foreign corporations from acquiring a domicile for the purpose of business without first taking the steps necessary to render them amenable to suits in the local courts. It was to prevent the foreign companies from enjoying the good while disregarding the bad.

As a matter of principle, this Court will not step in to shield defaulting local companies from the repercussions of their business dealings. While the doctrine of lack of capacity to sue based on failure to first acquire a local license may be resorted to in meritorious cases, it is not a magic incantation. It cannot be called upon when no evidence exists to support its invocation or the facts do not warrant its application. In this case, that the respondent is estopped from challenging the petitioners' capacity to sue has been conclusively established, and the forthcoming trial before the lower court should weigh instead on the other defenses raised by the respondent.[25] (Emphases supplied)

As shown in the previously cited cases, this Court has time and again upheld the principle that a foreign corporation doing business in the Philippines without a license may still sue before the Philippine courts a Filipino or a Philippine entity that had derived some benefit from their contractual arrangement because the latter is considered to be estopped from challenging the personality of a corporation after it had acknowledged the said corporation by entering into a contract with it.[26]

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[25] *Id.* at 650-652.

[26] *Global Business Holdings, Inc. v. Surecomp Software, B.V.*, G.R. No. 173463, October 13, 2010, 633 SCRA 94, 103-104.

In *Antam Consolidated, Inc. v. Court of Appeals*,[27] this Court had the occasion to draw attention to the common ploy of invoking the incapacity to sue of an unlicensed foreign corporation utilized by defaulting domestic companies which seek to avoid the suit by the former. The Court cannot allow this to continue by always ruling in favor of local companies, despite the injustice to the overseas corporation which is left with no available remedy.

During this period of financial difficulty, our nation greatly needs to attract more foreign investments and encourage trade between the Philippines and other countries in order to rebuild and strengthen our economy. While it is essential to uphold the sound public policy behind the rule that denies unlicensed foreign corporations doing business in the Philippines access to our courts, it must never be used to frustrate the ends of justice by becoming an all-encompassing shield to protect unscrupulous domestic enterprises from foreign entities seeking redress in our country. To do otherwise could seriously jeopardize the desirability of the Philippines as an investment site and would possibly have the deleterious effect of hindering trade between Philippine companies and international corporations.

WHEREFORE, the March 31, 2005 Decision of the Court of Appeals and its March 23, 2006 Resolution are hereby **REVERSED** and **SET ASIDE.** The dismissal order of the Regional Trial Court dated November 15, 1999 is hereby set aside. Steelcase's Amended Complaint is hereby ordered **REINSTATED.** The case is **REMANDED** to the RTC for appropriate action.

SO ORDERED.

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

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[27] 227 Phil. 267, 276 (1986).

FIRST DIVISION

[G.R. No. 175039. April 18, 2012]

ADDITION HILLS MANDALUYONG CIVIC & SOCIAL ORGANIZATION, INC., *petitioner, vs.* **MEGAWORLD PROPERTIES & HOLDINGS, INC., WILFREDO I. IMPERIAL, in his capacity as Director, NCR, and HOUSING AND LAND USE REGULATORY BOARD, DEPARTMENT OF NATURAL RESOURCES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; ELUCIDATED.— [C]ourts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. x x x [A] litigant cannot go around the authority of the concerned administrative agency and directly seek redress from the courts. Thus, when the law provides for a remedy against a certain action of an administrative board, body, or officer, relief to the courts can be made only after exhausting all remedies provided therein. It is settled that the non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.

2. ID.; ID.; ID.; COMPLAINT TO ANNUL ANY PERMIT ISSUED BY THE HOUSING AND LAND USE REGULATORY BOARD (HLURB); MUST BE FILED BEFORE THE HLURB INSTEAD OF THE TRIAL COURT.— Under the rules of the HLURB which were then in effect, particularly Sections 4 and 6 of HLURB Resolution No. R-391, Series of 1987 (Adopting the 1987 Rules of Procedure of the Housing and Land Use Regulatory Board), a complaint to annul any permit issued by the HLURB may be filed before the Housing and Land Use Arbiter (HLA). Therefore, petitioner's action to annul the Certificate of Locational Viability (CLV) and the Development Permit issued by the HLURB on October 25, 1994 and November 11, 1994, respectively, in favor of

private respondent for its Wack-Wack Heights Condominium Project should have been properly filed before the HLURB instead of the trial court.

APPEARANCES OF COUNSEL

Milagros Isabel Cristobal Amar for petitioner.
Angara Abello Concepcion Regala & Cruz for Megaworld.
Dunstan San Vicente for HLURB.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure of the Decision[1] dated May 16, 2006 as well as the Resolution[2] dated October 5, 2006 of the Court of Appeals in CA-G.R. CV No. 63439, entitled "*ADDITION HILLS MANDALUYONG CIVIC & SOCIAL ORGANIZATION INC. vs. MEGAWORLD PROPERTIES & HOLDINGS, INC., WILFREDO I. IMPERIAL in his capacity as Director, NCR, and HOUSING AND LAND USE REGULATORY BOARD, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.*" In effect, the appellate court's issuances reversed and set aside the Decision[3] dated September 10, 1998 rendered by the Regional Trial Court (RTC) of Pasig City, Branch 158 in Civil Case No. 65171.

The facts of this case, as narrated in the assailed May 16, 2006 Decision of the Court of Appeals, are as follows:

[Private respondent] MEGAWORLD was the registered owner of a parcel of land located along Lee Street, Barangay Addition Hills, Mandaluyong City with an area of 6,148 square meters, more

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[1] *Rollo*, pp. 10-20; penned by Associate Justice Vicente Q. Roxas with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring.

[2] *Id.* at 69-70.

[3] CA *rollo*, pp. 250-274.

or less, covered by Transfer Certificate of Title (TCT) No. 12768, issued by the Register of Deeds for Mandaluyong City.

Sometime in 1994, [private respondent] MEGAWORLD conceptualized the construction of a residential condominium complex on the said parcel of land called the ***Wack-Wack Heights Condominium*** consisting of a cluster of six (6) four-storey buildings and one (1) seventeen (17) storey tower.

[Private respondent] MEGAWORLD thereafter secured the necessary clearances, licenses and permits for the condominium project, including: (1) a CLV, issued on October 25, 1994, and a Development Permit, issued on November 11, 1994, both by the [public respondent] HLURB; (2) an ECC, issued on March 15, 1995, by the Department of Environment and Natural Resources (DENR); (3) a Building Permit, issued on February 3, 1995, by the Office of the Building Official of Mandaluyong City; and (4) a Barangay Clearance dated September 29, 1994, from the office of the Barangay Chairman of Addition Hills.

Thereafter, construction of the condominium project began, but on June 30, 1995, the plaintiff-appellee AHMCSO filed a complaint before the Regional Trial Court of Pasig City, Branch 158, docketed as Civil Case No. 65171, for yo (*sic*) annul the Building Permit, CLV, ECC and Development Permit granted to MEGAWORLD; to prohibit the issuance to MEGAWORLD of Certificate of Registration and License to Sell Condominium Units; and to permanently enjoin local and national building officials from issuing licenses and permits to MEGAWORLD.

On July 20, 1995, [private respondent] MEGAWORLD filed a Motion to Dismiss the case for lack of cause of action and that jurisdiction over the case was with the [public respondent] HLURB and not with the regular courts.

On July 24, 1994, the RTC denied the motion to dismiss filed by [private respondent] MEGAWORLD.

On August 3, 1995, [private respondent] MEGAWORLD filed its Answer.

On November 15, 1995, pre-trial was commenced.

Thereafter, trial on the merits ensued.[4]

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[4] *Rollo*, pp. 12-13.

The trial court rendered a Decision dated September 10, 1998 in favor of petitioner, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the Certificate of Locational Viability, the Development Permit and the Certificate of Registration and License to Sell Condominium Units, all issued by defendant Wilfredo I. Imperial, National Capital Region Director of the Housing and Land Use Regulatory Board (HLURB-NCR) are all declared void and of no effect. The same goes for the Building Permit issued by defendant Francisco Mapalo of Mandaluyong City. In turn, defendant Megaworld Properties and Holdings Inc. is directed to rectify its Wack Wack Heights Project for it to conform to the requirements of an R-2 zone of Mandaluyong City and of the Metro Manila Zoning Ordinance 81-01.
>
> Costs against these defendants.[5]

Private respondent appealed to the Court of Appeals which issued the assailed May 16, 2006 Decision which reversed and set aside the aforementioned trial court ruling, the dispositive portion of which reads:

> WHEREFORE, premises considered, the September 10, 1998 Decision of the Regional Trial Court of Pasig City, Branch 158, rendered in Civil Case No. 65171 is hereby REVERSED and SET ASIDE and a new one entered DISMISSING the complaint.[6]

As can be expected, petitioner moved for reconsideration; however, the Court of Appeals denied the motion in its assailed October 5, 2006 Resolution.

Hence, the petitioner filed the instant petition and submitted the following issues for consideration:

> WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT FOUND THAT PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE SEEKING JUDICIAL INTERVENTION FROM THE COURTS.
>
> WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT FOUND THAT THE CASE FILED BEFORE AND DECIDED

[5] CA *rollo*, p. 274.

[6] *Rollo*, pp. 19-20.

BY THE REGIONAL TRIAL COURT OF PASIG, BRANCH 158, DOES NOT FALL UNDER ANY ONE OF THE EXCEPTIONS TO THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.

WHETHER OR NOT THE COURT OF APPEALS (The Court) ERRED WHEN IT FOUND THAT PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE SEEKING JUDICIAL INTERVENTION FROM THE COURTS.

WHETHER OR NOT THE COURT OF APPEALS (The Court) ERRED WHEN IT CONCLUDED THAT THE HLURB HAD JURISDICTION OVER ACTIONS TO ANNUL CERTIFICATES OF LOCATIONAL VIABILITY AND DEVELOPMENT PERMITS.[7]

On the other hand, private respondent put forth the following issues in its Memorandum:[8]

I

WHETHER OR NOT THE PETITION FOR REVIEW IS FATALLY DEFECTIVE FOR BEING IMPROPERLY VERIFIED.

II

WHETHER OR NOT THE COURT OF APPEALS CORRECTLY ANNULLED AND SET ASIDE THE TRIAL COURT'S DECISION AND DISMISSED THE COMPLAINT FOR PETITIONER'S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES.

III

WHETHER OR NOT THE DECISION OF THE TRIAL COURT IS CONTRARY TO LAW AND THE FACTS.

A. WHETHER OR NOT THE TRIAL COURT ERRED IN HOLDING THAT THE CLV WAS IMPROPERLY AND IRREGULARLY ISSUED.

1. WHETHER OR NOT THE TRIAL COURT ERRED IN HOLDING THAT HLURB HAS NO POWER TO GRANT AN EXCEPTION OR VARIANCE TO REQUIREMENTS OF METRO MANILA COMMISSION ORDINANCE NO. 81-01.

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[7] *Id.* at 384-385.

[8] *Id.* at 315-365.

2. WHETHER OR NOT THE TRIAL COURT ERRED IN HOLDING THAT THE PROJECT DID NOT MEET THE REQUIREMENTS OF SECTION 3(B), ARTICLE VII OF METRO MANILA COMMISSION ORDINANCE NO. 81-01 TO QUALIFY FOR AN EXCEPTION OR DEVIATION.

B. WHETHER OR NOT THE TRIAL COURT ERRED IN HOLDING THAT THE DEVELOPMENT PERMIT WAS IMPROPERLY AND IRREGULARLY ISSUED.

C. WHETHER OR NOT THE TRIAL COURT ERRED IN HOLDING THAT THE PROJECT DEPRIVES THE ADJACENT PROPERTIES OF AIR.[9]

We find the petition to be without merit.

At the outset, the parties in their various pleadings discuss issues, although ostensibly legal, actually require the Court to make findings of fact. It is long settled, by law and jurisprudence, that the Court is not a trier of facts.[10] Therefore, the only relevant issue to be resolved in this case is whether or not the remedy sought by the petitioner in the trial court is in violation of the legal principle of the exhaustion of administrative remedies.

We have consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[11]

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[9] *Id.* at 323-324.

[10] *General Milling Corporation v. Ramos*, G.R. No. 193723, July 20, 2011, 654 SCRA 256, 267.

[11] *New Sun Valley Homeowners' Association, Inc. v. Sangguniang Barangay, Barangay Sun Valley, Parañaque City*, G.R. No. 156686, July

In the case of *Republic v. Lacap*,[12] we expounded on the doctrine of exhaustion of administrative remedies and the related doctrine of primary jurisdiction in this wise:

> The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.
>
> Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.[13]

It is true that the foregoing doctrine admits of exceptions, such that in *Lacap*, we also held:

> Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted

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27, 2011, 654 SCRA 438, 463, citing *Universal Robina Corporation (Corn Division) v. Laguna Lake Development Authority*, G.R. No. 191427, May 30, 2011, 649 SCRA 506, 511.

[12] G.R. No. 158253, March 2, 2007, 517 SCRA 255.

[13] *Id.* at 265.

acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings. x x x.[14]

Upon careful consideration of the parties' contentions, we find that none of the aforementioned exceptions exist in the case at bar.

What is apparent, however, is that petitioner unjustifiably failed to exhaust the administrative remedies available with the Housing and Land Use Regulatory Board (HLURB) before seeking recourse with the trial court. Under the rules of the HLURB which were then in effect, particularly Sections 4 and 6 of HLURB Resolution No. R-391, Series of 1987 (Adopting the 1987 Rules of Procedure of the Housing and Land Use Regulatory Board),[15] a complaint to annul any permit issued by the HLURB may be filed before the Housing and Land Use Arbiter (HLA). Therefore, petitioner's action to annul the Certificate of Locational Viability (CLV) and the Development Permit issued by the HLURB on October 25, 1994 and November 11, 1994, respectively, in favor of private respondent for its Wack-Wack Heights Condominium Project should have been properly filed before the HLURB instead of the trial court.

We quote with approval the Court of Appeals' discussion of this matter:

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[14] *Id.* at 265-266.

[15] Section 4. Applicant and Oppositor. — Any person natural or juridical, applying to the Board for issuance of any license, permit, development and/or locational clearance or the authority to exercise any right or privilege under any law administered or enforced by the Board, shall be called the applicant.

Any person claiming interest in any application filed with the Board, or in the subject matter thereof, which is adverse to the applicant, shall be called the oppositor.

Section 6. When Action Deemed Commenced. — An action is deemed commenced upon the filing of a verified complaint or opposition, in three copies, together with all the supporting documents, and upon payment of the filing fees.

In the case at bar, plaintiff-appellee AHMCSO failed to exhaust the available administrative remedies before seeking judicial intervention *via* a petition for annulment. The power to act as appellate body over decisions and actions of local and regional planning and zoning bodies and deputized official of the board was retained by the HLURB and remained unaffected by the devolution under the Local Government Code.

Under Section 5 of Executive Order No. 648, series of 1981, the Human Settlement Regulatory Commission (HSRC) later renamed as Housing and Land Use Regulatory Board (HLURB), pursuant to Section 1(c) of Executive Order No. 90, series of 1986, has the power to:

> f) Act as the appellate body on decisions and actions of local and regional planning and zoning bodies of the deputized officials of the Commission, on matters arising from the performance of these functions.

In fact, Section 4 of E.O. No. 71 affirms the power of the HLURB to review actions of local government units on the issuance of permits —

> Sec. 4. — If in the course of evaluation of application for registration and licensing of projects within its jurisdiction, HLURB finds that a local government unit has overlooked or mistakenly applied a certain law, rule or standard in issuing a development permit, it shall suspend action with a corresponding advice to the local government concerned, so as to afford it an opportunity to take appropriate action thereon. Such return and advice must likewise be effected within a period of thirty (30) days from receipt by HLURB of the application.

Moreover, Sections 18 and 19 of HSRC Administrative Order No. 20 provides:

> Section 18. *Oppossition to Application.* Opposition to application shall be considered as a complaint, the resolution of which shall be a prerequisite to any action on the application. Complaints and other legal processes shall be governed by the Rules of Procedure of the Commission, and shall have the effect of suspending the application.

> Section 19. *Complaints/Opposition Filed After the Issuance of Locational Clearance*. Temporary issuance of locational permit or land transaction approval shall be acted upon by the Office that issued the same. Such complaint shall not automatically suspend the locational clearance, temporary use permit, development permit or land transaction approval unless an order issued by the commission to that effect.
>
> The appropriate provisions of the Rules of Procedure governing hearings before the Commission shall be applied in the resolution of said complaint as well as any motion for reconsideration that may be filed thereto, provided that if the complaint is directed against the certificate of zoning compliance issued by the deputized zoning administrator, the same shall be acted upon the Commissioner in Charge for adjudication.

Under the rules of the HLURB then prevailing at the time this case was filed, **a complaint to annul any permit issued by the HLURB may be filed before the Housing and Land Use Arbiter (HLA)**. **The decision of the HLA may be brought to the Board of Commissioners by Petition for *Certiorari* and the decision of the Board of Commissioners [is] appealable to the Office of the President**.[16] (Citations omitted; emphases supplied.)

It does not escape the attention of the Court that in its Reply, petitioner admitted that it had a pending complaint with the HLURB involving private respondent's the Development Permit, the Certificate of Registration and License to Sell Condominium Units, aside from complaints with the Building Official of the Municipality (now City) of Mandaluyong and the MMDA, when it instituted its action with the trial court. As discussed earlier, a litigant cannot go around the authority of the concerned administrative agency and directly seek redress from the courts. Thus, when the law provides for a remedy against a certain action of an administrative board, body, or officer, relief to the courts can be made only after exhausting all remedies provided therein. It is settled that the non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause

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[16] *Rollo*, pp. 16-17.

of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[17]

In view of the foregoing discussion, we find it unnecessary to resolve the other issues raised by the parties.

To conclude, it is our view that the Court of Appeals committed no reversible error in setting aside the trial court decision and dismissing said complaint.

WHEREFORE, premises considered, the petition is hereby **DENIED.** The assailed Decision dated May 16, 2006 and the Resolution dated October 5, 2006 of the Court of Appeals in CA-G.R. CV No. 63439 are **AFFIRMED.**

SO ORDERED.

Velasco, Jr.,[*] *Bersamin, del Castillo,* and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 175139. April 18, 2012]

HERMOJINA ESTORES, *petitioner, vs.* **SPOUSES ARTURO and LAURA SUPANGAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; INTEREST MAY BE IMPOSED NOTWITHSTANDING ABSENCE OF STIPULATION IN

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[17] *National Electrification Administration v. Villanueva,* G.R. No. 168203, March 9, 2010, 614 SCRA 659, 665-666, citing *Teotico v. Baer*, G.R. No. 147464, June 8, 2006, 490 SCRA 279, 284.

[*] Per Raffle dated March 28, 2012.

THE CONTRACT; CASE AT BAR.— Article 2210 of the Civil Code expressly provides that "[i]nterest may, in the discretion of the court, be allowed upon damages awarded for breach of contract." In this case, there is no question that petitioner is legally obligated to return the ₱3.5 million because of her failure to fulfill the obligation under the Conditional Deed of Sale, despite demand. She has in fact admitted that the conditions were not fulfilled and that she was willing to return the full amount of ₱3.5 million but has not actually done so. Petitioner enjoyed the use of the money from the time it was given to her until now. Thus, she is already in default of her obligation from the date of demand, *i.e.*, on September 27, 2000.

2. **ID.; ID.; ID.; INTEREST RATE ABSENT ANY STIPULATION; DISCUSSED.—** Anent the interest rate, the general rule is that the applicable rate of interest "shall be computed in accordance with the stipulation of the parties." Absent any stipulation, the applicable rate of interest shall be 12% per annum "when the obligation arises out of a loan or a forbearance of money, goods or credits. In other cases, it shall be six percent (6%)." In this case, the parties did not stipulate as to the applicable rate of interest. The only question remaining therefore is whether the 6% as provided under Article 2209 of the Civil Code, or 12% under Central Bank Circular No. 416, is due.

3. **ID.; ID.; ID.; ID.; TWELVE PERCENT (12%) INTEREST PER ANNUM FROM DATE OF DEMAND AS FORBEARANCE OF MONEY GOVERNING THE DELAYED RETURN OF MONEY IN A TRANSACTION INVOLVING CONDITIONAL DEED OF SALE; DISCUSSED.—** In this case, the respondent-spouses parted with their money even before the conditions were fulfilled. They have therefore allowed or granted forbearance to the seller (petitioner) to use their money pending fulfillment of the conditions. They were deprived of the use of their money for the period pending fulfillment of the conditions and when those conditions were breached, they are entitled not only to the return of the principal amount paid, but also to compensation for the use of their money. And the compensation for the use of their money, absent any stipulation, should be the same rate of legal interest applicable to a loan since the use or

deprivation of funds is similar to a loan. Petitioner's unwarranted withholding of the money which rightfully pertains to respondent-spouses amounts to forbearance of money which can be considered as an involuntary loan. Thus, the applicable rate of interest is 12% per annum. Reckoned from [the] date of demand until the principal amount and the interest thereon is fully satisfied.

4. ID.; ID.; ATTORNEY'S FEES; PROPER WHERE A PARTY WAS FORCED TO LITIGATE TO PROTECT HIS INTEREST.— Under Article 2208 of the Civil Code, attorney's fees may be recovered: x x x (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest; x x x (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In all cases, the attorney's fees and expenses of litigation must be reasonable.

APPEARANCES OF COUNSEL

Fidel Angelito I. Arias for petitioner.
Rudy T. Tasarra Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The only issue posed before us is the propriety of the imposition of interest and attorney's fees.

Assailed in this Petition for Review[1] filed under Rule 45 of the Rules of Court is the May 12, 2006 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 83123, the dispositive portion of which reads:

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[1] *Rollo*, pp. 11-18.

[2] CA *rollo*, pp. 82-104; penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Arturo G. Tayag.

WHEREFORE, the appealed decision is MODIFIED. The rate of interest shall be six percent (6%) per annum, computed from September 27, 2000 until its full payment before finality of the judgment. If the adjudged principal and the interest (or any part thereof) remain unpaid thereafter, the interest rate shall be adjusted to twelve percent (12%) per annum, computed from the time the judgment becomes final and executory until it is fully satisfied. The award of attorney's fees is hereby reduced to ₱100,000.00. Costs against the defendants-appellants.

SO ORDERED.[3]

Also assailed is the August 31, 2006 Resolution[4] denying the motion for reconsideration.

Factual Antecedents

On October 3, 1993, petitioner Hermojina Estores and respondent-spouses Arturo and Laura Supangan entered into a Conditional Deed of Sale[5] whereby petitioner offered to sell, and respondent-spouses offered to buy, a parcel of land covered by Transfer Certificate of Title No. TCT No. 98720 located at Naic, Cavite for the sum of ₱4.7 million. The parties likewise stipulated, among others, to wit:

x x x x x x x x x

1. Vendor will secure approved clearance from DAR requirements of which are (*sic*):

    a) Letter request
    b) Title
    c) Tax Declaration
    d) Affidavit of Aggregate Landholding – Vendor/Vendee
    e) Certification from the Prov'l. Assessor's as to Landholdings of Vendor/Vendee
    f) Affidavit of Non-Tenancy
    g) Deed of Absolute Sale

x x x x x x x x x

[3] *Id.* at 103.

[4] *Id.* at 118.

[5] Records, pp. 8-9.

4. Vendee shall be informed as to the status of DAR clearance within 10 days upon signing of the documents.

x x x x x x x x x

6. Regarding the house located within the perimeter of the subject [lot] owned by spouses [Magbago], said house shall be moved outside the perimeter of this subject property to the 300 sq. m. area allocated for [it]. Vendor hereby accepts the responsibility of seeing to it that such agreement is carried out before full payment of the sale is made by vendee.

7. If and after the vendor has completed all necessary documents for registration of the title and the vendee fails to complete payment as per agreement, a forfeiture fee of 25% or downpayment, shall be applied. However, if the vendor fails to complete necessary documents within thirty days without any sufficient reason, or without informing the vendee of its status, vendee has the right to demand return of full amount of down payment.

x x x x x x x x x

9. As to the boundaries and partition of the lots (15,018 sq. m. and 300 sq. m.) Vendee shall be informed immediately of its approval by the LRC.

10. The vendor assures the vendee of a peaceful transfer of ownership.

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

After almost seven years from the time of the execution of the contract and notwithstanding payment of ₱3.5 million on the part of respondent-spouses, petitioner still failed to comply with her obligation as expressly provided in paragraphs 4, 6, 7, 9 and 10 of the contract. Hence, in a letter[7] dated September 27, 2000, respondent-spouses demanded the return of the amount of ₱3.5 million within 15 days from receipt of the letter. In reply,[8]

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[6] *Id.*

[7] *Id.* at 11.

[8] See letter dated October 13, 2000; *id.* at 13.

petitioner acknowledged receipt of the ₱3.5 million and promised to return the same within 120 days. Respondent-spouses were amenable to the proposal provided an interest of 12% compounded annually shall be imposed on the ₱3.5 million.[9] When petitioner still failed to return the amount despite demand, respondent-spouses were constrained to file a Complaint[10] for sum of money before the Regional Trial Court (RTC) of Malabon against herein petitioner as well as Roberto U. Arias (Arias) who allegedly acted as petitioner's agent. The case was docketed as Civil Case No. 3201-MN and raffled off to Branch 170. In their complaint, respondent-spouses prayed that petitioner and Arias be ordered to:

1. Pay the principal amount of ₱3,500,000.00 plus interest of 12% compounded annually starting October 1, 1993 or an estimated amount of ₱8,558,591.65;
2. Pay the following items of damages:
   a) Moral damages in the amount of ₱100,000.00;
   b) Actual damages in the amount of ₱100,000.00;
   c) Exemplary damages in the amount of ₱100,000.00;
   d) [Attorney's] fee in the amount of ₱50,000.00 plus 20% of recoverable amount from the [petitioner].
   e) [C]ost of suit.[11]

In their Answer with Counterclaim,[12] petitioner and Arias averred that they are willing to return the principal amount of ₱3.5 million but without any interest as the same was not agreed upon. In their Pre-Trial Brief,[13] they reiterated that the only remaining issue between the parties is the imposition of interest. They argued that since the Conditional Deed of Sale provided

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[9] See letter dated October 20, 2000; *id*. at 22.

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

[11] *Id.* at 6.

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

[13] *Id.* at 40-42.

only for the return of the downpayment in case of breach, they cannot be held liable to pay legal interest as well.[14]

In its Pre-Trial Order[15] dated June 29, 2001, the RTC noted that "the parties agreed that the principal amount of 3.5 million pesos should be returned to the [respondent-spouses] by the [petitioner] and the issue remaining [is] whether x x x [respondent-spouses] are entitled to legal interest thereon, damages and attorney's fees."[16]

Trial ensued thereafter. After the presentation of the respondent-spouses' evidence, the trial court set the presentation of Arias and petitioner's evidence on September 3, 2003.[17] However, despite several postponements, petitioner and Arias failed to appear hence they were deemed to have waived the presentation of their evidence. Consequently, the case was deemed submitted for decision.[18]

Ruling of the Regional Trial Court

On May 7, 2004, the RTC rendered its Decision[19] finding respondent-spouses entitled to interest but only at the rate of 6% per annum and not 12% as prayed by them.[20] It also found respondent-spouses entitled to attorney's fees as they were compelled to litigate to protect their interest.[21]

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the [respondent-spouses] and ordering the [petitioner and Roberto Arias] to jointly and severally:

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[14] *Id.* at 40.

[15] *Id.* at 80-81.

[16] *Id.* at 81.

[17] See Order dated July 30, 2003; *id.* at 120.

[18] See Order dated November 21, 2003; *id.* at 181.

[19] *Id.* at 253-257; penned by Judge Benjamin T. Antonio.

[20] *Id.* at 256.

[21] *Id.*

1. Pay [respondent-spouses] the principal amount of Three Million Five Hundred Thousand pesos (₱3,500,000.00) with an interest of 6% compounded annually starting October 1, 1993 and attorney's fee in the amount of Fifty Thousand pesos (₱50,000.00) plus 20% of the recoverable amount from the defendants and cost of the suit.

The Compulsory Counter Claim is hereby dismissed for lack of factual evidence.

SO ORDERED.[22]

Ruling of the Court of Appeals

Aggrieved, petitioner and Arias filed their notice of appeal.[23] The CA noted that the only issue submitted for its resolution is "whether it is proper to impose interest for an obligation that does not involve a loan or forbearance of money in the absence of stipulation of the parties."[24]

On May 12, 2006, the CA rendered the assailed Decision affirming the ruling of the RTC finding the imposition of 6% interest proper.[25] However, the same shall start to run only from September 27, 2000 when respondent-spouses formally demanded the return of their money and not from October 1993 when the contract was executed as held by the RTC. The CA also modified the RTC's ruling as regards the liability of Arias. It held that Arias could not be held solidarily liable with petitioner because he merely acted as agent of the latter. Moreover, there was no showing that he expressly bound himself to be personally liable or that he exceeded the limits of his authority. More importantly, there was even no showing that Arias was authorized to act as agent of petitioner.[26] Anent the award of attorney's fees, the CA found the award by the trial court (₱50,000.00 plus 20%

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[22] *Id.* at 256-257.

[23] *Id.* at 258.

[24] CA *rollo*, p. 82.

[25] *Id.* at 98.

[26] *Id.* at 100-101.

of the recoverable amount) excessive[27] and thus reduced the same to ₱100,000.00.[28]

The dispositive portion of the CA Decision reads:

> WHEREFORE, the appealed decision is MODIFIED. The rate of interest shall be six percent (6%) per annum, computed from September 27, 2000 until its full payment before finality of the judgment. If the adjudged principal and the interest (or any part thereof) remain[s] unpaid thereafter, the interest rate shall be adjusted to twelve percent (12%) per annum, computed from the time the judgment becomes final and executory until it is fully satisfied. The award of attorney's fees is hereby reduced to ₱100,000.00. Costs against the [petitioner].
>
> SO ORDERED.[29]

Petitioner moved for reconsideration which was denied in the August 31, 2006 Resolution of the CA.

Hence, this petition raising the sole issue of whether the imposition of interest and attorney's fees is proper.

Petitioner's Arguments

Petitioner insists that she is not bound to pay interest on the ₱3.5 million because the Conditional Deed of Sale only provided for the return of the downpayment in case of failure to comply with her obligations. Petitioner also argues that the award of attorney's fees in favor of the respondent-spouses is unwarranted because it cannot be said that the latter won over the former since the CA even sustained her contention that the imposition of 12% interest compounded annually is totally uncalled for.

Respondent-spouses' Arguments

Respondent-spouses aver that it is only fair that interest be imposed on the amount they paid considering that petitioner

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[27] *Id.* at 102.

[28] *Id.* at 103.

[29] *Id.*

failed to return the amount upon demand and had been using the ₱3.5 million for her benefit. Moreover, it is undisputed that petitioner failed to perform her obligations to relocate the house outside the perimeter of the subject property and to complete the necessary documents. As regards the attorney's fees, they claim that they are entitled to the same because they were forced to litigate when petitioner unjustly withheld the amount. Besides, the amount awarded by the CA is even smaller compared to the filing fees they paid.

Our Ruling

The petition lacks merit.

Interest may be imposed even in the absence of stipulation in the contract.

We sustain the ruling of both the RTC and the CA that it is proper to impose interest notwithstanding the absence of stipulation in the contract. Article 2210 of the Civil Code expressly provides that "[i]nterest may, in the discretion of the court, be allowed upon damages awarded for breach of contract." In this case, there is no question that petitioner is legally obligated to return the ₱3.5 million because of her failure to fulfill the obligation under the Conditional Deed of Sale, despite demand. She has in fact admitted that the conditions were not fulfilled and that she was willing to return the full amount of ₱3.5 million but has not actually done so. Petitioner enjoyed the use of the money from the time it was given to her[30] until now. Thus, she is already in default of her obligation from the date of demand, *i.e.*, on September 27, 2000.

The interest at the rate of 12% is applicable in the instant case.

Anent the interest rate, the general rule is that the applicable rate of interest "shall be computed in accordance with the

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[30] ₱1,500,000 on October 1, 1993; ₱1,500,000 on April 14, 1994; ₱300,000 on October 7, 1998 and ₱200,000 on November 2, 1998; see records, p. 10.

stipulation of the parties."[31] Absent any stipulation, the applicable rate of interest shall be 12% per annum "when the obligation arises out of a loan or a forbearance of money, goods or credits. In other cases, it shall be six percent (6%)."[32] In this case, the parties did not stipulate as to the applicable rate of interest. The only question remaining therefore is whether the 6% as provided under Article 2209 of the Civil Code, or 12% under Central Bank Circular No. 416, is due.

The contract involved in this case is admittedly not a loan but a Conditional Deed of Sale. However, the contract provides that the seller (petitioner) must return the payment made by the buyer (respondent-spouses) if the conditions are not fulfilled. There is no question that they have in fact, not been fulfilled as the seller (petitioner) has admitted this. Notwithstanding demand by the buyer (respondent-spouses), the seller (petitioner) has failed to return the money and should be considered in default from the time that demand was made on September 27, 2000.

Even if the transaction involved a Conditional Deed of Sale, can the stipulation governing the return of the money be considered as a forbearance of money which required payment of interest at the rate of 12%? We believe so.

In *Crismina Garments, Inc. v. Court of Appeals*,[33] "forbearance" was defined as a "contractual obligation of lender or creditor to refrain during a given period of time, from requiring the borrower or debtor to repay a loan or debt then due and payable." This definition describes a loan where a debtor is given a period within which to pay a loan or debt. In such case, "forbearance of money, goods or credits" will have no distinct definition from a loan. We believe however, that the phrase "forbearance of money, goods or credits" is meant to have a separate meaning from a loan, otherwise there would have been

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[31] *Crismina Garments, Inc. v. Court of Appeals*, 363 Phil. 701, 703 (1999).

[32] *Id.*

[33] *Id.* at 709. Emphasis supplied.

no need to add that phrase as a loan is already sufficiently defined in the Civil Code.[34] Forbearance of money, goods or credits should therefore refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions. In this case, the respondent-spouses parted with their money even before the conditions were fulfilled. They have therefore allowed or granted forbearance to the seller (petitioner) to use their money pending fulfillment of the conditions. They were deprived of the use of their money for the period pending fulfillment of the conditions and when those conditions were breached, they are entitled not only to the return of the principal amount paid, but also to compensation for the use of their money. And the compensation for the use of their money, absent any stipulation, should be the same rate of legal interest applicable to a loan since the use or deprivation of funds is similar to a loan.

Petitioner's unwarranted withholding of the money which rightfully pertains to respondent-spouses amounts to forbearance of money which can be considered as an involuntary loan. Thus, the applicable rate of interest is 12% per annum. In *Eastern Shipping Lines, Inc. v. Court of Appeals*,[35] cited in *Crismina Garments, Inc. v. Court of Appeals*,[36] the Court suggested the following guidelines:

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[34] Article 1933 of the Civil Code provides:

Art. 1933. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or *mutuum*.

Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In *commodatum* the bailor retains the ownerships of the thing loaned, while in simple loan, ownership passes to the borrower.

[35] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[36] *Supra* note 31.

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on 'Damages' of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal

> interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[37]

Eastern Shipping Lines, Inc. v. Court of Appeals[38] and its predecessor case, *Reformina v. Tongol*[39] both involved torts cases and hence, there was no forbearance of money, goods, or credits. Further, the amount claimed (*i.e.*, damages) could not be established with reasonable certainty at the time the claim was made. Hence, we arrived at a different ruling in those cases.

Since the date of demand which is September 27, 2000 was satisfactorily established during trial, then the interest rate of 12% should be reckoned from said date of demand until the principal amount and the interest thereon is fully satisfied.

The award of attorney's fees is warranted.

Under Article 2208 of the Civil Code, attorney's fees may be recovered:

x x x x x x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x x x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

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[37] *Eastern Shipping Lines, Inc. v. Court of Appeals, supra* note 35 at 95-97. Emphasis supplied.

[38] *Id.*

[39] 223 Phil. 472 (1985).

Considering the circumstances of the instant case, we find respondent-spouses entitled to recover attorney's fees. There is no doubt that they were forced to litigate to protect their interest, *i.e.*, to recover their money. However, we find the amount of ₱50,000.00 more appropriate in line with the policy enunciated in Article 2208 of the Civil Code that the award of attorney's fees must always be reasonable.

WHEREFORE, the Petition for Review is **DENIED.** The May 12, 2006 Decision of the Court of Appeals in CA-G.R. CV No. 83123 is **AFFIRMED** with **MODIFICATIONS** that the rate of interest shall be twelve percent (12%) per annum, computed from September 27, 2000 until fully satisfied. The award of attorney's fees is further reduced to **₱50,000.00**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177611. April 18, 2012]

REPUBLIC OF THE PHILIPPINES (UNIVERSITY OF THE PHILIPPINES), *petitioner, vs.* **RODOLFO L. LEGASPI, SR., QUEROBIN L. LEGASPI, OFELIA LEGASPI-MUELA, PURISIMA LEGASPI *VDA. DE* MONDEJAR, VICENTE LEGASPI, RODOLFO LEGASPI II, and SPOUSES ROSALINA LIBO-ON and DOMINADOR LIBO-ON,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; TWO STAGES AND THEIR NATURE, ELUCIDATED.—** Expropriation or the exercise of the power of eminent domain is the inherent right of the state and of those entities to which the power has been lawfully delegated to condemn private property to public use upon payment of just compensation. Governed by Rule 67 of the *Rules of Court*, the proceedings therefor consist of two (2) stages: (a) the condemnation of the property after it is determined that its acquisition will be for a public purpose or public use; and, (b) the determination of just compensation to be paid for the taking of private property to be made by the court with the assistance of not more than three commissioners. The nature of these two stages was discussed in the following wise in the case of *Municipality of Biñan vs. Judge Garcia*, to wit: x x x It cannot, therefore, be gainsaid that the outcome of the first phase of expropriation proceedings — be it an order of expropriation or an order of dismissal — finally disposes of the case and is, for said reason, final. The same is true of the second phase that ends with an order determining the amount of just compensation which, while essential for the transfer of ownership in favor of the plaintiff, is but the last stage of the expropriation proceedings and the outcome of the initial finding by the court that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint. In the same manner that the order of expropriation may be appealed by any party by filing a record on appeal, a second and separate appeal may likewise be taken from the order fixing the just compensation. Indeed, jurisprudence recognizes the existence of multiple appeals in a complaint for expropriation because of said two stages in every action for expropriation.

2. **ID.; ID.; *CERTIORARI;* CANNOT BE USED AS SUBSTITUTE FOR APPEAL; EXCEPTIONS.—** Narrow in scope and unflexible in character, a petition for *certiorari* is, concededly, intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction and lies only when there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law. Hence, the CA denied the petition filed by petitioner on the principle that *certiorari*

cannot be used as substitute for an appeal that has been lost. Although *certiorari* cannot be generally used as a substitute for a lapsed appeal, the CA lost sight of the fact, however, that the rule had been relaxed on a number of occasions, where its rigid application will result in a manifest failure or miscarriage of justice. This Court has allowed the issuance of a writ of *certiorari* despite the availability of appeal where the latter remedy is not adequate or equally beneficial, speedy and sufficient or there is need to promptly relieve the aggrieved party from the injurious effects of the acts of an inferior court or tribunal. x x x Indeed, *certiorari* and appeal are not mutually exclusive remedies in certain exceptional cases, such as when there is grave abuse of discretion or when public welfare so requires.

3. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; PRESENT IN CASE AT BAR WHERE ORDER WAS ISSUED WITHOUT RATIONALE THEREFOR AND ANOTHER ORDER ISSUED DENYING RIGHT OF EXPROPRIATION WITHOUT VALID REASON.— Petitioner has more than amply demonstrated that the RTC's issuance of the assailed orders x x x was attended with grave abuse of discretion. In the context of a Rule 65 petition for *certiorari*, grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It has been ruled that the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. To our mind, the grave abuse of discretion imputable against the RTC was manifest as early in the assailed 17 November 2003 order where, without giving any rationale therefor, and while it upheld petitioner's right of expropriation over Lot Nos. 21609-A, *etc*., it excluded the area occupied by the Villa Marina Beach Resort owned and operated by respondent Rodolfo Legaspi, Sr. No less than the Constitution mandates that "(n)o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." Since it is a requirement of due process that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court, the rule is settled that a decision that does not conform

to the form and substance required by the Constitution and the law is void and deemed legally inexistent.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Alcantara Law Office for respondents.

D E C I S I O N

PEREZ, *J.*:

Assailed in this petition for review on *certiorari* filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure* is the Decision dated 26 April 2007[1] rendered by the Eighteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 85735,[2] denying for lack of merit the Rule 65 petition for *certiorari* filed by petitioner Republic of the Philippines, thru the University of the Philippines in the Visayas (UPV), for the nullification of the orders dated 17 November 2003[3] and 31 May 2004[4] issued by the Hon. Roger B. Patricio, Presiding Judge of Branch 38 of the Regional Trial Court (RTC) of Iloilo City, in the expropriation case docketed thereat as Civil Case No. 19921.

The Facts

In December 1978, respondent Rosalina Libo-on (Rosalina) accomplished a letter of intent signifying her willingness to sell to UPV Lot No. 1 of Psu-193912 Amd., the 40,133-square meter property situated at Miag-ao, Iloilo registered in her name under Original Certificate of Title (OCT) No. F-20020 of the Iloilo provincial registry.[5] Forthwith, a Deed of Definite Sale was

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[1] Penned by CA Associate Justice Agustin S. Dizon with Associate Justices Arsenio J. Magpale and Francisco P. Acosta, concurring.

[2] CA's 26 April 2007 Decision, CA *rollo*, pp. 191-198.

[3] RTC's 17 November 2003 Order, *id.* at 32.

[4] RTC's 31 May 2004 Order, *id.* at 33-36.

[5] Libo-on's undated Letter of Intent, *id.* at 38.

executed by the parties whereby Rosalina, with the conformity of her then tenant, Vicente Libo-on, sold the subject parcel in favor of UPV for the stated consideration of ₱56,479.50.[6] As a consequence, UPV immediately took possession of the property and, in line with its educational development plan, started building thereon road networks, infrastructure and school facilities. The record shows that further use and development of the property was subsequently taken up at the 1093rd meeting of the UP Board of Regents held in Quezon City on 15 December 1995.[7]

On 4 January 1980, however, Rosalina wrote a letter, informing UPV that she was rescinding the sale of the subject parcel on the ground that she was no longer the owner of the property in view of her 5 September 1978 conveyance thereof by way of barter or exchange in favor of respondents Rodolfo Legaspi, Sr., Querobin Legaspi,[8] Ofelia Legaspi-Muela, Purisima Legaspi *Vda*. *De* Mondejar, Vicente Legaspi, Rodolfo Legaspi II and the Spouses Rosalina and Dominador Libo-on, among others. UPV subsequently learned that Lot 1 was subdivided into ten lots denominated and later registered in the names of respondents[9] in the following wise:

Lot No.	Area (Sqm.)	TCT No.	Registered Owner
21609-A	9,078	8192	Querobin Legaspi, *et al.*
21609-B	2,648	8193	Rodolfo Legaspi, Sr.
21609-C	4,374	8194	Rodolfo Legaspi, Sr.
21609-D	16,286	8195	Querobin Legaspi, *et al.*
21609-E	1,494	8196	Rodolfo Legaspi, Sr.
21609-F	1,250	8197	Ofelia Legaspi Muela
21609-G	1,251	8198	Rodolfo Legaspi
21609-H	1,250	8199	Querobin Legaspi

[6] The Parties' undated Deed of Definite Sale, *id*. at 39-43.

[7] Excerpts of the UP Board of Regents' 15 December 1995 Meeting, *id.* at 44-46.

[8] Respondent Querobin Legaspi's name in the Pre-Trial Conference Order is spelled as "Querubin," *id.* at 47-50.

[9] As summarized in the RTC's 7 July 1997 Pre-Trial Conference Order, *id*. at 47-50, 57.

21609-I	1,251	8200	Purisima Legaspi *Vda. De* Mondejar
21609-J	1,251	8201	Vicente Legaspi

On 8 August 1991, petitioner, thru UPV, filed against respondents the complaint for eminent domain docketed before the RTC as Civil Case No. 19921. Petitioner alleged, among other matters, that the subject parcel is within the approved and delineated campus of the UPV which had well-established its presence in the area by building its laboratories, classrooms, faculty and student centers, among other facilities; and, that it had been constrained to resort to expropriation in view of the failure of its efforts to negotiate with respondents for the retention of the property on which it constructed considerable improvements already being used for academic purposes. Maintaining that the fair market value of the property at the time of its entry was ₱49,298.00, UPV sought confirmation of its right of condemnation as well as the fixing of the just compensation for the property.[10]

On 2 September 1991, the RTC issued an order granting petitioner's motion to allow UPV to continue its possession of the subject parcel upon deposit with the Iloilo Provincial Treasurer of the sum of ₱50,070.00, representing the provisional valuation of the property.[11] In their answer dated 16 December 1991, however, respondents averred that petitioner's right of expropriation should only be limited to the three lots covered by Transfer Certificate of Title (TCT) Nos. T-8193, 8194 and 8196,[12] containing an aggregate area of 8,516 square meters. Finding no opposition to petitioner's motion for a declaration on its right to expropriate the same, the RTC issued an order of condemnation dated 1 April 1992,[13] upholding UPV's right to expropriate said three parcels which had been denominated as Lot Nos. 21609-B, 21609-C and 21609-E, to wit:

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[10] Petitioner's 29 July 1991 Complaint, *id*. at 54-63.

[11] RTC's 2 September 1991 Order, stated as ₱15,070.00, *id*. at 78.

[12] As narrated in the RTC's 16 June 2000 Order, *id*. at 83.

[13] RTC's 1 April 1992 Order, *id*. at 79.

WHEREFORE, an ORDER OF CONDEMNATION is hereby entered covering the above-mentioned parcels of land, [petitioner] having a lawful right to take the properties sought to be condemned, for the public use or purpose described in the complaint, upon payment of just compensation to be determined by three (3) Commissioners who shall ascertain and report to the court the just compensation for the properties sought to be taken.

Appointment of the three (3) Commissioners is hereby held in abeyance to give the court sufficient time to select the three (3) competent and disinterested persons as Commissioners provided for under Section 5 of Rule 67 of the Revised Rules of Court.

Notify Counsels.

Considering that the foregoing condemnation order covered only three (3) of the ten (10) lots comprising the subject property, petitioner moved for the continuation of the condemnation proceedings insofar as the remaining seven lots were concerned.[14] On 10 November 1994, petitioner also filed an amended complaint, impleading as additional defendants the Rural Bank of Miag-ao (Iloilo), Inc. (RBMI), the Philippine National Bank (PNB) and the Iloilo Finance Corporation (IFC), in view of the mortgages constituted in their favor by respondents over some of the lots into which the Lot 1 had been subdivided.[15] Claiming to have relied on the certificates of title presented to them by the mortgagors, however, RBMI, PNB and IFC filed their individual answers maintaining that the said mortgages were entered into for value and in good faith.[16] The issues thus joined and the pre-trial conference subsequently terminated, the RTC went on to issue the 7 July 1997 pre-trial order summarizing the parties' admissions, their respective positions as well as the issues to be tried in the case.[17]

On 13 April 1998, the Office of the UPV Chancellor sent respondent Rodolfo Legaspi a letter, protesting against the latter's

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[14] *Rollo*, p. 16.

[15] CA *rollo*, Petitioner's 29 July 1991 Amended Complaint, pp. 64-77.

[16] As narrated in the RTC's 16 June 2000 Order, *id*. at 83-84.

[17] RTC's 7 July 1997 Pre-Trial Conference Order, *id*. at 47-53.

occupation of a portion of the property in litigation.[18] Calling the RTC's attention to its 2 September 1991 Order which allowed UPV's continued possession of the property, petitioner also filed its 7 July 1998 manifestation and motion praying for the grant of a writ of possession over the entirety of Lot 1.[19] Without resolving the motion, however, the RTC went on to issue the 16 June 2000 order,[20] fixing the just compensation for Lot Nos. 21609-B, 21609-C and 21609-E, based on the evidence adduced by the parties and the report submitted by the commissioners, to wit:

> WHEREFORE, in view of all the foregoing, order is hereby issued fixing the just compensation of subject Lots Nos. 21609-B, 21609-C and 21609-E covering a total area of 8,516 sq. meters, as fifty one thousand ninety six pesos (₱51,096.00) at the rate of six pesos (₱6.00) per sq. meter. Accordingly, the [petitioner] is hereby ordered to pay [respondents] Judge Rodolfo L. Legaspi, *et al*. fifty one thousand ninety six pesos (₱51,096.00) for the total just compensation of the three (3) aforementioned subject lots. This amount includes the amount of fifty thousand seventy pesos (₱50,070.00) deposited by the [petitioner] in the Office of the Provincial Treasurer of Iloilo.
>
> There being no evidence presented by the parties to support their respective claims for damages, none is herein awarded.[21]

On 17 November 2003, the RTC further issued the herein assailed condemnation order of the same date, upholding petitioner's authority to expropriate the remaining seven lots comprising the property, namely, Lot Nos. 21609-A, 21609-D, 21609-F, 21609-G, 21609-H, 21609-I and 21609-J. Excluding therefrom the area occupied by the Villa Marina Beach Resort which respondent Rodolfo Legaspi, Sr. operated in the premises,[22] the RTC ruled as follows:

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[18] UPV Chancellor's 13 April 1998 Letter, *id*. at 96.

[19] Petitioner's 7 July 1998 Manifestation and Motion, *id*. at 97-102.

[20] RTC's 16 June 2000 Order, *id*. at 80-93.

[21] *Id.* at 93.

[22] RTC's 17 November 2003 Order, *id*. at 32.

WHEREFORE, an Order of Condemnation is hereby entered allowing the [petitioner] to expropriate for public use the remaining seven (7) subject Lot Nos. 21609-A, 21609-D, 21609-F, 21609-G, 21609-H, 21609-I and 21609-J all situated in Barangay Sapa, Miag-ao, Iloilo, except such area therein as is occupied by the Villa Marina Beach resort and which [respondent] Rodolfo L. Legaspi, Sr. has been operating a business.

In properly fixing the just compensation to be paid to the [respondents] Legaspis over the aforesaid 7 lots, the Provincial Treasurer, the Provincial Assessor and the Provincial Engineer, all of the Province of Iloilo, are hereby appointed as commissioners to assist the Court in the fixing the just compensation of the subject lots. Before these commissioners so appointed discharge their respective duties, they may take their oath to faithfully perform their duties as such commissioners and their oaths shall be filed before this Court as part of the records of the proceedings in this case.

The commissioners who are hereby appointed are requested to make known their acceptance within ten (10) days from receipt of this order.

On 19 December 2003, petitioner[23] and UPV[24] filed motions for reconsideration of the foregoing order on the ground that the exclusion of the Villa Marina Beach Resort area from the condemned lots is bereft of legal basis and contrary to the evidence presented in the case which showed that the same is an integral part of the UPV's developmental plan for research and educational use. On 22 December 2003, respondents also filed their manifestation and partial motion for reconsideration of the same order alleging, among other matters, that Lot Nos. 21609-F, 21609-G, 21609-H, 21609-I and 21609-J comprise the area occupied by Villa Marina Beach Resort; that Lot No. 21609-A is the area where respondent Rodolfo Legaspi, Sr. operates a business called Omp's Corner; that UPV has no intended use for Lot No. 21609-D which is being used for residential purposes by respondent Vicente Legaspi; and, that the foregoing lots,

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[23] Petitioner's 19 December 2003 Motion for Reconsideration, *id*. at 125-129.

[24] UPV's 19 December 2003 Motion for Reconsideration, *id*. at 121-124.

together with the portion of Lot No. 1 of Psu-193912 Amd. utilized by the Municipality of Miag-ao as a public cemetery should be excluded from petitioner's exercise of its right of expropriation.[25] Finding that the exclusion of the aforesaid lots would not defeat UPV's plan for its campus, the RTC issued the order dated 31 May 2004,[26] the decretal portion of which states as follows:

> WHEREFORE, finding the [petitioner's] Motion for Reconsideration dated December 19, 2003 without merit, the same is denied. The Manifestation and Partial Motion for Reconsideration dated December 19, 2003 of [respondents] Legaspis being meritorious is, thus, granted and the Order dated November 17, 2003 of this Court is partially reconsidered and judgment is hereby entered denying the expropriation of subject Lots Nos. 21609-A, 21609-D, 21609-F, 21609-G, 21609-H, 21609-I and 21609-J.
>
> As a consequence hereof, the order of this Court appointing as Commissioners the Provincial Treasurer, the Provincial Assessor and the Provincial Engineer, all of the Province of Iloilo is likewise reconsidered and set aside.
>
> Let copies of this Order be furnished the Office of the Solicitor General, Atty. Cornelio Salinas, Atty. Rodolfo Legaspi, Sr., Atty. Legaspi II, Atty. Alejandro Somo, the Provincial Treasurer, the Provincial Assessor and the Provincial Engineer, all of the Province of Iloilo.
>
> No pronouncement as to costs.[27]

Aggrieved, petitioner filed on 16 August 2004 the Rule 65 petition for *certiorari* and *mandamus* docketed before the CA as CA-G.R. SP No. 85735, assailing the RTC's order dated 31 May 2004 on the ground that grave abuse of discretion attended the denial of the expropriation of the subject lots after the right to expropriate the same was earlier upheld in the likewise assailed

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[25] Respondents' 19 December 2003 Manifestation and Partial Motion for Reconsideration, *id*. at 103-104.

[26] RTC's 31 May 2004 Order, *id.* at 33-36.

[27] *Id.* at 36.

order dated 17 November 2003.[28] On 26 April 2007, the CA's then Eighteenth Division rendered the herein assailed decision denying the petition on the ground that, under Rule 67 of the *1997 Rules of Civil Procedure*, the proper remedy from said assailed orders was an ordinary appeal which, once lost, cannot be substituted by a Rule 65 petition for *certiorari* and *mandamus*. Even if petitioner's choice of remedy were, moreover, to be considered proper under the circumstances, the CA ruled that the RTC's issuance of said assailed orders was well within its power and duty to review, amend or reverse its findings and conclusions if it deems it necessary for the administration of justice within the scope of its jurisdiction.[29] Without moving for a reconsideration of the foregoing decision, petitioner filed the petition at bench on 25 June 2007.

The Issue

Petitioner urges the nullification of the CA's assailed 26 April 2007 Decision on the following ground:

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN DENYING THE PETITION FOR *CERTIORARI* AND AFFIRMING THE ORDER DATED MAY 31, 2004 OF BRANCH 38 OF THE REGIONAL TRIAL COURT OF ILOILO CITY WHICH DID NOT STATE THE FACTS AND THE LAW ON WHICH IT IS BASED.[30]

The Court's Ruling

We find the petition impressed with merit.

Expropriation or the exercise of the power of eminent domain is the inherent right of the state and of those entities to which the power has been lawfully delegated to condemn private property to public use upon payment of just compensation.[31] Governed

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[28] Petitioner's 12 August 2004 Rule 65 Petition, *id*. at 1-20.

[29] CA's 26 April 2007 Decision, *id*. at 191-198.

[30] *Rollo*, p. 20

[31] *Robern Development Corp. v. Judge Quitain*, 373 Phil. 773, 792-793 (1999).

by Rule 67 of the *Rules of Court*, the proceedings therefor consist of two (2) stages: (a) the condemnation of the property after it is determined that its acquisition will be for a public purpose or public use; and, (b) the determination of just compensation to be paid for the taking of private property to be made by the court with the assistance of not more than three commissioners.[32] The nature of these two stages was discussed in the following wise in the case of *Municipality of Biñan vs. Judge Garcia*,[33] to wit:

> 1. There are two (2) stages in every action for expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint." An order of dismissal, if this be ordained, would be a final one, of course, since it finally disposes of the action and leaves nothing more to be done by the Court on the merits. So, too, would an order of condemnation be a final one, for thereafter, as the Rules expressly state, in the proceedings before the Trial Court, "no objection to the exercise of the right of condemnation (or the propriety thereof) shall be filed or heard.
>
> The second phase of the eminent domain action is concerned with the determination by the Court of "the just compensation for the property sought to be taken." This is done by the Court with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final, too. It would finally dispose of the second stage of the suit, and leave nothing more to be done by the Court regarding the issue. Obviously, one or another of the parties may believe the order to be erroneous in its appreciation of the evidence or findings of fact or otherwise. Obviously, too, such a dissatisfied party may seek a reversal of the order by taking an appeal therefrom.

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[32] *City of Manila v. Serrano*, 411 Phil. 754-765 (2001).

[33] 259 Phil. 1058, 1068-1069 (1989).

It cannot, therefore, be gainsaid that the outcome of the first phase of expropriation proceedings — be it an order of expropriation or an order of dismissal — finally disposes of the case and is, for said reason, final. The same is true of the second phase that ends with an order determining the amount of just compensation[34] which, while essential for the transfer of ownership in favor of the plaintiff, is but the last stage of the expropriation proceedings and the outcome of the initial finding by the court that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint.[35] In the same manner that the order of expropriation may be appealed by any party by filing a record on appeal, a second and separate appeal may likewise be taken from the order fixing the just compensation. Indeed, jurisprudence recognizes the existence of multiple appeals in a complaint for expropriation because of said two stages in every action for expropriation.[36]

In the case at bench, the RTC split the determination of UPV's right of expropriation over the ten lots into which Lot No. 1 of Psu-193912 Amd. had been subdivided. Considering the lack of opposition on the part of respondents, the RTC issued the order dated 1 April 1996, upholding UPV's right to expropriate the three (3) lots denominated as Lot Nos. 21609-B, 21609-C and 21609-E, with an aggregate area of 8,516 square meters.[37] Without any appeal having been perfected therefrom, the RTC's 1 April 1996 order attained finality and left no more question as to the propriety of the acquisition of said lots for the public purpose alleged in the complaint from which the instant suit originated. Accordingly, the RTC correctly went on to issue the order dated 16 June 2000, fixing the just compensation for

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[34] *NHA v. Heirs of Guivelondo*, 452 Phil. 481, 491 (2003).

[35] *Heirs of Alberto Suguitan v. City of Mandaluyong*, 384 Phil. 676, 692 (2000).

[36] *Marinduque Mining and Industrial Corporation v. Court of Appeals*, G.R. No. 161219, 6 October 2008, 567 SCRA 483, 493.

[37] CA *rollo*, p. 79.

Lot Nos. 21609-B, 21609-D and 21609-E at ₱51,096.00, less the ₱50,070.00 UPV appears to have already deposited with the Provincial Treasurer of Iloilo.[38]

On the other hand, with respect to Lot Nos. 21609-A, 21609-D, 21609-F, 21609-G, 21609-H, 21609-I and 21609-J, the record shows that the RTC issued the herein assailed 17 November 2003 order which, while likewise upholding UPV's right of expropriation over said lots, ordered the exclusion of the portion occupied by Villa Marina Beach Resort from the 31,617 square meters comprising said lots.[39] Acting on the motions for reconsideration of said order filed by petitioner, UPV and respondents, however, the RTC issued the second assailed 31 May 2004 order, altogether denying said right of expropriation,[40] upon the following succinct findings and conclusions:

> It bears stressing that even before the filing of the original complaint, [respondent] Rodolfo Legaspi, Sr. was already operating as his business establishment the Villa Marina Resort and this must be the reason why [petitioner] had expressly excluded this area from the area it intended to expropriate, the amended complaint notwithstanding, and must also be the reason why former UP President Angara wrote a letter (Exh. 10) to defendant Legaspi, Sr. conveying a 'happy compromise acceptable to all.'
>
> It likewise bears stressing the fact that insofar as Lot No. 21609-A, a portion thereof has been utilized by defendant Rodolfo Legaspi, Sr.'s "Omp's Corner" and the rest of the said lot has been utilized by the Municipality of Miag-ao, Iloilo as a public cemetery.
>
> The total area covered by Lots Nos. 21609-A, 21609-D, 21609-F, 21609-G, 21609-H, 21609-I and 21609-J is only 31,617 sq. meters. Based on the locations of these lots, acquisition by [UPV] would not impair or defeat the purpose of its campus site. In other words, without including in the expropriation the Villa Marina Resort, the "Omp's Corner" and the public cemetery and the residential land where [respondent] Vicente Legaspi's family is residing, [UPV's] operation as a university would not be adversely affected.

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[38] *Id.* at 80-93.

[39] *Id.* at 32.

[40] *Id.* at 33-36.

As to the Villa Marina Resort and the "Omp's Corner" these places have been utilized by defendant Rodolfo Legaspi, Sr. for his business even before the filing of the instant complaint. As to [respondent] Vicente Legaspi's lot, including this in the expropriation would force his family to go astray as they have no place where to live.

As to the portion being utilized as public cemetery, this Court believes and so holds that allowing the plaintiff to expropriate the same would be bordering to the long cherished and revered customs and tradition of respecting the dead. x x x[41]

The order of denial of UPV's right to expropriate Lot Nos. 21609-A, 21609-D, 21609-F, 21609-G, 21609-H, 21609-I and 21609-J, is final in nature and not merely interlocutory. However, instead of perfecting an appeal from said order which it received on 16 June 2004,[42] petitioner filed on 16 August 2004 the Rule 65 petition for *certiorari* docketed before the CA as CA-G.R. SP No. 85735, on the ground that the RTC acted with grave abuse of discretion in denying the expropriation of the subject lots after its right to expropriate the same had been earlier determined. Narrow in scope and unflexible in character,[43] a petition for *certiorari* is, concededly, intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction[44] and lies only when there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.[45] Hence, the CA denied the petition filed by petitioner on the principle that *certiorari* cannot be used as substitute for an appeal that has been lost.[46]

Although *certiorari* cannot be generally used as a substitute for a lapsed appeal, the CA lost sight of the fact, however, that the rule had been relaxed on a number of occasions, where its

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[41] *Id.* at 35.

[42] *Id.* at 2.

[43] *Land Bank of the Phils. v. Court of Appeals*, 456 Phil. 755, 784 (2003).

[44] *Julie's Franchise Corporation v. Hon. Chandler O. Ruiz*, G.R. No. 180988, 28 August 2009, 597 SCRA 463, 471.

[45] Section 1, Rule 65, 1997 Rules of Procedure.

[46] *Republic of the Philippines v. Court of Appeals*, 379 Phil. 92, 97 (2000).

rigid application will result in a manifest failure or miscarriage of justice.[47] This Court has allowed the issuance of a writ of *certiorari* despite the availability of appeal where the latter remedy is not adequate or equally beneficial, speedy and sufficient or there is need to promptly relieve the aggrieved party from the injurious effects of the acts of an inferior court or tribunal.[48] In *SMI Development Corporation v. Republic of the Philippines*,[49] this Court significantly upheld the CA's grant of the Rule 65 petition for *certiorari* filed in lieu of an ordinary appeal which was not considered a speedy and adequate remedy that can sufficiently address the urgent need of the *National Children's Hospital* to expand and extend quality medical and other health services to indigent patients. Indeed, *certiorari* and appeal are not mutually exclusive remedies in certain exceptional cases, such as when there is grave abuse of discretion or when public welfare so requires.[50]

Petitioner has more than amply demonstrated that the RTC's issuance of the assailed orders dated 17 November 2003 and 31 May 2004 was attended with grave abuse of discretion. In the context of a Rule 65 petition for *certiorari*, grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[51] It has been ruled that the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[52] To our mind,

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[47] *Republic of the Phils. v. CA*, 357 Phil. 174, 187 (1998).

[48] *Provident International Resources, Corp. v. CA*, 328 Phil. 871, 885-886 (1996).

[49] G.R. No. 137537, 380 Phil. 832 (2000).

[50] *Estate of Salud Jimenez v. Phil. Export Processing Zone*, 402 Phil. 271, 285 (2001).

[51] *Gaston v. Court of Appeals*, 390 Phil. 36, 43 (2000).

[52] *First Women's Credit Corporation v. Hon. Hernando B. Perez*, G.R. No. 169026, 15 June 2006, 490 SCRA 774, 777-778.

the grave abuse of discretion imputable against the RTC was manifest as early in the assailed 17 November 2003 order where, without giving any rationale therefor, and while it upheld petitioner's right of expropriation over Lot Nos. 21609-A, 21609-D, 21609-F, 21609-G, 21609-H, 21609-I and 21609-J, it excluded the area occupied by the Villa Marina Beach Resort owned and operated by respondent Rodolfo Legaspi, Sr. No less than the Constitution mandates that "(n)o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."[53]

Since it is a requirement of due process that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court,[54] the rule is settled that a decision that does not conform to the form and substance required by the Constitution and the law is void and deemed legally inexistent.[55] In *Yao v. Court of Appeals*,[56] this Court ruled as follows:

> Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process clause of the Constitution. The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible

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[53] Section 14, Article VIII, *Constitution of the Philippines.*

[54] *Nicos Industrial Corporation v. Court of Appeals*, G.R. No. 88709, 11 February 1992, 206 SCRA 127, 132.

[55] *Velarde v. Social Justice Society*, G.R. No. 159357, 28 April 2004, 428 SCRA 283, 285.

[56] 398 Phil. 86, 105-106 (2000).

errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding *ipse dixit.* Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision.

Thus the Court has struck down as void, decisions of lower courts and even of the Court of Appeals whose careless disregard of the constitutional behest exposed their sometimes cavalier attitude not only to their magisterial responsibilities but likewise to their avowed fealty to the Constitution.

The RTC compounded its error when, acting on the motions for reconsideration filed by the parties, it issued the assailed 31 May 2004 Order, denying petitioner's right of expropriation over Lot Nos. 21609-A, 21609-D, 21609-F, 21609-G, 21609-H, 21609-I and 21609-J, on the ground that the same were already used by respondents for their businesses and/or residences. Subject to the direct constitutional qualification that "private property shall not be taken for public use without just compensation,"[57] the power of eminent domain is, after all, the ultimate right of the sovereign power to appropriate any property within its territorial sovereignty for a public purpose[58] thru a method that partakes the nature of a compulsory sale.[59] The fact that said lots are being utilized by respondents Legaspis for their own private purposes is, consequently, not a valid reason to deny exercise of the right of expropriation, for as long as the taking is for a public purpose and just compensation is paid.

Our review of the documents attached to the pleadings filed in connection with the petition before the CA and this Court

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[57] *Manosca v. CA*, 322 Phil. 442, 448 (1996).

[58] *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now city) of Pasig, Metro Manila*, 503 Phil. 845, 861 (2005).

[59] *Manapat v. Court of Appeals*, G.R. Nos. 110478, 116176, 116491-503, 15 October 2007, 536 SCRA 32, 48.

also failed to yield any basis for the RTC's pronouncement that UPV excluded the area occupied by the Villa Marina Resort from its exercise of the right of expropriation. This is belied by petitioner's motion for continuation of the condemnation proceedings for the seven remaining lots into which Lot No. 1 of Psu-193912 Amd. had been subdivided,[60] UPV's 13 April 1998 letter-protest against respondent Rodolfo Legaspi, Sr.'s occupation of the property,[61] its motion for the grant of a writ of possession of the entire lot[62] and the motions for reconsideration of petitioner and UPV filed from the condemnation order dated 17 November 2003.[63] Considering that the site of the Villa Marina Resort appears to have already been earmarked for UPV's proposed National Institute of Marine Biotechnology,[64] the RTC clearly abused its discretion when it ruled that the exclusion of 31,617 square meters from the original 40,133 sought to be expropriated would not adversely affect UPV's operations. Granted that no part of the ground of a public cemetery can be taken for other public uses under a general authority,[65] there is, likewise, no showing in the record of the location and area of the public cemetery of Miag-ao in relation to the subject property.

In sum, we find the RTC gravely abused its discretion when, without stating the factual and legal bases therefor, it issued the assailed 17 November 2003 condemnation order, excluding the area occupied by the Villa Marina Resort from petitioner's exercise of its right of expropriation. The RTC likewise gravely abused its discretion when, in total disregard of the evidence on record, it issued the second assailed 31 May 2004 order which reconsidered its first assailed order and altogether denied

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[60] *Rollo*, p. 16.

[61] *Id.* at 96.

[62] *Id.* at 97-102.

[63] *Id.* at 121-129.

[64] *Id.* at 44.

[65] *The City of Manila v. Chinese Community of Manila*, 40 Phil. 349, 369 (1919).

petitioner's right of expropriation over Lot Nos. 21609-A, 21609-D, 21609-F, 21609-G, 21609-H, 21609-I and 21609-J.

WHEREFORE, premises considered, the CA's Decision dated 26 April 2007 is **REVERSED** and **SET ASIDE.** In lieu thereof, another is entered **NULLYING** the assailed orders dated 17 November 2003 and 31 May 2004 and directing the Regional Trial Court of Iloilo City, Branch 38 to resolve the case in compliance with Section 14, Article VIII of the Constitution and in accordance with the evidence on record.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 177761. April 18, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REMEDIOS TANCHANCO *y* PINEDA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; THEFT; ELEMENTS.— "The elements of the crime of Theft as provided for in Article 308 of the Revised Penal Code [(RPC)] are: (1) x x x there [was] taking of personal property; (2) x x x [the] property belongs to another; (3) x x x the taking [was] done with intent to gain; (4) x x x the taking [was] without the consent of the owner; and (5) x x x the taking was accomplished without the use of violence against or intimidation of persons or force upon things."

2. REMEDIAL LAW; CIRCUMSTANTIAL EVIDENCE; REQUISITES.— Circumstantial evidence may prove the guilt of appellant and "justify a conviction if the following requisites concur: (a) there is more than one circumstance; (b) the facts

from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt." In other words, "[f]or circumstantial evidence to be sufficient to support conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."

3. CRIMINAL LAW; THEFT; ELEMENTS; INTENT TO GAIN; ESTABLISHED WITH THE PADDING OF EXPENSES AND SUBMITTING FAKE RECEIPTS TO GAIN MONEY. — With regard to the third element, "[i]ntent to gain (*animus lucrandi*) is presumed to be alleged in an information, in which it is charged that there was unlawful taking (*apoderamiento*) and appropriation by the offender of the things subject of asportation." In this case, it was established that appellant padded her expenses and submitted fake receipts of her supposed payment for the processing of the transfer of land titles, to gain from the money entrusted to her by Rebecca. Her intentional failure to properly and correctly account for the same constitutes appropriation with intent to gain.

4. ID.; ID.; ID.; LACK OF CONSENT; ESTABLISHED WHEN THE OWNER MADE VERIFICATIONS AFTER DISCOVERING THE MISSING SUMS OF MONEY.— Anent the fourth element pertaining to Rebecca's lack of consent, same is manifested by the fact that it was only after appellant abandoned her job on April 18, 2001 that Rebecca discovered the missing sums of money. Her subsequent acts of confirming the payment or non-payment of fees and of verifying from different banks the issuance of the purported ORs presented to her by appellant in liquidating the amounts she entrusted to the latter, negates consent on Rebecca's part.

5. ID.; QUALIFIED THEFT; PRESENT WHERE THEFT COMMITTED WITH GRAVE ABUSE OF CONFIDENCE. — "Under Article 310 of the [RPC], theft [becomes] qualified when it is, among others, committed with grave abuse of confidence. x x x" The grave abuse of confidence must be the result of the relation by reason of dependence, guardianship, or vigilance, between the appellant and the offended party that might create a high degree of confidence between them which the appellant abused.

6. REMEDIAL LAW; EVIDENCE; DENIAL; WEAK DEFENSE THAT CANNOT PREVAIL OVER POSITIVE TESTIMONY. — Unfortunately for appellant, she was not able to refute Rebecca's allegations against her as well as the evidence supporting the same since what she advanced during trial were mere bare denials. The Court has "oft pronounced that x x x denial x x x [is] an inherently weak [defense] which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime."

7. CRIMINAL LAW; QUALIFIED THEFT; PENALTY.— Article 310 of the RPC provides that the crime of qualified theft shall be punished by the penalties next higher by two degrees than those respectively specified in Art. 309. Under paragraph 1, Art. 309 of the RPC, the penalty of *prision mayor* in its minimum and medium periods is to be imposed if the value of the thing stolen is more than ₱12,000.00 but does not exceed ₱22,000.00. But if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in said paragraph [*prision mayor* in its minimum and medium periods], and one year for each additional ₱10,000.00, but the total of the penalty which may be imposed shall not exceed twenty (20) years. In such cases and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of the RPC, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

8. ID.; ID.; ID.; PROPER PENALTY IN CASE AT BAR WHERE THE AMOUNT STOLEN WAS ₱248,447.75.— Here, the amount stolen by appellant, as correctly found by the CA, is ₱248,447.75. Since the said amount exceeds ₱22,000.00, "the basic penalty is *prision mayor* in its minimum and medium periods to be imposed in the maximum period, which is eight (8) years, eight (8) months and one (1) day to ten (10) years of *prision mayor*." To determine the additional years of imprisonment, ₱22,000.00 must be deducted from the said amount and the difference should then be divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. Hence, we have twenty-two (22) years that should be added to the basic penalty. However, the imposable penalty for simple theft should not exceed a total of twenty (20) years. Thus, had the appellant committed simple theft, the penalty for this case would be twenty (20) years of *reclusion temporal*. But as the penalty

for qualified theft is two degrees higher, the proper penalty as correctly imposed by both lower courts is *reclusion perpetua*.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

Theft becomes qualified when it is committed with grave abuse of confidence.[1]

Factual Antecedents

On appeal is the September 27, 2006 Decision[2] of the Court of Appeals (CA) in CA-GR. CR-H.C. No. 01409 which affirmed with modification the July 4, 2005 Decision[3] of the Regional Trial Court (RTC) of Las Piñas City, Branch 198, finding appellant Remedios Tanchanco *y* Pineda (appellant) guilty beyond reasonable doubt of the crime of qualified theft.

The Information[4] against appellant contained the following accusatory allegations:

That during the period from **October 2000 to May 8, 2001,** in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named Accused, being then employed as Legal Secretary and Liaison Officer of Complainant **ATTY. REBECCA MANUEL *Y* AZANZA,** with intent [to] gain, with grave abuse of confidence and without the knowledge and consent of the

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[1] *Cruz v. People*, G.R. No. 176504, September 3, 2008, 564 SCRA 99, 110.

[2] CA *rollo*, pp. 92-113; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Ruben T. Reyes and Juan Q. Enriquez, Jr.

[3] Records, pp. 653-659; penned by Judge Erlinda Nicolas-Alvaro.

[4] *Id.* at 1.

owner thereof, did then and there willfully, unlawfully and feloniously take, steal, and carry away cash money amounting to **Four Hundred Seventeen Thousand Nine Hundred Twenty-two [Pesos] and ninety centavos** (₱417,922.90) [from] said Complainant, to the damage and prejudice of the latter x x x.

CONTRARY TO LAW.[5]

The appellant entered a plea of "not guilty" during her arraignment. Thereafter, trial ensued.

Version of the Prosecution

Private complainant Atty. Rebecca Manuel *y* Azanza (Rebecca) knew appellant for more than 25 years, the latter being the niece of her long-time neighbor. During this period, Rebecca and her children established a close relationship with appellant to the point that they treated her as a member of their family. In June 1999, Rebecca hired appellant to work in her office as legal secretary and liaison officer. One of appellant's tasks as liaison officer was to process the transfer of titles of Rebecca's clients.

In the course of appellant's employment, Rebecca noticed that the completion of the transfer of titles was taking longer than usual. Upon inquiry, appellant attributed the delay to the cumbersome procedure of transferring titles, as well as to the fact that personnel processing the documents could not be bribed. Rebecca took appellant's word for it. However, appellant suddenly abandoned her job on April 18, 2001. And when Rebecca reviewed appellant's unfinished work, she discovered that the latter betrayed her trust and confidence on several occasions by stealing sums of money entrusted to her as payment for capital gains tax, documentary stamp tax, transfer tax and other expenses intended for the transfer of the titles of properties from their previous owners to Rebecca's clients.

According to Rebecca, she gave appellant ₱39,000.00 as payment for donor's tax in connection with a Deed of Donation and Acceptance and Deed of Partition by Donees/Co-Owners,

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[5] *Id.*

which her client Tomas Manongsong (Tomas) paid for the partitioning of a parcel of land located in Batangas. Upon verification from the Bureau of Internal Revenue (BIR), however, it turned out that appellant paid only ₱31,709.08. This was confirmed by the Bank of Commerce,[6] where appellant made such payment.

Appellant also received ₱20,000.00 from Tomas's wife, Mila Manongsong, for the processing of the properties' land titles. Appellant liquidated the same in a handwritten statement[7] in which she indicated payment of ₱10,089.45 for transfer tax under Official Receipt (OR) No. 1215709 and of ₱7,212.00 for registration with the Registry of Deeds of Bauan, Batangas under OR No. 5970738. An inquiry, however, later revealed that OR No. 1215709 was issued only for the amount of ₱50.00, representing payment for the issuance of a certified true copy of a tax declaration,[8] while OR No. 5970738 was never issued per Certification[9] from the same Registry of Deeds. Rebecca also found out that the documents relevant to the said transfer of titles are still with the BIR since the amount of ₱4,936.24 had not yet been paid.

Appellant also duped Rebecca relative to the ₱105,000.00 for the payment of the capital gains and documentary stamp taxes. Said taxes arose from the sale of a house and lot covered by TCT No. (62911) T-33899-A to her client Dionisia Alviedo (Alviedo). Appellant submitted a liquidation statement[10] stating that she paid the sums of ₱81,816.00 as capital gains tax and ₱20,460.00 for documentary stamp tax under Equitable Bank OR Nos. 937110 and 937111, respectively. However, said bank certified that said ORs do not belong to the series of ORs issued

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[6] See Certification to that effect issued by said bank, Exhibit "T", Folder of Exhibits, p. 712.

[7] Exhibit "E-1", *id*. at 686.

[8] Exhibit "V", *id*. at 714.

[9] Exhibit "W", *id*. at 715.

[10] Exhibit "J", *id*. at 696.

by it.[11] As a result, Rebecca was constrained to pay these taxes with the corresponding penalties and surcharges.

Rebecca further alleged that in connection with the payment of the capital gains and documentary stamp taxes imposed on the property of another client, Carmelita Sundian (Sundian), she gave appellant ₱120,000.00. Appellant purportedly presented a handwritten liquidation report stating that she paid the amounts of ₱94,281.00 as capital gains tax and ₱23,571.00 as documentary stamp tax under Equitable Bank OR Nos. 717228[12] and 717229.[13] Appellant also stated that the balance from the money intended for processing the papers of Sundian was only ₱2,148.00.[14] However, Rebecca discovered upon verification that the receipts submitted by appellant are bogus as Equitable Bank issued a Certification[15] that said ORs were issued to different persons and for different amounts. Rebecca was again forced to refund the sum to Sundian.

With regard to Rebecca's client Rico Sendino, Rebecca claimed that she gave appellant ₱35,000.00 for the payment of capital gains and transfer taxes in connection with the deed of sale executed between one Priscilla Cruz and her said client. In the handwritten liquidation statement[16] submitted to her by appellant, the latter claimed to have paid the amount of ₱35,000.00 under Traders Royal Bank OR No. 1770047.[17] Again, the receipt turned out to be a fake as said bank issued a Certification[18] negating the issuance of said OR. And just as in transactions with her other clients, Rebecca was forced to shell-out money from her own funds to pay the same.

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[11] Exhibit "IIII", *id*. at 818.

[12] Exhibit "EE", *id*. at 724.

[13] Exhibit "FF", *id*. at 725.

[14] Exhibit "GG", *id*. at 726.

[15] Exhibit "MM", *id*. at 733.

[16] Exhibit "RR", *id*. at 742.

[17] Exhibit "SS", *id*. at 743.

[18] Exhibit "HHHH", *id*. at 817.

Leilani Gonzaga (Gonzaga) was another client of Rebecca who engaged her services to pay the capital gains tax imposed on the sale of a property. After Rebecca told appellant to go to the BIR, the latter indicated in her handwritten liquidation statement that she paid the capital gains tax using two Equitable PCI Manager's Checks for which she was issued OR Nos. 1770016 and 1770017, and cash payments of ₱71,184.00 under OR No. 1770018 and ₱17, 805.00 under OR No. 1770019.[19] However, no payments were actually made. To complete the processing of the transaction, Rebecca had to pay the sum of ₱3,273.00 to the Registry of Deeds and ₱9,050.00 for the transfer tax imposed on the transaction.

The same thing happened with the payment of capital gains tax as a result of a Deed of Transfer with Partition Agreement of a Land executed between Rebecca's client Edmer and his siblings, Evelyn and Renato, all surnamed Mandrique.[20] This time, appellant showed Rebecca a donor's tax return[21] accomplished in her own handwriting as proof of payment of the sum of ₱12,390.00. Appellant also liquidated the amount of ₱6,250.00 as advance payment made to a geodetic engineer for the purpose of subdividing the property.[22] Again, Rebecca was later able to verify that no payments in such amounts were made.

According to Rebecca, appellant likewise pocketed the sum of ₱10,000.00 intended for the processing of 15 titles that the latter claimed to have paid in her liquidation report. Also, Rebecca asserted that appellant did not pay or file the proper application for the issuance of title of the Grand Del Rosario property. Aside from the above, Rebecca was likewise constrained to complete the processing of one of the three other titles recovered from appellant and had to pay the capital gains tax imposed on the purchase of the land in the sum of more than ₱100,000.00.

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[19] Exhibit "III", *id.* at 763.

[20] Exhibit "MMM", *id.* at 767.

[21] Exhibit "PPP", *id.* at 771.

[22] Exhibit "RRR", *id.* at 773.

All in all, the money supposed to be used as payments for capital gains and transfer taxes as well as for the registration of sale of properties of Rebecca's various clients amounted to ₱427,992.90. Aside from this sum, Rebecca also spent at least ₱650,000.00 for the reconstitution of all the documents, payment of surcharges for late filing of capital gains tax returns, transportation expenses and other incidental expenses.

Version of the Appellant

Appellant admitted that she used to be the legal secretary and liaison officer of Rebecca. In particular, as liaison officer, she attended to the transfer of titles of Rebecca's clients such as Gonzaga, Manongsong, Alviedo and others whose names she could no longer remember. She claimed that the processing of the title of the Manongsong property was her last transaction for Rebecca. She was given money to pay the capital gains tax at the BIR. When confronted with the charges filed against her, appellant merely denied the allegations.

Ruling of the Regional Trial Court

In its Decision[23] of July 4, 2005, the trial court found the existence of a high degree of confidence between Rebecca and appellant. It noted that the relationship between the two as employer-employee was not an ordinary one; appellant was being considered a part of Rebecca's family. Because of this trust and confidence, Rebecca entrusted to appellant cash in considerable sums which were liquidated through appellant's own handwritten statements of expenses. However, appellant gravely abused the trust and confidence reposed upon her by Rebecca when she pocketed the money entrusted to her for processing the clients' land titles. And as a cover up, she presented to Rebecca either fake or altered receipts which she did not even deny during trial. The trial court thus found appellant guilty beyond reasonable doubt of the crime charged.

However, the trial court ruled that the total amount stolen by appellant was ₱407,711.68 and not ₱417,907.90 as claimed by Rebecca. It disposed of the case as follows:

[23] *Supra* note 3.

WHEREFORE, in view of all the foregoing, the court finds the accused Remedios Tanchanco *y* Pineda GUILTY beyond reasonable doubt of the crime of Qualified Theft as defined and penalized under Article 309, paragraph 1 and Article 310 of the Revised Penal Code, and hereby sentences said accused to suffer the penalty of *reclusion perpetua* and to indemnify the offended party in the sum of Four Hundred Seven Thousand Seven Hundred Eleven Pesos and Sixty Eight Centavos (₱407,711.68) representing the total amount taken by the accused, without subsidiary imprisonment in case of insolvency, with costs.

SO ORDERED.[24]

Ruling of the Court of Appeals

The appellate court affirmed the trial court's ruling but came up with a different figure as to the total amount taken by the appellant. The CA noted that there was no clear justification for the award of ₱407,711.68 as an examination of the records revealed that appellant failed to pay or padded her expenses only in the total amount of ₱248,447.45, computed as follows:

On the Manongsong property:

₱ 10,089.45	Transfer tax[25]
₱ 7,212.00	Registration of the documents[26]
₱ 2,000.00	Estate tax[27]
₱ 8,000.00	Difference between the donor's tax that accused-appellant claimed she paid and that which she actually paid per certification of the Bank of Commerce[28]
₱ 27,301.45	Sub-total

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[24] Records, pp. 658-659.

[25] Exhibit "E-1", Folder of Exhibits, p. 686; Exhibit "S-1", *id*. at 711; TSN dated January 14, 2003, p. 13.

[26] *Id.*; *id.; id.*; Exhibit "W", *id*. at 715.

[27] Exhibit "F-1", *id*. at 686; *id*.; Exhibit "T", *id*. at 712.

[28] Exhibit "S-1", *id*. at 711; Exhibit "U", *id*. at 713-A; TSN dated January 14, 2003, pp. 12-13.

On the Alviedo property:	
₱ 81,816.00	Capital gains tax[29]
₱ 20,460.00	Documentary stamp tax[30]
₱ 102,276.00	Sub-total
On the Sundian property:	
₱ 94,281.00	Capital gains tax[31]
₱ 23,571.00	Documentary stamp tax[32]
₱ 117,852.00	Sub-total
On the Sendino property:	
₱ 6,018.00	Ueda donor's tax[33]
₱ 35,000.00	Capital gains tax and documentary stamp tax[34]
₱ 41,018.00	Sub-total
On the Mandrique property:	
₱ 10,000.00	Difference between donor's tax per accused-appellant's liquidation report and the amount she actually paid[35]
₱ 10,000.00	Sub-total
₱ 248,447.45	Total[36] (Footnotes supplied.)

Thus, the dispositive portion of its Decision[37] dated September 27, 2006 reads:

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[29] Exhibit "J", *id*. at 696; TSN dated November 26, 2002, pp. 28-29.

[30] *Id.*; Exhibit "III", *id*. at 763.

[31] Exhibit "DD", *id.* at 723; Exhibit "EE", *id*. at 724; Exhibit "MM-1", *id*. at 734; TSN dated January 14, 2003, pp. 20-21.

[32] *Id.*; Exhibit "FF", *id*. at 725; Exhibit "MM-2", *id*. at 734; 3-4, 9-13.

[33] Exhibit "RR", *id*. at 742; Exhibit "CCC", *id*. at 755; TSN dated January 28, 2003, pp. 2, 7-10.

[34] Exhibit "SS", *id*. at 743; Exhibit "HHHH", *id*. at 817; TSN dated March 18, 2003, pp. 4-6.

[35] Appellant claimed to have paid ₱12,390.00 but actually paid only ₱2,390.00, see Exhibit "PPP-7", *id*. at 771; TSN dated March 18, 2003, pp. 15-16.

[36] CA *rollo*, pp. 109-110.

[37] *Supra* note 2.

WHEREFORE, the assailed Decision dated July 4, 2005 is AFFIRMED with MODIFICATION in that accused-appellant, Remedios Tanchanco Pineda is hereby ordered to indemnify the private complainant Rebecca Manuel *y* Azanza the sum of *Two Hundred Forty-Eight Thousand Four Hundred Forty-Seven Pesos and Forty Five Centavos (₱248,447.45)* representing the total amount she took from the private complainant.

SO ORDERED.[38]

Issue

In this appeal, appellant again raises the lone issue she submitted to the CA, *viz*:

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED OF QUALIFIED THEFT DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HER FAVOR.[39]

Appellant maintains that there is no direct evidence to prove that she actually received the alleged amounts intended for the processing of various documents. She also denies the claim that she took the money entrusted to her during the period from May 2000 to May 8, 2001 as alleged in the Information.

Our Ruling

The appeal is not meritorious.

Courts below correctly held appellant liable for qualified theft

"The elements of the crime of Theft as provided for in Article 308 of the Revised Penal Code [(RPC)] are: (1) x x x there [was] taking of personal property; (2) x x x [the] property belongs to another; (3) x x x the taking [was] done with intent to gain; (4) x x x the taking [was] without the consent of the owner; and (5) x x x the taking was accomplished without the

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[38] CA *rollo*, pp. 112-113.

[39] *Id.* at 50.

use of violence against or intimidation of persons or force upon things."[40]

As to the first and second elements, we quote with approval the CA's discussion on the matter:

> Accused-appellant contends that the prosecution failed to prove by direct evidence the first and basic element of the offense – that is, the taking of the sum of Php417,922.90 during the period from May 2000 up to May 8, 2001. She claims that the prosecution failed to adduce any evidence that would prove that the accused actually received the alleged amounts handed to her for the processing of various documents.
>
> x x x x x x x x x
>
> Regarding x x x the prosecution's failure to present direct evidence to prove the accused-appellant's taking of the questioned amount, it is Our view that the absence of direct evidence proving accused-appellant's stealing and carrying away of the alleged Php417,922.90 from private respondent would not matter as long as there is enough circumstantial evidence that would establish such element of 'taking.' After all, Sec. 4, Rule 133 of the Revised Rules of Court provides that an accused may be convicted on the basis of circumstantial evidence if more than one circumstance is involved, the facts of which, inferring said circumstances have been proven, and provided that the combination of all such circumstances would suffice to produce a conviction beyond reasonable doubt.
>
> There is no doubt, as held by the trial court, that the prosecution was able to establish the following circumstances:
>
> 1. Accused-appellant was the legal secretary and liaison officer of private complainant from June 1999 to April 18, 2001. She was the only person working for the private complainant during said period.
>
> 2. As legal secretary and liaison officer, accused-appellant was tasked to process land titles of private complainant's clients. Her duties included the payment of taxes (documentary stamp taxes, capital gains taxes, transfer tax) for the transfer of title from previous owners to new owners/buyers of the property.

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[40] *Astudillo v. People*, G.R. Nos. 159734 & 159745, November 30, 2006, 509 SCRA 302, 324.

3. Because of the nature of accused appellant's work and the trust reposed in her by private complainant, the latter confidently gave her considerable amounts of cash without need of receipts. The accused-appellant even admitted that she often received money from private complainant for payment of capital gains and transfer taxes.

4. There were also instances when accused-appellant was authorized by private complainant to collect money from her clients especially when the accused-appellant ran out of money needed in the processing of titles.

5. The accused-appellant was given a free hand in liquidating her expenses in her own handwriting.

6. Upon verification from banks and government agencies with which the accused-appellant transacted in relation to her tasks, the private complainant discovered that what the accused-appellant submitted were handwritten 'padded' liquidation statements because her reported expenses turned out to be higher than what she actually spent; and worse, the 'official' receipts she submitted to private complainant were fake. x x x.

x x x x x x x x x

7. The accused-appellant did not specifically deny her submitting altered or fake receipts in liquidating her expenses for said taxes.

8. And conceding her guilt, the accused-appellant suddenly disappeared leaving some of her tasks, unfinished.

x x x x x x x x x

[These] pieces of circumstantial evidence presented by the prosecution constitute an unbroken chain leading to a fair and reasonable conclusion that accused-appellant took sums of money that were entrusted to her by the private complainant. x x x[41]

Circumstantial evidence may prove the guilt of appellant and "justify a conviction if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of

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[41] CA *rollo*, pp. 102-109.

all the circumstances is such as to produce a conviction beyond reasonable doubt."[42] In other words, "[f]or circumstantial evidence to be sufficient to support conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."[43] Here, we agree with the CA that the circumstances above enumerated lead to the reasonable conclusion that appellant took amounts of money from Rebecca.

With regard to the third element, "[i]ntent to gain (*animus lucrandi*) is presumed to be alleged in an information, in which it is charged that there was unlawful taking (*apoderamiento*) and appropriation by the offender of the things subject of asportation."[44] In this case, it was established that appellant padded her expenses and submitted fake receipts of her supposed payment for the processing of the transfer of land titles, to gain from the money entrusted to her by Rebecca. Her intentional failure to properly and correctly account for the same constitutes appropriation with intent to gain.

Anent the fourth element pertaining to Rebecca's lack of consent, same is manifested by the fact that it was only after appellant abandoned her job on April 18, 2001 that Rebecca discovered the missing sums of money. Her subsequent acts of confirming the payment or non-payment of fees and of verifying from different banks the issuance of the purported ORs presented to her by appellant in liquidating the amounts she entrusted to the latter, negates consent on Rebecca's part.

With regard to the fifth element, it is clear from the facts that the taking was accomplished without the use of violence against or intimidation of persons or force upon things.

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[42] RULES OF COURT, Rule 133, Section 4; *People v. Abrera*, 347 Phil. 302, 315 (1997).

[43] *People v. Casingal*, 312 Phil. 945, 953-954 (1995).

[44] *Cruz v. People*, *supra* note 1 at 111.

From these, it is clear that all the elements of theft are obtaining in this case. The next crucial question now is, did appellant commit the crime with grave abuse of confidence as to make her liable for qualified theft? "Under Article 310 of the [RPC], theft [becomes] qualified when it is, among others, committed with grave abuse of confidence. x x x"[45] The grave abuse of confidence must be the result of the relation by reason of dependence, guardianship, or vigilance, between the appellant and the offended party that might create a high degree of confidence between them which the appellant abused.[46]

Here, it is undisputed that appellant was a close friend of Rebecca and her family. It was due to this personal relationship that appellant was employed by Rebecca as a legal secretary and liaison officer. The latter position necessarily entails trust and confidence not only because of its nature and the functions attached to it, but also because appellant makes representations on behalf of Rebecca as regards third parties. By reason of this, all matters essentially pertaining to the conduct of business of the law office were known by, and entrusted to, appellant. This included the safekeeping of important documents and the handling of money needed for the processing of papers of Rebecca's clients. It is thus safe to assume that Rebecca relied on appellant when it comes to the affairs of her law office as to create a high degree of trust and confidence between them. And as Rebecca trusted appellant completely, and by reason of her being the liaison officer, she handed the monies to appellant without requiring the latter to sign any paper to evidence her receipt thereof. She also allowed appellant to liquidate the expenses incurred through mere handwritten liquidation statements solely prepared by appellant and treated them, as well as the official receipts presented, as true and correct. It thus becomes clear that it is because of the trust and confidence reposed by Rebecca upon appellant that the latter was able to make it appear from her liquidation statements that she spent the sums she

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[45] *Cruz v. People*, *supra* note 1 at 110.

[46] See *People v. Koc Song*, 63 Phil. 369 (1936) and *Astudillo v. People*, *supra* note 40 at 326.

received from Rebecca for their intended purposes. To conceal this, she presented to Rebecca fake or altered receipts for the supposed payment, all of which form part of the records as evidence. Unfortunately for appellant, she was not able to refute Rebecca's allegations against her as well as the evidence supporting the same since what she advanced during trial were mere bare denials. The Court has "oft pronounced that x x x denial x x x [is] an inherently weak [defense] which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime."[47] The Court therefore concludes that appellant took undue advantage of Rebecca's confidence in her when she appropriated for herself sums of money that the latter entrusted to her for a different purpose. The theft in this case was thus committed with grave abuse of confidence. Hence, appellant was correctly held by the lower courts as liable for qualified theft.

With respect to appellant's contention that she could not have taken the alleged amount of money until May 8, 2001 since her employment with Rebecca lasted only until April 18, 2001, same fails to impress. The Information alleged that the crime was committed "during the period from October 2000 to May, 2001." The word "during" simply means "at some point in the course of"[48] or "throughout the course of a period of time"[49] from October 2000 to May 8, 2001. In the Information, "during" should therefore be understood to mean at some point from October 2000 to May 8, 2001, and not always until May 8, 2001. Further, the period alleged in the Information, which is from October 2000 to May 8, 2001 is not distant or far removed from the actual period of the commission of the offense, which is from October 2000 to April 17, 2001.

As to the total amount unlawfully taken by appellant, we hold that the sum of ₱407,711.68 which the trial court came up

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[47] *People v. Saludo*, G.R. No. 178406, April 6, 2011.

[48] *WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (Unabridged)*.

[49] *COMPACT OXFORD ENGLISH DICTIONARY OF CURRENT ENGLISH*, Third Edition.

with has no basis. After a thorough review of the records, we find as correct instead the result of the detailed computation made by the CA as to the total amount of money that appellant stole or padded as expenses, which is only ₱248,447.75.

The Proper Penalty

Article 310 of the RPC provides that the crime of qualified theft shall be punished by the penalties next higher by two degrees than those respectively specified in Art. 309. Under paragraph 1, Art. 309 of the RPC, the penalty of *prision mayor* in its minimum and medium periods is to be imposed if the value of the thing stolen is more than ₱12,000.00 but does not exceed ₱22,000.00. But if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in said paragraph [*prision mayor* in its minimum and medium periods], and one year for each additional ₱10,000.00, but the total of the penalty which may be imposed shall not exceed twenty (20) years. In such cases and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of the RPC, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. Here, the amount stolen by appellant, as correctly found by the CA, is ₱248,447.75. Since the said amount exceeds ₱22,000.00, "the basic penalty is *prision mayor* in its minimum and medium periods to be imposed in the maximum period, which is eight (8) years, eight (8) months and one (1) day to ten (10) years of *prision mayor*."[50] To determine the additional years of imprisonment, ₱22,000.00 must be deducted from the said amount and the difference should then be divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. Hence, we have twenty-two (22) years that should be added to the basic penalty. However, the imposable penalty for simple theft should not exceed a total of twenty (20) years. Thus, had the appellant committed simple theft, the penalty for this case would be twenty (20) years of *reclusion temporal*. But as the penalty for qualified

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[50] *People v. Mirto*, G.R. No. 193479, October 19, 2011, citing *People v. Mercado*, 445 Phil. 813, 828 (2003)

theft is two degrees higher, the proper penalty as correctly imposed by both lower courts is *reclusion perpetua*.[51]

WHEREFORE, the appeal is hereby **DENIED.** The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01409 finding appellant Remedios Tanchanco *y* Pineda guilty beyond reasonable doubt of the crime of qualified theft is **AFFIRMED.**

Costs against the appellant.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 180177. April 18, 2012]

ROGELIO S. REYES, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; MUST BE ESTABLISHED TO JUSTIFY CONVICTION.— In this jurisdiction, we convict the accused only when his guilt is established beyond reasonable doubt. Conformably with this standard, we are mandated as an appellate court to sift the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused. x x x Conviction must

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[51] *Id.*

stand on the strength of the Prosecution's evidence, not on the weakness of the defense the accused put up. Evidence proving the guilt of the accused must always be beyond reasonable doubt. If the evidence of guilt falls short of this requirement, the Court will not allow the accused to be deprived of his liberty. His acquittal should come as a matter of course.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; BUY-BUST OPERATION; PROCEDURAL SAFEGUARDS MUST BE COMPLIED STARTING WITH THE REQUIREMENT RELATING TO CUSTODY AND DISPOSITION OF CONFISCATED DANGEROUS DRUGS.— The buy-bust operation mounted against petitioner resulted from the tip of an unnamed lady confidential informant. Such an operation, according to *People v. Garcia*, was "susceptible to police abuse, x x x [thus] x x x the institution of several procedural safeguards by R.A. No. 9165, mainly to guide the law enforcers. x x x [Section 21(1) thereof provides:] *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — x x x: (1) **The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized**, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x

3. ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; COMPLIANCE WITH THE "CHAIN OF CUSTODY" MUST BE ESTABLISHED.— [For] The successful prosecution of illegal sale [and illegal possession] of dangerous drugs, x x x it is crucial that the Prosecution establishes the identity of the seized dangerous drugs in a way that the integrity thereof has been well preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. x x x Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002, *viz*: (b) "Chain of custody" means **the duly recorded**

authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment **of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall **include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer or custody were made in the course of safekeeping and used in court as evidence**, and the final disposition.

4. ID.; ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ARTICLES MUST ALWAYS BE IMMEDIATELY EXECUTED AT THE PLACE OF SEIZURE AND CONFISCATION.— We clarified in *People v. Sanchez* that in compliance with Section 21 of R.A. No. 9165, *supra*, the physical inventory and photographing of the seized articles should be conducted, *if practicable*, at the place of seizure or confiscation in cases of warrantless seizure. But that was true only if there were indications that petitioner tried to escape or resisted arrest, which might provide the reason why the arresting team was not able to do the inventory or photographing at petitioner's house; otherwise, the physical inventory and photographing must always be immediately executed at the place of seizure or confiscation.

5. ID.; ID.; ID.; ID.; ID.; NON-COMPLIANCE FATAL IN CASE AT BAR AS THE STATE DID NOT ESTABLISH THE IDENTITY OF THE DANGEROUS DRUGS ALLEGEDLY SEIZED WITH THE SAME EXACTING CERTITUDE REQUIRED FOR A FINDING OF GUILT.— In *People v. Pringas*, the non-compliance by the buy-bust team with Section 21, *supra*, was held not to be fatal for as long as there was justifiable ground for it, and for as long as the integrity and the evidentiary value of the confiscated or seized articles were properly preserved by the apprehending officer or team. x x x However, the omissions noted herein indicated that the State did not establish the identity of the dangerous drugs allegedly seized from petitioner with the same exacting certitude required for a finding of guilt.

APPEARANCES OF COUNSEL

William F. De los Santos for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

The burden rests in the Prosecution to see to it that the evidence of guilt satisfies the standard of moral certainty demanded in all criminal prosecutions. The standard demands that all the essential elements of the offense are established as to leave no room for any doubt about the guilt of the accused. The courts should unfailingly impose the standard in order to prevent injustice from being perpetrated against the accused.

Under review is the decision promulgated on September 28, 2007 by the Court of Appeals (CA),[1] whereby the CA affirmed the conviction of petitioner by the Regional Trial Court (RTC), Branch 2, in Manila[2] for violations of Section 5 and Section 11, Article II of Republic Act No. 9165 (*The Comprehensive Dangerous Drugs Act of 2002*).

Antecedents

On February 23, 2005, the Office of the City Prosecutor of Manila filed two informations charging petitioner with illegal sale of *shabu* and illegal possession of *shabu* defined and punished, respectively, by Sections 5 and 11 of R.A. No. 9165,[3] to wit:

Criminal Case No. 05234564

That on or about January 20, 2005, in the City of Manila, Philippines, the said accused, not being been (sic) authorized by

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[1] CA *Rollo*, pp. 13-28; penned by Associate Justice Myrna Dimaranan-Vidal (retired), with Associate Justice Jose C. Reyes, Jr. and Associate Justice Japar B. Dimaampao, concurring.

[2] Records, pp. 104-113.

[3] *Id.*, pp. 2-5.

law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell One (1) heat sealed transparent plastic sachet containing zero point zero two two (0.022) gram, of white crystalline substance known as "*SHABU*" containing methylamphetamine hydrochloride, which is a dangerous drug.

CONTRARY TO LAW.[4]

Criminal Case No. 05234565

That on or about January 20, 2005, in the City of Manila, Philippines, the said accused, not being then authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control One (1) heat sealed transparent plastic sachet containing zero point zero two four (0.024) gram of white crystalline substance known as "*SHABU*" containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[5]

After petitioner pled *not guilty*, trial ensued. The summary of the evidence of the parties adduced at trial follows.

In the morning of January 20, 2005, a lady confidential informant went to the Police Station 8 of the Western Police District to report on the drug-dealing activities of a certain *alias* Boy (later identified as petitioner) on M. Mapa Street, Sta. Mesa, Manila.[6] A buy-bust team of ten members,[7] including PO2 Erwin Payumo as designated poseur-buyer,[8] was formed. PO2 Payumo then prepared the necessary documents prior to the operation.[9]

From the police station, the lady confidential informant called petitioner by phone. The latter instructed her to wait on M.

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[4] *Id.*, pp. 2-3.

[5] *Id.*, pp. 4-5.

[6] TSN dated September 7, 2005, p. 11.

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

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

[9] *Id.*, pp. 5 and 12.

Mapa Street.[10] Thus, the buy-bust team proceeded to that area and arrived at around 4:20 p.m. of January 20, 2005.[11] PO2 Payumo and the lady confidential informant arrived together to wait for petitioner. The rest of the buy-bust team, who had gone to the area on board an L300 van,[12] took positions nearby. Petitioner came by five minutes later,[13] and, after asking the lady confidential informant whether PO2 Payumo was the buyer, instructed Payumo to follow him to his house where he told PO2 Payumo to wait. Two other individuals, later identified as Conchita Carlos and Jeonilo Flores, were also waiting for petitioner.[14]

Upon getting back, petitioner asked PO2 Payumo for the payment,[15] and the latter complied and handed the marked money consisting of three ₱50.00 bills all bearing the initials "TF."[16] Petitioner then went into a room and returned with a plastic sachet containing white crystalline substance that he gave to PO2 Payumo. Receiving the plastic sachet, PO2 Payumo placed a missed call to PO1 Miguelito Gil, a member of the buy-bust team, thereby giving the pre-arranged signal showing that the transaction was completed. PO2 Payumo then arrested petitioner after identifying himself as an officer. PO2 Payumo recovered another sachet containing white crystalline substance from petitioner's right hand, and the marked money from petitioner's right front pocket.[17] The rest of the buy-bust team meanwhile came around and recovered two sachets also containing white crystalline substance from the sofa where Conchita and Jeonilo

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[10] *Id.,* p. 13.

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

[12] TSN dated August 31, 2005, p. 4.

[13] TSN dated September 7, 2005, p. 14.

[14] *Id.,* pp. 15-17.

[15] *Id.,* p. 17.

[16] *Id.,* pp. 8-9.

[17] *Id.,* pp. 18-20.

were sitting. The buy-bust team thus also arrested Conchita and Jeonilo.[18]

Back at the police station, PO2 Payumo placed on the plastic sachet that petitioner had handed him the marking "RRS-1" and on the other sachet recovered from petitioner's right hand the marking "RRS-2."[19] The seized items were thereafter turned over to the Western Police District Crime Laboratory for examination by P/Insp. Judycel Macapagal, who found the items positive for methampethamine hydrochloride or *shabu*.[20]

On the other hand, petitioner denied that there had been a buy-bust operation, and claimed that he had been framed up.

Petitioner testified that he was at his house entertaining his visitors Conchita and Jeonilo in the afternoon of January 20, 2005;[21] that Conchita was selling to him a sofa bed for ₱800.00, while Jeonilo was only contracted by Conchita to drive the jeepney carrying the sofa bed;[22] that the three of them were surprised when a group of armed men in civilian clothes barged into his house and conducted a search, and arrested them; that he was also surprised to see a plastic sachet when the armed men emptied his pocket; that the plastic sachet did not belong to him;[23] that PO2 Payumo was not among those who entered and searched his house;[24] that the three of them were made to board a van where PO1 Rudolf Mijares demanded ₱30,000.00 for his release;[25] and that because he told them he had no money to give to them, one of the men remarked: *Sige, tuluyan na yan*; and that they were then brought to the police station.[26]

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[18] TSN dated August 31, 2005, pp. 8-10.

[19] TSN dated September 7, 2005, pp. 22-24.

[20] TSN dated August 24, 2005, pp. 3-5.

[21] TSN dated September 28, 2005, p. 4.

[22] *Id.*, p. 5.

[23] *Id.*, pp. 6-7.

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

[25] *Id.*, pp. 8-9.

[26] *Id.*, pp. 9-10.

Jeonilo corroborated petitioner's story.[27]

Ruling of the RTC

As stated, on May 23, 2006, the RTC found petitioner guilty beyond reasonable doubt, to wit:

> Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies with respect to the operation deserve full faith and credit.
>
> However like alibi, we view the defense of frame up with disfavor as it can easily be concocted and is commonly used as a standard line of defense in most prosecution arising from violations of the Dangerous Drugs Acts.
>
> Having established that a legitimate buy-bust operation occurred in the case at bar, there can now be no question as to the guilt of the accused-appellant. Such operation has been considered as an effective mode of apprehending drug pushers. If carried out with due regard to the constitutional and legal safeguards, it deserves judicial sanction." (People of the Philippines *vs.* Lowell Saludes, *et al*., G.R. No. 144157, June 10, 2003)
>
> The accused failed to show any ill motive on the part of the policeman to testify falsely against him. Indeed, the prosecution showed that the police were at the place of the incident to do exactly what they are supposed to do—to conduct an operation. The portrayal put forward by accused and his lone witness remained uncorroborated. Evidence to be believed must not only come from a credible witness but must in itself be credible.
>
> The entrapment operation paved the way for the valid warrantless arrest of accused, Sec. 5(a) of Rule 113 of the Rules of Court provides thus:
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> "A police officer or private person, without warrant, may 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; x x x

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[27] TSN dated May 3, 2006, pp. 3-5.

"It has been held that the testimonies of police officers involved in a buy-bust operation deserve full faith and credit, given the presumption that they have performed their duties regularly. This presumption can be overturned if clear and convincing evidence is presented to prove either two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive." (People of the Philippines *vs.* Reynaldo Remarata, *et al.*, G.R. No. 147230, April 29, 2003)

The positive identification of appellants by the prosecution witness should prevail over the former's denials of the commission of the crime for which they are charged, since greater weight is generally accorded to the positive testimony of the prosecution witness than the accused's denial. Denial, like alibi, is inherently a weak defense and cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. (People of the Philippines *vs.* Edwin Belibet, Manny Banoy and Ronnie Rosero, G.R. No. 91260, July 25, 1991)[28]

The dispositive portion of the decision of the RTC reads:

WHEREFORE, judgment is hereby rendered as follows, to wit:

1. In Criminal Case No. 05-234564, finding accused, Rogelio Reyes *y* Samson, GUILTY beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay the fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

2. In Criminal Case No. 05-234565, finding accused, Rogelio Reyes *y* Samson, GUILTY beyond reasonable doubt of the crime charged, he is hereby sentenced to suffer the indeterminate penalty of 12 years and 1 day as minimum to 17 years and 4 months as maximum; to pay a fine of ₱300,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The specimens are forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

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[28] Records, pp. 111-113.

SO ORDERED.[29]

With his motion for reconsideration being denied by the RTC, petitioner filed his notice of appeal.[30]

Ruling of the CA

On appeal, the CA affirmed the findings of the RTC thuswise:

A *fortiori*, viewed in the light of the foregoing, We are strongly convinced that the prosecution has proven the guilt of the Appellant for the crimes charged beyond reasonable doubt.

WHEREFORE, premises considered, the instant Appeal is DENIED. The challenged Decision of the court *a quo* is hereby AFFIRMED *in toto*.

SO ORDERED.[31]

The CA gave more weight to the testimony of poseur buyer PO2 Payumo, and believed the findings of the laboratory examination conducted by P/Insp. Macapagal. It recognized the validity of the buy-bust operation.

Issue

Petitioner is now before the Court seeking to reverse the decision of the CA upon the sole error that:

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT FINDING WORTHY OF CREDENCE PETITIONER'S WITNESS TESTIMONY CREATING DOUBT ON THE GUILT OF THE PETITIONER OF THE CRIME CHARGED IN THE INFORMATION.

Petitioner wants the Court to give credence to his defense of frame-up, and to believe the testimony of Jeonilo Flores who had no reason to testify falsely against the arresting officers.

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[29] *Id.*, p. 113.

[30] CA *Rollo*, pp. 28-29.

[31] *Id.*, p. 136.

Ruling

The appeal is meritorious.

In this jurisdiction, we convict the accused only when his guilt is established beyond reasonable doubt. Conformably with this standard, we are mandated as an appellate court to sift the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused.[32]

Guided by the standard, we acquit petitioner.

The buy-bust operation mounted against petitioner resulted from the tip of an unnamed lady confidential informant. Such an operation, according to *People v. Garcia*,[33] was "susceptible to police abuse, the most notorious of which is its use as a tool for extortion," and the possibility of that abuse was great.[34] The susceptibility to abuse of the operation led to the institution of several procedural safeguards by R.A. No. 9165, mainly to guide the law enforcers. Thus, the State must show a faithful compliance with such safeguards during the prosecution of every drug-related offense.[35]

The procedural safeguards start with the requirements prescribed by Section 21 of R.A. No. 9165 relating to the custody and disposition of the confiscated, seized, and surrendered dangerous drugs, plant sources of the dangerous drugs, controlled precursors and essential chemicals, instruments and paraphernalia, and laboratory equipment. The provision relevantly states:

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[32] *People v. Feliciano*, G.R. Nos. 127759-60, September 24, 2001, 365 SCRA 613, 629; *People v. Quimzon*, G.R. No. 133541, April 14, 2004, 427 SCRA 261, 281; *People v. Cula*, G.R. No. 133146, March 28, 2000, 329 SCRA 101, 116.

[33] G.R. No. 173480, February 25, 2009, 580 SCRA 259.

[34] *Id.*, at p. 267, citing *People v. Tan*, G.R. No. 133001, December 14, 2000, 348 SCRA 116.

[35] *Id*.

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — x x x:

> (1) **The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized**, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x (Emphasis supplied)

This appeal involves two distinct drug-related offenses, namely: illegal sale of dangerous drugs, and illegal possession of dangerous drugs. The successful prosecution of illegal sale of dangerous drugs requires: (*a*) proof that the transaction or sale took place, and (*b*) the presentation in court as evidence of the *corpus delicti*, or the dangerous drugs themselves. On the other hand, the prosecution of illegal possession of dangerous drugs necessitates the following facts to be proved, namely: (*a*) the accused was in possession of dangerous drugs, (*b*) such possession was not authorized by law, and (*c*) the accused was freely and consciously aware of being in possession of dangerous drugs.[36] For both offenses, it is crucial that the Prosecution establishes the identity of the seized dangerous drugs in a way that the integrity thereof has been well preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. Nothing less than a faithful compliance with this duty is demanded of all law enforcers arresting drug pushers and drug possessors and confiscating and seizing the dangerous drugs and substances from them.

This duty of seeing to the integrity of the dangerous drugs and substances is discharged only when the arresting law enforcer

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[36] *People v. Sembrano*, G.R. No. 185848, August 16, 2010, 628 SCRA 328, 339; *People v. Desuyo*, G.R. No. 186466, July 26, 2010, 625 SCRA 590, 603-604; *People v. Darisan*, G.R. No. 176151, January 30, 2009, 577 SCRA 486.

ensures that the *chain of custody* is unbroken. This has been the reason for defining *chain of custody* under Section 1(b) of the Dangerous Drugs Board Regulation No. 1, Series of 2002, *viz*:

> (b) "Chain of custody" means **the duly recorded authorized movements and custody of seized drugs** or controlled chemicals or plant sources of dangerous drugs or laboratory equipment **of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall **include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer or custody were made in the course of safekeeping and used in court as evidence**, and the final disposition; (Emphasis supplied)

In *Mallilin v. People*,[37] the need to maintain an unbroken chain of custody is emphasized:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when

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[37] G.R. No. 172953, April 30, 2008, 553 SCRA 619.

a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule.

Cogently, *Mallilin v. People* is reiterated in *Catuiran v. People*,[38] *People v. Garcia*,[39] and *People v. Villanueva*,[40] among others.

Here, the Prosecution failed to demonstrate a faithful compliance by the arresting lawmen of the rule on chain of custody. To start with, the fact that the dangerous drugs were inventoried and photographed at the site of arrest upon seizure in the presence of petitioner, a representative of the media, a representative of the Department of Justice (DOJ), and any elected public official, was not shown. As such, the arresting lawmen did not at all comply with the further requirement to have the attending representative of the media, representative of the DOJ, and elected public official sign the inventory and be furnished a copy each of the inventory. Instead, the records show that PO2 Payumo placed the markings of "RRS-1" on the sachet allegedly received from petitioner and "RRS-2" on the two sachets allegedly seized from petitioner's hand already at the police station with only petitioner present. Yet, the Prosecution did not also present any witness to establish that an inventory of the seized articles at least signed by petitioner at that point was prepared.

We clarified in *People v. Sanchez*[41] that in compliance with Section 21 of R.A. No. 9165, *supra*, the physical inventory and photographing of the seized articles should be conducted, *if practicable,* at the place of seizure or confiscation in cases

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[38] G.R. No. 175647, May 8, 2009, 587 SCRA 567.

[39] *Supra,* note 33.

[40] G.R. No. 189844, November 15, 2010, 634 SCRA 743.

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

of warrantless seizure. But that was true only if there were indications that petitioner tried to escape or resisted arrest, which might provide the reason why the arresting team was not able to do the inventory or photographing at petitioner's house; otherwise, the physical inventory and photographing must always be immediately executed at the place of seizure or confiscation.

In *People v. Pringas*,[42] the non-compliance by the buy-bust team with Section 21, *supra*, was held not to be fatal for as long as there was justifiable ground for it, and for as long as the integrity and the evidentiary value of the confiscated or seized articles were properly preserved by the apprehending officer or team. The Court further pronounced therein that such non-compliance would not render an accused's arrest illegal or the items seized or confiscated from him inadmissible, for what was of utmost importance was the preservation of the integrity and the evidentiary value of the seized or confiscated articles, considering that they were to be utilized in the determination of the guilt or innocence of the accused.

However, the omissions noted herein indicated that the State did not establish the identity of the dangerous drugs allegedly seized from petitioner with the same exacting certitude required for a finding of guilt.

To be sure, the buy-bust operation was infected by lapses. Although PO2 Payumo declared that he was the one who had received the sachet of *shabu* ("RRS-1") from petitioner and who had confiscated the two sachets of *shabu* ("RRS-2") from petitioner, all of which he had then sealed, nothing more to support the fact that the evidence thus seized had remained intact was adduced. In fact, the State did not anymore establish to whom the seized articles had been endorsed after PO2 Payumo had placed the markings at the station, and with whose custody or safekeeping the seized articles had remained until their endorsement to P/Insp. Macapagal for the laboratory examination. Presently, we cannot justifiably presume that the seized articles had remained in the possession of PO2 Payumo in view of the

[42] G.R. No. 175928, August 31, 2007, 531 SCRA 828.

testimony of P/Insp. Macapagal to the effect that the party requesting the laboratory examination had been a certain Police Officer Alano,[43] whom the Prosecution did not at all particularly identify or present as its witness. In this regard, Laboratory Report No. D-085-05,[44] the report prepared by P/Insp. Macapagal, also stated that the party requesting the conduct of the laboratory examination was the "OIC-SAID-SOTU, PS-8, Western Police District." Also, the Prosecution did not show to whom the seized articles had been turned over following the conduct of the laboratory examination, and how the seized articles had been kept in a manner that preserved their integrity until their final presentation in court as evidence of the *corpus delicti*. Such lapses of the Prosecution were fatal to its proof of guilt because they demonstrated that the chain of custody did not stay unbroken, thereby raising doubt on the integrity and identity of the dangerous drugs as evidence of the *corpus delicti* of the crimes charged.

We are then not surprised to detect other grounds for skepticism about the evidence of guilt.

Firstly, PO2 Payumo testified that the lady confidential informant had gone to Police Station 8 to report the alleged drug-selling activities of petitioner *for the first time* in the morning of January 20, 2005. That report led to the forming of the buy-bust team,[45] for purposes of which he prepared the pre-operation documents. His veracity was suspect, however, considering that his so-called Pre-Operation/Coordination Sheet appeared to have been prepared on the day before, as its date "January 19, 2005" disclosed.[46] The date of January 19, 2005 also appeared in the Certification of Coordination issued by the Philippine Drug Enforcement Agency in reference to the buy-bust operation against petitioner.[47] Considering that the Prosecution did not explain

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[43] TSN dated August 24, 2005, p. 3.

[44] Records, p. 16.

[45] TSN dated September 7, 2005, pp. 11-12.

[46] Records, p. 20.

[47] *Id.,* p. 22.

the discrepancy, the impression is unavoidable that the buy-bust operation was already set in motion even before the lady informant actually made her report against petitioner. Thereby, his defense of frame-up was bolstered.

Secondly, the Pre-Operation/Coordination Sheet indicated that there were ten members "and three (3) others" that comprised the buy-bust team.[48] Yet, the Joint Affidavit submitted by the members of the buy-bust team was executed and signed by only six officers (excluding even poseur buyer PO2 Payumo himself), namely: PO1 Mijares, PO1 Mark Dave Vicente, PO1 Maurison Ablaza, PO1 Elmer Clemente and PO1 Gil.[49] The Prosecution's failure to explain why only six members of the buy-bust team actually executed and signed the Joint Affidavit might indicate that the incrimination of petitioner through the buy-bust operation was probably not reliable.

And, thirdly, both the Pre-Operation/Coordination Sheet and the Certification of Coordination revealed that the confidential information received involved two suspects of illegal drug trade in Bacood, Sta. Mesa known as *alias* Boy and *alias* Totoy Tinga. PO2 Payumo recalled, however, that the lady confidential informant had tipped the police off only about *alias* Boy. It seems from such selectiveness that PO2 Payumo deliberately omitted the other target and zeroed in only on *alias* Boy (petitioner), which might suggest that PO2 Payumo was not as reliable as a poseur buyer-witness as he presented himself to be.

Conviction must stand on the strength of the Prosecution's evidence, not on the weakness of the defense the accused put up.[50] Evidence proving the guilt of the accused must always be beyond reasonable doubt. If the evidence of guilt falls short of this requirement, the Court will not allow the accused to be deprived of his liberty. His acquittal should come as a matter of course.

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[48] *Supra*, at note 46.

[49] Records, p. 14 (Exhibits "D" and "D-1").

[50] *People v. Obeso*, G.R. No. 152285, October 24, 2003, 414 SCRA 447, 460; *People v. Decillo*, G.R. No. 121408, October 2, 2000, 341 SCRA 591, 598-599.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on September 28, 2007 by the Court of Appeals; and **ACQUITS** accused **ROGELIO S. REYES** of the crimes charged in Criminal Case No. 05-234564 and Criminal Case No. 05-234565.

The Court **DIRECTS** the Director of the Bureau of Corrections in Muntinlupa City to release **ROGELIO S. REYES** from custody unless he is detained thereat for another lawful cause; and to report on his compliance herewith within five days from receipt.

No pronouncements on costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180898. April 18, 2012]

PHILIPPINE CHARTER INSURANCE CORPORATION, *petitioner, vs.* **PETROLEUM DISTRIBUTORS & SERVICES CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; LIQUIDATED DAMAGES; PROPER FOR DELAY IN THE CONSTRUCTION OF BUILDING CONTRACT IN CASE AT BAR.— Respondent Petroleum Distributors and Services Corporation (*PDSC*) x x x entered into a building contract with N.C. Francia Construction Corporation (*FCC*) x x x for the construction of Park N' Fly Building. x x x Paragraph 2.3 of the Building

Contract clearly provides a stipulation for the payment of liquidated damages in case of delay in the construction of the project. Such is in the nature of a penalty clause fixed by the contracting parties as a compensation or substitute for damages in case of breach of the obligation. The contractor is bound to pay the stipulated amount without need for proof of the existence and the measures of damages caused by the breach. Article 2226 of the Civil Code allows the parties to a contract to stipulate on liquidated damages to be paid in case of breach.

2. ID.; SPECIAL CONTRACTS; GUARANTY.— A contract of suretyship is an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee. Although the contract of a surety is secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. x x x [Here] the claim of PDSC against PCIC occurred from the failure of FCC to perform its obligation under the building contract. As mandated by Article 2047 of the Civil Code. x x x A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.

3. ID.; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION.— [I]n order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligation be in every point incompatible with each other. Novation of a contract is never presumed. x x x Undoubtedly, a surety is released from its obligation when there is a material alteration of the principal contract in connection with which the bond is given, such as a change which imposes a new obligation on the promising party, or which takes away some obligation already imposed, or one which changes the legal effect of the original contract and not merely its form. In this case, however, no new contract was concluded and perfected between PDSC and FCC.

APPEARANCES OF COUNSEL

Conrado R. Ayuyao & Associates for petitioner.
Andres Marcelo Padernal Guerrero & Paras for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the July 31, 2007 Decision[1] and the December 28, 2007 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 82417, which affirmed with modification the January 12, 2004 Decision of the Regional Trial Court, Branch 111, Pasay City *(RTC)*.

The Facts:

On January 27, 1999, respondent Petroleum Distributors and Services Corporation *(PDSC)*, through its president, Conrado P. Limcaco, entered into a building contract[3] with N.C. Francia Construction Corporation *(FCC)*, represented by its president and chief executive officer, Emmanuel T. Francia, for the construction of a four-story commercial and parking complex located at MIA Road corner Domestic Road, Pasay City, known as Park 'N Fly Building *(Park 'N Fly*). Under the contract, FCC agreed to undertake the construction of Park 'N Fly for the price of ₱45,522,197.72.

The parties agreed that the construction work would begin on February 1, 1999. Under the Project Evaluation and Review Technique Critical Path Method *(PERT-CPM)*, the project was divided into two stages: Phase 1[4] of the construction work would

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[1] *Rollo*, pp. 28-48. Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justice Mario L. Guariña III and Associate Justice Sixto C. Marella, Jr.

[2] *Id.*, pp. 50-55

[3] Annex "A" of the Complaint, Records, Volume I, pp. 26-43.

[4] Annex "B" of the Complaint, CPM & Bar Chart, Records, Volume I, p. 46.

be finished on May 17, 1999 and Phase 2[5] would begin on May 18, 1999 and finish on October 20, 1999. The project should be turned over by October 21, 1999.[6] It was further stipulated that in the event FCC failed to finish the project within the period specified, liquidated damages equivalent to 1/10 of 1% of the contract price for every day of delay shall accrue in favor of PDSC.[7]

To ensure compliance with its obligation, FCC's individual officers, namely, Natividad Francia, Emmanuel C. Francia, Jr., Anna Sheila C. Francia, San Diego Felipe G. Bermudez, Emmanuel T. Francia, Charlemagne C. Francia, and Ruben G. Caperiña, signed the Undertaking of Surety[8] holding themselves personally liable for the accountabilities of FCC.

Also, FCC procured Performance Bond No. 31915 amounting to ₱6,828,329.00 from petitioner Philippine Charter Insurance Corporation *(PCIC)* to secure full and faithful performance of its obligation under the Building Contract.[9]

The construction of the Park 'N Fly started on February 1, 1999.

Pursuant to the Building Contract, PDSC sourced out construction materials and subcontracted various phases of the work to help obtain the lowest cost of the construction and speed up the work of the project. These resulted in the reduction of the contract price.[10]

During the Phase 1 of the project, PDSC noticed that FCC was sixteen (16) days behind schedule. In a Letter[11] dated March 25, 1999, it reminded FCC to catch up with the schedule of the

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[5] *Id.* at 47-49.

[6] *Id.* at 54.

[7] Article 2.3 of the Building Contract, Annex "A" of the Complaint, Records, Volume I, p. 28.

[8] Annex "C" of the Complaint, Records, Volume I, p. 60.

[9] Annex "B" of the Complaint, Records, Volume III, pp. 1173-1174.

[10] Letter dated July 30, 1999, Exhibit "S", Records, Volume III, p. 1183.

[11] Records, Volume III, p. 1177.

projected work path, or it would impose the penalty of 1/10 of the 1% of the contract price. The problem, however, was not addressed, as the delay increased to 30 days[12] and ballooned to 60 days.[13]

Consequently, on September 10, 1999, FCC executed a deed of assignment,[14] assigning a portion of its receivables from Caltex Philippines, Inc. *(Caltex)*, and a chattel mortgage,[15] conveying some of its construction equipment to PDSC as additional security for the faithful compliance with its obligation.

On even date, PDSC and FCC likewise executed a memorandum of agreement *(MOA)*,[16] wherein the parties agreed to revise the work schedule of the project. As a consequence, Performance Bond No. 31915 was extended up to March 2, 2000.[17]

For failure of FCC to accomplish the project within the agreed completion period, PDSC, in a letter[18] dated December 3, 1999, informed FCC that it was terminating their contract based on Article 12, Paragraph 12.1 of the Building Contract. Subsequently, PDSC sent demand letters[19] to FCC and its officers for the payment of liquidated damages amounting to ₱9,149,962.02 for the delay. In the same manner, PDSC wrote PCIC asking for remuneration pursuant to Performance Bond No. 31915.[20]

Despite notice, PDSC did not receive any reply from either FCC or PCIC, constraining it to file a complaint[21] for damages,

[12] Exhibit "Q", Records, Volume III, p. 1178.

[13] Exhibit "R", Records, Volume III, p. 1181.

[14] Exhibit "U", Records, Volume III, pp. 1186-1187.

[15] Annex "E" of the Complaint, Records, Volume I, pp. 63-66.

[16] Annex "D" of the Complaint, Records, Volume I, pp. 61-62.

[17] Exhibit "N-1", Records, Volume III, p. 1175.

[18] Annex "F", Records, Volume I, pp. 70-71.

[19] Annexes "G" to "M", Records, Volume I, pp. 72-85.

[20] Annex "D", Records, Volume II, p. 682.

[21] Records, Volume I, pp. 2-25.

recovery of possession of personal property and/or foreclosure of mortgage with prayer for the issuance of a writ of replevin and writ of attachment, against FCC and its officers before the RTC. PDSC later filed a supplemental complaint[22] impleading PCIC, claiming coverage under Performance Bond No. 31915 in the amount of ₱6,828,329.66.

In its Amended Answer with affirmative defense and counterclaim,[23] FCC admitted that it entered into a contract with PDSC for the construction of the Park 'N Fly building. It, however, asserted that due to outsourcing of different materials and subcontracting of various phases of works made by PDSC, the contract price was invariably reduced to ₱19,809,822.12.

FCC denied any liability to PDSC claiming that any such claim by the latter had been waived, abandoned or otherwise extinguished by the execution of the September 10, 1999 MOA. FCC claimed that in the said MOA, PDSC assumed all the obligations originally reposed upon it. FCC further explained that the PERT-CPM agreed upon by the parties covering the first phase of the work project was severely affected when PDSC deleted several scopes of work and undertook to perform the same. In fact, the PERT-CPM was evaluated and it was concluded that the delay was attributable to both of them. FCC added that after Phase I of the project, it sent a progress billing in the amount of ₱939,165.00 but PDSC approved the amount of ₱639,165.00 only after deducting the cost of the attributable delay with the agreement that from then on, PDSC should shoulder all expenses in the construction of the building until completion; that FCC would provide the workers on the condition that they would be paid by PDSC; and that it would allow PDSC free use of the construction equipments that were in the project site.

For its part, PCIC averred that as a surety, it was not liable as a principal obligor; that its liability under the bond was conditional and subsidiary and that it could be made liable only

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[22] Records, Volume II, pp. 654-659.

[23] Records, Volume I, pp. 290-315.

upon FCC's default of its obligation in the Building Contract up to the extent of the terms and conditions of the bond. PCIC also alleged that its obligation under the performance bond was terminated when it expired on October 15, 1999 and the extension of the performance bond until March 2, 2000 was not binding as it was made without its knowledge and consent.

PCIC added that PDSC's claim against it had been waived, abandoned or extinguished by the September 10, 1999 MOA. It also argued that its obligation was indeed extinguished when PDSC terminated the contract on December 3, 1999 and took over the construction and it failed to file its claim within ten (10) days from the expiry date or from the alleged default of FCC.[24]

Nonetheless, in the event that PCIC would be made liable, its liability should be in proportion to the liabilities of the other sureties.

On January 12, 2004, the RTC rendered its Decision[25] in favor of PDSC. The RTC found FCC guilty of delay when it failed to finish and turn over the project on October 15, 1999. It pronounced FCC and PCIC jointly and severally liable and ordered them to pay PDSC the amount of ₱9,000,000.00 as damages and ₱50,000.00 as attorney's fees plus interest.

FCC and PCIC filed their respective notice of appeal[26] with the RTC. On February 12, 2004, the RTC issued its Order[27] giving due course to the notice of appeal.

On July 31, 2007, the CA modified the RTC's decision.[28] The CA agreed that FCC incurred delay in the construction of the project. It, however, found that the computation of the liquidated damages should be based on the reduced contract price of ₱19,809,822.12. The dispositive portion reads:

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[24] Answer to Supplemental Complaint, Records, Volume II, pp. 761-765.

[25] Records, Volume IV, pp. 1547-1558.

[26] *Id.* at 1575-1576 & 1584-1585.

[27] *Id.* at 1586.

[28] CA *Rollo*, pp. 275-293.

WHEREFORE, the Decision dated 12 January 2004 of the Regional Trial Court of Pasay City, Branch 111 is AFFIRMED with MODIFICATION in that appellants N.C. Francia Construction Corporation, Natividad Francia, Emmanuel Francia, Jr., Anna Sheila Francia San Diego, Felipe Bermudez, Emmanuel Francia, Charlemagne Francia, Ruben Caperiña, and Philippine Charter Insurance Corporation are hereby held solidarily liable to pay appellee Petroleum Distributors & Services Corporation (1) liquidated damages in the sum of ₱3,882,725.13, which shall earn legal interest at the rate of 6% per annum from 10 January 2000 until finality of this judgment; (2) attorney's fees amounting to ₱50,000.00; and (3) cost of suit. Pursuant to Performance Bond No. 31915, the liability of appellant Philippine Charter Insurance Corporation should not exceed ₱6,828,329.66.

Appellants N.C. Francia Construction Corporation, Emmanuel Francia and Natividad Francia are adjudged liable to pay appellant Philippine Charter Insurance Corporation for the amount the latter may have paid under Performance Bond No. 31915.

SO ORDERED.[29]

FCC and PCIC filed their separate motions for reconsideration[30] but the CA denied them in its December 28, 2007 Resolution.[31]

Hence, this petition.

It is well to note that only PCIC appealed the CA's decision. It became final and executory with regard to FCC and the other parties in the case. Hence, the Court shall limit its discussion to the liability of PCIC.

In its Memorandum,[32] PCIC anchored its petition on the following issues:

1. Whether or not the Court of Appeals, in adjudging Petitioner liable for liquidated damages, expanded liability under

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[29] *Rollo*, p. 48.

[30] CA *Rollo*, pp. 297-303 & 314-319.

[31] *Id.* at 393-398.

[32] Records, pp. 172-191.

Performance Bond No. 31915 which on its face answers only for actual and compensatory damages, not liquidated damages.

Assuming *arguendo* liability for liquidated damages under the performance bond, whether or not the Court of Appeals erred in not declaring that the award of liquidated damages is iniquitous and unconscionable and in not applying the provisions of Article 2227, Civil Code, and Palmares *v.* Court of Appeals, 288 SCRA 422.

2. Whether or not the Memorandum of Agreement dated Sept. 10, 1999 entered into by respondent and Francia Construction, confirmed in a letter dated Sept. 20, 1999, — without Petitioner's knowledge or consent—, the effect that all costs, expenses, payments and obligations shall be deemed paid, performed and fully settled as of Sept. 10, 1999, discharged Petitioner from liability under the performance bond under Article 2079, Civil Code.

3. Whether or not the Court of Appeals, having made the finding of fact that the sums of Php2,793,000.00 and Php662,836.50 should be deducted from Php3,882,725.13, erred in not deducting the amounts in the dispositive portion of the decision.[33]

In sum, the issues before the Court are (1) whether or not PCIC is liable for liquidated damages under the performance bond; (2) whether or not the September 10, 1999 MOA executed by PDSC and FCC extinguished PCIC's liability under the performance bond; and (3) whether or not the amounts of ₱2,793,000.00 and ₱662,836.50 are deductible from the liquidated damages awarded by the CA.

PCIC argues that in case of a breach of contract, the performance bond is answerable only for actual or compensatory, not for liquidated damages. The terms of the bond are clear that the liability of the surety is determined by the contract of suretyship and cannot be extended by implication beyond the terms of the contract. Nonetheless, even assuming that it is liable under the performance bond, the liability should be based on equity. It claims that it is unlawful and iniquitous to hold FCC

[33] *Id.* at 180.

responsible for the delay of the subcontractor commissioned by PDSC.

PCIC adds that the act of PDSC of subcontracting the various stages of the project resulted in a revision of work schedule and extension of the completion date that ultimately released both FCC and PCIC of whatever claims PDSC may have against them. PCIC is of the impression that since the subcontracting made by PDSC was made without its consent and knowledge, its liability under the performance bond should be extinguished.

PCIC also pointed out that the receivable in the amount of ₱2,793,000.00 acquired by PDSC from Caltex and the proceeds from the auction sale in the sum of ₱662,836.50 should be deducted from the award of ₱3,882,725.13.

The Court finds no merit in the petition.

The Building Contract entered into by PDSC and FCC provides that:

Art. 2 ESSENCE OF THE CONTRACT

2.1 It is understood that time, quality of work in accordance with the OWNER's requirements, and reduced construction costs are the essence of this Contract.

2.2 The CONTRACTOR shall commence the construction for the first two (2) levels not later than five (5) days immediately after the date of execution of this Contract and shall regularly proceed and complete the construction within Two Hundred Fifty-Nine (259) calendar days reckoned from the date of signing of this Contract or not later than October 15, 1999, whichever is earlier. To ensure completion of the work within the time given herein, construction work shall be conducted at least twenty hours each day with at least two (2) work shift for every day actually worked.

2.3 In the event that the construction is not completed within the aforesaid period of time, the OWNER is entitled and shall have the right to deduct from any amount that may be due to the CONTRACTOR the sum of one-tenth (1/10) of one percent (1%) of the contract price for every day of delay in whatever stage of the project as liquidated

damages, and not by way of penalty, and without prejudice to such other remedies as the OWNER may, in its discretion, employ including the termination of this Contract, or replacement of the CONTRACTOR.

2.4 Furthermore, the CONTRACTOR agrees not to request any extension of time due to any delay in the procurement of materials needed in the construction other than due to circumstances of "*Force Majeure*." *Force Majeure* is hereby defined as any war, civil commotion and disturbance, acts of God or any other cause beyond the CONTRACTOR's control and without any contributing fault on the part of the CONTRACTOR.

2.5 Contractor shall arrange, schedule and carry on the work so as not to interfere with the delivery and erection of the work of others. To facilitate the erection of such other work, the CONTRACTOR shall cease or resume work at any point or stage of the Project, when so directed by the OWNER or his duly authorized representative. [Emphasis supplied]

Paragraph 2.3 of the Building Contract clearly provides a stipulation for the payment of liquidated damages in case of delay in the construction of the project. Such is in the nature of a penalty clause fixed by the contracting parties as a compensation or substitute for damages in case of breach of the obligation.[34] The contractor is bound to pay the stipulated amount without need for proof of the existence and the measures of damages caused by the breach.[35]

Article 2226 of the Civil Code allows the parties to a contract to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to insure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the

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[34] *Comments and Jurisprudence on Obligations and Contracts*, Desiderio P. Jurado, Twelfth Revised Edition 2010, p. 219.

[35] *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, March 1, 2007, G.R. No. 153874, 517 SCRA 180, 189.

threat of greater responsibility in the event of breach.[36] As a general rule, contracts constitute the law between the parties, and they are bound by its stipulations.[37] For as long as they are not contrary to law, morals, good customs, public order, or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient.[38]

In the case at bench, the performance bond issued by PCIC specifically provides that:

KNOW ALL MEN BY THESE PRESENTS:

That we, N.C. FRANCIA CONSTRUCTION CORPORATION of Merryland Corporate Offices, 3250 Gracia St., cor. Edsa, Brgy. Pinagkaisahan, Makati City, as Principal and PHILIPPINE CHARTER INSURANCE CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the Philippines, as Surety, are held and firmly bound unto PETROLEUM DISTRIBUTORS & SERVICES CORPORATION, as obligee in the sum of PESOS SIX MILLION EIGHT HUNDRED TWENTY EIGHT THOUSAND THREE HUNDRED TWENTY NINE & 66/100 ONLY (₱6,828,329.66) Philippine Currency for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION ARE AS FOLLOWS:

WHEREAS, the above bounden principal, on the ____ day of _____ 19___ entered into an _____ with _____, to fully and faithfully guarantee that the above-named Principal shall furnish, deliver, place and complete any and all necessary materials, labor, plant, tools appliances and

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[36] *Filinvest Land, Inc. v. Court of Appeals*, 507 Phil. 259, 267 (2005).

[37] *R & M General Merchandise, Inc. v. Court of Appeals*, 419 Phil. 131, 142 (2001).

[38] Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (1255a)

equipment, supplies, utilities transportation, superintendence, supervision and all other facilities in connection with the construction of a 4-storey commercial/parking complex situated at MIA Road cor. Domestic Road, Pasay City as per attached Building Contract dated January 27, 1999.

Provided, however, that the liability of the Surety Company under this bond shall in no case exceed the face value hereof.

WHEREAS, said oblige requires said principal to give a good and sufficient bond in the above stated sum to secure the full and faithful performance on its part of said undertaking.

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms conditions and agreements stipulated in said undertakings then this obligation shall be null and void; otherwise it shall remain in full force and effect. [Emphasis Supplied]

By the language of the performance bond issued by PCIC, it guaranteed the full and faithful compliance by FCC of its obligations in the construction of the Park 'N Fly. In fact, the primary purpose for the acquisition of the performance bond was to guarantee to PDSC that the project would proceed in accordance with the terms and conditions of the contract and to ensure the payment of a sum of money in case the contractor would fail in the full performance of the contract.[39] This guaranty made by PCIC gave PDSC the right to proceed against it (PCIC) following FCC's non-compliance with its obligation.

A contract of suretyship is an agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee.[40] Although the contract of a surety is secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over

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[39] *http://*www. Businessdictionary.com/definition/performance-bond.html; March 27, 2012.

[40] *Stronghold Insurance Company, Incorporated v. Tokyu Construction Company, Ltd.*, G.R. Nos. 158820-21, June 5, 2009, 588 SCRA 410, 421.

the obligations nor does it receive any benefit therefrom.[41] This was explained in the case of *Stronghold Insurance Company, Inc. v. Republic-Asahi Glass Corporation*,[42] where it was written:

> The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. Nevertheless, although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promisee of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the principal.

Corollary, when PDSC communicated to FCC that it was terminating the contract, PCIC's liability, as surety, arose. The claim of PDSC against PCIC occurred from the failure of FCC to perform its obligation under the building contract. As mandated by Article 2047 of the Civil Code, to wit:

> Article 2047. By guaranty, a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.
>
> If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case, the contract is called a suretyship.

Thus, suretyship arises upon the solidary binding of a person deemed the surety with the principal debtor for the purpose of fulfilling an obligation.[43] A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.[44] Therefore, as surety, PCIC becomes liable for the debt or duty of FCC although it possesses

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[41] *Asset Builders Corporation v. Stronghold Insurance Company, Incorporated*, G.R. No. 187116, October 18, 2010, 633 SCRA 370, 379.

[42] G.R. No. 147561, 492 SCRA 179, 190, June 6, 2006.

[43] *Prudential Guarantee and Assurance, Inc. v. Equinox Land Corporation*, G.R. Nos. 152505-06, September 13, 2007, 533 SCRA 257, 268.

[44] *Security Pacific Assurance Corporation v. Hon. Tria-Infante*, 505 Phil. 609, 620, (2005).

no direct or personal interest over the obligations of the latter, nor does it receive any benefit therefrom.[45]

The Court also found untenable the contention of PCIC that the principal contract was novated when PDSC and FCC executed the September 10, 1999 MOA, without informing the surety, which, in effect, extinguished its obligation.

A surety agreement has two types of relationship: (1) the principal relationship between the obligee and the obligor; and (2) the accessory surety relationship between the principal and the surety. The obligee accepts the surety's solidary undertaking to pay if the obligor does not pay. Such acceptance, however, does not change in any material way the obligee's relationship with the principal obligor. Neither does it make the surety an active party in the principal obligor-obligee relationship. It follows, therefore, that the acceptance does not give the surety the right to intervene in the principal contract. The surety's role arises only upon the obligor's default, at which time, it can be directly held liable by the obligee for payment as a solidary obligor.[46]

Furthermore, in order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligation be in every point incompatible with each other.[47] Novation of a contract is never presumed. In the absence of an express agreement, novation takes place only when the old and the new obligations are incompatible on every point.[48]

Undoubtedly, a surety is released from its obligation when there is a material alteration of the principal contract in connection with which the bond is given, such as a change which imposes

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[45] *Id.*

[46] *Asset Builders Corporation v. Stronghold Insurance Company, Incorporated, supra* note 41 at 380.

[47] Article 1292 Civil Code.

[48] *Security Bank and Trust Company, Inc. v. Cuenca*, 396 Phil. 108, 122, (2000).

a new obligation on the promising party, or which takes away some obligation already imposed, or one which changes the legal effect of the original contract and not merely its form.[49] In this case, however, no new contract was concluded and perfected between PDSC and FCC. A reading of the September 10, 1999 MOA reveals that only the revision of the work schedule originally agreed upon was the subject thereof. The parties saw the need to adjust the work schedule because of the various subcontracting made by PDSC. In fact, it was specifically stated in the MOA that "*all other terms and conditions of the Building Contract of 27 January 1999 not inconsistent herewith shall remain in full force and effect.*"[50] There was no new contract/agreement which could be considered to have substituted the Building Contract. As correctly ruled by the CA, thus:

> At first blush, it would seem that the parties agreed on a revised timetable for the construction of Park 'N Fly. But then, nowhere in the voluminous records of this case could We find the Annex "A" mentioned in the above-quoted agreement which could have shed light to the question of whether a new period was indeed fixed by the parties. The testimony of appellant Emmanuel Francia, Sr., President and Chief Executive Officer of appellant N.C. Francia, candidly disclosed what truly happened to Annex "A", as he admitted that no new PERT/CPM was actually attached to the Memorandum of Agreement.
>
> Accordingly, We find no compelling reason to declare that novation ensued under the prevailing circumstances. The execution of the Building Contract dated 27 January 1999 does not constitute a novation of the Memorandum of Agreement dated 10 September 1999. There lies no incompatibility between the two contracts as their principal object and conditions remained the same. While there is really no hard and fast rule to determine what might constitute to be a sufficient change that can bring about novation, the touchtone for contrariety,

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[49] *Stronghold Insurance Company, Incorporated v. Tokyu Construction Company, Ltd.*, G.R. Nos. 158820-21, June 5, 1990, 588 SCRA 410, 423. [*Stronghold Insurance Company, Incorporated v. Tokyu Construction Company, Ltd.*, *supra* note 38 at 423.]

[50] Paragraph 5 of the Memorandum of Agreement dated September 10, 1999, Annex "D", Records, Volume I, p. 61.

however, would be an irreconcilable incompatibility between the old and the new obligations.[51]

It must likewise be emphasized that pursuant to the September 10, 1999 MOA, PCIC extended the coverage of the performance bond until March 2, 2000.[52]

Finally, as pointed out by PCIC, the receivable in the amount of ₱2,793,000.00 acquired by PDSC from Caltex and the proceeds from the auction sale in the sum of ₱662,836.50 should be deducted from the award of ₱3,882,725.13. There is no quibble on this point. The ruling of the CA on the matter is very clear. It reads:

> With these points firmly in mind, We proceed to the next question raised by appellants — whether the value of the securities given as well as the proceeds of the sale of chattels should be deducted from the claim of liquidated damages.
>
> We answer in the affirmative.
>
> There is no quibble that appellant N.C. Francia assigned a portion of its receivables from Caltex Philippines, Inc. in the amount of ₱2,793,000.00 pursuant to the Deed of Assignment dated 10 September 1999. Upon transfer of said receivables, appellee Petroleum Distributors automatically stepped into the shoes of its transferor. It is in keeping with the demands of justice and equity that the amount of these receivables be deducted from the claim for liquidated damages.
>
> So too, vehicles and equipment owned by appellant N.C. Francia were sold at public auction at ₱1,070,000.00. After deducting storage fees, the amount of ₱662,836.50 was deposited before the court *a quo*. The latter amount accrues in favor of appellee Petroleum Distributors as partial payment of its claim for liquidated damages.

WHEREFORE, the petition is **DENIED.** The July 31, 2007 Decision and December 28, 2007 Resolution of the Court of Appeals *(CA)* in CA-G.R. CV No. 82417 are **AFFIRMED**. The receivable in the amount of ₱2,793,000.00 acquired by PDSC

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

[52] Exhibit "N-1", Records, Volume III, p. 1175.

from Caltex and the proceeds from the auction sale in the sum of ₱662,836.50 should be deducted from the award of ₱3,882,725.13.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182331. April 18, 2012]

MA. CORINA C. JIAO, RODEN B. LOPEZ, FRANCISCO L. DIMAYUGA, NORMA G. DEL VALLE, MACARIO G. MARASIGAN, LANIE MARIA B. PASANA, NILO M. DE CASTRO, ANGELITO M. BALITAAN, CESAR L. RICO, CRISPIN S. CONSTANTINO, GLENDA S. CORPUZ, LEONILA C. TUAZON, ALFREDO S. DAZA, LORNA R. CRUZ, MARIA M. AMBOJIA, NOEMI M. JAPOR, ANGELITO V. DANAN, GLORIA M. SALAZAR, JOHN V. VIGILIA, ROEL D. ROBINO, WILLIAM L. ENDAYA, TERESITA M. ROMAN, ARTURO M. SABALLE, AUGUSTO N. RIGOR, ALLAN O. OLANO, RODOLFO T. CABATU, NICANOR R. BRAVO, EDUARDO M. ALCANTARA, FELIPE F. OCAMPO, ELPIDIO C. ADALIA, RENATO M. CRUZ, JOSE C. PEREZ, JR., FERNANDO V. MAPILE, ROMEO R. PATRICIO, FERNANDO N. RONGAVILLA, FERMIN A. COBRADOR, ANTONIO O. BOSTRE, RALPH M. MICHAELSON, CRISTINA G. MANIO, EDIGARDO M. BAUTISTA, CYNTHIA C. SANIEL, PRISCILLA F. DAVID, MACARIO V. ARNEDO, NORLITO V. HERNANDEZ, ALFREDO G. BUENAVENTURA, JOSE R. CASTRONUEVO,

OLDERICO M. AGORILLA, CESAR M. PEREZ, RONALD M. GENER, EMMANUEL G. QUILAO, BENJAMIN C. CUBA, EDGARDO S. MEDRANO, GODOFREDO D. PATENA, VIRGILIO G. ILAGAN, MYRNA C. LEGASPI, ELIZABETH P. REYES, ANTONIO A. TALON, ROMEO P. CRUZ, ELEANOR T. TAN, FERDINAND G. PINAUIN, MA. OLIVETTE A. NAKPIL, GILBERT NOVIEM A. COLUMNA, ARTHUR L. ABELLA, BENJAMIN L. ENRIQUEZ, ANTONINO P. QUEVEDO, ADFEL GEORGE MONTEMAYOR, RAMON S. VELASCO, WILFREDO M. HALILI, ANTONIO M. LUMANGLAS, ANDREW M. MAGNO, SONNY S. ESTANISLAO, RODOLFO S. ALABASTRO, MICAH B. MARALIT, LINA M. QUEBRAL, REBECCA R. NARCISO, RONILO T. TOLENTINO, RUPERTO B. LETAN, JR., MEDARDO A. VASQUEZ, VALENTINA A. SANTIAGO, RODELO S. DIAZ, JOHN O. CORDIAL, EDWIN J. ANDAYA, RODRIGO M. MOJADO, GERMAN L. ESTRADA, BENJAMIN B. DADUYA, MARLYN A. MUNOZ, MARIVIC M. DIONISIO, CESAR M. FLORES, JACINTO T. GUINTO, JR., BELEN C. SALAVERRIA, EVELYN M. ANZURES, GLORIA D. ABELLA, LILIAN V. BUNUAN, MA. CONCEPCION G. UBIADAS, ROLANDO I. CAMPOSANO, MONICO R. GOREMBALEM, ELADIO M. VICENCIO, AMORSOLO B. BELTRAN, LEOPOLDO B. JUAREZ, NEPHTALI V. SALAZAR, SANGGUNI P. ROQUE, ROY O. SAPANGHILA, MELVIN A. DEVEZA, CARMENCITA D. ABELLA, PRIMITIVO S. AGUAS, JOSE MA. ANTONIO I. BUGAY, HILARIO P. DE GUZMAN, WILLIAM C. VENTIGAN, NOEL L. AMA, ROMEO G. USON, RAOUL E. VELASCO, FLORENCIO B. PAGSALIGAN, RUBEN C. CRUZ, ANGELA D. CUSTODIO, NOEL C. CABEROY, GUILLERMO V. GAVINO, JR., GAUDENCIO P. BESA, AIDA M. PADILLA, ROWENA M. BAUYON, HENRY C. EPISCOPE, ALVIN T. PATRIARCA, EUSTAQUIO C. AQUINO, JR., VALENTINO T.

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SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; MOTION FOR RECONSIDERATION OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) DECISION REQUIRED BEFORE FILING AN APPEAL TO THE COURT OF APPEALS (CA).— [T]he procedural issue raised by the petitioners: whether the CA erred in dismissing their

petition due to their failure to file a motion for reconsideration of the NLRC's adverse resolution. x x x The petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, the petitioners must show a concrete, compelling, and valid reason for doing so.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; SEPARATION PAY; PROPER AS LONG AS AMOUNT REQUIRED UNDER THE LABOR CODE IS COMPLIED WITH.— The petitioners' receipt of separation pay equivalent to their one and a half months salary for every year of service as provided in the Special Separation Program (SSP) and the New Gratuity Plan more than sufficiently complies with the Labor Code, which only requires the payment of separation pay at the rate of one month salary for every year of service. x x x For as long as the minimum requirements of the Labor Code are met, it is within the management prerogatives of employers to come up with separation packages that will be given in lieu of what is provided under the Labor Code.

3. ID.; ID.; ID.; QUITCLAIMS; VALID IN THE ABSENCE OF ANY VICE IN CONSENT THEREOF; CASE AT BAR. — In the absence of proof that any of the vices of consent are present, the petitioners' acceptance letters and quitclaims are valid; thus, barring them from claiming additional separation pay. x x x In this case, there is no allegation of fraud or deceit employed by the respondents in making the petitioners sign the acceptance letters and quitclaims. Neither was there any claim of force or duress exerted upon the petitioners to compel them to sign the acceptance letters and quitclaims. Likewise, the consideration is credible and reasonable since the petitioners are getting more than the amount required under the law. Thus, the acceptance letters and quitclaims executed by the petitioners are valid and binding.

4. MERCANTILE LAW; CORPORATION LAW; CORPORATION BOUGHT BY ANOTHER CORPORATION; PURCHASING CORPORATION IN CASE AT BAR NOT LIABLE FOR SEPARATION PAY OF SELLING CORPORATION'S EMPLOYEES. — Metrobank cannot be held liable for the

> petitioners' claims. x x x Under the Deed of Assignments of Assets and Assumption of Liabilities between Globalbank and Metrobank, the latter accepted the former's assets in exchange for assuming its liabilities. x x x [However], the liabilities that Metrobank assumed can be characterized as those pertaining to Globalbank's banking operations. They do not include Globalbank's liabilities to pay separation pay to its former employees. This must be so because it is understood that the same liabilities ended when the petitioners were paid the amounts embodied in their respective acceptance letters and quitclaims. Hence, this obligation could not have been passed on to Metrobank.

APPEARANCES OF COUNSEL

Romeo C. De la Cruz & Associates for petitioners.
Malaya Sanchez Francisco Añover and Añover for respondents.
Laguesma Magsalin Consulta & Gastardo Law Offices for Metropolitan Bank Trust Company.

D E C I S I O N

REYES, *J.*:

Nature of the Case

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court wherein the petitioners assail the Resolutions dated November 7, 2007[1] and March 26, 2008,[2] respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 101065.

Antecedent Facts

The petitioners were regular employees of the Philippine Banking Corporation (Philbank), each with at least ten years

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[1] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Remedios A. Salazar-Fernando and Enrico A. Lanzanas, concurring; *rollo*, pp. 68-69.

[2] *Id.* at 71-73.

of service in the company.[3] Pursuant to its Memorandum dated August 28, 1970, Philbank established a Gratuity Pay Plan (Old Plan) for its employees. The Old Plan provided:

> 1. Any employee who has reached the compulsory retirement age of 60 years, or who wishes to retire or resign prior to the attainment of such age or who is separated from service by reason of death, sickness or other causes beyond his/her control shall for himself or thru his/her heirs file with the personnel office an application for the payment of benefits under the plan[.][4]

Section 1 laid down the benefits to which the employee would be entitled, to wit:

> **Section 1**
>
> **Benefits**
>
> 1.1 The gratuity pay of an employee shall be an amount equivalent to one-month salary for every year of credited service, computed on the basis of last salary received.
>
> 1.2 An employee with credited service of 10 years or more, shall be entitled to and paid the full amount of the gratuity pay, but in no case shall the gratuity pay exceed the equivalent of 24 months, or two years, salary.[5]

On March 8, 1991, Philbank implemented a new Gratuity Pay Plan (New Gratuity Plan).[6] In particular, the New Gratuity Plan stated thus:

> x x x An Employee who is involuntarily separated from the service by reason of death, sickness or physical disability, or for any authorized cause under the law such as redundancy, or other causes not due to his own fault, misconduct or voluntary resignation, shall be entitled to either one hundred percent (100%) of his accrued gratuity benefit or the actual benefit due him under the Plan, whichever is greater.[7]

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[3] *Id.* at 402.

[4] *Id.* at 271.

[5] *Id.* at 272.

[6] *Id.* at 17.

[7] *Id.* at 279.

In February 2000, Philbank merged with Global Business Bank, Inc. (Globalbank), with the former as the surviving corporation and the latter as the absorbed corporation, but the bank operated under the name Global Business Bank, Inc. As a result of the merger, complainants' respective positions became redundant. A Special Separation Program (SSP) was implemented and the petitioners were granted a separation package equivalent to one and a half month's pay (or 150% of one month's salary) for every year of service based on their current salary. Before the petitioners could avail of this program, they were required to sign two documents, namely, an Acceptance Letter and a Release, Waiver, Quitclaim (quitclaim).[8]

As their positions were included in the redundancy declaration, the petitioners availed of the SSP, signed acceptance letters and executed quitclaims in Globalbank's favor[9] in consideration of their receipt of separation pay equivalent to 150% of their monthly salaries for every year of service.

In August 2002, respondent Metropolitan Bank and Trust Company (Metrobank) acquired the assets and liabilities of Globalbank through a Deed of Assignment of Assets and Assumption of Liabilities.[10]

Subsequently, the petitioners filed separate complaints for non-payment of separation pay with prayer for damages and attorney's fees before the National Labor Relations Commission (NLRC).[11]

The petitioners asserted that, under the Old Plan, they were entitled to an additional 50% of their gratuity pay on top of 150% of one month's salary for every year of service they had already received. They insisted that 100% of the 150% rightfully belongs to them as their separation pay. Thus, the remaining 50% was only half of the gratuity pay that they are entitled to under the Old Plan. They argued that even if the New Gratuity

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[8] *Id.* at 402.

[9] *Id.* at 23, 24, 308 and 309.

[10] *Id.* at 324-327.

[11] *Id.* at 26.

Plan were to be followed, the computation would be the same, since Section 10.1 of the New Gratuity Plan provided that:

> 10.1 Employees who have attained a regular status as of March 8, 1991 who are covered by the Old Gratuity Plan and are now covered by this Plan shall be entitled to which is the higher benefit between the two Plans. Double recovery from both plans is not allowed.[12]

The petitioners further argued that the quitclaims they signed should not bar them from claiming their full entitlement under the law. They also claimed that they were defrauded into signing the same without full knowledge of its legal implications.[13]

On the other hand, Globalbank asserted that the SSP should prevail and the petitioners were no longer entitled to the additional 50% gratuity pay which was already paid, the same having been included in the computation of their separation pay. It maintained further that the waivers executed by the petitioners should be held binding, since these were executed in good faith and with the latter's full knowledge and understanding.[14]

Meanwhile, Metrobank denied any liability, citing the absence of an employment relationship with the petitioners. It argued that its acquisition of the assets and liabilities of Globalbank did not include the latter's obligation to its employees. Moreover, Metrobank pointed out that the petitioners' employment with Globalbank had already been severed before it took over the latter's banking operations.[15]

The Labor Arbiter's Decision

On August 30, 2004, the Labor Arbiter (LA) promulgated a decision[16] dismissing the complaint.[17] The LA ruled that the

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[12] *Id.* at 280.

[13] *Id.* at 403.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 363-396.

[17] *Id.* at 396.

petitioners were not entitled to the additional 50% in gratuity pay that they were asking for.[18]

The LA held that the 150% rate used by Globalbank could legally cover both the separation pay and the gratuity pay of complainants. The LA upheld the right of the employer to enact a new gratuity plan after finding that its enactment was not attended by bad faith or any design to defraud complainants. Thus, the New Gratuity Plan must be deemed to have superseded the Old Plan.[19] The LA also ruled that the minimum amount due to the petitioners under the New Gratuity Plan, in relation to Article 283 of the Labor Code was one month's pay for every year of service. Thus, anything over that amount was discretionary.

As to the validity of the quitclaim, the LA held that the issue has been rendered moot. Nonetheless, the LA upheld the petitioners' undertaking under their respective quitclaims, considering the amount involved is not unconscionable, and that their supposed lack of complete understanding did not mean that they were coerced or deceived into executing the same.[20]

The LA also absolved Metrobank from liability. The LA found that the petitioners had already been separated from Globalbank when Metrobank took over the former's banking operations. Moreover, the liabilities that Metrobank assumed were limited to those arising from banking operations and excluded those pertaining to Globalbank's employees or to claims of previous employees.[21]

The NLRC's Decision

Aggrieved, the petitioners appealed to the NLRC. In a decision[22] dated August 15, 2007, the NLRC dismissed the appeal and affirmed the LA's decision.

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[18] *Id.* at 392.

[19] *Id.* at 393.

[20] *Id.* at 394.

[21] *Id.* at 395.

[22] *Id.* at 398-406.

The NLRC held that the petitioners did not acquire a vested right to Philbank's gratuity plans since, at the outset, it was made clear that these plans would not perpetuate into eternity. It also noted that, under the SSP, the employee to be separated due to redundancy would be receiving more than the rate in the old plan and higher than the legal rate for the separated employees.

The petitioners elevated the case to the CA *via* a Petition for *Certiorari* under Rule 65.

The CA's Decision

In the first of the assailed CA resolutions, the CA ruled that the petition was dismissible outright for failure of the petitioners to file a motion for reconsideration of the decision under review before resorting to *certiorari*. Further, the CA held that the case did not fall under any of the recognized exceptions to the rule on motions for reconsideration.[23]

The petitioners then moved for the reconsideration, which was denied in the second assailed Resolution, noting the absence of an explanation for their failure to file a motion for reconsideration of the assailed NLRC decision in their petition for *certiorari*.[24]

The Issues

The petitioners are now before this Court raising the following errors supposedly committed by the CA:

1. In dismissing the petition for failure to file a motion for reconsideration before filing a petition under Rule 65 as it blatantly ignored the application of the recent jurisprudence on labor law.

2. In dismissing the petition without taking into consideration the meritorious grounds laid down by [the] petitioners by categorically outlining the grave abuse of discretion amounting to lack or excess of jurisdiction committed by [the] NLRC in affirming the decision of the Labor Arbiter, to wit:

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[23] *Supra* note 1.

[24] *Supra* note 2.

2.a. In holding that [the] petitioners "did not acquire a vested right under the PHILBANK gratuity plan."

2.b. In holding that "the bank had abandoned the old plan" (referring to the old Gratuity Pay Plan) and replaced it with a Special Separation Program under which [the] petitioners "would be receiving more than the rate in the old plan and higher than the legal rate for redundant employees."

2.c. In holding that the benefits under the Special Separation Program legally replaced not only the gratuity pay plan to which [the] petitioners were entitled under the old and new Gratuity Pay Plans but also all other benefits including separation pay under the law.

2.d. In not holding that when [the] petitioners were separated due to redundancy they were entitled per provision of Article 283 of the Labor Code to separation pay equivalent to one month pay for every year of service.

2.e. In holding that [the] petitioners are bound under the Acceptance x x x and Release, Waiver and Quitclaim x x x that they had executed and [cannot] question the same, hence they [cannot] claim benefits in addition to those they had received from the bank.

2.f. In not holding that respondent METROBANK is the parent corporation of GLOBALBANK and the latter is the subsidiary, hence METROBANK is liable for the payment of the employment benefits of [the] petitioners as it had acquired all the assets of GLOBALBANK.

2.g. In not holding that the Assignment of Assets and Liabilities x x x executed by GLOBALBANK and METROBANK is a scheme to defraud [the] petitioners of the employment benefits due them upon separation from service.

2.h. In not holding that [the] respondents are liable to [the] petitioners for moral, exemplary and temperate damages because [the] respondents are guilty of deceit and fraud in not paying [the] petitioners the full amount of their employment benefits.[25]

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[25] *Rollo,* pp. 27-29.

The Court's Decision

The Petition has no merit, hence, must be denied.

The petitioners' unexplained failure to move for the reconsideration of the NLRC's resolution before applying for a writ of *certiorari* in the CA is reason enough to deny such application.

We shall first discuss the procedural issue raised by the petitioners: whether the CA erred in dismissing their petition due to their failure to file a motion for reconsideration of the NLRC's adverse resolution.

The petitioners claim that it was error for the CA to have dismissed their petition on the sole basis thereof. According to the petitioners, they had opted not to file a motion for reconsideration as the issues that will be raised therein are those that the NLRC had already passed upon. The petitioners likewise invoke the liberal application of procedural rules.

To begin with, the petitioners do not have the discretion or prerogative to determine the propriety of complying with procedural rules. This Court had repeatedly emphasized in various cases involving the tedious attempts of litigants to relieve themselves of the consequences of their neglect to follow a simple procedural requirement for perfecting a petition for *certiorari* that he who seeks a writ of *certiorari* must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. The petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, the petitioners must show a concrete, compelling, and valid reason for doing so.[26]

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[26] *Sim v. National Labor Relations Commission*, G.R. No. 157376, October 2, 2007, 534 SCRA 515, 522-523, citing *Cervantes v. Court of Appeals*, 512 Phil. 210, 217 (2005).

As the CA correctly noted, the petitioners did not bother to explain their omission and only did so in their motion for reconsideration of the dismissal of their petition. Aside from the fact that such belated effort will not resurrect their application for a writ of *certiorari*, the reason proffered by the petitioners does not fall under any of the recognized instances when the filing of a motion for reconsideration may be dispensed with. Whimsical and arbitrary deviations from the rules cannot be condoned in the guise of a plea for a liberal interpretation thereof. We cannot respond with alacrity to every claim of injustice and bend the rules to placate vociferous protestors crying and claiming to be victims of a wrong.[27]

We now rule on the substantive issues.

The petitioners' receipt of separation pay equivalent to their one and a half months salary for every year of service as provided in the SSP and the New Gratuity Plan more than sufficiently complies with the Labor Code, which only requires the payment of separation pay at the rate of one month salary for every year of service.

The petitioners do not question the legality of their separation from the service or the basis for holding their positions redundant. What they raise is their entitlement to gratuity pay, as provided in the Old Plan, in addition to what they received under the SSP. According to the petitioners, they are entitled to separation pay at a rate of one month salary for every year of service under the Labor Code and gratuity pay at a rate of one month salary for every year of service whether under the Old Plan or the New Gratuity Plan. Since what they received as separation pay was equivalent to only 150% or one and one-half of their monthly salaries for every year of service, the respondents are

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[27] *Sublay v. NLRC*, G.R. No. 130104, January 21, 2000, 324 SCRA 188.

still liable to pay them the deficiency equivalent to one-half of their monthly salary for every year of service.

We disagree.

The New Gratuity Plan has repealed the Old Plan.

It is clear from the provisions of Section 8 of the New Gratuity Plan that the Old Plan has been revoked or superseded. Thus:

> SECTION 8
> INTEGRATION OF SOCIAL LEGISLATION, CONTRACTS, *ETC.*
>
> 8.1 This Plan is not intended to duplicate or cause the double payment of similar or analogous benefits provided for under existing labor and social security laws. Accordingly, benefits under this Plan shall be deemed integrated with and in lieu of (i) statutory benefits under the New Labor Code and Social Security Laws, as now or hereafter amended[;] and (ii) analogous benefits granted under present or future collective bargaining agreements, and other employee benefit plans providing analogous benefits which may be imposed by future legislations. In the event the benefits due under the Plan are less than those due and demandable under the provisions of the New Labor Code and/or present or future Collective Bargaining Agreements and/or future plans of similar nature imposed by law, the Fund shall respond for the difference.[28]

Globalbank's right to replace the Old Plan and the New Gratuity Plan is within legal bounds as the terms thereof are in accordance with the provisions of the Labor Code and complies with the minimum requirements thereof. **Contrary to the petitioners' claim, they had no vested right over the benefits under the Old Plan considering that none of the events contemplated thereunder occurred prior to the repeal thereof by the adoption of the New Gratuity Plan.** Such right accrues only upon their separation from service for causes contemplated under the Old Plan and the petitioners can only avail the benefits under the plan that is effective at the time of their dismissal. In

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[28] *Rollo*, p. 291.

this case, when the merger and the redundancy program were implemented, what was in effect were the New Gratuity Plan and the SSP; the petitioners cannot, thus, insist on the provisions of the Old Plan which is no longer existent.

The SSP did not revoke or supersede the New Gratuity Plan.

On the other hand, the issuance of the SSP did not result to the repeal of the New Gratuity Plan. As the following provision of the SSP shows, the terms of the New Gratuity Plan had been expressly incorporated in the SSP and should, thus, be implemented alongside the SSP:

> II. Separation Pay Package
>
> Affected employees are entitled to the following tax free:
>
> a. Gratuity Benefits which they are entitled to *under the respective retirement plans*. The bank shall give a premium by rounding up the benefit to an equivalent of 1.5 months salary per every year of service based on their salary as of separation date.[29] (emphasis supplied)

The SSP was not intended to supersede the New Gratuity Plan. On the contrary, the SSP was issued to make the benefits under the New Gratuity Plan available to employees whose positions had become redundant because of the merger between Philbank and Globalbank, subject to compliance with certain requirements such as age and length of service, and to improve such benefits by increasing or rounding it up to an amount equivalent to the affected employees' one and a half monthly salary for every year of service. In other words, the benefits to which the redundated employees are entitled to, including the petitioners, are the benefits under the New Gratuity Plan, albeit increased by the SSP.

Considering that the New Gratuity Plan still stands and has not been revoked by the SSP, does this mean that the petitioners can claim the benefits thereunder in addition to or on top of what is required under the Article 283 of the Labor Code?

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[29] *Id.* at 306.

For as long as the minimum requirements of the Labor Code are met, it is within the management prerogatives of employers to come up with separation packages that will be given in lieu of what is provided under the Labor Code.

A direct reference to the New Gratuity Plan reveals the contrary. The above-quoted Section 8 of the New Gratuity Plan expressly states that "the benefits under this Plan shall be deemed integrated with and in lieu of (i) statutory benefits under the New Labor Code and Social Security Laws, as now or hereafter amended" and that "[t]his Plan is not intended to duplicate or cause the double payment of similar or analogous benefits provided for under existing labor and security laws."

Article 283 of the Labor Code[30] provides only the required minimum amount of separation pay, which employees dismissed for any of the authorized causes are entitled to receive. Employers, therefore, have the right to create plans, providing for separation pay in an amount over and above what is imposed by Article 283. There is nothing therein that prohibits employers and employees from contracting on the terms of employment, or from entering into agreements on employee benefits, so long as

[30] Art. 283. *Closure of Establishment and Reduction of Personnel.*— The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in case of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

they do not violate the Labor Code or any other law, and are not contrary to morals, good customs, public order, or public policy.[31] As this Court held in a case:

> [E]ntitlement to benefits consequent thereto are not limited to those provided by said provision of law. Otherwise, the provisions of collective bargaining agreements, individual employment contracts, and voluntary retirement plans of companies would be rendered inutile if we were to limit the award of monetary benefits to an employee only to those provided by statute. x x x.[32]

Previously, the Court adopted the CA's ruling, upholding the validity of a similar provision in a company's retirement plan:

> [T]here is no further doubt that the payment of separation pay is a requirement of the law, *i.e.*[,] the Labor Code, which is a social legislation. The clear intent of Article XI, Section 6 [of the Retirement Plan] is to input the effects of social legislation in the circulation of Retirement benefits due to retiring employees x x x. **The Retirement Plan itself clearly sets forth the intention of the parties to entitle employees only to whatever is greater between the Retirement Benefits then due and that which the law requires to be given by way of separation pay.** To give way to complainant's demands would be to totally ignore the contractual obligations of the parties in the Retirement Plan, and to distort the clear intent of the parties as expressed in the terms and conditions contained in such plan. x x x.[33] (emphasis supplied)

Consequently, if the petitioners were allowed to receive separation pay from both the Labor Code, on the one hand, and the New Gratuity Plan and the SSP, on the other, they would receive double compensation for the same cause (*i.e.*, separation from the service due to redundancy) even if such is contrary to

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[31] Article 1306 of the Civil Code states: "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, goods customs, public order, or public policy."

[32] *American Home Assurance Co. v. National Labor Relations Commission*, 328 Phil. 606, 616 (1996).

[33] *Cruz v. Philippine Global Communication, Inc.*, G.R. No. 141868, May 28, 2004, 430 SCRA 184, 188-189.

the provisions of the New Gratuity Plan. The petitioners' claim of being shortchanged is certainly unfounded. They have recognized the validity of the SSP and the New Gratuity Plan as evidenced by the acceptance letters and quitclaims they executed; and the benefits they received under the SSP and the New Gratuity Plan are more than what is required by the Labor Code.

In the absence of proof that any of the vices of consent are present, the petitioners' acceptance letters and quitclaims are valid; thus, barring them from claiming additional separation pay.

The Court now comes to the issue on the validity of the acceptance letters and quitclaims that the petitioners executed, which they claim do not preclude them from asking for the benefits rightfully due them under the law.

It is true that quitclaims executed by employees are often frowned upon as contrary to public policy.[34] Hence, deeds of release or quitclaims cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel.[35]

However, the Court, in other cases, has upheld quitclaims if found to comply with the following requisites: (1) the employee executes a deed of quitclaim voluntarily; (2) there is no fraud or deceit on the part of any of the parties; (3) the consideration of the quitclaim is credible and reasonable; and (4) the contract is not contrary to law, public order, public policy, morals or good customs or prejudicial to a third person with a right recognized by law.[36]

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[34] *Sime Darby Pilipinas, Inc. v. Arguilla*, G.R. No. 143542, June 8, 2006, 490 SCRA 183, 200.

[35] *Emco Plywood Corporation v. Abelgas*, 471 Phil. 460, 483 (2004).

[36] *Soriano, Jr. v. National Labor Relations Commission*, G.R. No. 165594, April 23, 2007, 521 SCRA 526, 548; *Danzas Intercontinental, Inc. v. Daguman*,

In this case, there is no allegation of fraud or deceit employed by the respondents in making the petitioners sign the acceptance letters and quitclaims. Neither was there any claim of force or duress exerted upon the petitioners to compel them to sign the acceptance letters and quitclaims. Likewise, the consideration is credible and reasonable since the petitioners are getting more than the amount required under the law. Thus, the acceptance letters and quitclaims executed by the petitioners are valid and binding.

Considering that the petitioners have already waived their right to file an action for any of their claims in relation to their employment with Globalbank, the question of whether Metrobank can be held liable for these claims is now academic. However, in order to put to rest any doubt in the petitioners' minds as to Metrobank's liabilities, we shall proceed to discuss this issue.

We hold that Metrobank cannot be held liable for the petitioners' claims.

As a rule, a corporation that purchases the assets of another will not be liable for the debts of the selling corporation, provided the former acted in good faith and paid adequate consideration for such assets, except when any of the following circumstances is present: (1) where the purchaser expressly or impliedly agrees to assume the debts; (2) where the transaction amounts to a consolidation or merger of the corporations; (3) where the purchasing corporation is merely a continuation of the selling corporation; and (4) where the selling corporation fraudulently enters into the transaction to escape liability for those debts.[37]

Under the Deed of Assignments of Assets and Assumption of Liabilities[38] between Globalbank and Metrobank, the latter accepted the former's assets in exchange for assuming its

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496 Phil. 279, 292-293 (2005), citing *More Maritime Agencies, Inc. v. National Labor Relations Commission*, 366 Phil. 646, 653 (1999).

[37] *McLeod v. National Labor Relations Commission*, G.R. No. 146667, January 23, 2007, 512 SCRA 222, 240-241.

[38] *Rollo*, 324-327.

liabilities. The liabilities that Metrobank assumed, which were clearly set out in Annex "A" of the instrument, are: deposit liabilities; interbank loans payable; bills payable; manager's checks and demand drafts outstanding; accrued taxes, interest and other expenses; and deferred credits and other liabilities.[39]

Based on this enumeration, the liabilities that Metrobank assumed can be characterized as those pertaining to Globalbank's banking operations. They do not include Globalbank's liabilities to pay separation pay to its former employees. This must be so because it is understood that the same liabilities ended when the petitioners were paid the amounts embodied in their respective acceptance letters and quitclaims. Hence, this obligation could not have been passed on to Metrobank.

The petitioners insist that Metrobank is liable because it is the "parent" company of Globalbank and that majority of the latter's board of directors are also members of the former's board of directors.

While the petitioners' allegations are true, one fact cannot be ignored — that Globalbank has a separate and distinct juridical personality. The petitioners' own evidence — Global Business Holdings, Inc.'s General Information Sheet[40] filed with the Securities and Exchange Commission — bears this out.

Even then, the petitioners would want this Court to pierce the veil of corporate identity in order to hold Metrobank liable for their claims.

What the petitioners desire, the Court cannot do. This fiction of corporate entity can only be disregarded in cases when it is used to defeat public convenience, justify wrong, protect fraud, or defend crime. Moreover, to justify the disregard of the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established.[41]

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[39] *Id.* at 326.

[40] *Id.* at 332-338.

[41] *Complex Electronics Employees Association v. National Labor Relations Commission*, 369 Phil. 666, 681-682 (1999).

In the instant case, none of these circumstances is present such as to warrant piercing the veil of corporate fiction and treating Globalbank and Metrobank as one.

Lastly, the petitioners' prayer for the award of damages must be denied for lack of legal basis.

In sum, the New Gratuity Plan and SSP are valid and must be given effect, inasmuch as their provisions are not contrary to law; and, indeed, grant benefits that meet the minimum amount required by the Labor Code. The petitioners have voluntarily sought such benefits and upon their receipt thereof, executed quitclaims in Globalbank's favor. The petitioners cannot, upon a mere change of mind, seek to invalidate such quitclaims and renege on their undertaking thereunder, which, to begin with, is supported by a substantial consideration and which they had knowingly assumed and imposed upon themselves.

WHEREFORE, the foregoing premises considered, the petition is **DENIED.** The assailed Resolutions dated November 7, 2007 and March 26, 2008, respectively, of the Court of Appeals in CA-G.R. SP No. 101065 are **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 185918. April 18, 2012]

LOCKHEED DETECTIVE AND WATCHMAN AGENCY, INC., *petitioner, vs.* **UNIVERSITY OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; COMMISSION ON AUDIT (COA); CLAIM FOR PAYMENT OF JUDGMENT AWARD AGAINST THE UNIVERSITY OF THE PHILIPPINES (UP) MUST FIRST BE FILED WITH THE COA.—** UP is a juridical personality separate and distinct from the government and has the capacity to sue and be sued. x x x [I]t cannot evade execution, and its funds may be subject to garnishment or levy. However, before execution may be had, a claim for payment of the judgment award must first be filed with the COA.

2. **ID.; ID.; ID.; GARNISHMENT MADE AGAINST THE FUND OF UP WITHOUT FILING A PROPER CLAIM WITH COA, MUST BE REIMBURSED WITH INTEREST.—** Since the garnishment was erroneously carried out and did not go through the proper procedure (the filing of a claim with the COA), UP is entitled to reimbursement of the garnished funds plus interest of 6% per annum, to be computed from the time of judicial demand to be reckoned from the time UP filed a petition for *certiorari* before the CA which occurred right after the withdrawal of the garnished funds from PNB.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
U.P. Diliman Law Office for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the August 20, 2008 Amended Decision[1] and December 23,

[1] *Rollo*, pp. 47-50. Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza, concurring.

2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 91281.

The antecedent facts of the case are as follows:

Petitioner Lockheed Detective and Watchman Agency, Inc. (Lockheed) entered into a contract for security services with respondent University of the Philippines (UP).

In 1998, several security guards assigned to UP filed separate complaints against Lockheed and UP for payment of underpaid wages, 25% overtime pay, premium pay for rest days and special holidays, holiday pay, service incentive leave pay, night shift differentials, 13th month pay, refund of cash bond, refund of deductions for the Mutual Benefits Aids System (MBAS), unpaid wages from December 16-31, 1998, and attorney's fees.

On February 16, 2000, the Labor Arbiter rendered a decision as follows:

WHEREFORE, premises considered, respondents Lockheed Detective and Watchman Agency, Inc. and UP as job contractor and principal, respectively, are hereby declared to be solidarily liable to complainants for the following claims of the latter which are found meritorious.

Underpaid wages/salaries, premium pay for work on rest day and special holiday, holiday pay, 5 days service incentive leave pay, 13th month pay for 1998, refund of cash bond (deducted at ₱50.00 per month from January to May 1996, ₱100.00 per month from June 1996 and ₱200.00 from November 1997), refund of deduction for Mutual Benefits Aids System at the rate of ₱50.00 a month, and attorney's fees; in the total amount of ₱1,184,763.12 broken down as follows per attached computation of the Computation and [E]xamination Unit of this Commission, which computation forms part of this Decision:

1.	JOSE SABALAS	₱77,983.62
2.	TIRSO DOMASIAN	76,262.70
3.	JUAN TAPEL	80,546.03

[2] *Id.* at 52-53.

4.	DINDO MURING	80,546.03
5.	ALEXANDER ALLORDE	80,471.78
6.	WILFREDO ESCOBAR	80,160.63
7.	FERDINAND VELASQUEZ	78,595.53
8.	ANTHONY GONZALES	76,869.97
9.	SAMUEL ESCARIO	80,509.78
10.	PEDRO FAILORINA	80,350.87
11.	MATEO TANELA	70,590.58
12.	JOB SABALAS	59,362.40
13.	ANDRES DACANAYAN	77,403.73
14.	EDDIE OLIVAR	77,403.73
		₱1,077,057.38
	Plus 10% attorney's fees	107,705.74
	GRAND TOTAL AWARD	₱1,184,763.12

Third party respondent University of the Philippines is hereby declared to be liable to Third Party Complainant and cross claimant Lockheed Detective and Watchman Agency for the unpaid legislated salary increases of the latter's security guards for the years 1996 to 1998, in the total amount of ₱13,066,794.14, out of which amount the amounts due complainants here shall be paid.

The other claims are hereby DISMISSED for lack of merit (night shift differential and 13th month pay) or for having been paid in the course of this proceedings (salaries for December 15-31, 1997 in the amount of ₱40,140.44).

The claims of Erlindo Collado, Rogelio Banjao and Amor Banjao are hereby DISMISSED as amicably settled for and in consideration of the amounts of ₱12,315.72, ₱12,271.77 and ₱12,819.33, respectively.

SO ORDERED.[3]

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

Both Lockheed and UP appealed the Labor Arbiter's decision. By Decision[4] dated April 12, 2002, the NLRC modified the Labor Arbiter's decision. The NLRC held:

> WHEREFORE, the decision appealed from is hereby modified as follows:
>
> 1. Complainants' claims for premium pay for work on rest day and special holiday, and 5 days service incentive leave pay, are hereby dismissed for lack of basis.
>
> 2. The respondent University of the Philippines is still solidarily liable with Lockheed in the payment of the rest of the claims covering the period of their service contract.
>
> The Financial Analyst is hereby ordered to recompute the awards of the complainants in accordance with the foregoing modifications.
>
> SO ORDERED.[5]

The complaining security guards and UP filed their respective motions for reconsideration. On August 14, 2002, however, the NLRC denied said motions.

As the parties did not appeal the NLRC decision, the same became final and executory on October 26, 2002.[6] A writ of execution was then issued but later quashed by the Labor Arbiter on November 23, 2003 on motion of UP due to disputes regarding the amount of the award. Later, however, said order quashing the writ was reversed by the NLRC by Resolution[7] dated June 8, 2004, disposing as follows:

> WHEREFORE, premises considered, we grant this instant appeal. The Order dated 23 November 2003 is hereby reversed and set aside. The Labor Arbiter is directed to issue a Writ of Execution

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[4] *Id.* at 22-38.

[5] *Id.* at 37.

[6] *Id.* at 44, citing NLRC records, p. 868.

[7] *Id.* at 39-56.

for the satisfaction of the judgment award in favor of Third-Party complainants.

SO ORDERED.[8]

UP moved to reconsider the NLRC resolution. On December 28, 2004, the NLRC upheld its resolution but with modification that the satisfaction of the judgment award in favor of Lockheed will be only against the funds of UP which are not identified as public funds.

The NLRC order and resolution having become final, Lockheed filed a motion for the issuance of an *alias* writ of execution. The same was granted on May 23, 2005.[9]

On July 25, 2005, a Notice of Garnishment[10] was issued to Philippine National Bank (PNB) UP Diliman Branch for the satisfaction of the award of ₱12,142,522.69 (inclusive of execution fee).

In a letter[11] dated August 9, 2005, PNB informed UP that it has received an order of release dated August 8, 2005 issued by the Labor Arbiter directing PNB UP Diliman Branch to release to the NLRC Cashier, through the assigned NLRC Sheriff Max L. Lago, the judgment award/amount of ₱12,142,522.69. PNB likewise reminded UP that the bank only has 10 working days from receipt of the order to deliver the garnished funds and unless it receives a notice from UP or the NLRC before the expiry of the 10-day period regarding the issuance of a court order or writ of injunction discharging or enjoining the implementation and execution of the Notice of Garnishment and Writ of Execution, the bank shall be constrained to cause the release of the garnished funds in favor of the NLRC.

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[8] *Id.* at 55.

[9] *Id.* at 57-64.

[10] *Id.* at 65.

[11] *Id.* at 74.

On August 16, 2005, UP filed an Urgent Motion to Quash Garnishment.[12] UP contended that the funds being subjected to garnishment at PNB are government/public funds. As certified by the University Accountant, the subject funds are covered by Savings Account No. 275-529999-8, under the name of UP System Trust Receipts, earmarked for Student Guaranty Deposit, Scholarship Fund, Student Fund, Publications, Research Grants, and Miscellaneous Trust Account. UP argued that as public funds, the subject PNB account cannot be disbursed except pursuant to an appropriation required by law. The Labor Arbiter, however, dismissed the urgent motion for lack of merit on August 30, 2005.[13]

On September 2, 2005, the amount of ₱12,062,398.71 was withdrawn by the sheriff from UP's PNB account.[14]

On September 12, 2005, UP filed a petition for *certiorari* before the CA based on the following grounds:

I.

The concept of "solidary liability" by an indirect employer notwithstanding, respondent NLRC gravely abused its discretion in a manner amounting to lack or excess of jurisdiction by misusing such concept to justify the garnishment by the executing Sheriff of public/government funds belonging to UP.

II.

Respondents NLRC and Arbiter LORA acted without jurisdiction or gravely abused their discretion in a manner amounting to lack or excess of jurisdiction when, by means of an *Alias* Writ of Execution against petitioner UP, they authorized respondent Sheriff to garnish UP's public funds. Similarly, respondent LORA gravely abused her discretion when she resolved petitioner's Motion to Quash Notice of Garnishment addressed to, and intended for, the NLRC, and when she unilaterally and arbitrarily disregarded an official Certification that the funds garnished are public/government

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[12] *Id.* at 66-73.

[13] *Id.* at 79-81.

[14] *Id.* at 10.

funds, and thereby allowed respondent Sheriff to withdraw the same from PNB.

III.

Respondents gravely abused their discretion in a manner amounting to lack or excess of jurisdiction when they, despite prior knowledge, effected the execution that caused paralyzation and dislocation to petitioner's governmental functions.[15]

On March 12, 2008, the CA rendered a decision[16] dismissing UP's petition for *certiorari*. Citing *Republic v. COCOFED*,[17] which defines public funds as moneys belonging to the State or to any political subdivisions of the State, more specifically taxes, customs, duties and moneys raised by operation of law for the support of the government or the discharge of its obligations, the appellate court ruled that the funds sought to be garnished do not seem to fall within the stated definition.

On reconsideration, however, the CA issued the assailed Amended Decision. It held that without departing from its findings that the funds covered in the savings account sought to be garnished do not fall within the classification of public funds, it reconsiders the dismissal of the petition in light of the ruling in the case of *National Electrification Administration v. Morales*[18] which mandates that all money claims against the government must first be filed with the Commission on Audit (COA).

Lockheed moved to reconsider the amended decision but the same was denied in the assailed CA Resolution dated December 23, 2008. The CA cited *Manila International Airport Authority v. Court of Appeals*[19] which held that UP ranks with MIAA, a government instrumentality exercising corporate powers but not

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[15] *Id.*

[16] *Id.* at 122-134.

[17] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 481.

[18] G.R. No. 154200, June 24, 2007, 528 SCRA 79, 90-91.

[19] G.R. No. 155650, July 20, 2006, 495 SCRA 591, 618-619.

organized as a stock or non-stock corporation. While said corporations are government instrumentalities, they are loosely called government corporate entities but not government-owned and controlled corporations in the strict sense.

Hence this petition by Lockheed raising the following arguments:

1. RESPONDENT UP IS A GOVERNMENT ENTITY WITH A SEPARATE AND DISTINCT PERSONALITY FROM THE NATIONAL GOVERNMENT AND HAS ITS OWN CHARTER GRANTING IT THE RIGHT TO SUE AND BE SUED. IT THEREFORE CANNOT AVAIL OF THE IMMUNITY FROM SUIT OF THE GOVERNMENT. NOT HAVING IMMUNITY FROM SUIT, RESPONDENT UP CAN BE HELD LIABLE AND EXECUTION CAN THUS ENSUE.
2. MOREOVER, IF THE COURT LENDS IT ASSENT TO THE INVOCATION OF THE DOCTRINE OF STATE IMMUNITY, THIS WILL RESULT [IN] GRAVE INJUSTICE.
3. FURTHERMORE, THE PROTESTATIONS OF THE RESPONDENT ARE TOO LATE IN THE DAY, AS THE EXECUTION PROCEEDINGS HAVE ALREADY BEEN TERMINATED.[20]

Lockheed contends that UP has its own separate and distinct juridical entity from the national government and has its own charter. Thus, it can be sued and be held liable. Moreover, Executive Order No. 714 entitled "Fiscal Control and Management of the Funds of UP" recognizes that "as an institution of higher learning, UP has always granted full management and control of its affairs including its financial affairs."[21] Therefore, it cannot shield itself from its private contractual liabilities by simply invoking the public character of its funds. Lockheed also cites several cases wherein it was ruled that funds of public corporations which can sue and be sued were not exempt from garnishment.

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[20] *Rollo*, p. 17.

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

Lockheed likewise argues that the rulings in the *NEA* and *MIAA* cases are inapplicable. It contends that UP is not similarly situated with NEA because the jurisdiction of COA over the accounts of UP is only on a post-audit basis. As to the *MIAA* case, the liability of MIAA pertains to the real estate taxes imposed by the City of Paranaque while the obligation of UP in this case involves a private contractual obligation. Lockheed also argues that the declaration in *MIAA* specifically citing UP was mere *obiter dictum*.

Lockheed moreover submits that UP cannot invoke state immunity to justify and perpetrate an injustice. UP itself admitted its liability and thus it should not be allowed to renege on its contractual obligations. Lockheed contends that this might create a ruinous precedent that would likely affect the relationship between the public and private sectors.

Lastly, Lockheed contends that UP cannot anymore seek the quashal of the writ of execution and notice of garnishment as they are already *fait accompli*.

For its part, UP contends that it did not invoke the doctrine of state immunity from suit in the proceedings *a quo* and in fact, it did not object to being sued before the labor department. It maintains, however, that suability does not necessarily mean liability. UP argues that the CA correctly applied the *NEA* ruling when it held that all money claims must be filed with the COA.

As to alleged injustice that may result for invocation of state immunity from suit, UP reiterates that it consented to be sued and even participated in the proceedings below. Lockheed cannot now claim that invocation of state immunity, which UP did not invoke in the first place, can result in injustice.

On the *fait accompli* argument, UP argues that Lockheed cannot wash its hands from liability for the consummated garnishment and execution of UP's trust fund in the amount of ₱12,062,398.71. UP cites that damage was done to UP and the beneficiaries of the fund when said funds, which were earmarked for specific educational purposes, were misapplied, for instance, to answer for the execution fee of ₱120,123.98 unilaterally

stipulated by the sheriff. Lockheed, being the party which procured the illegal garnishment, should be held primarily liable. The mere fact that the CA set aside the writ of garnishment confirms the liability of Lockheed to reimburse and indemnify in accordance with law.

The petition has no merit.

We agree with UP that there was no point for Lockheed in discussing the doctrine of state immunity from suit as this was never an issue in this case. Clearly, UP consented to be sued when it participated in the proceedings below. What UP questions is the hasty garnishment of its funds in its PNB account.

This Court finds that the CA correctly applied the *NEA* case. Like NEA, UP is a juridical personality separate and distinct from the government and has the capacity to sue and be sued. Thus, also like NEA, it cannot evade execution, and its funds may be subject to garnishment or levy. However, before execution may be had, a claim for payment of the judgment award must first be filed with the COA. Under Commonwealth Act No. 327,[22] as amended by Section 26 of P.D. No. 1445,[23] it is the

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[22] AN ACT FIXING THE TIME WITHIN WHICH THE AUDITOR GENERAL SHALL RENDER HIS DECISIONS AND PRESCRIBING THE MANNER OF APPEAL THEREFROM.

[23] ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES. Section 26 thereof provides:

Section 26. *General jurisdiction.* — The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental

COA which has primary jurisdiction to examine, audit and settle "all debts and claims of any sort" due from or owing the Government or any of its subdivisions, agencies and instrumentalities, including government-owned or controlled corporations and their subsidiaries. With respect to money claims arising from the implementation of Republic Act No. 6758,[24] their allowance or disallowance is for COA to decide, subject only to the remedy of appeal by petition for *certiorari* to this Court.[25]

We cannot subscribe to Lockheed's argument that NEA is not similarly situated with UP because the COA's jurisdiction over the latter is only on post-audit basis. A reading of the pertinent Commonwealth Act provision clearly shows that it does not make any distinction as to which of the government subdivisions, agencies and instrumentalities, including government-owned or controlled corporations and their subsidiaries whose debts should be filed before the COA.

As to the *fait accompli* argument of Lockheed, contrary to its claim that there is nothing that can be done since the funds of UP had already been garnished, since the garnishment was erroneously carried out and did not go through the proper procedure (the filing of a claim with the COA), UP is entitled to reimbursement of the garnished funds plus interest of 6% per annum, to be computed from the time of judicial demand to be reckoned from the time UP filed a petition for *certiorari* before the CA which occurred right after the withdrawal of the garnished funds from PNB.

WHEREFORE, the petition for review on *certiorari* is **DENIED** for lack of merit. Petitioner Lockheed Detective and

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entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.

[24] Compensation and Position Classification Act of 1989.

[25] *National Electrification Administration v. Morales*, *supra* note 18, at 89-91.

Watchman Agency, Inc. is ordered to **REIMBURSE** respondent University of the Philippines the amount of ₱12,062,398.71 plus interest of 6% per annum, to be computed from September 12, 2005 up to the finality of this Decision, and 12% interest on the entire amount from date of finality of this Decision until fully paid.

No pronouncement as to costs.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), Peralta,[*] *Bersamin,* and *Reyes,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 188921. April 18, 2012]

LEO C. ROMERO and DAVID AMANDO C. ROMERO, *petitioners, vs.* **HON. COURT OF APPEALS, AURORA C. ROMERO and VITTORIO C. ROMERO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; THE PROBATE COURT MAY PROVISIONALLY PASS UPON THE ISSUE OF TITLE WHERE THE ONLY INTERESTED PARTIES ARE ALL HEIRS TO THE ESTATE.— In *Coca v. Borromeo,* this Court **allowed** the probate court to provisionally pass upon the issue of title, precisely because the only interested parties are all heirs to the estate, subject of the proceeding, *viz*: x x x. As a

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[*] Designated additional member per Raffle dated April 2, 2012.

[**] Designated additional members per Raffle dated April 16, 2012.

general rule, the question as to title property should not be passed upon in the testate or intestate proceeding. That question should be ventilated in a separate action. That general rule has qualifications or exceptions justified by expediency and convenience. Thus, the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final determination in a separate action. Although generally, a probate court may not decide a question of title or ownership, yet if the interested parties are all heirs, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, then the probate court is competent to decide the question of ownership. We hold that the instant case may be treated as an exception to the general rule that questions of title should be ventilated in a separate action. x x x.

2. ID.; ID.; ID.; THE RULE THAT A PROBATE COURT'S DETERMINATION OF OWNERSHIP OVER PROPERTIES WHICH MAY FORM PART OF THE ESTATE IS NOT FINAL OR ULTIMATE IN NATURE IS APPLICABLE ONLY AS BETWEEN THE REPRESENTATIVES OF THE ESTATE AND STRANGERS THERETO.— While it is true that a probate court's determination of ownership over properties which may form part of the estate is not final or ultimate in nature, this rule is applicable only as between the representatives of the estate and strangers thereto. Indeed, as early as *Bacquial v. Amihan,* the court stated thus: x x x The rulings of this court have always been to the effect that in the special proceeding for the settlement of the estate of a deceased person, persons not heirs, intervening therein to protect their interests are allowed to do so protect the same, but not for a decision on their action. In the case of *In re Estate of the deceased Paulina Vasquez Vda. de Garcia, Teresa Garcia vs. Luisa Garcia, et al.*, 67 Phil. 353, this court held: A court which takes cognizance of testate or intestate proceedings has power and jurisdiction to determine whether or not the properties included therein or excluded therefrom belong *prima facie* to the deceased, although such a determination is not final or ultimate in nature, and without prejudice to the right of interested parties, in a proper action, to raise the question on the ownership or existence of the right or credit.

3. ID.; ID.; ID.; THE DETERMINATION OF WHETHER A PROPERTY IS CONJUGAL OR PARAPHERNAL FOR PURPOSES OF INCLUSION IN THE INVENTORY OF THE ESTATE RESTS WITH THE PROBATE COURT. — There is no merit to petitioners' claim that the issues raised in the case at bar pertain to title and ownership and therefore need to be ventilated in a separate civil action. The issue before the court is not really one of title or ownership, but the determination of which particular properties should be included in the inventory of the estate. In Civil Case No. 18757, the RTC has listed the properties alleged by petitioners to have been conjugal properties of their parents and, therefore, part of the estate that was illegally sold to the respondent. Some of these real properties identified seem to be the same real properties that form part of the inventory of the estate in the intestate proceedings. Not only do petitioners assert their legal interest as compulsory heirs, they also seek to be the owners, *pro indiviso*, of the said properties. x x x. In *Bernardo v. Court of Appeals*, the Supreme Court declared that the determination of whether a property is conjugal or paraphernal **for purposes of inclusion in the inventory of the estate** rests with the probate court: x x x. **In the case now before us, the matter in controversy is the question of ownership of certain of the properties involved — whether they belong to the conjugal partnership or to the husband exclusively. This is a matter properly within the jurisdiction of the probate court which necessarily has to liquidate the conjugal partnership in order to determine the estate of the decedent which is to be distributed among his heirs who are all parties to the proceedings.** In the present case, petitioners assume that the properties subject of the allegedly illegal sale are conjugal and constitute part of their share in the estate. To date, there has been no final inventory of the estate or final order adjudicating the shares of the heirs. Thus, only the probate court can competently rule on whether the properties are conjugal and form part of the estate. It is only the probate court that can liquidate the conjugal partnership and distribute the same to the heirs, after the debts of the estate have been paid.

4. ID.; ID.; ID.; IT IS WITHIN THE JURISDICTION OF THE PROBATE COURT TO APPROVE THE SALE OF PROPERTIES OF A DECEASED PERSON BY HIS

PROSPECTIVE HEIR BEFORE FINAL ADJUDICATION; QUESTION AS TO THE VALIDITY OF THE ACTS OF THE ADMINISTRATOR OF THE ESTATE IS SUBJECT TO THE SOLE JURISDICTION OF THE PROBATE COURT.— There is nothing on the record that would prove that Aurora defied the orders of the probate court or entered into sale agreements in violation of her trust. In fact, petitioners are really accusing a co-heir, their brother Vittorio, of having acquired certain properties which they allege to be properties of their parents. Even if we assume the property to be conjugal and thus, part of the estate, Aurora Romero's acts as the administrator of the estate are subject to the sole jurisdiction of the probate court. In *Acebedo v. Abesamis,* the Court stated: In the case of *Dillena vs. Court of Appeals*, this Court made a pronouncement that it is within the jurisdiction of the probate court to approve the sale of properties of a deceased person by his prospective heirs before final adjudication. Hence, it is error to say that this matter should be threshed out in a separate action.

5. ID.; ID.; ID.; THE PROBATE COURT HAS THE POWER TO RESCIND OR NULLIFY THE DISPOSITION OF A PROPERTY UNDER ADMINISTRATION THAT WAS EFFECTED WITHOUT ITS AUTHORITY.— [P]etitioners do not pose issues pertaining to title or ownership. They are, in effect, questioning the validity of the sales made by the administrator, an issue that can only be properly threshed out by the probate court. x x x Indeed, implicit in the requirement for judicial approval of sales of property under administration is the recognition that the probate court has the power to rescind or nullify the disposition of a property under administration that was effected without its authority. That petitioners have the prerogative of choosing where to file their action for nullification — whether with the probate court or the regular court — is erroneous. As held in *Marcos, II v. Court of Appeals:* x x x (T)he authority of the Regional Trial Court, sitting, albeit with limited jurisdiction, as a probate court over the estate of deceased individual, is not a trifling thing. The court's jurisdiction, once invoked, and made effective, cannot be treated with indifference nor should it be ignored with impunity by the very parties invoking its authority. In testament to this, it has been held that it is within the jurisdiction of the probate

court to approve the sale of properties of a deceased person by his prospective heirs before final adjudication; to determine who are the heirs of the decedent; the recognition of a natural child; the status of a woman claiming to be the legal wife of the decedent; the legality of disinheritance of an heir by the testator; and to pass upon the validity of a waiver of hereditary rights. Thus, the validity of the sales made by Aurora, allegedly orchestrated by petitioners' co-heir, Vittorio, can only be determined by the probate court, because it is the probate court which is empowered to identify the nature of the property, and that has jurisdiction over Aurora's actions and dispositions as administrator.

APPEARANCES OF COUNSEL

Leo C. Romero for petitioners.

Regino Palma Raagas Esguerra and Associates Law Office for respondents.

D E C I S I O N

SERENO, *J.*:

This is a Petition filed under Rule 45 of the 1997 Rules of Civil Procedure, praying for the reversal of the Decision[1] of the Court of Appeals dated 14 April 2009 and the subsequent Resolution[2] dated 21 July 2009.

The Court of Appeals (CA) dismissed the Petition for *Certiorari* filed by petitioners which alleged grave abuse of discretion in the Resolutions dated 14 December 2007 and 29 January 2008 issued by Judge Maria Susana T. Baua in her capacity as presiding judge of the Regional Trial Court (RTC) of Lingayen, Pangasinan. The said Resolutions dismissed petitioners' complaint against private respondents Aurora C. Romero and Vittorio C. Romero.

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[1] In CA-G.R. SP No. 104025, penned by Associate Justice Josefina Guevara-Salonga, and concurred in by Associate Justices Japar B. Dimaampao, and Ramon R. Garcia, SC *rollo*, pp. 25-33.

[2] CA *rollo*, pp. 116-117.

Petitioners allege that upon their father's death on 18 October 1974, their mother, respondent Aurora Romero, was appointed as legal guardian who held several real and personal properties in trust for her children.[3] Since that year until the present, she continues to be the administrator of the properties, businesses, and investments comprising the estate of her late husband.

Sometime in 2006, petitioners Leo and Amando discovered that several Deeds of Sale were registered over parcels of land that are purportedly conjugal properties of their parents. These included the following real and personal properties:

1. A parcel of land identified as Lot 3-G of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real Property No. 16142 and Transfer Certificate of Title (TCT) No. 290013 in the name of Vittorio C. Romero. A warehouse stands on the lot, covered by Declaration of Real Property No. 16142.

2. A parcel of land identified as Lot 3-D of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real Property No. 405, and TCT No. 77223 in the name of Spouses Dante Y. Romero and Aurora Cruz-Romero.

3. A parcel of land identified as Lot 3-E of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real Property No. 407 and TCT No. 77224 in the names of Spouses Dante Y. Romero and Aurora Cruz-Romero.

4. A parcel of land identified as Lot 3-H of Subdivision Plan Psd-67995 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of one thousand square meters under Declaration of Real

[3] Amended Complaint, CA *rollo*, p. 31.

Property No. 406, and TCT No. 77225 in the name of Spouses Dante Y. Romero and Aurora Cruz-Romero.

5. A parcel of land identified as Lot 3815-A of Subdivision Plan Psd-227224 situated in Barrio Pogon-lomboy, Mangatarem, Pangasinan, containing an area of four hundred ninety-four square meters under TCT No. 113514 in the name of Aurora Cruz *vda. de* Romero.

6. A parcel of land located in Barangay Burgos, Mangatarem, Pangasinan, containing an area of more or less three hundred seventy-nine square meters under Declaration of Real Property No. 16136. It is not yet registered under Act 496 or the Old Spanish Mortgage Law, but registrable under Act 3344 as amended. The improvement thereon, a building classified as a warehouse, is covered by Declaration of Real Property No. 16136 A.

7. A parcel of land located in Brgy. Burgos, Mangatarem, Pangasinan, containing an area of more or less two hundred four square meters under Declaration of Real Property No. 16139. It is not yet registered under Act 496 or Act 3344 as amended. The improvement thereon is covered by Declaration of Real Property No. 16140.

8. A parcel of land located in Brgy. Pogon-lomboy, Mangatarem, Pangasinan, containing an area of more or less eleven thousand six hundred forty-six square meters under Declaration of Real Property No. 724 and TCT No. 284241 in the name of Aurora P. Cruz *vda. de* Romero.

9. A parcel of land located in Brgy. Pogon-lomboy, Mangatarem, Pangasinan, containing an area of more or less one thousand two hundred fifty-six square meters under Declaration of Real Property No. 725 and TCT No. 284242 in the name of Aurora P. Cruz *vda. de* Romero.[4]

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[4] *Id.* at CA *rollo,* pp. 27-30.

Petitioners claim that sometime in August of 2005, their brother Vittorio — through fraud, misrepresentation and duress — succeeded in registering the above-mentioned properties in his name through Deeds of Sale executed by their mother, Aurora.[5] Vittorio allegedly employed force and threat upon her, and even administered drugs that rendered her weak and vulnerable. Thus, Aurora signed the Deeds of Sale without reading or knowing their contents.

On 18 December 2006, petitioners filed a Complaint for Annulment of Sale, Nullification of Title, and Conveyance of Title (Amended)[6] against private respondents Aurora C. Romero and Vittorio C. Romero. Respondents filed their Answer, arguing that the properties in question were acquired long after the death of their father, Judge Dante Romero; hence, the properties cannot be considered conjugal. They allege that the lots covered by TCT Nos. 290010, 290011, 113514, and Tax Declaration Nos. 16136 and 11639 were paraphernal properties of Aurora which she had mortgaged. Vittorio purportedly had to shell out substantial amounts in order to redeem them. The lots covered by TCT Nos. 77223, 77224, and 77225 were sold by Aurora herself as attorney-in-fact of her children on 23 November 2006, since her authority to do so had never been revoked or modified.

On 14 December 2007, the RTC rendered its Resolution dismissing petitioners' complaint, stating thus:

> x x x (T)he case under Special Proceedings No. 5185 remains pending in that no distribution of the assets of the estate of the late Dante Y. Romero, nor a partition, has been effected among his compulsory heirs. **Thus, the contending claims of plaintiffs and defendants in this case could not be adjudicated nor passed upon by this Court without first getting a definitive pronouncement from the intestate court as to the share of each of the heirs of the late Dante Y. Romero in his estate.**
>
> Even the claim of defendant Aurora C. Romero that some of the properties being claimed by plaintiffs in this case are her own, the

[5] *Id.* at 31.

[6] Amended Complaint, CA *rollo*, pp. 26-30.

same being paraphernal, is an issue which must be taken up and established in the intestate proceedings.[7] (Emphasis supplied.)

The RTC denied their Motion for Reconsideration, citing Section 3, Rule 87 of the Rules of Court which bars an heir or a devisee from maintaining an action to recover the title or possession of lands until such lands have actually been assigned. The court ruled that "plaintiffs must first cause the termination of Special Proceedings No. 5185 to its logical conclusion before this case could be entertained by the Court."[8]

Alleging grave abuse of discretion on the part of the trial court in rendering the said Resolutions, petitioners filed for *certiorari* under Rule 65 with the CA. On 14 April 2009, the CA rendered the assailed judgment dismissing the Petition, ruling that the properties involved in this case are part of the estate left to the heirs of Judge Romero, the partition of which is already subject of an intestate proceeding filed on 6 January 1976 in the then Court of First Instance (CFI).[9] The CA based its judgment on the findings of the RTC that the inventory of the estate of Judge Romero submitted to the CFI included the same parties, properties, rights and interests as in the case before it.

Petitioners now come to us on a Rule 45 Petition, arguing that the probate court may rule on issues pertaining to title over property only in a provisional capacity. They assert that the CA erred in dismissing their appeal, just because the intestate proceeding has not yet terminated. Petitioners, as heirs, are purportedly allowed to exercise their option of filing a separate civil action in order to protect their interests.

Thus, the singular issue in the case at bar is whether or not petitioners in this case may file a separate civil action for annulment of sale and reconveyance of title, despite the pendency of the settlement proceedings for the estate of the late Judge Dante Y. Romero.

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[7] CA *rollo,* p. 20.

[8] RTC Resolution, 29 January 2008, CA *rollo,* p. 60.

[9] CA Decision, p. 7; CA *rollo,* p. 95.

Ruling of the Court

The probate court has jurisdiction to determine the issues in the present case

Petitioners assert that the jurisdiction of the RTC sitting as a probate or intestate court relates only to matters having to do with the settlement of the estate of deceased persons or the appointment of executors, but does not extend to the determination of questions of ownership that arise during the proceedings.[10] They cite *Ongsingco v. Tan*,[11] *Baybayan v. Aquino*[12] and several cases which state that when questions arise as to ownership of property alleged to be part of the estate of a deceased person, but claimed by some other person to be his property, not by virtue of any right of inheritance from the deceased but by title adverse to that of the deceased and his estate, the intestate court has no jurisdiction to adjudicate these questions. Petitioners conclude that the issue of ownership of the properties enumerated in their Petition and included in the inventory submitted by respondent Aurora Romero to the intestate court, must be determined in a separate civil action to resolve title.[13]

The rulings in *Ongsingco* and *Baybayan* are wholly inapplicable, as they both arose out of facts different from those in the case at bar. *Baybayan* involved a summary settlement for the estate of the decedent, in which a parcel of land representing the share of decedent's nephews and nieces was already covered by a TCT under the name of a third party. To defeat the writ of partition issued by the probate court, the third party, petitioners Baybayan *et al.*, had to file a separate civil action for quieting of their title and for damages. The issue before the Court then devolved upon the propriety of the probate court's order to amend the Complaint for quieting of title before the regular court. More

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[10] Petition for Review, SC *rollo,* pp. 9-20.

[11] 97 Phil. 330 (1955).

[12] 232 Phil. 191 (1987).

[13] *Supra* note 9, at 16.

importantly, *Baybayan* pertained to a civil action involving third parties who were not heirs, and not privy to the intestate proceedings in the probate court. The present action was instituted precisely by heirs of Judge Romero, against their brother, who is also an heir, and their mother, who is the administrator of the estate.

In *Coca v. Borromeo*,[14] this Court **allowed** the probate court to provisionally pass upon the issue of title, precisely because the only interested parties are all heirs to the estate, subject of the proceeding, *viz*:

> It should be clarified that whether a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited probate jurisdiction is in reality not a jurisdictional question. In essence, it is a procedural question involving a mode of practice "which may be waived."
>
> As a general rule, the question as to title to property should not be passed upon in the testate or intestate proceeding. That question should be ventilated in a separate action. That general rule has qualifications or exceptions justified by expediency and convenience.
>
> Thus, the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final determination in a separate action.
>
> Although generally, a probate court may not decide a question of title or ownership, yet if the interested parties are all heirs, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, then the probate court is competent to decide the question of ownership.
>
> We hold that the instant case may be treated as an exception to the general rule that questions of title should be ventilated in a separate action.
>
> Here, the probate court had already received evidence on the ownership of the twelve-hectare portion during the hearing of the motion for its exclusion from (the) inventory. The only interested

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[14] 171 Phil. 246 (1978).

parties are the heirs who have all appeared in the intestate proceeding.[15] (Citations omitted.)

While it is true that a probate court's determination of ownership over properties which may form part of the estate is not final or ultimate in nature, this rule is applicable only as between the representatives of the estate and strangers thereto. Indeed, as early as *Bacquial v. Amihan*,[16] the court stated thus:

> x x x The rulings of this court have always been to the effect that in the special proceeding for the settlement of the estate of a deceased person, persons not heirs, intervening therein to protect their interests are allowed to do so to protect the same, but not for a decision on their action. In the case of In re Estate of the deceased Paulina Vasquez *Vda. de* Garcia, Teresa Garcia *vs.* Luisa Garcia, *et al.*, 67 Phil., 353, this court held:
>
> > A court which takes cognizance of testate or intestate proceedings has power and jurisdiction to determine whether or not the properties included therein or excluded therefrom belong *prima facie* to the deceased, although such a determination is not final or ultimate in nature, and without prejudice to the right of interested parties, in a proper action, to raise the question on the ownership or existence of the right or credit.
>
> To this same effect are rulings in various states of the United States.
>
> > * * * That the probate court is without jurisdiction to try the title to property ***as between the representatives of an estate and strangers*** thereto is too well established by the authorities to require argument.
>
> There is also authority abroad that where the court is without jurisdiction to determine questions of title, as for example, ***as between the estate and persons claiming adversely***, its orders and judgments relating to the sale do not render the issue of title *res judicata*.[17] (Citations omitted, emphasis supplied.)

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[15] *Id.* at 251-252.

[16] 92 Phil. 501 (1953).

[17] *Id.* at 503-504.

In any case, there is no merit to petitioners' claim that the issues raised in the case at bar pertain to title and ownership and therefore need to be ventilated in a separate civil action. The issue before the court is not really one of title or ownership, but the determination of which particular properties should be included in the inventory of the estate. In Civil Case No. 18757, the RTC has listed the properties alleged by petitioners to have been conjugal properties of their parents and, therefore, part of the estate that was illegally sold to the respondent. Some of these real properties identified seem to be the same real properties that form part of the inventory of the estate in the intestate proceedings.[18]

Not only do petitioners assert their legal interest as compulsory heirs, they also seek to be the owners, *pro indiviso*, of the said properties. To anchor their claim, they argue that the properties are conjugal in nature and hence form part of their inheritance. For his defense, Vittorio contends that the lots are the paraphernal properties of Aurora that she had mortgaged, and that Vittorio subsequently redeemed.

In *Bernardo v. Court of Appeals*,[19] the Supreme Court declared that the determination of whether a property is conjugal or paraphernal **for purposes of inclusion in the inventory of the estate** rests with the probate court:

> x x x (T)he jurisdiction to try controversies between heirs of a deceased person regarding the ownership of properties alleged to belong to his estate, has been recognized to be vested in probate courts. This is so because the purpose of an administration proceeding is the liquidation of the estate and distribution of the residue among the heirs and legatees. Liquidation means determination of all the assets of the estate and payment of all the debts and expenses. Thereafter, distribution is made of the decedent's liquidated estate among the persons entitled to succeed him. The proceeding is in the nature of an action of partition, in which each party is required to bring into the mass whatever community property he has in his

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[18] CA *rollo,* p. 16.

[19] 117 Phil. 385 (1963).

possession. To this end, and as a necessary corollary, the interested parties may introduce proofs relative to the ownership of the properties in dispute. All the heirs who take part in the distribution of the decedent's estate are before the court, and subject to the jurisdiction thereof, in all matters and incidents necessary to the complete settlement of such estate, so long as no interests of third parties are affected.

In the case now before us, the matter in controversy is the question of ownership of certain of the properties involved — whether they belong to the conjugal partnership or to the husband exclusively. This is a matter properly within the jurisdiction of the probate court which necessarily has to liquidate the conjugal partnership in order to determine the estate of the decedent which is to be distributed among his heirs who are all parties to the proceedings.[20] **x x x** (Emphasis supplied.)

In the present case, petitioners assume that the properties subject of the allegedly illegal sale are conjugal and constitute part of their share in the estate. To date, there has been no final inventory of the estate or final order adjudicating the shares of the heirs. Thus, only the probate court can competently rule on whether the properties are conjugal and form part of the estate. It is only the probate court that can liquidate the conjugal partnership and distribute the same to the heirs, after the debts of the estate have been paid.

Section 3, Rule 87 bars petitioners from filing the present action

Petitioners next contend that even if the probate court has the power to rule on their Complaint, the submission of the issues in this case to the probate court is merely optional, and not mandatory upon them. Hence, they argue, they still have the right to bring these issues in a separate civil action, if they so choose. They argue further that Section 3, Rule 87 of the Revised Rules of Court is not applicable to the present case.

The said provision states that:

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[20] *Id.* at 390-391.

Sec. 3. *Heir may not sue until share assigned.* — When an executor or administrator is appointed and assumes the trust, no action to recover the title or possession of lands or for damages done to such lands shall be maintained against him by an heir or devisee until there is an order of the court assigning such lands to such heir or devisee or until the time allowed for paying debts has expired.

Petitioners believe that the above rule is subject to certain exceptions. They invoke the doctrine that while heirs have no standing in court to sue for the recovery of property of the estate represented by an administrator, these heirs may maintain such action if the administrator is unwilling to bring the suit, or has allegedly participated in the act complained of.

On this contention, petitioners' theory must again fail. There is nothing on the record that would prove that Aurora defied the orders of the probate court or entered into sale agreements in violation of her trust. In fact, petitioners are really accusing a co-heir, their brother Vittorio, of having acquired certain properties which they allege to be properties of their parents.

Even if we assume the property to be conjugal and thus, part of the estate, Aurora Romero's acts as the administrator of the estate are subject to the sole jurisdiction of the probate court. In *Acebedo v. Abesamis*,[21] the Court stated:

In the case of *Dillena vs. Court of Appeals*, this Court made a pronouncement that it is within the jurisdiction of the probate court to approve the sale of properties of a deceased person by his prospective heirs before final adjudication. Hence, it is error to say that this matter should be threshed out in a separate action.

The Court further elaborated that although the Rules of Court do not specifically state that the sale of an immovable property belonging to an estate of a decedent, in a special proceeding, should be made with the approval of the court, this authority is necessarily included in its capacity as a probate court.[22]

Again, petitioners do not pose issues pertaining to title or ownership. They are, in effect, questioning the validity of the

[21] G.R. No. 102380, 18 January 1993, 217 SCRA 186.

[22] *Id.* at 193.

sales made by the administrator, an issue that can only be properly threshed out by the probate court. Paragraph 13 of petitioners' Complaint alleges as follows:

> 13. The purported transfers and sales executed by Defendant Aurora C. Romero to and in favor of Defendant Vittorio C. Romero are nullities since all were simulated, entered into without the intent and volition of Defendant Aurora C. Romero, attended by force, intimidation, duress and fraud and not supported with any valid or sufficient consideration and with the sole depraved intentions of depriving the other compulsory heirs of the late Judge Dante Y. Romero of their rightful share in the estate.[23] (Emphasis omitted.)

Indeed, implicit in the requirement for judicial approval of sales of property under administration is the recognition that the probate court has the power to rescind or nullify the disposition of a property under administration that was effected without its authority.[24] That petitioners have the prerogative of choosing where to file their action for nullification — whether with the probate court or the regular court — is erroneous. As held in *Marcos, II v. Court of Appeals:*

> x x x (T)he authority of the Regional Trial Court, sitting, albeit with limited jurisdiction, as a probate court over the estate of deceased individual, is not a trifling thing. The court's jurisdiction, once invoked, and made effective, cannot be treated with indifference nor should it be ignored with impunity by the very parties invoking its authority.
>
> In testament to this, it has been held that it is within the jurisdiction of the probate court to approve the sale of properties of a deceased person by his prospective heirs before final adjudication; to determine who are the heirs of the decedent; the recognition of a natural child; the status of a woman claiming to be the legal wife of the decedent; the legality of disinheritance of an heir by the testator; and to pass upon the validity of a waiver of hereditary rights.[25] (Citations omitted.)

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[23] Amended Complaint, CA *rollo,* p. 33.

[24] *Spouses Lebin v. Mirasol,* G.R. No. 164255, 7 September 2011.

[25] 393 Phil. 253, 265 (1997).

Thus, the validity of the sales made by Aurora, allegedly orchestrated by petitioners' co-heir, Vittorio, can only be determined by the probate court, because it is the probate court which is empowered to identify the nature of the property, and that has jurisdiction over Aurora's actions and dispositions as administrator. In *Peñaverde v. Peñaverde*,[26] the Court even adjudged the petitioners guilty of forum-shopping for filing a separate civil action despite the pendency of the said petitioners' own case seeking that letters of administration be granted to them. Similar to the case at bar, the petitioners in *Peñaverde* also sought the annulment of titles in the name of their co-heir:

> The two cases filed by petitioners are: (1) Sp. Proc. No. Q-94-19471, which seeks letters of administration for the estate of Mariano Peñaverde; and (2) Civil Case No. Q-95-24711, which seeks the annulment of the Affidavit of Self-Adjudication executed by Mariano Peñaverde and the annulment of titles in his name as well as the reopening of the distribution of his estate.
>
> Evidently, in filing Sp. Proc. No. Q-94-19471, petitioners sought to share in the estate of Mariano, specifically the subject land previously owned in common by Mariano and his wife, Victorina. This is also what they hoped to obtain in filing Civil Case No. Q-95-24711.
>
> Indeed, a petition for letters of administration has for its object the ultimate distribution and partition of a decedent's estate. This is also manifestly sought in Civil Case No. Q-95-24711, which precisely calls for the "Reopening of Distribution of Estate" of Mariano Peñaverde. In both cases, petitioners would have to prove their right to inherit from the estate of Mariano Peñaverde, albeit indirectly, as heirs of Mariano's wife, Victorina.
>
> Under the circumstances, petitioners are indeed guilty of forum-shopping.
>
> x x x x x x x x x
>
> In the case at bar, it cannot be denied that the parties to Sp. Proc. No. Q-94-19471 and Civil Case No. Q-95-24711 are identical. There is also no question that the rights asserted by petitioners in

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[26] 397 Phil. 925 (2000).

both cases are identical, *i.e.*, the right of succession to the estate of their aunt, Victorina, wife of Mariano. Likewise, the reliefs prayed for — to obtain their share in the estate of Mariano — are the same, such relief being founded on the same facts — their relationship to Mariano's deceased wife, Victorina.[27]

WHEREFORE, the instant Petition is **DENIED.** As the properties herein are already subject of an intestate proceeding filed on 6 January 1976, the 14 April 2009 judgment of the Court of Appeals in CA-G.R. SP No. 104025 finding no grave abuse of discretion on the part of the RTC is **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192514. April 18, 2012]

D.M. CONSUNJI, INC. and/or DAVID M. CONSUNJI, *petitioners, vs.* **ESTELITO L. JAMIN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; MOTIONS; LATE FILING OF THE MOTION FOR RECONSIDERATION RENDERED THE APPEALED DECISION FINAL AND EXECUTORY; LIBERAL APPLICATION OF THE RULE NOT APPLICABLE WHERE THE PETITION LACKS MERIT. — DMCI received its copy of the February 26, 2010 CA decision on March 4, 2010 (a Thursday), as indicated in its motion for reconsideration of the decision itself, not on March 5, 2010 (a Friday), as stated in the present petition. The deadline for the

[27] *Id.* at 930-932.

filing of the motion for reconsideration was on March 19, 2010 (15 days from receipt of copy of the decision), but it was filed only on March 22, 2010 or three days late. Clearly, **the motion for reconsideration was filed out of time, thereby rendering the CA decision final and executory**. Necessarily, DMCI's petition for review on *certiorari* is also late as it had only fifteen (15) days from notice of the CA decision to file the petition or the denial of its motion for reconsideration filed in due time. The reckoning date is March 4, 2010, since DMCI's motion for reconsideration was not filed in due time. We see no point in exercising liberality and disregarding the late filing as we did in *Orozco v. Fifth Division of the Court of Appeals,* where we ruled that "[t]echnicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties." The petition lacks merit for its failure to show that **the CA committed any reversible error or grave abuse of discretion when it reversed the findings of the labor arbiter and the NLRC**.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; REGULAR EMPLOYMENT; PROJECT OR WORK POOL EMPLOYEE WHEN DEEMED A REGULAR EMPLOYEE.— Jamin's employment history with DMCI stands out for his continuous, repeated and successive rehiring in the company's construction projects. In all the 38 projects where DMCI engaged Jamin's services, the tasks he performed as a carpenter were indisputably necessary and desirable in DMCI's construction business. He might not have been a member of a work pool as DMCI insisted that it does not maintain a work pool, but his continuous rehiring and the nature of his work unmistakably made him a regular employee. In *Maraguinot, Jr. v. NLRC,* the Court held that once a **project or work pool employee** has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, **then the employee must be deemed a regular employee**.

3. ID.; ID.; ID.; LENGTH OF TIME IS NOT THE CONTROLLING TEST FOR PROJECT EMPLOYMENT BUT IT IS VITAL IN DETERMINING IF THE EMPLOYEE WAS HIRED FOR A SPECIFIC UNDERTAKING OR TASKED TO

PERFORM FUNCTIONS VITAL, NECESSARY AND INDISPENSABLE TO THE USUAL BUSINESS OR TRADE OF THE EMPLOYER.— [A]s we stressed in *Liganza*, "[r]espondent capitalizes on our ruling in *D.M. Consunji, Inc. v. NLRC* which reiterates the rule that the length of service of a project employee is not the controlling test of employment tenure but whether or not 'the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee.'" "Surely, length of time is not the controlling test for project employment. Nevertheless, it is vital in determining if the employee was hired for a specific undertaking or tasked to perform functions vital, necessary and indispensable to the usual business or trade of the employer. Here, [private] respondent had been a project employee several times over. His employment ceased to be coterminous with specific projects when he was repeatedly re-hired due to the demands of petitioner's business." Without doubt, Jamin's case fits squarely into the employment situation just quoted.

4. ID.; ID.; THE PRESIDENT/GENERAL MANAGER OF THE CORPORATION IS ABSOLVED OF LIABILITY WHERE THERE IS NO EXPRESS FINDING OF HIS INVOLVEMENT IN THE ILLEGAL DISMISSAL OF THE EMPLOYEE.— While there is no question that the company is liable for Jamin's dismissal, we note that the CA made no pronouncement on whether DMCI's President/General Manager, a co-petitioner with the company, is also liable. Neither had the parties brought the matter up to the CA nor with this Court. As there is no express finding of Mr. Consunji's involvement in Jamin's dismissal, we deem it proper to absolve him of liability in this case.

APPEARANCES OF COUNSEL

Bernas Pagaspas Balatbat See for petitioners.
Fernandez and Associates for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the present appeal[1] from the decision[2] dated February 26, 2010 and the resolution[3] dated June 3, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 100099.

The Antecedents

On December 17, 1968, petitioner D.M. Consunji, Inc. (*DMCI*), a construction company, hired respondent Estelito L. Jamin as a laborer. Sometime in 1975, Jamin became a helper carpenter. Since his initial hiring, Jamin's employment contract had been renewed a number of times.[4] On March 20, 1999, his work at DMCI was terminated due to the completion of the SM Manila project. This termination marked the end of his employment with DMCI as he was not rehired again.

On April 5, 1999, Jamin filed a complaint[5] for illegal dismissal, with several money claims (including attorney's fees), against DMCI and its President/General Manager, David M. Consunji. Jamin alleged that DMCI terminated his employment without a just and authorized cause at a time when he was already 55 years old and had no independent source of livelihood. He claimed that he rendered service to DMCI continuously for almost 31 years. In addition to the schedule of projects (where he was assigned) submitted by DMCI to the labor arbiter,[6] he alleged that he worked for three other DMCI projects: Twin Towers, Ritz Towers, from July 29, 1980 to June 12, 1982; New Istana

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[1] *Rollo*, pp. 3-23; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 26-37; penned by Associate Justice Stephen C. Cruz, and concurred in by former Associate Justice Bienvenido L. Reyes (now a Supreme Court Associate Justice) and Associate Justice Japar B. Dimaampao.

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

[4] *Supra* note 2, at 2-31; Schedule of DMCI projects where Jamin worked.

[5] *Rollo*, pp. 49-50.

[6] *Id.* at 60.

Project, B.S.B. Brunei, from June 23, 1982 to February 16, 1984; and New Istana Project, B.S.B. Brunei, from January 24, 1986 to May 25, 1986.

DMCI denied liability. It argued that it hired Jamin on a project-to-project basis, from the start of his engagement in 1968 until the completion of its SM Manila project on March 20, 1999 where Jamin last worked. With the completion of the project, it terminated Jamin's employment. It alleged that it submitted a report to the Department of Labor and Employment (*DOLE*) everytime it terminated Jamin's services.

The Compulsory Arbitration Rulings

In a decision dated May 27, 2002,[7] Labor Arbiter Francisco A. Robles dismissed the complaint for lack of merit. He sustained DMCI's position that Jamin was a project employee whose services had been terminated due to the completion of the project where he was assigned. The labor arbiter added that everytime DMCI rehired Jamin, it entered into a contract of employment with him. Moreover, upon completion of the phase of the project for which Jamin was hired or upon completion of the project itself, the company served a notice of termination to him and a termination report to the DOLE Regional Office. The labor arbiter also noted that Jamin had to file an application if he wanted to be re-hired.

On appeal by Jamin, the National Labor Relations Commission (*NLRC*), in its decision of April 18, 2007,[8] dismissed the appeal and affirmed the labor arbiter's finding that Jamin was a project employee. Jamin moved for reconsideration, but the NLRC denied the motion in a resolution dated May 30, 2007.[9] Jamin sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

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[7] *Id.* at 206-217.

[8] *Id.* at 249-253.

[9] *Id.* at 264.

The CA Decision

On February 26, 2010, the CA Special Fourth Division rendered the disputed decision[10] reversing the compulsory arbitration rulings. **It held that Jamin was a regular employee**. It based its conclusion on: (1) Jamin's repeated and successive rehiring in DMCI's various projects; and (2) the nature of his work in the projects — he was performing activities necessary or desirable in DMCI's construction business. Invoking the Court's ruling in an earlier case,[11] the CA declared that the pattern of Jamin's rehiring and the recurring need for his services are sufficient evidence of the necessity and indispensability of such services to DMCI's business or trade, a key indicator of regular employment. It opined that although Jamin started as a project employee, the circumstances of his employment made it regular or, at the very least, has ripened into a regular employment.

The CA considered the project employment contracts Jamin entered into with DMCI for almost 31 years not definitive of his actual status in the company. It stressed that the existence of such contracts is not always conclusive of a worker's employment status as this Court explained in *Liganza v. RBL Shipyard Corporation, et al.*[12] It found added support from *Integrated Contractor and Plumbing Works, Inc. v. NLRC*,[13] where the Court said that while there were several employment contracts between the worker and the employer, in all of them, the worker performed tasks which were usually necessary or desirable in the usual business or trade of the employer and, a review of the worker's assignments showed that he belonged to a work pool, making his employment regular.

Contrary to DMCI's submission and the labor arbiter's findings, the CA noted that DMCI failed to submit a report to

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[10] *Supra* note 2.

[11] *Baguio Country Club Corporation v. NLRC*, G.R. No. 71664, February 28, 1992, 206 SCRA 643.

[12] G.R. No. 159862, October 17, 2006, 504 SCRA 678.

[13] 503 Phil. 875 (2005).

the DOLE Regional Office everytime Jamin's employment was terminated, as required by DOLE Policy Instructions No. 20. The CA opined that DMCI's failure to submit the reports to the DOLE is an indication that Jamin was not a project employee. It further noted that DOLE Department Order No. 19, Series of 1993, which superseded DOLE Policy Instructions No. 20, provides that the termination report is one of the indicators of project employment.[14]

Having found Jamin to be a regular employee, the CA declared his dismissal illegal as it was without a valid cause and without due process. It found that DMCI failed to provide Jamin the required notice before he was dismissed. Accordingly, the CA ordered Jamin's immediate reinstatement with backwages, and without loss of seniority rights and other benefits.

DMCI moved for reconsideration, but the CA denied the motion in its resolution of June 3, 2010.[15] DMCI is now before the Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court.[16]

The Petition

DMCI seeks a reversal of the CA rulings on the ground that the appellate court committed a grave error in annulling the decisions of the labor arbiter and the NLRC. It presents the following arguments:

1. The CA misapplied the phrase "usually necessary or desirable in the usual business or trade of the employer" when it considered Jamin a regular employee. The definition of a regular employee under Article 280 of the Labor Code does not apply to project employment or "employment which has been fixed for a specific project," as interpreted by the Supreme Court in *Fernandez v. National Labor Relations Commission*[17] and *D.M.*

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[14] Section 2.2(e)

[15] *Supra* note 3.

[16] *Supra* note 1.

[17] G.R. No. 106090, February 28, 1994, 230 SCRA 460.

Consunji, Inc. v. NLRC.[18] It maintains the same project employment methodology in its business operations and it cannot understand why a different ruling or treatment would be handed down in the present case.

2. There is no work pool in DMCI's roster of project employees. The CA erred in insinuating that Jamin belonged to a work pool when it cited *Integrated Contractor and Plumbing Works, Inc.* ruling.[19] At any rate, Jamin presented no evidence to prove his membership in any work pool at DMCI.

3. The CA misinterpreted the rules requiring the submission of termination of employment reports to the DOLE. While the report is an indicator of project employment, as noted by the CA, it is only one of several indicators under the rules.[20] In any event, the CA penalized DMCI for a few lapses in its submission of reports to the DOLE with a "very rigid application of the rule despite the almost unanimous proofs surrounding the circumstances of private respondent being a project employee as shown by petitioner's documentary evidence."[21]

4. The CA erred in holding that Jamin was dismissed without due process for its failure to serve him notice prior to the termination of his employment. As Jamin was not dismissed for cause, there was no need to furnish him a written notice of the grounds for the dismissal and neither is there a need for a hearing. When there is no more job for Jamin because of the completion of the project, DMCI, under the law, has the right to terminate his employment without incurring any liability. Pursuant to the rules implementing the Labor Code,[22] if the

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[18] 401 Phil. 635 (2000).

[19] *Supra* note 13.

[20] *Supra* note 14.

[21] *Supra* note 1, at 16-17.

[22] OMNIBUS RULES IMPLEMENTING THE LABOR CODE, Book VI, Rule I, Sec. 1(d)(iii), last paragraph, not Book V, Rule XXIII, Section 2(c), as cited.

termination is brought about by the completion of the contract or phase thereof, no prior notice is required.

Finally, DMCI objects to the CA's reversal of the findings of the labor arbiter and the NLRC in the absence of a showing that the labor authorities committed a grave abuse of discretion or that evidence had been disregarded or that their rulings had been arrived at arbitrarily.

The Case for Jamin

In his Comment (to the Petition),[23] Jamin prays that the petition be denied for having been filed out of time and for lack of merit.

He claims, in support of his plea for the petition's outright dismissal, that DMCI received a copy of the CA decision (dated February 26, 2010) on March 4, 2010, as stated by DMCI itself in its motion for reconsideration of the decision.[24] Since DMCI filed the motion with the CA on March 22, 2010, it is obvious, Jamin stresses, that the motion was filed three days beyond the 15-day reglementary period, the last day of which fell on March 19, 2010. He maintains that for this reason, the CA's February 26, 2010 decision had become final and executory, as he argued before the CA in his Comment and Opposition (to DMCI's Motion for Reconsideration).[25]

On the merits of the case, Jamin submits that the CA committed no error in nullifying the rulings of the labor arbiter and the NLRC. He contends that DMCI misread this Court's rulings in *Fernandez v. National Labor Relations Commission, et al.*[26] and *D.M. Consunji, Inc. v. NLRC*,[27] cited to support its position that Jamin was a project employee.

Jamin argues that in *Fernandez*, the Court explained that the *proviso* in the second paragraph of Article 280 of the Labor

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[23] *Rollo,* pp. 328-348.

[24] *Id.* at 38, paragraph 1.

[25] *Id.* at 350-351.

[26] *Supra* note 17.

[27] *Supra* note 18.

Code relates only to **casual employees** who shall be considered regular employees if they have rendered at least one year of service, whether such service is continuous or broken. He further argues that in *Fernandez,* the Court held that inasmuch as the documentary evidence clearly showed gaps of a month or months between the hiring of Ricardo Fernandez in the numerous projects where he was assigned, it was the Court's conclusion that Fernandez had not continuously worked for the company but only intermittently as he was hired solely for specific projects.[28] Also, in *Fernandez,* the Court affirmed its rulings in earlier cases that "the failure of the employer to report to the [nearest] employment office the termination of workers everytime a project is completed proves that the employees are not project employees."[29]

Jamin further explains that in the *D.M. Consunji, Inc*. case, the company deliberately omitted portions of the Court's ruling stating that the complainants were not claiming that they were regular employees; rather, they were questioning the termination of their employment before the completion of the project at the Cebu Super Block, without just cause and due process.[30]

In the matter of termination reports to the DOLE, Jamin disputes DMCI's submission that it committed only few lapses in the reportorial requirement. He maintains that even the NLRC noted that there were no termination reports with the DOLE Regional Office after every completion of a phase of work, although the NLRC considered that the report is required only for statistical purposes. He, therefore, contends that the CA committed no error in holding that DMCI's failure to submit reports to the DOLE was an indication that he was not a project employee.

Finally, Jamin argues that as a regular employee of DMCI for almost 31 years, the termination of his employment was without just cause and due process.

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[28] *Supra* note 17, at 465.

[29] *Id.* at 468.

[30] *Supra* note 18, at 642.

The Court's Ruling

The procedural issue

Was DMCI's appeal filed out of time, as Jamin claims, and should have been dismissed outright? The records support Jamin's submission on the issue.

DMCI received its copy of the February 26, 2010 CA decision on March 4, 2010 (a Thursday), as indicated in its motion for reconsideration of the decision itself,[31] not on March 5, 2010 (a Friday), as stated in the present petition.[32] The deadline for the filing of the motion for reconsideration was on March 19, 2010 (15 days from receipt of copy of the decision), but it was filed only on March 22, 2010 or three days late. Clearly, **the motion for reconsideration was filed out of time, thereby rendering the CA decision final and executory**.

Necessarily, DMCI's petition for review on *certiorari* is also late as it had only fifteen (15) days from notice of the CA decision to file the petition or the denial of its motion for reconsideration filed in due time.[33] The reckoning date is March 4, 2010, since DMCI's motion for reconsideration was not filed in due time. We see no point in exercising liberality and disregarding the late filing as we did in *Orozco v. Fifth Division of the Court of Appeals*,[34] where we ruled that "[t]echnicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties." The petition lacks merit for its failure to show that **the CA committed any reversible error or grave abuse of discretion when it reversed the findings of the labor arbiter and the NLRC**.

As earlier mentioned, Jamin worked for DMCI for almost 31 years, initially as a laborer and, for the most part, as a

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[31] *Supra* note 24.

[32] *Supra* note 1, at 2.

[33] RULES OF COURT, Rule 45, Section 1.

[34] 497 Phil. 227 (2005), citing *Buenaobra v. Lim King Guan*, 465 Phil. 290 (2004).

carpenter. Through all those years, DMCI treated him as a project employee, so that he never obtained tenure. On the surface and at first glance, DMCI appears to be correct. Jamin entered into a contract of employment (actually an appointment paper to which he signified his conformity) with DMCI either as a field worker, a temporary worker, a casual employee, or a project employee everytime DMCI needed his services and a termination of employment paper was served on him upon completion of every project or phase of the project where he worked.[35] DMCI would then submit termination of employment reports to the DOLE, containing the names of a number of employees including Jamin.[36] The NLRC and the CA would later on say, however, that DMCI failed to submit termination reports to the DOLE.

The CA pierced the cover of Jamin's project employment contract and declared him a regular employee who had been dismissed without cause and without notice. To reiterate, the CA's findings were based on: (1) Jamin's repeated and successive engagements in DMCI's construction projects, and (2) Jamin's performance of activities necessary or desirable in DMCI's usual trade or business.

We agree with the CA. In *Liganza v. RBL Shipyard Corporation*,[37] the Court held **that "[a]ssuming, without granting[,] that [the] petitioner was initially hired for specific projects or undertakings, the repeated re-hiring and continuing need for his services for over eight (8) years have undeniably made him a regular employee**." We find the *Liganza* ruling squarely applicable to this case, considering that for almost 31 years, DMCI had repeatedly, continuously and successively engaged Jamin's services since he was hired on December 17, 1968 or for a total of 38 times — 35 as shown by the schedule of projects submitted by DMCI to the labor arbiter[38] and three more projects or engagements added by Jamin, which

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[35] *Rollo*, pp. 71-140.

[36] *Id.* at 141-157.

[37] *Supra* note 12, at 689.

[38] *Supra* note 6.

he claimed DMCI intentionally did not include in its schedule so as to make it appear that there were wide gaps in his engagements. One of the three projects was local, the *Ritz Towers*,[39] from July 29, 1980 to June 12, 1982, while the other two were overseas — the *New Istana Project* in Brunei, Darussalam, from June 23, 1982 to February 16, 1984;[40] and again, the *New Istana Project*, from January 24, 1986 to May 25, 1986.[41]

We reviewed Jamin's employment contracts as the CA did and we noted that while the contracts indeed show that Jamin had been engaged as a project employee, there was an almost unbroken string of Jamin's rehiring from December 17, 1968 up to the termination of his employment on March 20, 1999. While the history of Jamin's employment (schedule of projects)[42] relied upon by DMCI shows a gap of almost four years in his employment for the period between July 28, 1980 (the supposed completion date of the Midtown Plaza project) and June 13, 1984 (the start of the IRRI Dorm IV project), the gap was caused by the company's omission of the three projects above mentioned.

For not disclosing that there had been other projects where DMCI engaged his services, Jamin accuses the company of suppressing vital evidence that supports his contention that he rendered service in the company's construction projects continuously and repeatedly for more than three decades. The non-disclosure might not have constituted suppression of evidence — it could just have been overlooked by the company — but the oversight is unfair to Jamin as the non-inclusion of the three projects gives the impression that there were substantial gaps not only of several months but years in his employment with DMCI.

Thus, as Jamin explains, the Ritz Tower Project (July 29, 1980 to June 12, 1982) and the New Istana Project (June 23, 1982 to February 16, 1984) would explain the gap between the Midtown Plaza project (September 3, 1979 to July 28, 1980)

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[39] *Rollo*, p. 171; Certification of Premium Payments, SSS Makati Branch.

[40] *Id.* at 175-196; Jamin's Payslips for the New Istana Project.

[41] *Id.* at 197-199; Payslips for New Istana Project (second phase).

[42] *Supra* note 6.

and the IRRI Dorm IV project (June 13, 1984 to March 12, 1985) and the other New Istana Project (January 24, 1986 to May 25, 1986) would explain the gap between P. 516 Hanger (September 13, 1985 to January 23, 1986) and P. 516 Maint (May 26, 1986 to November 18, 1987).

To reiterate, Jamin's employment history with DMCI stands out for his continuous, repeated and successive rehiring in the company's construction projects. In all the 38 projects where DMCI engaged Jamin's services, the tasks he performed as a carpenter were indisputably necessary and desirable in DMCI's construction business. He might not have been a member of a work pool as DMCI insisted that it does not maintain a work pool, but his continuous rehiring and the nature of his work unmistakably made him a regular employee. In *Maraguinot, Jr. v. NLRC*,[43] the Court held that once a **project or work pool employee** has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, **then the employee must be deemed a regular employee**.

Further, as we stressed in *Liganza*,[44] "[r]espondent capitalizes on our ruling in *D.M. Consunji, Inc. v. NLRC* which reiterates the rule that the length of service of a project employee is not the controlling test of employment tenure but whether or not 'the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee.'"

"Surely, length of time is not the controlling test for project employment. Nevertheless, it is vital in determining if the employee was hired for a specific undertaking or tasked to perform functions vital, necessary and indispensable to the usual business or trade of the employer. Here, [private] respondent had been a project employee several times over. His employment ceased to be coterminous with specific projects when he was repeatedly re-

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[43] 348 Phil. 580 (1998).

[44] *Supra* note 12, at 689.

hired due to the demands of petitioner's business."[45] Without doubt, Jamin's case fits squarely into the employment situation just quoted.

The termination reports

With our ruling that Jamin had been a regular employee, the issue of whether DMCI submitted termination of employment reports, pursuant to Policy Instructions No. 20 (Undated[46]), as superseded by DOLE Department Order No. 19 (series of 1993), has become academic. DOLE Policy Instructions No. 20 provides in part:

> Project employees are not entitled to termination pay if they are terminated as a result of the completion of the project or any phase thereof in which they are employed, regardless of the number of projects in which they have been employed by a particular construction company. Moreover, the company is not required to obtain a clearance from the Secretary of Labor in connection with such termination. What is required of the company is a report to the nearest Public Employment Office for statistical purposes.[47]

To set the records straight, DMCI indeed submitted reports to the DOLE but as pointed out by Jamin, the submissions started only in 1992.[48] DMCI explained that it submitted the earlier reports (1982), but it lost and never recovered the reports. It reconstituted the lost reports and submitted them to the DOLE in October 1992; thus, the dates appearing in the reports.[49]

Is David M. Consunji, DMCI's President/General Manager, liable for Jamin's dismissal?

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[45] *Ibid.*

[46] VICENTE B. FOZ, *THE LABOR CODE OF THE PHILIPPINES and ITS IMPLEMENTING RULES AND REGULATIONS*, 7th Edition, 1979, pp. 134-135, but cited as Policy Instructions No. 20 (Series of 1977) in *Raycor Aircontrol Systems, Inc. v. NLRC,* 330 Phil. 306, 315 (1996).

[47] *Id.,* paragraph 4.

[48] *Rollo,* pp. 141-147.

[49] *Id.* at 243; DMCI's Answer to and/or Comment on the Appeal, p. 8.

While there is no question that the company is liable for Jamin's dismissal, we note that the CA made no pronouncement on whether DMCI's President/General Manager, a co-petitioner with the company, is also liable.[50] Neither had the parties brought the matter up to the CA nor with this Court. As there is no express finding of Mr. Consunji's involvement in Jamin's dismissal, we deem it proper to absolve him of liability in this case.

As a final point, it is well to reiterate a cautionary statement we made in *Maraguinot*,[51] thus:

> At this time, we wish to allay any fears that this decision unduly burdens an employer by imposing a duty to re-hire a project employee even after completion of the project for which he was hired. The import of this decision is not to impose a positive and sweeping obligation upon the employer to re-hire project employees. What this decision merely accomplishes is a judicial recognition of the employment status of a project or work pool employee in accordance with what is *fait accompli*, *i.e.*, the continuous re-hiring by the employer of project or work pool employees who perform tasks necessary or desirable to the employer's usual business or trade.

In sum, we deny the present appeal for having been filed late and for lack of any reversible error. We see no point in extending any liberality by disregarding the late filing as the petition lacks merit.

WHEREFORE, premises considered, the petition is hereby **DENIED** for late filing and for lack of merit. The decision dated February 26, 2010 and the resolution dated June 3, 2010 of the Court of Appeals are **AFFIRMED.** Petitioner David M. Consunji is absolved of liability in this case.

SO ORDERED.

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

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[50] *Supra* note 2, at 37.

[51] *Supra* note 43 at 605.

[*] Additional Member vice Justice Bienvenido L. Reyes per Raffle dated March 28, 2012.

SECOND DIVISION

[G.R. No. 193415. April 18, 2012]

SPOUSES DAISY and SOCRATES M. AREVALO, *petitioners, vs.* **PLANTERS DEVELOPMENT BANK and THE REGISTER OF DEEDS OF PARAÑAQUE CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; A CASE BECOMES MOOT AND ACADEMIC WHEN THERE IS NO MORE ACTUAL CONTROVERSY BETWEEN THE PARTIES OR USEFUL PURPOSE THAT CAN BE SERVED IN PASSING UPON THE MERITS; DISMISSAL OF THE FIRST COMPLAINT RENDER THE ISSUE ON NON-ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION MOOT.— The Court rules that upon dismissal of the First Complaint by the trial court on 27 October 2009, the issue of whether the writ of injunction should issue has become moot. Although both parties failed to raise this particular argument in their submissions, we deny the instant Petition on this ground. A case becomes moot and academic when there is no more actual controversy between the parties or useful purpose that can be served in passing upon the merits. There remains no actual controversy in the instant Petition because the First Complaint has already been dismissed by the trial court. Upon its dismissal, the question of the non-issuance of a writ of preliminary injunction necessarily died with it.

2. ID.; PROVISIONAL REMEDIES; INJUNCTION; A WRIT OF PRELIMINARY INJUNCTION IS DEEMED LIFTED UPON DISMISSAL OF THE MAIN CASE, ANY APPEAL THEREFROM NOTWITHSTANDING.— A writ of preliminary injunction is a provisional remedy. It is auxiliary to, an adjunct of, and subject to the outcome of the main case. Thus, a writ of preliminary injunction is deemed lifted upon dismissal of the main case, any appeal therefrom notwithstanding, as this Court emphasized in *Buyco v. Baraquia* from which we quote: **The writ is provisional because it constitutes a temporary measure availed of during the pendency of the**

action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action. It is well-settled that the sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard. It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case. x x x **The present case having been heard and found dismissible as it was in fact dismissed, the writ of preliminary injunction is deemed lifted, its purpose as a provisional remedy having been served, the appeal therefrom notwithstanding.** x x x. There will be no practical value in resolving the question of the non-issuance of an injunctive writ in this case. Setting aside the assailed Orders is manifestly pointless, considering that the First Complaint itself has already been dismissed, and there is nothing left to enjoin. The reversal of the assailed Orders would have a practical effect only if the dismissal were set aside and the First Complaint reinstated. In this case, however, petitioner Spouses Arevalo admitted to the impossibility of the reinstatement of the First Complaint when they filed their Second Complaint.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE EXERCISE OF JUDICIAL POWER REQUIRES AN ACTUAL CASE CALLING FOR IT; COURTS DO NOT SIT TO ADJUDICATE MERE ACADEMIC QUESTIONS TO SATISFY SCHOLARLY INTEREST, HOWEVER, INTELLECTUALLY CHALLENGING.—** Even petitioners' plea that this Court give due course to the Petition for a ruling on the proper application of the Procedure on Foreclosure cannot compel us to resolve this issue. The Constitution provides that judicial power "includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable." The exercise of judicial power requires an actual case calling for it. The courts have no authority to pass upon issues through advisory opinions, or to resolve hypothetical or feigned problems or friendly suits collusively arranged between parties without real adverse interests. Furthermore, courts do not sit to adjudicate mere academic

questions to satisfy scholarly interest, however intellectually challenging. As a condition precedent to the exercise of judicial power, an actual controversy between litigants must first exist. An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution, as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.

4. REMEDIAL LAW; ACTIONS; FORUM SHOPPING; EXPLAINED; RATIONALE AGAINST FORUM SHOPPING. — We rule that petitioners were guilty of willful and deliberate forum-shopping when they filed their Second Complaint with the trial court insofar as they undertook to obtain similar reliefs as those sought in the instant Petition. x x x. Forum shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different *fora*, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another. The rationale against forum-shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.

5. ID.; ID.; ID.; REQUISITES.— In *Yu v. Lim*, this Court enumerated the requisites of forum-shopping, as follows: Forum-shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res*

judicata in the other case. What is essential in determining the existence of forum-shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues.

6. ID.; ID.; ID.; THE GRAVE EVIL SOUGHT TO BE AVOIDED BY THE RULE AGAINST FORUM-SHOPPING IS THE RENDITION BY TWO COMPETENT TRIBUNALS OF TWO SEPARATE AND CONTRADICTORY DECISIONS; VIOLATION OF THE RULES RESULTS IN THE DISMISSAL OF A CASE.— A comparison of the reliefs sought by petitioners in the instant Petition and in their Second Complaint confirms that they are substantially similar on two points: (1) revocation and cancellation of the Certificate of Sale and (2) permanent injunction on any transfer and/or consolidation of title in favor of respondent Bank. These similarities undoubtedly create the possibility of conflicting decisions from different courts x x x. We emphasize that the grave evil sought to be avoided by the rule against forum-shopping is the rendition by two competent tribunals of two separate and contradictory decisions. To avoid any confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case. The acts committed and described herein can possibly constitute direct contempt.

7. ID.; ID.; ID.; EVERY LITIGANT IS REQUIRED TO NOTIFY THE COURT OF THE FILING OR PENDENCY OF ANY OTHER ACTION OR SUCH OTHER PROCEEDING INVOLVING THE SAME OR SIMILAR ACTION OR CLAIM WITHIN FIVE (5) DAYS OF LEARNING OF THAT FACT; NOT COMPLIED WITH.— Aside from the fact that petitioners sought substantially similar reliefs from different courts, they likewise failed to disclose to this Court the filing of their Second Complaint within five (5) days from its filing, in violation of their previous undertaking to do so. Every litigant is required to notify the court of the filing or pendency of any other action or such other proceeding involving the same or similar action or claim within five (5) days of learning of that fact. Petitioners claim that it was merely

due to inadvertence that they failed to disclose the said filing within five (5) days, contrary to their undertaking. This Court is not inclined to accept this self-serving explanation. We cannot disregard the glaring fact that respondents had to call the attention of petitioners to the said requirement before the latter admitted that they had indeed filed their Second Complaint.

APPEARANCES OF COUNSEL

Socrates M. Arevalo for petitioners.
Janda Asia & Associates for respondents.

D E C I S I O N

SERENO, *J.*:

This is a Rule 45 Petition for Review, which seeks to reverse the Decision dated 24 March 2010[1] and Resolution dated 05 August 2010[2] of the Court of Appeals (CA) in CA-G.R. SP No. 110806. The CA affirmed the trial court's Decision not to grant petitioners' application for a writ of preliminary injunction.

As stated, this case involves the trial court's refusal to issue a writ of preliminary injunction in favor of petitioner Spouses Daisy and Socrates M. Arevalo (Spouses Arevalo) based on their failure to comply with Section 2 of the Procedure in Extra-Judicial or Judicial Foreclosure of Real Estate Mortgages (Procedure on Foreclosure)[3] issued by this Court. This procedure required them to pay twelve percent (12%) per annum interest on the amount of the principal obligation, as stated in the application for foreclosure sale, before an injunctive writ may

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[1] *Rollo,* pp. 51-62.

[2] *Rollo,* p. 64.

[3] SC Administrative Matter No. 99-10-05-0 dated 20 February 2007. (Hereinafter, Procedure on Foreclosure).

issue against the extra-judicial foreclosure of real estate mortgage.[4]

We deny the instant Petition for the following reasons: (1) the Petition is moot, because the trial court has already dismissed the Complaint dated 07 April 2009 (the First Complaint),[5] upon which petitioners' application for the provisional remedy of preliminary injunction was based; and (2) petitioners are guilty of forum-shopping.

The conflict between the parties arose from a Loan Agreement[6] petitioners executed with respondent Planters Development Bank (Bank). Petitioners obtained from respondent Bank a ₱2,100,000 loan secured by a mortgage on their property situated in Muntinlupa. Due to their failure to pay the loaned amount, the Bank undertook to extra-judicially foreclose the mortgage. The Clerk of Court issued a Notice of Sheriff's Sale and set the auction sale on 21 and 28 April 2009.[7]

Petitioners thereafter filed the First Complaint wherein they asked for the nullification of interests, penalties and other charges, as well as for specific performance with an application for a temporary restraining order (TRO) and writ of preliminary injunction to enjoin the then impending auction sale of their

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[4] "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." (Sec. 2 of the Procedure on Foreclosure.)

[5] The Complaint for Nullification of Interests, Penalties and Other Charges, Specific Performance with Prayer for Preliminary Injunction, TRO and Damages dated 07 April 2009, docketed as Civil Case No. 09-0126, entitled *Daisy M. Arevalo and Socrates M. Arevalo v. Planters Development Bank, Inc.*, then pending before Regional Trial Court of Parañaque City, Branch 258, was dismissed by virtue of an Order dated 27 October 2009; *rollo*, pp. 105-137, 231-236.

[6] *Rollo*, pp. 118-121.

[7] *Rollo*, p. 52.

Muntinlupa property. They alleged that it was respondent Bank who breached its obligations under the loan agreement; and that the auction sale was premature, arbitrary and confiscatory, as their inability to pay the loan was caused and aggravated by the Bank's illegal schemes.[8]

During the hearing of petitioners' application for preliminary injunction, the trial court ruled that, as a precondition for the issuance of the writ and pursuant to the Procedure on Foreclosure, petitioners were directed to pay 12% per annum interest on the principal obligation as stated in the application for foreclosure sale. Otherwise, the writ shall not issue.[9] The trial court further ruled that the evidence in support of their application was evidentiary in nature and should thus be presented during trial.[10]

Petitioner Spouses Arevalo sought to clarify the trial court's Order,[11] inquiring whether they should be required to pay 12% per annum interest. They argue that the rule requiring the payment of 12% interest as a condition for the issuance of an injunctive writ against an impending foreclosure sale was applicable only when applicant alleges that the interest rate is unconscionable.[12] According to petitioners, nowhere in the Complaint did they allege that the interest charges were unconscionable.[13] Instead, what they raised in the First Complaint as their principal cause of action was the Bank's deliberate withholding of loan releases on various pretexts and the propriety of the acts of the Bank charging them with interests and penalties due to the delay caused by the Bank itself.[14] The trial court, however, affirmed its earlier ruling.[15]

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[8] *Rollo*, p. 54.

[9] Order dated 24 April 2009; *rollo*, p. 139.

[10] *Id.*

[11] *Id.*

[12] *Rollo*, pp. 140-159.

[13] *Rollo*, p. 145.

[14] *Id.*

[15] Order dated 10 July 2009; *rollo*, pp. 98-100.

Petitioners moved for reconsideration,[16] but their motion was denied.[17] Consequently, they did not pay the required interest; thus, no writ of preliminary injunction was issued in their favor.

Aggrieved, petitioner Spouses Arevalo filed a Rule 65 Petition[18] with the CA to assail the Orders of the trial court involving the non-issuance of the injunctive writ.[19]

Meanwhile, proceedings for the First Complaint ensued at the trial court. Acting on the Motion to Dismiss filed by respondent Bank, the trial court granted the motion and dismissed the First Complaint for lack of cause of action.[20] Petitioner Spouses Arevalo then proceeded again to the CA to appeal[21] the dismissal of the main case. The record does not reveal the status of the case.

With regard to the Rule 65 Petition to the CA questioning the non-issuance of the writ, respondent Bank filed its Comment[22] thereon. Subsequently, the CA rendered the present assailed Decision dated 24 March 2010, affirming the applicability of Section 2 of the Procedure on Foreclosure. It ruled that the trial court was correct in refusing to issue the writ due to petitioners' inexplicable failure and even stubborn refusal to pay the accrued interest at 12% per annum.[23] The CA held that the words used by petitioners in their First Complaint, such as

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[16] *Rollo*, pp. 160-166.

[17] Order dated 24 August 2009; *rollo*, pp. 102-103.

[18] Docketed as CA-G.R. No. 110806, entitled *Sps. Daisy Arevalo and Socrates Arevalo v. The Presiding Judge Branch 258, Regional Trial Court of Paranaque City*; *rollo*, pp. 65-97.

[19] *Rollo*, p. 79.

[20] Order dated 27 October 2009; *rollo*, pp. 231-236.

[21] Docketed as CA-G.R. CV No. 94925, entitled *Sps. Daisy & Socrates Arevalo v. Planters Development Bank*, Notice of Appeal dated 08 March 2010; *rollo*, pp. 237-238 and Notice dated 28 September 2010; *rollo*, p. 239.

[22] *Rollo*, pp. 178-186.

[23] *Rollo*, pp. 60-61.

"manifestly unjust," "purely potestative condition," "void *ab initio*," "clearly contravenes morals, good customs and public policy," "whimsical," "capricious violation of the legal and inherent principles of mutuality of contracts," "illegal, invalid, unilateral impositions"—all of which pertained to interest imposed by the Bank—undeniably meant that petitioners were challenging the interest for being unconscionable, while opting to use other words of similar import.[24]

Petitioners moved for reconsideration, but the CA denied their motion.[25]

Aggrieved, they filed the instant Rule 45 Petition to assail the Decision of the CA affirming the non-issuance of the injunctive writ.

There are thus two (2) cases arising from similar facts and circumstances; more particularly, the instant Rule 45 Petition and the appeal of the dismissal of the main case with the CA.[26] It appears on record also that on 12 November 2010, petitioners filed yet another Complaint dated 11 November 2010[27] (Second Complaint) with the trial court. This time, they prayed for the nullification of the real estate mortgage, the extra-judicial foreclosure sale, and the subsequent proceedings, with a prayer for preliminary injunction and TRO.

With regard to the instant Rule 45 Petition, petitioners assail the Decision and Resolution of the CA based on the following grounds:[28] (1) they were deprived of the opportunity to present evidence on their application for a writ of preliminary injunction; and (2) the CA erred when it required them to pay 12% interest per annum based on Section 2 of the Procedure on Foreclosure, when the core of their First Complaint was not excessiveness

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[24] *Rollo*, p. 60.

[25] *Rollo*, p. 64.

[26] *Supra* note 21.

[27] *Rollo*, pp. 290-299.

[28] *Rollo*, p. 8.

of the interest but the Bank's supposed breach of their obligations in the loan agreement.[29]

Respondent Bank, on the other hand, countered as follows:[30] (1) petitioner Spouses Arevalo were not denied due process, since they were accorded several opportunities to be heard on their application for the issuance of an injunctive writ; (2) the CA correctly required petitioners to pay the interest; and (3) petitioner Spouses Arevalo were guilty of forum-shopping when they filed their Second Complaint. For forum-shopping, respondent Bank likewise moved to hold them in contempt,[31] arguing that they had sought similar reliefs in their Second Complaint with the trial court as in the present Petition.

Petitioners filed their Reply[32] and Comment[33] to the charges on contempt.

Based on the parties' submissions, the following issues are presented for the resolution of this Court:

1. Whether the requirement to pay 12% interest per annum before the issuance of an injunctive writ to enjoin an impending foreclosure sale is applicable to the instant case; and
2. Whether petitioner Spouses Arevalo are guilty of forum-shopping and should consequently be punished for contempt.

RULING OF THE COURT

I. The issue of the applicability to this case of the requirement to pay 12% interest per annum before the issuance

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[29] *Rollo*, p. 27.

[30] *Rollo*, pp. 279-301.

[31] *Id.*

[32] *Rollo*, pp. 307-320.

[33] *Rollo*, pp. 334-347.

of an injunctive writ to enjoin an impending foreclosure sale is moot.

The Court rules that upon dismissal of the First Complaint by the trial court on 27 October 2009,[34] the issue of whether the writ of injunction should issue has become moot. Although both parties failed to raise this particular argument in their submissions, we deny the instant Petition on this ground.

A case becomes moot and academic when there is no more actual controversy between the parties or useful purpose that can be served in passing upon the merits.[35]

There remains no actual controversy in the instant Petition because the First Complaint has already been dismissed by the trial court. Upon its dismissal, the question of the non-issuance of a writ of preliminary injunction necessarily died with it.

A writ of preliminary injunction is a provisional remedy. It is auxiliary to, an adjunct of, and subject to the outcome of the main case.[36] Thus, a writ of preliminary injunction is deemed lifted upon dismissal of the main case, any appeal therefrom notwithstanding,[37] as this Court emphasized in *Buyco v. Baraquia*[38] from which we quote:

The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.

It is well-settled that the sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard. It is usually granted when it is made to appear that there is a substantial controversy between the

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[34] *Supra* note 20.

[35] *Tantoy, Sr. v. Hon. Judge Abrogar*, 497 Phil. 615 (2005).

[36] *Bustamante v. Court of Appeals*, G.R. No. 126371, 17 April 2002, 381 SCRA 171.

[37] *Golez v. Hon. Judge Leonidas*, 194 Phil. 179 (1981).

[38] G.R. No. 177486, 21 December 2009, 608 SCRA 699.

parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case.

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The present case having been heard and found dismissible as it was in fact dismissed, the writ of preliminary injunction is deemed lifted, its purpose as a provisional remedy having been served, the appeal therefrom notwithstanding.

Unionbank *v.* Court of Appeals enlightens:

x x x a **dismissal, discontinuance or non-suit of an action in which a restraining order or temporary injunction has been granted operates as a dissolution of the restraining order or temporary injunction**," regardless of whether the period for filing a motion for reconsideration of the order dismissing the case or appeal therefrom has expired. **The rationale therefor is that even in cases where an appeal is taken from a judgment dismissing an action on the merits, the appeal does not suspend the judgment, hence the general rule applies that a temporary injunction terminates automatically on the dismissal of the action**. (Emphases supplied.)[39]

There will be no practical value in resolving the question of the non-issuance of an injunctive writ in this case. Setting aside the assailed Orders is manifestly pointless, considering that the First Complaint itself has already been dismissed, and there is nothing left to enjoin. The reversal of the assailed Orders would have a practical effect only if the dismissal were set aside and the First Complaint reinstated.[40] In this case, however, petitioner Spouses Arevalo admitted to the impossibility of the reinstatement of the First Complaint when they filed their Second Complaint.[41]

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[39] *Id.* at 703-705.

[40] *Ley Construction & Development Corporation v. Hyatt Industrial Manufacturing Corporation*, 393 Phil. 633 (2000).

[41] "Civil Case No. 10-0519 is anchored on an entirely distinct causes of action, one of which, is that despite the total approved loan was already annotated on petitioners' TCT No. 13168 pursuant to the real estate mortgage,

Even petitioners' plea that this Court give due course to the Petition for a ruling on the proper application of the Procedure on Foreclosure[42] cannot compel us to resolve this issue.

The Constitution provides that judicial power "includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable."[43] The exercise of judicial power requires an actual case calling for it. The courts have no authority to pass upon issues through advisory opinions, or to resolve hypothetical or feigned problems or friendly suits collusively arranged between parties without real adverse interests.[44] Furthermore, courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.[45] As a condition precedent to the exercise of judicial power, an actual controversy between litigants must first exist.[46] An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution, as distinguished from a hypothetical or

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the respondent bank failed to release the full amount of loan to the petitioners on various pretexts, thus, a substantial portion of the consideration of the real estate mortgage was not released to petitioners resulting to their substantial prejudice. Thus, in Civil Case No. CV-09-0126 before Branch 258, petitioners prayed for Specific Performance for the release to the latter of the ₱602,013.93 which the respondent bank unjustifiably withheld from them, but instead proceeded with the extrajudicial foreclosure of the subject property.

Since fulfillment is rendered legally impossible by the extrajudicial foreclosure already conducted by the respondent bank, as in fact it may have already consolidated its title over petitioners property, petitioners availed themselves of the remedy provided, for under paragraph 2 of Article 1191 of the Civil Code, which states:

'**x x x He may also seek rescission, even after he has chosen fulfillment if the latter should become impossible.**'" (Emphases supplied.) (*Rollo*, pp. 335-336.)

[42] *Rollo*, p. 319.

[43] CONSTITUTION, Art. VIII, Sec. 3.

[44] *Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 426 (1998).

[45] *Id.*

[46] *Id.*

abstract difference or dispute.[47] There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.[48]

This Court cannot issue a mere advisory opinion in relation to the applicability of the provisions of the Procedure on Foreclosure.

II. Petitioners are guilty of forum-shopping.

Petitioners have committed two distinct acts of forum-shopping,[49] namely: (1) petitioners willfully and deliberately went to different courts to avail themselves of multiple judicial remedies founded on similar facts and raising substantially similar reliefs, and (2) they did not comply with their undertaking to report the filing of the Second Complaint within five days from its filing.

A. Petitioners filed multiple suits based on similar facts while seeking similar reliefs—acts proscribed by the rules on forum-shopping.

We rule that petitioners were guilty of willful and deliberate forum-shopping when they filed their Second Complaint with the trial court insofar as they undertook to obtain similar reliefs as those sought in the instant Petition.

Respondent Bank argues that the rights asserted by petitioners, as well as the reliefs petitioners seek in the instant Petition, are identical to those raised in their Second Complaint.[50]

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[47] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain* (GRP), G.R. Nos. 183591, 183752, 183893 & 183591, 14 October 2008, 568 SCRA 402.

[48] *Id.*

[49] *Sadang v. Court of Appeals*, G.R. No. 140138, 11 October 2006, 504 SCRA 137.

[50] *Rollo*, pp. 285-288.

Petitioners, on the other hand, counter that the disparity between the two cases lies in the issue to be resolved. More particularly, they allege that the issue in this Petition is the summary application of the payment of 12% interest per annum as a precondition for the issuance of a writ, as opposed to the issue in the Second Complaint involving the validity of the real estate mortgage and compliance with the rules on the holding of the extrajudicial foreclosure sale.[51]

Forum shopping is the act of litigants who repetitively avail themselves of multiple judicial remedies in different *fora*, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances; and raising substantially similar issues either pending in or already resolved adversely by some other court; or for the purpose of increasing their chances of obtaining a favorable decision, if not in one court, then in another.[52] The rationale against forum-shopping is that a party should not be allowed to pursue simultaneous remedies in two different courts, for to do so would constitute abuse of court processes which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.[53]

In *Yu v. Lim*,[54] this Court enumerated the requisites of forum-shopping, as follows:

> Forum-shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *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

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[51] *Rollo*, pp. 318, 340.

[52] *Pilipino Telephone Corp. v. Radiomarine Network, Inc.*, G.R. No. 152092, 04 August 2010, 626 SCRA 702.

[53] *Id.*

[54] G.R. No. 182291, 22 September 2010, 631 SCRA 172.

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.[55]

What is essential in determining the existence of forum-shopping is the vexation caused the courts and litigants by a party who asks different courts and/or administrative agencies to rule on similar or related causes and/or grant the same or substantially similar reliefs, in the process creating the possibility of conflicting decisions being rendered upon the same issues.[56]

A comparison of the reliefs sought by petitioners in the instant Petition and in their Second Complaint confirms that they are substantially similar on two points: (1) revocation and cancellation of the Certificate of Sale and (2) permanent injunction on any transfer and/or consolidation of title in favor of respondent Bank. These similarities undoubtedly create the possibility of conflicting decisions from different courts:

Instant Petition	Second Complaint
WHEREFORE, it is most respectfully prayed that immediately upon filing of this petition, the same be given due course, and an order issue, *ex parte*: (1) A Resolution be issued **directing the *Ex-Officio* Sheriff and his Assisting Sheriff to undo, cancel, revoke the Certificate of Sale they issued**; (2) Enjoining the Register of Deeds of Paranaque (or any of her subordinates, agents, representatives and persons acting in their behalf **to cease**	WHEREFORE, it is respectfully prayed of the Honorable Court that pending consideration and hearing on the principal reliefs herein prayed for, a Temporary Restraining order (TRO) and/or Writ of Preliminary Injunction be issued immediately **restraining and/or stopping the defendants *Ex-Officio* Sheriff Atty. Jerry R. Toledo and Deputy Sheriff Paulo Jose N. Cusi from executing and issuing a final deed of sale in favor of the defendant bank and further ordering the defendant Registrar of Deeds**

[55] *Id.*

[56] *Lim v. Vianzon*, 529 Phil. 472 (2006).

and desist from allowing any transfer and/or consolidation of respondents banks title to the property in question and an order be issued **directing the Register of Deeds to undo, cancel and revoke the registration of the Certificate of Sale on November 13, 2009 and other proceedings had thereafter**, the petition be given due course and judgment be rendered as follows: **1. Making the injunction permanent**. 2. Issuing a writ of mandatory injunction for the respondent *Ex-Officio* Sheriff to **undo, revoke and cancel the Certificate of Sale issued and/or directing the Register of Deeds to undo, revoke and cancel the registration of the Certificate of Sale and/or defer any consolidation of title in favor of respondent bank pending final resolution of this petition.** 3. Reversing and setting aside the Decision of the Court of Appeals dated March 24, 2010 and Resolution dated August 5, 2010.[57] (Emphasis supplied.)	**of Paranaque City to hold in abeyance the registration of the final deed of sale and other documents of consolidation pending resolution of this Honorable Court**. Plaintiffs pray for the following additional reliefs: 1. After hearing on the merits, the Real Estate Mortgage be declared and rescinded and/or null and void; **2. The Certificate of Sale [dated November 4, 2009] issued by the defendant Sheriffs and its subsequent registration on November 13, 2009 with the Registry of Deeds be declared null and void**; **3. After due hearing, the preliminary injunction be declared permanent**. x x x[58] (Emphases supplied.)

As illustrated above, there is a clear violation of the rules on forum-shopping, as the Court is being asked to grant substantially

[57] *Rollo*, pp. 41-42.

[58] *Rollo*, pp. 298-299.

similar reliefs as those that may also be granted by the trial court, in the process creating a possibility of conflicting decisions.

We emphasize that the grave evil sought to be avoided by the rule against forum-shopping is the rendition by two competent tribunals of two separate and contradictory decisions.[59] To avoid any confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.[60] The acts committed and described herein can possibly constitute direct contempt.[61]

B. Petitioners did not report the filing of their Second Complaint within five (5) days, in violation of their undertaking to do so.

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[59] *Guevara v. BPI Securities Corporation*, G.R. No. 159786, 15 August 2006, 498 SCRA 613.

[60] *Dy v. Mandy Commodities Co., Inc.*, G.R. No. 171842, 22 July 2009, 593 SCRA 440.

[61] "SEC. 5. *Certification against forum shopping.*— The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and **(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.**

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. **The submission, of a false certification or 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**.(Emphases supplied.)" (Rules of Court, Rule 7, Sec. 5.)

Aside from the fact that petitioners sought substantially similar reliefs from different courts, they likewise failed to disclose to this Court the filing of their Second Complaint within five (5) days from its filing, in violation of their previous undertaking to do so.[62]

Every litigant is required to notify the court of the filing or pendency of any other action or such other proceeding involving the same or similar action or claim within five (5) days of learning of that fact.[63] Petitioners claim that it was merely due to inadvertence that they failed to disclose the said filing within five (5) days, contrary to their undertaking. [64]

This Court is not inclined to accept this self-serving explanation. We cannot disregard the glaring fact that respondents had to call the attention of petitioners to the said requirement before the latter admitted that they had indeed filed their Second Complaint.

As previously established, petitioners have violated two (2) components of forum-shopping, more particularly: (1) petitioners willfully and deliberately went to different courts to avail themselves of multiple judicial remedies founded on similar facts and raising substantially similar reliefs, an act which may be punishable as direct contempt;[65] and (2) they did not comply with their undertaking to report the filing of the Second Complaint within five days from its filing. The latter action may also possibly be construed as a separate count for indirect contempt.

While in a limited sense, petitioners have already been given the chance to rebut the prayer to hold them in contempt, We hereby provide sufficient avenue for them to explain themselves by requiring them to show cause, within fifteen (15) days, why they should not be held in direct and indirect contempt of court.

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[62] *Rollo*, pp. 43, 317-319 and 341-343.

[63] Rules of Court, Rule 45, Sec. 4, in relation to Rule 42, Sec. 2; Rule 7, Sec. 5.

[64] *Rollo*, pp. 319 and 343.

[65] Rules of Court, Rule 7, Sec. 5; *Garcia v. Sandiganbayan*, G.R. No. 165835, 22 June 2005, 460 SCRA 600.

WHEREFORE, the instant Petition for Review filed by Spouses Daisy Arevalo and Socrates M. Arevalo is hereby **DENIED.** The Decision dated 24 March 2010 and Resolution dated 05 August 2010 issued by the Court of Appeals in CA-G.R. SP No. 110806 are **AFFIRMED.**

Accordingly, petitioners are required to **SHOW CAUSE,** within fifteen (15) days from receipt of this Decision, why they should not be held in contempt; more specifically: (a) for direct contempt of court—for availing of multiple judicial remedies founded on similar facts and raising substantially similar reliefs from different courts; and (b) for indirect contempt of court—for not complying with their undertaking to report the filing of the Second Complaint within five days from its filing.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 194677. April 18, 2012]

ALEN H. SANTIAGO, *petitioner, vs.* **PACBASIN SHIPMANAGEMENT, INC. and/or MAJESTIC CARRIERS, INC.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION; THE STANDARD TERMS OF THE POEA STANDARD EMPLOYMENT AGREED UPON ARE INTENDED TO BE READ AND UNDERSTOOD IN ACCORDANCE WITH THE LABOR CODE, AS AMENDED, AND THE APPLICABLE IMPLEMENTING RULES AND REGULATIONS IN CASE OF ANY DISPUTE,

CLAIM OR GRIEVANCE.— The contention of Santiago, that he was entitled to a permanent total disability benefit as he was unable to perform his job for more than 120 days, is not totally correct. This issue has been clarified in *Vergara* where it was ruled that the standard terms of the POEA Standard Employment Contract agreed upon are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code, as amended, and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

2. ID.; ID.; DISABILITY; A TEMPORARY TOTAL DISABILITY ONLY BECOMES PERMANENT WHEN THE COMPANY-DESIGNATED PHYSICIAN, WITHIN THE 240 DAY PERIOD, DECLARES IT TO BE SO, OR WHEN AFTER THE LAPSE OF THE SAME, HE FAILS TO MAKE SUCH DECLARATION.— In the recent case of *Magsaysay Maritime Corp. v. Lobusta*, this Court also referred to, and applied, the ruling in *Vergara* in this manner: x x x. As we outlined above, **a temporary total disability only becomes permanent when so declared by the company physician within the period he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.** x x x. [I]n the case at bench, two days after repatriation on March 17, 2005, Santiago underwent several tests and treatment. On April 8, 2005, a neurologist conducted EMG/NCV on him. On August 13, Dr. Lim, the company-designated physician, opined that he was suffering from a "Grade 12" disability only, not a permanent total one. Counting the days from March 17 to August 13, 2005, this assessment by Dr. Lim was made on the 148th day, more or less, and, therefore, within the 240-day period. Thus, Santiago's condition cannot be considered a permanent total disability that would entitle him to the maximum disability benefit of $60,000.00. To stress, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240 day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration.

3. ID.; ID.; ID.; WHERE THE DOCTOR APPOINTED BY THE SEAFARER MAKES A FINDING CONTRARY TO THAT

OF THE ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN, THE OPINION OF A THIRD DOCTOR MAY BE AGREED JOINTLY BETWEEN THE EMPLOYER AND THE SEAFARER, WHOSE FINDING SHALL BE FINAL AND BINDING; ABSENT AGREEMENT ON A THIRD DOCTOR, THE FINDINGS OF THE COMPANY-DESIGNATED PHYSICIAN SHALL BE UPHELD.— [T]he POEA Standard Employment Contract clearly provides that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. However, if the doctor appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer as the decision final and binding on both of them. In this case, Santiago did not avail of this procedure. There was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. Thus, this Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability.

APPEARANCES OF COUNSEL

Valmores & Valmores Law Office for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court assailing the February 11, 2010 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP. No. 108035, which affirmed

[1] *Rollo*, pp. 233-244. Penned by Associate Justice Bienvenido L. Reyes (now member of this Court) with Associate Justice Celia C. Librea-Leagogo and Associate Justice Francisco P. Acosta, concurring.

the April 25, 2008 Decision[2] of the National Labor Relations Commission *(NLRC).* The NLRC affirmed with modification the December 29, 2006 Decision[3] of the Labor Arbiter *(LA)* in NLRC OFW Case No. (M) 06-01-00057-00, entitled "*Alen H. Santiago v. Pacbasin ShipManagement, Inc./Esteban Salonga/ Majestic Carriers, Inc.*"

The Factual and Procedural Antecedents

Petitioner Alen H. Santiago *(Santiago)* entered into a contract of employment[4] with respondent Pacbasin ShipManagement, Inc. *(Pacbasin),* the local manning agent of its foreign principal, Majestic Carriers, Inc. Under said contract, Santiago shall work as a "riding crew cleaner" with a monthly salary of US$162.00 for two months.

On February 2, 2005, Santiago boarded the vessel M/T Grand Explorer. During his stint, he figured in an accident. On March 9, 2005, he was accidentally hit by two falling scaffolding pipes while performing a task, and his head, neck and shoulder were injured. He was rushed to Rashid Hospital in Dubai where he underwent a series of examination and treatment. Despite the treatment he received, his condition did not improve. He continued to have headaches with severe pain in his nape and shoulder. For this reason, it was advised that he be repatriated to the Philippines.

On March 17, 2005, two days after his repatriation, Santiago was referred to the company-designated doctor, Dr. Robert Lim *(Dr. Lim)* of the Marine Medical Services at the Metropolitan Medical Center, to undergo some tests. He underwent cervical spine and skull x-ray. His neck injury was diagnosed to be a contusion, nape area and left, C5, C6, C7 radiculopathy, mild

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[2] *Id.* at 159-167. Penned by Commissioner Romeo L. Go with Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco, concurring.

[3] *Id.* at 100-110. Penned by Executive Labor Arbiter for Adjudication Fatima Jambaro-Franco.

[4] *Id.* at 35.

sensorineural hearing loss, bilateral probably secondary to cochlear concussion. On April 8, 2005, he was referred to a neurologist and EMG/NCV was conducted. On August 13, 2005, after several sessions of treatment and evaluation from March 17, 2005 to July 2005, Dr. Lim, in coordination with the clinic's orthopedic surgeon and EENT specialists, pronounced that his hearing problem was cured and gave him a disability assessment of "Grade 12."

On October 10, 2005, Santiago underwent a CT scan of the head at his own expense. On the 23rd of the same month, he was seen by Dr. Epifania Collantes *(Dr. Collantes)*, a neurologist. He was diagnosed to have cerebral concussion, C5-C7 Radiculopathy secondary to trauma. In the clinical summary,[5] it was stated, among others, that his motor exam was 5/5 on all extremities and reflexes were normal; that there was no note of sensory deficits and the neck was supple; that cranial CT scan showed no skull fractures and no brain parenchymal lesions; that there was a showing of bilateral sclerosis of mastoids; and that he was ambulatory and able to perform his daily chores, although experiencing neck pains and headaches.

Despite medical treatment, his condition showed minimal improvement. He continued to experience a lingering pain in his nape, headaches and mixed type deafness. On February 16, 2006, he consulted Dr. Efren Vicaldo *(Dr. Vicaldo)* of the Philippine Heart Center, who was not a company-designated physician. After checking on his condition, Dr. Vicaldo issued a medical certificate[6] assessing his disability as Grade 7. He was also declared to be unfit to resume work as a seaman. His medical state would require regular medication and that it would take a considerable length of time before he would be considered symptom-free.

Subsequently, Santiago demanded payment from Pacbasin for disability benefits pursuant to the provisions of the POEA

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[5] *Id.* at 17.

[6] *Id.* at 50.

Standard Employment Contract. This demand, however, was not heeded. Consequently, he filed a complaint for disability benefit, illness allowance, and reimbursement of medical expenses, damages and attorney's fees.

In its defense, Pacbasin averred that during the time that Santiago was under medication, it shouldered all the expenses; that it even paid him a total of one hundred twenty (120) days of sickness allowance; that the findings of Dr. Vicaldo should not be given more weight than that of Dr. Lim; and that since Dr. Lim categorized his disability to be Grade 12, then the amount that he was entitled to receive was only $5,225.00 and not the maximum amount of $60,000.00.

In its decision dated December 29, 2006, the LA adopted the findings of Dr. Vicaldo that he was totally and permanently disabled, entitling him to full disability benefits. Thus, it disposed:

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering the respondents **PacBasin ShipManagement, Inc./Esteban Salonga/Majestic Carriers, Inc.** to pay complainant **Alen H. Santiago** the amount of **SIXTY SIX THOUSAND SEVEN HUNDRED TWELVE US DOLLARS & 80/100 (US$66,712.80)** or its equivalent in Philippine Peso at the prevailing rate of exchange at the time of actual payment representing his disability benefits, sickness wages and attorney's fees.
>
> All other claims are **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[7]

Dissatisfied with the ruling of the LA, Pacbasin appealed the decision to the NLRC. On April 25, 2008, the NLRC partially granted its prayer. It ruled that Santiago was only entitled to partial permanent disability equivalent to grade 12 or the amount of $5,225.00 plus 10% as attorney's fees. Thus, the claim for total permanent disability benefit and sickness allowance was disallowed. The decretal portion reads:

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[7] *Id.* at 109-110.

WHEREFORE, premises considered, respondent's appeal is partially GRANTED. The Decision of the Labor Arbiter is **AFFIRMED** subject to MODIFICATIONS in that complainant is entitled only to partial permanent disability equivalent to grade 12 or the amount of US$5,225.00 plus 10% thereof as attorney's fees. The award of total permanent disability benefit (US$60,000.00) and sickness allowance (of US$648.00) are vacated and set aside for lack of merit.

SO ORDERED.[8]

A motion for reconsideration was filed by Santiago but the same was denied.

Aggrieved, Santiago elevated the case to the CA. He insisted that he was entitled to the maximum disability benefit of $60,000.00 because he was unable to perform his customary work for more than 120 days. His basis for said position was the ruling in the case of *Crystal Shipping v. Natividad*.[9]

Pacbasin countered that the case of *Crystal Shipping v. Natividad* was already abandoned and superseded by the case of *Jesus Vergara v. Hammonia Maritime Services*.[10] In said case, the Court ruled that a temporary total disability only becomes permanent when so declared by the company-designated physician within the period he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without the declaration of either fitness to work or the existence of a permanent disability.[11]

The CA, in its February 11, 2010 Decision, dismissed Santiago's appeal and affirmed the NLRC decision and resolution. The dispositive portion of said decision is quoted below as follows:

WHEREFORE, in view of the foregoing, the instant petition is hereby ***DISMISSED***. Accordingly, the decision dated April 25, 2008

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[8] *Id.* at 166.

[9] 510 Phil. 332 (2005).

[10] G.R. No. 172933, October 6, 2008, 567 SCRA 610.

[11] *Id.* at 629.

and resolution dated November 28, 2008 both issued by public respondent commission are perforce ***affirmed in toto***.

SO ORDERED.[12]

The CA applied the case of *Vergara* where it was held that if the 120-day initial period was exceeded and no declaration was made with respect to disability or fitness because the seaman required further medical treatment, then treatment should continue up to a maximum of 240 days. At any time within the 240-day period, the seaman may be declared fit or disabled. If, however, the 240-day period lapsed without any declaration that the seaman was fit or disabled to work, the temporary total disability becomes a permanent total disability, which would entitle the seaman for maximum disability benefits.

The CA also wrote that since Santiago was assessed by the company-designated physician to be suffering a Grade 12 disability within the 240- day period, then he was merely suffering from a permanent partial disability and not a permanent total disability which would entitle him to a maximum disability benefit of $60,000.00.

A motion for reconsideration was filed but the CA denied it in its resolution dated November 12, 2010.

Hence, this petition.

Santiago presents for evaluation the following errors allegedly committed by the CA, to wit:

I.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN NOT APPLYING THE RULE OF PERMANENT TOTAL DISABILITY UNDER ARTICLE 291 OF THE LABOR CODE AND SEVERAL JURISPRUDENCE SUPPORTING THE SAME.

II.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN MISAPPLYING THE PROVISIONS OF THE POEA

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[12] *Rollo*, p. 243.

STANDARD EMPLOYMENT REGARDING THE OPTION OF THE PARTIES TO SECURE THE OPINION OF A THIRD DOCTOR.

III.

THE COURT OF APPEALS COMMITTED AN ERROR OF LAW IN NOT SUSTAINING THE AWARD OF ATTORNEY'S FEES IN FAVOR OF PETITIONER.[13]

The core issue in this case is the question of whether or not Santiago is entitled to a maximum disability benefit of US$60,000.00 on account of his being unable to perform work as a seaman for more than 120 days.

The respondents, in their Comment,[14] state that both the NLRC and the CA were correct in ruling that Santiago was not permanently and totally disabled but was merely suffering from a Grade 12 disability under the POEA contract. They claim that the prevalent rule now, as enunciated in *Vergara*, is that the company-designated doctor overseeing the seafarer's treatment is given a maximum of 240 days to assess a seafarer with a disability or declare him fit to work. It is only after the lapse of 240 days when the company-designated doctor could not yet render a final assessment of the seafarer's medical condition that the latter shall be automatically considered permanently and totally disabled and, as such, entitled to the maximum disability benefit.

Santiago, in his Reply,[15] argues that the 120-day Presumptive Disability Rule is the prevailing jurisprudence in this jurisdiction. According to him, this rule is not a novel one because as early as in the case of *GSIS v. Court of Appeals*,[16] the Court has ruled that if an employee is unable to perform his customary job for more than 120 days then said employee suffers permanent

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[13] *Id.* at 19.

[14] *Id.* at 296-325.

[15] *Id.* at 333-345.

[16] 363 Phil. 585 (1999).

total disability regardless of whether or not he loses the use of any part of his body.

The Court finds no merit in the petition.

The contention of Santiago, that he was entitled to a permanent total disability benefit as he was unable to perform his job for more than 120 days, is not totally correct. This issue has been clarified in *Vergara* where it was ruled that the standard terms of the POEA Standard Employment Contract agreed upon are intended to be read and understood in accordance with Philippine laws, particularly, Articles 191 to 193 of the Labor Code, as amended, and the applicable implementing rules and regulations in case of any dispute, claim or grievance.

In the recent case of *Magsaysay Maritime Corp. v. Lobusta*,[17] this Court also referred to, and applied, the ruling in *Vergara* in this manner:

> Article 192(c)(1) under Title II, Book IV of the Labor Code, as amended, reads:
>
> **ART. 192.** ***Permanent total disability***. — x x x
>
> x x x x x x x x x
>
> (c) The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;
>
> x x x x x x x x x
>
> Section 2(b), Rule VII of the Implementing Rules of Title II, Book IV of the Labor Code, as amended, or the Amended Rules on Employees' Compensation Commission (ECC Rules), reads:
>
> Sec. 2. *Disability*. — x x x
>
> (b) A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any

[17] G.R. No. 177578, January 25, 2012.

gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

x x x x x x x x x

Section 2, Rule X of the ECC Rules reads:

SEC. 2. *Period of entitlement.* — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

x x x x x x x x x

According to *Vergara*, these provisions of the Labor Code, as amended, and implementing rules are to be read hand in hand with the first paragraph of Section 20(B)(3) of the 2000 POEA Standard Employment Contract which reads:

> Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician[,] but in no case shall this period exceed one hundred twenty (120) days.

Vergara continues:

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable

Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

x x x x x x x x x

As we outlined above, **a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability.**

To be sure, there is one Labor Code concept of permanent total disability, as stated in Article 192(c)(1) of the Labor Code, as amended, and the ECC Rules. We also note that the first paragraph of Section 20(B)(3) of the 2000 POEA Standard Employment Contract was lifted verbatim from the first paragraph of Section 20(B)(3) of the 1996 POEA Standard Employment Contract, to wit:

> Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.
>
> [Emphasis supplied]

In said *Magsaysay Maritime Corp.* case, the employee (Oberto Lobusta) was eventually awarded the maximum disability benefit of $60,000.00. Applying the *Vergara* case, the Court ruled that he was suffering from permanent total disability because the maximum 240-day (8 months) medical treatment period expired with no declaration from the attending physician that he was already fit to work. Neither was there a declaration that Lobusta was afflicted with a permanent disability. From May 22, 1998, his initial examination, to February 16, 1999, when he was still

prescribed medications for his lumbosacral pain and was even advised to return for reevaluation, the number of days would be 264 days or 6 days short of 9 months,[18] way beyond the prescribed 240 day period.

In contrast, in the case at bench, two days after repatriation on March 17, 2005, Santiago underwent several tests and treatment. On April 8, 2005, a neurologist conducted EMG/NCV on him. On August 13, 2005, Dr. Lim, the company-designated physician, opined that he was suffering from a "Grade 12" disability only, not a permanent total one. Counting the days from March 17 to August 13, this assessment by Dr. Lim was made on the 148th day, more or less, and, therefore, within the 240-day period. Thus, Santiago's condition cannot be considered a permanent total disability that would entitle him to the maximum disability benefit of $60,000.00. To stress, the rule is that a temporary total disability only becomes permanent when the company-designated physician, within the 240 day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration.

Santiago relies too much on the *Crystal Shipping* case for his permanent total disability claim. Unfortunately, his reliance on the ruling in said case is misplaced. In the *Vergara* case, this Court held in resolving the seeming conflict between the two cases by stating:

> x x x This declaration of permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts. The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations.
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> *Crystal Shipping* was a case where the seafarer was completely unable to work for **three years** and was indisputably unfit for sea duty "due to respondent's need for regular medical check-up and treatment which would not be available if he were at sea." While the case was not clear on how the initial 120-day and the subsequent

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[18] *Id.*

temporary total disability period operated, **what appears clear is that the disability went beyond 240 days without any declaration that the seafarer was fit to resume work. Under the circumstances, a ruling of permanent and total disability was called for, fully in accordance with the operation of the period for entitlement that we described above.**[19] (Emphases supplied)

Furthermore, the Court takes note that even after Santiago was informed by Dr. Lim of his finding, he sought the opinion of independent doctors. First he went to see Dr. Collantes, a neurologist, who diagnosed him to have cerebral concussion, C5-C7 Radiculopathy secondary to trauma. It is interesting to note, however, that the clinical summary stated, among others, that his reflexes were normal and he was ambulatory and able to perform his daily chores although he still experienced neck pains and headaches. These findings negate a claim for total disability.

Finally, Santiago went to see Dr. Vicaldo of the Philippine Heart Center, whose findings also belied his claim for permanent total disability. The doctor, after only a single session, gave him a disability grading of 7, which would not entitle him to a permanent total disability compensation.

At any rate, said finding ought not to be given more weight than the disability grading given by the company-designated doctor. The POEA Standard Employment Contract clearly provides that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. However, if the doctor appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer as the decision final and binding on both of them.[20] In this case, Santiago did not avail

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[19] *Vergara v. Hammonia Maritime Service, Inc.*, G.R. No. 172933, October 6, 2008, 567 SCRA 610, 631-632.

[20] Section 20 [50]. *Compensation and Benefits for Injury or Illness* —

x x x x x x x x x

of this procedure. There was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. Thus, this Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability.

WHEREFORE, the petition is **DENIED.** Accordingly, the February 11, 2010 Decision of the Court of Appeals, in CA-G.R. SP. No. 108035, is **AFFIRMED.**

SO ORDERED.

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

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3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of his permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be binding on both parties. (Emphasis supplied)

SECOND DIVISION

[G.R. No. 200030. April 18, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NELSON BAYOT *y* SATINA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXTINGUISHMENT OF CRIMINAL LIABILITY; APPELLANT'S DEATH DURING THE PENDENCY OF HIS APPEAL, EXTINGUISHED NOT ONLY HIS CRIMINAL LIABILITY FOR THE CRIME OF RAPE, BUT ALSO HIS CIVIL LIABILITY SOLELY ARISING FROM OR BASED ON SAID CRIME; RATIONALE.— Appellant's death on 4 December 2004, during the pendency of his appeal before the Court of Appeals, extinguished not only his criminal liability for the crime of rape committed against AAA, but also his civil liability solely arising from or based on said crime. Article 89(1) of the Revised Penal Code, as amended, specifically provides the effect of death of the accused on his criminal, as well as civil, liability. It reads thus: **Art. 89**. *How criminal liability is totally extinguished*. — Criminal liability is **totally extinguished**: 1. By **death of the convict, as to the personal penalties; and as to pecuniary penalties**, liability therefor is extinguished only when the death of the offender occurs before final judgment; Applying the foregoing provision, this Court, in *People v. Bayotas*, which was cited in a catena of cases, had laid down the following guidelines: 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*." x x x. From the foregoing, it is clear that the death of the accused pending appeal of his conviction extinguishes his criminal liability, as well as the civil liability *ex delicto*. The rationale, therefore, is that the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused, the civil action instituted therein for

recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal case.

2. ID.; ID.; ID.; ID.; THE DECISION OF THE COURT OF APPEALS FINDING THE ACCUSED CRIMINALLY AND CIVILLY LIABLE FOR THE CRIME OF RAPE BECOMES INEFFECTUAL UPON THE DEATH OF THE ACCUSED. — Evidently, as this Court has pronounced in *People v. Olaco* and *People v. Paniterce*, it is already unnecessary to rule on appellant's appeal. Appellant's appeal was still pending and no final judgment had been rendered against him at the time of his death. Thus, whether or not appellant was guilty of the crime charged had become irrelevant because even assuming that appellant did incur criminal liability and civil liability *ex delicto*, these were totally extinguished by his death, following the provisions of Article 89(1) of the Revised Penal Code and this Court's ruling in *People v. Bayotas*. In the same breath, the appealed Decision dated 9 May 2006 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00269 — finding appellant guilty of the crime of rape, sentencing him to *reclusion perpetua*, and ordering him to pay AAA ₱50,000.00 as indemnity and ₱50,000.00 as moral damages — had become ineffectual.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J.*:

This is an appeal from the Decision[1] dated 9 May 2006 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00269 affirming with modification the Decision[2] dated 31 July 2000 of the Regional Trial Court (RTC) of Kabankalan City, Negros

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[1] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring. *Rollo*, pp. 4-10.

[2] Penned by Judge Henry D. Arles. CA *rollo*, pp. 21-24.

Occidental, 6th Judicial Region, Branch 61, in Criminal Case No. 98-2025, finding herein appellant Nelson Bayot *y* Satina (appellant) guilty beyond reasonable doubt of the crime of rape, committed against AAA,[3] thus, sentencing him to suffer the penalty of *reclusion perpetua*. The appellate court increased the award of indemnity from ₱40,000.00 to ₱50,000.00. It also ordered appellant to pay AAA moral damages in the amount of ₱50,000.00.

Appellant Nelson Bayot *y* Satina was charged with Rape in an Information[4] dated 29 December 1997, which reads as follows:

> That on or about the 17th day of September, 1997, in the Municipality of XXX, Province of XXX, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge of and/or sexual intercourse with the [AAA], 44 years old, against her will.[5]

On arraignment, appellant pleaded NOT GUILTY to the crime charged. Trial on the merits ensued thereafter.

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[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* [G.R. No. 167693, 19 September 2006, 502 SCRA 419], wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective 15 November 2004.

[4] CA *rollo*, pp. 10-11.

[5] *Id.* at 10.

In its 31 July 2000 Decision, the RTC convicted appellant of the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua* and to pay AAA the amount of ₱40,000.00 as indemnity with costs. In convicting appellant, the RTC ratiocinated that AAA's testimony as regards her ordeal was simple and straightforward, unshaken by a rigid cross-examination. There appeared to be no inconsistency in her testimony. Further, AAA's declaration that she was raped by appellant was corroborated by a medical certificate showing contusion on her vagina at 6:00 o'clock quadrant of the crevice, which was explained by Dr. Rodrigo Cubid to have been caused by forceful vaginal intrusion. The RTC negates the "sweet heart" defense offered by appellant. It stated that appellant's claim of being AAA's lover was a mere devise to extricate himself from the consequence of his dastardly lust. AAA's immediate response of reporting the rape incident carries the stamp of truth. Moreover, if, indeed, there was such relationship between appellant and AAA, the latter would not have pursued this case. It bears stressing that despite appellant's repeated plea for the dismissal of the case, AAA remained steadfast in seeking justice for the violation of her womanhood.[6]

Aggrieved, appellant appealed the aforesaid RTC Decision to this Court by filing a Notice of Appeal dated 6 September 2000.[7] In light, however, of this Court's pronouncement in *People v. Mateo*,[8] the case was transferred to the Court of Appeals for intermediate review per Resolution[9] dated 4 October 2004.

In a Decision dated 9 May 2006, the Court of Appeals affirmed appellant's conviction with the modification increasing the award of indemnity from ₱40,000.00 to ₱50,000.00. It likewise awarded moral damages in favor of AAA in the amount of ₱50,000.00. The Court of Appeals aptly observed that the prosecution was able to prove beyond reasonable doubt that appellant committed

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

[7] *Id.* at 25.

[8] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[9] *Rollo*, pp. 2-3.

the crime of rape against AAA. It further held that other than the self-serving declaration of appellant that he and AAA were sweethearts; no other evidence was ever presented to substantiate such claim. Even the testimony of appellant's daughter, who claimed that her father and AAA are maintaining an illicit relationship, could not be given any considerable weight. Aside from the fact that appellant's daughter could not point to any other circumstance supporting her claim, except for one incident when she allegedly saw her father and AAA holding hands during a dance at their *barangay* fiesta, her testimony could not be stripped of bias and partiality considering that she is the daughter of appellant. In the same way, her testimony that she saw her father and AAA in the act of sexual intercourse deserves scant consideration as she was not present at the time of the commencement of the said act. She could not, therefore, be in a position to state with certainty that there was no struggle on the part of AAA. Hence, her testimony regarding such matter is a mere conclusion of fact.[10]

However, in a letter dated 29 May 2006,[11] Dr. Juanito S. Leopando, Penal Superintendent IV of the New Bilibid Prison, informed the Court of Appeals that appellant died at the New Bilibid Prison Hospital on 4 December 2004. Attached in his letter is the original copy of appellant's Certificate of Death.[12]

Nonetheless, the Public Attorney's Office still appealed, on behalf of appellant, the aforesaid Court of Appeals' Decision to this Court *via* a Notice of Appeal[13] dated 31 May 2006, which was given due course by the Court of Appeals *per* Resolution[14] dated 19 January 2007. The Court of Appeals also directed the Chief of the Judicial Records Division to forward the entire records of the case to this Court.

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

[11] CA *rollo*, p. 105.

[12] *Id.* at 106-107.

[13] *Rollo*, p. 11.

[14] CA *rollo*, p. 114.

Taking into consideration appellant's death, this Court will now determine its effect to this present appeal.

Appellant's death on 4 December 2004, during the pendency of his appeal before the Court of Appeals, extinguished not only his criminal liability for the crime of rape committed against AAA, but also his civil liability solely arising from or based on said crime.[15]

Article 89(1) of the Revised Penal Code, as amended, specifically provides the effect of death of the accused on his criminal, as well as civil, liability. It reads thus:

Art. 89. *How criminal liability is totally extinguished.* — Criminal liability is **totally extinguished**:

1. By **death of the convict, as to the personal penalties; and as to pecuniary penalties**, liability therefor is extinguished only when the death of the offender occurs before final judgment; [Emphasis supplied].

Applying the foregoing provision, this Court, in *People v. Bayotas*,[16] which was cited in a catena of cases,[17] had laid down the following guidelines:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
2. Corollarily, the claim for civil liability survives notwithstanding the death of [the] accused, if the same may also be predicated on a source of obligation other than delict.

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[15] *People v. Olaco*, G.R. No. 197042, 17 October 2011.

[16] G.R. No. 102007, 2 September 1994, 236 SCRA 239.

[17] *People v. Olaco*, *supra* note 15; *People v. Abungan*, 395 Phil. 456, 461 (2000); *People v. Enoja*, 378 Phil. 623, 633-634 (1999); *De Guzman v. People*, 459 Phil. 576, 579-580 (2003); *People v. Romero*, 365 Phil. 531, 543 (1999).

> Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:
>
> a) Law
>
> b) Contracts
>
> c) Quasi-contracts
>
> d) x x x x x x x x x
>
> *e) Quasi-delicts*
>
> 3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.
>
> 4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with [the] provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[18]

From the foregoing, it is clear that the death of the accused pending appeal of his conviction extinguishes his criminal liability, as well as the civil liability *ex delicto*. The rationale, therefore, is that the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused, the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal case.[19]

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[18] *People v. Bayotas, supra* note 16 at 255-256.

[19] *People v. Romero, supra* note 17 at 543.

Evidently, as this Court has pronounced in *People v. Olaco* and *People v. Paniterce*,[20] it is already unnecessary to rule on appellant's appeal. Appellant's appeal was still pending and no final judgment had been rendered against him at the time of his death. Thus, whether or not appellant was guilty of the crime charged had become irrelevant because even assuming that appellant did incur criminal liability and civil liability *ex delicto*, these were totally extinguished by his death, following the provisions of Article 89(1) of the Revised Penal Code and this Court's ruling in *People v. Bayotas*.

In the same breath, the appealed Decision dated 9 May 2006 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00269 — finding appellant guilty of the crime of rape, sentencing him to *reclusion perpetua*, and ordering him to pay AAA ₱50,000.00 as indemnity and ₱50,000.00 as moral damages — had become ineffectual.

WHEREFORE, in view of the death of appellant Nelson Bayot *y* Satina, the Decision dated 9 May 2006 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00269 is **SET ASIDE** and Criminal Case No. 98-2025 before the RTC of Kabankalan City, Negros Occidental, is **DISMISSED.** Costs *de oficio*.

SO ORDERED.

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

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[20] G.R. No. 186382, 5 April 2010, 617 SCRA 389 at 395.

THIRD DIVISION

[A.M. No. MTJ-08-1711. April 23, 2012]

RAMONCITO and JULIANA LUARCA, *complainants, vs.* **JUDGE IRENEO B. MOLATO,[*] Municipal Trial Court, Bongabong, Oriental Mindoro,** *respondent.*

[A.M. No. MTJ-08-1716. April 23, 2012]

JENY AGBAY, *complainant, vs.* **JUDGE IRENEO B. MOLATO, Municipal Trial Court, Bongabong, Oriental Mindoro,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; EVERY PUBLIC OFFICIAL AND EMPLOYEE SHALL AT ALL TIMES RESPECT THE RIGHTS OF OTHERS, AND REFRAIN FROM DOING ACTS CONTRARY TO LAW, GOOD MORALS, GOOD CUSTOMS, PUBLIC POLICY, PUBLIC ORDER, AND PUBLIC INTEREST; ANY CONDUCT CONTRARY TO THESE STANDARDS WOULD QUALIFY AS CONDUCT UNBECOMING OF A GOVERNMENT EMPLOYEE.— Section 4 of the Code of Conduct and Ethical Standards for Public Officials and Employees lays down the norms of conduct which every public official and employee shall observe in the discharge and execution of their official duties, specifically providing that they shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest. Thus, any conduct contrary to these standards would qualify as conduct unbecoming of a government employee.

2. JUDICIAL ETHICS; JUDGES; CONDUCT UNBECOMING A JUDGE, NOT A CASE OF. — Absent any showing that

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[*] Sometimes referred to as Judge Irineo B. Molato.

Judge Molato defrauded complainants of their money or committed acts that detract from the dignity of his position, the mere fact that the corporation of which his wife was the president had difficulties meeting its obligations does not *per se* make him lacking in moral integrity and of questionable character as would make him liable for conduct unbecoming a judge.

3. ID.; ID.; ADMINISTRATIVE CIRCULAR 5; PROHIBITS PUBLIC OFFICIALS FROM PERFORMING OR AGREEING TO PERFORM FUNCTIONS OR SERVICES OUTSIDE OF THEIR OFFICIAL FUNCTIONS; PENALTY OF REPRIMAND IMPOSED FOR VIOLATION THEREOF. — [J]udge Molato is to be reprimanded for agreeing to serve as one of Lucky Corporation's alternate bank signatories even if he may not have performed such service for the corporation. He has no business agreeing to the performance of such service. His offense constitutes a violation of Administrative Circular 5 which in essence prohibits public officials from performing or agreeing to perform functions or services outside of their official functions for the reason that the entire time of the officials and employees of the judiciary shall be devoted to their official work to ensure the efficient and speedy administration of justice.

D E C I S I O N

ABAD, *J.*:

These cases talk about the need for a judge to distance himself from the operation of a business.

The Facts and the Case

In two separate complaints,[1] spouses Ramoncito and Juliana Luarca (the Luarcas) and Jenny Agbay charged Judge Ireneo B. Molato of the Municipal Trial Court of Bongabong, Oriental Mindoro, with conduct unbecoming a member of the judiciary. They alleged that Judge Molato and his wife, Nilalina, enticed

[1] *Rollo* (A.M. MTJ-08-1711), pp. 1-3; *rollo* (A.M. MTJ-08-1716), pp. 17-18.

them to invest money in Lucky Socorro Investor and Credit Corporation (Lucky Corporation) of which Nilalina was president. The Luarcas invested ₱2.3M in that company,[2] ₱1M[3] of which they coursed through Judge Molato as evidenced by a temporary receipt that he issued. Agbay invested ₱700,000.00.[4] These investments were to earn interest of 2.5% per month.[5]

The Luarcas claim that they got the monthly interest promised them but only up to 2003 when Lucky Corporation started missing on its obligations.[6] Agbay claims that it did not give her interest on her entire investment but only on a ₱200,000.00 portion of it.[7]

On October 5, 2003 the Luarcas asked Lucky Corporation to return their ₱2,749,550.00 investments with the corresponding interests. Agbay earlier made the same demand on May 23, 2003 with respect to her investments of ₱1,021,000.00. But Judge Molato and his wife failed to comply. The Luarcas and Agbay were instead compelled to take land titles as collaterals for what were owed them. Still Judge Molato and his wife did not settle their financial obligations.

Answering the complaints, Judge Molato said that he never enticed the complainants to invest money in Lucky Corporation nor compelled them to accept land titles instead of money when they wanted to pull out their investments from Lucky Corporation. He had no involvement in the operations of that company. If at all, it was merely that his wife happened to be its president. Complainants should have gone after the corporation rather than after him since it was the one responsible for their investments. Further, since the complaints were essentially claims for sums

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[2] *Rollo* (A.M. MTJ-08-1711), pp. 4, 5, 32.

[3] *Id.* at 7.

[4] *Rollo* (A.M. MTJ-08-1716), pp. 4-7.

[5] *Rollo* (A.M. MTJ-08-1711), pp. 4, 5, 32; *rollo* (A.M. MTJ-08-1716), pp. 4-7.

[6] *Rollo* (A.M. MTJ-08-1716), pp. 91-92.

[7] *Id.* at 108.

of money, they are improperly lodged before the Office of the Court Administrator (OCA).[8]

On August 27, 2008 the Supreme Court consolidated the two complaints, re-docketed them as regular administrative matters, and referred them to the Executive Judge of the Regional Trial Court of Oriental Mindoro for investigation, report, and recommendation.[9]

In his letter-report[10] of January 15, 2009, Judge Recto A. Calabocal, the investigating Executive Judge, says in his report that Judge Molato did not use his office to lure the complainants into investing in Lucky Corporation. They did on their own volition. But while Judge Molato denied having any connection with Lucky Corporation, the evidence presented, particularly the August 1, 2001 resolution of Lucky Corporation, shows that it had once authorized him to withdraw its deposits from the named bank. Judge Calabocal recommends that Judge Molato be directed to distance himself from Lucky Corporation and to be more circumspect in dealing with its clients in order to maintain the integrity of the judicial service.

Asked for comment and recommendation,[11] on November 13, 2009 the OCA submitted a memorandum,[12] stating that the evidence on record fully supports Judge Calabocal's report and recommendation, prompting it to adopt the same. The OCA would however, have Judge Molato held administratively liable for conduct unbecoming a judge for violating Section 10 (c), Canon 4 of A.M. 03-05-01-SC, or the New Code of Judicial Conduct for the Philippine Judiciary; and Paragraph b (24) of Section 46, Chapter 7, Title I, Subtitle (A) [Civil Service Commission], Book V of Executive Order 292, or the

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[8] *Rollo* (A.M. MTJ-08-1711), pp. 88-89; *rollo* (A.M. MTJ-08-1716), pp. 55-56.

[9] *Rollo* (A.M. MTJ-08-1716), p. 68.

[10] *Id.* at 72-74.

[11] *Id.* at 115.

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

Administrative Code of 1987 for engaging in private business without the written permission of the Supreme Court. Finding this to be Judge Molato's second offense for conduct unbecoming a judge and no mitigating circumstance attended the commission of the offense, the OCA said that a fine of ₱5,000.00 is appropriate.[13]

Questions Presented

The questions presented in these cases are:

1. Whether or not Judge Molato was, apart from being the husband of Lucky Corporation's president, involved in its affairs; and

2. In the affirmative, what shall the nature of his administrative liability be?

Rulings of the Court

There is no evidence in these cases that Judge Molato engaged in a private business, unduly mixing it up with his official work as judge. Complainants were themselves unsure of the nature of Judge Molato's involvement in Lucky Corporation. They seem to connect him to it by the mere fact that the president of that corporation happens to be his wife.

It is unmistakable from complainants' testimonies that Judge Molato never used the fact of his being a judge to entice them into putting money into Lucky Corporation. Juliana Luarca said that she had decided to invest in that company even before she met the judge.[14] She and her husband in fact admitted that they met Judge Molato for the first time when they went to Nilalina's residence to give their ₱1M investment.[15] They were the ones who requested the judge to receive the money after they learned that his wife, Nilalina, was not around to personally receive it.[16]

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

[14] *Id.* at 91

[15] *Id.* at 92.

[16] *Supra* note 14

Agbay, on the other hand, said that her previous good experience with Victory Investor and Lending Corporation, a company that Nilalina also managed, made her decide to likewise invest money into Lucky Corporation.[17]

Further, as it turned out, complainants' previous claim that Judge Molato forced them to accept land titles as security for the repayment of their investments had turned out to be false. They eventually admitted that it was Nilalina who made them accept those land titles.[18]

Section 4 of the Code of Conduct and Ethical Standards for Public Officials and Employees[19] lays down the norms of conduct which every public official and employee shall observe in the discharge and execution of their official duties, specifically providing that they shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest. Thus, any conduct contrary to these standards would qualify as conduct unbecoming of a government employee.[20]

Absent any showing that Judge Molato defrauded complainants of their money or committed acts that detract from the dignity of his position, the mere fact that the corporation of which his wife was the president had difficulties meeting its obligations does not per se make him lacking in moral integrity and of questionable character as would make him liable for conduct unbecoming a judge.

Of course, there is evidence that the corporation's Board of Directors issued Resolution 1-2000[21] that authorized Judge Molato

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[17] *Id.* at 85, 99-100.

[18] *Id.* at 105, 110.

[19] Republic Act 6713.

[20] *Romero v. Villarosa, Jr.*, A.M. No. P-11-2913, April 12, 2011, 648 SCRA 32, 41; *Government Service Insurance System (GSIS) v. Mayordomo*, G.R. No. 191218, May 31, 2011, 649 SCRA 667, 681.

[21] *Rollo* (A.M. MTJ-08-1716), p. 19.

and three other persons to serve as the company's alternate bank signatories, with their signatures appearing on the document. But complainants presented no evidence that Judge Molato in fact performed such function for Lucky Corporation. The complainants presented no company withdrawal slips or checks where his signature appears. No evidence has been adduced that he was a stockholder of that corporation, proof that he engaged in private business without the Supreme Court's consent, or served as one of its corporate or line officers.

Still, Judge Molato is to be reprimanded for agreeing to serve as one of Lucky Corporation's alternate bank signatories even if he may not have performed such service for the corporation. He has no business agreeing to the performance of such service. His offense constitutes a violation of Administrative Circular 5 which in essence prohibits public officials from performing or agreeing to perform functions or services outside of their official functions for the reason that the entire time of the officials and employees of the judiciary shall be devoted to their official work to ensure the efficient and speedy administration of justice.[22]

WHEREFORE, the Court finds respondent Judge Ireneo B. Molato of the Municipal Trial Court, Bongabong, Oriental Mindoro, **GUILTY** of violation of Administrative Circular 5, dated October 4, 1988, and **REPRIMANDS** him for it. He is also warned that a repetition of the same or similar acts will be dealt with more severely. Let this Decision be noted in the personal record of the respondent. No costs.

SO ORDERED.

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

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[22] *Go v. Remotigue,* A.M. No. P-05-1969, June 12, 2008, 554 SCRA 242, 250-251.

THIRD DIVISION

[A.M. No. P-11-2948. April 23, 2012]
(Formerly OCA I.P.I. No. 09-3049-P)

EVELYN V. JALLORINA, *complainant, vs.* **RICHELLE TANEO-REGNER, Data Entry Machine Operator II, Regional Trial Court, Office of the Clerk of Court, San Mateo, Rizal,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ONLY SUBSTANTIAL EVIDENCE IS REQUIRED.— In administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE PRESUMPTION IS THAT WITNESSES ARE NOT ACTUATED BY ANY IMPROPER MOTIVE ABSENT ANY PROOF TO THE CONTRARY AND THAT THEIR TESTIMONIES MUST ACCORDINGLY BE MET WITH CONSIDERABLE, IF NOT CONCLUSIVE, FAVOR UNDER THE RULES OF EVIDENCE; REASON.— [W]e also note that there was no allegation of ill motive on the part of witness La Verne I that would prompt him to testify in court and accuse respondent of immorality. In fact, he has been consistent throughout the investigation and hearings that he was not forced, albeit assisted, by his mother in coming out and testifying against respondent. True, it cannot be said that he did not harbor ill feelings towards respondent whom he believed to be his father's mistress, but considering his consistent testimonies of the illicit affair of his father and respondent, his testimony deserves to be given credit. The presumption is that witnesses are not actuated by any improper motive absent any proof to the contrary and that their testimonies must accordingly be met with considerable, if not

conclusive, favor under the rules of evidence because it is not expected that said witnesses would prevaricate and cause the damnation of one who brought them no harm or injury.

3. ID.; ID.; DENIAL; INHERENTLY A WEAK DEFENSE AS IT IS NEGATIVE AND SELF-SERVING, AND THE WEAKEST OF ALL DEFENSES, FOR IT IS EASY TO CONTRIVE AND DIFFICULT TO PROVE.— We also note that while respondent has consistently argued that the allegations against her are without basis, other than bare denials, she herself failed to refute the charges against her. Indeed, denial is inherently a weak defense as it is negative and self-serving, and the weakest of all defenses, for it is easy to contrive and difficult to prove.

4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CHARGE OF IMMORALITY; IMMORALITY, DEFINED; ENGAGING IN SEXUAL RELATIONS WITH A MARRIED MAN IS NOT ONLY A VIOLATION OF THE MORAL STANDARDS EXPECTED OF EMPLOYEES OF THE JUDICIARY, BUT IS ALSO A DESECRATION OF THE SANCTITY OF THE INSTITUTION OF MARRIAGE WHICH THE COURT ABHORS AND IS, THUS, PUNISHABLE.— Immorality has been defined to include not only sexual matters but also "*conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare*." There is no doubt that engaging in sexual relations with a married man is not only a violation of the moral standards expected of employees of the judiciary, but is also a desecration of the sanctity of the institution of marriage which this Court abhors and is, thus, punishable.

5. ID.; ID.; ID.; DISGRACEFUL AND IMMORAL CONDUCT; PROPER PENALTY.— Under the Revised Uniform Rules on Administrative Cases in the Civil Service, disgraceful and immoral conduct is punishable by suspension of six months and one day to one year for the first offense. Considering that this is respondent's first offense, we deem it proper to impose the penalty of suspension in its minimum period to respondent.

APPEARANCES OF COUNSEL

Nenita C. Mahinay for complainant.
Lerio & Lerio Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is an Administrative Complaint[1] filed by Evelyn V. Jallorina, against Richelle Taneo-Regner, Data Entry Machine Operator II, Regional Trial Court (RTC), Office of the Clerk of Court, San Mateo, Rizal, for Immorality and Gross Misconduct.

Complainant Jallorina claimed that she is the wife of Assistant Provincial Prosecutor La Verne A. Jallorina, who is presently assigned at the Pasig City Hall of Justice. She has four (4) children with Prosecutor Jallorina, namely: Caselyn, Juris, La Verne I and Wolf Hector. They have been separated *de facto* since November 2000. She claimed that in the year 2003, Prosecutor Jallorina filed a petition for annulment of their marriage in order to marry his paramour, respondent Richelle T. Regner, who is a single woman. The case is still pending at the RTC, Branch 75 of San Mateo, Rizal.

Complainant Jallorina asserted that the illicit affair between her husband and respondent Taneo-Regner was well-known in the entire court as well as in the Halls of Justice of Pasig City. She further averred that her brother-in-law, a policeman who usually visits Pasig City Hall of Justice for inquest purposes, personally witnessed Prosecutor Jallorina's blatant display of indiscretion. She was told that Prosecutor Jallorina even displayed the photo of his mistress, respondent, beside his photo and their son's on his office table. She added that the illicit affair between her husband and respondent had roused gossips in the towns of San Mateo and Montalban, Rizal, where they were

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[1] *Rollo,* pp. 1-8.

seen together in gatherings and wakes of friends, showing their intimate relationship.

Complainant Jallorina further alleged that her children, Caselyn and La Verne I, were aware of the illicit affair of their father with respondent.

In an Affidavit[2] dated February 25, 2004, La Verne I attested that while he was sleeping at his father's house, he was awakened when he felt the bed rocking, and saw respondent Taneo-Regner having intercourse with his father.

In another Affidavit[3] dated February 25, 2004, Caselyn stated that at one time, she went to her father's house to ask for allowance, she discovered an engagement gold ring with engraved name "Richelle."

Complainant further narrated that she had caught her husband and respondent in a very compromising situation. In one incident, while her husband was still holding office at the San Mateo Hall of Justice, she caught respondent performing fellatio on her husband, in his own table near a refrigerator. She asserted that her husband then was half-naked, with a towel wrapped around his waist, and that respondent's hair was in shambles.

At the time of the filing of the complaint, complainant asserted that the illicit affair can be proven by the fact that respondent, who is unmarried, is four (4) to five (5) months pregnant. The pregnancy is evident by respondent's bulging tummy, and her husband's effort to fetch respondent from her office.

Thus, complainant prayed that respondent Taneo-Regner: (1) be dismissed from the service, considering the shame and damage that she had caused to the integrity of the Court; and (2) damages in the amount of ₱600,000.00 be awarded to her.

In her Comment[4] dated February 20, 2009, respondent Richelle Taneo-Regner vehemently denied that she has an illicit affair

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[2] Annex "A", *id*. at 17.

[3] Annex "B", *id*. at 18.

[4] *Rollo*, pp. 21-24.

with complainant's husband, Prosecutor La Verne Jallorina. She claimed that there was never a time in her entire life that she went to gatherings in the company of complainant's husband. She alleged that the accusations against her were pure lies as complainant even failed to state specific dates and actual place of gatherings.

Respondent likewise maintained that she has never been in the house of Prosecutor Jallorina; thus, she was not the woman whom their son saw having intercourse with Prosecutor Jallorina. She also pointed out that in the affidavit of La Verne I, it did not state her name as the woman whom complainant's son saw having intercourse with his father.

As to the alleged engagement ring, respondent argued that complainant's daughter, Caselyn, did not state in her affidavit that the engraved name is Richelle T. Regner. Caselyn's affidavit only stated that her father "*has a mistress named Richelle which I saw through an engagement ring*." Respondent emphasized that "Richelle" is not synonymous with "Richelle T. Regner."

Anent the alleged intercourse with Prosecutor Jallorina inside a public building, respondent argued that the same was purely a lie as complainant did not report the same to the security guard or proper authorities. She did not even state in the complaint the specific date when such incident happened.

Respondent further added that granting without admitting that she was pregnant, it does not necessarily mean that complainant's husband is the "father" of her unborn child.

Finally, respondent claimed that considering that complainant's accusation is unsupported by evidence, she prayed that the instant complaint against her be dismissed.

In her Reply[5] dated March 12, 2009, complainant Evelyn V. Jallorina asserted that the comment of respondent only contained bare denials. She maintained that respondent Taneo-Regner was identified several times as the paramour of her husband in the

[5] *Id*. at 25-32.

pending annulment case. Complainant further asserted that the photos of respondent Taneo-Regner on the office table and in the bedroom of Prosecutor Jallorina are proofs of their illicit relationship.

Complainant added that while it is true that in the Affidavit of her son, respondent was not categorically named as the woman having intercourse with her husband, the same affidavit was testified to in court under oath by La Verne I, and referred to as the woman whom his father called "Babe" as no other than respondent.

Complainant averred that no other woman would be referred to as "Richelle" in the engagement ring of Prosecutor Jallorina other than respondent Richelle T. Regner because Caselyn, her daughter, has personal knowledge of her father's paramour, who was seen several times in the house of Prosecutor Jallorina.

In her Comment to the Reply[6] dated March 31, 2009, respondent Regner stated that complainant was insulting the intelligence of the Court by making serious accusations without evidence and lies she cannot substantiate.

In view of the conflicting versions of both parties, the Office of the Court Administrator (OCA) recommended that the instant complaint be referred to the Executive Judge for investigation, report and recommendation.

In a Resolution[7] dated August 2, 2010, the Court resolved to refer the instant matter to the Executive Judge of the Regional Trial Court, San Mateo, Rizal, for investigation, report and recommendation.

After investigation and hearings, in her Investigation Report dated December 14, 2010, Executive Judge Josephine Zarate-Fernandez, RTC, Fourth Judicial Region, San Mateo, Rizal, recommended that the charge of gross misconduct be dismissed for lack of merit. However, finding sufficient evidence that

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[6] *Id*. at 47.

[7] *Id*. at 129.

respondent Taneo-Regner is guilty of the charge of immorality, the Investigating Judge recommended that respondent be penalized with six (6) months suspension without pay.

Thereafter, in a Memorandum dated May 13, 2011, the OCA, finding merit on the facts and conclusions, as well as the findings by the Executive Judge, recommended that: (1) the instant administrative case be redocketed as a regular administrative complaint; and (2) respondent Richelle Taneo-Regner be meted the penalty of six (6) months suspension without pay for having been found guilty of Disgraceful and Immoral Conduct.

We adopt the findings and recommendation of the OCA and the Investigating Judge.

In administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.[8]

As observed by the Investigating Judge, while there is no concrete proof that respondent indeed had an illicit affair with complainant's husband, the testimonies of complainant and her son show otherwise.[9]

La Verne I also testified that he had seen his father and respondent together inside and outside of his father's house several times.[10]

Even on cross-examination, counsel of respondent could not intimidate the minor son of complainant and stood pat on his version of what he witnessed.[11]

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[8] *Evelyn C. Banaag v. Olivia C. Espeleta, Interpreter III, Branch 82, RTC, Quezon City*, A.M. No. P-11-3011, December 16, 2011.

[9] TSN, November 12, 2010, 9:00 a.m., pp. 8-10.

[10] *Id.* at 8-11.

[11] *Id.* at 26-35.

Likewise, we also note that there was no allegation of ill motive on the part of witness La Verne I that would prompt him to testify in court and accuse respondent of immorality. In fact, he has been consistent throughout the investigation and hearings that he was not forced, albeit assisted, by his mother in coming out and testifying against respondent. True, it cannot be said that he did not harbor ill feelings towards respondent whom he believed to be his father's mistress, but considering his consistent testimonies of the illicit affair of his father and respondent, his testimony deserves to be given credit.

The presumption is that witnesses are not actuated by any improper motive absent any proof to the contrary and that their testimonies must accordingly be met with considerable, if not conclusive, favor under the rules of evidence because it is not expected that said witnesses would prevaricate and cause the damnation of one who brought them no harm or injury.[12]

We also note that while respondent has consistently argued that the allegations against her are without basis, other than bare denials, she herself failed to refute the charges against her. Indeed, denial is inherently a weak defense as it is negative and self-serving, and the weakest of all defenses, for it is easy to contrive and difficult to prove.

Immorality has been defined to include not only sexual matters but also "*conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare*."[13]

There is no doubt that engaging in sexual relations with a married man is not only a violation of the moral standards expected of employees of the judiciary, but is also a desecration of the

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[12] *Naval v. Panday*, A.M. No. RTJ-95-1283, December 21, 1999, 321 SCRA 290, 308.

[13] *Regir v. Regir*, A.M. No. P-06-2282, August 4, 2009, 595 SCRA 455, 462.

sanctity of the institution of marriage which this Court abhors and is, thus, punishable.[14]

Under the Revised Uniform Rules on Administrative Cases in the Civil Service, disgraceful and immoral conduct is punishable by suspension of six months and one day to one year for the first offense. Considering that this is respondent's first offense, we deem it proper to impose the penalty of suspension in its minimum period to respondent.

WHEREFORE, this Court finds respondent RICHELLE TANEO-REGNER **GUILTY** of Disgraceful and Immoral Conduct. She is hereby **SUSPENDED** from service for six (6) months and one (1) day without pay, and **WARNED** that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 143264. April 23, 2012]

LISAM ENTERPRISES, INC. represented by LOLITA A. SORIANO, and LOLITA A. SORIANO, *petitioners, vs.* **BANCO DE ORO UNIBANK, INC. (formerly PHILIPPINE COMMERCIAL INTERNATIONAL BANK),[*] LILIAN S. SORIANO, ESTATE OF LEANDRO A. SORIANO, JR., REGISTER OF DEEDS OF LEGASPI CITY, and JESUS L. SARTE,** *respondents.*

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[14] *Dela Cueva v. Omaga,* A.M. No. P-08-2590, July 5, 2010, 623 SCRA 14, 23.

[*] Per Manifestation dated January 26, 2012, filed by said respondent.

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; AMENDMENTS; GENERALLY FAVORED AND SHOULD BE LIBERALLY ALLOWED TO SERVE THE HIGHER INTEREST OF JUSTICE IN ORDER TO PROVIDE THE BEST OPPORTUNITY FOR THE ISSUES AMONG ALL PARTIES TO BE THOROUGHLY THRESHED OUT AND THE RIGHTS OF ALL PARTIES FINALLY DETERMINED; MOTION TO ADMIT AMENDED COMPLAINT FILED BEFORE THE TRIAL OF THE CASE, GRANTED.— It should be noted that respondents Lilian S. Soriano and the Estate of Leandro A. Soriano, Jr. already filed their Answer, to petitioners' complaint, and the claims being asserted were made against said parties. A responsive pleading having been filed, amendments to the complaint may, therefore, be made only by leave of court and no longer as a matter of right. However, in *Tiu v. Philippine Bank of Communications*, the Court discussed this rule at length, to wit: x x x **The courts should be liberal in allowing amendments to pleadings to avoid a multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined, and the case decided on the merits without unnecessary delay. This liberality is greatest in the early stages of a lawsuit, especially in this case where the amendment was made before the trial of the case, thereby giving the petitioners all the time allowed by law to answer and to prepare for trial.** Furthermore, amendments to pleadings are generally favored and should be liberally allowed in furtherance of justice in order that every case, may so far as possible, be determined on its real facts and in order to speed up the trial of the case or prevent the circuitry of action and unnecessary expense. That is, unless there are circumstances such as inexcusable delay or the taking of the adverse party by surprise or the like, which might justify a refusal of permission to amend. Since, as explained above, amendments are generally favored, it would have been more fitting for the trial court to extend such liberality towards petitioners by admitting the amended complaint, which was filed before the order dismissing the original complaint became final and executory. It is quite apparent that since trial proper had not yet even begun, allowing the amendment would not have caused any delay. Moreover,

doing so would have served the higher interest of justice as this would provide the best opportunity for the issues among all parties to be thoroughly threshed out and the rights of all parties finally determined. Hence, the Court overrules the trial court's denial of the motion to admit the amended complaint, and orders the admission of the same.

2. COMMERCIAL LAW; CORPORATIONS; DERIVATIVE SUIT; REQUISITES.— In *Hi-Yield Realty, Incorporated v. Court of Appeals*, the Court enumerated the requisites for filing a derivative suit, as follows: a) the party bringing the suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit. A reading of the amended complaint will reveal that all the foregoing requisites had been alleged therein. Hence, the amended complaint remedied the defect in the original complaint and now sufficiently states a cause of action.

3. REMEDIAL LAW; 1997 RULES OF CIVIL PROCEDURE; PLEADINGS AND PRACTICES; AMENDMENTS; MAY SUBSTANTIALLY ALTER THE CAUSE OF ACTION OR DEFENSE.— Respondent PCIB should not complain that admitting the amended complaint after they pointed out a defect in the original complaint would be unfair to them. They should have been well aware that due to the changes made by the 1997 Rules of Civil Procedure, amendments may now substantially alter the cause of action or defense. It should not have been a surprise to them that petitioners would redress the defect in the original complaint by substantially amending the same, which course of action is now allowed under the new rules.

4. ID.; COURTS; JURISDICTION; JURISDICTION OVER COMPLAINT FOR ANNULMENT OF MORTGAGE EXECUTED BETWEEN THE BANK AND THE CORPORATION, WITH THE MORTGAGE BANK AS ONE OF THE DEFENDANTS, PROPERLY LODGED WITH THE REGULAR COURT BECAUSE THE

MORTGAGEE BANK HAS NO INTRA-CORPORATE RELATIONSHIP WITH THE STOCKHOLDERS; NO FORUM SHOPPING ABSENT IDENTITY OF ISSUES.— [The pronouncements of the Court in the case of *Saura v. Saura, Jr.*] are exactly in point with the issues in the present case. Here, the complaint is for annulment of mortgage with the mortgagee bank as one of the defendants, thus, as held in *Saura,* jurisdiction over said complaint is lodged with the regular courts because the mortgagee bank has no intra-corporate relationship with the stockholders. There can also be no forum shopping, because there is no identity of issues. The issue being threshed out in the SEC case is the due execution, authenticity or validity of board resolutions and other documents used to facilitate the execution of the mortgage, while the issue in the case filed by petitioners with the RTC is the validity of the mortgage itself executed between the bank and the corporation, purportedly represented by the spouses Leandro and Lilian Soriano, the President and Treasurer of petitioner LEI, respectively. Thus, there is no reason to dismiss the complaint in this case.

APPEARANCES OF COUNSEL

Perfecto Nixon C. Tabora for petitioner.
Alampay & Tamase Law Office for BDO Unibank, Inc.
Nicolas A. Ocampo for Lilian S. Soriano.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Resolution[1] of the Regional Trial Court of Legaspi City (RTC), dated November 11, 1999, dismissing petitioners' complaint, and its Order[2] dated May 15, 2000, denying herein petitioners' Motion for

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[1] Penned by Judge Gregorio A. Consulta.

[2] *Id*.

Reconsideration and Motion to Admit Amended Complaint, be reversed and set aside.

The records reveal the following antecedent facts.

On August 13, 1999, petitioners filed a Complaint against respondents for Annulment of Mortgage with Prayer for Temporary Restraining Order & Preliminary Injunction with Damages with the RTC of Legaspi City. Petitioner Lolita A. Soriano alleged that she is a stockholder of petitioner Lisam Enterprises, Inc. (LEI) and a member of its Board of Directors, designated as its Corporate Secretary. The Complaint also alleged the following:

4. Sometime in 1993, plaintiff LEI, in the course of its business operation, acquired by purchase a parcel of residential land with improvement situated at Legaspi City, covered by Transfer Certificate of Title No. 37866, copy attached as Annex "A", which property is more particularly described as follows:

x x x x x x x x x

5. On or about 28 March 1996, defendant Lilian S. Soriano and the late Leandro A. Soriano, Jr., as husband and wife (hereafter "Spouses Soriano"), in their personal capacity and for their own use and benefit, obtained a loan from defendant PCIB (Legaspi Branch) (now known as Banco de Oro Unibank, Inc.) in the total amount of ₱20 Million;

6. That as security for the payment of the aforesaid credit accommodation, the late Leandro A. Soriano, Jr. and defendant Lilian S. Soriano, as president and treasurer, respectively of plaintiff LEI, but without authority and consent of the board of said plaintiff and with the use of a falsified board resolution, executed a real estate mortgage on 28 March 1996, over the above-described property of plaintiff LEI in favor of defendant PCIB, and had the same registered with the Office of the Registry of Deeds, Legaspi City, copy of the Real Estate Mortgage is hereto attached and marked as Annex "B", and made part hereof, to the prejudice of plaintiffs;

7. That specifically, the Spouses Soriano, with intent to defraud and prejudice plaintiff LEI and its stockholders, falsified the signatures of plaintiff Lolita A. Soriano as corporate secretary and director of plaintiff LEI, in a document denominated as board resolution

purportedly issued by the board of plaintiff LEI on 6 November 1995, making it appear that plaintiff LEI's Board met and passed a board resolution on said date authorizing the Spouses Soriano to mortgage or encumber all or substantially all of the properties of plaintiff LEI, when in fact and in truth, no resolution of that nature was ever issued by the board of plaintiff LEI, nor a meeting was called to that effect, copy of the resolution in question is hereto attached and marked as Annex "C", and made part hereof;

8. That plaintiff Lolita A. Soriano as Corporate Secretary of plaintiff LEI, had never signed a board resolution nor issued a Secretary's Certificate to the effect that on 6 November 1995 a resolution was passed and approved by plaintiff LEI authorizing the Spouses Soriano as president and treasurer, respectively, to mortgage the above-described property of plaintiff LEI, neither did she appear personally before a notary public on 28 March 1996 to acknowledge or attest to the issuance of a supposed board resolution issued by plaintiff LEI on 6 November 1995;

9. That defendant PCIB, knowing fully well that the property being mortgaged by the Spouses Soriano belongs to plaintiff LEI, a corporation, negligently and miserably failed to exercise due care and prudence required of a banking institution. Specifically, defendant PCIB failed to investigate and to delve into the propriety of the issuance of or due execution of subject board resolution, which is the very foundation of the validity of subject real estate mortgage. Further, it failed to verify the genuineness of the signatures appearing in said board resolution nor to confirm the fact of its issuance with plaintiff Lolita A. Soriano, as the corporate secretary of plaintiff LEI. Furthermore, the height of its negligence was displayed when it disregarded or failed to notice that the questioned board resolution with a Secretary's Certificate was notarized only on 28 March 1996 or after the lapse of more than four (4) months from its purported date of issue on 6 November 1995. That these circumstances should have put defendant PCIB on notice of the flaws and infirmities of the questioned board resolution. Unfortunately, it negligently failed to exercise due care and prudence expected of a banking institution;

10. That having been executed without authority of the board of plaintiff LEI said real estate mortgage dated 28 March 1996 executed by the Spouses Soriano, as officers of plaintiff LEI in favor of defendant PCIB, is the null and void and has no legal effect upon said plaintiff. Consequently, said mortgage deed cannot be used nor resorted to

by defendant PCIB against subject property of plaintiff LEI as no right or rights whatsoever were created nor granted thereunder by reason of its nullity;

11. Worst, sometime in August 1998, in order to remedy the defects in the mortgage transaction entered by the Spouses Soriano and defendant PCIB, the former, with the unlawful instigation of the latter, signed a document denominated as "Deed of Assumption of Loans and Mortgage Obligations and Amendment of Mortgage"; wherein in said document, plaintiff LEI was made to assume the ₱20 Million personal indebtedness of the Spouses Soriano with defendant PCIB, when in fact and in truth it never so assumed the same as no board resolution duly certified to by plaintiff Lolita A. Soriano as corporate secretary was ever issued to that effect, copy of said Deed is hereto attached and marked as Annex "D", and made part hereof;

12. Moreover, to make it appear that plaintiff LEI had consented to the execution of said deed of assumption of mortgage, the Spouses Soriano again, through the unlawful instigation and connivance of defendant PCIB, falsified the signature of plaintiff Lolita A. Soriano as corporate secretary of plaintiff LEI in a document denominated as "Corporate Resolution to Borrow," to make it appear that plaintiff LEI so authorized the Spouses Soriano to perform said acts for the corporation, when in fact and in truth no such authority or resolution was ever issued nor granted by plaintiff LEI, nor a meeting called and held for said purpose in accordance with its By-laws; copy of which is hereto attached and marked as Annex "E" and made part hereof;

13. That said irregular transactions of defendant Lilian S. Soriano and her husband Leandro A. Soriano, Jr., on one hand, and defendant PCIB, on the other, were discovered by plaintiff Lolita A. Soriano sometime in April 1999. That immediately upon discovery, said plaintiff, for herself and on behalf and for the benefit of plaintiff LEI, made demands upon defendants Lilian S. Soriano and the Estate of Leandro A. Soriano, Jr., to free subject property of plaintiff LEI from such mortgage lien, by paying in full their personal indebtedness to defendant PCIB in the principal sum of ₱20 Million. However, said defendants, for reason only known to them, continued and still continue to ignore said demands, to the damage and prejudice of plaintiffs;

14. Hence, on 25 June 1999, plaintiffs commenced a derivative suit against defendants Lilian S. Soriano and the Estate of Leandro A. Soriano, Jr., before the Securities and Exchange Commission, docketed as SEC Case No. 06-99-6339 for "Fraudulent Scheme and Unlawful Machination with Damages" in order to protect and preserve the rights of plaintiffs, copy of said complaint is hereto attached as Annex "F";

15. That plaintiffs, in order to seek complete relief from the unauthorized mortgage transaction between the Spouses Soriano and defendant PCIB, were further compelled to institute this instant case to seek the nullification of the real estate mortgage dated 28 March 1999. Consequently, plaintiffs were forced to retain the services of a lawyer with whom they contracted to pay ₱100,000.00 as and for attorney's fee;

16. That unfortunately, the plaintiffs learned that on 30 July 1999, defendant Sarte, in his capacity as Notary Public of Daraga, Albay and upon application of defendant PCIB, issued a notice of Auction/ Foreclosure Sale of the property subject of the mortgage in question and has set the auction sale on 7 September 1999 x x x;

17. That by reason of the fraudulent and surreptitious schemes perpetrated by defendant Lilian S. Soriano and her husband, the late Leandro A. Soriano, Jr., in unlawful connivance and through the gross negligence of defendant PCIB, plaintiff Lolita A. Soriano, as stockholder, suffered sleepless nights, moral shock, wounded feeling, hurt pride and similar injuries, hence, should be awarded moral damages in the amount of ₱200,000.00.

After service of summons on all defendants, the RTC issued a temporary restraining order on August 25, 1990 and, after hearing, went on to issue a writ of preliminary injunction enjoining respondent PCIB (now known as Banco de Oro Unibank, Inc.) from proceeding with the auction sale of the subject property.

Respondents Lilian S. Soriano and the Estate of Leandro A. Soriano, Jr. filed an Answer dated September 25, 1999, stating that the Spouses Lilian and Leandro Soriano, Jr. (Spouses Soriano) were duly authorized by LEI to mortgage the subject property; that proceeds of the loan from respondent PCIB were for the use and benefit of LEI; that all notarized documents submitted to PCIB by the Spouses Soriano bore the genuine

signature of Lolita Soriano; and that although the Spouses Soriano indeed received demands from petitioner Lolita Soriano for them to pay the loan, they gave satisfactory explanations to the latter why her demands could not be honored. It was, likewise, alleged in said Answer that it was respondent Lilian Soriano who should be entitled to moral damages and attorney's fees.

On September 28, 1999, respondent PCIB filed a Motion to Dismiss the Complaint on grounds of lack of legal capacity to sue, failure to state cause of action, and *litis pendencia*. Petitioners filed an Opposition thereto, while PCIB's co-defendants filed a Motion to Suspend Action.

On November 11, 1999, the RTC issued the first assailed Resolution dismissing petitioners' Complaint. Petitioners then filed a Motion for Reconsideration of said Resolution. While awaiting resolution of the motion for reconsideration, petitioners also filed, on January 4, 2000, a Motion to Admit Amended Complaint, amending paragraph 13 of the original complaint to read as follows:

> 13. That said irregular transactions of defendant Lilian S. Soriano and her husband Leandro A. Soriano, Jr., on one hand, and defendant PCIB, on the other, were discovered by plaintiff Lolita A. Soriano sometime in April 1999. That immediately upon discovery, said plaintiff, for herself and on behalf and for the benefit of plaintiff LEI, made demands upon defendant Lilian S. Soriano and the Estate of Leandro A. Soriano, Jr., to free subject property of plaintiff LEI from such mortgage lien, by paying in full their personal indebtedness to defendant PCIB in the principal sum of ₱20 Million. However, said defendants, for reason only known to them, continued and still continue to ignore said demands, to the damage and prejudice of plaintiffs; <u>that plaintiff Lolita A. Soriano likewise made demands upon the Board of Directors of Lisam Enterprises, Inc., to make legal steps to protect the interest of the corporation from said fraudulent transaction, but unfortunately, until now, no such legal step was ever taken by the Board, hence, this action for the benefit and in behalf of the corporation</u>;

On May 15, 2000, the trial court issued the questioned Order denying both the Motion for Reconsideration and the Motion to Admit Amended Complaint. The trial court held that no new

argument had been raised by petitioners in their motion for reconsideration to address the fact of plaintiffs' failure to allege in the complaint that petitioner Lolita A. Soriano made demands upon the Board of Directors of Lisam Enterprises, Inc. to take steps to protect the interest of the corporation against the fraudulent acts of the Spouses Soriano and PCIB. The trial court further ruled that the Amended Complaint can no longer be admitted, because the same absolutely changed petitioners' cause of action.

Petitioners filed the present petition with this Court, alleging that what are involved are pure questions of law, to wit:

FIRST, WHETHER OR NOT THE COURT COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED THE ACTION ON THE GROUND THAT PETITIONER LOLITA A. SORIANO HAS NO LEGAL CAPACITY TO SUE AS SHE IS NOT A REAL PARTY-IN-INTEREST;

SECOND, WHETHER OR NOT THE COURT COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED THE ACTION ON THE GROUND THAT THERE IS ANOTHER ACTION PENDING BETWEEN THE SAME PARTIES FOR THE SAME CAUSE;

THIRD, WHETHER OR NOT THE COURT COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED THE ACTION ON THE GROUND THAT THE COMPLAINT STATES NO CAUSE OF ACTION;

FOURTH, WHETHER OR NOT THE COURT COMMITTED A REVERSIBLE ERROR WHEN IT DENIED THE ADMISSION OF PETITIONERS' AMENDED COMPLAINT FILED AS A MATTER OF RIGHT, AFTER THE ORDER OF DISMISSAL WAS ISSUED BUT BEFORE ITS FINALITY.

FIFTH, WHETHER OR NOT THE COURT ERRED IN DISMISSING THE ACTION, INSTEAD OF MERELY SUSPENDING THE SAME FOLLOWING THE DOCTRINE LAID DOWN IN *UNION GLASS*.[3]

The petition is impressed with merit.

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[3] *Rollo*, p. 5.

The Court shall first delve into the matter of the propriety of the denial of the motion to admit amended complaint. Pertinent provisions of Rule 10 of the Rules of Court provide as follows:

> Sec. 2. *Amendments as a matter of right*. — A party may amend his pleadings once as a matter of right at any time before a responsive pleading is served x x x.
>
> Sec. 3. *Amendments by leave of court*. — Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. x x x

It should be noted that respondents Lilian S. Soriano and the Estate of Leandro A. Soriano, Jr. already filed their Answer, to petitioners' complaint, and the claims being asserted were made against said parties. A responsive pleading having been filed, amendments to the complaint may, therefore, be made only by leave of court and no longer as a matter of right. However, in *Tiu v. Philippine Bank of Communications*,[4] the Court discussed this rule at length, to wit:

> x x x [A]fter petitioners have filed their answer, Section 3, Rule 10 of the Rules of Court specifically allows amendment by leave of court. The said Section states:
>
> > SECTION 3. *Amendments by leave of court*. — Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.
>
> This Court has emphasized the import of Section 3, Rule 10 of the 1997 Rules of Civil Procedure in *Valenzuela v. Court of Appeals*, thus:
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> > Interestingly, Section 3, Rule 10 of the 1997 Rules of Civil Procedure amended the former rule in such manner that the

[4] G.R. No. 151932, August 19, 2009, 596 SCRA 432.

> phrase "or that the cause of action or defense is substantially altered" was stricken-off and not retained in the new rules. The clear import of such amendment in Section 3, Rule 10 is that under the new rules, "the amendment may (now) substantially alter the cause of action or defense." This should only be true, however, when despite a substantial change or alteration in the cause of action or defense, the amendments sought to be made shall serve the higher interests of substantial justice, and prevent delay and equally promote the laudable objective of the rules which is to secure a "just, speedy and inexpensive disposition of every action and proceeding."

The granting of leave to file amended pleading is a matter particularly addressed to the sound discretion of the trial court; and that discretion is broad, subject only to the limitations that the amendments should not substantially change the cause of action or alter the theory of the case, or that it was not made to delay the action. Nevertheless, as enunciated in *Valenzuela*, even if the amendment substantially alters the cause of action or defense, such amendment could still be allowed when it is sought to serve the higher interest of substantial justice, prevent delay, and secure a just, speedy and inexpensive disposition of actions and proceedings.

The courts should be liberal in allowing amendments to pleadings to avoid a multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined, and the case decided on the merits without unnecessary delay. This liberality is greatest in the early stages of a lawsuit, especially in this case where the amendment was made before the trial of the case, thereby giving the petitioners all the time allowed by law to answer and to prepare for trial.

Furthermore, amendments to pleadings are generally favored and should be liberally allowed in furtherance of justice in order that every case, may so far as possible, be determined on its real facts and in order to speed up the trial of the case or prevent the circuitry of action and unnecessary expense. That is, unless there are circumstances such as inexcusable delay or the taking of the adverse party by surprise or the like, which might justify a refusal of permission to amend.[5]

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[5] *Id*. at 444-445. (Emphasis Supplied.)

Since, as explained above, amendments are generally favored, it would have been more fitting for the trial court to extend such liberality towards petitioners by admitting the amended complaint, which was filed before the order dismissing the original complaint became final and executory. It is quite apparent that since trial proper had not yet even begun, allowing the amendment would not have caused any delay. Moreover, doing so would have served the higher interest of justice as this would provide the best opportunity for the issues among all parties to be thoroughly threshed out and the rights of all parties finally determined. Hence, the Court overrules the trial court's denial of the motion to admit the amended complaint, and orders the admission of the same.

With the amendment stating "that plaintiff Lolita A. Soriano likewise made demands upon the Board of Directors of Lisam Enterprises, Inc., to make legal steps to protect the interest of the corporation from said fraudulent transaction, but unfortunately, until now, no such legal step was ever taken by the Board, hence, this action for the benefit and in behalf of the corporation," does the amended complaint now sufficiently state a cause of action? In *Hi-Yield Realty, Incorporated v. Court of Appeals*,[6] the Court enumerated the requisites for filing a derivative suit, as follows:

> a) the party bringing the suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;
>
> b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and
>
> c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.[7]

A reading of the amended complaint will reveal that all the foregoing requisites had been alleged therein. Hence, the amended

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[6] G.R. No. 168863, June 23, 2009, 590 SCRA 548.

[7] *Id.* at 556.

complaint remedied the defect in the original complaint and now sufficiently states a cause of action.

Respondent PCIB should not complain that admitting the amended complaint after they pointed out a defect in the original complaint would be unfair to them. They should have been well aware that due to the changes made by the 1997 Rules of Civil Procedure, amendments may now substantially alter the cause of action or defense. It should not have been a surprise to them that petitioners would redress the defect in the original complaint by substantially amending the same, which course of action is now allowed under the new rules.

The next question then is, upon admission of the amended complaint, would it still be proper for the trial court to dismiss the complaint? The Court answers in the negative.

Saura v. Saura, Jr.[8] is closely analogous to the present case. In *Saura*,[9] the petitioners therein, stockholders of a corporation, sold a disputed real property owned by the corporation, despite the existence of a case in the Securities and Exchange Commission (SEC) between stockholders for annulment of subscription, recovery of corporate assets and funds, *etc*. The sale was done without the knowledge of the other stockholders, thus, said stockholders filed a separate case for annulment of sale, declaration of nullity of deed of exchange, recovery of possession, *etc*., against the stockholders who took part in the sale, and the buyer of the property, filing said case with the regular court (RTC). Petitioners therein also filed a motion to dismiss the complaint for annulment of sale filed with the RTC, on the ground of forum shopping, lack of jurisdiction, lack of cause of action, and *litis pendentia* among others. The Court held that the complaint for annulment of sale was properly filed with the regular court, because the buyer of the property had no intra-corporate relationship with the stockholders, hence, the buyer could not be joined as party-defendant in the SEC case. To include said buyer as a party-defendant in the case pending

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[8] G.R. No. 136159, September 1, 1999, 313 SCRA 465.

[9] *Supra*.

with the SEC would violate the then existing rule on jurisdiction over intra-corporate disputes. The Court also struck down the argument that there was forum shopping, ruling that the issue of recovery of corporate assets and funds pending with the SEC is a totally different issue from the issue of the validity of the sale, so a decision in the SEC case would not amount to *res judicata* in the case before the regular court. Thus, the Court merely ordered the suspension of the proceedings before the RTC until the final outcome of the SEC case.

The foregoing pronouncements of the Court are exactly in point with the issues in the present case. Here, the complaint is for annulment of mortgage with the mortgagee bank as one of the defendants, thus, as held in *Saura*,[10] jurisdiction over said complaint is lodged with the regular courts because the mortgagee bank has no intra-corporate relationship with the stockholders. There can also be no forum shopping, because there is no identity of issues. The issue being threshed out in the SEC case is the due execution, authenticity or validity of board resolutions and other documents used to facilitate the execution of the mortgage, while the issue in the case filed by petitioners with the RTC is the validity of the mortgage itself executed between the bank and the corporation, purportedly represented by the spouses Leandro and Lilian Soriano, the President and Treasurer of petitioner LEI, respectively. Thus, there is no reason to dismiss the complaint in this case.

IN VIEW OF THE FOREGOING, the Resolution of the Regional Trial Court of Legaspi City, Branch 4, dated November 11, 1999, dismissing petitioners' complaint in Civil Case No. 9729, and its Order dated May 15, 2000, denying herein petitioners' Motion for Reconsideration and Motion to Admit Amended Complaint, are hereby **REVERSED** and **SET ASIDE.** The Regional Trial Court of Legaspi City, Branch 4, is hereby **DIRECTED** to **ADMIT** the Amended Complaint.

Considering further, that this case has been pending for some time and, under R.A. No. 8799, it is now the regular courts which

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[10] *Supra*.

have jurisdiction over intra-corporate disputes, the Regional Trial Court of Legaspi City, Branch 4 is hereby **DIRECTED** to **PROCEED** with dispatch in trying Civil Case No. 9729.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170425. April 23, 2012]

SECURITIES AND EXCHANGE COMMISSION, NATIONAL BUREAU OF INVESTIGATION and DEPARTMENT OF JUSTICE, *petitioners, vs.* **RIZZA G. MENDOZA, CARLITO LEE, GRESHIELA G. COMPENDIO, RAUL RIVERA, REY BELTRAN, REX ALMOJUELA, LINDA P. CAPALUNGAN, HILDA R. RONQUILLO, MA. LODA CALMA, TERESITA P. ALMOJUELA, RUFINA ABAD and AMADOR A. PASTRANA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; QUESTIONS CONCERNING BOTH THE ISSUANCE OF THE SEARCH WARRANT AND THE SUPPRESSION OF EVIDENCE SEIZED UNDER IT ARE MATTERS THAT CAN BE RAISED ONLY WITH THE ISSUING COURT, IF NO CRIMINAL ACTION HAS IN THE MEANTIME BEEN FILED IN COURT.— Section 14 of Rule 126 is clear. Questions concerning both 1) the issuance of the search warrant and 2) the suppression of evidence seized under it are matters that can be raised only with the issuing court if, as in the present case, no criminal action has in the

meantime been filed in court. x x x Although passed off as a petition for injunction, the action that Mendoza, *et al*. filed with the Muntinlupa RTC, the object of which is to prohibit the three agencies from using the items seized under the search warrant, is actually an action to suppress their use as evidence. Consequently, Mendoza, *et al*. should have filed it with the Makati RTC that issued such warrant.

2. ID.; ID.; ID.; A MOTION TO SUPPRESS THE USE OF ITEMS SEIZED UNDER A SEARCH WARRANT AS EVIDENCE MAY BE FILED BY PERSONS NOT PARTIES TO THE SEARCH WARRANT PROCEEDING; NATURE OF SEARCH WARRANT PROCEEDING, EXPLAINED. — The rules do not require Mendoza, *et al*. to be parties to the search warrant proceeding for them to be able to file a motion to suppress. It is not correct to say that only the parties to the application for search warrant can question its issuance or seek suppression of evidence seized under it. The proceeding for the issuance of a search warrant does not partake of an action where a party complains of a violation of his right by another. The Court clearly explained in *United Laboratories, Inc. v. Isip*, the nature of a search warrant proceeding. [A] search warrant proceeding is, in no sense, a criminal action or the commencement of a prosecution. The proceeding is not one against any person, but is solely for the discovery and to get possession of personal property. It is a special and peculiar remedy, drastic in nature, and made necessary because of public necessity. x x x. A search warrant is a legal process which has been likened to a writ of discovery employed by the State to procure relevant evidence of crime. It is in the nature of a criminal process, restricted to cases of public prosecutions. A search warrant is a police weapon, issued under the police power. A search warrant must issue in the name of the State, namely, the People of the Philippines. A search warrant has no relation to a civil process. It is not a process for adjudicating civil rights or maintaining mere private rights. It concerns the public at large as distinguished from the ordinary civil action involving the rights of private persons. It may only be applied for in the furtherance of public prosecution.

3. ID.; ID.; ID.; THE MOTION TO SUPPRESS THE USE OF THE SEIZED ITEMS AS EVIDENCE AGAINST THE RESPONDENTS MUST BE FILED BEFORE THE

ISSUING COURT, WHERE NO CRIMINAL ACTION HAS BEEN FILED AGAINST THEM IN SOME OTHER COURT; ITEMS SEIZED UNDER A SEARCH WARRANT MUST BE IMMEDIATELY TURNED OVER TO THE ISSUING COURT.— [A]lthough the search warrant in this case did not target the residence or offices of Mendoza, *et al.*, they were entitled to file with the Makati RTC a motion to suppress the use of the seized items as evidence against them for failure of the SEC and the NBI to immediately turn these over to the issuing court. The issuing court is the right forum for such motion given that no criminal action had as yet been filed against Mendoza, *et al.* in some other court. Parenthetically, it appears from its investigation report that the SEC kept the seized documents and articles for months rather than immediately turn them over to the Makati RTC. Justifying its action, the SEC said that it still needed to study the seized items. Evidently, it wanted to use them to build up a case against the respondents, unmindful of its duty to first turn them over to the court. Clearly, SEC's arbitrary action compromised the integrity of the seized documents and articles.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Cadiz & Tabayoyong for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the institution of an action for prohibition and injunction filed by the affected party in one court, seeking to enjoin the use of evidence seized under a search warrant issued by another court.

The Facts and the Case

On March 26, 2001 the National Bureau of Investigation (NBI) applied with the Regional Trial Court (RTC) of Makati City, Branch 63, for the issuance of a search warrant covering documents and articles found at the offices of Amador Pastrana

and Rufina Abad at 1908, 88 Corporate Center, Valero Street, Makati City. The NBI alleged that these documents and articles were being used to a) violate Republic Act 8799, also known as the Securities Regulation Code (SRC), and b) commit estafa under Article 315 of the Revised Penal Code.[1] The court granted the application.

Acting on the search warrant, NBI and Securities Exchange Commission (SEC) agents searched the offices mentioned and seized the described documents and articles from them. Shortly after, the SEC filed a criminal complaint with the Department of Justice (DOJ) against respondents Rizza Mendoza, Carlito Lee, Ma. Greshiela Compendio, Raul Rivera, Rey Beltran, Rex Almojuela, Linda Capalungan, Hilda Ronquillo, Ma. Loda Calma, and Teresita Almojuela (Mendoza, *et al*.) for violation of Sections 24.1 (b) (iii), 26, and 28 of the SRC.[2]

On July 11, 2001 Mendoza, *et al*. filed a petition for prohibition and injunction with application for temporary restraining order (TRO) and preliminary injunction against the NBI and the SEC before the RTC of Muntinlupa.[3] They alleged that, three months after the search and seizure, the NBI and the SEC had not turned over the seized articles to the Makati RTC that issued the search warrant.[4] This omission, they said, violated Section 1, Rule 126 of the Rules on Criminal Procedure,[5] which required the officers who conducted the seizure to immediately turn over the seized items to the issuing court.

The Muntinlupa petition sought to prevent the SEC and the NBI from using the seized articles in prosecuting Mendoza, *et al*.

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[1] *Rollo*, pp. 38, 54.

[2] *Id*. at 38.

[3] *Id*.

[4] Records, pp. 7-9.

[5] Sec. 1. Search warrant defined. — A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court. (1a)

and the DOJ from proceeding with the preliminary investigation of their case, using the same.[6] They feared that the seized articles may have already been tampered with, altered, or augmented by those responsible for seizing them.[7] Essentially, Mendoza, *et al*.'s action is one for the suppression of evidence whose seizure had become illegal for failure to turn them over to the issuing court.

Opposing the petition, the SEC, the NBI, and the DOJ (the three agencies) averred that injunction may not be issued to protect contingent rights or enjoin criminal prosecution. They pointed out that Mendoza, *et al*. should have exhausted administrative remedies available to them at the DOJ. Further, the three agencies maintained that Mendoza, *et al*.'s petition for prohibition should have been lodged with the Court of Appeals (CA).[8]

Simultaneous with the action before the Muntinlupa RTC, on July 11, 2001 two of the respondents who did not join that action, Pastrana and Abad, filed with the Makati RTC a motion to quash the subject search warrant for having been issued in connection with several offenses when the Rules of Criminal Procedure[9] require its issuance for only one specific offense.

On July 19, 2001 the Muntinlupa RTC issued a TRO against the three agencies,[10] enjoining them from using the seized articles in proceeding against Mendoza, *et al*. On July 31, 2001 respondents Pastrana and Abad asked for leave to intervene in the civil case in the Muntinlupa RTC, which leave was granted on August 8, 2001. On the following day, August 9, 2001, having assumed as true the uncontroverted allegations in the petition before it, the Muntinlupa RTC replaced the TRO it issued with

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[6] *Rollo*, p. 38.

[7] Records, p. 9.

[8] *Id.* at 398-402.

[9] *Id.* at 197; *rollo*, p. 39.

[10] *Id.* at 411-412.

a writ of preliminary injunction[11] subject to the final outcome of the proceedings before the Makati RTC.[12]

On August 23, 2001 the three agencies moved for reconsideration of the Muntinlupa RTC's orders granting the intervention and the preliminary injunction. They also moved on September 13, 2001 to dismiss the action. On January 15, 2002 that court issued an omnibus order, denying their motions for reconsideration and to dismiss.[13] This prompted the three agencies to file a petition for *certiorari* and prohibition with the CA, seeking to annul the Muntinlupa RTC's orders of August 8, 2001, August 9, 2001, and January 15, 2002.[14]

During the pendency of the case before the CA, however, or on May 10, 2002 the Makati RTC rendered a decision nullifying the search warrant it issued and declaring the documents and articles seized under it inadmissible in evidence. The Makati RTC also directed the SEC and the NBI to return the seized items to respondents Pastrana and Abad.[15]

For some reason, the CA did not mention the Makati RTC order and did not dismiss the petition before it on ground of mootness. On March 24, 2004 it rendered judgment, denied the three agencies' petition, and affirmed the orders of the Muntinlupa RTC. The CA ruled, among other things, that Mendoza, *et al.*'s action before the Muntinlupa RTC was proper and distinct from that which respondents Pastrana and Abad filed with the Makati RTC.[16] The three agencies moved for reconsideration but the CA denied the same on November 10, 2005.[17] Undaunted, they filed the present petition for review on *certiorari*.

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[11] *Rollo*, p. 39.

[12] *Id.* at 107-108.

[13] *Id.* at 39.

[14] *Id.* at 39-40.

[15] Records, pp. 1005-1014.

[16] *Rollo*, p. 41.

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

Issue Presented

The issues raised in this petition have essentially been rendered moot and academic by the Makati RTC's decision, which quashed the search warrant it issued and declared the items seized under it inadmissible in evidence. Still, one issue—whether or not the CA erred in holding that the Muntinlupa RTC has jurisdiction to entertain Mendoza, *et al*.'s injunction action—needs to be resolved in the interest of setting the matter aright and providing a lesson for the future.

The Court's Ruling

The CA held that the proceedings before the Makati RTC and the Muntinlupa RTC are separate and distinct. The object of the motion to quash search warrant, here filed by respondents Pastrana and Abad with the Makati RTC, the issuing court, was to test the validity of its issuance, given that the warrant was made to cover several offenses rather than just one as the rules provide.[18] On the other hand, the object of the Muntinlupa injunction case is to prevent the three agencies from using the seized articles in any criminal proceeding against Mendoza, *et al*. considering the SEC and the NBI's failure to immediately turn over the seized articles to the court that issued the warrant as the rules require.[19]

But Section 14 of Rule 126 is clear. Questions concerning both 1) the issuance of the search warrant and 2) the suppression of evidence seized under it are matters that can be raised only with the issuing court if, as in the present case, no criminal action has in the meantime been filed in court. Thus:

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[18] Sec. 4, Rule 126. *Requisites for issuing search warrant*. — A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. (3a)

[19] Sec. 12, Rule 126. *Delivery of property and inventory thereof to court; return and proceedings thereon.* — (a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath. x x x

Section 14. Motion to quash a search warrant or to suppress evidence; where to file. — A motion to quash a search warrant and/or **to suppress evidence obtained thereby** may be filed in and acted upon only by the court where the action has been instituted. **If no criminal action has been instituted, the motion may be filed in and resolved by the court that issued the search warrant.** However, if such court failed to resolve the motion and a criminal case is subsequently filed in another court, the motion shall be resolved by the latter court. (Emphasis supplied)

Although passed off as a petition for injunction, the action that Mendoza, *et al*. filed with the Muntinlupa RTC, the object of which is to prohibit the three agencies from using the items seized under the search warrant, is actually an action to suppress their use as evidence. Consequently, Mendoza, *et al*. should have filed it with the Makati RTC that issued such warrant.

It might be pointed out of course that since Mendoza, *et al*. were not parties to the issuance of the search warrant, they had no standing to question the same or seek the suppression of evidence taken under it. Consequently, since they had reasons for questioning government use of the seized items against them, they had the right to bring the injunction action before the Muntinlupa RTC where they resided.

But the rules do not require Mendoza, *et al*. to be parties to the search warrant proceeding for them to be able to file a motion to suppress. It is not correct to say that only the parties to the application for search warrant can question its issuance or seek suppression of evidence seized under it. The proceeding for the issuance of a search warrant does not partake of an action where a party complains of a violation of his right by another. The Court clearly explained in *United Laboratories, Inc. v. Isip*,[20] the nature of a search warrant proceeding.

[A] search warrant proceeding is, in no sense, a criminal action or the commencement of a prosecution. The proceeding is not one against any person, but is solely for the discovery and to get possession of personal property. It is a special and peculiar remedy, drastic in

[20] 500 Phil. 342 (2005).

nature, and made necessary because of public necessity. It resembles in some respect with what is commonly known as John Doe proceedings. While an application for a search warrant is entitled like a criminal action, it does not make it such an action.

A search warrant is a legal process which has been likened to a writ of discovery employed by the State to procure relevant evidence of crime. It is in the nature of a criminal process, restricted to cases of public prosecutions. A search warrant is a police weapon, issued under the police power. A search warrant must issue in the name of the State, namely, the People of the Philippines.

A search warrant has no relation to a civil process. It is not a process for adjudicating civil rights or maintaining mere private rights. It concerns the public at large as distinguished from the ordinary civil action involving the rights of private persons. It may only be applied for in the furtherance of public prosecution.[21]

Clearly, although the search warrant in this case did not target the residence or offices of Mendoza, *et al*., they were entitled to file with the Makati RTC a motion to suppress the use of the seized items as evidence against them for failure of the SEC and the NBI to immediately turn these over to the issuing court. The issuing court is the right forum for such motion given that no criminal action had as yet been filed against Mendoza, *et al*. in some other court.

Parenthetically, it appears from its investigation report that the SEC kept the seized documents and articles for months rather than immediately turn them over to the Makati RTC.[22] Justifying its action, the SEC said that it still needed to study the seized items.[23] Evidently, it wanted to use them to build up a case against the respondents, unmindful of its duty to first turn them over to the court. Clearly, SEC's arbitrary action compromised the integrity of the seized documents and articles.

WHEREFORE, the Court **REVERSES** the decision of the Court of Appeals dated March 24, 2004 and its resolution dated

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[21] *Id.* at 357-358.

[22] Records, p. 48.

[23] *Id.* at 216.

November 10, 2005 in CA-G.R. SP 70212 and **ORDERS** the dismissal of the action for prohibition and injunction that respondents Rizza Mendoza, Carlito Lee, Ma. Greshiela Compendio, Raul Rivera, Rey Beltran, Rex Almojuela, Linda Capalungan, Hilda Ronquillo, Ma. Loda Calma, Teresita Almojuela, Rufina Abad and Amador Pastrana filed with the Regional Trial Court of Muntinlupa City in Civil Case 01-206 for lack of jurisdiction over the subject matter of the same.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 175042. April 23, 2012]

DANILO A. DU, *petitioner, vs.* **VENANCIO R. JAYOMA, then Municipal Mayor of Mabini, Bohol, VICENTE GULLE, JR., JOVENIANO MIANO, WILFREDO MENDEZ, AGAPITO VALLESPIN, RENE BUCIO, JESUS TUTOR, CRESCENCIO BERNALES, EDGARDO YBANEZ, and REY PAGALAN, then members of the *Sangguniang Bayan* (SB) of Mabini, Bohol,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; DEFINED AND ESSENTIAL ELEMENTS THEREOF.— A cause of action is defined as "the act or omission by which a party violates a right of another." Corollarily, the essential elements of a cause of action are: (1) a right in favor of the plaintiff; (2) an obligation on the part of the defendant to

respect such right; and (3) an act or omission on the part of the defendant in violation of the plaintiff's right with a resulting injury or damage to the plaintiff for which the latter may file an action for the recovery of damages or other appropriate relief.

2. ID.; ID.; ID.; NO CAUSE OF ACTION ABSENT A LEGAL RIGHT.— In this case, we find that petitioner has no cause of action against the respondents as he has no legal right to operate a cockpit in the municipality. Under Resolution No. 127, series of 1988, the *Sangguniang Bayan* allowed him to continue to operate his cockpit only because the winning bidder for the period January 1, 1989 to December 31, 1992 failed to comply with the legal requirements for operating a cockpit. Clearly, under the said resolution, petitioner's authority to operate the cockpit would end on December 31, 1992 or upon compliance by the winning bidder with the legal requirements for operating a cockpit, whichever comes first. As we see it, the only reason he was able to continue operating until July 1997 was because the *Sangguniang Bayan* of Mabini failed to monitor the status of the cockpit in their municipality.

3. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT; ORDINANCE; PRESUMED VALID IN THE ABSENCE OF EVIDENCE SHOWING THAT IT IS NOT IN ACCORDANCE WITH THE LAW; MUNICIPAL RESOLUTION NO. 065, NOT INVALIDATED.— And even if he was able to get a business permit from respondent mayor for the period January 1, 1997 to December 31, 1997, this did not give him a license to operate a cockpit. Under Section 447(a)(3)(v) of the LGC, it is the *Sangguniang Bayan* which is empowered to "authorize and license the establishment, operation and maintenance of cockpits, and regulate cockfighting and commercial breeding of gamecocks." Considering that no public bidding was conducted for the operation of a cockpit from January 1, 1997 to December 31, 1997, petitioner cannot claim that he was duly authorized by the *Sangguniang Bayan* to operate his cockpit in the municipality for the period January 1, 1997 to December 31, 1997. Respondent members of the *Sangguniang Bayan*, therefore, had every reason to suspend the operation of petitioner's cockpit by enacting Municipal Resolution No. 065, series of 1997. As the chief executive of the municipal government, respondent mayor was duty-bound

to enforce the suspension of the operation of petitioner's cockpit pursuant to the said Resolution. It bears stressing that no evidence was presented to show that upon review by the *Sangguniang Panlalawigan* of Bohol, the resolution was declared invalid or that the resolution was issued beyond the powers of the *Sangguniang Bayan* or mayor. Jurisprudence consistently holds that an ordinance, or in this case a resolution, is "presumed valid in the absence of evidence showing that it is not in accordance with the law." Hence, we find no reason to invalidate Municipal Resolution No. 065, series of 1997.

4. ID.; ID.; ID.; A LICENSE AUTHORIZING THE OPERATION AND EXPLOITATION OF A COCKPIT IS NOT PROPERTY OF WHICH THE HOLDER MAY NOT BE DEPRIVED WITHOUT DUE PROCESS OF LAW, BUT A MERE PRIVILEGE THAT MAY BE REVOKED WHEN PUBLIC INTERESTS SO REQUIRE.— [I]t is well enshrined in our jurisprudence that "a license authorizing the operation and exploitation of a cockpit is not property of which the holder may not be deprived without due process of law, but a mere privilege that may be revoked when public interests so require." Having said that, petitioner's allegation that he was deprived of due process has no leg to stand on.

5. CIVIL LAW; DAMAGES; INJURY ALONE DOES NOT GIVE THE PARTY THE RIGHT TO RECOVER DAMAGES; HE MUST ALSO HAVE A RIGHT OF ACTION FOR THE LEGAL WRONG INFLICTED BY THE OTHER PARTY.— Without any legal right to operate a cockpit in the municipality, petitioner is not entitled to damages. Injury alone does not give petitioner the right to recover damages; he must also have a right of action for the legal wrong inflicted by the respondents. We need not belabor that "in order that the law will give redress for an act causing damage, there must be *damnum et injuria* — that act must be not only hurtful, but wrongful."

APPEARANCES OF COUNSEL

Lord M. Marapao for petitioner.
Oscar B. Glovasa for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

In the absence of a legal right in favor of the plaintiff, there can be no cause of action.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated July 11, 2006 and the Resolution[3] dated October 4, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 00492.

Factual Antecedents

On July 7, 1988, the *Sangguniang Bayan* of the Municipality of Mabini, Bohol, enacted Municipal Ordinance No. 1, series of 1988,[4] requiring the conduct of a public bidding for the operation of a cockpit in the said municipality every four years.

For the period January 1, 1989 to December 31, 1992, the winning bidder was Engr. Edgardo Carabuena.[5] However, due to his failure to comply with the legal requirements for operating a cockpit, the *Sangguniang Bayan* on December 1, 1988 adopted Resolution No. 127, series of 1988,[6] authorizing petitioner Danilo Du to continue his cockpit operation until the winning bidder complies with the legal requirements.[7]

On July 9, 1997, upon discovering that petitioner has been operating his cockpit in violation of Municipal Ordinance No. 1, series of 1988, the *Sangguniang Bayan* passed Municipal

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[1] *Rollo,* pp. 3-107 with Annexes "A" to "J-1" inclusive.

[2] *Id.* at 85-93; penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Vicente L. Yap and Romeo F. Barza.

[3] *Id.* at 104-105; penned by Associate Justice Arsenio J. Magpale and concurred in by Associate Justices Romeo F. Barza and Antonio L. Villamor.

[4] *Id.* at 40.

[5] *Id.* at 86.

[6] *Id.* at 41.

[7] *Id.* at 86.

Resolution No. 065, series of 1997,[8] suspending petitioner's cockpit operation effective upon approval.[9]

On July 11, 1997, pursuant to Municipal Resolution No. 065, series of 1997, respondent Venancio R. Jayoma, then Mayor of Mabini, in a letter,[10] ordered petitioner to desist from holding any cockfighting activity effective immediately.[11]

Feeling aggrieved, petitioner filed with Branch 51 of the Regional Trial Court (RTC) of Bohol, a Petition for Prohibition,[12] docketed as Special Civil Action No. 4, against respondent mayor and nine members of the *Sangguniang Bayan* of Mabini, namely: Vicente Gulle, Jr., Joveniano Miano, Wilfredo Mendez, Agapito Vallespin, Rene Bucio, Jesus Tutor, Crescencio Bernales, Edgardo Ybanez and Rey Pagalan. Petitioner prayed that a preliminary injunction and/or a temporary restraining order be issued to prevent respondents from suspending his cockpit operation.[13] Petitioner claimed that he has a business permit to operate until December 31, 1997;[14] and that the Municipal Resolution No. 065, series of 1997, was unlawfully issued as it deprived him of due process.[15]

In their Answer,[16] respondents interposed that under the Local Government Code (LGC) of 1991, the power to authorize and license the establishment, operation and maintenance of a cockpit is lodged in the *Sangguniang Bayan*;[17] that respondent mayor,

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[8] Records, p. 8.

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

[10] Records, p. 7.

[11] *Rollo,* pp. 87-88.

[12] *Id.* at 29-33.

[13] *Id.* at 32.

[14] *Id.* at 29.

[15] *Id.* at 31-32.

[16] *Id.* at 34-39.

[17] *Id.* at 35.

in ordering the suspension of petitioner's cockpit operation, was merely exercising his executive power to regulate the establishment of cockpits in the municipality, pursuant to the ordinances and resolutions enacted by the *Sangguniang Bayan*;[18] and that Municipal Resolution No. 065, series of 1997, does not need to be approved by the *Sangguniang Panlalawigan* because it is not an ordinance but an expression of sentiments of the *Sangguniang Bayan* of Mabini.[19]

On October 22, 1997, a Temporary Restraining Order[20] was issued by the RTC enjoining respondents from suspending the cockpit operation of petitioner until further orders from the court.[21]

The Petition for Prohibition was later amended[22] to include damages, which the RTC admitted in an Order[23] dated January 21, 1998.

Ruling of the Regional Trial Court

On October 5, 2004, the RTC rendered a Decision[24] in favor of petitioner, to wit:

> WHEREFORE, and on the ground that petitioner was able to prove his case with preponderance of evidence, judgment is hereby rendered in favor of the petitioner and against the respondents, ordering the respondents jointly and severally to pay the petitioner:
>
> 1. The amount of Twenty Thousand Pesos (₱20,000.00) in the concept of moral damages;
>
> 2. The amount of Sixty Thousand Pesos (₱60,000.00) in the concept of unearned income considering the unrebutted testimony

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[18] *Id.*

[19] *Id.*

[20] Records, p. 54.

[21] *Rollo*, p. 88.

[22] *Id.* at 44-50.

[23] *Id.* at 51.

[24] *Id.* at 52-61; penned by Executive Presiding Judge Patsita Sarmiento-Gamutan.

of the petitioner [that] he lost Four Thousand Pesos (₱4,000.00) for each of the fifteen (15) Sundays that his cockpit was closed as its operation was ordered suspended by the respondent. By mathematical computation ₱4,000.00 x 15 amounts to ₱60,000.00;

3. The amount of Ten Thousand Pesos (₱10,000.00) as exemplary damages to deter other public officials from committing similar acts;

4. The amount of Twenty Thousand Pesos (₱20,000.00) as attorney's fees, and to pay the cost.

SO ORDERED.[25]

Ruling of the Court of Appeals

On appeal, the CA reversed the Decision of the RTC. According to the CA, petitioner did not acquire a vested right to operate a cockpit in the municipality as he was only granted a temporary privilege by the *Sangguniang Bayan*.[26] Hence, there being no right *in esse*, petitioner is not entitled to damages.[27] Thus, the dispositive portion reads:

WHEREFORE, premises considered, the instant appeal is hereby DENIED. The assailed decision granting petitioner the award of damages is SET ASIDE and the petition filed by petitioner against respondents is DISMISSED.

SO ORDERED.[28]

Petitioner moved for reconsideration which was denied by the CA in a Resolution[29] dated October 4, 2006.

Issue

Hence, the instant petition raising the core issue of whether the CA erred in finding that petitioner is not entitled to damages.[30]

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[25] *Id.* at 61.

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

[27] *Id.*

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

[29] *Id.* at 104-105.

[30] *Id.* at 146-147 and 169.

Petitioner's Arguments

Petitioner contends that Municipal Resolution No. 065, series of 1997, is ultra vires as it was maliciously, hastily, and unlawfully enforced by respondent mayor two days after its passage without the review or approval of the *Sangguniang Panlalawigan* of Bohol.[31] He alleges that respondents suspended the operation of his cockpit without due process and that the suspension was politically motivated.[32] In addition, he claims that as a result of the incident, he is entitled to actual, moral and exemplary damages as well as attorney's fees.[33]

Respondents' Arguments

Echoing the ruling of the CA, respondents insist that petitioner is not entitled to damages because he did not acquire a vested right to operate a cockpit in the municipality.[34] They also maintain that the suspension of petitioner's cockpit operation was pursuant to law and prevailing ordinance.[35]

Our Ruling

The petition lacks merit.

A cause of action is defined as "the act or omission by which a party violates a right of another."[36]

Corollarily, the essential elements of a cause of action are: (1) a right in favor of the plaintiff; (2) an obligation on the part of the defendant to respect such right; and (3) an act or omission on the part of the defendant in violation of the plaintiff's right with a resulting injury or damage to the plaintiff for which the

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[31] *Id.* at 148.

[32] *Id.*

[33] *Id.* at 148-149.

[34] *Id.* at 169-172.

[35] *Id.*

[36] RULES OF COURT, Rule 2, Section 2.

latter may file an action for the recovery of damages or other appropriate relief.[37]

Petitioner has no legal right to operate a cockpit.

In this case, we find that petitioner has no cause of action against the respondents as he has no legal right to operate a cockpit in the municipality. Under Resolution No. 127, series of 1988, the *Sangguniang Bayan* allowed him to continue to operate his cockpit only because the winning bidder for the period January 1, 1989 to December 31, 1992 failed to comply with the legal requirements for operating a cockpit. Clearly, under the said resolution, petitioner's authority to operate the cockpit would end on December 31, 1992 or upon compliance by the winning bidder with the legal requirements for operating a cockpit, whichever comes first. As we see it, the only reason he was able to continue operating until July 1997 was because the *Sangguniang Bayan* of Mabini failed to monitor the status of the cockpit in their municipality.

And even if he was able to get a business permit from respondent mayor for the period January 1, 1997 to December 31, 1997, this did not give him a license to operate a cockpit. Under Section 447(a)(3)(v) of the LGC, it is the *Sangguniang Bayan* which is empowered to "authorize and license the establishment, operation and maintenance of cockpits, and regulate cockfighting and commercial breeding of gamecocks." Considering that no public bidding was conducted for the operation of a cockpit from January 1, 1997 to December 31, 1997, petitioner cannot claim that he was duly authorized by the *Sangguniang Bayan* to operate his cockpit in the municipality for the period January 1, 1997 to December 31, 1997. Respondent members of the *Sangguniang Bayan*, therefore, had every reason to suspend the operation of petitioner's cockpit by enacting Municipal Resolution No. 065, series of 1997. As the chief executive of the municipal government, respondent mayor was

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[37] *Soloil, Inc. v. Philippine Coconut Authority*, G.R. No. 174806, August 11, 2010, 628 SCRA 185, 190.

duty-bound to enforce the suspension of the operation of petitioner's cockpit pursuant to the said Resolution.

It bears stressing that no evidence was presented to show that upon review by the *Sangguniang Panlalawigan* of Bohol, the resolution was declared invalid or that the resolution was issued beyond the powers of the *Sangguniang Bayan* or mayor. Jurisprudence consistently holds that an ordinance, or in this case a resolution, is "presumed valid in the absence of evidence showing that it is not in accordance with the law."[38] Hence, we find no reason to invalidate Municipal Resolution No. 065, series of 1997.

License to operate a cockpit is a mere privilege.

In addition, it is well enshrined in our jurisprudence that "a license authorizing the operation and exploitation of a cockpit is not property of which the holder may not be deprived without due process of law, but a mere privilege that may be revoked when public interests so require."[39] Having said that, petitioner's allegation that he was deprived of due process has no leg to stand on.

Petitioner not entitled to damages

Without any legal right to operate a cockpit in the municipality, petitioner is not entitled to damages. Injury alone does not give petitioner the right to recover damages; he must also have a right of action for the legal wrong inflicted by the respondents.[40] We need not belabor that "in order that the law will give redress for an act causing damage, there must be *damnum et injuria* – that act must be not only hurtful, but wrongful."[41]

All told, we find no error on the part of the CA in dismissing petitioner's case.

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[38] *Judge Leynes v. Commission on Audit*, 463 Phil. 557, 580 (2003).

[39] *Pedro v. Provincial Board of Rizal*, 56 Phil. 123, 132 (1931).

[40] *Tan v. Pereña*, 492 Phil. 200, 210 (2005).

[41] *Id.*

WHEREFORE, the petition is hereby **DENIED.** The assailed Decision dated July 11, 2006 and the Resolution dated October 4, 2006 of the Court of Appeals in CA-G.R. SP No. 00492 are hereby **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179488. April 23, 2012]

COSCO PHILIPPINES SHIPPING, INC., *petitioner, vs.* **KEMPER INSURANCE COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; CERTIFICATION AGAINST FORUM SHOPPING; WITH RESPECT TO A CORPORATION, THE CERTIFICATION AGAINST FORUM SHOPPING MAY BE SIGNED FOR AND ON ITS BEHALF, BY A SPECIFICALLY AUTHORIZED LAWYER WHO HAS PERSONAL KNOWLEDGE OF THE FACTS REQUIRED TO BE DISCLOSED IN SUCH DOCUMENT.— We have consistently held that the certification against forum shopping must be signed by the principal parties. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized. With respect to a corporation, the certification against forum shopping may be signed for and on its behalf, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document. A corporation has no power, except those expressly conferred on it by the Corporation Code and those

that are implied or incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Thus, it has been observed that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. In turn, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.

2. ID.; ID.; ID.; ID.; A CERTIFICATION AGAINST FORUM SHOPPING SIGNED BY A PERSON ON BEHALF OF A CORPORATION WHICH IS UNACCOMPANIED BY PROOF THAT SAID SIGNATORY IS AUTHORIZED TO FILE THE COMPLAINT AND SIGN THE SAID CERTIFICATE ON ITS BEHALF, IS FATALLY DEFECTIVE AND WARRANTS THE DISMISSAL OF THE COMPLAINT.— In *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines (FASAP),* we ruled that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping on behalf of a corporation. We also required proof of such authority to be presented. The petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority. In the present case, since respondent is a corporation, the certification must be executed by an officer or member of the board of directors or by one who is duly authorized by a resolution of the board of directors; otherwise, the complaint will have to be dismissed. The lack of certification against forum shopping is generally not curable by mere amendment of the complaint, but shall be a cause for the dismissal of the case without prejudice. The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file the complaint on behalf of the corporation. There is no proof that respondent, a private corporation, authorized Atty. Lat, through a board resolution, to sign the verification and certification against forum shopping on its behalf. Accordingly, the certification against forum shopping appended to the complaint is fatally defective, and warrants the dismissal of respondent's complaint for Insurance Loss and Damages (Civil Case No. 99-95561) against petitioner.

3. ID.; ID.; ID.; OBEDIENCE TO THE REQUIREMENTS OF PROCEDURAL RULES IS NEEDED IF WE ARE TO EXPECT FAIR RESULTS THEREFROM, AND UTTER DISREGARD OF THE RULES CANNOT JUSTLY BE RATIONALIZED BY HARKING ON THE POLICY OF LIBERAL CONSTRUCTION.— Contrary to the CA's finding, the Court finds that the circumstances of this case do not necessitate the relaxation of the rules. There was no proof of authority submitted, even belatedly, to show subsequent compliance with the requirement of the law. Neither was there a copy of the board resolution or secretary's certificate subsequently submitted to the trial court that would attest to the fact that Atty. Lat was indeed authorized to file said complaint and sign the verification and certification against forum shopping, nor did respondent satisfactorily explain why it failed to comply with the rules. Thus, there exists no cogent reason for the relaxation of the rule on this matter. Obedience to the requirements of procedural rules is needed if we are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.

4. ID.; ID.; ID.; THE AUTHORITY OF THE PARTY TO ACT ON BEHALF OF THE CORPORATION MUST BE EVIDENCED BY A BOARD RESOLUTION OR SECRETARY'S CERTIFICATE. — [T]he SPA dated May 11, 2000, submitted by respondent allegedly authorizing Atty. Lat to appear on behalf of the corporation, in the pre-trial and all stages of the proceedings, signed by Brent Healy, was fatally defective and had no evidentiary value. It failed to establish Healy's authority to act in behalf of respondent, in view of the absence of a resolution from respondent's board of directors or secretary's certificate proving the same. Like any other corporate act, the power of Healy to name, constitute, and appoint Atty. Lat as respondent's attorney-in-fact, with full powers to represent respondent in the proceedings, should have been evidenced by a board resolution or secretary's certificate.

5. ID.; ID.; ID.; WHERE THE PARTY WAS NOT DULY AUTHORIZED BY THE CORPORATION TO FILE THE COMPLAINT AND SIGN THE CERTIFICATION AGAINST FORUM SHOPPING ON ITS BEHALF, THE COMPLAINT IS CONSIDERED NOT FILED AND

INEFFECTUAL, AND IS DISMISSIBLE DUE TO LACK OF JURISDICTION.— Respondent's allegation that petitioner is estopped by *laches* from raising the defect in respondent's certificate of non-forum shopping does not hold water. In *Tamondong v. Court of Appeals*, we held that if a complaint is filed for and in behalf of the plaintiff who is not authorized to do so, the complaint is not deemed filed. An unauthorized complaint does not produce any legal effect. Hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint and the plaintiff. Accordingly, since Atty. Lat was not duly authorized by respondent to file the complaint and sign the verification and certification against forum shopping, the complaint is considered not filed and ineffectual, and, as a necessary consequence, is dismissable due to lack of jurisdiction.

6. ID.; COURTS; JURISDICTION; COURTS ACQUIRE JURISDICTION OVER THE PLAINTIFFS UPON FILING OF THE COMPLAINT, AND TO BE BOUND BY A DECISION, A PARTY SHOULD FIRST BE SUBJECTED TO THE COURT'S JURISDICTION; ABSENT A VALID COMPLAINT, THE COURT DID NOT ACQUIRE JURISDICTION OVER THE PARTY.— Jurisdiction is the power with which courts are invested for administering justice; that is, for hearing and deciding cases. In order for the court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and the parties. Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint, and to be bound by a decision, a party should first be subjected to the court's jurisdiction. Clearly, since no valid complaint was ever filed with the RTC, Branch 8, Manila, the same did not acquire jurisdiction over the person of respondent.

7. ID.; ID.; ID.; THE ISSUE OF JURISDICTION MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS, EVEN ON APPEAL, AND IS NOT LOST BY WAIVER OR BY ESTOPPEL.— Since the court has no jurisdiction over the complaint and respondent, petitioner is not estopped from challenging the trial court's jurisdiction, even at the pre-trial stage of the proceedings. This is so because the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by *estoppel*.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for petitioner.

Rodolfo A. Lat Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA), in CA-G.R. CV No. 75895, entitled *Kemper Insurance Company v. Cosco Philippines Shipping, Inc*. The CA Decision reversed and set aside the Order dated March 22, 2002 of the Regional Trial Court (RTC), Branch 8, Manila, which granted the Motion to Dismiss filed by petitioner Cosco Philippines Shipping, Inc., and ordered that the case be remanded to the trial court for further proceedings.

The antecedents are as follows:

Respondent Kemper Insurance Company is a foreign insurance company based in Illinois, United States of America (USA) with no license to engage in business in the Philippines, as it is not doing business in the Philippines, except in isolated transactions; while petitioner is a domestic shipping company organized in accordance with Philippine laws.

In 1998, respondent insured the shipment of imported frozen boneless beef (owned by Genosi, Inc.), which was loaded at a port in Brisbane, Australia, for shipment to Genosi, Inc. (the importer-consignee) in the Philippines. However, upon arrival at the Manila port, a portion of the shipment was rejected by

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Conrado M. Vasquez, Jr. and Mario L. Guariña III, concurring; *rollo*, pp. 31-38.

[2] *Id.* at 40-41.

Genosi, Inc. by reason of spoilage arising from the alleged temperature fluctuations of petitioner's reefer containers.

Thus, Genosi, Inc. filed a claim against both petitioner shipping company and respondent Kemper Insurance Company. The claim was referred to McLarens Chartered for investigation, evaluation, and adjustment of the claim. After processing the claim documents, McLarens Chartered recommended a settlement of the claim in the amount of $64,492.58, which Genosi, Inc. (the consignee-insured) accepted.

Thereafter, respondent paid the claim of Genosi, Inc. (the insured) in the amount of $64,492.58. Consequently, Genosi, Inc., through its General Manager, Avelino S. Mangahas, Jr., executed a Loss and Subrogation Receipt[3] dated September 22, 1999, stating that Genosi, Inc. received from respondent the amount of $64,492.58 as the full and final satisfaction compromise, and discharges respondent of all claims for losses and expenses sustained by the property insured, under various policy numbers, due to spoilage brought about by machinery breakdown which occurred on October 25, November 7 and 10, and December 5, 14, and 18, 1998; and, in consideration thereof, subrogates respondent to the claims of Genosi, Inc. to the extent of the said amount. Respondent then made demands upon petitioner, but the latter failed and refused to pay the said amount.

Hence, on October 28, 1999, respondent filed a Complaint for Insurance Loss and Damages[4] against petitioner before the trial court, docketed as Civil Case No. 99-95561, entitled *Kemper Insurance Company v. Cosco Philippines Shipping, Inc.* Respondent alleged that despite repeated demands to pay and settle the total amount of US$64,492.58, representing the value of the loss, petitioner failed and refused to pay the same, thereby causing damage and prejudice to respondent in the amount of US$64,492.58; that the loss and damage it sustained was due

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[3] Records, p. 10.

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

to the fault and negligence of petitioner, specifically, the fluctuations in the temperature of the reefer container beyond the required setting which was caused by the breakdown in the electronics controller assembly; that due to the unjustified failure and refusal to pay its just and valid claims, petitioner should be held liable to pay interest thereon at the legal rate from the date of demand; and that due to the unjustified refusal of the petitioner to pay the said amount, it was compelled to engage the services of a counsel whom it agreed to pay 25% of the whole amount due as attorney's fees. Respondent prayed that after due hearing, judgment be rendered in its favor and that petitioner be ordered to pay the amount of US$64,492.58, or its equivalent in Philippine currency at the prevailing foreign exchange rate, or a total of ₱2,594,513.00, with interest thereon at the legal rate from date of demand, 25% of the whole amount due as attorney's fees, and costs.

In its Answer[5] dated November 29, 1999, petitioner insisted, among others, that respondent had no capacity to sue since it was doing business in the Philippines without the required license; that the complaint has prescribed and/or is barred by *laches*; that no timely claim was filed; that the loss or damage sustained by the shipments, if any, was due to causes beyond the carrier's control and was due to the inherent nature or insufficient packing of the shipments and/or fault of the consignee or the hired stevedores or arrastre operator or the fault of persons whose acts or omissions cannot be the basis of liability of the carrier; and that the subject shipment was discharged under required temperature and was complete, sealed, and in good order condition.

During the pre-trial proceedings, respondent's counsel proffered and marked its exhibits, while petitioner's counsel manifested that he would mark his client's exhibits on the next scheduled pre-trial. However, on November 8, 2001, petitioner filed a Motion to Dismiss,[6] contending that the same was filed

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

[6] *Id.* at 119-122.

by one Atty. Rodolfo A. Lat, who failed to show his authority to sue and sign the corresponding certification against forum shopping. It argued that Atty. Lat's act of signing the certification against forum shopping was a clear violation of Section 5, Rule 7 of the 1997 Rules of Court.

In its Order[7] dated March 22, 2002, the trial court granted petitioner's Motion to Dismiss and dismissed the case without prejudice, ruling that it is mandatory that the certification must be executed by the petitioner himself, and not by counsel. Since respondent's counsel did not have a Special Power of Attorney (SPA) to act on its behalf, hence, the certification against forum shopping executed by said counsel was fatally defective and constituted a valid cause for dismissal of the complaint.

Respondent's Motion for Reconsideration[8] was denied by the trial court in an Order[9] dated July 9, 2002.

On appeal by respondent, the CA, in its Decision[10] dated March 23, 2007, reversed and set aside the trial court's order. The CA ruled that the required certificate of non-forum shopping is mandatory and that the same must be signed by the plaintiff or principal party concerned and not by counsel; and in case of corporations, the physical act of signing may be performed in behalf of the corporate entity by specifically authorized individuals. However, the CA pointed out that the factual circumstances of the case warranted the liberal application of the rules and, as such, ordered the remand of the case to the trial court for further proceedings.

Petitioner's Motion for Reconsideration[11] was later denied by the CA in the Resolution[12] dated September 3, 2007.

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[7] *Id.* at 141-142.

[8] *Id.* at 145-147.

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

[10] CA *rollo*, pp. 74-81.

[11] *Id.* at 86-95.

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

Hence, petitioner elevated the case to this Court *via* Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with the following issues:

THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT ATTY. RODOLFO LAT WAS PROPERLY AUTHORIZED BY THE RESPONDENT TO SIGN THE CERTIFICATE AGAINST FORUM SHOPPING DESPITE THE UNDISPUTED FACTS THAT:

A) THE PERSON WHO EXECUTED THE SPECIAL POWER OF ATTORNEY (SPA) APPOINTING ATTY. LAT AS RESPONDENT'S ATTORNEY-IN-FACT WAS MERELY AN UNDERWRITER OF THE RESPONDENT WHO HAS NOT SHOWN PROOF THAT HE WAS AUTHORIZED BY THE BOARD OF DIRECTORS OF RESPONDENT TO DO SO.

B) THE POWERS GRANTED TO ATTY. LAT REFER TO [THE AUTHORITY TO REPRESENT DURING THE] PRE-TRIAL [STAGE] AND DO NOT COVER THE SPECIFIC POWER TO SIGN THE CERTIFICATE.[13]

Petitioner alleged that respondent failed to submit any board resolution or secretary's certificate authorizing Atty. Lat to institute the complaint and sign the certificate of non-forum shopping on its behalf. Petitioner submits that since respondent is a juridical entity, the signatory in the complaint must show proof of his or her authority to sign on behalf of the corporation. Further, the SPA[14] dated May 11, 2000, submitted by Atty. Lat, which was notarized before the Consulate General of Chicago, Illinois, USA, allegedly authorizing him to represent respondent in the pre-trial and other stages of the proceedings was signed by one Brent Healy (respondent's underwriter), who lacks authorization from its board of directors.

In its Comment, respondent admitted that it failed to attach in the complaint a concrete proof of Atty. Lat's authority to execute the certificate of non-forum shopping on its behalf. However, there was subsequent compliance as respondent

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[13] *Rollo*, p. 15.

[14] Records, pp. 148-149.

submitted an authenticated SPA empowering Atty. Lat to represent it in the pre-trial and all stages of the proceedings. Further, it averred that petitioner is barred by *laches* from questioning the purported defect in respondent's certificate of non-forum shopping.

The main issue in this case is whether Atty. Lat was properly authorized by respondent to sign the certification against forum shopping on its behalf.

The petition is meritorious.

We have consistently held that the certification against forum shopping must be signed by the principal parties.[15] If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.[16] With respect to a corporation, the certification against forum shopping may be signed for and on its behalf, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document.[17] A corporation has no power, except those expressly conferred on it by the Corporation Code and those that are implied or incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Thus, it has been observed that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. In turn, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.[18]

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[15] *Athena Computers, Inc. v. Reyes*, G.R. No. 156905, September 5, 2007, 532 SCRA 343, 351; *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 147217, October 7, 2004, 440 SCRA 200, 205.

[16] *Eagle Ridge Golf & Country Club v. Court of Appeals*, G.R. No. 178989, March 18, 2010, 616 SCRA 116, 132.

[17] *Athena Computers, Inc. v. Reyes*, G.R. No. 156905, September 5, 2007, 532 SCRA 343, 351.

[18] *Republic v. Coalbrine International Philippines, Inc.*, G.R. No. 161838, April 7, 2010, 617 SCRA 491, 498.

In *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines (FASAP),*[19] we ruled that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping on behalf of a corporation. We also required proof of such authority to be presented. The petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority.

In the present case, since respondent is a corporation, the certification must be executed by an officer or member of the board of directors or by one who is duly authorized by a resolution of the board of directors; otherwise, the complaint will have to be dismissed.[20] The lack of certification against forum shopping is generally not curable by mere amendment of the complaint, but shall be a cause for the dismissal of the case without prejudice.[21] The same rule applies to certifications against forum

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[19] G.R. No. 143088, January 24, 2006, 479 SCRA 605, 608.

[20] *Tamondong v. Court of Appeals*, G.R. No. 158397, November 26, 2004, 444 SCRA 509, 520-521.

[21] Section 5 of Rule 7 of the 1997 Rules of Civil Procedure provides:

SEC. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (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.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or 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

shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file the complaint on behalf of the corporation.[22]

There is no proof that respondent, a private corporation, authorized Atty. Lat, through a board resolution, to sign the verification and certification against forum shopping on its behalf. Accordingly, the certification against forum shopping appended to the complaint is fatally defective, and warrants the dismissal of respondent's complaint for Insurance Loss and Damages (Civil Case No. 99-95561) against petitioner.

In *Republic v. Coalbrine International Philippines, Inc.*,[23] the Court cited instances wherein the lack of authority of the person making the certification of non-forum shopping was remedied through subsequent compliance by the parties therein. Thus,

> [w]hile there were instances where we have allowed the filing of a certification against non-forum shopping by someone on behalf of a corporation without the accompanying proof of authority at the time of its filing, we did so on the basis of a special circumstance or compelling reason. Moreover, there was a subsequent compliance by the submission of the proof of authority attesting to the fact that the person who signed the certification was duly authorized.

In *China Banking Corporation v. Mondragon International Philippines, Inc.*, the CA dismissed the petition filed by China Bank, since the latter failed to show that its bank manager who signed the certification against non-forum shopping was authorized to do so. We reversed the CA and said that the case be decided on the merits despite the failure to attach the required proof of authority, since the board resolution which was subsequently attached recognized the pre-existing status of the bank manager as an authorized signatory.

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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. (Emphasis supplied.)

[22] *Republic v. Coalbrine International Philippines, Inc.*, *supra* note 18, at 499.

[23] *Supra* note 18.

In *Abaya Investments Corporation v. Merit Philippines*, where the complaint before the Metropolitan Trial Court of Manila was instituted by petitioner's Chairman and President, Ofelia Abaya, who signed the verification and certification against non-forum shopping without proof of authority to sign for the corporation, we also relaxed the rule. We did so taking into consideration the merits of the case and to avoid a re-litigation of the issues and further delay the administration of justice, since the case had already been decided by the lower courts on the merits. Moreover, Abaya's authority to sign the certification was ratified by the Board.[24]

Contrary to the CA's finding, the Court finds that the circumstances of this case do not necessitate the relaxation of the rules. There was no proof of authority submitted, even belatedly, to show subsequent compliance with the requirement of the law. Neither was there a copy of the board resolution or secretary's certificate subsequently submitted to the trial court that would attest to the fact that Atty. Lat was indeed authorized to file said complaint and sign the verification and certification against forum shopping, nor did respondent satisfactorily explain why it failed to comply with the rules. Thus, there exists no cogent reason for the relaxation of the rule on this matter. Obedience to the requirements of procedural rules is needed if we are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[25]

Moreover, the SPA dated May 11, 2000, submitted by respondent allegedly authorizing Atty. Lat to appear on behalf of the corporation, in the pre-trial and all stages of the proceedings, signed by Brent Healy, was fatally defective and had no evidentiary value. It failed to establish Healy's authority to act in behalf of respondent, in view of the absence of a resolution from respondent's board of directors or secretary's certificate proving the same. Like any other corporate act, the power of

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[24] *Id.* at 500-501. (Citations omitted.)

[25] *Clavecilla v. Quitain*, G.R. No. 147989, February 20, 2006, 482 SCRA 623, 631.

Healy to name, constitute, and appoint Atty. Lat as respondent's attorney-in-fact, with full powers to represent respondent in the proceedings, should have been evidenced by a board resolution or secretary's certificate.

Respondent's allegation that petitioner is estopped by *laches* from raising the defect in respondent's certificate of non-forum shopping does not hold water.

In *Tamondong v. Court of Appeals*,[26] we held that if a complaint is filed for and in behalf of the plaintiff who is not authorized to do so, the complaint is not deemed filed. An unauthorized complaint does not produce any legal effect. Hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint and the plaintiff.[27] Accordingly, since Atty. Lat was not duly authorized by respondent to file the complaint and sign the verification and certification against forum shopping, the complaint is considered not filed and ineffectual, and, as a necessary consequence, is dismissable due to lack of jurisdiction.

Jurisdiction is the power with which courts are invested for administering justice; that is, for hearing and deciding cases. In order for the court to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter and the parties. Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint, and to be bound by a decision, a party should first be subjected to the court's jurisdiction.[28] Clearly, since no valid complaint was ever filed with the RTC, Branch 8, Manila, the same did not acquire jurisdiction over the person of respondent.

Since the court has no jurisdiction over the complaint and respondent, petitioner is not estopped from challenging the trial

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[26] *Supra* note 20, cited in *Negros Merchant's Enterprises, Inc. v. China Banking Corporation,* G.R. No. 150918, August 17, 2007, 530 SCRA 478, 487.

[27] *Id*. at 519.

[28] *Perkin Elmer Singapore Pte. Ltd. v. Dakila Trading Corporation,* G.R. No. 172242, August 14, 2007, 530 SCRA 170, 186.

court's jurisdiction, even at the pre-trial stage of the proceedings. This is so because the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by *estoppel*.[29]

In *Regalado v. Go*,[30] the Court held that *laches* should be clearly present for the *Sibonghanoy*[31] doctrine to apply, thus:

> *Laches* is 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 length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."
>
> The ruling in *People v. Regalario* that was based on the landmark doctrine enunciated in *Tijam v. Sibonghanoy* on the matter of jurisdiction by estoppel is the exception rather than the rule. *Estoppel by laches may be invoked to bar the issue of lack of jurisdiction only in cases in which the factual milieu is analogous to that in the cited case*. In such controversies, *laches* should have been clearly present; that is, lack of jurisdiction must have been raised so belatedly as to warrant the presumption that the party entitled to assert it had abandoned or declined to assert it.
>
> In *Sibonghanoy*, the defense of lack of jurisdiction was raised for the first time in a motion to dismiss filed by the Surety almost 15 years after the questioned ruling had been rendered. At several stages of the proceedings, in the court *a quo* as well as in the Court of Appeals, the Surety invoked the jurisdiction of the said courts to obtain affirmative relief and submitted its case for final adjudication on the merits. It was only when the adverse decision was rendered by the Court of Appeals that it finally woke up to raise the question of jurisdiction.[32]

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[29] *Figueroa v. People,* G.R. No. 147406, July 14, 2008, 558 SCRA 63, 81.

[30] G.R. No. 167988, February 6, 2007, 514 SCRA 616.

[31] In *Tijam v. Sibonghanoy*, 131 Phil. 556 (1968), the Court held that a party may be barred by laches from invoking lack of jurisdiction at a late hour for the purpose of annulling everything done in the case with the active participation of said party invoking the plea of lack of jurisdiction.

[32] *Id.* at 635-636.

The factual setting attendant in *Sibonghanoy* is not similar to that of the present case so as to make it fall under the doctrine of *estoppel* by *laches*. Here, the trial court's jurisdiction was questioned by the petitioner during the pre-trial stage of the proceedings, and it cannot be said that considerable length of time had elapsed for *laches* to attach.

WHEREFORE, the petition is **GRANTED.** The Decision and the Resolution of the Court of Appeals, dated March 23, 2007 and September 3, 2007, respectively, in CA-G.R. CV No. 75895 are **REVERSED and SET ASIDE.** The Orders of the Regional Trial Court, dated March 22, 2002 and July 9, 2002, respectively, in Civil Case No. 99-95561, are **REINSTATED.**

SO ORDERED.

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

EN BANC

[A.C. No. 7481. April 24, 2012]

LORENZO D. BRENNISEN, *complainant, vs.* **ATTY. RAMON U. CONTAWI,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT; THE LAWYER'S UNAUTHORIZED MORTGAGE AND SALE OF CLIENT'S PROPERTY FOR HIS PERSONAL BENEFIT THROUGH THE USE OF A FALSIFIED DOCUMENT CONSTITUTES A VIOLATION OF THE LAWYER'S OATH AND THE CANONS OF PROFESSIONAL RESPONSIBILITY; DISBARMENT, PROPER PENALTY.— After a punctilious examination of

the records, the Court concurs with the findings and recommendation of Commissioner De Mesa and the IBP Board of Governors that respondent acted with deceit when, through the use of a falsified document, he effected the unauthorized mortgage and sale of his client's property for his personal benefit. Indisputably, respondent disposed of complainant's property without his knowledge or consent, and partook of the proceeds of the sale for his own benefit. His contention that he merely accommodated the request of his then financially-incapacitated office assistants to confirm the spurious SPA is flimsy and implausible, as he was fully aware that complainant's signature reflected thereon was forged. As aptly opined by Commissioner De Mesa, the fraudulent transactions involving the subject property were effected using the owner's duplicate title, which was in respondent's safekeeping and custody during complainant's absence. Consequently, Commissioner De Mesa and the IBP Board of Governors correctly recommended his disbarment for violations of the pertinent provisions of the Canons of Professional Responsibility, to wit: Canon 1 — A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes. Canon 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. Canon 16 — A lawyer shall hold in trust all moneys and properties of his client which may come into his possession. Canon 16.01 — A lawyer shall account for all money or property collected or received for or from client. Canon 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand. Canon 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

2. ID.; ID.; THE PRACTICE OF LAW IS A PRIVILEGE GIVEN TO LAWYERS WHO MEET THE HIGH STANDARDS OF LEGAL PROFICIENCY AND MORALITY; ANY VIOLATION OF THESE STANDARDS EXPOSES THE LAWYER TO ADMINISTRATIVE LIABILITY. — [R]espondent's established acts exhibited his unfitness and plain inability to discharge the bounden duties of a member of the legal profession. He failed to prove himself worthy of the privilege to practice law and to live up to the exacting standards demanded of the members of the bar. It bears to stress that "[t]he practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality.

Any violation of these standards exposes the lawyer to administrative liability."

3. **ID.; ID.; THERE IS NO DISTINCTION AS TO WHETHER THE TRANSGRESSION IS COMMITTED IN A LAWYER'S PRIVATE OR PROFESSIONAL CAPACITY, FOR A LAWYER MAY NOT DIVIDE HIS PERSONALITY AS AN ATTORNEY AT ONE TIME AND A MERE CITIZEN AT ANOTHER. —** [R]espondent's argument that there was no formal lawyer-client relationship between him and complainant will not serve to mitigate his liability. There is no distinction as to whether the transgression is committed in a lawyer's private or professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another.

4. **ID.; ID.; DISBARMENT; GROUNDS; ONLY SUBSTANTIAL EVIDENCE IS REQUIRED.—** [T]he Court x x x finds the penalty of disbarment proper in this case, as recommended by Commissioner De Mesa and the IBP Board of Governors. Section 27, Rule 38 of the Rules of Court provides: "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" The Court notes that in administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. Having carefully scrutinized the records of this case, the Court therefore finds that the standard of substantial evidence has been more than satisfied.

APPEARANCES OF COUNSEL

Teodoro C. Baroque for complainant.

D E C I S I O N

***PER CURIAM*:**

Before the Court is an administrative complaint[1] for disbarment filed by complainant Lorenzo D. Brennisen against respondent Atty. Ramon U. Contawi for deceit and gross misconduct in violation of his lawyer's oath.

The Facts

Complainant is the registered owner of a parcel of land located in San Dionisio, Parañaque City covered by Transfer Certificate of Title (TCT) No. 21176[2] of the Register of Deeds for the Province of Rizal. Being a resident of the United States of America (USA), he entrusted the administration of the subject property to respondent, together with the corresponding owner's duplicate title.

Unbeknownst to complainant, however, respondent, through a spurious Special Power of Attorney (SPA)[3] dated February 22, 1989, mortgaged and subsequently sold the subject property to one Roberto Ho ("Ho"), as evidenced by a Deed of Absolute Sale[4] dated November 15, 2001. As a result, TCT No. 21176 was cancelled and replaced by TCT No. 150814[5] issued in favor of Ho.

Thus, on April 16, 2007, complainant filed the instant administrative complaint against respondent for having violated his oath as a lawyer, causing him damage and prejudice.

In his counter-affidavit,[6] respondent denied any formal lawyer-client relationship between him and the complainant, claiming to have merely extended his services for free. He also denied receiving money from the complainant for the purpose of paying

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

[2] *Id*. at p. 3.

[3] *Id*. at p. 87.

[4] *Id*. at pp. 85-86.

[5] *Id*. at p. 6.

[6] *Id*. at pp. 34-36.

the real estate taxes on the property. Further, he averred that it was his former office assistants, a certain Boy Roque ("Roque") and one Danilo Diaz ("Diaz"), who offered the subject property to Ho as collateral for a loan. Nevertheless, respondent admitted to having confirmed the spurious SPA in his favor already annotated at the back of TCT No. 21176 upon the prodding of Roque and Diaz, and because he was also in need of money at that time. Hence, he signed the real estate mortgage and received his proportionate share of ₱130,000.00 from the proceeds of the loan, which he asserted to have fully settled.

Finally, respondent denied signing the Deed of Absolute Sale in favor of Ho and insisted that it was a forgery. Nonetheless, he sought complainant's forgiveness and promised to repay the value of the subject property.

In the Resolution[7] dated July 16, 2008, the Court resolved to refer the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The Action and Recommendation of the IBP

During the mandatory conference held on October 21, 2008, the parties stipulated on the following matters:

1. That complainant is the owner of a property covered by TCT No. 21176 (45228) of the Register of Deeds of Parañaque;
2. Respondent was in possession of the Owner's Duplicate Certificate of the property of the complainant;
3. The property of the complainant was mortgaged to a certain Roberto Ho;
4. The title to the property of complainant was cancelled in year 2000 and a new one, TCT No. 150814 was issued in favor of Mr. Roberto Ho;
5. The Special Power of Attorney dated 24 February 1989 in favor of Atty. Ramon U. Contawi is spurious and was not signed by complainant Lorenzo D. Brennisen;

[7] *Id*. at p. 43.

6. That respondent received Php100,000.00 of the mortgage loan secured by the mortgagee on the aforementioned property of complainant;
7. That respondent did not inform the complainant about the unauthorized mortgage and sale of his property;
8. That respondent has a loan obligation to Mr. Roberto Ho;
9. That respondent has not yet filed any case against the person whom he claims to have falsified his signature;
10. That respondent did not notify the complainant that the owner's copy of TCT No. 21176 was stolen and was taken out from his office.[8]

In its Report[9] dated July 10, 2009, the IBP Commission on Bar Discipline (IBP-CBD), through Commissioner Eduardo V. De Mesa, found that respondent had undeniably mortgaged and sold the property of his client without the latter's knowledge or consent, facilitated by the use of a falsified SPA. Hence, in addition to his possible criminal liability for falsification, the IBP-CBD deduced that respondent violated various provisions of the Canons of Professional Responsibility and accordingly recommended that he be disbarred and his name stricken from the Roll of Attorneys.

On May 14, 2011, the IBP Board of Governors adopted and approved the report of Commissioner De Mesa through Resolution No. XIX-2011-248[10] as follows:

"RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex 'A' and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and finding Respondent guilty of falsification; making or using falsified documents; and for benefiting from the proceed[s] of his dishonest acts, Atty. Ramon U. Contawi is hereby DISBARRED."

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[8] *Id*. at pp. 51-52.

[9] *Id*. at pp. 119-122.

[10] *Id*. at p. 118.

The Issue

The sole issue before the Court is whether respondent violated his lawyer's oath when he mortgaged and sold complainant's property, which was entrusted to him, without the latter's consent.

The Court's Ruling

After a punctilious examination of the records, the Court concurs with the findings and recommendation of Commissioner De Mesa and the IBP Board of Governors that respondent acted with deceit when, through the use of a falsified document, he effected the unauthorized mortgage and sale of his client's property for his personal benefit.

Indisputably, respondent disposed of complainant's property without his knowledge or consent, and partook of the proceeds of the sale for his own benefit. His contention that he merely accommodated the request of his then financially-incapacitated office assistants to confirm the spurious SPA is flimsy and implausible, as he was fully aware that complainant's signature reflected thereon was forged. As aptly opined by Commissioner De Mesa, the fraudulent transactions involving the subject property were effected using the owner's duplicate title, which was in respondent's safekeeping and custody during complainant's absence.

Consequently, Commissioner De Mesa and the IBP Board of Governors correctly recommended his disbarment for violations of the pertinent provisions of the Canons of Professional Responsibility, to wit:

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

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

Canon 16 — A lawyer shall hold in trust all moneys and properties of his client which may come into his possession.

Canon 16.01 — A lawyer shall account for all money or property collected or received for or from client.

Canon 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand.

Canon 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

In *Sabayle v. Tandayag,*[11] the Court disbarred one of the respondent lawyers and ordered his name stricken from the Roll of Attorneys on the grounds of serious dishonesty and professional misconduct. The respondent lawyer knowingly participated in a false and simulated transaction not only by notarizing a spurious Deed of Sale, but also — and even worse — sharing in the profits of the specious transaction by acquiring half of the property subject of the Deed of Sale.

In *Flores v. Chua*,[12] the Court disbarred the respondent lawyer for having deliberately made false representations that the vendor appeared personally before him when he notarized a forged deed of sale. He was found guilty of grave misconduct.

In this case, respondent's established acts exhibited his unfitness and plain inability to discharge the bounden duties of a member of the legal profession. He failed to prove himself worthy of the privilege to practice law and to live up to the exacting standards demanded of the members of the bar. It bears to stress that "[t]he practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality. Any violation of these standards exposes the lawyer to administrative liability."[13]

Moreover, respondent's argument that there was no formal lawyer-client relationship between him and complainant will not serve to mitigate his liability. There is no distinction as to whether the transgression is committed in a lawyer's private or professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another.[14]

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[11] A.C. No. 140-J, March 8, 1988, 158 SCRA 497, 506.

[12] A.C. No. 4500, April 30, 1999, 306 SCRA 465, 485.

[13] *Atty. Bonifacio Barandon, Jr. v. Atty. Edwin Ferrer, Sr.,* A.C. No. 5768, March 26, 2010, 616 SCRA 529, 535.

[14] *Eugenia Mendoza v. Atty. Victor C. Deciembre,* A.C. No. 5338, February 23, 2009, 580 SCRA 28, 36.

With the foregoing disquisitions, the Court thus finds the penalty of disbarment proper in this case, as recommended by Commissioner De Mesa and the IBP Board of Governors. Section 27, Rule 38 of the Rules of Court provides:

"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)

The Court notes that in administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required.[15] Having carefully scrutinized the records of this case, the Court therefore finds that the standard of substantial evidence has been more than satisfied.

WHEREFORE, respondent ATTY. RAMON U. CONTAWI, having clearly violated his lawyer's oath and the Canons of Professional Responsibility through his unlawful, dishonest and deceitful conduct, is **DISBARRED** and his name ordered **STRICKEN** from the Roll of Attorneys.

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

SO ORDERED.

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

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[15] *Babante-Caples v. Caples*, A.M. No. HOJ-10-03 (Formerly A.M. OCA IPI No. 09-04-HOJ), November 5, 2010, 634 SCRA 498.

EN BANC

[A.C. No. 7940. April 24, 2012]

RE: SC DECISION DATED MAY 20, 2008 IN G.R. NO. 161455 UNDER RULE 139-B OF THE RULES OF COURT, *vs.* **ATTY. RODOLFO D. PACTOLIN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT; GROUNDS. — Under Section 27, Rule 138 of the Rules of Court, a lawyer may be removed or suspended on the following grounds: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) willful disobedience of any lawful order of a superior court; and (8) corruptly or willfully appearing as a lawyer for a party to a case without authority so to do.

2. ID.; ID.; ID.; CRIME OF FALSIFICATION OF PUBLIC DOCUMENT IS CONTRARY TO JUSTICE, HONESTY, AND GOOD MORALS AND, THEREFORE, INVOLVES MORAL TURPITUDE.— This Court has ruled that the crime of falsification of public document is contrary to justice, honesty, and good morals and, therefore, involves moral turpitude. Moral turpitude includes everything which is done contrary to justice, honesty, modesty, or good morals. It involves an act of baseness, vileness, or depravity in the private duties which a man owes his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals.

3. ID.; ID.; ID.; APPROPRIATE PENALTY FOR CONVICTION BY FINAL JUDGMENT FOR A CRIME INVOLVING MORAL TURPITUDE.— As a rule, this Court exercises the power to disbar with great caution. Being the most severe form of disciplinary sanction, it is imposed only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the bar. Yet this Court has also

consistently pronounced that disbarment is the appropriate penalty for conviction by final judgment for a crime involving moral turpitude. Here, Atty. Pactolin's disbarment is warranted. The Sandiganbayan has confirmed that although his culpability for falsification has been indubitably established, he has not yet served his sentence. His conduct only exacerbates his offense and shows that he falls short of the exacting standards expected of him as a vanguard of the legal profession.

4. ID.; ID.; LAWYERS MUST AT ALL TIMES CONDUCT THEMSELVES, ESPECIALLY IN THEIR DEALINGS WITH THEIR CLIENTS AND THE PUBLIC AT LARGE, WITH HONESTY AND INTEGRITY IN A MANNER BEYOND REPROACH.— This Court once again reminds all lawyers that they, of all classes and professions, are most sacredly bound to uphold the law. The privilege to practice law is bestowed only upon individuals who are competent intellectually, academically and, equally important, morally. As such, lawyers must at all times conduct themselves, especially in their dealings with their clients and the public at large, with honesty and integrity in a manner beyond reproach.

APPEARANCES OF COUNSEL

Sam Norman G. Fuentes for respondent.

D E C I S I O N

***PER CURIAM*:**

This case resolves the question of whether or not the conviction of a lawyer for a crime involving moral turpitude constitutes sufficient ground for his disbarment from the practice of law under Section 27, Rule 138 of the Rules of Court.

The Facts and the Case

In May 1996, Elmer Abastillas, the playing coach of the Ozamis City volleyball team, wrote Mayor Benjamin A. Fuentes of Ozamis City, requesting financial assistance for his team. Mayor Fuentes approved the request and sent Abastillas' letter to the City Treasurer for processing. Mayor Fuentes also designated

Mario R. Ferraren, a city council member, as Officer-in-Charge (OIC) of the city while Mayor Fuentes was away. Abastillas eventually got the ₱10,000.00 assistance for his volleyball team.

Meanwhile, respondent lawyer, Atty. Rodolfo D. Pactolin, then a *Sangguniang Panlalawigan* member of Misamis Occidental, got a photocopy of Abastillas' letter and, using it, filed on June 24, 1996 a complaint with the Office of the Deputy Ombudsman-Mindanao against Ferraren for alleged illegal disbursement of ₱10,000.00 in public funds. Atty. Pactolin attached to the complaint a copy of what he claimed was a falsified letter of Abastillas, which showed that it was Ferraren, not Mayor Fuentes, who approved the disbursement.

Aggrieved, Ferraren filed with the Sandiganbayan in Criminal Case 25665 a complaint against Atty. Pactolin for falsification of public document.[1] On November 12, 2003 the Sandiganbayan found Atty. Pactolin guilty of falsification under Article 172 and sentenced him to the indeterminate penalty of imprisonment of 2 years and 4 months of *prision correccional* as minimum to 4 years, 9 months and 10 days of *prision correccional* as maximum, to suffer all the accessory penalties of *prision correccional*, and to pay a fine of ₱5,000.00, with subsidiary imprisonment in case of insolvency.

Atty. Pactolin appealed to this Court but on May 20, 2008 it affirmed his conviction.[2] Since the Court treated the matter as an administrative complaint against him as well under Rule 139-B of the Rules of Court, it referred the case to the Integrated Bar of the Philippines (IBP) for appropriate action.

Because complainant Ferraren neither appeared nor submitted any pleading during the administrative proceedings before the IBP Commission on Bar Discipline, on October 9, 2010 the IBP Board of Governors passed Resolution XIX-2010-632, adopting and approving the Investigating Commissioner's Report

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[1] Article 171(2) of the Revised Penal Code.

[2] *Pactolin v. Sandiganbayan (Fourth Division)*, G.R. No. 161455, May 20, 2008, 554 SCRA 136.

and Recommendation that the case against Atty. Pactolin be dismissed for insufficiency of evidence.

The Issue Presented

The only issue presented in this case is whether or not Atty. Pactolin should be disbarred after conviction by final judgment of the crime of falsification.

The Court's Ruling

In his pleadings before the Commission on Bar Discipline, Atty. Pactolin reiterated the defenses he raised before the Sandiganbayan and this Court in the falsification case. He claims that the Court glossed over the facts, that its decision and referral to the IBP was "factually infirmed"[3] and contained "factual exaggerations and patently erroneous observation,"[4] and was "too adventurous."[5]

To recapitulate, this Court upheld the finding of the Sandiganbayan that the copy of Abastillas' letter which Atty. Pactolin attached to his complaint was spurious. Given the clear absence of a satisfactory explanation regarding his possession and use of the falsified Abastillas' letter, this Court held that the Sandiganbayan did not err in concluding that it was Atty. Pactolin who falsified the letter. This Court relied on the settled rule that in the absence of satisfactory explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification.[6]

This Court's decision in said falsification case had long become final and executory. In *In Re: Disbarment of Rodolfo Pajo*,[7] the Court held that in disbarment cases, it is no longer called upon to review the judgment of conviction which has become

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[3] *Rollo*, p. 30.

[4] *Id.* at 31.

[5] *Id.* at 36.

[6] *Pactolin v. Sandiganbayan (Fourth Division)*, *supra* note 2, at 146.

[7] 203 Phil. 79, 83 (1982); see *Moreno v. Araneta*, 496 Phil. 788, 797 (2005).

final. The review of the conviction no longer rests upon this Court.

Under Section 27, Rule 138 of the Rules of Court, a lawyer may be removed or suspended on the following grounds: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the lawyer's oath; (7) willful disobedience of any lawful order of a superior court; and (8) corruptly or willfully appearing as a lawyer for a party to a case without authority so to do.

This Court has ruled that the crime of falsification of public document is contrary to justice, honesty, and good morals and, therefore, involves moral turpitude.[8] Moral turpitude includes everything which is done contrary to justice, honesty, modesty, or good morals. It involves an act of baseness, vileness, or depravity in the private duties which a man owes his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman, or conduct contrary to justice, honesty, modesty, or good morals.[9]

Having said that, what penalty should be imposed then on Atty. Pactolin?

As a rule, this Court exercises the power to disbar with great caution. Being the most severe form of disciplinary sanction, it is imposed only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the bar.[10] Yet this Court has also consistently pronounced that disbarment is the appropriate penalty for conviction by final judgment for a crime involving moral turpitude.[11]

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[8] *In Re: Disbarment of Rodolfo Pajo, id.*

[9] *Barrios v. Martinez*, 485 Phil. 1, 9 (2004).

[10] *Yu v. Palaña*, A.C. No. 7747, July 14, 2008, 558 SCRA 21, 29.

[11] *Barrios v. Martinez*, *supra* note 9, at 15.

Here, Atty. Pactolin's disbarment is warranted. The Sandiganbayan has confirmed that although his culpability for falsification has been indubitably established, he has not yet served his sentence. His conduct only exacerbates his offense and shows that he falls short of the exacting standards expected of him as a vanguard of the legal profession.[12]

This Court once again reminds all lawyers that they, of all classes and professions, are most sacredly bound to uphold the law.[13] The privilege to practice law is bestowed only upon individuals who are competent intellectually, academically and, equally important, morally. As such, lawyers must at all times conduct themselves, especially in their dealings with their clients and the public at large, with honesty and integrity in a manner beyond reproach.[14]

WHEREFORE, Atty. Rodolfo D. Pactolin is hereby **DISBARRED** and his name **REMOVED** from the Rolls of Attorney. Let a copy of this decision be attached to his personal records and furnished the Office of the Bar Confidant, Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

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[12] *Soriano v. Atty. Dizon*, 515 Phil. 635, 646 (2006).

[13] *Resurreccion v. Sayson*, 360 Phil. 313, 315 (1998).

[14] *Id.* at 322.

EN BANC

[G.R. No. 164987. April 24, 2012]

LAWYERS AGAINST MONOPOLY AND POVERTY (LAMP), represented by its Chairman and counsel, CEFERINO PADUA, Members, ALBERTO ABELEDA, JR., ELEAZAR ANGELES, GREGELY FULTON ACOSTA, VICTOR AVECILLA, GALILEO BRION, ANATALIA BUENAVENTURA, EFREN CARAG, PEDRO CASTILLO, NAPOLEON CORONADO, ROMEO ECHAUZ, ALFREDO DE GUZMAN, ROGELIO KARAGDAG, JR., MARIA LUZ ARZAGA-MENDOZA, LEO LUIS MENDOZA, ANTONIO P. PAREDES, AQUILINO PIMENTEL III, MARIO REYES, EMMANUEL SANTOS, TERESITA SANTOS, RUDEGELIO TACORDA, SECRETARY GEN. ROLANDO ARZAGA, Board of Consultants, JUSTICE ABRAHAM SARMIENTO, SEN. AQUILINO PIMENTEL, JR., and BARTOLOME FERNANDEZ, JR., *petitioners, vs.* **THE SECRETARY OF BUDGET AND MANAGEMENT, THE TREASURER OF THE PHILIPPINES, THE COMMISSION ON AUDIT, and THE PRESIDENT OF THE SENATE and the SPEAKER OF THE HOUSE OF REPRESENTATIVES in representation of the Members of the Congress,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; LIMITATIONS.— Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result

of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

2. ID.; ID.; ID.; ID.; ID.; CASE-OR-CONTROVERSY REQUIREMENT; REQUISITE OF "RIPENESS"; A QUESTION IS RIPE FOR ADJUDICATION WHEN THE ACT BEING CHALLENGED HAD A DIRECT ADVERSE EFFECT ON THE INDIVIDUAL CHALLENGING IT; PRESENT.— An aspect of the "case-or-controversy" requirement is the requisite of "ripeness." In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another concern is the evaluation of the twofold aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. In this case, the petitioner contested the *implementation* of an alleged unconstitutional statute, as citizens and taxpayers. According to LAMP, the practice of *direct* allocation and release of funds to the Members of Congress and the authority given to them to propose and select projects is the core of the law's flawed execution resulting in a serious constitutional transgression involving the expenditure of public funds. Undeniably, as taxpayers, LAMP would somehow be adversely affected by this. A finding of unconstitutionality would necessarily be tantamount to a misapplication of public funds which, in turn, cause injury or hardship to taxpayers. This affords "ripeness" to the present controversy.

3. ID.; ID.; ID.; ID.; ID.; ID.; A COMPLAINT OF ILLEGAL DISBURSEMENT OF PUBLIC FUNDS DERIVED FROM TAXATION IS SUFFICIENT REASON TO CONSIDER THAT THERE EXISTS A DEFINITE, CONCRETE, REAL OR SUBSTANTIAL CONTROVERSY BEFORE THE COURT.— [T]he allegations in the petition do not aim to obtain sheer legal opinion in the nature of advice concerning legislative or executive action. The possibility of constitutional violations in the implementation of PDAF surely involves the

interplay of legal rights susceptible of judicial resolution. For LAMP, this is the right to recover public funds possibly misapplied by no less than the Members of Congress. Hence, without prejudice to other recourse against erring public officials, allegations of illegal expenditure of public funds reflect a concrete injury that may have been committed by other branches of government before the court intervenes. The possibility that this injury was indeed committed cannot be discounted. The petition complains of illegal disbursement of public funds derived from taxation and this is sufficient reason to say that there indeed exists a definite, concrete, real or substantial controversy before the Court.

4. ID.; ID.; ID.; ID.; *LOCUS STANDI*; EXPLAINED.— Anent *locus standi*, "the rule is that the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustained, direct injury as a result of its enforcement. The gist of the question of standing is whether a party alleges "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." In public suits, the plaintiff, representing the general public, asserts a "public right" in assailing an allegedly illegal official action. The plaintiff may be a person who is affected no differently from any other person, and could be suing as a "stranger," or as a "citizen" or "taxpayer." Thus, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law. Of greater import than the damage caused by the illegal expenditure of public funds is the mortal wound inflicted upon the fundamental law by the enforcement of an invalid statute.

5. ID.; ID.; ID.; ID.; ID.; TAXPAYERS HAVE SUFFICIENT INTEREST IN PREVENTING THE ILLEGAL EXPENDITURE OF MONEY RAISED BY TAXATION AND MAY QUESTION THE CONSTITUTIONALITY OF STATUTES REQUIRING EXPENDITURE OF PUBLIC MONEYS.— Here, the sufficient interest preventing the illegal expenditure of money raised by taxation required in taxpayers'

suits is established. Thus, in the claim that PDAF funds have been illegally disbursed and wasted through the enforcement of an invalid or unconstitutional law, LAMP should be allowed to sue. The case of *Pascual v. Secretary of Public Works* is authority in support of the petitioner: In the determination of the degree of interest essential to give the requisite standing to attack the constitutionality of a statute, the general rule is that not only persons individually affected, but also **taxpayers have sufficient interest in preventing the illegal expenditures of moneys raised by taxation and may therefore question the constitutionality of statutes requiring expenditure of public moneys.**

6. ID.; ID.; ID.; ID.; ISSUES INVOLVING THE UNCONSTITUTIONAL SPENDING OF PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF) IS IMPRESSED WITH PARAMOUNT PUBLIC INTEREST. — [T]he Court is of the view that the petition poses issues impressed with paramount public interest. The ramification of issues involving the unconstitutional spending of PDAF deserves the consideration of the Court, warranting the assumption of jurisdiction over the petition.

7. ID.; ID.; ID.; THE JUDICIARY IS THE FINAL ARBITER ON THE QUESTION OF WHETHER OR NOT A BRANCH OF GOVERNMENT OR ANY OF ITS OFFICIALS HAS ACTED WITHOUT JURISDICTION OR IN EXCESS OF JURISDICTION OR SO CAPRICIOUSLY AS TO CONSTITUTE AN ABUSE OF DISCRETION AMOUNTING TO EXCESS OF JURISDICTION.— The powers of government are generally divided into three branches: the Legislative, the Executive and the Judiciary. Each branch is supreme within its own sphere being independent from one another and it is this supremacy which enables the courts to determine whether a law is constitutional or unconstitutional. The Judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

8. POLITICAL LAW; STATUTES; CONSTITUTIONALITY OF; THE PRESUMPTION OF CONSTITUTIONALITY

ACCORDED TO STATUTORY ACTS OF CONGRESS CAN BE OVERCOME ONLY BY THE CLEAREST SHOWING THAT THERE WAS INDEED AN INFRACTION OF THE CONSTITUTION, AND ONLY WHEN SUCH A CONCLUSION IS REACHED BY THE REQUIRED MAJORITY MAY THE COURT PRONOUNCE, IN THE DISCHARGE OF THE DUTY IT CANNOT ESCAPE, THAT THE CHALLENGED ACT MUST BE STRUCK DOWN.— In determining whether or not a statute is unconstitutional, the Court does not lose sight of the presumption of validity accorded to statutory acts of Congress. In *Fariñas v. The Executive Secretary,* the Court held that: Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. **Every presumption should be indulged in favor of the constitutionality and the burden of proof is on the party alleging that there is a clear and unequivocal breach of the Constitution**. To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down. The petition is miserably wanting in this regard.

9. ID.; ID.; ID.; THE COURT IS NOT ENDOWED WITH THE POWER OF CLAIRVOYANCE TO DIVINE FROM SCANTY ALLEGATIONS IN PLEADINGS WHERE JUSTICE AND TRUTH LIE. — LAMP would have the Court declare the unconstitutionality of the PDAF's enforcement based on the absence of express provision in the GAA allocating PDAF funds to the Members of Congress and the latter's encroachment on executive power in proposing and selecting projects to be funded by PDAF. Regrettably, these allegations

lack substantiation. No convincing proof was presented showing that, indeed, there were direct releases of funds to the Members of Congress, who actually spend them according to their sole discretion. Not even a documentation of the disbursement of funds by the DBM in favor of the Members of Congress was presented by the petitioner to convince the Court to probe into the truth of their claims. Devoid of any pertinent evidentiary support that illegal misuse of PDAF in the form of kickbacks has become a common exercise of unscrupulous Members of Congress, the Court cannot indulge the petitioner's request for rejection of a law which is outwardly legal and capable of lawful enforcement. In a case like this, the Court's hands are tied in deference to the presumption of constitutionality lest the Court commits unpardonable judicial legislation. The Court is not endowed with the power of clairvoyance to divine from scanty allegations in pleadings where justice and truth lie. Again, newspaper or electronic reports showing the appalling effects of PDAF cannot be appreciated by the Court, "not because of any issue as to their truth, accuracy, or impartiality, but for the simple reason that facts must be established in accordance with the rules of evidence."

10. ID.; ID.; ID.; ABSENT A CLEAR SHOWING THAT AN OFFENSE TO THE PRINCIPLE OF SEPARATION OF POWERS WAS COMMITTED, MUCH LESS TOLERATED BY BOTH THE LEGISLATIVE AND EXECUTIVE, THE COURT IS CONSTRAINED TO HOLD THAT A LAWFUL AND REGULAR GOVERNMENT BUDGETTING AND APPROPRIATION PROCESS ENSUED DURING THE ENACTMENT AND ALL THROUGHOUT THE IMPLEMENTATION OF THE GENERAL APPROPRIATION ACT. — [A]bsent a clear showing that an offense to the principle of separation of powers was committed, much less tolerated by both the Legislative and Executive, the Court is constrained to hold that a lawful and regular government budgeting and appropriation process ensued during the enactment and all throughout the implementation of the GAA of 2004. x x x. Under the Constitution, the power of appropriation is vested in the Legislature, subject to the requirement that appropriation bills originate exclusively in the House of Representatives with the option of the Senate to propose or concur with amendments. While the budgetary process commences from the proposal submitted by the President to Congress, it is the latter which

concludes the exercise by crafting an appropriation act it may deem beneficial to the nation, based on its own judgment, wisdom and purposes. Like any other piece of legislation, the appropriation act may then be susceptible to objection from the branch tasked to implement it, by way of a Presidential veto. Thereafter, budget execution comes under the domain of the Executive branch which deals with the operational aspects of the cycle including the allocation and release of funds earmarked for various projects. Simply put, from the regulation of fund releases, the implementation of payment schedules and up to the actual spending of the funds specified in the law, the Executive takes the wheel. "The DBM lays down the guidelines for the disbursement of the fund. The Members of Congress are then requested by the President to recommend projects and programs which may be funded from the PDAF. The list submitted by the Members of Congress is endorsed by the Speaker of the House of Representatives to the DBM, which reviews and determines whether such list of projects submitted are consistent with the guidelines and the priorities set by the Executive." This demonstrates the power given to the President to execute appropriation laws and therefore, to exercise the spending *per se* of the budget.

11. ID.; ID.; ID.; ID.; SO LONG AS THERE IS NO SHOWING OF A DIRECT PARTICIPATION OF LEGISLATORS IN THE ACTUAL SPENDING OF THE BUDGET, THE CONSTITUTIONAL BOUNDARIES BETWEEN THE EXECUTIVE AND THE LEGISLATIVE IN THE BUDGETARY PROCESS REMAIN INTACT.— As applied to this case, the petition is seriously wanting in establishing that individual Members of Congress receive and thereafter spend funds out of PDAF. Although the possibility of this unscrupulous practice cannot be entirely discounted, surmises and conjectures are not sufficient bases for the Court to strike down the practice for being offensive to the Constitution. Moreover, the authority granted the Members of Congress to propose and select projects was already upheld in *Philconsa*. This remains as valid case law. The Court sees no need to review or reverse the standing pronouncements in the said case. So long as there is no showing of a direct participation of legislators in the actual spending of the budget, the constitutional boundaries between the Executive and the Legislative in the budgetary process remain intact.

12. ID.; ID.; ID.; ALL PRESUMPTIONS ARE INDULGED IN FAVOR OF CONSTITUTIONALITY AND ONE WHO ATTACKS A STATUTE, ALLEGING UNCONSTITUTIONALITY, MUST PROVE ITS INVALIDITY BEYOND REASONABLE DOUBT.— While the Court is not unaware of the yoke caused by graft and corruption, the evils propagated by a piece of valid legislation cannot be used as a tool to overstep constitutional limits and arbitrarily annul acts of Congress. Again, "all presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted."

APPEARANCES OF COUNSEL

Ceferino Padua, Jr. for petitioners.
The Solicitor General for rspondents.

D E C I S I O N

MENDOZA, *J.*:

For consideration of the Court is an original action for *certiorari* assailing the constitutionality and legality of the implementation of the Priority Development Assistance Fund *(PDAF)* as provided for in Republic Act *(R.A.)* 9206 or the General Appropriations Act for 2004 *(GAA of 2004)*. Petitioner Lawyers Against Monopoly and Poverty *(LAMP)*, a group of lawyers who have banded together with a mission of dismantling all forms of political, economic or social monopoly in the country,[1] also sought the issuance of a writ of preliminary injunction or

[1] *Rollo*, p. 7.

temporary restraining order to enjoin respondent Secretary of the Department of Budget and Management *(DBM)* from making, and, thereafter, releasing budgetary allocations to individual members of Congress as "pork barrel" funds out of PDAF. LAMP likewise aimed to stop the National Treasurer and the Commission on Audit *(COA)* from enforcing the questioned provision.

On September 14, 2004, the Court required respondents, including the President of the Senate and the Speaker of the House of Representatives, to comment on the petition. On April 7, 2005, petitioner filed a Reply thereto.[2] On April 26, 2005, both parties were required to submit their respective memoranda.

The GAA of 2004 contains the following provision subject of this petition:

PRIORITY DEVELOPMENT ASSISTANCE FUND

For fund requirements of priority development programs and projects, as indicated hereunder – ₱8,327,000,000.00

x x x x x x x x x

Special Provision

1. Use and Release of the Fund. The amount herein appropriated shall be used to fund priority programs and projects or to fund the required counterpart for foreign-assisted programs and projects: PROVIDED, That such amount shall be released directly to the implementing agency or Local Government Unit concerned: PROVIDED, FURTHER, That the allocations authorized herein may be realigned to any expense class, if deemed necessary: PROVIDED FURTHERMORE, That a maximum of ten percent (10%) of the authorized allocations by district may be used for procurement of rice and other basic commodities which shall be purchased from the National Food Authority.

Petitioner's Position

According to LAMP, the above provision is silent and, therefore, prohibits an automatic or direct allocation of lump sums to individual senators and congressmen for the funding

[2] *Id.* at 113-117.

of projects. It does not empower individual Members of Congress to propose, select and identify programs and projects to be funded out of PDAF. "In previous GAAs, said allocation and identification of projects were the main features of the 'pork barrel' system technically known as Countrywide Development Fund (CDF). Nothing of the sort is now seen in the present law (R.A. No. 9206 of CY 2004).[3] In its memorandum, LAMP insists that "[t]he silence in the law of direct or even indirect participation by members of Congress betrays a deliberate intent on the part of the Executive and the Congress to scrap and do away with the 'pork barrel' system."[4] In other words, "[t]he omission of the PDAF provision to specify sums as 'allocations' to individual Members of Congress is a '*casus omissus*' signifying an omission intentionally made by Congress that this Court is forbidden to supply."[5] Hence, LAMP is of the conclusion that "the pork barrel has become legally defunct under the present state of GAA 2004."[6]

LAMP further decries the supposed flaws in the implementation of the provision, namely: 1) the DBM illegally made and directly released budgetary allocations out of PDAF in favor of individual Members of Congress; and 2) the latter do not possess the power to propose, select and identify which projects are to be actually funded by PDAF.

For LAMP, this situation runs afoul against the principle of separation of powers because in receiving and, thereafter, spending funds for their chosen projects, the Members of Congress in effect intrude into an executive function. In other words, they cannot directly spend the funds, the appropriation for which was made by them. In their individual capacities, the Members of Congress cannot "virtually tell or dictate upon the Executive Department how to spend taxpayer's money.[7] Further, the

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[3] *Id.* at 9.

[4] *Id.* at 10.

[5] *Id.* at 163.

[6] *Id.* at 152.

[7] *Id.* at 154.

authority to propose and select projects does not pertain to legislation. "It is, in fact, a non-legislative function devoid of constitutional sanction,"[8] and, therefore, impermissible and must be considered nothing less than malfeasance. The proposal and identification of the projects do not involve the making of laws or the repeal and amendment thereof, which is the only function given to the Congress by the Constitution. Verily, the power of appropriation granted to Congress as a collegial body, "does not include the power of the Members thereof to individually propose, select and identify which projects are to be actually implemented and funded — a function which essentially and exclusively pertains to the Executive Department."[9] By allowing the Members of Congress to receive direct allotment from the fund, to propose and identify projects to be funded and to perform the actual spending of the fund, the implementation of the PDAF provision becomes legally infirm and constitutionally repugnant.

Respondents' Position

For their part, the respondents[10] contend that the petition miserably lacks legal and factual grounds. Although they admit that PDAF traced its roots to CDF,[11] they argue that the former should not be equated with "pork barrel," which has gained a derogatory meaning referring "to government projects affording political opportunism."[12] In the petition, no proof of this was offered. It cannot be gainsaid then that the petition cannot stand on inconclusive media reports, assumptions and conjectures alone. Without probative value, media reports cited by the petitioner deserve scant consideration especially the accusation that corrupt

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[8] *Id.*

[9] *Id.* at 156.

[10] The Office of the Solicitor General entered its appearance and filed a Comment for the Secretary of the Department of Budget and Management, Treasurer of the Philippines and Commission on Audit, while then Speaker of the House of Representatives, Jose De Venecia Jr. filed his separate Comment dated January 6, 2005.

[11] *Rollo*, p. 66.

[12] *Id.* at 62.

legislators have allegedly proposed cuts or slashes from their pork barrel. Hence, the Court should decline the petitioner's plea to take judicial notice of the supposed iniquity of PDAF because there is no concrete proof that PDAF, in the guise of "pork barrel," is a source of "dirty money" for unscrupulous lawmakers and other officials who tend to misuse their allocations. These "facts" have no attributes of sufficient notoriety or general recognition accepted by the public without qualification, to be subjected to judicial notice. This applies, *a fortiori*, to the claim that Members of Congress are beneficiaries of commissions (kickbacks) taken out of the PDAF allocations and releases and preferred by favored contractors representing from 20% to 50% of the approved budget for a particular project.[13] Suffice it to say, the perceptions of LAMP on the implementation of PDAF must not be based on mere speculations circulated in the news media preaching the evils of pork barrel. Failing to present even an iota of proof that the DBM Secretary has been releasing lump sums from PDAF directly or indirectly to individual Members of Congress, the petition falls short of its cause.

Likewise admitting that CDF and PDAF are "appropriations for substantially similar, if not the same, beneficial purposes,"[14] the respondents invoke *Philconsa v. Enriquez*,[15] where CDF was described as an imaginative and innovative process or mechanism of implementing priority programs/projects specified in the law. In *Philconsa*, the Court upheld the authority of individual Members of Congress to propose and identify priority projects because this was merely recommendatory in nature. In said case, it was also recognized that individual members of Congress far more than the President and their congressional colleagues were likely to be knowledgeable about the needs of their respective constituents and the priority to be given each project.

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[13] *Id.* at 149.

[14] *Id.* at 67.

[15] G.R. No. 113888, August 19, 1994, 235 SCRA 506.

The Issues

The respondents urge the Court to dismiss the petition for its failure to establish factual and legal basis to support its claims, thereby lacking an essential requisite of judicial review—an actual case or controversy.

The Court's Ruling

To the Court, the case boils down to these issues: 1) whether or not the mandatory requisites for the exercise of judicial review are met in this case; and 2) whether or not the implementation of PDAF by the Members of Congress is unconstitutional and illegal.

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[16]

An aspect of the "case-or-controversy" requirement is the requisite of "ripeness." In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another concern is the evaluation of the twofold aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it.[17]

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[16] *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35.

[17] *Lozano v. Nograles*, G.R. Nos. 187883, and 187910, June 16, 2009, 589 SCRA 356, 358, citing *Guingona Jr. v. Court of Appeals*, 354 Phil. 415, 427-428.

In this case, the petitioner contested the *implementation* of an alleged unconstitutional statute, as citizens and taxpayers. According to LAMP, the practice of *direct* allocation and release of funds to the Members of Congress and the authority given to them to propose and select projects is the core of the law's flawed execution resulting in a serious constitutional transgression involving the expenditure of public funds. Undeniably, as taxpayers, LAMP would somehow be adversely affected by this. A finding of unconstitutionality would necessarily be tantamount to a misapplication of public funds which, in turn, cause injury or hardship to taxpayers. This affords "ripeness" to the present controversy.

Further, the allegations in the petition do not aim to obtain sheer legal opinion in the nature of advice concerning legislative or executive action. The possibility of constitutional violations in the implementation of PDAF surely involves the interplay of legal rights susceptible of judicial resolution. For LAMP, this is the right to recover public funds possibly misapplied by no less than the Members of Congress. Hence, without prejudice to other recourse against erring public officials, allegations of illegal expenditure of public funds reflect a concrete injury that may have been committed by other branches of government before the court intervenes. The possibility that this injury was indeed committed cannot be discounted. The petition complains of illegal disbursement of public funds derived from taxation and this is sufficient reason to say that there indeed exists a definite, concrete, real or substantial controversy before the Court.

Anent *locus standi*, "the rule is that the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustained, direct injury as a result of its enforcement.[18] The gist of the question of standing is whether a party alleges "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult

[18] *People v. Vera*, 65 Phil. 56, 89 (1937).

constitutional questions."[19] In public suits, the plaintiff, representing the general public, asserts a "public right" in assailing an allegedly illegal official action. The plaintiff may be a person who is affected no differently from any other person, and could be suing as a "stranger," or as a "citizen" or "taxpayer."[20] Thus, taxpayers have been allowed to sue where there is a claim that public funds are illegally disbursed or that public money is being deflected to any improper purpose, or that public funds are wasted through the enforcement of an invalid or unconstitutional law.[21] Of greater import than the damage caused by the illegal expenditure of public funds is the mortal wound inflicted upon the fundamental law by the enforcement of an invalid statute.[22]

Here, the sufficient interest preventing the illegal expenditure of money raised by taxation required in taxpayers' suits is established. Thus, in the claim that PDAF funds have been illegally disbursed and wasted through the enforcement of an invalid or unconstitutional law, LAMP should be allowed to sue. The case of *Pascual v. Secretary of Public Works*[23] is authority in support of the petitioner:

> In the determination of the degree of interest essential to give the requisite standing to attack the constitutionality of a statute, the general rule is that not only persons individually affected, but also **taxpayers have sufficient interest in preventing the illegal expenditures of moneys raised by taxation and may therefore question the constitutionality of statutes requiring expenditure of public moneys.** [11 Am. Jur. 761, Emphasis supplied.]

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[19] *Navarro v. Ermita,* G.R. No. 180050, April 12, 2011, 648 SCRA 400, 434.

[20] *David v. Macapagal-Arroyo,* G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 and 171424, May 3, 2006, 489 SCRA 160.

[21] *Public Interest Center, Inc. v. Honorable Vicente Q. Roxas, in his capacity as Presiding Judge, RTC of Quezon City, Branch 227,* G.R. No. 125509, January 31, 2007, 513 SCRA 457, 470.

[22] *People v. Vera,* 65 Phil. 56, 89 (1937).

[23] 110 Phil. 331, 342-343 (1960).

Lastly, the Court is of the view that the petition poses issues impressed with paramount public interest. The ramification of issues involving the unconstitutional spending of PDAF deserves the consideration of the Court, warranting the assumption of jurisdiction over the petition.

Now, on the substantive issue.

The powers of government are generally divided into three branches: the Legislative, the Executive and the Judiciary. Each branch is supreme within its own sphere being independent from one another and it is this supremacy which enables the courts to determine whether a law is constitutional or unconstitutional.[24] The Judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.[25]

With these long-established precepts in mind, the Court now goes to the crucial question: In allowing the direct allocation and release of PDAF funds to the Members of Congress based on their own list of proposed projects, did the implementation of the PDAF provision under the GAA of 2004 violate the Constitution or the laws?

The Court rules in the negative.

In determining whether or not a statute is unconstitutional, the Court does not lose sight of the presumption of validity accorded to statutory acts of Congress. In *Fariñas v. The Executive Secretary*,[26] the Court held that:

Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one

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[24] Separate Opinion, *Joker P. Arroyo v. HRET and Augusto L. Syjuco, Jr.*, 316 Phil. 464 (1995).

[25] *Tanada v. Angara*, 338 Phil. 546, 575 (1997).

[26] 463 Phil. 179, 197 (2003).

which operates no further than may be necessary to effectuate the specific purpose of the law. **Every presumption should be indulged in favor of the constitutionality and the burden of proof is on the party alleging that there is a clear and unequivocal breach of the Constitution**.

To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it."[27] This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.[28]

The petition is miserably wanting in this regard. LAMP would have the Court declare the unconstitutionality of the PDAF's enforcement based on the absence of express provision in the GAA allocating PDAF funds to the Members of Congress and the latter's encroachment on executive power in proposing and selecting projects to be funded by PDAF. Regrettably, these allegations lack substantiation. No convincing proof was presented showing that, indeed, there were direct releases of funds to the Members of Congress, who actually spend them according to their sole discretion. Not even a documentation of the disbursement of funds by the DBM in favor of the Members of Congress was presented by the petitioner to convince the Court to probe into the truth of their claims. Devoid of any pertinent evidentiary support that illegal misuse of PDAF in the form of kickbacks has become a common exercise of unscrupulous Members of Congress, the Court cannot indulge the petitioner's request for

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[27] *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251.

[28] *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135.

rejection of a law which is outwardly legal and capable of lawful enforcement. In a case like this, the Court's hands are tied in deference to the presumption of constitutionality lest the Court commits unpardonable judicial legislation. The Court is not endowed with the power of clairvoyance to divine from scanty allegations in pleadings where justice and truth lie.[29] Again, newspaper or electronic reports showing the appalling effects of PDAF cannot be appreciated by the Court, "not because of any issue as to their truth, accuracy, or impartiality, but for the simple reason that facts must be established in accordance with the rules of evidence."[30]

Hence, absent a clear showing that an offense to the principle of separation of powers was committed, much less tolerated by both the Legislative and Executive, the Court is constrained to hold that a lawful and regular government budgeting and appropriation process ensued during the enactment and all throughout the implementation of the GAA of 2004. The process was explained in this wise, in *Guingona v. Carague:*[31]

> 1. *Budget preparation*. The first step is essentially tasked upon the Executive Branch and covers the estimation of government revenues, the determination of budgetary priorities and activities within the constraints imposed by *available revenues* and by *borrowing limits*, and the translation of desired priorities and activities into expenditure levels.
>
> Budget preparation starts with the budget call issued by the Department of Budget and Management. Each agency is required to submit agency budget estimates in line with the requirements consistent with the general ceilings set by the Development Budget Coordinating Council (DBCC).
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> With regard to debt servicing, the DBCC staff, based on the macro-economic projections of interest rates (*e.g.* LIBOR rate) and estimated

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[29] Dissenting Opinion, *The Board of Election Inspectors, et al. v. Edmundo S. Piccio Judge of First Instance of Leyte at Tacloban, and Cesario R. Colasito*, G.R. No. L-1852, October 14, 1948/September 30, 1948.

[30] *Lim v. Hon. Executive Secretary*, 430 Phil. 555, 580 (2002).

[31] 273 Phil. 443, 460, (1991).

sources of domestic and foreign financing, estimates debt service levels. Upon issuance of budget call, the Bureau of Treasury computes for the interest and principal payments for the year for all direct national government borrowings and other liabilities assumed by the same.

2. *Legislative authorization*. — At this stage, Congress enters the picture and deliberates or *acts* on the budget proposals of the President, and Congress in the exercise of its own judgment and wisdom *formulates* an appropriation act precisely following the process established by the Constitution, which specifies that no money may be paid from the Treasury except in accordance with an appropriation made by law.

x x x x x x x x x

3. *Budget Execution*. Tasked on the Executive, the third phase of the budget process covers the various *operational* aspects of budgeting. The establishment of obligation authority ceilings, the evaluation of work and financial plans for individual activities, the continuing review of government fiscal position, the regulation of funds releases, the implementation of cash payment schedules, and other related activities comprise this phase of the budget cycle.

4. *Budget accountability*. The fourth phase refers to the evaluation of actual performance and initially approved work targets, obligations incurred, personnel hired and work accomplished are compared with the targets set at the time the agency budgets were approved.

Under the Constitution, the power of appropriation is vested in the Legislature, subject to the requirement that appropriation bills originate exclusively in the House of Representatives with the option of the Senate to propose or concur with amendments.[32] While the budgetary process commences from the proposal submitted by the President to Congress, it is the latter which concludes the exercise by crafting an appropriation act it may deem beneficial to the nation, based on its own judgment, wisdom and purposes. Like any other piece of legislation, the appropriation act may then be susceptible to objection from the branch tasked to implement it, by way of a Presidential veto. Thereafter, budget execution comes under the domain of the Executive branch which

[32] 1987 Constitution, Article 6 Sections 24 and 29 (1).

deals with the operational aspects of the cycle including the allocation and release of funds earmarked for various projects. Simply put, from the regulation of fund releases, the implementation of payment schedules and up to the actual spending of the funds specified in the law, the Executive takes the wheel. "The DBM lays down the guidelines for the disbursement of the fund. The Members of Congress are then requested by the President to recommend projects and programs which may be funded from the PDAF. The list submitted by the Members of Congress is endorsed by the Speaker of the House of Representatives to the DBM, which reviews and determines whether such list of projects submitted are consistent with the guidelines and the priorities set by the Executive."[33] This demonstrates the power given to the President to execute appropriation laws and therefore, to exercise the spending *per se* of the budget.

As applied to this case, the petition is seriously wanting in establishing that individual Members of Congress receive and thereafter spend funds out of PDAF. Although the possibility of this unscrupulous practice cannot be entirely discounted, surmises and conjectures are not sufficient bases for the Court to strike down the practice for being offensive to the Constitution. Moreover, the authority granted the Members of Congress to propose and select projects was already upheld in *Philconsa.* This remains as valid case law. The Court sees no need to review or reverse the standing pronouncements in the said case. So long as there is no showing of a direct participation of legislators in the actual spending of the budget, the constitutional boundaries between the Executive and the Legislative in the budgetary process remain intact.

While the Court is not unaware of the yoke caused by graft and corruption, the evils propagated by a piece of valid legislation cannot be used as a tool to overstep constitutional limits and arbitrarily annul acts of Congress. Again, "all presumptions are indulged in favor of constitutionality; one who attacks a statute,

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[33] *Rollo,* p. 98.

alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted."[34]

There can be no question as to the patriotism and good motive of the petitioner in filing this petition. Unfortunately, the petition must fail based on the foregoing reasons.

WHEREFORE, the petition is **DISMISSED** without pronouncement as to costs.

SO ORDERED.

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

EN BANC

[G.R. No. 171101. April 24, 2012]

HACIENDA LUISITA, INCORPORATED, *petitioner,* **LUISITA INDUSTRIAL PARK CORPORATION and RIZAL COMMERCIAL BANKING CORPORATION,** *petitioners-in-intervention, vs.* **PRESIDENTIAL AGRARIAN REFORM COUNCIL; SECRETARY NASSER PANGANDAMAN OF THE DEPARTMENT OF AGRARIAN REFORM; ALYANSA NG MGA MANGGAGAWANG BUKID NG HACIENDA**

[34] *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60 (1974).

LUISITA, RENE GALANG, NOEL MALLARI, and JULIO SUNIGA[1] and his SUPERVISORY GROUP OF THE HACIENDA LUISITA, INC. and WINDSOR ANDAYA, *respondents.*

SYLLABUS

1. REMEDIAL LAW; MOTIONS; SECOND MOTION FOR RECONSIDERATION, AS A RULE, IS PROHIBITED FOR BEING A MERE REITERATION OF THE ISSUES ASSIGNED AND THE ARGUMENTS RAISED BY THE PARTIES.— At the outset, it should be noted that Section 2, Rule 52 of the Rules of Court states, "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." A second motion for reconsideration, as a rule, is prohibited for being a mere reiteration of the issues assigned and the arguments raised by the parties. In the instant case, the issue on just compensation and the grounds HLI and Mallari, *et al.* rely upon in support of their respective stance on the matter had been previously raised by them in their first motion for reconsideration and fully passed upon by the Court in its November 22, 2011 Resolution. The similarities in the issues then and now presented and the grounds invoked are at once easily discernible from a perusal of the November 22, 2011 Resolution x x x. Considering that the issue on just compensation has already been passed upon and denied by the Court in its November 22, 2011 Resolution, a subsequent motion touching on the same issue undeniably partakes of a second motion for reconsideration, hence, a prohibited pleading, and as such, the motion or plea must be denied x x x. Nonetheless, even if we entertain said motion and examine the arguments raised by HLI and Mallari, *et al.* one last time, the result will be the same.

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (R.A. NO. 6657) JUST COMPENSATION; DEFINED AND EXPLAINED. — Sec. 4, Article XIII of the 1987 Constitution expressly provides that the taking of land for use in the agrarian reform

[1] "Jose Julio Zuniga" in some parts of the records.

program of the government is conditioned on the payment of just compensation. x x x. Just compensation has been defined as "the full and fair equivalent of the property taken from its owner by the expropriator." The measure is not the taker's gain, but the owner's loss. In determining just compensation, the price or value of the property at the time it was taken from the owner and appropriated by the government shall be the basis. If the government takes possession of the land before the institution of expropriation proceedings, the value should be fixed as of the time of the taking of said possession, not of the filing of the complaint.

3. ID.; ID.; ID.; EFFECTIVE DATE OF TAKING, WHEN IT TAKES PLACE.— In *Land Bank of the Philippines v. Livioco*, the Court held that "the 'time of taking' is the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred to the Republic." It should be noted, however, that "taking" does not only take place upon the issuance of title either in the name of the Republic or the beneficiaries of the Comprehensive Agrarian Reform Program (CARP). "Taking" also occurs when agricultural lands are voluntarily offered by a landowner and approved by PARC for CARP coverage through the stock distribution scheme, as in the instant case. Thus, HLI's submitting its SDP for approval is an acknowledgment on its part that the agricultural lands of Hacienda Luisita are covered by CARP. However, it was the PARC approval which should be considered as the effective date of "taking" as it was only during this time that the government officially confirmed the CARP coverage of these lands.

4. ID.; ID.; ID.; STOCK DISTRIBUTION OPTION AND COMPULSORY LAND ACQUISITION, DISTINGUISHED; THE APPROVAL OF THE STOCK DISTRIBUTION PLAN (SDP) OPERATES AND TAKES THE PLACE OF A NOTICE OF COVERAGE ORDINARILY ISSUED UNDER COMPULSORY ACQUISITION.— Indeed, stock distribution option and compulsory land acquisition are two (2) different modalities under the agrarian reform program. Nonetheless, both share the same end goal, that is, to have "a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation." The fact that Sec. 31 of Republic Act No. 6657 (RA 6657) gives corporate

landowners the option to give qualified beneficiaries the right to avail of a stock distribution or, in the phraseology of the law, "the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets," does not detract from the avowed policy of the agrarian reform law of equitably distributing ownership of land. The difference lies in the fact that instead of actually distributing the agricultural lands to the farmer-beneficiaries, these lands are held by the corporation as part of the capital contribution of the farmer-beneficiaries, not of the landowners, under the stock distribution scheme. The end goal of equitably distributing ownership of land is, therefore, undeniable. And since it is only upon the approval of the SDP that the agricultural lands actually came under CARP coverage, such approval operates and takes the place of a notice of coverage ordinarily issued under compulsory acquisition.

5. ID.; ID.; ID.; TARLAC DEVELOPMENT CORPORATION (TADECO) WAS DISPOSSESSED OF THE ATTRIBUTES OF OWNERSHIP OVER THE SUBJECT AGRICULTURAL LANDS WHEN IT TRANSFERRED THE SAME TO PETITIONER HACIENDA LUISITA, INCORPORATED (HLI) IN COMPLIANCE WITH CARP THROUGH THE STOCK DISTRIBUTION OPTION SCHEME; OWNERSHIP DEFINED; ATTRIBUTES OF OWNERSHIP.— While it is true that Tadeco has majority control over HLI, the Court cannot subscribe to the view Mallari, *et al*. espouse that, on the basis of such majority stockholding, Tadeco was never deprived of the use and benefit of the agricultural lands of Hacienda Luisita it divested itself in favor of HLI. It bears stressing that "[o]wnership is defined as a relation in law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by law or the concurrence with the rights of another." The attributes of ownership are: *jus utendi* or the right to possess and enjoy, *jus fruendi* or the right to the fruits, *jus abutendi* or the right to abuse or consume, *jus disponendi* or the right to dispose or alienate, and *jus vindicandi* or the right to recover or vindicate. When the agricultural lands of Hacienda Luisita were transferred by Tadeco to HLI in order to comply with CARP through the stock distribution option scheme, sealed with the imprimatur of PARC under PARC Resolution No. 89-12-2 dated November

21, 1989, Tadeco was consequently dispossessed of the aforementioned attributes of ownership. Notably, Tadeco and HLI are two different entities with separate and distinct legal personalities. Ownership by one cannot be considered as ownership by the other.

6. ID.; ID.; ID.; THE TAKING OF THE AGRICULTURAL LANDS OF HACIENDA LUISITA SHOULD BE RECKONED FROM THE TIME OF THE APPROVAL OF THE STOCK DISTRIBUTION PLAN (SDP) BY THE PRESIDENTIAL AGRARIAN REFORM COUNCIL (PARC).— Corollarily, it is the official act by the government, that is, the PARC's approval of the SDP, which should be considered as the reckoning point for the "taking" of the agricultural lands of Hacienda Luisita. Although the transfer of ownership over the agricultural lands was made prior to the SDP's approval, it is this Court's consistent view that these lands officially became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP. And as We have mentioned in Our November 22, 2011 Resolution, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition.

7. ID.; ID.; ID.; THE DATE OF TAKING OF THE SUBJECT AGRICULTURAL LANDS FOR THE PURPOSE OF DETERMINING JUST COMPENSATION IS NOVEMBER 21, 1989 WHEN PARC APPROVED THE STOCK OPTION PLAN; THE FACT THAT THE SPECIAL AGRARIAN COURT IS VESTED WITH ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL PETITIONS FOR DETERMINATION OF JUST COMPENSATION TO LANDOWNERS WILL NOT PRECLUDE THE COURT FROM RULING UPON A MATTER THAT MAY ALREADY BE RESOLVED BASED ON THE RECORDS BEFORE IT.— As regards the issue on when "taking" occurred with respect to the agricultural lands in question, We, however, maintain that this Court can rule, as it has in fact already ruled on its reckoning date, that is, November 21, 1989, the date of issuance of PARC Resolution No. 89-12-2, based on the above-mentioned disquisitions. The investment on SACs of original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners will not preclude the Court from ruling upon a matter that may already

be resolved based on the records before Us. x x x. Even though the compensation due to HLI will still be preliminarily determined by DAR and LBP, subject to review by the RTC acting as a SAC, the fact that the reckoning point of "taking" is already fixed at a certain date should already hasten the proceedings and not further cause undue hardship on the parties, especially the qualified FWBs. By a vote of 8-6, the Court affirmed its ruling that the date of "taking" in determining just compensation is November 21, 1989 when PARC approved HLI's stock option plan.

8. ID.; ID.; ID.; THE FARMERS, INDIVIDUALLY OR COLLECTIVELY, MUST HAVE CONTROL OVER THE AGRICULTURAL LANDS THEY TILL.— The Court agrees that the option given to the qualified FWBs whether to remain as stockholders of HLI or opt for land distribution is neither iniquitous nor prejudicial to the FWBs. Nonetheless, the Court is not unmindful of the policy on agrarian reform that control over the agricultural land must always be in the hands of the farmers. Contrary to the stance of HLI, both the Constitution and RA 6657 intended the farmers, individually or collectively, to have control over the agricultural lands of HLI; otherwise, all these rhetoric about agrarian reform will be rendered for naught. x x x. Pursuant to and as a mechanism to carry out [Sec. 4, Art. XIII of the 1987 Constitution], RA 6657 was enacted. x x x Based on [Sec. 2 of RA 6657] the notion of farmers and regular farmworkers having the right to own directly or collectively the lands they till is abundantly clear.

9. ID.; ID.; ID.; CONTROL OVER THE AGRICULTURAL LAND MUST ALWAYS BE IN THE HANDS OF THE FARMERS, AND THEY WILL NO LONGER HAVE THE OPTION TO REMAIN AS STOCKHOLDERS OF HLI. — [T]here is collective ownership as long as there is a concerted group work by the farmers on the land, regardless of whether the landowner is a cooperative, association or corporation composed of farmers. However, this definition of collective ownership should be read in light of the clear policy of the law on agrarian reform, which is to emancipate the tiller from the bondage of the soil and empower the common people. Worth noting too is its noble goal of rectifying "the acute imbalance in the distribution of this precious resource among our people." Accordingly, HLI's insistent view that control need not be in

the hands of the farmers translates to allowing it to run roughshod against the very reason for the enactment of agrarian reform laws and leave the farmers in their shackles with sheer lip service to look forward to. Notably, it has been this Court's consistent stand that control over the agricultural land must always be in the hands of the farmers. x x x There is an aphorism that "what has been done can no longer be undone." That may be true, but not in this case. The SDP was approved by PARC even if the qualified FWBs did not and will not have majority stockholdings in HLI, contrary to the obvious policy by the government on agrarian reform. Such an adverse situation for the FWBs will not and should not be permitted to stand. For this reason, We maintain Our ruling that the qualified FWBs will no longer have the option to remain as stockholders of HLI.

10. ID.; ID.; ID.; THE FWBS ARE ENTITLED TO THE PROCEEDS OF THE SALE OF THE 500-HECTARE CONVERTED LAND AND THE SCTEX LOT LESS 3% SHARE, TAXES AND EXPENSES.— It cannot be denied that the adverted 500-hectare converted land and the SCTEX lot once formed part of what would have been agrarian-distributable lands, in fine subject to compulsory CARP coverage. And, as stated in our July 5, 2011 Decision, were it not for the approval of the SDP by PARC, these large parcels of land would have been distributed and ownership transferred to the FWBs, subject to payment of just compensation, given that, as of 1989, the subject 4,915 hectares of Hacienda Luisita were already covered by CARP. Accordingly, the proceeds realized from the sale and/or disposition thereof should accrue for the benefit of the FWBs, less deductions of the 3% of the proceeds of said transfers that were paid to the FWBs, the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary Holdings, Inc. for legitimate corporate purposes, as prescribed in our November 22, 2011 Resolution.

11. ID.; ID.; ID.; THE FWBS SHALL RETAIN OWNERSHIP OF THE HOMELOTS GIVEN TO THEM BUT THE GOVERNMENT THROUGH THE DEPARTMENT OF AGRARIAN REFORM (DAR) MUST PAY THE JUST COMPENSATION FOR SAID HOMELOTS.— As We have explained in Our July 5, 2011 Decision, the distribution of homelots is required under RA 6657 only for corporations or

business associations owning or operating farms which opted for land distribution. This is provided under Sec. 30 of RA 6657. x x x. Since none of the above-quoted provisions made reference to corporations which opted for stock distribution under Sec. 31 of RA 6657, then it is apparent that said corporations are not obliged to provide for homelots. Nonetheless, HLI undertook to "subdivide and allocate **for free and without charge** among the qualified family-beneficiaries x x x residential or homelots of not more than 240 sq. m. each, with each family beneficiary being assured of receiving and owning a homelot in the barrio or *barangay* where it actually resides." In fact, HLI was able to distribute homelots to some if not all of the FWBs. Thus, in our November 22, 2011 *Resolution*, We declared that the homelots already received by the FWBs shall be respected with no obligation to refund or to return them. The Court, by a unanimous vote, resolved to maintain its ruling that the FWBs shall retain ownership of the homelots given to them with no obligation to pay for the value of said lots. However, since the SDP was already revoked with finality, the Court directs the government through the DAR to pay HLI the just compensation for said homelots in consonance with Sec. 4, Article XIII of the 1987 Constitution that the taking of land for use in the agrarian reform program is "subject to the payment of just compensation." Just compensation should be paid to HLI instead of Tadeco in view of the Deed of Assignment and Conveyance dated March 22, 1989 executed between Tadeco and HLI, where Tadeco transferred and conveyed to HLI the titles over the lots in question. DAR is ordered to compute the just compensation of the homelots in accordance with existing laws, rules and regulations.

BERSAMIN, *J., concurring and dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; STATE; POWER OF EMINENT DOMAIN; TWO STAGES; EXPLAINED.— [T]he exercise by the State of its inherent power of eminent domain comes in two stages. The Court has characterized the dual stages in *Municipality of Biñan v. Garcia* in the following manner: There are two (2) stages in every action of expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in

the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint." x x x The second phase of the eminent domain action is concerned with the determination by the court of "the just compensation for the property sought to be taken." xxx. The first stage in expropriation relates to the determination of the validity of the expropriation. At this stage, the trial court resolves questions, like whether the expropriator has the power of eminent domain, whether the use of the property is public, whether the taking is necessary, and, should there be conditions precedent for the exercise of the power, whether they have been complied with. In the second stage, the trial court is called upon to determine the just compensation, taking into consideration all the factors of just compensation (including whether interest should be paid on the amount of just compensation). Rule 67 of the *Rules of Court* generally delineates the procedure followed in both stages. Although expropriation may be either judicial or legislative, the dual stages apply to both, for there is "no point in distinguishing between judicial and legislative expropriation as far as the two stages mentioned above are concerned."

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (R.A. 6657); TAKING OF PROPERTY PURSUANT THERETO IS AN EXERCISE OF THE POWER OF EMINENT DOMAIN BY THE STATE; TWO STAGES OF EXPROPRIATION UNDER CARL, EXPLAINED.— The taking of property pursuant to the CARL is an exercise of the power of eminent domain by the State. It is a revolutionary expropriation that covers all private agricultural lands that exceeded the maximum retention limits reserved to their owners. x x x. Its revolutionary character notwithstanding, expropriation under the CARL still goes through the two stages. Section 16 of the CARL, which provides the procedure for private agricultural land acquisition, makes this explicit enough x x x. For sure, the expropriation under the CARL is not an exclusively judicial process. The first stage of expropriation commences upon the issuance of the notice of coverage, and is initially dealt with administratively by the

DAR pursuant to Section 50 of the CARL, subject to a judicial review in accordance with Section 54 of the CARL. The DAR, through the Regional Director, has jurisdiction over all agrarian law implementation cases, including protests or petitions to lift coverage. In exercising jurisdiction over such cases, the Regional Director passes upon and resolves various issues, including whether the land is subject to or exempt from CARP coverage, and whether the required notices of coverage have been served on the landowners. x x x The Constitution itself has thereby settled the requirement of public use and the necessity for the expropriation, which are the proper subjects of the first stage of expropriation proceedings. x x x. The second stage is devoted to the determination of just compensation. This stage, as essential as the first, is always judicial in nature.

3. ID.; ID.; JUST COMPENSATION; DEFINED AND EXPLAINED.— Just compensation is the full and fair equivalent of the property the expropriator takes from its owner. The measure for computing just compensation is not the taker's gain, but the owner's loss. The constitutional policy underlying the requirement for the payment of just compensation is to make the landowner whole after the State has taken his property. The word *just* intensifies the word *compensation* to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full and ample. For the landowner of expropriated property to be fully compensated, the State must put him in as good a position pecuniarily as if the use of the property had not been taken away. Accordingly, just compensation is principally based on the fair market value, which is "that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefore."

4. ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION, FACTORS TO BE CONSIDERED.— The price or value of the land and its character *at the time it is taken* by the Government are the primordial criteria for determining just compensation. Section 17 of the CARL enumerates other factors to be considered, *viz*: Section 17. *Determination of Just Compensation* — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the

owner, the tax declarations, and assessments made by the government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

5. ID.; ID.; ID.; TAKING OF PROPERTY FOR PUBLIC USE, CONCEPT OF.— As to taking, the Court has set a number of circumstances that must be established before property is said to be taken for a public use, to wit: A number of circumstances must be present in "taking" of property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way to oust the owner and deprive him of all beneficial enjoyment of the property.

6. ID.; ID.; ID.; THE SUPREME COURT, NOT BEING A TRIER OF FACTS, HAS NO CAPACITY TO RENDER A VALID FINDING AS TO THE TIME OF TAKING OF THE PROPERTY FOR PUBLIC USE; THE REGIONAL TRIAL COURT-SPECIAL AGRARIAN COURT IS VESTED WITH THE ORIGINAL AND EXCLUSIVE JURISDICTION TO RECEIVE THE PARTIES' EVIDENCE ON THE VALUATION OF THE AFFECTED PROPERTY PURSUANT TO CARL.— The prescription of such number of circumstances means that *compensable taking* is not a simple concept easy to ascertain. Certainly, evidence from the parties is needed to concretize the concept. Thus, stablishing the time of taking demands a judicial trial in which both the owner and the expropriator are afforded the fullest opportunity to prove either when the owner was actually deprived or dispossessed of the property, or when a practical destruction or a material impairment of the value of the property happened, or when the owner was deprived of the ordinary use of the property. Not being a trier of facts, the Court has no capacity to render a valid finding upon the time of taking. In contrast,

not only is the RTC-SAC a trier of facts but it is also vested with the *original* and *exclusive* jurisdiction to receive the parties' evidence on the valuation of the affected property pursuant to Section 57 of the CARL x x x. *Original jurisdiction* means jurisdiction to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts, and concerns the right to hear a cause and to make an original determination of the issues from the evidence as submitted directly by the witnesses, or of the law as presented, *uninfluenced or unconcerned by any prior determination*, or the action of any other court juridically determining the same controversy. Needless to point out, that jurisdiction of the RTC-SAC is also exclusive of all *other* courts, including this Court.

7. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE COURT SHOULD NOT CREATE ISSUES *SUA SPONTE* BUT SHOULD DECIDE ONLY THE ISSUES PRESENTED BY THE PARTIES.— Although November 21, 1989 was the date when the affected landholdings of HLI came under the SDP, x x x no practical justification why the Court should peg that date as the time of taking. x x x It is significant that the parties did not raise the time of taking as an issue in their pleadings. The petition for *certiorari* and prohibition assailed only the PARC's revocation of the SDP and the resulting placement of the lands subject of the SDP under compulsory land acquisition of the CARP on the ground that the PARC had no authority to revoke the SDP. Consequently, the time of taking was neither relevant to the objective of the petition, nor necessary to the determination of the issues the petition raised. x x x. **The first time that the time of taking surfaced was when the July 5, 2011 decision pegged it on November 29, 1989.** As such, the Court overstepped its adjudicative boundaries by pegging the taking at a definite date (whether November 21, 1989, or January 2, 2006, or any other date) even without the parties presenting the matter here. x x x As a rule, the Court should not create issues *sua sponte* but should decide only the issues presented by the parties. This rule adheres to the principle of party presentation, which fully complements the role of the Judiciary as the neutral arbiter of disputes, a role that is vital to the adversarial system. x x x. The grave danger posed by the *sua sponte* creation and decision of issues by the trial and appellate courts without the prior knowledge of the parties is

to cause injustice itself. "Were we to address these unbriefed issues," an appellate tribunal in the State of Illinois observed, "we would be forced to speculate as to the arguments that the parties might have presented had these issues been properly raised before this court. To engage in such speculation would only cause further injustice; thus, we refrain from addressing these issues *sua sponte*."

8. ID.; ID.; ID.; INSTANCES WHEN COURTS ARE ALLOWED TO STEP IN AND RAISE ISSUES; *SUA SPONTE*; LIMITATIONS; NOT PRESENT.— Instances admittedly happen when courts are allowed to step in and raise issues *sua sponte*. The most common instance is when a court decides whether or not it has jurisdiction over a case before it. Also, in the exercise of its appellate jurisdiction, the Court has been relatively flexible in resolving unassigned issues everytime it has found doing so necessary to arrive at a just decision. However, limitations on such instances should be set in order to preserve the courts' neutrality and to respect the litigants' autonomy, particularly: (*a*) when necessary to avoid issuing decisions containing erroneous statements of the law, such as when the parties misrepresent the law and ask the court to decide a case on such ground; (*b*) when necessary to maintain control over how the court would want to interpret the law; and (*c*) when necessary to give voice to legislative enactments disfavored or ignored by the parties. None of the limitations obtains here. The time of taking is an issue peripheral to and outside of the claims the parties extensively argued in this case. That the parties did not see fit to present the issue is concrete testimony to their consensus that the issue was not appropriate to be decided here and now, or that it might be better dealt with by and presented to the trial court. Consequently, the Court must itself exercise self-restraint and resist the temptation to deal with and pass upon the issue, because: x x x a court has no reason to raise issues that are tangential to or distinct from the claims that the parties have asked the court to decide, because in these cases its opinion will not mislead other or create flawed precedent. x x x Moreover, questions that are truly independent from those that the parties have already briefed and argued would likely require the development of facts not already in the record, which is unfair to litigants who are beyond the discovery stage — thus providing good reason for courts to ignore those issues as well.

9. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (R.A. NO. 6657); THE TAKING OF LAND FOR THE CARP, ALBEIT REVOLUTIONARY, SHOULD NOT BE DONE BY SACRIFICING THE CONSTITUTIONAL RIGHT TO FAIR AND PROMPT DETERMINATION OF JUST COMPENSATION FOR THE LANDOWNERS BECAUSE THEY ARE ENTITLED, AS THE FARM-WORKER BENEFICIARIES (FWBS), TO THE PROTECTION OF THE CONSTITUTION AND THE AGRARIAN REFORM LAWS; THE TIME OF TAKING SHOULD BE FULLY HEARD AND SETTLED INITIALLY BY THE DEPARTMENT OF AGRARIAN REFORM AND LAND BANK AND SUBSEQUENTLY BY THE RTC-SAC.— The taking of land for the CARP, albeit revolutionary, should not be done by sacrificing the constitutional right to the fair and prompt determination of just compensation for HLI as the landowner because it was as entitled as the FWBs to the protection of the Constitution and the agrarian reform laws. On the other hand, having the RTC-SAC determine the time of taking, far from being a cause for delay, may actually expedite the proceedings, because the RTC-SAC can resort to the aid of extrajudicial and judicial mediation, as well as to other procedures heretofore effectively used by the trial courts to expedite, including pre-trial and discovery, with the end in view of quickening the all-important determination of just compensation. In this regard, all the possibilities of expediting the process should be encouraged, because just compensation that results from the agreement and consent of the stakeholders of land reform will be no less just and full. Given the foregoing, the time of taking, as a factor in determining just compensation, should be fully heard during the second stage of the expropriation proceedings and settled initially by the DAR and Land Bank, and subsequently by the RTC-SAC, not by the Court in these proceedings that commenced from an administrative decision that was an incident during the first stage of the expropriation.

10. ID.; ID.; ID.; SOCIAL JUSTICE CANNOT BE INVOKED TO TRAMPLE ON THE RIGHTS OF THE PROPERTY OWNER, WHO UNDER THE CONSTITUTION AND LAWS, IS ALSO ENTITLED TO PROTECTION; THE PETITIONER HLI SHOULD BE JUSTLY COMPENSATED FOR THE MARKET VALUE OF THE HOMELOTS

DISTRIBUTED TO THE FARMER-WORKER BENEFICIARIES (FWBS).— Verily, the giving of the homelots as among the benefits acquired by the FWBs under the SDP should not be disturbed, *that is*, the FWBs should not be obliged to return the homelots thus received. To oust the FWBs from their homelots would displace them from the premises they had enjoyed for two decades, more or less, building thereon the homes for their families. Their displacement would be unjust. Yet, the homelots were distributed to the FWBs because of the SDP. Upon the revocation of the SDP, HLI lost the only enforceable justification for distributing the homelots to the FWBs. Simple justice demands, therefore, that HLI be justly compensated for the market value of the homelots. Indeed, while the emancipation of the FWBs from the bondage of the soil is the primordial objective of the CARP, vigilance for the rights of the landowner is equally important because social justice cannot be invoked to trample on the rights of the property owner, who under our Constitution and laws is also entitled to protection.

BRION, *J., separate opinion (concurring and dissenting)*:

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (CARL) (R.A. NO. 6657); THE ILLEGALITY OF THE TERMS OF THE STOCK DISTRIBUTION PLAN (SDP) RENDERED THE SAME NULL AND VOID FROM THE VERY BEGINNING AND WAS NOT CURED BY PRESIDENTIAL AGRARIAN REFORM COUNCIL'S (PARC) ERRONEOUS APPROVAL. — On December 22, 2005, PARC revoked its approval of the SDP through Resolution No. 2005-31-01. Although this revocation was made only in 2005, the effects should date back to 1989, considering that the basis for the revocation was primarily the illegality of the SDP's terms; the illegality rendered the SDP null and void from the very beginning and was not cured by PARC's erroneous approval. Indeed, the illegality of the terms of the SDP was apparent from its face so that PARC's approval should not have been given from the start. Specifically, the *man-days* scheme — the SDP's method in determining the number of shares of stock to which each FWB was entitled — ran counter to Section 4 of Administrative Order (*AO*) No. 10, Series of 1988 of the Department of Agrarian Reform (*DAR*);

this AO required the distribution of an *equal number of shares of stock to each qualified beneficiary*. Section 11 of the same AO mandated that the *stock distribution should also be implemented within three months from receipt* of the PARC's approval of the SDP, and that the transfer of the shares of stock in the name of the qualified beneficiaries should be *recorded in the stock and transfer books within 60 days from the implementation of the SDP*. HLI's SDP clearly and illegally provided for a 30-year distribution period.

2. ID.; ID.; ID.; THE AGRICULTURAL LAND OF THE CORPORATE OWNERS BECAME SUBJECT TO THE COMPULSORY COVERAGE OF CARP AND THEIR RIGHTS OF OWNERSHIP OVER THE SAID LANDS WERE TRANSFERRED BY LAW TO THE FARMER-WORKERS BENIFICIARIES (FWBS) WHEN THE PARC DISAPPROVED THE STOCK DISTRIBUTION PLAN (SDP).— In the absence of any valid stock distribution plan, HLI's agricultural land became subject to compulsory coverage by 1989 — the time HLI chose as its option in complying with RA No. 6657. Section 31 of RA No. 6657 states without any ambiguity that: SEC. 31. *Corporate Landowners.*— x x x **If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.** HLI exercised the option granted under this provision by putting in place and securing the approval of its SDP with its FWBs on November 21, 1989. Its exercise of the stock distribution scheme, however, failed due primarily to its failure to secure PARC's approval of the SDP. The legal consequence, by the very terms of the above provision, is for the "agricultural land of the corporate owners or corporation [to] be subject to the compulsory coverage of th[e] Act." Compulsory coverage — the option not taken — means the actual transfer of the HLI land to the FWBs which should be deemed to have taken place on November 21, 1989 when the first option HLI took failed. ***At that point, the rights of ownership of HLI were transferred by law to the FWBs, who should be deemed the owners of the HLI land (and who should enjoy the rights of ownership under Article 428 of***

the Civil Code, subject only to the restrictions and limitations that the medium of their ownership RA No. 6657 imposes).

3. ID.; ID.; JUST COMPENSATION; THE AGRICULTURAL LAND OF PETITIONER HLI WAS DEEMED TAKEN ON NOVEMBER 21, 1989, AND JUST COMPENSATION SHOULD BE COMPUTED AS OF THAT DATE.— "Taking" for purposes of determining just compensation necessarily took place as of 1989 not only because of the failure of the stock distribution option under Section 31 of RA No. 6657 (whose terms require the inclusion of the agricultural land under the law's compulsory coverage), but also because HLI chose to comply with the government's agrarian reform program through the SDP. The "taking" involved here was a revolutionary form of expropriation for purposes of agrarian reform. Expropriation under RA No. 6657 may take the form of either ***actual land distribution*** or ***stock distribution***. HLI was only allowed to use stock distribution because of RA No. 6657, and it lost this privilege upon the invalid exercise of this option when its approval was cancelled. x x x **[November 21, 1989]** is the point in time when HLI complied with its obligation under the CARL as a corporate landowner, through the stock distribution mode of compliance. This is the point, too, when the parties themselves determined — albeit under a contract that is null and void, but within the period of coverage that the CARL required and pursuant to the terms of what this law allowed — that compliance with the CARL should take place. **From the eminent domain perspective, this is the point when the deemed "taking" of the land, for agrarian reform purposes, should have taken place if the compulsory coverage and direct distribution of lands had been the compliance route taken. As the chosen mode of compliance was declared a nullity, the alternative compulsory coverage (that the SDOA was intended to replace) and the accompanying "taking" should thus be reckoned from [November 21, 1989.] Since "taking" in law is deemed to have occurred on November 21, 1989, the just compensation due to HLI for placing its agricultural lands under RA No. 6657's compulsory coverage should be computed as of this date.**

4. ID.; ID.; ID.; ADMINISTRATIVE AND JUDICIAL DETERMINATION OF JUST COMPENSATION,

DISTINGUISHED.— The determination of the **valuation of the HLI land as of 1989** is a matter that RA No. 6657 and its applicable regulation leaves with the Land Bank of the Philippines (*LBP*), DAR, and, ultimately, the RTC acting as Special Agrarian Court (*SAC*). The determination of just compensation is done at two levels: administrative determination by LBP and DAR and judicial determination by the SAC. The authority of LBP to make a preliminary valuation of the land is provided under Section 1 of Executive Order (*EO*) No. 405 dated June 14, 1990, x x x. After the preliminary determination of the value of the land, DAR then acquires administrative jurisdiction to determine just compensation, pursuant to Rule II, Section 1 5(b) of the 2009 DARAB Rules of Procedure. The process for the preliminary determination of just compensation is fully discussed in Rule XIX of the 2009 DARAB Rules. The judicial determination of just compensation commences when a petition for its determination is filed with the SAC, which has the original and primary jurisdiction pursuant to Section 57 of RA No. 6657. Notably, no overlapping of jurisdiction between DARAB and SAC occurs because, as the Court explained: x x x primary jurisdiction is vested in the DAR to determine in a preliminary manner the just compensation for the lands taken under the agrarian reform program, but such determination is subject to challenge before the courts. The resolution of just compensation cases for the taking of lands under agrarian reform is, after all, essentially a judicial function. The above process is a matter of law and regulation that the courts, including the Supreme Court, cannot deviate from. Hence, the referral of the valuation of the former HLI land under the parameters outlined in the Court's Resolution should initially be to DAR.

5. ID.; ID.; ID.; ALL NON-COMPENSATION ISSUES THAT THE COURT HAS NOT RESOLVED FOR DETERMINATION AND ALL RESOLVED ISSUES FOR IMPLEMENTATION SHOULD BE REFERRED TO THE DEPARTMENT OF AGRARIAN REFORM (DAR).— Other than the issue of just compensation over which jurisdiction is a matter of law, this case faces issues of compulsory coverage, land distribution, and restitution of amounts previously paid and of homelots previously granted. All these are within the jurisdiction of this Court to adjudicate, save only for the determination of facts not yet on record that this Court is not

equipped to undertake because of its limited trial capabilities. In lieu of remanding all the unresolved factual issues to the judicial trial courts, we should appropriately delegate the fact-finding to the DAR from which this case originated and which has primary jurisdiction over the issue of compensation that the Court has left untouched. Consequently, we should refer to DAR (1) all non-compensation issues that we have not resolved for determination, and (2) all resolved issues for implementation. To state what is obvious in law, what we have resolved here constitute the *law of the case* that none of the parties and no court or administrative body can reopen, modify, alter, or amend. As a matter of judicial policy and practice that is now established, the DAR should apply to the fullest the mediation and conciliation efforts that the judiciary has found very effective. Save only for the legal conclusions and final factual determinations the Court has reached (*e.g.*, the decision to distribute and the time of taking), all factual issues can be conciliated and agreed upon by mutual and voluntary action of the parties.

6. ID.; ID.; ID.; PAYMENT OF INTEREST ON JUST COMPENSATION, WHEN MAY BE AWARDED; NO IMPOSITION OF INTEREST ON JUST COMPENSATION DURING THE INTERVENING PERIOD IN CASE AT BAR. — No interest on the amount due as just compensation may be imposed. The Court awards interests when there is delay in the payment of just compensation, not for reasons of the fact of delay, but for the consequent income that the landowner should have received from the land had there been no immediate "taking" by the government. x x x. [The rules in the case of *Apo Fruits Corporation, Inc. v. Land Bank of the Philippines*], do not apply to the present case, since **HLI never lost possession and control of the land; all the incomes that the land generated were appropriated by HLI**; no loss of income on the land therefore exists that should be compensated by the imposition of interest on just compensation. For the same reason that [the Ponente opposes] the imposition of interest on the just compensation due to HLI, [he disagrees] with the view that "taking" should be pegged on January 6, 2006, when the Notice of Compulsory Coverage was issued. Supposedly, the "rationale in pegging the period of computing the value so close or near the present market value at the time of taking is to consider the appreciation of the property, brought about by

improvements in the property and other factors. x x x. It is patently iniquitous for landowners to have their real properties subject of expropriation valued several years or even decades behind." To peg the taking in 1989 would allegedly make HLI suffer the loss of its lands twice, since it will be paid its property at 1989 levels and any improvements it made on the land, which appreciated its value, would be ignored. Considering that HLI retained possession and control of the land, any benefit that could have been derived from such possession and control would be for HLI's account. In reality, therefore, HLI will be reaping benefits twice if the taking is pegged in 2006.

7. ID.; ID.; ID.; THE AMOUNT OF AMORTIZATION THAT THE FWBS ARE REQUIRED TO PAY TO THE GOVERNMENT IS NOT NECESSARILY BASED ON THE COST OF THE LAND.— The amount of amortization that the FWBs are required to pay the government is not necessarily based on the cost of the land. **DAR AO No. 6, Series of 1993** is the implementing rule of Section 26 of RA No. 6657. x x x A. As a general rule, land awarded pursuant to x x x R.A. 6657 shall be repaid by the Agrarian Reform Beneficiary (ARB) to LANDBANK in thirty (30) annual amortizations at six (6%) percent interest per annum. The annual amortization shall start one year from date of Certificate of Landownership Award (CLOA) registration. B. The payments by the ARBs for the first three (3) years shall be two and a half percent (2.5%) of AGP [Annual Gross Production] and five percent (5.0%) of AGP for the fourth and fifth years. To further make the payments affordable, **the ARBs shall pay ten percent (10.0%) of AGP or the regular amortization** [refers to the annuity based on the cost of the land and permanent improvements at six percent (6%) interest rate per annum payable in 30 years], **whichever is lower, from the sixth (6th) to the thirtieth (30th) year.** Construing these provisions, the Court explained in *Apo Fruits* that the payments made by the farmers-beneficiaries to the LBP are primarily based on a fixed percentage of their annual gross production or the value of the annual yield/produce of the land awarded to them. ***The cost of the land will only be considered as the basis for the payments made by the farmers-beneficiaries when this amount is lower than the amount based on the annual gross production***. Hence, the amount due to HLI as just compensation for the land is not necessarily

the basis of the amount that the FWBs are required to pay the government pursuant to Section 26 of RA No. 6657.

8. ID.; ID.; ID.; PETITIONER HLI IS A POSSESSOR IN GOOD FAITH; THE FWBS CANNOT OBLIGE THE PETITIONER HLI TO PAY THE PRICE OF THE LAND BUT THEY MUST APPROPRIATE THE WORKS AFTER PAYMENT OF INDEMNITY.— [H]LI, at the very least, has remained a *possessor in good faith* during all these times and has built and introduced improvements on the land in good faith. Its possession proceeded from its belief that it validly retained ownership of the land after choosing to adopt stock distribution option as its mode of compliance with the agrarian reform program, which option was approved (erroneously, as discussed) by PARC. Its possession, although wrongful, was in good faith. Under the Civil Code, a possessor in good faith is one who is not aware that there exists in his title or mode of acquisition any flaw that invalidates it. The relationship between the owner of the land (the FWBs starting November 21, 1989) and the builder in good faith (HLI) is governed by Article 448 of the Civil Code x x x. This provision is "manifestly intended to apply only to a case where one builds, plants, or sows on land in which he believes himself to have a claim of title." Generally, the owner of the land has the option of either (a) choosing to appropriate the works after payment of indemnity or (b) obliging the builder in good faith to pay the price of the land. Considering that the HLI land is, *by law*, subject to compulsory acquisition, the FWBs can no longer now exercise the option of obliging HLI to pay for the price of the land, and are thus left only with the first option of appropriating the works upon payment of indemnity pursuant to Articles 546 and 548.

9. ID.; ID.; ID.; THE COST OF THE NECESSARY AND USEFUL EXPENSES THAT GAVE RISE TO THE INCREASE IN VALUE OF THE LAND SHOULD BE REIMBURSED TO THE PETITIONER HLI AS INDEMNITY; COMPUTATION THEREOF.— The necessary expenses are those made for the proper preservation of the land and the improvements introduced, or those without expenses without which the land and the improvements would have been lost. These expenses include the taxes paid on the land and all other charges on the land. Useful expenses, on the other hand, are the expenses

incurred to give greater utility or productivity to the land and its improvements. Among others, these include the cost of roads, drainage, lighting, and other fixtures that HLI introduced into the land that increased its value and its eventual purchase price to third parties**. Pursuant to Article 448 of the Civil Code x x x all these improvements HLI can retain until it is reimbursed.** Under the unique facts of this case, **this indemnity should be paid together with the payment for just compensation and should be included in the total reckoning of what the parties owe one another.** x x x**.** [The Ponente takes] the view that the rule that prevailed with respect to the land and the improvements should still prevail. Thus, **the third parties' purchase price should be credited to the FWBs as owners**. The value of the improvements introduced by HLI on these lands, which led to the increase in the price of the land and its eventual sale to LIPCO/RCBC and (if proven to be valid) to LRC, should be subject to the builder in good faith provision of Article 448 of the Civil Code and the payment of indemnity to HLI computed under Articles 546 and 548 of the same Code. This would be true whether the sale was voluntary (as in the case of the sale to LIPCO/RCBC/LRC) or involuntary (as in the exercise of the power of eminent domain by government in securing the land for the SCTEX). In either case, **the cost of the necessary and useful expenses that gave rise to the increase in value of the land should be reimbursed to HLI as indemnity**. In simple mathematical terms, the computation of the amounts due the parties should run: **Amount Accruing to FWBs** ***= Purchase Price by 3rd Parties – the amounts due to HLI (the amount of just compensation FWBs should pay HLI + the indemnity due to HLI under Articles 546 and 548, etc.).***

10. ID.; ID.; ID.; RESTITUTION OF WHAT THE PARTIES RECEIVED UNDER THE DISAPPROVED SDP, PROPER. — The consequence of the nullification of the SDP's approval should have properly been the restitution of what the parties received under the disapproved SDP; **the parties must revert back to their respective situations prior to the execution of the SDP and must return whatever they received from each other under the SDP that, in legal contemplation, never took place.**

11. POLITICAL LAW; STATUTES; OPERATIVE FACT DOCTRINE; DOES NOT APPLY TO THE EXERCISE OF QUASI-ADJUDICATORY POWER; WHEN THE AGREEMENTS ARE NULLIFIED, THE PARTIES SHOULD BE RESTORED TO THEIR ORIGINAL STATE PRIOR TO THE EXECUTION OF THE NULLIFIED AGREEMENT; APPLIED.— In ruling on the present motion, the *ponencia* has apparently abandoned the view that the SDP, while illegal, should still be accorded recognition as a reality that was operative from the time it was put in place up to the time the PARC revocation. This change cannot be wrong as the "operative fact" doctrine applies only in considering the effects of the declaration unconstitutionality of, among others, ***executive acts that have the force and effect of law, i.e., those issued pursuant to a grant of quasi-legislative power.*** The doctrine does not apply to the exercise of quasi-adjudicatory power that PARC exercised as part of its mandate under RA No. 6657, which required its determination of facts and the applicable law in the course of implementing Section 31 of the law. Thus, the SDP, erroneously approved by PARC through Resolution No. 89-12-2, cannot be the basis for the grant of benefits to the FWBs as the approval was not in the exercise of quasi-legislative powers. In law, nullification of agreements — as we now undertake in our present ruling — dictates that the parties should be restored to their original state prior to the execution of the nullified agreement. This is the command of Articles 1409, 1411 and 1412 of the Civil Code and its supporting jurisprudence that this Court should follow. This means that (1) the 3% production share; (2) the 3% share I the proceeds of the sale of the lands; and (3) the homelots in relation with the revoked SDP should all be returned by the FWBs to HLI, subject to x x x conditions.

12. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657); HOMELOTS ALREADY GRANTED TO BOTH THE FWBS AND NON-FWBS CONSIDERED AS COMPULSORY ACQUISITIONS SUBJECT TO THE PAYMENT OF JUST COMPENSATION IN THE COURSE OF THE EXERCISE OF THE POWER OF EMINENT DOMAIN.— An undisputed fact is that the homelots do not form part of the 4,915 hectares covered by the SDP, and no obligation under RA No. 6657 exists for HLI to provide homelots. HLI — through TADECO, however, made

the grant of homelots apparently as a consideration for the adoption of the SDP that does not now legally exists. From this view, the homelots may be said to have in fact been donated by HLI so that these should not be taken back. [T]he grant of the homelots outside of the requirements of RA No. 6657 cannot be denied. In fairness, however, to HLI who made the grant in the spirit of and pursuant to the SDP, the parties cannot just be left as they are. The way out of this bind is to consider the homelots already granted to both FWBs and non-FWBs as compulsory acquisitions subject to the payment of just compensation in the course of the exercise of the power of eminent domain. The valuation of just compensation for these homelots, therefore, should be an issue to be brought to the DAR for its determination together with all other issue submitted to that forum. For the FWBs, the just compensation for these homelots shall be an item considered in the adjustment of the claims of HLI and the FWBs against one another. For non-FWBs who now enjoy their homelots, the matter should be submitted to DAR and to the LBP for their determination and action as these homelots are or were part of an agricultural estate that is subject to land reform.

13. ID.; ID.; NULLIFICATION OF THE SDP, CONSEQUENCES THEREOF.— As a consequence of the nullification of the SDP, the FWBs should return the following benefits to HLI: 1. the 59 million shares of stock of HLI; 2. the ₱150 million representing the 3% gross sales of the production of the agricultural lands; and 3. the ₱37.5 million representing the 3% proceeds from the sale of the 500 hectares of agricultural land (including the amount received as just compensation for the expropriation by the government of the land used for SCTEX). The 3% proceeds from the voluntary and involuntary sale of the agricultural land shall be offset against the value received by HLI as consideration for the sale, which should be turned over to the FWBs who are considered the owners of the land as of 1989. The taxes and expenses related to the transfer of titles should likewise be deducted as the same amounts would be incurred regardless of the seller (HLI or the FWBs). [A]djustments should also be made to allow for the payment of indemnity for the improvements HLI introduced on the land, pursuant to Articles 448, 546, and 548 of the Civil Code. As discussed above, this task has been delegated by the Court for factual determination to the DAR. To summarize, the purchase

price received by HLI for the sale of portions of the land should be turned over to the FWBs less (1) the 3% proceeds from the sale already given to the FWBs, (2) the taxes and expenses related to the transfer of titles, and (3) the value of the improvements HLI introduced according to Articles 448, 546, and 548 of the Civil Code. To be excluded from the benefits that should be returned to HLI are the wages and benefits that both the FWBs and non-FWBs received as employees of HLI. They are entitled to retain these as fruits of their labor; they received these as compensation earned for services rendered.

SERENO, *J., separate opinion (concurring and dissenting)*:

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (R.A. NO. 6657); JUST COMPENSATION; PAYMENT THEREOF BASED ON OUTDATED VALUES OF THE EXPROPRIATED LANDS IS TOO CONFISCATORY; THE TAKING OF THE EXPROPRIATED PROPERTY TO BE RECKONED FROM THE TIME OF THE APPROVAL OF THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA) IS UNJUST; REASONS.— For the Court to impose the reckoning period for the valuation of the expropriated Hacienda Luisita farmlands to its 1989 levels is an unwarranted departure from what the Philippine legal system has come to understand and accept (and continues to do so, as recently as last month) as the meaning of just compensation in agrarian reform cases since the 1988 Comprehensive Agrarian Reform Law (CARL). The decision taken by the Court today (albeit *pro hac vice*) to pay petitioner HLI an amount based on outdated values of the expropriated lands is too confiscatory considering the years of jurisprudence built by this Court. No reasonable explanation has been offered in this case to justify such deviation from our past decisions that would lead to a virtual non-compensation for petitioner HLI's lands. x x x [T]hat the "taking" is to be reckoned from the time of the approval of the SDOA is unjust for two reasons. *First*, the uniform jurisprudence on this matter is that taking is actual taking. *Second*, no clever restatement of the law is acceptable if it will result in injustice, and in this case, to a landowner who is differently treated from every other landowner.

2. ID.; ID.; ID.; REMAND OF THE CASE TO THE PROPER TRIAL COURT FOR THE RECEPTION OF EVIDENCE ON FACTUAL MATTERS, FOR PURPOSES OF DETERMINING JUST COMPENSATION DUE TO PETITIONER HACIENDA LUISITA INC. (HLI), WARRANTED.— The records of the case as it now stands sorely lack factual certainty for this Court to make a proper determination of the exact award of just compensation. It has only been in the media that a purported numerical value has been argued; no argument over such amount has ever taken place before this Court. Although this Court can provide guidelines for the concerned judicial authorities, the dearth in evidence to substantiate the value of the lands (regardless of whether it is reckoned from 1989 or 2006) requires that the parties be allowed to present before an impartial authority with jurisdiction to receive evidence, hear their cases and finally decide the matter. The Supreme Court is not a trier of facts. Factual matters such as the scope of the farmlands in the name of Tarlac Development Corporation (TADECO) or petitioner HLI that should be subject to CARP coverage, the number and value of the homelots given, the improvements introduced, the type of lands subject to coverage, and the amounts actually received by both the corporate landowner and the farmworker beneficiaries during the operation of the SDOA have yet to be convincingly determined to arrive at the amount of just compensation. The more equitable solution would be to allow reception of evidence on these factual matters and to relegate the adjudication of the same to the proper trial court with exclusive and original jurisdiction over the controversy.

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R E S O L U T I O N

VELASCO, JR., *J.*:

Before the Court are the *Motion to Clarify and Reconsider Resolution of November 22, 2011* dated December 16, 2011 filed by petitioner Hacienda Luisita, Inc. (HLI) and the *Motion for Reconsideration/Clarification* dated December 9, 2011 filed by private respondents Noel Mallari, Julio Suniga, Supervisory Group of Hacienda Luisita, Inc. and Windsor Andaya (collectively referred to as "Mallari, *et al*.").

In Our July 5, 2011 Decision[2] in the above-captioned case, this Court denied the petition for review filed by HLI and affirmed the assailed Presidential Agrarian Reform Council (PARC) Resolution No. 2005-32-01 dated December 22, 2005 and PARC Resolution No. 2006-34-01 dated May 3, 2006 with the modification that the original 6,296 qualified farmworker-beneficiaries of Hacienda Luisita (FWBs) shall have the option to remain as stockholders of HLI.

Upon separate motions of the parties for reconsideration, the Court, by Resolution[3] of November 22, 2011, recalled and set aside the option thus granted to the original FWBs to remain as stockholders of HLI, while maintaining that all the benefits and homelots received by all the FWBs shall be respected with no obligation to refund or return them.

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[2] G.R. No. 171101, 653 SCRA 154; hereinafter referred to as "July 5, 2011 Decision."

[3] G.R. No. 171101; hereinafter referred to as "November 22, 2011 Resolution."

HLI invokes the following grounds in support of its instant *Motion to Clarify and Reconsider Resolution of November 22, 2011* dated December 16, 2011:

A

WITH DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT IN DETERMINING THE JUST COMPENSATION, THE DATE OF "TAKING" IS NOVEMBER 21, 1989, WHEN PARC APPROVED HLI's SDP [STOCK DISPTRIBUTION PLAN] (sic) "IN VIEW OF THE FACT THAT THIS IS THE TIME THAT THE FWBs WERE CONSIDERED TO OWN AND POSSESS THE AGRICULTURAL LANDS IN HACIENDA LUISITA" BECAUSE:

(1) THE SDP IS PRECISELY A MODALITY WHICH THE AGRARIAN LAW GIVES THE LANDOWNER AS ALTERNATIVE TO COMPULSORY COVERAGE IN WHICH CASE, THEREFORE, THE FWBs CANNOT BE CONSIDERED AS OWNERS AND POSSESSORS OF THE AGRICULTURAL LANDS AT THE TIME THE SDP WAS APPROVED BY PARC;

(2) THE APPROVAL OF THE SDP CANNOT BE AKIN TO A NOTICE OF COVERAGE IN COMPULSORY COVERAGE OR ACQUISITION BECAUSE SDP AND COMPULSORY COVERAGE ARE TWO DIFFERENT MODALITIES WITH INDEPENDENT AND SEPARATE RULES AND MECHANISMS;

(3) THE NOTICE OF COVERAGE OF JANUARY 02, 2006 MAY, AT THE VERY LEAST, BE CONSIDERED AS THE TIME WHEN THE FWBs CAN BE CONSIDERED TO OWN AND POSSESS THE AGRICULTURAL LANDS OF HACIENDA LUISITA BECAUSE THAT IS THE ONLY TIME WHEN HACIENDA LUISITA WAS PLACED UNDER COMPULSORY ACQUISITION IN VIEW OF FAILURE OF HLI TO PERFORM CERTAIN OBLIGATIONS OF THE SDP, OR SDOA [STOCK DISTRIBUTION OPTION AGREEMENT];

(4) INDEED, THE IMMUTABLE RULE AND THE UNBENDING JURISPRUDENCE IS THAT "TAKING" TAKES PLACE WHEN THE OWNER IS ACTUALLY DEPRIVED OR DISPOSSESSED OF HIS PROPERTY;

(5) TO INSIST THAT THE "TAKING" IS WHEN THE SDP WAS APPROVED BY PARC ON NOVEMBER 21, 1989 AND THAT THE SAME BE CONSIDERED AS THE RECKONING PERIOD

TO DETERMINE THE JUST COMPENSATION IS DEPRIVATION OF LANDOWNER'S PROPERTY WITHOUT DUE PROCESS OF LAW;

(6) HLI SHOULD BE ENTITLED TO PAYMENT OF INTEREST ON THE JUST COMPENSATION.

B

WITH DUE RESPECT, THE HONORABLE COURT ERRED WHEN IT REVERSED ITS DECISION GIVING THE FWBs THE OPTION TO REMAIN AS HLI STOCKHOLDERS OR NOT, BECAUSE:

(1) IT IS AN EXERCISE OF A RIGHT OF THE FWB WHICH THE HONORABLE COURT HAS DECLARED IN ITS DECISION AND EVEN IN ITS RESOLUTION AND THAT HAS TO BE RESPECTED AND IMPLEMENTED;

(2) NEITHER THE CONSTITUTION NOR THE CARL [COMPREHENSIVE AGRARIAN REFORM LAW] REQUIRES THAT THE FWBs SHOULD HAVE CONTROL OVER THE AGRICULTURAL LANDS;

(3) THE OPTION HAS NOT BEEN SHOWN TO BE DETRIMENTAL BUT INSTEAD BENEFICIAL TO THE FWBs AS FOUND BY THE HONORABLE COURT.

C

WITH DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT THE PROCEEDS FROM THE SALES OF THE 500-HECTARE CONVERTED LOT AND THE 80.51-HECTARE SCTEX CANNOT BE RETAINED BY HLI BUT RETURNED TO THE FWBs AS BY SUCH MANNER; HLI IS USING THE CORPORATION CODE TO AVOID ITS LIABILITY TO THE FWBs FOR THE PRICE IT RECEIVED FROM THE SALES, BECAUSE:

(1) THE PROCEEDS OF THE SALES BELONG TO THE CORPORATION AND NOT TO EITHER HLI/TADECO OR THE FWBs, BOTH OF WHICH ARE STOCKHOLDERS ENTITLED TO THE EARNINGS OF THE CORPORATION AND TO THE NET ASSETS UPON LIQUIDATION;

(2) TO ALLOW THE RETURN OF THE PROCEEDS OF THE SALES TO FWBs IS TO IMPOSE ALL LIABILITIES OF THE CORPORATION ON HLI/TADECO WHICH IS UNFAIR AND VIOLATIVE OF THE CORPORATION CODE.

Mallari, *et al*. similarly put forth the following issues in its *Motion for Reconsideration/Clarification* dated December 9, 2011:

I

REPUBLIC ACT NO. 6657 [RA 6657] OR THE COMPREHENSIVE AGRARIAN REFORM LAW [CARL] DOES NOT PROVIDE THAT THE FWBs WHO OPT FOR STOCK DISTRIBUTION OPTION SHOULD RETAIN MAJORITY SHAREHOLDING OF THE COMPANY TO WHICH THE AGRICULTURAL LAND WAS GIVEN.

II

IF THE NOVEMBER 22, 2011 DECISION OF THIS HONORABLE COURT ORDERING LAND DISTRIBUTION WOULD BE FOLLOWED, THIS WOULD CAUSE MORE HARM THAN GOOD TO THE LIVES OF THOSE PEOPLE LIVING IN THE HACIENDA, AND MORE PARTICULARLY TO THE WELFARE OF THE FWBs.

III

ON THE CONCLUSION BY THIS HONORABLE COURT THAT THE OPERATIVE FACT DOCTRINE IS APPLICABLE TO THE CASE AT BAR, THEN FWBs WHO MERELY RELIED ON THE PARC APPROVAL SHOULD NOT BE PREJUDICED BY ITS SUBSEQUENT NULLIFICATION.

IV

THOSE WHO CHOOSE LAND SHOULD RETURN WHATEVER THEY GOT FROM THE SDOA [STOCK DISTRIBUTION OPTION AGREEMENT] AND TURN OVER THE SAME TO HLI FOR USE IN THE OPERATIONS OF THE COMPANY, WHICH IN TURN WILL REDOUND TO THE BENEFIT OF THOSE WHO WILL OPT TO STAY WITH THE SDO.

V

FOR THOSE WHO CHOOSE LAND, THE TIME OF TAKING FOR PURPOSES OF JUST COMPENSATION SHOULD BE AT THE TIME HLI WAS DISPOSSESSED OF CONTROL OVER THE PROPERTY, AND THAT PAYMENT BY [THE GOVERNMENT] OF THE LAND SHOULD BE TURNED OVER TO HLI FOR THE BENEFIT AND USE OF THE COMPANY'S OPERATIONS THAT WILL, IN TURN, REDOUND TO THE BENEFIT OF FWBs WHO WILL OPT TO STAY WITH THE COMPANY.

Basically, the issues raised by HLI and Mallari, *et al.* boil down to the following: (1) determination of the date of "taking"; (2) propriety of the revocation of the option on the part of the original FWBs to remain as stockholders of HLI; (3) propriety of distributing to the qualified FWBs the proceeds from the sale of the converted land and of the 80.51-hectare Subic-Clark-Tarlac Expressway (SCTEX) land; and (4) just compensation for the homelots given to the FWBs.

Payment of just compensation

HLI contends that since the SDP is a modality which the agrarian reform law gives the landowner as alternative to compulsory coverage, then the FWBs cannot be considered as owners and possessors of the agricultural lands of Hacienda Luisita at the time the SDP was approved by PARC.[4] It further claims that the approval of the SDP is not akin to a Notice of Coverage in compulsory coverage situations because stock distribution option and compulsory acquisition are two (2) different modalities with independent and separate rules and mechanisms. Concomitantly, HLI maintains that the Notice of Coverage issued on January 2, 2006 may, at the very least, be considered as the date of "taking" as this was the only time that the agricultural lands of Hacienda Luisita were placed under compulsory acquisition in view of its failure to perform certain obligations under the SDP.[5]

Mallari, *et al.* are of a similar view. They contend that Tarlac Development Corporation (Tadeco), having as it were majority control over HLI, was never deprived of the use and benefit of the agricultural lands of Hacienda Luisita. Upon this premise, Mallari, *et al.* claim the "date of taking" could not be at the time of the approval of the SDP.[6]

A view has also been advanced that the date of the "taking" should be left to the determination of the Department of Agrarian

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[4] HLI MR, pp. 10-11.

[5] *Id.* at 11.

[6] Mallari, *et al.* MR, p. 15.

Reform (DAR) in conjunction with its authority to preliminarily determine the just compensation for the land made subject of CARP.

Alyansa ng mga Manggagawang Bukid sa Hacienda Luisita (AMBALA), in its *Comment/Opposition (to the Motion to Clarify and Reconsider Resolution of November 22, 2011)* dated January 30, 2012, on the other hand, alleges that HLI should not be paid just compensation altogether.[7] It argues that when the Court of Appeals (CA) dismissed the case[8] the government of then President Ferdinand E. Marcos initially instituted and won against Tadeco, the CA allegedly imposed as a condition for its dismissal of the action that should the stock distribution program fail, the lands should be distributed to the FWBs, with Tadeco receiving by way of compensation only the amount of PhP 3,988,000.[9]

AMBALA further contends that if HLI or Tadeco is, at all, entitled to just compensation, the "taking" should be reckoned as of November 21, 1989, the date when the SDP was approved, and the amount of compensation should be PhP 40,000 per hectare as this was the same value declared in 1989 by Tadeco to ensure that the FWBs will not control the majority stockholdings in HLI.[10]

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[7] AMBALA MR, p. 4.

[8] As a backgrounder, and as stated in Our July 5, 2011 Decision, the government filed a suit on May 7, 1980 before the Manila Regional Trial Court (RTC) against Tadeco, *et al.* for them to surrender Hacienda Luisita to the then Ministry of Agrarian Reform (MAR, now the Department of Agrarian Reform [DAR]) so that the land can be distributed to the farmers at cost. For its part, Tadeco alleged that aside from the fact that Hacienda Luisita does not have tenants, the sugar lands, of which the hacienda consisted, are not covered by existing agrarian reform legislations.

Eventually, the Manila RTC rendered judgment ordering Tadeco to surrender Hacienda Luisita to the MAR. Aggrieved, Tadeco appealed to the CA. On March 17, 1988, the Office of the Solicitor General (OSG) moved to withdraw the government's case against Tadeco, *et al.* By Resolution of May 18, 1988, the CA dismissed the case, subject to the obtention by Tadeco of the PARC's approval of a stock distribution plan that must initially be implemented after such approval shall have been secured.

[9] AMBALA MR, p. 6.

[10] *Id.* at 17.

At the outset, it should be noted that Section 2, Rule 52 of the Rules of Court states, "No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." A second motion for reconsideration, as a rule, is prohibited for being a mere reiteration of the issues assigned and the arguments raised by the parties.[11]

In the instant case, the issue on just compensation and the grounds HLI and Mallari, *et al*. rely upon in support of their respective stance on the matter had been previously raised by them in their first motion for reconsideration and fully passed upon by the Court in its November 22, 2011 Resolution. The similarities in the issues then and now presented and the grounds invoked are at once easily discernible from a perusal of the November 22, 2011 Resolution, the pertinent portions of which read:

> In Our July 5, 2011 Decision, We stated that "HLI shall be paid just compensation for the remaining agricultural land that will be transferred to DAR for land distribution to the FWBs." We also ruled that the date of the "taking" is November 21, 1989, when PARC approved HLI's SDP per PARC Resolution No. 89-12-2.
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> In its *Motion for Clarification and Partial Reconsideration*, HLI disagrees with the foregoing ruling and contends that the "taking" should be reckoned from finality of the Decision of this Court, or at the very least, the reckoning period may be tacked to January 2, 2006, the date when the Notice of Coverage was issued by the DAR pursuant to PARC Resolution No. 2006-34-01 recalling/revoking the approval of the SDP.
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> For their part, Mallari, *et al*. argue that the valuation of the land cannot be based on November 21, 1989, the date of approval of the SDP. Instead, they aver that the date of "taking" for valuation purposes is a factual issue best left to the determination of the trial courts.
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> At the other end of the spectrum, AMBALA alleges that HLI should no longer be paid just compensation for the agricultural land that will be distributed to the FWBs, since the Manila Regional

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[11] See *Lao v. Co*, G.R. No. 168198, August 22, 2008, 563 SCRA 139, 143; citing *Balindong v. CA*, G.R. No. 159962, December 16, 2004, 447 SCRA 200, 210.

Trial Court (RTC) already rendered a decision ordering the Cojuangcos to transfer the control of Hacienda Luisita to the Ministry of Agrarian Reform, which will distribute the land to small farmers after compensating the landowners ₱3.988 million. In the event, however, that this Court will rule that HLI is indeed entitled to compensation, AMBALA contends that it should be pegged at forty thousand pesos (PhP 40,000) per hectare, since this was the same value that Tadeco declared in 1989 to make sure that the farmers will not own the majority of its stocks.

Despite the above propositions, We maintain that the date of "taking" is November 21, 1989, the date when PARC approved HLI's SDP per PARC Resolution No. 89-12-2, in view of the fact that this is the time that the FWBs were considered to own and possess the agricultural lands in Hacienda Luisita. To be precise, these lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP, that is, November 21, 1989. Thus, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition. Further, any doubt should be resolved in favor of the FWBs. As this Court held in *Perez-Rosario v. CA*:

> It is an established social and economic fact that the escalation of poverty is the driving force behind the political disturbances that have in the past compromised the peace and security of the people as well as the continuity of the national order. To subdue these acute disturbances, the legislature over the course of the history of the nation passed a series of laws calculated to accelerate agrarian reform, ultimately to raise the material standards of living and eliminate discontent. Agrarian reform is a perceived solution to social instability. The edicts of social justice found in the Constitution and the public policies that underwrite them, the extraordinary national experience, and the prevailing national consciousness, all command the great departments of government to tilt the balance in favor of the poor and underprivileged whenever reasonable doubt arises in the interpretation of the law. But annexed to the great and sacred charge of protecting the weak is the diametric function to put every effort to arrive at an equitable solution for all parties concerned: the jural postulates of social justice cannot shield illegal acts, nor do they sanction false sympathy towards a certain class, nor yet should they deny justice to the landowner whenever truth and justice happen to be on her side. In the

> occupation of the legal questions in all agrarian disputes whose outcomes can significantly affect societal harmony, the considerations of social advantage must be weighed, an inquiry into the prevailing social interests is necessary in the adjustment of conflicting demands and expectations of the people, and the social interdependence of these interests, recognized. (Emphasis and citations omitted.)

Considering that the issue on just compensation has already been passed upon and denied by the Court in its November 22, 2011 Resolution, a subsequent motion touching on the same issue undeniably partakes of a second motion for reconsideration, hence, a prohibited pleading, and as such, the motion or plea must be denied. Sec. 3 of Rule 15 of the Internal Rules of the Supreme Court is clear:

> SEC. 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*.

Nonetheless, even if we entertain said motion and examine the arguments raised by HLI and Mallari, *et al.* one last time, the result will be the same.

Sec. 4, Article XIII of the 1987 Constitution expressly provides that the taking of land for use in the agrarian reform program of the government is conditioned on the payment of just compensation. As stated:

> Section 4. 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. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and **subject to the payment of just compensation**. (Emphasis supplied.)

Just compensation has been defined as "the full and fair equivalent of the property taken from its owner by the expropriator."[12] The measure is not the taker's gain, but the owner's loss.[13] In determining just compensation, the price or value of the property at the time it was taken from the owner and appropriated by the government shall be the basis. If the government takes possession of the land before the institution of expropriation proceedings, the value should be fixed as of the time of the taking of said possession, not of the filing of the complaint.[14]

In *Land Bank of the Philippines v. Livioco,* the Court held that "the 'time of taking' is the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred to the Republic."[15] It should be noted, however, that "taking" does not only take place upon the issuance of title either in the name of the Republic or the beneficiaries of the Comprehensive Agrarian Reform Program (CARP). "Taking" also occurs when agricultural lands are voluntarily offered by a landowner and approved by PARC for CARP coverage through the stock distribution scheme, as in the instant case. Thus, HLI's submitting its SDP for approval is an acknowledgment on its part that the agricultural lands of Hacienda Luisita are covered by CARP. However, it was the PARC approval which should be considered as the effective date of "taking" as it was only

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[12] *National Power Corporation v. Diato-Bernal*, G.R. No. 180979, December 15, 2010, 638 SCRA 660, 669.

[13] *Id.*

[14] *Republic v. CA*, G.R. No. 160379, August 14, 2009, 596 SCRA 57, 70.

[15] G.R. No. 170685, September 22, 2010, 631 SCRA 86, 112-113.

during this time that the government officially confirmed the CARP coverage of these lands.

Indeed, stock distribution option and compulsory land acquisition are two (2) different modalities under the agrarian reform program. Nonetheless, both share the same end goal, that is, to have "a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation."[16]

The fact that Sec. 31 of Republic Act No. 6657 (RA 6657) gives corporate landowners the option to give qualified beneficiaries the right to avail of a stock distribution or, in the phraseology of the law, "the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets," does not detract from the avowed policy of the agrarian reform law of equitably distributing ownership of land. The difference lies in the fact that instead of actually distributing the agricultural lands to the farmer-beneficiaries, these lands are held by the corporation as part of the capital contribution of the farmer-beneficiaries, not of the landowners, under the stock distribution scheme. The end goal of equitably distributing ownership of land is, therefore, undeniable. And since it is only upon the approval of the SDP that the agricultural lands actually came under CARP coverage, such approval operates and takes the place of a notice of coverage ordinarily issued under compulsory acquisition.

Moreover, precisely because due regard is given to the rights of landowners to just compensation, the law on stock distribution option acknowledges that landowners can require payment for the shares of stock corresponding to the value of the agricultural lands in relation to the outstanding capital stock of the corporation.

Although Tadeco did not require compensation for the shares of stock corresponding to the value of the agricultural lands in relation to the outstanding capital stock of HLI, its inability to

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[16] RA 6657, Sec. 2.

receive compensation cannot be attributed to the government. The second paragraph of Sec. 31 of RA 6657 explicitly states that "[u]pon certification by DAR, corporations owning agricultural lands may give their qualified beneficiaries **the right to purchase** such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. x x x"[17] On the basis of this statutory provision, Tadeco could have exacted payment for such shares of stock corresponding to the value of the agricultural lands of Hacienda Luisita in relation to the outstanding capital stock of HLI, but it did not do so.

What is notable, however, is that the divestment by Tadeco of the agricultural lands of Hacienda Luisita and the giving of the shares of stock for free is nothing but an enticement or incentive for the FWBs to agree with the stock distribution option scheme and not further push for land distribution. And the stubborn fact is that the "man days" scheme of HLI impelled the FWBs to work in the hacienda in exchange for such shares of stock.

Notwithstanding the foregoing considerations, the suggestion that there is "taking" only when the landowner is deprived of the use and benefit of his property is not incompatible with Our conclusion that "taking" took place on November 21, 1989. As mentioned in Our July 5, 2011 Decision, even from the start, the stock distribution scheme appeared to be Tadeco's preferred option in complying with the CARP when it organized HLI as its spin-off corporation in order to facilitate stock acquisition by the FWBs. For this purpose, Tadeco assigned and conveyed to HLI the agricultural lands of Hacienda Luisita, set at 4,915.75 hectares, among others. These agricultural lands constituted as the capital contribution of the FWBs in HLI. In effect, Tadeco deprived itself of the ownership over these lands when it transferred the same to HLI.

While it is true that Tadeco has majority control over HLI, the Court cannot subscribe to the view Mallari, *et al.* espouse

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[17] Emphasis supplied.

that, on the basis of such majority stockholding, Tadeco was never deprived of the use and benefit of the agricultural lands of Hacienda Luisita it divested itself in favor of HLI.

It bears stressing that "[o]wnership is defined as a relation in law by virtue of which a thing pertaining to one person is completely subjected to his will in everything not prohibited by law or the concurrence with the rights of another."[18] The attributes of ownership are: *jus utendi* or the right to possess and enjoy, *jus fruendi* or the right to the fruits, *jus abutendi* or the right to abuse or consume, *jus disponendi* or the right to dispose or alienate, and *jus vindicandi* or the right to recover or vindicate.[19]

When the agricultural lands of Hacienda Luisita were transferred by Tadeco to HLI in order to comply with CARP through the stock distribution option scheme, sealed with the imprimatur of PARC under PARC Resolution No. 89-12-2 dated November 21, 1989, Tadeco was consequently dispossessed of the afore-mentioned attributes of ownership. Notably, Tadeco and HLI are two different entities with separate and distinct legal personalities. Ownership by one cannot be considered as ownership by the other.

Corollarily, it is the official act by the government, that is, the PARC's approval of the SDP, which should be considered as the reckoning point for the "taking" of the agricultural lands of Hacienda Luisita. Although the transfer of ownership over the agricultural lands was made prior to the SDP's approval, it is this Court's consistent view that these lands officially became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP. And as We have mentioned in Our November 22, 2011 Resolution, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition.

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[18] *Tatad v. Garcia*, G.R. No. 114222, April 6, 1995, 243 SCRA 436, 453; citing 2 Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 45 (1992).

[19] *Samartino v. Raon*, G.R. No. 131482, July 3, 2002, 383 SCRA 664, 674.

Further, if We adhere to HLI's view that the Notice of Coverage issued on January 2, 2006 should, at the very least, be considered as the date of "taking" as this was the only time that the agricultural portion of the hacienda was placed under compulsory acquisition in view of HLI's failure to perform certain obligations under the SDP, this Court would, in effect, be penalizing the qualified FWBs twice for acceding to the adoption of the stock distribution scheme: *first*, by depriving the qualified FWBs of the agricultural lands that they should have gotten early on were it not for the adoption of the stock distribution scheme of which they only became minority stockholders; and *second*, by making them pay higher amortizations for the agricultural lands that should have been given to them decades ago at a much lower cost were it not for the landowner's initiative of adopting the stock distribution scheme "for free."

Reiterating what We already mentioned in Our November 22, 2011 Resolution, "[e]ven if it is the government which will pay the just compensation to HLI, this will also affect the FWBs as they will be paying higher amortizations to the government if the 'taking' will be considered to have taken place only on January 2, 2006." As aptly observed by Justice Leonardo-De Castro in her Concurring Opinion, "this will put the land beyond the capacity of the [FWBs] to pay," which this Court should not countenance.

Considering the above findings, it cannot be gainsaid that effective "taking" took place in the case at bar upon the approval of the SDP, that is, on November 21, 1989.

HLI postulates that just compensation is a question of fact that should be left to the determination by the DAR, Land Bank of the Philippines (LBP) or even the special agrarian court (SAC).[20] As a matter of fact, the Court, in its November 22, 2011 Resolution, dispositively ordered the DAR and the LBP to determine the compensation due to HLI. And as indicated in the body of said Resolution:

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[20] HLI MR, pp. 21-23.

The foregoing notwithstanding, it bears stressing that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner. The landowner can file an original action with the RTC acting as a special agrarian court to determine just compensation. The court has the right to review with finality the determination in the exercise of what is admittedly a judicial function.

As regards the issue on when "taking" occurred with respect to the agricultural lands in question, We, however, maintain that this Court can rule, as it has in fact already ruled on its reckoning date, that is, November 21, 1989, the date of issuance of PARC Resolution No. 89-12-2, based on the above-mentioned disquisitions. The investment on SACs of original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners[21] will not preclude the Court from ruling upon a matter that may already be resolved based on the records before Us. By analogy, Our ruling in *Heirs of Dr. Jose Deleste v. LBP* is applicable:

> Indeed, it is the Office of the DAR Secretary which is vested with the primary and exclusive jurisdiction over all matters involving the implementation of the agrarian reform program. **However, this will not prevent the Court from assuming jurisdiction over the petition considering that the issues raised in it may already be resolved on the basis of the records before Us. Besides, to allow the matter to remain with the Office of the DAR Secretary would only cause unnecessary delay and undue hardship on the parties.** Applicable, by analogy, is Our ruling in the recent *Bagong Pagkakaisa ng Manggagawa ng Triumph International v. Department of Labor and Employment Secretary*, where We held:
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> > But as the CA did, we similarly recognize that undue hardship, to the point of injustice, would result if a remand would be ordered under a situation where we are in the position to resolve the case based on the records before us. As we said in *Roman Catholic Archbishop of Manila v. Court of Appeals*:
> >
> > [w]e have laid down the rule that the remand of the case to the lower court for further reception of evidence is not necessary

[21] RA 6657, Sec. 57.

> where the Court is in a position to resolve the dispute based on the records before it. On many occasions, the Court, in the public interest and for the expeditious administration of justice, has resolved actions on the merits instead of remanding them to the trial court for further proceedings, such as where the ends of justice, would not be subserved by the remand of the case.[22] (Emphasis supplied; citations omitted.)

Even though the compensation due to HLI will still be preliminarily determined by DAR and LBP, subject to review by the RTC acting as a SAC, the fact that the reckoning point of "taking" is already fixed at a certain date should already hasten the proceedings and not further cause undue hardship on the parties, especially the qualified FWBs.

By a vote of 8-6, the Court affirmed its ruling that the date of "taking" in determining just compensation is November 21, 1989 when PARC approved HLI's stock option plan.

As regards the issue of interest on just compensation, We also leave this matter to the DAR and the LBP, subject to review by the RTC acting as a SAC.

Option will not ensure control over agricultural lands

In Our November 22, 2011 Resolution, this Court held:

> After having discussed and considered the different contentions raised by the parties in their respective motions, We are now left to contend with one crucial issue in the case at bar, that is, control over the agricultural lands by the qualified FWBs.
>
> Upon a review of the facts and circumstances, We realize that the FWBs will never have control over these agricultural lands for as long as they remain as stockholders of HLI. In Our July 5, 2011 Decision, this Court made the following observations:
>
> > There is, thus, nothing unconstitutional in the formula prescribed by RA 6657. **The policy on agrarian reform is that control over the agricultural land must always be in the hands of the farmers.** Then it falls on the shoulders of

[22] G.R. No. 169913, June 8, 2011, 651 SCRA 352, 374-375.

> DAR and PARC to see to it the farmers should always own majority of the common shares entitled to elect the members of the board of directors to ensure that the farmers will have a clear majority in the board. Before the SDP is approved, strict scrutiny of the proposed SDP must always be undertaken by the DAR and PARC, such that the value of the agricultural land contributed to the corporation must always be more than 50% of the total assets of the corporation to ensure that the majority of the members of the board of directors are composed of the farmers. The PARC composed of the President of the Philippines and cabinet secretaries must see to it that control over the board of directors rests with the farmers by rejecting the inclusion of non-agricultural assets which will yield the majority in the board of directors to non-farmers. Any deviation, however, by PARC or DAR from the correct application of the formula prescribed by the second paragraph of Sec. 31 of RA 6675 does not make said provision constitutionally infirm. Rather, it is the application of said provision that can be challenged. Ergo, Sec. 31 of RA 6657 does not trench on the constitutional policy of ensuring control by the farmers.

In line with Our finding that control over agricultural lands must always be in the hands of the farmers, We reconsider our ruling that the qualified FWBs should be given an option to remain as stockholders of HLI, inasmuch as these qualified FWBs will never gain control given the present proportion of shareholdings in HLI.

A revisit of HLI's Proposal for Stock Distribution under CARP and the Stock Distribution Option Agreement (SDOA) upon which the proposal was based reveals that the total assets of HLI is PhP 590,554,220, while the value of the 4,915.7466 hectares is PhP 196,630,000. Consequently, the share of the farmer-beneficiaries in the HLI capital stock is 33.296% (196,630,000 divided by 590,554.220); 118,391,976.85 HLI shares represent 33.296%. Thus, even if all the holders of the 118,391,976.85 HLI shares unanimously vote to remain as HLI stockholders, which is unlikely, control will never be placed in the hands of the farmer-beneficiaries. Control, of course, means the majority of 50% plus at least one share of the common shares and other voting shares. Applying the formula to the HLI stockholdings, the number of shares that will constitute the majority is 295,112,101 shares (590,554,220 divided by 2 plus one [1] HLI share). The 118,391,976.85 shares subject to the SDP approved by PARC substantially fall short of the 295,112,101 shares

needed by the FWBs to acquire control over HLI. Hence, control can NEVER be attained by the FWBs. There is even no assurance that 100% of the 118,391,976.85 shares issued to the FWBs will all be voted in favor of staying in HLI, taking into account the previous referendum among the farmers where said shares were not voted unanimously in favor of retaining the SDP. In light of the foregoing consideration, the option to remain in HLI granted to the individual FWBs will have to be recalled and revoked.

Moreover, bearing in mind that with the revocation of the approval of the SDP, HLI will no longer be operating under SDP and will only be treated as an ordinary private corporation; the FWBs who remain as stockholders of HLI will be treated as ordinary stockholders and will no longer be under the protective mantle of RA 6657. (Emphasis in the original.)

HLI, however, takes exception to the above-mentioned ruling and contends that "[t]here is nothing in the Constitution nor in the agrarian laws which require that control over the agricultural lands must always be in the hands of the farmers."[23] Moreover, both HLI and Mallari, *et al*. claim that the option given to the qualified FWBs to remain as stockholders of HLI is neither iniquitous nor prejudicial to the FWBs.[24]

The Court agrees that the option given to the qualified FWBs whether to remain as stockholders of HLI or opt for land distribution is neither iniquitous nor prejudicial to the FWBs. Nonetheless, the Court is not unmindful of the policy on agrarian reform that control over the agricultural land must always be in the hands of the farmers. Contrary to the stance of HLI, both the Constitution and RA 6657 intended the farmers, individually or collectively, to have control over the agricultural lands of HLI; otherwise, all these rhetoric about agrarian reform will be rendered for naught. Sec. 4, Art. XIII of the 1987 Constitution provides:

Section 4. The State shall, by law, undertake an agrarian reform program founded on **the right of farmers and regular farmworkers**

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[23] HLI MR, p. 25.

[24] *Id.* at 30; Mallari, *et al.* MR, p. 8.

who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied.)

Pursuant to and as a mechanism to carry out the above-mentioned constitutional directive, RA 6657 was enacted. In consonance with the constitutional policy on agrarian reform, Sec. 2 of RA 6657 also states:

SECTION 2. *Declaration of Principles and Policies*. — It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farm workers will receive the highest consideration to promote social justice and to move the nation towards sound rural development and industrialization, and the establishment of owner cultivatorship of economic-sized farms as the basis of Philippine agriculture.

To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farm workers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

The agrarian reform program is 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 share of the fruits thereof. To this end, the State shall encourage the just distribution of all agricultural lands, subject to the priorities and retention limits set forth in this Act, having taken into account ecological, developmental, and equity considerations, and subject to the payment of just compensation. The State shall respect the right of small landowners and shall provide incentives for voluntary land-sharing.

The State shall recognize the right of farmers, farm workers and landowners, as well as cooperatives and other independent farmers'

organization, to participate in the planning, organization, and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing and other support services.

The State shall apply the principles of agrarian reform or stewardship, whenever applicable, in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain, under lease or concession, suitable to agriculture, subject to prior rights, homestead rights of small settlers and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farm workers in its own agricultural estates, which shall be distributed to them in the manner provided by law.

By means of appropriate incentives, the State shall encourage the formation and maintenance of economic-sized family farms to be constituted by individual beneficiaries and small landowners.

The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production and marketing assistance and other services, The State shall also protect, develop and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

The State shall be guided by the principles that land has a social function and land ownership has a social responsibility. Owners of agricultural land have the obligation to cultivate directly or through labor administration the lands they own and thereby make the land productive.

The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment and privatization of public sector enterprises. Financial instruments used as payment for lands shall contain features that shall enhance negotiability and acceptability in the marketplace.

The State may lease undeveloped lands of the public domain to qualified entities for the development of capital-intensive farms,

traditional and pioneering crops especially those for exports subject to the prior rights of the beneficiaries under this Act. (Emphasis supplied.)

Based on the above-quoted provisions, the notion of farmers and regular farmworkers having the right to own directly or collectively the lands they till is abundantly clear. We have extensively discussed this ideal in Our July 5, 2011 Decision:

> The wording of the provision is unequivocal — the farmers and regular farmworkers have a right TO OWN DIRECTLY OR COLLECTIVELY THE LANDS THEY TILL. The basic law allows two (2) modes of land distribution—direct and indirect ownership. Direct transfer to individual farmers is the most commonly used method by DAR and widely accepted. Indirect transfer through collective ownership of the agricultural land is the alternative to direct ownership of agricultural land by individual farmers. The aforequoted Sec. 4 EXPRESSLY authorizes collective ownership by farmers. No language can be found in the 1987 Constitution that disqualifies or prohibits corporations or cooperatives of farmers from being the legal entity through which collective ownership can be exercised. The word 'collective' is defined as 'indicating a number of persons or things considered as constituting one group or aggregate,' while 'collectively' is defined as 'in a collective sense or manner; in a mass or body.' By using the word 'collectively,' the Constitution allows for indirect ownership of land and not just outright agricultural land transfer. This is in recognition of the fact that land reform may become successful even if it is done through the medium of juridical entities composed of farmers.
>
> Collective ownership is permitted in two (2) provisions of RA 6657. Its Sec. 29 allows workers' cooperatives or associations to collectively own the land, while the second paragraph of Sec. 31 allows corporations or associations to own agricultural land with the farmers becoming stockholders or members. Said provisions read:
>
> > SEC. 29. *Farms owned or operated by corporations or other business associations*.— In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC.
> >
> > In general, lands shall be distributed directly to the individual worker-beneficiaries.

> In case it is not economically feasible and sound to divide the land, then **it shall be owned collectively by the worker beneficiaries who shall form a workers' cooperative or association** which will deal with the corporation or business association. x x x
>
> SEC. 31. *Corporate Landowners.* — x x x
>
> x x x x x x x x x
>
> Upon certification by the DAR, **corporations** owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the **corporation** that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to **associations**, with respect to their equity or participation. x x x

Clearly, workers' cooperatives or associations under Sec. 29 of RA 6657 and corporations or associations under the succeeding Sec. 31, as differentiated from individual farmers, are authorized vehicles for the collective ownership of agricultural land. Cooperatives can be registered with the Cooperative Development Authority and acquire legal personality of their own, while corporations are juridical persons under the Corporation Code. Thus, Sec. 31 is constitutional as it simply implements Sec. 4 of Art. XIII of the Constitution that land can be owned COLLECTIVELY by farmers. Even the framers of the l987 Constitution are in unison with respect to the two (2) modes of ownership of agricultural lands tilled by farmers—DIRECT and COLLECTIVE, thus:

> MR. NOLLEDO. And when we talk of the phrase 'to own **directly**,' we mean the principle of **direct ownership by the tiller**?
>
> MR. MONSOD. Yes.
>
> MR. NOLLEDO. And when we talk of '**collectively**,' we mean communal ownership, stewardship or State ownership?
>
> MS. NIEVA. In this section, we conceive of cooperatives; **that is farmers' cooperatives owning the land**, not the State.

MR. NOLLEDO. And when we talk of '**collectively**,' referring to farmers' cooperatives, do the farmers own specific areas of land where they only unite in their efforts?

MS. NIEVA. That is one way.

MR. NOLLEDO. Because I understand that there are two basic systems involved: the 'moshave' type of agriculture and the 'kibbutz.' So are both contemplated in the report?

MR. TADEO. ***Ang dalawa kasing pamamaraan ng pagpapatupad ng tunay na reporma sa lupa ay ang pagmamay-ari ng lupa na hahatiin sa individual na pagmamay-ari – directly – at ang tinatawag na sama-samang gagawin ng mga magbubukid.*** *Tulad sa Negros, ang gusto ng mga magbubukid ay gawin nila itong 'cooperative or collective farm.' Ang ibig sabihin ay* ***sama-sama*** *nilang sasakahin.*

x x x x x x x x x

MR. TINGSON. x x x When we speak here of 'to own directly or collectively the lands they till,' is this land for the tillers rather than land for the landless? Before, we used to hear 'land for the landless,' but now the slogan is 'land for the tillers.' Is that right?

MR. TADEO. *Ang prinsipyong umiiral dito ay iyong* land for the tillers. ***Ang ibig sabihin ng 'directly' ay tulad sa implementasyon sa rice and corn lands kung saan inaari na ng mga magsasaka ang lupang binubungkal nila. Ang ibig sabihin naman ng 'collectively' ay sama-samang paggawa sa isang lupain o isang bukid****, katulad ng sitwasyon sa Negros.*

As Commissioner Tadeo explained, the farmers will work on the agricultural land 'sama-sama' or collectively. Thus, the main requisite for collective ownership of land is collective or group work by farmers of the agricultural land. Irrespective of whether the landowner is a cooperative, association or corporation composed of farmers, as long as concerted group work by the farmers on the land is present, then it falls within the ambit of collective ownership scheme. (Emphasis in the original; underscoring supplied.)

As aforequoted, there is collective ownership as long as there is a concerted group work by the farmers on the land, regardless of whether the landowner is a cooperative, association or

corporation composed of farmers. However, this definition of collective ownership should be read in light of the clear policy of the law on agrarian reform, which is to emancipate the tiller from the bondage of the soil and empower the common people. Worth noting too is its noble goal of rectifying "the acute imbalance in the distribution of this precious resource among our people."[25] Accordingly, HLI's insistent view that control need not be in the hands of the farmers translates to allowing it to run roughshod against the very reason for the enactment of agrarian reform laws and leave the farmers in their shackles with sheer lip service to look forward to.

Notably, it has been this Court's consistent stand that control over the agricultural land must always be in the hands of the farmers. As We wrote in Our July 5, 2011 Decision:

> There is, thus, nothing unconstitutional in the formula prescribed by RA 6657. **The policy on agrarian reform is that control over the agricultural land must always be in the hands of the farmers.** Then it falls on the shoulders of DAR and PARC to see to it the farmers should always own majority of the common shares entitled to elect the members of the board of directors to ensure that the farmers will have a clear majority in the board. Before the SDP is approved, strict scrutiny of the proposed SDP must always be undertaken by the DAR and PARC, such that the value of the agricultural land contributed to the corporation must always be more than 50% of the total assets of the corporation to ensure that the majority of the members of the board of directors are composed of the farmers. **The PARC composed of the President of the Philippines and cabinet secretaries must see to it that control over the board of directors rests with the farmers by rejecting the inclusion of non-agricultural assets which will yield the majority in the board of directors to non-farmers. Any deviation, however, by PARC or DAR from the correct application of the formula prescribed by the second paragraph of Sec. 31 of RA 6675 does not make said provision constitutionally infirm. Rather, it is the application of said provision that can be challenged.** Ergo, Sec. 31 of RA 6657 does not trench on the constitutional policy of ensuring control by the farmers. (Emphasis supplied.)

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[25] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 352.

There is an aphorism that "what has been done can no longer be undone." That may be true, but not in this case. The SDP was approved by PARC even if the qualified FWBs did not and will not have majority stockholdings in HLI, contrary to the obvious policy by the government on agrarian reform. Such an adverse situation for the FWBs will not and should not be permitted to stand. For this reason, We maintain Our ruling that the qualified FWBs will no longer have the option to remain as stockholders of HLI.

FWBs Entitled to Proceeds of Sale

HLI reiterates its claim over the proceeds of the sales of the 500 hectares and 80.51 hectares of the land as corporate owner and argues that the return of said proceeds to the FWBs is unfair and violative of the Corporation Code.

This claim is bereft of merit.

It cannot be denied that the adverted 500-hectare converted land and the SCTEX lot once formed part of what would have been agrarian-distributable lands, in fine subject to compulsory CARP coverage. And, as stated in our July 5, 2011 Decision, were it not for the approval of the SDP by PARC, these large parcels of land would have been distributed and ownership transferred to the FWBs, subject to payment of just compensation, given that, as of 1989, the subject 4,915 hectares of Hacienda Luisita were already covered by CARP. Accordingly, the proceeds realized from the sale and/or disposition thereof should accrue for the benefit of the FWBs, less deductions of the 3% of the proceeds of said transfers that were paid to the FWBs, the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary Holdings, Inc. for legitimate corporate purposes, as prescribed in our November 22, 2011 Resolution.

Homelots

In the present recourse, HLI also harps on the fact that since the homelots given to the FWBs do not form part of the 4,915.75 hectares covered by the SDP, then the value of these homelots

should, with the revocation of the SDP, be paid to Tadeco as the landowner.[26]

We disagree. As We have explained in Our July 5, 2011 Decision, the distribution of homelots is required under RA 6657 only for corporations or business associations owning or operating farms which opted for land distribution. This is provided under Sec. 30 of RA 6657. Particularly:

> SEC. 30. *Homelots and Farmlots for Members of Cooperatives.* — The individual members of the cooperatives or corporations mentioned in the *preceding section* shall be provided with homelots and small farmlots for their family use, to be taken from the land owned by the cooperative or corporation. (Italics supplied.)

The "preceding section" referred to in the above-quoted provision is Sec. 29 of RA 6657, which states:

> SEC. 29. *Farms Owned or Operated by Corporations or Other Business Associations.* — In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC.
>
> In general, lands shall be distributed directly to the individual worker-beneficiaries.
>
> In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association. Until a new agreement is entered into by and between the workers' cooperative or association and the corporation or business association, any agreement existing at the time this Act takes effect between the former and the previous landowner shall be respected by both the workers' cooperative or association and the corporation or business association.

Since none of the above-quoted provisions made reference to corporations which opted for stock distribution under Sec. 31 of RA 6657, then it is apparent that said corporations are not obliged to provide for homelots. Nonetheless, HLI undertook

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[26] HLI MR, pp. 38-40.

to "subdivide and allocate **for free and without charge** among the qualified family-beneficiaries x x x residential or homelots of not more than 240 sq. m. each, with each family beneficiary being assured of receiving and owning a homelot in the barrio or *barangay* where it actually resides." In fact, HLI was able to distribute homelots to some if not all of the FWBs. Thus, in our November 22, 2011 *Resolution*, We declared that the homelots already received by the FWBs shall be respected with no obligation to refund or to return them.

The Court, by a unanimous vote, resolved to maintain its ruling that the FWBs shall retain ownership of the homelots given to them with no obligation to pay for the value of said lots. However, since the SDP was already revoked with finality, the Court directs the government through the DAR to pay HLI the just compensation for said homelots in consonance with Sec. 4, Article XIII of the 1987 Constitution that the taking of land for use in the agrarian reform program is "subject to the payment of just compensation." Just compensation should be paid to HLI instead of Tadeco in view of the Deed of Assignment and Conveyance dated March 22, 1989 executed between Tadeco and HLI, where Tadeco transferred and conveyed to HLI the titles over the lots in question. DAR is ordered to compute the just compensation of the homelots in accordance with existing laws, rules and regulations.

To recapitulate, the Court voted on the following issues in this manner:

1. In determining the date of "taking," the Court voted 8-6 to maintain the ruling fixing November 21, 1989 as the date of "taking," the value of the affected lands to be determined by the LBP and the DAR;

2. On the propriety of the revocation of the option of the FWBs to remain as HLI stockholders, the Court, by unanimous vote, agreed to reiterate its ruling in its November 22, 2011 Resolution that the option granted to the FWBs stays revoked;

3. On the propriety of returning to the FWBs the proceeds of the sale of the 500-hectare converted land and of the 80.51-hectare SCTEX land, the Court unanimously voted to maintain its ruling to order the payment of the proceeds of the sale of the said land to the FWBs less the 3% share, taxes and expenses specified in the *fallo* of the November 22, 2011 Resolution;

4. On the payment of just compensation for the homelots to HLI, the Court, by unanimous vote, resolved to amend its July 5, 2011 Decision and November 22, 2011 Resolution by ordering the government, through the DAR, to pay to HLI the just compensation for the homelots thus distributed to the FWBS.

WHEREFORE, the *Motion to Clarify and Reconsider Resolution of November 22, 2011* dated December 16, 2011 filed by petitioner Hacienda Luisita, Inc. and the *Motion for Reconsideration/Clarification* dated December 9, 2011 filed by private respondents Noel Mallari, Julio Suniga, Supervisory Group of Hacienda Luisita, Inc. and Windsor Andaya are hereby **DENIED** with this qualification: the July 5, 2011 Decision, as modified by the November 22, 2011 Resolution, is **FURTHER MODIFIED** in that the government, through DAR, is ordered to pay Hacienda Luisita, Inc. the just compensation for the 240-square meter homelots distributed to the FWBs.

The July 5, 2011 Decision, as modified by the November 22, 2011 Resolution and further modified by this Resolution is declared **FINAL** and **EXECUTORY**. The entry of judgment of said decision shall be made upon the time of the promulgation of this Resolution.

No further pleadings shall be entertained in this case.

SO ORDERED.

Corona, C.J., Leonardo-de Castro, Abad, and *Villarama, Jr., JJ.,* concur.

Brion, J., see separate opinion.

Peralta, del Castillo, Reyes, and *Perlas-Bernabe, JJ.,* join the opinion of *J.* Bersamin.

Bersamin, J., see concurring and dissenting opinion.

Perez, J., concurs but joins Justice Brion on his position on mediation.

Mendoza, J., joins Justice Brion in his concurring and dissenting opinion.

Sereno, J., joins *J.* Bersamin, see also separate opinion.

Carpio, J., no part.

CONCURRING AND DISSENTING OPINION

BERSAMIN, *J.*:

For resolution are the *Motion to Clarify and Reconsider Resolution of November 22, 2011* of petitioner Hacienda Luisita, Inc. (HLI) and the *Motion for Reconsideration/Clarification* dated December 9, 2011 of respondents Noel Mallari, *et al.*

HLI contends in its *Motion to Clarify and Reconsider Resolution of November 22, 2011* as follows:

A

WITH DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT IN DETERMINING THE JUST COMPENSATION, THE DATE OF "TAKING" IS NOVEMBER 21, 1989, WHEN PARC APPROVED HLI's SDP "IN VIEW OF THE FACT THAT THIS IS THE TIME THAT THE FWBs WERE CONSIDERED TO OWN AND POSSESS THE AGRICULTURAL LANDS IN HACIENDA LUISITA" **because:**

1. The SDP is precisely a modality which the agrarian law gives the landowner as alternative to compulsory coverage in which case, therefore, the FWBs cannot be considered as owners and possessors of the agricultural lands at the time the SDP was approved by PARC;

2. The approval of the SDP cannot be akin to a Notice of Coverage in compulsory coverage or acquisition because SDP and compulsory

coverage are two **different modalities** with independent and separate rules and mechanisms;

3. The Notice of Coverage of **January 02, 2006** may, at the very least, be considered as the time when the FWBs can be considered to own and possess the agricultural lands of Hacienda Luisita because that is only the time when Hacienda Luisita was placed under **compulsory acquisition** in view of failure of HLI to perform certain obligations of the SDP, or SDOA;

4. Indeed, the immutable rule and the unbending jurisprudence is that "taking" takes place when the owner is actually deprived or dispossessed of his property;

5. To insist that the "taking" is when the SDP was approved by PARC on November 21, 1989 and that the same be considered as the reckoning period to determine the just compensation is deprivation of landowner's property without due process of law;

6. HLI should be entitled to payment of interest on the just compensation.

B

WITH DUE RESPECT, THE HONORABLE COURT ERRED WHEN IT REVERSED ITS DECISION GIVING THE FWBs THE OPTION TO REMAIN AS HLI STOCKHOLDERS OR NOT, **because:**

1. It is an exercise of a right of the FWB which the Honorable Court has declared in its Decision and even in its Resolution and that has to be respected and implemented;

2. Neither the Constitution nor the CARL require[s] that the FWBs should have control over the agricultural lands;

3. The option has not been shown to be detrimental but instead beneficial to the FWBs as found by the Honorable Court.

C

WITH DUE RESPECT, THE HONORABLE COURT ERRED IN RULING THAT THE PROCEEDS FROM THE SALES OF THE 500-HECTARE CONVERTED LOT AND THE 80.51-HECTARE SCTEX CANNOT BE RETAINED BY HLI BUT RETURNED TO THE FWBs AS BY SUCH MANNER; HLI IS USING THE CORPORATION CODE TO AVOID ITS LIABILITY TO THE FWBs FOR THE PRICE IT RECEIVED FROM THE SALES, **because —**

1. The proceeds of the sales belong to the corporation and not to either HLI/Tadeco or the FWBs, both of which are stockholders entitled to the earnings of the corporation and to the net assets upon liquidation;

2. To allow the return of the proceeds of the sales to FWBs is to impose all liabilities of the corporation on HLI/Tadeco which is unfair and violative of the Corporation Code.

For their part, respondents Mallari, *et al*. submitted in their *Motion for Reconsideration/Clarification* that:

1. Republic Act No. 6657 or the Comprehensive Agrarian Reform Law does not provide that the FWBs who opt for stock distribution option should retain majority shareholding of the company to which the agricultural land was given.

2. If the November 22, 2011 decision of this Honorable Court ordering land distribution would be followed, this would cause more harm than good to the lives of those people living in the hacienda, and more particularly to the welfare of the FWBs.

3. On the conclusion by this Honorable Court that the operative fact doctrine is applicable to the case at bar, then FWBs who merely relied on the PARC approval should not be prejudiced by its subsequent nullification.

4. Those who choose land should return whatever they got from the SDOA and turn over the same to HLI for use in the operations of the company, which in turn will redound to the benefit of those who will opt to stay with the SDO.

5. For those who choose land, the time of taking for purposes of just compensation should be at the time HLI was dispossessed of control over the property, and that payment by of the land should be turned over to HLI for the benefit and use of the company's operations that will, in turn, redound to the benefit of FWBs who will opt to stay with the company.

Recommendations

I readily **CONCUR** with the Majority in subjecting to compulsory land distribution the lands of HLI affected by the discredited Stock Distribution Plan (SDP), as disposed in the resolution promulgated on November 22, 2011.

However, I humbly **REITERATE** my **DISSENT** on two aspects of the decision of July 5, 2011 and the resolution of November 22, 2011. I **MAINTAIN** that if the constitutional guarantee of just compensation is to be fulfilled with justice and fairness:

(*a*) The Department of Agrarian Reform (DAR) and Land Bank of the Philippines (Land Bank), initially, and the Regional Trial Court as Special Agrarian Court (RTC-SAC), ultimately, should determine the reckoning date of taking as an integral component of their statutory responsibility to determine just compensation under Republic Act No. 6657 (*Comprehensive Agrarian Reform Law of 1988*, or CARL); and

(*b*) HLI should be compensated as the landowner for the fair market value of the homelots granted to the farmworker-beneficiaries (FWBs) under the discredited SDP.

I humbly **CONTEND** that the Court will likely overstep its jurisdiction if it pegs the time of taking at a definite date (whether November 21, 1989, or January 2, 2006, or any other date) because it thereby pre-empts the RTC-SAC from doing so. I must **NOTE** that the determination of just compensation (which is always reckoned from the time of taking) is a factual matter expressly within the original and exclusive jurisdiction of the RTC-SAC; and that the *sua sponte* pegging by the Court of the time of taking (even without the parties having properly raised and argued the matter) unduly interferes with the parties' right of presentation and autonomy.

Submissions & Explanations

I

A

For a proper perspective, let me remind that the exercise by the State of its inherent power of eminent domain comes in two stages. The Court has characterized the dual stages in *Municipality of Biñan v. Garcia*[1] in the following manner:

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[1] G.R. No. 69260, December 22, 1989, 180 SCRA 576.

There are two (2) stages in every action of expropriation. The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint." x x x

The second phase of the eminent domain action is concerned with the determination by the court of "the just compensation for the property sought to be taken." x x x.[2]

The first stage in expropriation relates to the determination of the validity of the expropriation. At this stage, the trial court resolves questions, like whether the expropriator has the power of eminent domain, whether the use of the property is public, whether the taking is necessary, and, should there be conditions precedent for the exercise of the power, whether they have been complied with. In the second stage, the trial court is called upon to determine the just compensation, taking into consideration all the factors of just compensation (including whether interest should be paid on the amount of just compensation). Rule 67 of the *Rules of Court* generally delineates the procedure followed in both stages. Although expropriation may be either judicial or legislative, the dual stages apply to both, for there is "no point in distinguishing between judicial and legislative expropriation as far as the two stages mentioned above are concerned."[3]

The taking of property pursuant to the CARL is an exercise of the power of eminent domain by the State. It is a revolutionary expropriation that covers all private agricultural lands that exceeded the maximum retention limits reserved to their owners. This the Court has fittingly pointed out in *Association of Small*

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[2] *Id*., pp. 583-584.

[3] *Republic v. Salem Investment Corporation*, G.R. No. 137569, June 23, 2000, 334 SCRA 320, 330.

Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform:[4]

x x x [W]e do not deal here with the *traditional* exercise of the power of eminent domain. This is not an ordinary expropriation where only a specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose. What we deal with here is a *revolutionary* kind of expropriation.

The expropriation before us affects *all* private agricultural lands wherever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. This kind of expropriation is intended for the benefit not only of a particular community or of a small segment of the population but of the entire Filipino nation, from all levels of our society, from the impoverished farmer to the land-glutted owner. Its purpose does not cover only the whole territory of this country but goes beyond in time to the foreseeable future, which it hopes to secure and edify with the vision and the sacrifice of the present generation of Filipinos. Generations yet to come are as involved in this program as we are today, although hopefully only as beneficiaries of a richer and more fulfilling life we will guarantee to them tomorrow through our thoughtfulness today. And, finally, let it not be forgotten that it is no less than the Constitution itself that has ordained this revolution in the farms, calling for "a just distribution" among the farmers of lands that have heretofore been the prison of their dreams but can now become the key at last to their deliverance.

Its revolutionary character notwithstanding, expropriation under the CARL still goes through the two stages. Section 16 of the CARL, which provides the procedure for private agricultural land acquisition, makes this explicit enough, thus:

Section 16. *Procedure for Acquisition of Private Lands.* — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and

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[4] G.R. No. 78742, July 14, 1989, 175 SCRA 343, 385-386.

post the same in a conspicuous place in the municipal building and *barangay* hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the LBP shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other muniments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation of the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

For sure, the expropriation under the CARL is not an exclusively judicial process. The first stage of expropriation commences upon the issuance of the notice of coverage, and is initially dealt with administratively by the DAR pursuant to

Section 50 of the CARL,[5] subject to a judicial review in accordance with Section 54 of the CARL.[6] The DAR, through the Regional Director, has jurisdiction over all agrarian law implementation cases, including protests or petitions to lift coverage.[7] In exercising jurisdiction over such cases, the Regional Director passes upon and resolves various issues, including whether the land is subject to or exempt from CARP coverage, and whether the required notices of coverage have been served on the landowners.

Section 4, Article XIII of the 1987 Constitution provides:

> Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. **To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation.** In determining retention limits, the State shall respect the right of

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[5] Section 50. *Quasi-Judicial Powers of the DAR.* — The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

x x x x x x x x x

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.

[6] Section 54. *Certiorari.* — Any decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by *certiorari* except as otherwise provided in this Act within fifteen (15) days from the receipt of a copy thereof.

The findings of fact of the DAR shall be final and conclusive if based on substantial evidence.

[7] DAR Administrative Order No. 03, series of 2003 (*Rules for Agrarian Law Implementation Cases*).

small landowners. The State shall further provide incentives for voluntary land-sharing.

The Constitution itself has thereby settled the requirement of public use and the necessity for the expropriation, which are the proper subjects of the first stage of expropriation proceedings. In its 1987 pronouncement in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[8] the Court declared so:

> As earlier observed, the requirement of public use has already been settled for us by the Constitution itself. No less than the 1987 Charter calls for agrarian reform, which is the reason why private agricultural lands are to be taken from their owners, subject to the prescribed maximum retention limits. The purposes specified in P.D. No. 27, Proc. No. 131 and R.A. No. 6657 are only an elaboration of the constitutional injunction that the State adopt the necessary measures "to encourage and undertake the just distribution of all agricultural lands to enable farmers who are landless to own directly or collectively the lands they till." That public use, as pronounced by the fundamental law itself, must be binding on us.

The second stage is devoted to the determination of just compensation. This stage, as essential as the first, is always judicial in nature. According to *Export Processing Zone Authority v. Dulay*:[9]

> The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

B.

HLI assailed the resolution of November 22, 2011 for reckoning the time of taking from November 21, 1989, the date when the

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[8] *Supra*, note 4, at p. 378.

[9] No. 59603, April 29, 1987, 149 SCRA 305, 316.

PARC approved HLI's SDP, because there was yet no land transfer at that time. It insists that, at the very least, January 2, 2006, the date when the notice of coverage issued, should be considered as the time of taking.

In the alternative, HLI manifested its willingness to abide by my *Concurring and Dissenting Opinion* of November 22, 2011, whereby I respectfully recommended leaving the issue of the time of taking for the RTC-SAC to decide as an adjunct of the determination of the just compensation.

Respondents Noel Mallari, *et al.* agreed that the RTC-SAC should decide the issue of the time of taking.

To recall, I wrote in my *Concurring and Dissenting Opinion* of November 22, 2011, as follows:

> The determination of when the taking occurred is an integral and vital part of the determination and computation of just compensation. The nature and character of land *at the time of its taking* are the principal criteria to determine just compensation to the landowner. In *National Power Corporation v. Court of Appeals*, the Court emphasized the importance of the time of taking in fixing the amount of just compensation, thus:
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> > x x x [T]he Court xxx invariably held that **the time of taking is the critical date in determining lawful or just compensation**. Justifying this stance, Mr. Justice (later Chief Justice) Enrique Fernando, speaking for the Court in *Municipality of La Carlota vs. The Spouses Felicidad Baltazar and Vicente Gan,* said, "xxx the owner as is the constitutional intent, is paid what he is entitled to according to the value of the property so devoted to public use as of the date of the taking. From that time, he had been deprived thereof. He had no choice but to submit. He is not, however, to be despoiled of such a right. No less than the fundamental law guarantees just compensation. It would be an injustice to him certainly if from such a period, he could not recover the value of what was lost. There could be on the other hand, injustice to the expropriator if by a delay in the collection, the increment in price would accrue to the owner. The doctrine to which this Court has been committed is intended precisely to avoid either contingency fraught with unfairness."

It is my humble submission, therefore, that the factual issue of when the taking had taken place as to the affected agricultural lands should not be separated from the determination of just compensation by DAR, Land Bank and SAC. Accordingly, I urge that the Court should leave the matter of the reckoning date to be hereafter determined by the DAR and Land Bank pursuant to Section 18 of Republic Act No. 6657.[10] Should the parties disagree thereon, the proper SAC will then resolve their disagreement as an integral part of a petition for determination of just compensation made pursuant to Section 57 of Republic Act No. 6657 x x x.

I **MAINTAIN** my foregoing position.

Just compensation is the full and fair equivalent of the property the expropriator takes from its owner. The measure for computing just compensation is not the taker's gain, but the owner's loss.[11] The constitutional policy underlying the requirement for the payment of just compensation is to make the landowner whole after the State has taken his property.[12] The word *just* intensifies the word *compensation* to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full and ample.[13] For the landowner of expropriated property to be fully compensated, the State must put him in as good a position pecuniarily as if the use of the property had not been taken away.[14] Accordingly, just compensation is principally based on the fair market value, which is "that sum of money which a person desirous but not compelled to buy, and an owner willing

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[10] Section 18. *Valuation and Mode of Compensation*. — The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and LBP or as may be finally determined by the court as just compensation for the land.

[11] *National Power Corporation v. Maruhom*, G.R. No. 183297, December 23, 2009, 609 SCRA 198, 210.

[12] *State By and Through Dept. of Highways of State of Mont. v. McGuckin*, 242 Mont. 81, 788 P.2d 926 (1990).

[13] *National Power Corporation v. Maruhom*, G.R. No. 183297, December 23, 2009, 609 SCRA 198, 210.

[14] *South Carolina Department of Transportation v. Faulkenberry*, 522 S.E.2d 822 (1999).

but not compelled to sell, would agree on as a price to be given and received therefore."[15]

The price or value of the land and its character *at the time it is taken* by the Government are the primordial criteria for determining just compensation.[16] Section 17 of the CARL enumerates other factors to be considered, *viz*:

> Section 17. *Determination of Just Compensation* — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and assessments made by the government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

As to taking, the Court has set a number of circumstances that must be established before property is said to be taken for a public use, to wit:

> A number of circumstances must be present in "taking" of property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and (5) the utilization of the property for public use must be in such a way to oust the owner and deprive him of all beneficial enjoyment of the property.[17]

The prescription of such number of circumstances means that *compensable taking* is not a simple concept easy to ascertain.

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[15] *National Power Corporation v. Co*, G.R. No. 166973, February 10, 2009, 578 SCRA 234, 240.

[16] *National Power Corporation v. Court of Appeals*, No. 56378, June 22, 1984, 129 SCRA 665, 673.

[17] *National Power Corporation v. Court of Appeals*, G.R. No. 113194, March 11, 1996, 254 SCRA 577, 590.

Certainly, evidence from the parties is needed to concretize the concept. Thus, establishing the time of taking demands a judicial trial in which both the owner and the expropriator are afforded the fullest opportunity to prove either when the owner was actually deprived or dispossessed of the property, or when a practical destruction or a material impairment of the value of the property happened, or when the owner was deprived of the ordinary use of the property. Not being a trier of facts, the Court has no capacity to render a valid finding upon the time of taking.

In contrast, not only is the RTC-SAC a trier of facts but it is also vested with the *original* and *exclusive* jurisdiction to receive the parties' evidence on the valuation of the affected property pursuant to Section 57 of the CARL, *viz*:

> Section 57. *Special Jurisdiction.* — **The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners**, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.
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> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

Original jurisdiction means jurisdiction to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts,[18] and concerns the right to hear a cause and to make an original determination of the issues from the evidence as submitted directly by the witnesses, or of the law as presented, *uninfluenced or unconcerned by any prior determination*, or the action of any other court juridically determining the same controversy.[19] Needless to point out, that jurisdiction of the RTC-SAC is also exclusive of all *other* courts, including this Court.

Although November 21, 1989 was the date when the affected landholdings of HLI came under the SDP, I see no practical

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[18] *Cubero v. Laguna West Multi-Purpose Cooperative, Inc.*, G.R. No. 166833, November 30, 2006, 509 SCRA 410, 416.

[19] *State v. Johnson*, 100 Utah 316, 114 P.2d 1034 (1941).

justification why the Court should peg that date as the time of taking. As I see it, HLI/TADECO as landowner was not deprived of its property on that date. Nor was its property destroyed or materially impaired then. **Instead, what occurred on that date was the fusion of HLI/TADECO as owner, on the one hand, and the FWBs as the tenant-farmers, on the other hand, into one corporate entity in relation to the land subject of the SDP, a fusion that did not result into or cause the deprivation of HLI of its land.**

It is significant that the parties did not raise the time of taking as an issue in their pleadings. The petition for *certiorari* and prohibition assailed only the PARC's revocation of the SDP and the resulting placement of the lands subject of the SDP under compulsory land acquisition of the CARP on the ground that the PARC had no authority to revoke the SDP. Consequently, the time of taking was neither relevant to the objective of the petition, nor necessary to the determination of the issues the petition raised. In fact, the decision promulgated on July 5, 2011 itself expressly limited the issues only to: — "(1) matters of standing; (2) the constitutionality of Sec. 31 of RA 6657; (3) the jurisdiction of PARC to recall or revoke HLI's SDP; (4) the validity or propriety of such recall or revocatory action; and (5) corollary to (4), the validity of the terms and conditions of the SDP, as embodied in the SDOA," with none of the stated issues involving the time of taking. **The first time that the time of taking surfaced was when the July 5, 2011 decision pegged it on November 29, 1989.** As such, the Court overstepped its adjudicative boundaries by pegging the taking at a definite date (whether November 21, 1989, or January 2, 2006, or any other date) even without the parties presenting the matter here.

With all due respect to my distinguished colleagues in the Majority, I state that the Court unduly interfered with the right of the parties to present the issues they desired to bring for the Court's consideration and resolution. As a rule, the Court should not create issues *sua sponte* but should decide only the issues presented by the parties. This rule adheres to the principle of party presentation, which fully complements the role of the

Judiciary as the neutral arbiter of disputes, a role that is vital to the adversarial system.

Greenlaw v. United States,[20] a 2008 ruling of the United States Supreme Court, explained the principle of party presentation or litigants' autonomy in the following terms, to wit:

> In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. To the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a *pro se* litigant's rights. See *Castro v. United States*, 540 U. S. 375, 381-383 (2003). But as a general rule, "[o]ur adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." *Id*., at 386 (*Scalia, J.*, concurring in part and concurring in judgment). As cogently explained:
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> > "[Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties. Counsel almost always know a great deal more about their cases than we do, and this must be particularly true of counsel for the United States, the richest, most powerful, and best represented litigant to appear before us." *United States v. Samuels*, 808 F. 2d 1298, 1301 (CA8 1987) (R. Arnold, J., concurring in denial of reh'g *en banc*).

The grave danger posed by the *sua sponte* creation and decision of issues by the trial and appellate courts without the prior knowledge of the parties is to cause injustice itself. "Were we to address these unbriefed issues," an appellate tribunal in the State of Illinois observed, "we would be forced to speculate as to the arguments that the parties might have presented had these issues been properly raised before this court. To engage in such speculation would only cause further injustice; thus, we refrain

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[20] 554 U.S. 237, 128 S.Ct. 2559, 171 L.Ed.2d 399, 76 BNA USLW 4533 (June 23, 2008).

from addressing these issues *sua sponte*."[21] Such injustice may extend outside of the parties themselves, as warned in *United Shoe Workers of America, Local 132 v. Wisconsin Labor Relations Board*,[22] *viz*:

> Courts do not decline to decide questions which are not before them because they are not willing to assume responsibility for the decision. When a court decides a question not before it, its decision may and very probably will affect the rights of parties who have never had their day in court. The question may, as Chief Justice Winslow said, arise under circumstances that cannot be foreseen which may throw much additional light upon the question. Long experience has demonstrated that questions which affect the rights of citizens should not be determined upon hypothetical and suppositious cases.

Instances admittedly happen when courts are allowed to step in and raise issues *sua sponte*.[23] The most common instance is when a court decides whether or not it has jurisdiction over a case before it.[24] Also, in the exercise of its appellate jurisdiction,

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[21] *People v. Rodriguez*, 336 Ill.App.3d 1, 782 N.E.2d 718, 270 Ill. Dec. 159 (2003).

[22] 227 Wis. 569, 279 N.W. 37, 2 L.R.R.M. (BNA) 883, 1 Lab. Cas. P 18, 132 (1938).

[23] See *People v. Villarico, Sr.*, G.R. No. 158362, April 4, 2011, 647 SCRA 43, which held that the absence of specific assignments of error does not inhibit the *sua sponte* rectification of the omission to grant civil liability and damages to the victim, "for the grant of *all* the proper kinds and amounts of civil liability to the victim or his heirs is a matter of law and judicial policy not dependent upon or controlled by an assignment of error"; *Euro-Med Laboratories, Phil., Inc. v. Province of Batangas*, G.R. No. 148106, July 17, 2006, 495 SCRA 301, which declared that courts may raise the issue of primary jurisdiction *sua sponte* and its invocation cannot be waived by the failure of the parties to argue it; *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, wherein the Court held that courts may apply the precept of retroactivity of penal laws that is favorable to the accused even if the accused has not invoked it; *Republic v. Feliciano*, No. 70853, March 12, 1987, 148 SCRA 424, which declared that the defense of immunity from suit may be invoked by the courts *sua sponte* at any stage of the proceedings.

[24] *Dy v. National Labor Relations Commission*, No. 68544, October 27, 1986, 145 SCRA 211.

the Court has been relatively flexible in resolving unassigned issues everytime it has found doing so necessary to arrive at a just decision.[25] However, limitations on such instances should be set in order to preserve the courts' neutrality and to respect the litigants' autonomy, particularly: (*a*) when necessary to avoid issuing decisions containing erroneous statements of the law, such as when the parties misrepresent the law and ask the court to decide a case on such ground; (*b*) when necessary to maintain control over how the court would want to interpret the law; and (*c*) when necessary to give voice to legislative enactments disfavored or ignored by the parties.[26]

None of the limitations obtains here. The time of taking is an issue peripheral to and outside of the claims the parties extensively argued in this case. That the parties did not see fit to present the issue is concrete testimony to their consensus that the issue was not appropriate to be decided here and now, or that it might be better dealt with by and presented to the trial court. Consequently, the Court must itself exercise self-restraint and resist the temptation to deal with and pass upon the issue, because:

> x x x a court has no reason to raise issues that are tangential to or distinct from the claims that the parties have asked the court to decide, because in these cases its opinion will not mislead other or create flawed precedent. x x x Moreover, questions that are truly independent from those that the parties have already briefed and argued would likely require the development of facts not already in the record, which is unfair to litigants who are beyond the discovery stage — thus providing good reason for courts to ignore those issues as well.[27]

Moreover, I disagree that the desire to avoid delaying the distribution of the land can justify deciding now the time of

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[25] *Globe Telecom, Inc. v. Florendo-Flores,* G.R. No. 150092, September 27, 2002, 390 SCRA 201, 209.

[26] Frost, A., *Limits of Advocacy, Duke Law Journal,* Vol. 59:44, pp. 509-511 (2009).

[27] *Id.,* pp. 509-510.

taking. Haste on that basis may unduly sacrifice the constitutional right of HLI to the fair and prompt determination of its just compensation. We have to bear in mind that the taking of land for the CARP, albeit revolutionary, should not be done by sacrificing the constitutional right to the fair and prompt determination of just compensation for HLI as the landowner because it was as entitled as the FWBs to the protection of the Constitution and the agrarian reform laws.[28] On the other hand, having the RTC-SAC determine the time of taking, far from being a cause for delay, may actually expedite the proceedings, because the RTC-SAC can resort to the aid of extrajudicial and judicial mediation, as well as to other procedures heretofore effectively used by the trial courts to expedite, including pre-trial and discovery, with the end in view of quickening the all-important determination of just compensation. In this regard, all the possibilities of expediting the process should be encouraged, because just compensation that results from the agreement and consent of the stakeholders of land reform will be no less just and full.

Given the foregoing, the time of taking, as a factor in determining just compensation, should be fully heard during the second stage of the expropriation proceedings and settled initially by the DAR and Land Bank, and subsequently by the RTC-SAC, not by the Court in these proceedings that commenced from an administrative decision that was an incident during the first stage of the expropriation.

II

The Majority now rules that the Government shall pay to HLI the just compensation for the 240-square-meter homelots distributed to the FWBs pursuant to the provisions of the discredited SDP.

I welcome the ruling, because the Majority now adopts my humble view.

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[28] *Land Bank v. Chico*, G.R. No. 168453, March 13, 2009, 581 SCRA 226, 245.

Verily, the giving of the homelots as among the benefits acquired by the FWBs under the SDP should not be disturbed, *that is*, the FWBs should not be obliged to return the homelots thus received. To oust the FWBs from their homelots would displace them from the premises they had enjoyed for two decades, more or less, building thereon the homes for their families. Their displacement would be unjust. Yet, the homelots were distributed to the FWBs because of the SDP. Upon the revocation of the SDP, HLI lost the only enforceable justification for distributing the homelots to the FWBs. Simple justice demands, therefore, that HLI be justly compensated for the market value of the homelots. Indeed, while the emancipation of the FWBs from the bondage of the soil is the primordial objective of the CARP, vigilance for the rights of the landowner is equally important because social justice cannot be invoked to trample on the rights of the property owner, who under our Constitution and laws is also entitled to protection.[29]

IN VIEW OF THE FOREGOING, I vote to **PARTIALLY GRANT** HLI's *Motion to Clarify and Reconsider Resolution of November 22, 2011* and the *Motion for Reconsideration/ Clarification* of Noel Mallari, *et al*. in accordance with the foregoing.

SEPARATE OPINION
(Concurring and Dissenting)

BRION, *J.*:

I **concur** with the *ponencia's* ruling that the Stock Distribution Plan (*SDP*) of the petitioner Hacienda Luisita, Inc. (*HLI*), made pursuant to the agrarian reform law, Republic Act (*RA*) No. 6657[1] which took effect on June 15, 1988, is illegal so that an actual compulsory transfer of the HLI's agricultural lands should have taken place. I likewise agree that the date of **"taking" for**

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[29] *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 118712, October 6, 1995, 249 SCRA 149, 161.

[1] Comprehensive Agrarian Reform Law of 1988.

purposes of determining just compensation should be deemed to be *November 21, 1989* — the date when the respondent Presidential Agrarian Reform Council (*PARC*) erroneously approved the Stock Distribution Plan (*SDP*) of the petitioner HLI and its 6,596 farmworker-beneficiaries (*FWBs*) through Resolution No. 89-12-2.

Despite my overall concurrence, I still **differ** with some of the *ponencia's* rulings, particularly on the legal basis of the **consequences of** PARC's revocation of its previous SDP approval. These consequences should be determined on the basis of clear *applicable statutory provisions* and the legal principles discussed below.

The illegality of the SDP rendered it null and void from the beginning

On December 22, 2005, PARC revoked its approval of the SDP through Resolution No. 2005-31-01. Although this revocation was made only in 2005, the effects should date back to 1989, considering that the basis for the revocation was primarily the illegality of the SDP's terms; the illegality rendered the SDP null and void from the very beginning and was not cured by PARC's erroneous approval. Indeed, the illegality of the terms of the SDP was apparent from its face so that PARC's approval should not have been given from the start.

Specifically, the *man-days* scheme — the SDP's method in determining the number of shares of stock to which each FWB was entitled — ran counter to Section 4 of Administrative Order (*AO*) No. 10, Series of 1988 of the Department of Agrarian Reform (*DAR*); this AO required the distribution of an *equal number of shares of stock to each qualified beneficiary*. Section 11 of the same AO mandated that the *stock distribution should also be implemented within three months from receipt* of the PARC's approval of the SDP, and that the transfer of the shares of stock in the name of the qualified beneficiaries should be *recorded in the stock and transfer books within 60 days from the implementation of the SDP*. HLI's SDP clearly and illegally provided for a 30-year distribution period.

Consequences of Illegality

A. Compulsory coverage of HLI agricultural land

In the absence of any valid stock distribution plan, HLI's agricultural land became subject to compulsory coverage by 1989 — the time HLI chose as its option in complying with RA No. 6657. Section 31 of RA No. 6657 states without any ambiguity that:

SEC. 31. *Corporate Landowners.* — x x x

If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act. [emphasis supplied]

HLI exercised the option granted under this provision by putting in place and securing the approval of its SDP with its FWBs on November 21, 1989. Its exercise of the stock distribution scheme, however, failed due primarily to its failure to secure PARC's approval of the SDP. The legal consequence, by the very terms of the above provision, is for the "agricultural land of the corporate owners or corporation [to] be subject to the compulsory coverage of th[e] Act." Compulsory coverage — the option not taken — means the actual transfer of the HLI land to the FWBs which should be deemed to have taken place on November 21, 1989 when the first option HLI took failed. ***At that point, the rights of ownership of HLI were transferred by law to the FWBs, who should be deemed the owners of the HLI land (and who should enjoy the rights of ownership under Article 428 of the Civil Code, subject only to the restrictions and limitations that the medium of their ownership RA No. 6657 imposes).***

B. Payment of just compensation

B.1 "Taking" for purposes of just compensation

"Taking" for purposes of determining just compensation necessarily took place as of 1989 not only because of the failure of the stock distribution option under Section 31 of RA No. 6657 (whose terms require the inclusion of the agricultural land under the law's compulsory coverage), but also because HLI chose to comply with the government's agrarian reform program through the SDP. The "taking" involved here was a revolutionary form of expropriation for purposes of agrarian reform. Expropriation under RA No. 6657 may take the form of either ***actual land distribution*** or ***stock distribution***. HLI was only allowed to use stock distribution because of RA No. 6657, and it lost this privilege upon the invalid exercise of this option when its approval was cancelled. As I previously posited —

> **[November 21, 1989]** is the point in time when HLI complied with its obligation under the CARL as a corporate landowner, through the stock distribution mode of compliance. This is the point, too, when the parties themselves determined — albeit under a contract that is null and void, but within the period of coverage that the CARL required and pursuant to the terms of what this law allowed — that compliance with the CARL should take place. **From the eminent domain perspective, this is the point when the deemed "taking" of the land, for agrarian reform purposes, should have taken place if the compulsory coverage and direct distribution of lands had been the compliance route taken. As the chosen mode of compliance was declared a nullity, the alternative compulsory coverage (that the SDOA was intended to replace) and the accompanying "taking" should thus be reckoned from [November 21, 1989.]**[2] [emphasis supplied]

Since "taking" in law is deemed to have occurred on November 21, 1989, the just compensation due to HLI for placing its agricultural lands under RA No. 6657's compulsory coverage should be computed as of this date.

B.2 Administrative and judicial determination of just compensation

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[2] *J.* Brion, Separate Concurring and Dissenting Opinion to the Resolution dated November 22, 2011.

The determination of the **valuation of the HLI land as of 1989** is a matter that RA No. 6657 and its applicable regulation leaves with the Land Bank of the Philippines (*LBP*), DAR, and, ultimately, the RTC acting as Special Agrarian Court (*SAC*). The determination of just compensation is done at two levels: administrative determination by LBP and DAR and judicial determination by the SAC.[3]

Philippine Veterans Bank, Inc. v. Court of Appeals[4] outlines the procedure in determining just compensation:

> [T]he Land Bank of the Philippines is charged with the **preliminary determination of the value of lands** placed under land reform program and the compensation to be paid for their taking. It initiates the acquisition of agricultural lands by notifying the landowner of the government's intention to acquire his land and the valuation of the same as determined by the Land Bank. Within 30 days from receipt of notice, the landowner shall inform the DAR of his acceptance or rejection of the offer. In the event the landowner rejects the offer, a summary administrative proceeding is held by the provincial (PARAD), the regional (RARAD) or the central (DARAB) adjudicator, as the case may be, depending on the value of the land, for the purpose of determining the compensation for the land. The landowner, the Land Bank, and other interested parties are then required to submit evidence as to the just compensation for the land. The DAR adjudicator decides the case within 30 days after it is submitted for decision. If the landowner finds the price unsatisfactory, he may bring the matter directly to the appropriate Regional Trial Court.

The authority of LBP to make a preliminary valuation of the land is provided under Section 1 of Executive Order (*EO*) No. 405 dated June 14, 1990,[5] which states:

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[3] *Philippine Veterans Bank v. Court of Appeals*, G.R. No. 132767, January 18, 2000.

[4] *Ibid.*

[5] Entitled *Vesting in the Land Bank of the Philippines the Primary Responsibility to Determine the Land Valuation and Compensation for All Lands Covered Under Republic Act No. 6657, Known as the Comprehensive Agrarian Reform Law of 1988.*

SECTION 1. The Lank Bank of the Philippines shall be primarily responsible for the determination of the land valuation and compensation for all private lands suitable for agriculture under either the Voluntary Offer to Sell (VOS) or Compulsory Acquisition (CA) arrangement as governed by Republic Act No. 6657. The Department of Agrarian Reform shall make use of the determination of the land valuation and compensation by the Land Bank of the Philippines, in the performance of functions

After effecting the transfer of titles from the landowner to the Republic of the Philippines, the Land Bank of the Philippines shall inform the Department of Agrarian Reform of such fact in order that the latter may proceed with the distribution of the lands to the qualified agrarian reform beneficiaries within the time specified by law.

After the preliminary determination of the value of the land, DAR then acquires administrative jurisdiction to determine just compensation, pursuant to Rule II, Section 1 5(b) of the 2009 DARAB Rules of Procedure. The process for the preliminary determination of just compensation is fully discussed in Rule XIX of the 2009 DARAB Rules.

The judicial determination of just compensation commences when a petition for its determination is filed with the SAC, which has the original and primary jurisdiction pursuant to Section 57 of RA No. 6657.[6] Notably, no overlapping of jurisdiction between DARAB and SAC occurs because, as the Court explained:

x x x primary jurisdiction is vested in the DAR to determine in a preliminary manner the just compensation for the lands taken under the agrarian reform program, but such determination is subject to challenge before the courts. The resolution of just compensation cases for the taking of lands under agrarian reform is, after all, essentially a judicial function.[7]

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[6] Section 57. Special Jurisdiction. — The Special Agrarian Court shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. x x x

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

[7] *Philippine Veterans Bank v. Court of Appeals, supra* note 3.

The above process is a matter of law and regulation that the courts, including the Supreme Court, cannot deviate from. Hence, the referral of the valuation of the former HLI land under the parameters outlined in the Court's Resolution should initially be to DAR.

B.3 Resolution of non-just compensation issues

In the unique circumstances of this case, *i.e.* — a case that has caused unrest and even deaths; which has been pending for administrative and judicial adjudication for at least 22 years; and which has many parties raising multiple issues arising from 22 years of developments — a necessary problem area on the matter of adjudication, is the procedure in handling what has become a seeming multi-headed monster.

I believe that the only way left for us, on matters of procedures that this Court can act upon, is to handle the case *pro hac vice*, *i.e.*, with the use of a one-time non-recurring mode appropriate only to the case, on the issues that this Court has jurisdiction to act upon pursuant to its powers "to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts…and legal assistance to the underprivileged."[8]

Other than the issue of just compensation over which jurisdiction is a matter of law, this case faces issues of compulsory coverage, land distribution, and restitution of amounts previously paid and of homelots previously granted. All these are within the jurisdiction of this Court to adjudicate, save only for the determination of facts not yet on record that this Court is not equipped to undertake because of its limited trial capabilities.

In lieu of remanding all the unresolved factual issues to the judicial trial courts, we should appropriately delegate the fact-finding to the DAR from which this case originated and which has primary jurisdiction over the issue of compensation that the Court has left untouched. Consequently, we should refer

[8] CONSTITUTION, Article VIII, Section 5(5).

to DAR (1) all non-compensation issues that we have not resolved for determination, and (2) all resolved issues for implementation. To state what is obvious in law, what we have resolved here constitute the *law of the case* that none of the parties and no court or administrative body can reopen, modify, alter, or amend.

As a matter of judicial policy[9] and practice that is now established, the DAR should apply to the fullest the mediation and conciliation efforts that the judiciary has found very effective. Save only for the legal conclusions and final factual determinations the Court has reached (*e.g.*, the decision to distribute and the time of taking), all factual issues can be conciliated and agreed upon by mutual and voluntary action of the parties.

B.4 No interest on just compensation during intervening period

No interest on the amount due as just compensation may be imposed. The Court awards interests when there is delay in the payment of just compensation, not for reasons of the fact of delay, but for the consequent income that the landowner should

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[9] See RA No. 9285 or the *Alternative Dispute Resolution Act of 2004*, which recognized the authority of the Supreme Court to adopt "any Alternative Dispute Resolution system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time."

In this line, the Supreme Court has promulgated various rules on mediation and conciliation including: Amended Guidelines for the Implementation of Mediation/Conciliation Proceedings in the Pilot Areas of Mandaluyong City and Valenzuela City (November 16. 1999); A.O. No. 21-2001 re: Participation in the Amicable Settlement Weeks; A.O. No. 24-2001 re: Inclusion of Additional Participants in the Amicable Settlement Weeks (March 5, 2001); A.M. No. 01-10-5-SC-PHILJA and OCA Circular No. 82-2001 re: Designating the Philippine Judicial Academy as the Component Unit of the Supreme Court of the Court-Referred, Court-Related Mediation Cases and Other Alternative Dispute Resolution Mechanisms, and Establishing the Philippine Mediation Center for the Purpose; OCA Circular No. 2-2002 re Memorandum on Policy Guidelines between OCA and IBP; Administrative Circular No. 20-2002 re Monthly Inventory and Referral of Cases for Mediation; and A.M. No. 11-1-16-SC-PHILJA re: Consolidated and Revised Guidelines to Implement the Expanded Coverage.

have received from the land had there been no immediate "taking" by the government.[10] *Apo Fruits Corporation, Inc. v. Land Bank of the Philippines*[11] elaborated on this legal issue when it stated that —

x x x the just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.

In the context of this case, when the LBP took the petitioners' landholding without the corresponding full payment, it became liable to the petitioners for the income the landholding would have earned had they not immediately been taken from the petitioners.

[T]he undisputed fact is that the petitioners were deprived of their lands on December 9, 1996 (when the titles to their landholdings were cancelled and transferred to the Republic of the Philippines), and received full payment of the principal amount due them only on May 9, 2008.

In the interim, they received no income from their landholdings because these landholdings had been taken. Nor did they receive adequate income from what should replace the income potential of their landholdings because the LBP refused to pay interest while

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[10] See *Apo Fruits Corporation, Inc. v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010. Also, *Land Bank of the Philippines v. Soriano*, G.R. Nos. 180772 and 180776, May 6, 2010, where the Court declared that

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.

[11] *Ibid.*

withholding the full amount of the principal of the just compensation due by claiming a grossly low valuation.

The above rules, however, do not apply to the present case, since **HLI never lost possession and control of the land; all the incomes that the land generated were appropriated by HLI**; no loss of income on the land therefore exists that should be compensated by the imposition of interest on just compensation.[12]

For the same reason that I oppose the imposition of interest on the just compensation due to HLI, I disagree with the view that "taking" should be pegged on January 6, 2006, when the Notice of Compulsory Coverage was issued. Supposedly, the "rationale in pegging the period of computing the value so close or near the present market value at the time of taking is to consider the appreciation of the property, brought about by improvements in the property and other factors. x x x. It is patently iniquitous for landowners to have their real properties subject of expropriation valued several years or even decades behind."[13] To peg the taking in 1989 would allegedly make HLI suffer the loss of its lands twice, since it will be paid its property at 1989 levels and any improvements it made on the land, which appreciated its value, would be ignored.

Considering that HLI retained possession and control of the land, any benefit that could have been derived from such possession and control would be for HLI's account. In reality, therefore, HLI will be reaping benefits twice if the taking is pegged in 2006.

B.5 Amount of just compensation paid to landowner does not necessarily affect the amortizations due from FWBs

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[12] *J.* Brion, Separate Concurring and Dissenting Opinion to the Resolution dated November 22, 2011.

[13] *J.* Sereno, Dissenting Opinion to the Resolution dated November 22, 2011.

In this regard, I disagree with the *ponencia's* reasoning for rejecting the view that "taking" occurred in 2006. The *ponencia* objects to a "taking" in 2006 because the FWBs will be made to pay higher amortizations for the "lands that should have been given to them decades ago at a much lower cost." The amount of amortization that the FWBs are required to pay the government is not necessarily based on the cost of the land. **DAR AO No. 6, Series of 1993**[14] is the implementing rule of Section 26 of RA No. 6657.[15] Its pertinent provisions state:

> V. GENERAL GUIDELINES
>
> A. As a general rule, land awarded pursuant to x x x R.A. 6657 shall be repaid by the Agrarian Reform Beneficiary (ARB) to LANDBANK in thirty (30) annual amortizations at six (6%) percent interest per annum. The annual amortization shall start one year from date of Certificate of Landownership Award (CLOA) registration.
>
> B. The payments by the ARBs for the first three (3) years shall be two and a half percent (2.5%) of AGP [Annual Gross Production] and five percent (5.0%) of AGP

[14] *Revised Implementing Guidelines and Procedures Governing Payment of Land Amortization by Agrarian Reform Beneficiaries*.

[15] SEC. 26. *Payment by Beneficiaries.* — Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations at six percent (6%) interest per annum. The payments for the first three (3) years after the award may be at reduced amounts as established by the PARC : *Provided,* That the first five (5) annual payments may not be more than five percent (5%) of the value of the annual gross production is paid as established by the DAR. Should the scheduled annual payments after the fifth year exceed ten percent (10) of the annual gross production and the failure to produce accordingly is not due to the beneficiary's fault, the LBP may reduce the interest rate or reduce the principal obligation to make the payment affordable.

The LBP shall have a lien by way of mortgage on the land awarded to beneficiary and this mortgage may be foreclosed by the LBP for non-payment of an aggregate of three (3) annual amortizations. The LBP shall advise the DAR of such proceedings and the latter shall subsequently award the forfeited landholding to other qualified beneficiaries. A beneficiary whose land as provided herein has been foreclosed shall thereafter be permanently disqualified from becoming a beneficiary under this Act.

> for the fourth and fifth years. To further make the payments affordable, **the ARBs shall pay ten percent (10.0%) of AGP or the regular amortization** [refers to the annuity based on the cost of the land[16] and permanent improvements at six percent (6%) interest rate per annum payable in 30 years], **whichever is lower, from the sixth (6th) to the thirtieth (30th) year.**

Construing these provisions, the Court explained in *Apo Fruits*[17] that

> the payments made by the farmers-beneficiaries to the LBP are primarily based on a fixed percentage of their annual gross production or the value of the annual yield/produce of the land awarded to them. ***The cost of the land will only be considered as the basis for the payments made by the farmers-beneficiaries when this amount is lower than the amount based on the annual gross production***.

Hence, the amount due to HLI as just compensation for the land is not necessarily the basis of the amount that the FWBs are required to pay the government pursuant to Section 26 of RA No. 6657.

C. Determination of related claims arising from compulsory coverage of the land

Other consequences must necessarily flow from the compulsory coverage of HLI's agricultural lands, deemed to have taken place on November 21, 1989.

First. The transfer of the land to the FWBs after compulsory coverage does not signify that the land was actually distributed to them or that they immediately came into possession of the land as of that date. The factual reality is too clear to need further discussion and elaboration: no actual distribution actually took place and the present case is in fact with this Court today

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[16] Defined in the same AO as "the amount paid or approved for payment to the landowner for the specific parcel of land and permanent crops including improvements thereon acquired and awarded to ARBs."

[17] G.R. No. 164195, April 5, 2011.

— almost 22 years after distribution was due — because no actual distribution took place.

Second. From the perspective of law, ownership and possession are two different concepts and need not necessarily be fused with the same entity at the same time. Thus, while the FWBs have collectively been the owners of the transferred property as of November 21, 1989, actual possession has not been with them either collectively or individually.

The reality is that possession from that time effectively rested with HLI, which continued to possess and operate the land. In fact, HLI possessed the land in the concept of an owner from November 21, 1989 pursuant to the SDP, and was only divested of possession in this concept when PARC revoked its approval of the SDP in 2005. But even then, the issue of the SDP's legality (and the nature of HLI's possession) remained legally uncertain because the PARC revocation gave rise to the present dispute which to date remains pending.

I conclude from all these developments that HLI, at the very least, has remained a ***possessor in good faith*** during all these times and has built and introduced improvements on the land in good faith. Its possession proceeded from its belief that it validly retained ownership of the land after choosing to adopt stock distribution option as its mode of compliance with the agrarian reform program, which option was approved (erroneously, as discussed) by PARC. Its possession, although wrongful, was in good faith. Under the Civil Code, a possessor in good faith is one who is not aware that there exists in his title or mode of acquisition any flaw that invalidates it.[18]

The relationship between the owner of the land (the FWBs starting November 21, 1989) and the builder in good faith (HLI) is governed by Article 448 of the Civil Code, which reads:

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have **the right to appropriate as his own the works, sowing or planting, after payment of the**

[18] CIVIL CODE, Article 526.

indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

This provision is "manifestly intended to apply only to a case where one builds, plants, or sows on land in which he believes himself to have a claim of title."[19] Generally, the owner of the land has the option of either (a) choosing to appropriate the works after payment of indemnity or (b) obliging the builder in good faith to pay the price of the land.

Considering that the HLI land is, *by law*, subject to compulsory acquisition, the FWBs can no longer now exercise the option of obliging HLI to pay for the price of the land, and are thus left only with the first option of appropriating the works upon payment of indemnity pursuant to Articles 546 and 548. These provisions state:

Article 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

x x x x x x x x x

Article 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing

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[19] Arturo Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume Two (1992 ed.), p. 111, citing *Floreza v. Evangelista*, 96 SCRA 130.

if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

The necessary expenses are those made for the proper preservation of the land and the improvements introduced, or those without expenses without which the land and the improvements would have been lost.[20] These expenses include the taxes paid on the land and all other charges on the land.[21] Useful expenses, on the other hand, are the expenses incurred to give greater utility or productivity to the land and its improvements.[22] Among others, these include the cost of roads, drainage, lighting, and other fixtures that HLI introduced into the land that increased its value and its eventual purchase price to third parties**. Pursuant to Article 448 of the Civil Code above, all these improvements HLI can retain until it is reimbursed.** Under the unique facts of this case, **this indemnity should be paid together with the payment for just compensation and should be included in the total reckoning of what the parties owe one another.**

A twist in this case is the conveyance to third parties (LIPCO/RCBC, the government for SCTEX, and, if proven to be a valid transfer, to LRC), of part of the converted agricultural land by HLI while it *was still in possession in the concept of an owner*. As already held by the majority in its previous ruling on this case, the alienation to the third parties is valid as the latter were purchasers for value in good faith; these converted agricultural lands are excluded from the land reform coverage and distribution because of the intervening valid transfer. One seeming problem this conclusion, however, leaves is on the question of the purchase price — who should now get the purchase price in light of the change of the parties' circumstances under the revoked SDP?

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[20] A. Tolentino, *supra* note 18, at 292, citing 4 Manresa 270-271; *Case, et al. v. Cruz*, (S.C.), 50 Official Gazette 618, *Calang, et al. v. Santos, et al*. (C.A.), 50 Official Gazette 1446.

[21] *Id.* at 293, citing 4 Manresa 271-272.

[22] *Id.* at 294, citing 2 Oyuelos 298.

I take the view that the rule that prevailed with respect to the land and the improvements should still prevail. Thus, **the third parties' purchase price should be credited to the FWBs as owners**. The value of the improvements introduced by HLI on these lands, which led to the increase in the price of the land and its eventual sale to LIPCO/RCBC and (if proven to be valid) to LRC, should be subject to the builder in good faith provision of Article 448 of the Civil Code and the payment of indemnity to HLI computed under Articles 546 and 548 of the same Code. This would be true whether the sale was voluntary (as in the case of the sale to LIPCO/RCBC/LRC) or involuntary (as in the exercise of the power of eminent domain by government in securing the land for the SCTEX). In either case, **the cost of the necessary and useful expenses that gave rise to the increase in value of the land should be reimbursed to HLI as indemnity**.

In simple mathematical terms, the computation of the amounts due the parties should run:

Amount Accruing to FWBs	=	***Purchase Price by 3rd Parties***	**–** ***the amounts due to HLI (the amount of just compensation FWBs should pay HLI + the indemnity due to HLI under Articles 546 and 548, etc.)***

D. With the SDP declared revoked and illegal, mutual restitution should take place.

The consequence of the nullification of the SDP's approval should have properly been the restitution of what the parties received under the disapproved SDP; **the parties must revert back to their respective situations prior to the execution of the SDP and must return whatever they received from each other under the SDP that, in legal contemplation, never took place.**[23] The details of these restitutions are more fully discussed below.

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[23] A. Tolentino, *supra* note 18, at 632, citing Perez Gonzales & Alguer; 1-II Enneccerus, Kipp & Wolf 364-366; 3 Von Tuhr 311; 3 Fabres 231.

D.1 Mutual restitution must be in accordance with law

In ruling on the present motion, the *ponencia* has apparently abandoned the view that the SDP, while illegal, should still be accorded recognition as a reality that was operative from the time it was put in place up to the time the PARC revocation. This change cannot be wrong as the "operative fact" doctrine applies only in considering the effects of the declaration unconstitutionality of, among others, ***executive acts that have the force and effect of law, i.e., those issued pursuant to a grant of quasi-legislative power.*** The doctrine does not apply to the exercise of quasi-adjudicatory power that PARC exercised as part of its mandate under RA No. 6657, which required its determination of facts and the applicable law in the course of implementing Section 31 of the law. Thus, the SDP, erroneously approved by PARC through Resolution No. 89-12-2, cannot be the basis for the grant of benefits to the FWBs as the approval was not in the exercise of quasi-legislative powers.

In law, nullification of agreements — as we now undertake in our present ruling — dictates that the parties should be restored to their original state prior to the execution of the nullified agreement. This is the command of Articles 1409, 1411 and 1412 of the Civil Code and its supporting jurisprudence that this Court should follow.[24] This means that (1) the 3% production share; (2) the 3% share I the proceeds of the sale of the lands; and (3) the homelots granted in relation with the revoked SDP should all be returned by the FWBs to HLI, subject to the conditions I discuss below. Hence, mutual restitution (instead of the retention that the *ponencia* espouses) should take place.

D.2. Disposition of homelots

With the failure of the SDP, the question of how homelots should be handled becomes a ticklish issue, involving as it does **the home where the family lives. It is in this spirit that the Court should address issue, and in the spirit of fairness that should attend all our dispositions in this case.**

[24] *Ibid.*

An undisputed fact is that the homelots do not form part of the 4,915 hectares covered by the SDP, and no obligation under RA No. 6657 exists for HLI to provide homelots. HLI — through TADECO,[25] however, made the grant of homelots apparently as a consideration for the adoption of the SDP that does not now legally exists. From this view, the homelots may be said to have in fact been donated by HLI so that these should not be taken back.

In my view, the grant of the homelots outside of the requirements of RA No. 6657 cannot be denied. In fairness, however, to HLI who made the grant in the spirit of and pursuant to the SDP, the parties cannot just be left as they are. The way out of this bind is to consider the homelots already granted to both FWBs and non-FWBs as compulsory acquisitions subject to the payment of just compensation in the course of the exercise of the power of eminent domain. The valuation of just compensation for these homelots, therefore, should be an issue to be brought to the DAR for its determination together with all other issue submitted to that forum.

For the FWBs, the just compensation for these homelots shall be an item considered in the adjustment of the claims of HLI and the FWBs against one another. For non-FWBs who now enjoy their homelots, the matter should be submitted to DAR and to the LBP for their determination and action as these homelots are or were part of an agricultural estate that is subject to land reform.

D.3 Other restitutions

As a consequence of the nullification of the SDP, the FWBs should return the following benefits to HLI:

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[25] TADECO is the owner of the 6,443 hectare land; 4,916 hectares of this constitutes the agricultural land that TADECO turned over to HLI, the spin-off corporation it created to comply with Section 31 of RA No. 6657. In return, TADECO received shares of stock of HLI. The Stock Distribution Agreement (which became the basis of the SDP) executed by TADEO, HLI and the FWBs provided that the FWBs are entitled to residential or homelots of not more than 240 sqm. each, see Decision of July 5, 2011, pp. 9-14.

1. the 59 million shares of stock of HLI;
2. the ₱150 million representing the 3% gross sales of the production of the agricultural lands; and
3. the ₱37.5 million representing the 3% proceeds from the sale of the 500 hectares of agricultural land (including the amount received as just compensation for the expropriation by the government of the land used for SCTEX).

The 3% proceeds from the voluntary and involuntary sale of the agricultural land shall be offset against the value received by HLI as consideration for the sale, which should be turned over to the FWBs who are considered the owners of the land as of 1989. The taxes and expenses related to the transfer of titles should likewise be deducted as the same amounts would be incurred regardless of the seller (HLI or the FWBs). As earlier discussed, adjustments should also be made to allow for the payment of indemnity for the improvements HLI introduced on the land, pursuant to Articles 448, 546, and 548 of the Civil Code. As discussed above, this task has been delegated by the Court for factual determination to the DAR.

To summarize, the purchase price received by HLI for the sale of portions of the land should be turned over to the FWBs less (1) the 3% proceeds from the sale already given to the FWBs, (2) the taxes and expenses related to the transfer of titles, and (3) the value of the improvements HLI introduced according to Articles 448, 546, and 548 of the Civil Code.

To be excluded from the benefits that should be returned to HLI are the wages and benefits that both the FWBs and non-FWBs received as employees of HLI. They are entitled to retain these as fruits of their labor; they received these as compensation earned for services rendered.

Conclusions and Dispositions

For greater clarity, I submit the following conclusions and dispositions based on my foregoing discussions.

1. Compulsory Coverage. The entire 4,915 hectares of land is deemed placed under COMPULSORY COVERAGE of the Comprehensive Agrarian Reform Law AS OF NOVEMBER 21, 1989, and the 6,296 qualified FWBs shall be deemed to have collectively acquired ownership rights over the land as of this date. These new owners shall enjoy all the attributes of ownership pursuant to Article 428 of the Civil Code, subject only to legal limitations. The principal limitations are those imposed under RA No. 6657 that governs agrarian reform.

2. Distribution. The DAR shall DISTRIBUTE the land among the 6,296 qualified FWBs pursuant to the terms of RA No. 6657, EXCLUDING:

a. the 300 hectares of converted land acquired by LIPCO/ RCBC; and

b. the 80 hectares of land expropriated by the government for the SCTEX.

The LRC, which never entered its appearance in this case, shall be entitled to prove before the DAR that a valid transfer of the 200 hectares of converted land in its favor took place. If the DAR finds that LRC is a purchaser in good faith and for value, the 200 hectares of converted land shall likewise be excluded from the land to be distributed among qualified FWBs.

3. Just Compensation. The DAR is likewise ORDERED to determine the amount of just compensation that HLI is entitled for the entire 4,915.75 hectares of agricultural land, based on its value at the time of taking — November 21, 1989; no interest shall be imposed on this amount as discussed above. The amount of just compensation shall include the indemnities due to HLI under Articles 546 and 548 of the Civil Code for the useful and necessary expenses incurred for the lands under compulsory coverage.

The DAR is also ORDERED to determine the amount just compensation on the homelots that will be retained by the FWBs, based on their value at the time of taking — November 21, 1989.

4. Other Payments. HLI shall REMIT to the FWBs the purchase price of the:

a. 300 hectares of converted land conveyed to LIPCO/ RCBC;

b. 80 hectares of land taken over by government; and

c. if DAR finds that there was a valid transfer, 200 hectares of converted land conveyed to LRC.

The amount of taxes and expenses related to the sale shall be deducted from the purchase price. The indemnities due to HLI under Article 546 and 548 of the Civil Code representing the useful and necessary expenses incurred for the lands and improvements conveyed to third parties shall also be deducted from the purchase price. The amounts deducted shall be retained by HLI.

5. Restituted Amounts and Benefits. The FWBs shall likewise return to HLI the following amounts paid pursuant to the failed SDP:

a. the ₱37.5 million, representing the 3% share in the sale of portions of the land; and

b. the ₱150 million, representing the 3% production share;

The value of the 3% share in the proceeds of the sale of the lands and 3% production share shall depend on the amount actually received by the FWBs, to be determined by the DAR, and not the amount HLI claims that it gave to the FWBs. The actual amounts of received by the FWBs may be off-set against the purchase price of the sale of the lands that HLI must turn over to the FWBs.

All the FWBs shall return to HLI the 59 million shares of stock. They are, however, entitled to retain all the salaries, wages and other benefits received as employees of HLI.

6. Conciliation and Set-Off. The DAR shall exercise its authority in the determination of just compensation as mandated by law, and the authority delegated by the Supreme Court to undertake the determination of facts and the adjustment of the parties'

claims other than just compensation, including matters of set-off of the parties' claims and the possibility of settlement through mediation and conciliation. **The DAR, hopefully, shall seriously attempt at their level for mediation and conciliation for, ultimately, the agreement between and among the parties will best, in the quickest time, resolve the case.**

The DAR shall undertake its delegated authority on matters other than just compensation and report its results to this Court for its final disposition within one (1) year from this referral. This ruling is immediately final and no further pleadings shall be entertained.

SEPARATE OPINION
(Concurring and Dissenting)

SERENO, *J.*:

There is never any acceptable reason to be unjust. While this Court must be just and fully sympathetic to the farmers, it cannot also be unjust to the landowner. When the *ponente* first circulated the draft that became the 05 July 2011 Decision, I was the first to counter that the lands of petitioner Hacienda Luisita, Inc., (HLI) should be immediately distributed to the farmers. One of the theories of my Dissent of even date — namely, that the Stock Distribution Option Agreement (SDOA) cannot be upheld because, as designed, the farmworker-beneficiaries (FWBs) would forever be the minority stockholders of petitioner HLI — was the same theory used to justify the majority's reversal in its 22 November 2011 Resolution. Little did I suspect that my position in November, that the reckoning of the time of the taking should follow the uniform jurisprudence of this Court, would be stretched to such wild accusations, with some claiming that I had moved that petitioner HLI be paid ₱10 Billion, and that the FWBs had prayed that I be inhibited from participating in this case for unduly advocating the cause of petitioner HLI. Neither of the two claims is true nor has any basis on the record. This Court has never discussed any monetary

values for the land for purposes of just compensation, and none of the justices has even attempted to peg any such value.

In my Separate Opinion to the 22 November 2011 Resolution, I lament the fact that Congress did not choose a revolutionary form of taking for agrarian reform by allowing effective partial confiscation by not requiring payment to the landowners at fair market value.[1] I also advocated the immediate freedom of the land and the FWBs by construing that the 10-year prohibition against transfers of land should not be considered as effective in this case.[2] The FWBs of Hacienda Luisita deserve the full benefits of agrarian reform. But with the Supreme Court consistently requiring that payment to landowners be pegged at fair market value for all kinds of expropriation, and in the case of agrarian reform, pegging it at the time of the notice of

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[1] "After the fall of the martial law regime and at the start of the new democratic society, a 'window of opportunity' was presented to the State to determine and adopt the type of land and agrarian reform to be implemented. The newly formed administration enjoyed a strong mandate from the people, who desired change and would support a sweeping agrarian reform measure to distribute lands. In this scenario, the State could have chosen a more revolutionary approach, introducing into its agrarian reform program a more 'confiscatory element.' Following the examples of other revolutionary governments, **the State could have resorted to simply confiscating agricultural lands under the claim of social justice and the social function of lands, with little need of payment of full just compensation**." (Separate Opinion of Justice Sereno in the 22 November 2011 Resolution)

[2] "Similarly, qualified FWBs should be afforded the same freedom to have the lands awarded to them transferred, disposed of, or sold, if found to have substantially greater economic value as reclassified lands. The proceeds from the sale of reclassified lands in a free, competitive market may give the qualified FWBs greater options to improve their lives. The funds sourced from the sale may open up greater and more diverse entrepreneurial opportunities for them as opposed to simply tying them to the awarded lands. Severely restricting the options available to them with respect to the use or disposition of the awarded lands will only prolong their bondage to the land instead of freeing them from economic want. **Hence, in the interest of equity, the ten-year prohibitive period for the transfer of the Hacienda Luisita lands covered under the CARL shall be deemed to have been lifted, and nothing shall prevent qualified FWBs from negotiating the sale of the lands transferred to them**." (Dissenting Opinion of Justice Sereno in the 05 July 2011 Decision)

coverage, this same Court is required to be fair and observe the same rule by not unduly discriminating against petitioner HLI. Thus, I maintain the position I have earlier expounded in my Opinions in the 05 July 2011 Decision and the 22 November 2011 Resolution, specifically, that petitioner HLI, as any other landowner, is entitled to just compensation for their farmlands to be reckoned at the time of the actual taking of the expropriated property.

There is absolutely no basis on the record to claim that my position will render the lands beyond the FWBs' capability to pay. In my Opinion in the 22 November 2011 Resolution, the deliberations of the framers of the Constitution were cited to conclude that **there is no strict and absolute correspondence between the fair market value to be awarded to the landowners as just compensation and the amortization payments to be paid by the FWBs to the Land Bank of the Philippines for the awarded agricultural lands**.[3] Although the State is obliged to pay the fair market value of the agricultural lands in accordance with the law, rules and jurisprudence, the State does not shift that burden to the FWBs that would receive the expropriated properties. It shall subsidize the repayment schemes for the distributed agricultural lands and offer terms that are affordable to the farmers and allow them to simultaneously pursue their chosen agricultural enterprises on the lands. **In fact, under the CARL, the Presidential Agrarian Reform Council or the Land Bank of the Philippines may even reduce the principal**

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[3] "The approximation of fair value of the expropriated lands as just compensation is not meant to increase the burdens of payment by the qualified FWBs. **When the framers of the Constitution originally determined that just compensation, as understood in prevailing jurisprudence, was to be given to landowners in agrarian reform expropriation, the point was clarified that the amounts to be awarded to the landowners were not the exact figures that would in turn be paid by the farmers, in other words it should be subsidized**: x x x

Thus, the original intention was that there should be **no strict correspondence** between the just compensation due to the landowner and the amounts to be paid by the farmworkers: x x x" (Separate Opinion of Justice Sereno in the 22 November 2011 Resolution)

obligation or the interest rates on amortization payments to make them more affordable to the FWBs.[4] Hence, a totally different regime of social justice applies when it is the FWBs that will pay the amortization to the State through the Land Bank of the Philippines under the CARL.

Nevertheless, I have listened to the reasoning recently expounded in full by Justice Lucas P. Bersamin and join his position for the most judicious and equitable recourse of remanding the issue of determining just compensation, initially, to the Department of Agrarian Reform, and ultimately, to the Regional Trial Court, acting as a Special Agrarian Court. Considering that the parties had not fully substantiated or argued the determination of the award of just compensation, factual circumstances are clearly lacking for this Court to make a substantial and definitive ruling on significant, yet insufficiently factually-litigated facets of the case. As Justice Bersamin explains, the matter of the time when the taking of the Hacienda Luisita farmlands is to be pegged for purposes of valuation of the property has not been properly raised as an issue by the parties and that factual issue is within the exclusive and original jurisdiction of the Regional Trial Court, acting as a Special Agrarian Court.[5]

In his Separate Opinion, Justice Arturo D. Brion approximates, to some extent, the proper value of the expropriated lands for purposes of just compensation by characterizing petitioner HLI as a builder in good faith and allowing it reimbursement for its

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[4] "SECTION 26. *Payment by Beneficiaries*. — Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations at six percent (6%) interest *per annum*. The payments for the first three (3) years after the award **may be at reduced amounts as established by the PARC**: *Provided*, That the first five (5) annual payments may not be more than five percent (5%) of the value of the annual gross production as established by the DAR. Should the scheduled annual payments after the fifth year exceed ten percent (10%) of the annual gross production and the failure to produce accordingly is not due to the beneficiary's fault, **the LBP may reduce the interest rate or reduce the principal obligation to make the repayment affordable**. x x x"

[5] Concurring and Dissenting Opinion of Justice Bersamin, p. 4.

improvements on the expropriated lands.[6] As I mentioned in my previous Opinion, I would have been persuaded by Justice Brion's reasoning to reckon the period to the 1989 value of the lands, if petitioner HLI would be compensated for the time difference with interest in the interim period when payment was not made by the government.[7] The payment of interest is a superior solution to identifying and assessing each building or improvement attributable to petitioner HLI, as previous corporate landowner since it acquires less factual determination and accounting, which is open again to prolonged dispute and further adjudication. In any case, it seems incongruent to declare petitioner HLI a good faith builder of improvements on the land and yet, expropriate the same land under confiscatory, and hence, punitive values. The nullification of the SDOA and distribution of the lands to the FWBs should not come at the expense of depriving petitioner HLI what is due to it under the Constitution, the law and existing jurisprudence. If petitioner HLI has to be penalized for some

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[6] Separate Opinion (Concurring and Dissenting) of Justice Brion, pp. 11-14.

[7] "Although Justice Brion reckoned the period for the valuation of the land to 21 November 1989, he recognized petitioner HLI's entitlement to the value of the improvements that it has introduced into the agricultural lands for the past twenty years. The proposition is akin to the Civil Code situation where a landowner opts to acquire the improvements introduced by a builder in good faith and must necessarily pay their value. **Hence, although the land of petitioner HLI is expropriated by the government, there is a need for compensation for the introduction of the improvements actually installed by petitioner HLI, such as roads and other infrastructure, which have evidently improved the value of the property, aside from its appreciation over time. In recognizing the necessity for compensating petitioner HLI for their improvements, pegging the values to its 1989 levels will not be as severely confiscatory, if the value will be included as part of the just compensation to be paid. I would even be willing to accept the formulation proposed by Justice Brion since it would, to a lesser amount, approximates a fair market value of the property.** But to simply evaluate the property's worth to outdated levels and exclude entirely the improvements made and the market appreciation of the lands in all the 17 years that petitioner HLI invested in the lands is not even supportable by the Civil Code." (Separate Opinion of Justice Sereno in the 22 November 2011 Resolution)

historical infraction, then the factual and legal basis for such penalty has to be clearly articulated by the Court.

For the Court to impose the reckoning period for the valuation of the expropriated Hacienda Luisita farmlands to its 1989 levels is an unwarranted departure from what the Philippine legal system has come to understand and accept[8] (and continues to do so, as recently as last month)[9] as the meaning of just compensation in agrarian reform cases since the 1988 Comprehensive Agrarian Reform Law (CARL).[10] The decision taken by the Court today (albeit *pro hac vice*) to pay petitioner HLI an amount based on outdated values of the expropriated lands is too confiscatory considering the years of jurisprudence built by this Court. No reasonable explanation has been offered in this case to justify such deviation from our past decisions that would lead to a virtual non-compensation for petitioner HLI's lands. The

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[8] *LBP v. Spouses Banal*, G.R. No. 143276, 20 July 2004, 434 SCRA 543; *LBP v. Celada*, G.R. No. 164876, 23 January 2006, 479 SCRA 495; *Lubrica v. LBP*, G.R. No. 170220, 20 November 2006, 507 SCRA 415; *LBP v. Lim*, G.R. No. 171941, 02 August 2007, 529 SCRA 129; *LBP v. Suntay*, G.R. No. 157903, 11 October 2007, 535 SCRA 605; *Spouses Lee v. LBP*, G.R. No. 170422, 07 March 2008, 548 SCRA 52; *LBP v. Heirs of Eleuterio Cruz*, G.R. No. 175175, 29 September 2008, 567 SCRA 31; *LBP v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108; *LBP v. Gallego, Jr.*, G.R. No. 173226, 20 January 2009, 576 SCRA 680; *LBP v. Kumassie Plantation*, G.R. Nos. 177404 and 178097, 25 June 2009, 591 SCRA 1; *LBP v. Rufino*, G.R. No. 175644 and 175702, 02 October 2009, 602 SCRA 399; *LBP v. Luciano*, G.R. No. 165428, 25 November 2009, 605 SCRA 426; *LBP v. Dizon*, G.R. No. 160394, 27 November 2009, 606 SCRA 66; *Heirs of Lorenzo and Carmen Vidad v. LBP*, G.R. No. 166461, 30 April 2010, 619 SCRA 609; *LBP v. Soriano*, G.R. Nos. 180772 and 180776, 06 May 2010, 620 SCRA 347; *LBP v. Barrido*, G.R. No. 183688, 18 August 2010, 628 SCRA 454; *LBP v. Colarina*, G.R. No. 176410, 01 September 2010, 629 SCRA 614; *LBP v. Livioco*, G.R. No. 170685, 22 September 2010, 631 SCRA 86; *LBP v. Escandor*, G.R. No. 171685, 11 October 2010, 632 SCRA 504; *LBP v. Rivera*, G.R. No. 182431, 17 November 2010, 635 SCRA 285; *LBP v. DAR*, G.R. No. 171840, 04 April 2011.

[9] *LBP v. Honey Comb Farms Corp.*, G.R. No. 169903, 29 February 2012; *LBP v. Heirs of Jesus Yujuico*, G.R. No. 184719, 21 March 2012.

[10] Republic Act No. 6657.

majority's and Justice Brion's legal fiction that the "taking" is to be reckoned from the time of the approval of the SDOA is unjust for two reasons. *First*, the uniform jurisprudence on this matter is that taking is actual taking. *Second*, no clever restatement of the law is acceptable if it will result in injustice, and in this case, to a landowner who is differently treated from every other landowner.

Although I continue to believe that the application of the ordinary reckoning period from the time of the taking of the expropriated property as enunciated in existing agrarian reform jurisprudence is applicable to this case, the resolution of this case, as explained by Justice Bersamin, requires further reception of documentary evidence, administrative investigation and judicial analysis to arrive at the approximate value of the expropriated lands and the amount of just compensation to be paid to petitioner HLI. The records of the case as it now stands sorely lack factual certainty for this Court to make a proper determination of the exact award of just compensation. It has only been in the media that a purported numerical value has been argued; no argument over such amount has ever taken place before this Court. Although this Court can provide guidelines for the concerned judicial authorities, the dearth in evidence to substantiate the value of the lands (regardless of whether it is reckoned from 1989 or 2006) requires that the parties be allowed to present before an impartial authority with jurisdiction to receive evidence, hear their cases and finally decide the matter. The Supreme Court is not a trier of facts. Factual matters such as the scope of the farmlands in the name of Tarlac Development Corporation (TADECO) or petitioner HLI that should be subject to CARP coverage, the number and value of the homelots given, the improvements introduced, the type of lands subject to coverage, and the amounts actually received by both the corporate landowner and the farmworker beneficiaries during the operation of the SDOA have yet to be convincingly determined to arrive at the amount of just compensation. The more equitable solution would be to allow reception of evidence on these factual matters and to relegate the adjudication of the same to the proper trial court with exclusive and original jurisdiction over the controversy.

In the midst of these reasoned disagreements in our separate Opinions as to the period when to determine just compensation, the parties must not lose sight of our near unanimity of the substantial merits of the case — that the SDOA is nullified and that the lands should be immediately and without delay be distributed to the farmworker beneficiaries. **Hence, the remand of the determination of the just compensation due to petitioner HLI should not in any way hinder the immediate distribution of the farmlands in Hacienda Luisita**. Legal processes regarding the determination of the amount to be awarded to the corporate landowner in case of non-acceptance, must not be used to deny the farmworker beneficiaries the legal victory they have long fought for and successfuly obtained.

For the foregoing reasons, I join the Separate Concurring and Dissenting Opinion of Justice Lucas P. Bersamin.

EN BANC

[G.R. No. 181367. April 24, 2012]

LA CARLOTA CITY, NEGROS OCCIDENTAL, represented by its Mayor, HON. JEFFREY P. FERRER,[*] and the SANGGUNIANG PANLUNGSOD OF LA CARLOTA CITY, NEGROS OCCIDENTAL, represented by its Vice-Mayor, HON. DEMIE JOHN C. HONRADO,[**] *petitioners, vs.* **ATTY. REX G. ROJO,** *respondent.*

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[*] Now the Representative of the 4th District of Negros Occidental. See footnote 1 of the Petition for Review, *rollo*, p. 12.

[**] Now the Mayor of La Carlota City, Negros Occidental. See page 1 of the Petition for Review, *id.*

SYLLABUS

1. **POLITICAL LAW; LOCAL GOVERNMENT CODE (R.A. 7160); THE VICE-MAYOR IS A MEMBER OF *SANGGUNIANG PANLUNGSOD* AND CAN VOTE ONLY TO BREAK A TIE.—** RA 7160 clearly states that the *Sangguniang Panlungsod* "**shall be composed of the city vice-mayor as presiding officer**, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panlungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members." Black's Law Dictionary defines "composed of" as "**formed of**" or "**consisting of**." As the presiding officer, the vice-mayor can vote only to break a tie. In effect, the presiding officer votes when it matters the most, that is, to break a deadlock in the votes. Clearly, the vice-mayor, as presiding officer, is a "member" of the *Sangguniang Panlungsod* considering that he is mandated under Section 49 of RA 7160 to vote to break a tie. To construe otherwise would create an anomalous and absurd situation where the presiding officer who votes to break a tie during a *Sanggunian* session is not considered a "member" of the *Sanggunian*.

2. **ID.; ID.; THE VICE-MAYOR OR THE VICE-GOVERNOR, AS PRESIDING OFFICER, SHALL BE INCLUDED IN THE DETERMINATION OF A QUORUM IN THE *SANGGUNIAN*; APPLICATION.—** In the 2004 case of *Zamora v. Governor Caballero*, the Court interpreted Section 53 of RA 7160 to mean that the entire membership must be taken into account in computing the quorum of the *sangguniang panlalawigan*. x x x In stating that there were fourteen (14) members of the *Sanggunian*, the Court in *Zamora* clearly included the Vice-Governor, as presiding officer, as part of the entire membership of the *Sangguniang Panlalawigan* which must be taken into account in computing the quorum. DILG Opinions, which directly ruled on the issue of whether the presiding officer should be included to determine the quorum of the *sanggunian*, have consistently conformed to the Court's ruling in *Zamora*. In DILG Opinion No. 46, s. 2007, the Undersecretary for Local Government clearly stated that the vice-mayor is included in the determination of a quorum in the *sanggunian*. In the same manner, a quorum of the *Sangguniang Panlungsod* should be computed based on the

total composition of the *Sangguniang Panlungsod*. In this case, the *Sangguniang Panlungsod* of La Carlota City, Negros Occidental is composed of the presiding officer, ten (10) regular members, and two (2) *ex-officio* members, or a total of thirteen (13) members. A majority of the 13 "members" of the *Sangguniang Panlungsod*, or at least seven (7) members, is needed to constitute a quorum to transact official business. Since seven (7) members (including the presiding officer) were present on the 17 March 2004 regular session of the *Sangguniang Panlungsod*, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted.

3. ID.; ID.; WHERE THE APPOINTMENT OF A RESIGNED *SANGGUNIANG PANLUNGSOD* MEMBER TO THE POSITION OF *SANGGUNIAN* SECRETARY IS VALIDLY UPHELD AS THERE WAS NO VIOLATION OF THE ELECTION BAN PERIOD.— On the issue that respondent's appointment was issued during the effectivity of the election ban, the Court agrees with the finding of the Court of Appeals and the Civil Service Commission that since the respondent's appointment was validly issued on 18 March 2004, then the appointment did not violate the election ban period which was from 26 March to 9 May 2004. Indeed, the Civil Service Commission found that despite the lack of signature and certification of the Human Resource Management Officer of La Carlota City on respondent's appointment papers, respondent's appointment is deemed effective as of 18 March 2004 considering that there was substantial compliance with the appointment requirements. x x x Clearly, the appointment of respondent on 18 March 2004 was validly issued considering that: (1) he was considered resigned as *Sangguniang Panlungsod* member effective 17 March 2004; (2) he was fully qualified for the position of *Sanggunian* Secretary; and (3) there was substantial compliance with the appointment requirements.

BRION, *J.*, *concurring opinion*:

1. POLITICAL LAW; LOCAL GOVERNMENT CODE (R.A. 7160); THE POWER TO ACCEPT RESIGNATION OF *A SANGGUNIAN* MEMBER IS LODGED WITH THE *SANGGUNIAN* CONCERNED; VICE-MAYOR'S PRESENCE TO CONSTITUTE A QUORUM IS MATERIAL IN

ACCEPTING THE RESIGNATION.— [Article 82 of the Local Government Code] lays down the rule on resignations and identifies the authorities with the power to accept the resignation of particular local government officials. In the case of *sanggunian* members, that authority is the local legislative body — the *sanggunian* concerned of which the resignee is a member. Before determining what the law exactly means in making reference to the "*sanggunian* concerned," Section 53 of the LGC prescribes a quorum requirement before the *sanggunian* can validly transact its regular official business. x x x On the other hand, Article 457 of the LGC identifies the composition of the *sanggunian* for the purpose of determining the "*sanggunian* concerned" authorized to *accept* the resignation of its member. x x x Based on these provisions, I believe that it is absurd not to include the presiding officer in determining whether a quorum exists since (i) the law includes him as part of the body authorized to accept an elective local official's resignation and (ii) this body — the "*sanggunian* concerned" — can validly act only if there is a quorum. Moreover, while the Vice-Mayor as presiding officer cannot vote except in case of tie, the determination of the quorum *for purpose of accepting a resignation of a sanggunian member* does **not** require an **active** participation on the part of any member of the *sanggunian.* Under the LGC, the only express prohibition against the resignation of an elective local official is when he is the subject of an on-going recall process. Under the Anti-Graft and Corrupt Practices Act, a public officer who is the subject of a pending investigation (administrative or criminal) or prosecution is likewise prohibited from resigning. This prohibition, however, is for the sole purpose of preventing him from frustrating the ongoing investigation or prosecution, *i.e.*, in order to be consistent with an individual's constitutional right against involuntary servitude, a public official may resign from the service but his act will not cause the dismissal of the on-going proceeding against him. In other words, in accepting a resignation, the *sanggunian*, as a body, simply takes a passive stance on a matter that *relates to the administrative duties of the Vice-Mayor* himself. The dichotomy (*i.e.*, the counting of the Presiding Officer for purpose of quorum but without giving him the right to vote except in case of a tie) can be better appreciated if it is considered that, unlike in the old LGC, the presiding officer is empowered, as a rule, to appoint all officials

and employees of the *sanggunian*. In the present case, at issue is petitioner Rojo's resignation as a *sanggunian* member for the express purpose of applying for the position of *sanggunian* secretary whom the Vice-Mayor can appoint. In other words, woven into the question of resignation is the function of appointment that the law expressly assigned to the Vice-Mayor. These circumstances add to the reasons justifying the conclusion that the Vice-Mayor's presence in accepting the resignation is material.

2. ID.; ID.; DIFFERENT VOTING REQUIREMENT FOR AN AFFIRMATIVE ACTION ON THE PART OF *SANGGUNIAN*, EXPLAINED.— The *sanggunian* is a collegial body performing several legislative and non-legislative functions. Under the LGC, the voting requirement for an affirmative action on the part of the *sanggunian* varies depending on the particular power to be exercised or the measure to be adopted. The voting requirement could be (i) two-thirds (2/3) of all its members; or (ii) two-thirds (2/3) vote of the members present, there being quorum; or (iii) three-fourths (¾) of all its members; or (iv) majority vote of all the members; or (vi) simply concurrence of the *sanggunian* concerned or (vii) affirmative vote of a majority of the members present, there being a quorum; or (viii) unanimous vote of the *sanggunian* concerned. If the voting level required would engage the ***entirety*** of the *sanggunian* as a collegial body, making the quorum requirement least significant, there is no rhyme or reason to include the presiding officer's personality at all. The possibility of that one instance where he may be allowed to vote is nil. To include him in *sanggunian* membership without this qualification would adversely affect the statutory rule that generally prohibits him from voting. To illustrate, in disciplining members of the *sanggunian* where the penalty involved is suspension or expulsion, the LGC requires the concurrence of two-thirds (2/3) of all the members of the *sanggunian*. If the *Sanggunian* has thirteen (13) regular members (excluding the presiding officer), the votes needed to impose either of the penalty is eight. However, should the presiding officer be also included, therefore raising the membership to fourteen (14), — on the premise that he is also *sanggunian* member — even if he cannot vote in this instance, an additional one vote is required — *i.e.*, nine votes are required — before the penalty is imposed. The presiding officer's innocuous inclusion as *sanggunian*

member negatively impacts on the prohibition against him from voting since his mere inclusion affects the numerical value of the required voting level on a matter where generally and by law he has no concern.

DEL CASTILLO, *J., dissenting opinion*:

1. POLITICAL LAW; LOCAL GOVERNMENT CODE (RA 7160); THE VICE-MAYOR IS A PRESIDING OFFICER OF *SANGGUNIANG PANLUNGSOD*, AND NOT A MEMBER; VICE-MAYOR SHOULD NOT BE COUNTED FOR PURPOSES OF QUORUM.— The vice-mayor is not a member, even if he is a part of the composition of the *Sanggunian*. Section 457 itself does **not** treat everyone in the composition of the *sanggunian* as members. Instead, Section 457 divides the composition of the *sanggunian* into two: (a) the vice-mayor, as presiding officer, and (b) the rest, as members. This division is not an imaginary distinction, but is dictated by the very language of Section 457[.] x x x There are two qualifying phrases in this provision — "as presiding officer" and "as members." Qualifying phrases refer only to the words to which they are immediately associated. The phrase "as presiding officer" refers only to the vice- mayor, while the phrase "as members" refers only to the component parts that are mentioned after the phrase "as presiding officer." Since the phrase "as members" cannot in any manner refer to the vice-mayor, Section 457 itself does not support the argument that the vice-mayor is a member that is included in the quorum requirement "*of all the members* of the *sanggunian*." x x x In describing the composition of the *sangguniang panlungsod*, Section 457 states that it has the city vice-mayor as its presiding officer, and the regular members, *ex officio* members, and sectoral representatives, as members. The present wording of the *sanggunian's* composition, when read in conjunction with Section 53, which describes quorum as "a majority of *all* the members," leads to the conclusion that quorum refers to the majority of the regular, *ex officio* and sectoral members. The word "all" was added to encompass the three kinds of members of the *sanggunian*; not to encompass its entire composition. The inclusion of the presiding officer in the composition of the *sangguniang panlungsod* is only logical considering that the presiding officer *is* the administrative head of the said

body. But his inclusion as such does not automatically make him a member thereof. x x x [T]he Local Government Code treats the vice-mayor and his office separately from that of the *Sangguniang Panlungsod*. The powers and duties of the vice-mayor are provided in Section 456 and there is nothing therein which states or even suggests that he is also a member of the *Sangguniang Panlungsod*[.] x x x Chapter 3, Title II of Book I of the Local Government Code, which is entitled Local Legislation also did not describe the city vice-mayor as a member of the *Sangguniang Panlungsod*. Section 49 thereof was devoted to designating the vice-mayor as the presiding officer of the *sanggunian*, nothing more. The law is clear: the city vice-mayor is the presiding officer of the *sangguniang panlungsod*, and not a member. As such, the vice-mayor should not be counted for purposes of quorum.

2. ID.; ID.; OPINION FROM THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT THAT THE VICE-MAYOR, AS PRESIDING OFFICER, IS INCLUDED FOR PURPOSES OF QUORUM DOES NOT BIND THE COURT.— The *ponencia* also cites the opinions emanating from the Department of Interior and Local Government (DILG) that the presiding officer is included for purposes of quorum. A careful reading of the DILG opinions, however, will expose them as totally bereft of rational and legal basis. These opinions, in a nutshell, state that the presiding officer is included in the quorum merely because he is included in the composition of the *sanggunian*. It assumes that everyone in the composition of the *sanggunian* is a member, which assumption is false because, as I have already discussed, Section 457 itself divides the composition of the *sanggunian* into two: (a) the vice-mayor, as presiding officer, and (b) the rest, as members. While these DILG opinions may have persuasive effect because the DILG is the implementing agency of the LGC, this Court is not in any way bound by the DILG's pronouncements, especially when its opinion does not seek to persuade a critical mind but merely makes a declaration. The Court has the primary duty to interpret the law, and any construction that is clearly erroneous cannot prevent the Court from exercising its duty. The court's mandate is to the law and laws remain despite non-use, non-observance and customs to the contrary.

APPEARANCES OF COUNSEL

Aguilar Bering & Associates for petitioners.
Prospero C. Rojo and *Law Office of Baribar Jalando-on Placido & Associates* for respondent.

D E C I S I O N

CARPIO, *J.*:

This petition for review assails the 14 September 2007 Decision[1] and the 18 January 2008 Resolution[2] of the Court of Appeals in CA-G.R. CEB-SP No. 01377. The Court of Appeals affirmed Resolution Nos. 050654[3] and 051646[4] of the Civil Service Commission, which affirmed the Decision dated 20 September 2004 of the Civil Service Commission Regional Office (CSCRO) No. VI, Iloilo City, approving the appointment of respondent Atty. Rex G. Rojo (respondent) as *Sangguniang Panlungsod* Secretary under a permanent status.

The Facts

The facts as found by the Court of Appeals are as follows:

On March 18, 2004, [the] then Vice-Mayor Rex R. Jalandoon of La Carlota City, Negros Occidental appointed Atty. Rex G. Rojo (or Rojo) who had just tendered his resignation as member of the Sangguniang Panlungsod the day preceding such appointment, as Sangguniang Panlungsod Secretary. The status of the appointment was permanent. The next day, March 19, 2004, the Vice-Mayor submitted Rojo's appointment papers to the Civil Service Commission Negros Occidental Field Office (CSCFO-Negros Occidental) for attestation. In a Letter dated March 24, 2004, the said CSCFO wrote

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[1] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Francisco P. Acosta and Stephen C. Cruz, concurring; *id.* at 64-70.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier, concurring; *id*. at 72-73.

[3] *Id*. at 48-55.

[4] *Id*. at 58-62.

Jalandoon to inform him of the infirmities the office found on the appointment documents, *i.e.* the Chairman of the Personnel Selection Board and the Human Resource Management Officer did not sign the certifications, the latter relative to the completeness of the documents as well as to the publication requirement. In view of the failure of the appointing authority to comply with the directive, the said CSCFO considered the appointment of Rojo permanently recalled or withdrawn, in a subsequent Letter to Jalandoon dated April 14, 2004.

Jalandoon deemed the recall a disapproval of the appointment, hence, he brought the matter to the CSC Regional Office No. 6 in Iloilo City, by way of an appeal. He averred that the Human Resource Management Officer of La Carlota City refused to affix his signature on Rojo's appointment documents but nonetheless transmitted them to the CSCFO. Such transmittal, according to Jalandoon, should be construed that the appointment was complete and regular and that it complied with the pertinent requirements of a valid appointment. Before the said CSC Regional Office No. 6 [could resolve the appeal], the City of La Carlota represented by the newly elected mayor, Hon. Jeffrey P. Ferrer and the Sangguniang Panlungsod represented by the newly elected Vice-Mayor, Hon. Demie John C. Honrado, collectively, the petitioners herein, intervened. They argued that Jalandoon is not the real party in interest in the appeal but Rojo who, by his inaction, should be considered to have waived his right to appeal from the disapproval of his appointment; that the appointment was made within the period of the election ban prior to the May 14, 2004 national and local elections, and finally, that the resignation of Rojo as member of the Sangguniang Panlungsod is ineffective having not complied with the provision on quorum under Section 82(d) of R.A. No. 7160.

In a Decision dated September 20, 2004, the CSC Regional Office No. 6 reversed and set aside the CSCFO's earlier ruling. On the argument of the intervenors that the former Vice-Mayor lacked legal personality to elevate the case on appeal, the regional office cited settled jurisprudence that the disapproval of an appointment affects the discretionary authority of the appointing authority. Hence, he alone may request for reconsideration of or appeal the disapproval of an appointment. The regional office likewise ruled that Rojo's appointment on March 18, 2004 was made outside the period of the election ban from March 26 to May 9, 2004, and that his resignation from the Sangguniang Panlungsod was valid having been tendered

with the majority of the council members in attendance (seven (7) out of the thirteen councilors were present). Considering that the appointment of Rojo sufficiently complied with the publication requirement, deliberation by the Personnel Selection Board, certification that it was issued in accordance with the limitations provided for under Section 325 of R.A. 7160 and that appropriations or funds are available for said position, the regional office approved the same. x x x

Mayor Ferrer and Vice-Mayor Honrado appealed the foregoing Decision of the CSC Regional Office No. 6 to the Civil Service Commission (or Commission). On May 17, 2005, the Commission dismissed said appeal on the ground that the appellants were not the appointing authority and were therefore improper parties to the appeal. Despite its ruling of dismissal, the Commission went on to reiterate CSC Regional Office's discussion on the appointing authority's compliance with the certification and deliberation requirements, as well as the validity of appointee's tender of resignation. x x x

It likewise denied the motion for reconsideration thereafter filed by the petitioners in a Resolution dated November 8, 2005.[5]

Petitioners filed a petition for review with the Court of Appeals. On 14 September 2007, the Court of Appeals denied the petition, and affirmed Resolution Nos. 050654 and 051646 of the Civil Service Commission, dated 17 May 2005 and 8 November 2005, respectively. Petitioners filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution dated 18 January 2008.

Hence, this petition for review.

The Ruling of the Court of Appeals

Citing Section 9(h), Article V of Presidential Decree No. 807[6] or the Civil Service Decree, the Court of Appeals held that "in

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[5] CA Decision, pp. 1-4; *id*. at 64-67.

[6] Section 9(h), Article V of PD 807 reads:

Section 9. *Powers and Functions of the Commission*. The Commission shall administer the Civil Service and shall have the following powers and functions:

the attestation of an appointment made by a head of agency, the duty of the Civil Service Commission does not go beyond ascertaining whether the appointee possesses the appropriate civil service eligibility and the minimum statutory qualifications."[7] In this case, the Court of Appeals found that respondent met the minimum qualifications for the position of Secretary of the *Sanggunian*, as enumerated under Section 469(b), Article I, Title V of the Local Government Code.[8] In fact, the Court of Appeals held that respondent is more than qualified for the position considering that respondent is a lawyer and an active member of the bar. Furthermore, the requirements for the appointment of respondent have been substantially complied with: (a) publication; (b) Personnel Selection Board deliberation; and (c) certification from the appropriate offices that appropriations or funds are available for the position. Thus, the Court of Appeals ruled that there was no sufficient reason for the Commission to disapprove respondent's appointment.

On the issue of the lack of signature of the Human Resource Management Officer of La Carlota City on respondent's appointment papers, the Court of Appeals held that such refusal of the officer to affix his signature should not affect the validity of the appointment. Otherwise, "it would be tantamount to putting the appointing power under the mercy of a department head who may without reason refuse to perform a ministerial function, as what happened in the instant case."[9]

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x x x x x x x x x

(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. x x x

[7] *Rollo*, p. 68.

[8] Under Section 469(b), "[n]o person shall be appointed secretary to the *sanggunian* unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in law, commerce or public administration from a recognized college or university, and a first grade civil service eligible or its equivalent."

[9] *Rollo*, p. 69.

The Court of Appeals also found that the appointment of respondent on 18 March 2004 did not violate the election ban period which was from 26 March to 9 May 2004. Furthermore, there was no substantial evidence to show that the appointment was a "midnight appointment."

Thus, the Court of Appeals concluded that since respondent possessed the minimum qualifications for the position of *Sangguniang Panlungsod* Secretary, and the appointing authority has adequately complied with the other requirements for a valid appointment, then the Civil Service Commission's approval of the appointment was only proper.

The Issues

Petitioners raise the following issues:

1. WHETHER THE APPOINTMENT OF RESPONDENT AS *SANGGUNIANG PANLUNGSOD* SECRETARY VIOLATED THE CONSTITUTIONAL PROSCRIPTION AGAINST ELIGIBILITY OF AN ELECTIVE OFFICIAL FOR APPOINTMENT DURING HIS TENURE; and
2. WHETHER RESPONDENT'S APPOINTMENT AS *SANGGUNIANG PANLUNGSOD* SECRETARY WAS ISSUED CONTRARY TO EXISTING CIVIL SERVICE RULES AND REGULATIONS.[10]

The Ruling of the Court

Petitioners allege that respondent's appointment as *Sangguniang Panlungsod* Secretary is void. Petitioners maintain that respondent's irrevocable resignation as a *Sangguniang Panlungsod* member was not deemed accepted when it was presented on 17 March 2004 during the scheduled regular session of the *Sangguniang Panlungsod* of La Carlota City, Negros Occidental for lack of quorum. Consequently, respondent was still an incumbent regular *Sangguniang Panlungsod* member when then Vice Mayor Jalandoon appointed him as *Sangguniang*

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[10] Petitioners' Memorandum dated 7 November 2008, pp. 5-6; *id.* at 132-133.

Panlungsod Secretary on 18 March 2004, which contravenes Section 7, Article IX-B of the Constitution.[11]

The resolution of this case requires the application and interpretation of certain provisions of Republic Act No. 7160 (RA 7160), otherwise known as the Local Government Code of 1991. The pertinent provisions read:

Section 82. *Resignation of Elective Local Officials*. **(a) Resignations by elective local officials shall be deemed effective only upon acceptance by the following authorities:**

(1) The President, in the case of governors, vice-governors, and mayors and vice-mayors of highly urbanized cities and independent component cities;

(2) The governor, in the case of municipal mayors, municipal vice-mayors, city mayors and city vice-mayors of component cities;

(3) **The *sanggunian* concerned, in case of *sanggunian* members**; and

(4) The city or municipal mayor, in the case of *barangay* officials.

(b) Copies of the resignation letters of elective local officials, together with the action taken by the aforesaid authorities, shall be furnished the Department of Interior and Local Government.

(c) The resignation shall be deemed accepted if not acted upon by the authority concerned within fifteen (15) working days from receipt thereof.

(d) **Irrevocable resignations by *sanggunian* members shall be deemed accepted upon presentation before an open session of the *sanggunian* concerned and duly entered in its records**: *Provided, however,* That this subsection does not apply to *sanggunian* members who are subject to recall elections or to cases where existing laws prescribe the manner of acting upon such resignations.

Section 49. ***Presiding Officer***. (a) The vice-governor shall be the presiding officer of the *sangguniang panlalawigan*; **the city vice-mayor, of the *sangguniang panlungsod***; the municipal vice-mayor, of the *sangguniang bayan*; and the *punong barangay*, of the *sangguniang barangay*. **The presiding officer shall vote only to break a tie.**

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[11] Section 7, Article IX-B of the Constitution provides that "[n]o elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure."

(b) In the event of the inability of the regular presiding officer to preside at a *sanggunian* session, the members present and consisting a quorum shall elect from among themselves a temporary presiding officer. He shall certify within ten (10) days from the passage of ordinances enacted and resolutions adopted by the *sanggunian* in the session over which he temporarily presided.

Section 52. *Sessions*. (a) On the first day of the session immediately following the election of its members, the *sanggunian* shall, by resolution, fix the day, time, and place of its regular sessions. The minimum number of regular sessions shall be once a week for the *sangguniang panlalawigan*, *sangguniang panlungsod*, and *sangguniang bayan*, and twice a month for the *sangguniang barangay*.

(b) When public interest so demands, special session may be called by the local chief executive or by a majority of the members of the *sanggunian*.

(c) All *sanggunian* sessions shall be open to the public unless a closed-door session is ordered by an affirmative vote of a majority of the members present, there being a quorum, in the public interest or for reasons of security, decency, or morality. No two (2) sessions, regular or special, may be held in a single day.

(d) In the case of special sessions of the *sanggunian*, a written notice to the members shall be served personally at the member's usual place of residence at least twenty-four (24) hours before the special session is held. Unless otherwise concurred in by two-thirds (2/3) vote of the *sanggunian* members present, there being a quorum, no other matters may be considered at a special session except those stated in the notice.

(e) Each *sanggunian* shall keep a journal and record of its proceedings which may be published upon resolution of the *sanggunian* concerned.

Section 53. ***Quorum***. (a) **A majority of all the members of the *sanggunian* who have been elected and qualified shall constitute a quorum to transact official business.** Should a question of quorum be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results.

(b) Where there is no quorum, the presiding officer may declare a recess until such time as a quorum is constituted, or a majority of the members present may adjourn from day to day and may compel the immediate attendance of any member absent without justifiable cause by designating a member of the *sanggunian*, to be assisted by

a member or members of the police force assigned in the territorial jurisdiction of the local government unit concerned, to arrest the absent member and present him at the session.

(c) If there is still no quorum despite the enforcement of the immediately preceding subsection, no business shall be transacted. The presiding officer, upon proper motion duly approved by the members present, shall then declare the session adjourned for lack of quorum.

Section 457. ***Composition.*** (a) **The *sangguniang panlungsod*, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panlungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members**.

(b) In addition thereto, there shall be three (3) sectoral representatives: one (1) from the women; and as shall be determined by the *sanggunian* concerned within ninety (90) days prior to the holding of the local elections, one (1) from the agricultural or industrial workers; and one (1) from the other sectors, including the urban poor, indigenous cultural communities, or disabled persons.

(c) The regular members of the *sangguniang panlungsod* and the sectoral representatives shall be elected in the manner as may be provided for by law. (Boldfacing supplied)

Petitioners insist that the vice-mayor, as presiding officer of the *Sangguniang Panlungsod*, should not be counted in determining whether a quorum exists. Excluding the vice-mayor, there were only six (6) out of the twelve (12) members of the *Sangguniang Panlungsod* who were present on 17 March 2004. Since the required majority of seven (7) was not reached to constitute a quorum, then no business could have validly been transacted on that day including the acceptance of respondent's irrevocable resignation.

On the other hand, respondent maintains that in this case, the *Sangguniang Panlungsod* consists of the presiding officer, ten (10) regular members, and two (2) *ex-officio* members, or a total of thirteen (13) members. Citing the Department of Interior

and Local Government (DILG) Opinion No. 28, s. 2000,[12] dated 17 April 2000, respondent asserts that the vice-mayor, as presiding officer, should be included in determining the existence of a quorum. Thus, since there were six (6) members plus the presiding

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[12] *Rollo*, p.179. The DILG Opinion No. 28, s. 2000, dated 17 April 2000 reads:

Opinion No. 28, s. 2000
17 April 2000

Councilors JUVY M. MAGSINO, REUEL P. LAYGO, SOLOMON J. LUMALANG, JR. WILSON A. VIRAY, and JAIME C. GUTIERREZ, JR.

Sangguniang Bayan of Naujan
Oriental Mindoro

Dear Councilors:

This refers to your query on how many members of the Sangguniang Bayan of Naujan, composed of eight (8) regular and two (2) *ex-officio* members and the vice mayor as presiding officer, must be present before the *sanggunian* can declare the presence of a quorum to legally transact official business.

In reply thereto, please be apprised that, for quorum to exist, the Sangguniang Bayan of Naujan must have the presence of at least six (6) of its members including the vice-mayor, which is the majority of eleven (11), in order to legally transact official business.

It must be emphasized that Section 53 of the Local Government Code of 1991 (RA7160) mandates that a majority of all the members of the *sanggunian* who have been duly elected and have qualified shall constitute a quorum. With the phrase "majority of all the members of the *sanggunian,*" it is thus evident therefrom that the reckoning point should be the entire composition of the [of] the *sangguniang bayan*. In that regard, Section 446(a) of the Code enumerates the membership of the *sangguniang bayan*, consisting of "the municipal vice-mayor as presiding officer, the regular (elective) *sanggunian* members, the president of the municipal chapter of the *liga ng mga barangay*, the president of the *pambayang pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members." Clearly then, the vice-mayor, as presiding officer, is also a member of the *sangguniang bayan* and should, therefore,be included in determining the existence of a quorum since he is included in the enumeration as to who composes the said legislative body. As a matter of fact, in the case of *GAMBOA VS. AGUIRRE AND ARANETA* (G.R. No. 134213, July 20, 1999), the Supreme Court recognized the membership of the vice-governor (vice-

officer, or a total of seven (7) who were present on the 17 March 2004 regular session of the *Sangguniang Panlungsod*, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted.

The 1987 Constitution mandates Congress to enact a local government code which provides, among others, the powers, functions and duties of local officials and all other matters relating to the organization and operation of the local government units. Section 3, Article X of the 1987 Constitution states:

> *Section 3*. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanism of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, **powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.** (Emphasis supplied)

Thus, the Local Government Code "shall x x x provide for the x x x powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units." **In short, whether a vice-mayor has the power, function or duty of a member of the *Sangguniang Panlungsod* is determined by the Local Government Code.**

On 10 October 1991, the Congress approved RA 7160 or the Local Government Code. Under RA 7160, the city vice-

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mayor) in the *sangguniang panlalawigan* (*sangguniang bayan*). Accordingly, since the Sangguniang Bayan of Naujan is composed of a total [of] eleven (11) member who have been duly elected and have qualified, at least six (6) of its members, including the vice-mayor, must be present during any session to be able to muster a quorum and to legally transact official business.

Hoping that we have clarified the matter accordingly.

Very truly yours,
ALFREDO S. LIM
Secretary

mayor, as presiding officer, is a member of the *Sangguniang Panlungsod*, thus:

Section 49. ***Presiding Officer***. (a) The vice-governor shall be the presiding officer of the *sangguniang panlalawigan*; **the city vice-mayor, of the *sangguniang panlungsod***; the municipal vice-mayor, of the *sangguniang bayan*; and the *punong barangay*, of the *sangguniang barangay*. **The presiding officer shall vote only to break a tie.**

(b) In the event of the inability of the regular presiding officer to preside at a *sanggunian* session, the members present and consisting a quorum shall elect from among themselves a temporary presiding officer. He shall certify within ten (10) days from the passage of ordinances enacted and resolutions adopted by the *sanggunian* in the session over which he temporarily presided.

Section 457. ***Composition.*** (a) **The *sangguniang panlungsod*, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panlungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members**.

(b) In addition thereto, there shall be three (3) sectoral representatives: one (1) from the women; and as shall be determined by the *sanggunian* concerned within ninety (90) days prior to the holding of the local elections, one (1) from the agricultural or industrial workers; and one (1) from the other sectors, including the urban poor, indigenous cultural communities, or disabled persons.

(c) The regular members of the *sangguniang panlungsod* and the sectoral representatives shall be elected in the manner as may be provided for by law. (Boldfacing and underscoring supplied)

RA 7160 clearly states that the *Sangguniang Panlungsod* "**shall be composed of the city vice-mayor as presiding officer**, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panlungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members." Black's Law Dictionary defines "composed of" as "**formed of**" or "**consisting of**." As the presiding officer, the vice-mayor can vote only to break a tie. In effect,

the presiding officer votes when it matters the most, that is, to break a deadlock in the votes. Clearly, the vice-mayor, as presiding officer, is a "member" of the *Sangguniang Panlungsod* considering that he is mandated under Section 49 of RA 7160 to vote to break a tie. To construe otherwise would create an anomalous and absurd situation where the presiding officer who votes to break a tie during a *Sanggunian* session is not considered a "member" of the *Sanggunian*.

The Senate deliberations on Senate Bill No. 155 (Local Government Code) show the intent of the Legislature to treat the vice-mayor not only as the presiding officer of the *Sangguniang Panlungsod* but also as a member of the *Sangguniang Panlungsod*. The pertinent portions of the deliberations read:

Senator Pimentel. Before Senator Rasul and Senator Lina take the floor, Mr. President, may I reiterate this observation, that changes in the presiding officership of the local *sanggunians* are embodied for the municipality where the vice-mayor will now be the presiding officer of the *sanggunian* and the province where the vice-governor will now be the presiding officer. We did not make any change in the city because the city vice-mayor is already the presiding officer.

The President. All right.

Senator Rasul, Senator Lina, and Senator Gonzales.

Senator Gonzales. May I just add something to that statement of Senator Pimentel?

The President. All right.

Senator Gonzales. **Reading this bill, there is also a fundamental change in the sense that the provincial governor, the city mayor, the municipal mayor, as well as, the *punong barangay* are no longer members of their respective *sanggunian*; they are no longer members. Unlike before, when they were members of their respective *sanggunian*, now they are not only the presiding officers also, they are not members of their respective *sanggunian*.**

Senator Pimentel. May I thank Senator Gonzales for that observation. (Boldfacing supplied)

During the deliberations, Senator Pimentel, the principal author of the the Local Government Code of 1991, clearly agrees with Senator Gonzales that the provincial governor, the city mayor, and the municipal mayor who were previously the presiding officers of their respective *sanggunian* are no longer the presiding officers under the proposed Local Government Code, and thus, they ceased to be members of their respective *sanggunian*.[13] In

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[13] Prior to the enactment of RA 7160, there was already in existence a local government code enacted under Batas Pambansa Blg. 337, which was approved on 10 February 1983 by the Batasang Pambansa. The pertinent provisions read:

Title Two – The Municipality
CHAPTER 3. – OFFICIALS AND OFFICES COMMON TO ALL MUNICIPALITIES

Sec. 141. *Powers and Duties* [Municipal Mayor]. – (1) The mayor shall be the chief executive of the municipal government and shall exercise such powers, duties and functions as provided in this Code and other laws.

(2) He shall:

x x x x x x x x x

(e) Preside over the meetings of the *sangguniang bayan* with the right to vote only to break a tie;

x x x x x x x x x

Sec. 145. *Functions*[Municipal Vice Mayor]. — (1) The vice-mayor shall be an *ex-officio* member of the *sangguniang bayan* with all the rights and duties of any other member.

(2) He shall:

x x x x x x x x x

(c) Act as temporary presiding officer of the *sangguniang bayan* in the event of disability of the mayor to preside over a regular or special session on account of a trip on official business, absence on leave, sickness or any temporary incapacity; and

x x x x x x x x x

Sec. 146. *Composition* [The *Sangguniang Bayan*]. — (1) The *sangguniang bayan* shall be the legislative body of the municipality and shall be composed of the municipal mayor, who shall be the presiding officer, the vice-mayor, who shall be the presiding officer *pro tempore*, eight members elected at large, and the members appointive by the President consisting of the president of the *katipunang bayan* and the president of the *kabataang barangay* municipal federation.

the same manner that under the Local Government Code of 1991, the vice-governor, the city vice-mayor, and the municipal vice-mayor, as presiding officers of the *Sangguniang Panlalawigan*,

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(2) In addition thereto, there shall be one representative each from the agricultural and industrial labor sectors who shall be appointed by the President of the Philippines whenever, as determined by the *sangguniang bayan*, said sectors are of sufficient number in the municipality to warrant representation, after consultation with associations and persons belonging to the sector concerned.

Sec. 147. *Session*. — (1) The *sangguniang bayan* shall hold at least two regular sessions a month on the days which shall be fixed by resolution. Special sessions may be called by the mayor or a majority of the members of the *sangguniang bayan* as often as necessary. Not two sessions shall be held in one day.

(2) In the event of inability of the vice-mayor to act as temporary presiding officer on account of a trip on official business, absence on leave, sickness, or any temporary incapacity, the members constituting a *quorum* shall choose from among themselves the temporary presiding officer.

(3) The temporary presiding officer shall not vote even in case of a tie but he shall certify within ten days to all ordinances and resolutions enacted or adopted. If within said period the ordinances and resolutions were not signed by the temporary presiding officer, said ordinances and resolutions shall be deemed to have been signed and the municipal secretary shall forward them to the mayor for such action as may be authorized by law.

x x x x x x x x x

Sec. 148. *Quorum*. — A majority of all the members of the *sangguniang bayan* shall constitute a *quorum* for the transaction of business. A smaller number may adjourn from day to day but may compel the immediate attendance of any member absent without good cause by issuing to the Integrated National Police assigned in the area an order for his arrest and production at the session, or impose a fine upon him in such amount as shall have been previously prescribed by ordinance.

Title Three. — The City
CHAPTER 3. — OFFICIALS AND OFFICES COMMON TO ALL MUNICIPALITIES

Sec. 172. *Functions and Compensation* [The Vice-Mayor]. — The vice-mayor shall:

(a) Be the presiding officer of the *sangguniang panglungsod*;

x x x x x x x x x

Sec. 173. *Composition and Compensation* [The *Sangguniang Panglungsod*]. — The *sangguniang panglungsod*, as the legislative body

Sangguniang Panlungsod, *Sangguniang Bayan*, respectively, are members of their respective *sanggunian*.

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of the city, shall be composed of the vice-mayor, as presiding officer, the elected *sangguniang panglungsod* members, and the members who may be appointed by the President of the Philippines consisting of the presidents of the *katipunang panlungsod ng mga barangay* and the *kabataang barangay* city federation.

Sec. 175. *The Presiding Officer of the Sangguniang Panglungsod*. — (1) The vice-mayor, as presiding officer of the *sangguniang panglungsod*, shall not vote except in case of a tie. He shall sign within ten days from their adoption all ordinances, resolutions and motions enacted or adopted by the said *sanggunian*. If after the period of ten days an ordinance or resolution is not signed by the presiding officer, the city secretary shall forward the same to the city mayor for appropriate action.

(2) If the vice-mayor cannot preside over a regular or special session, the members present and constituting a *quorum* shall elect from among themselves a temporary presiding officer.

Sec. 176. *Quorum*. — A majority of all the members of the *sangguniang panglungsod* shall constitute a *quorum* for the transaction of business, but a smaller number may adjourn from day to day and compel the immediate attendance of any member who is absent without good cause by issuing to the Integrated National Police assigned in the area an order for his arrest and production at the session, subject to penalties prescribed by law.

Title Four. — The Province

CHAPTER 3. — OFFICIALS AND OFFICES COMMON TO ALL PROVINCES

Sec. 203. *Provincial Governor as Chief Executive of the Province; Powers and Duties*. — (1) The governor shall be the chief executive of the provincial government and shall exercise such powers and duties as provided in this Code and other laws.

x x x x x x x x x

Sec. 204. *Powers, Duties and Privileges* [The Vice-Governor]. — (1) The vice-governor shall be an *ex-officio* member of the *sangguniang panlalawigan* with all the rights, duties and privileges of any member thereof.

(2) He shall:

x x x x x x x x x

(c) Act as temporary presiding officer of the *sangguniang panlalawigan* in the event of inability of the governor to preside over a regular or special session on account of a trip on official business, absence on leave, sickness or any other temporary incapacity;

x x x x x x x x x

In the 2004 case of *Zamora v. Governor Caballero*,[14] the Court interpreted Section 53 of RA 7160 to mean that the entire membership must be taken into account in computing the quorum of the *sangguniang panlalawigan.* The Court held:

"Quorum" is defined as that number of members of a body which, when legally assembled in their proper places, will enable the body to transact its proper business or that number which makes a lawful body and gives it power to pass upon a law or ordinance or do any valid act. "Majority," when required to constitute a quorum, means the number greater than half or more than half of any total. In fine, the *entire membership* must be taken into account in computing the quorum of the *sangguniang panlalawigan*, for while the constitution merely states that "majority of each House shall constitute a quorum," Section 53 of the LGC is more exacting as it requires that the "majority of all members of the *sanggunian . . . elected and qualified*" shall constitute a quorum.

The trial court should thus have based its determination of the existence of a quorum on the total number of members of the Sanggunian without regard to the filing of a leave of absence by Board Member Sotto. The fear that a majority may, for reasons of

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Sec. 205. *Composition*. – (1) Each provincial government shall have a provincial legislature hereinafter known as the *sangguniang panlalawigan*, upon which shall be vested the provincial legislative power.

(2) The *sangguniang panlalawigan* shall be composed of the governor, the vice-governor, elective members of the said *sanggunian*, and the presidents of the *katipunang panlalawigan* and the *kabataang barangay* provincial federation who shall be appointed by the President of the Philippines.

x x x x x x x x x

Sec. 206. *Sessions*. – x x x

(3) The governor, who shall be the presiding officer of the *sangguniang panlalawigan*, shall not be entitled to vote except in case of a tie.

x x x x x x x x x

Sec. 207. *Quorum*. – A majority of all the members of the *sangguniang panlalawigan* shall constitute a quorum for the transaction of business. A smaller number may adjourn from day to day but may compel the immediate attendance of any member absent without good cause by issuing to the Integrated National Police of the city or municipality where the provincial capital is situated, an order for his arrest and appearance at the session hall under pain of penalty as prescribed by ordinance.

[14] 464 Phil. 471 (2004).

political affiliation, file leaves of absence in order to cripple the functioning of the *sanggunian* is already addressed by the grant of coercive power to a mere majority of *sanggunian* members present when there is no quorum.

A *sanggunian* is a collegial body. Legislation, which is the principal function and duty of the *sanggunian*, requires the participation of all its members so that they may not only represent the interests of their respective constituents but also help in the making of decisions by voting upon every question put upon the body. The acts of only a part of the Sanggunian done outside the parameters of the legal provisions aforementioned are legally infirm, highly questionable and are, more importantly, null and void. And all such acts cannot be given binding force and effect for they are considered unofficial acts done during an unauthorized session.[15]

In stating that there were fourteen (14) members of the *Sanggunian*,[16] the Court in *Zamora* clearly included the Vice-Governor, as presiding officer, as part of the entire membership of the *Sangguniang Panlalawigan* which must be taken into account in computing the quorum.

DILG Opinions, which directly ruled on the issue of whether the presiding officer should be included to determine the quorum of the *sanggunian*, have consistently conformed to the Court's ruling in *Zamora*.

In DILG Opinion No. 46, s. 2007, the Undersecretary for Local Government clearly stated that the vice-mayor is included in the determination of a quorum in the *sanggunian*. The DILG Opinion reads:

DILG Opinion No. 46, s. 2007
02 July 2007

MESSRS. JAMES L. ENGLE,
FEDERICO O. DIMPAS, JR.,
MARIFE G. RONDINA,

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[15] *Id.* at 488-490.

[16] Aside from the presiding officer, there were thirteen (13) other members of the *Sangguniang Panlalawigan* of Compostela Valley, making a total of fourteen (14) members.

PORFERIO D. DELA CRUZ, and
WINSTON B. MENZON
Sangguniang Bayan Membership
Babatngon, Leyte

Dear Gentlemen and Lady:

This has reference to your earlier letter asking our opinion on several issues, which we quoted herein *in toto*:

> *"(1)* ***What is the number that would determine the quorum of our sanggunian that has a total membership of eleven (11) including the vice-mayor?***
>
> *(2) Are the resolutions adopted by a sanggunian without quorum valid?*

In reply to your first query, may we invite your attention to Section 446 (a) of the Local Government Code of 1991 (RA 7160) which provides and we quote:

> *"SECTION 446. Composition. — (a) The Sangguniang bayan, the legislative body of the municipality, shall be composed of the municipal vice-mayor as the presiding officer, the regular sangguniang members, the president of the municipal chapter of the liga ng mga barangay, the president of the pambayang pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members."*

Based on the aforequoted provision, **the *Sangguniang Bayan* is composed of eight (8) regular members, the *Liga ng mga Barangay* President, the SK Federation President, the Vice-Mayor as Presiding Officer and the sectoral representatives.**

Under the old Local Government Code (Batas Pambansa Blg. 337), the Presiding Officer then of the *sanggunian* was the Mayor. Thus, there was a dilemma as to whether or not the Vice-Mayor, as Presiding Officer, is to be included in the determination of quorum in the *Sangguniang Bayan*. This issue was, however, resolved with the advent of the new Local Government Code of 1991 (RA 7160) providing the aforequoted provision. Hence, the vice-mayor is included in the determination of a quorum in the *sanggunian*.

Based on the aforequoted provision, sectoral representatives are also included in the determination of quorum in the *sangguniang bayan*. Let it be noted however that sectoral representatives in the

local sanggunian are, pursuant to Section 41 (c) of RA 7160 and Section 10 (b) of RA 9264, to be elected *"in a manner as may be provided for by law."* Meantime however, Congress has yet to enact a law providing for the manner of electing sectoral representatives at the local *sanggunians*. Such being the case, sectoral representatives are not, in the meantime, included in the determination of quorum in the local *sanggunians*.

In view of the foregoing, the *Sangguniang Bayan* is composed of the 8 regular members, the *Liga ng mga Barangay* President and the SK Federation President as *ex-officio* members, and the Vice-Mayor as Presiding Officer. The total membership in that *sanggunian*, therefore, is eleven (11). Relative thereto, Section 53 of the Local Government Code of 1991 provides that a majority of all the members of the *sanggunian* who have been elected and qualified shall constitute a quorum to transact official business. *"Majority"* has been defined in Santiago *vs.* Guingona, *et al.* (G.R. No. 134577, 18 November 1998) as that which is greater than half of the membership of the body. Following the said ruling, since the total membership of the *sanggunian* being 11, 11 divided by 2 will give us a quotient of 5.5. Let it be noted however that a fraction cannot be considered as one whole vote, since it is physically and legally impossible to divide a person or even his vote into a fractional part. Accordingly, we have to go up to the next whole number which is 6. In this regard, 6 is more than 5.5 and therefore, more than one-half of the total membership of the *sangguniang bayan* in conformity with the jurisprudential definition of the term majority. Thus, the presence of 6 members shall already constitute a quorum in the *sangguniang bayan* for it to conduct official sessions.

x x x x x x x x x

Very truly yours,

(signed)
AUSTERE A. PANADERO
OIC, OUSLG[17]

In another DILG Opinion dated 9 February 2010, the Undersecretary for Local Government opined that the Vice-

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[17] DILG Website, www.dilg.gov.ph/PDF_File/issuances/legal_opinions/LO046S2007.pdf (visited 18 November 2011). (Boldfacing supplied)

Governor, as a Presiding Officer of the *Sangguniang Panlalawigan*, is a composite member thereof and is included in the determination of the quorum. DILG Opinion No. 13, s. 2010 reads:

DILG Opinion No. 13, s. 2010
09 February 2010

GOVERNOR JESUS N. SACDALAN
VICE-GOVERNOR EMMANUEL F. PIÑOL
Provincial Capitol Building
Province of Cotabato

Gentlemen:

This has reference to your earlier separate letters, which we herein consolidated, considering that they both pertain to one subject matter.

Per your letters, the *Sangguniang Panlalawigan* held its regular session on 12 January 2010 where the August Body embarked upon the approval of the Annual Budget. According to you, all fourteen (14) members of the *Sangguniang Panlalawigan* attended said session, namely: *ten (10) regular Sangguniang Panlalawigan Members, three (3) ex-officio Sangguniang Panlalawigan Members and the Vice-Governor as the Presiding Officer.* You further represented that when said approval of the Annual Budget was submitted for votation of said August Body, the result was: *seven (7) members voted for the approval of the Annual Budget and six (6) voted against.*

Specifically, you want us to shed light on the following issues:

"1) Whether or not the august body has reached the required majority of all the members of the *Sangguniang Panlalawigan* as provided for in Sections 53 and 54 of the Local Government Code and in relation to Article 107 (g) of its Implementing Rules and Regulations?

2) **Whether or not the vice governor as the presiding officer is included in the count in determining the majority of all the members of the *sangguniang panlalawigan* to validly pass an appropriation ordinance.**

3) Whether or not the board member who signed the Committee Report endorsing the 2010 Proposed Annual Performance Budget may withdraw without just and valid cause his signature thereon and vote against the approval thereof?

4) In the event that the Province operates under a re-enacted budget, what are those expenditures included in the term "essential operating expenses" that may be incurred by the Province?"

x x x x x x x x x

For the *sanggunian* to officially transact business, there should be a quorum. A quorum is defined by Section 53 of the Local Government Code of 1991 as referring to the presence of the majority of all the members of the *sanggunian* who have been duly elected and qualified. Relative thereto, generally, ordinary measures require for its enactment only the approval of a simple majority of the *sanggunian* members present, there being a quorum. These pertain to the normal transactions of the *sanggunian* which are approved by the *sanggunian* through a vote of simple majority of those present. On the other hand, there are certain measures where the Local Government Code requires for its approval the vote of majority of all the members who were duly elected and qualified. This is what we call approval by the qualified majority of the *sanggunian*. In this case, the approval is to be voted not just by the majority of those present in a session there being a quorum but by the majority of all the members of the *sanggunian* duly elected and qualified regardless of whether all of them were present or not in a particular session, there being a quorum.

x x x x x x x x x

In determining a quorum, Section 53 of the Local Government Code of 1991 provides that a majority of all the members of the *sanggunian* who have been elected and qualified shall constitute a quorum. Along this line, it bears to emphasize that per Section 467 (a) of the Local Government Code of 1991, the Sangguniang Panlalawigan is a composite body where the Vice-Governor as Presiding Officer is a composite member thereof. As a composite member in the *sangguniang panlalawigan*, he is therefore included in the determination of a quorum.

"Majority" has been defined by the Supreme Court in *Santiago vs. Guingona, et al.* (G.R. No. 134577, 18 November 1998) as that which is greater than half of the membership of the body or that number which is 50% + 1 of the entire membership. We note, however, that using either formula will give us the same result. To illustrate, using the 50% +1 formula, the 50% of a *sanggunian* composed of 14 members

is 7. Hence 7 + 1 will give us a sum of 8. On the other hand, if we use the second formula which is that number greater than half, then 8, in relation to 7, is definitely greater than the latter. The simple majority of the *sangguniang panlalawigan* with fourteen (14) members where all of them were present in that particular session is therefore 8.

x x x x x x x x x

Very truly yours,

(signed)
AUSTERE A. PANADERO
Undersecretary[18]

In the same manner, a quorum of the *Sangguniang Panlungsod* should be computed based on the total composition of the *Sangguniang Panlungsod*. In this case, the *Sangguniang Panlungsod* of La Carlota City, Negros Occidental is composed of the presiding officer, ten (10) regular members, and two (2) *ex-officio* members, or a total of thirteen (13) members. A majority of the 13 "members" of the *Sangguniang Panlungsod*, or at least seven (7) members, is needed to constitute a quorum to transact official business. Since seven (7) members (including the presiding officer) were present on the 17 March 2004 regular session of the *Sangguniang Panlungsod*, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted.

The *Perez*[19] case cited in the Dissenting Opinion was decided in 1969 prior to the 1987 Constitution, and prior to the enactment of RA 7160 or the Local Government Code of 1991. In fact, the *Perez* case was decided even prior to the old Local Government Code which was enacted in 1983. In ruling that the vice-mayor is not a constituent member of the municipal board, the Court in the *Perez* case relied mainly on the provisions of Republic Act No. 305 (RA 305) creating the City of Naga and the

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[18] DILG Website, www.dilg.gov.ph/PDF_File/issuances/legal_opinions/DILG-Legal_Opinions-2011318-92df7c2541.pdf (visited 18 November 2011). (Boldfacing supplied)

[19] 137 Phil. 393 (1969).

amendatory provisions of Republic Act No. 2259[20] (RA 2259) making the vice-mayor the presiding officer of the municipal board. Under RA 2259, the vice-mayor was the presiding officer of the City Council or Municipal Board in chartered cities. **However, RA 305 and 2259 were silent on whether as presiding officer the vice-mayor could vote**. Thus, the applicable laws in *Perez* are no longer the applicable laws in the present case.

On the other hand, the 2004 case of *Zamora v. Governor Caballero*,[21] in which the Court interpreted Section 53[22] of RA 7160 to mean that the entire membership must be taken into account in computing the quorum of the *Sangguniang Panlalawigan*, was decided under the 1987 Constitution and after the enactment of the Local Government Code of 1991. In stating that there were fourteen (14) members of the *Sangguniang Panlalawigan* of Compostela Valley,[23] the Court in *Zamora* clearly included the Vice- Governor, as presiding officer, as

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[20] An Act Making Elective the Offices of Mayor, Vice-Mayor and Councilors in Chartered Cities, Regulating the Election in Such Cities and Fixing the Salaries and Tenure in Such Offices. Approved, 19 June 1959.

[21] *Supra* note 14.

[22] Section 53. ***Quorum***. (a) **A majority of all the members of the *sanggunian* who have been elected and qualified shall constitute a quorum to transact official business.** Should a question of quorum be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results.

(b) Where there is no quorum, the presiding officer may declare a recess until such time as a quorum is constituted, or a majority of the members present may adjourn from day to day and may compel the immediate attendance of any member absent without justifiable cause by designating a member of the *sanggunian*, to be assisted by a member or members of the police force assigned in the territorial jurisdiction of the local government unit concerned, to arrest the absent member and present him at the session.

(c) If there is still no quorum despite the enforcement of the immediately preceding subsection, no business shall be transacted. The presiding officer, upon proper motion duly approved by the members present, shall then declare the session adjourned for lack of quorum.

[23] Aside from the presiding officer, there were thirteen (13) other members of the *Sangguniang Panlalawigan* of Compostela Valley, making a total of fourteen (14) members.

part of the entire membership of the *Sangguniang Panlalawigan* which must be taken into account in computing the quorum.

On the issue that respondent's appointment was issued during the effectivity of the election ban, the Court agrees with the finding of the Court of Appeals and the Civil Service Commission that since the respondent's appointment was validly issued on 18 March 2004, then the appointment did not violate the election ban period which was from 26 March to 9 May 2004. Indeed, the Civil Service Commission found that despite the lack of signature and certification of the Human Resource Management Officer of La Carlota City on respondent's appointment papers, respondent's appointment is deemed effective as of 18 March 2004 considering that there was substantial compliance with the appointment requirements, thus:

> Records show that Atty. Rojo's appointment was transmitted to the CSC Negros Occidental Field Office on March 19, 2004 by the office of Gelongo without his certification and signature at the back of the appointment. Nonetheless, records show that the position to which Atty. Rojo was appointed was published on January 6, 2004. The qualifications of Atty. Rojo were deliberated upon by the Personnel Selection Board on March 5, 2004, attended by Vice Mayor Jalandoon as Chairman and Jose Leofric F. De Paola, SP member and Sonia P. Delgado, Records Officer, as members. Records likewise show that a certification was issued by Vice Mayor Jalandoon, as appointing authority, that the appointment was issued in accordance with the limitations provided for under Section 325 of RA 7160 and the said appointment was reviewed and found in order pursuant to Section 5, Rule V of the Omnibus Rules Implementing Executive Order No. 292. Further, certifications were issued by the City Budget Officer, Acting City Accountant, City Treasurer and City Vice Mayor that appropriations or funds are available for said position. Apparently, all the requirements prescribed in Section 1, Rule VIII in CSC Memorandum Circular No. 15, series of 1999, were complied with.[24]

Clearly, the appointment of respondent on 18 March 2004 was validly issued considering that: (1) he was considered resigned

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[24] Civil Service Commission (Regional Office No. 6) Decision, pp. 3-4; *rollo*, pp. 46-47.

as *Sangguniang Panlungsod* member effective 17 March 2004; (2) he was fully qualified for the position of *Sanggunian* Secretary; and (3) there was substantial compliance with the appointment requirements.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 14 September 2007 Decision and the 18 January 2008 Resolution of the Court of Appeals in CA-G.R. CEB-SP No. 01377.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Villarama, Jr., Mendoza, Sereno, and *Perlas-Bernabe, JJ.,* concur.

Brion, J., concurs in the result: see separate opinion.

Corona, C.J., Abad, Perez, and *Reyes, JJ.,* join the dissenting opinion of *J.* del Castillo.

Del Castillo, J., see dissenting opinion.

CONCURRING OPINION
(In the Result)

BRION, *J.*:

The constitutional issue before us is whether Atty. Rex Rojo's (*Rojo*) appointment violated the constitutional ban on appointment.[1] The answer to this question depends on the resolution of the prior and underlying question of whether petitioner Rojo effectively resigned from his post as *sanggunian* member before he was appointed as *sanggunian* secretary. This question, in turn, hinges on the much prior issue of the number of *sanggunian* members needed to validly act on Rojo's tender of resignation.

While I concur with the conclusion reached by the *ponencia*, I wish to emphasize that the Vice-Mayor as presiding officer is considered a member of the *sanggunian* for purposes of quorum determination *only*. In particular, the majority's ruling should by no means be interpreted as including the Vice-Mayor (as

[1] Article IX-B, Section 7, 1987 Constitution.

presiding officer) as *sanggunian* member, where the Local Government Code (*LGC*) itself prescribes a specific voting requirement that makes quorum determination irrelevant.

Brief Factual Antecedents

On March 10, 1994, Rojo, a member of the Sanggunian Panlungsod (*SP*) of La Carlota City, applied for the vacant position of SP Secretary. On the March 17, 2004 session of the SP, Rojo tendered his irrevocable resignation as SP Member. At that time, Vice-Mayor Rex Jalandoon (*Jalandoon*), as presiding officer, and six members of a twelve-member *sanggunian* were present.

On March 18, 2004, Jalandoon appointed Rojo as SP Secretary and the latter immediately took his oath of office. On March 26, 2004, the appointment ban for the May 2004 elections took effect. On April 27, 2004, the Civil Service Commission (*CSC*) Field-Office disapproved Rojo's appointment due to incomplete requirements. Jalandoon appealed the disapproval to the CSC Regional Office.

The 2004 elections resulted in changes in the La Carlota local government. The newly elected Mayor and Vice-Mayor of La Carlota City sought to affirm the disapproval of Rojo's appointment, alleging that there had been no quorum when Rojo tendered his resignation before the SP. Since Rojo's resignation could not have been validly accepted for lack of quorum, it was argued that Rojo continued to be an elective official who was ineligible for appointment to a public office under the Constitution.[2]

Core Issue

I submit that the quorum issue in this case can be decided by approaching the problem from the point of the question: ***to whom does the LGC vests the power to accept the resignation of a member of the sanggunian?***

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[2] Article IX-B, Section 7, par. 1, 1987 Constitution.

My Position

Article 82 of the LGC reads:

Section 82. Resignation of Elective Officials. — (a) Resignations by elective local officials shall be deemed effective only upon acceptance by the following authorities:

(1) The President, in case of governors, vice-governors, and mayors and vice-mayors of highly urbanized cities and independent component cities:

(2) The governor, in case of municipal mayors, municipal vice-mayors, city mayors and city vice-mayors of component cities:

(3) The ***sanggunian* concerned**, in the case of *sanggunian* members; and

(4) The city or municipal mayor, in case of *barangay* officials.

x x x x x x x x x

(d) Irrevocable resignations by *sanggunian* members shall be deemed accepted upon presentation before an open session of the ***sanggunian* concerned** and duly entered in its records: Provided, however, that this subsection does not apply to *sanggunian* members who are subject to recall elections or to cases where existing laws prescribe the manner of acting upon such resignations.

This Article lays down the rule on resignations and identifies the authorities with the power to accept the resignation of particular local government officials. In the case of *sanggunian* members, that authority is the local legislative body — the *sanggunian* concerned of which the resignee is a member.

Before determining what the law exactly means in making reference to the "*sanggunian* concerned," Section 53 of the LGC prescribes a quorum requirement before the *sanggunian* can validly transact its regular official business.

Section 53. *Quorum.* —

(a) A **majority of all the members** of the *sanggunian* **who have been elected and qualified** shall constitute a quorum to transact official business. Should a question of quorum

> be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results.
>
> x x x x x x x x x

On the other hand, Article 457 of the LGC identifies the composition of the *sanggunian* for the purpose of determining the "*sanggunian* concerned" authorized to *accept* the resignation of its member. Article 457 reads:

> Section 457. Composition. — (a) The Sanggunian Panlungsod, the legislative body of the City shall be **composed of** the city **vice-mayor as presiding officer**, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panlungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives as members.

Based on these provisions, I believe that it is absurd not to include the presiding officer in determining whether a quorum exists since (i) the law includes him as part of the body authorized to accept an elective local official's resignation and (ii) this body — the "sanggunian concerned" — can validly act only if there is a quorum.

Moreover, while the Vice-Mayor as presiding officer cannot vote except in case of tie,[3] the determination of the quorum *for purpose of accepting a resignation of a sanggunian member* does **not** require an **active** participation on the part of any member of the *sanggunian*.

Under the LGC, the only express prohibition against the resignation of an elective local official is when he is the subject of an on-going recall process.[4] Under the Anti-Graft and Corrupt Practices Act, a public officer who is the subject of a pending investigation (administrative or criminal) or prosecution[5] is

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[3] Local Government Code, Section 49(a).

[4] *Id.*, Section 73.

[5] For an offense under Republic Act No. 3019 or under the Revised Penal Code provisions on Bribery, (RA 3019, Section 12).

likewise prohibited from resigning. This prohibition, however, is for the sole purpose of preventing him from frustrating the ongoing investigation or prosecution, *i.e.*, in order to be consistent with an individual's constitutional right against involuntary servitude,[6] a public official may resign from the service but his act will not cause the dismissal of the on-going proceeding against him.[7] In other words, in accepting a resignation, the *sanggunian*, as a body, simply takes a passive stance on a matter that *relates to the administrative duties of the Vice-Mayor* himself.

The dichotomy (*i.e.*, the counting of the Presiding Officer for purpose of quorum but without giving him the right to vote except in case of a tie) can be better appreciated if it is considered that, unlike in the old LGC, the presiding officer is empowered, as a rule, to appoint all officials and employees of the *sanggunian*.[8] In the present case, at issue is petitioner Rojo's resignation as a *sanggunian* member for the express purpose of applying for the position of *sanggunian* secretary whom the Vice-Mayor can appoint. In other words, woven into the question of resignation is the function of appointment that the law expressly assigned to the Vice-Mayor. These circumstances add to the reasons justifying the conclusion that the Vice-Mayor's presence in accepting the resignation is material.

Refutation of the dissent's reliance on Perez

Justice Del Castillo's Dissent relies on the 1969 case of *Perez v. Hon. Dela Cruz*.[9] The use of the *Perez* ruling, in my view, is misplaced.

In *Perez,* the Naga Vice-mayor Virginia Perez wanted **to vote in the selection** of (i) the secretary of the municipal board of Naga and (ii) the chairmen of the board's various standing committees. The Court held that Perez does not possess any

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[6] Section 18 (2), Article III of the 1987 Constitution.

[7] *Estrada v. Desierto*, G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452, 506-507.

[8] Local Government Code, Section 456 (a) 2 and Section 463 (a).

[9] 137 Phil. 393 (1969).

voting right considering that she was not a member of the municipal board.

In order to fully appreciate *Perez*, proper consideration of its legal setting is critical. The pertinent laws then were:

a. Republic Act (*RA*) 305 (the Charter of Naga). This law **did not** provide for the position of Vice-Mayor; and

b. RA No. 2259 (An Act Making Effective the Offices of Mayor, Vice-Mayor and Councilors in Chartered Cities x x x). This law created the position of vice-mayor in Naga, among others. Section 3 of this law, however, simply provides that "the Vice-Mayor shall be the *presiding officer* of the City Council or Municipal Board in all chartered cities."

Based on these laws, *Perez* noted that "[RA 2259] does not decree that the vice-mayor is a *member* of the city council or municipal board." Necessarily, not being a member, she could not have any *direct and active* participation in filling the local appointive positions in Naga.

First, RA No. 2259, the applicable law at that time, did not provide for a similar provision under the LGC on the **composition of the *sanggunian***, aside from stating that the Vice-Mayor shall be the presiding officer of the city council or municipal board of chartered cities. In fact, under RA No. 2259, the powers of the Vice-Mayor clearly show that — aside from being the presiding officer of the city council — he was merely a "spare tire"[10] who could assume the powers of the Mayor only in case of the latter's inability:[11]

Section 3. x x x

The Vice-Mayor shall perform the duties and exercise the powers of the mayor in the event of the latter's inability to discharge

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[10] Page 649 of The Local Government Code Revisited 2007 by Sen. Aquilino "Nene" Pimentel, Jr.

[11] Under the Local Government Code, the Vice-Mayor is empowered to appoint all officials and employees of the Sanggunian Panlungsod [Section 456(a)2]. He can also exercise such other powers and functions as may be prescribed by law or ordinance.

the powers and duties of his office. In the event of a permanent vacancy in the office of mayor, the vice-mayor shall become mayor for the completion of the unexpired term. x x x

Second, *Perez* resolved the question of whether the presiding officer could **vote** in the selection of local appointive officials. In order to resolve this issue, the Court *had* to determine whether the presiding officer was also a member of the municipal board/ city council. As previously discussed, the present case does not involve the **active** role of the *sanggunian* as a body, exercising discretion whether to favorably vote or not; only the *sanggunian's* **passive** role in accepting the resignation of a *sanggunian* member is involved. Recall in this regard that under Section 82 of the LGC, the authority to accept a resignation resides in the "*sanggunian* concerned," and that under Article 457, the Vice-Mayor is part of the composition of the *sanggunian*. These distinctions can only lead to the conclusion that the Dissent cannot draw strength from *Perez* in determining whether there was quorum for the purpose of acting on petitioner Rojo's resignation.

Contrary to the Dissent's posture, we are not here giving additional role and prerogative to a presiding officer. Nor does our interpretation purport to give an active role to a presiding officer aside from what inheres to his position. We only resolve the issue of whether he should be counted for purposes of quorum on an administrative matter which relates to his duties and inheres to his position — a passive participation in the affairs of the body over which he actually presides and which he presumably influences for the common good.

The case of Zamora v. Caballero

In *Zamora v. Caballero*,[12] the Court was confronted with the question of **whether a *regular sanggunian member***, who filed a leave of absence and whose alleged departure overseas was not proved, should be considered ***in determining whether there was quorum*** at the time the *sanggunian* transacted official business. The Court ruled in the affirmative, holding that —

[12] 464 Phil. 478 (2004).

In fine, the entire membership must be taken into account in computing the quorum of the *sangguniang panlalawigan*, for while the constitution merely states that "majority of each House shall constitute a quorum," Section 53 of the LGC is more exacting as it requires that the "majority of *all* members of the *sanggunian…elected and qualified*" shall constitute a quorum.

The difference in the wordings of the Constitution and the LGC is not merely "a matter of style and writing" as respondents would argue, but is actually a matter of "meaning and intention." The qualification in the LGC that the majority be based on "those elected and qualified" was meant to allow *sanggunians* to function even when not all members thereof have been proclaimed. And, while the intent of the legislature in qualifying the quorum requirement was to allow *sanggunians* to function even when not all members thereof have been proclaimed and have assumed office, the provision necessarily applies when, after all the members of the *sanggunian* have assumed office, one or some of its members file for leave. What should be important then is the concurrence of election to and qualification for the office. And election to, and qualification as member of, a local legislative body are not altered by the simple expedient of filing a leave of absence.

Read in light of *Zamora*, the fact that the Vice-Mayor is "elected" and, by virtue of his position, "qualifies" as the *sanggunian's* presiding officer assumes added significance.

I submit, however, that the force of *Zamora* should not go beyond what the Court decreed in that case. The legality of the Vice-Mayor's (as presiding officer) inclusion as member of the *sanggunian* did not confront *Zamora*, which simply ***assumed*** that the presiding officer was included in the determination of the number of members required to constitute a quorum. For emphasis, *Zamora* resolved the issue of whether an absent regular member should be included in quorum determination; it did not rule on the inclusion of the Vice-Mayor, as presiding officer, in the *sanggunian* membership. The latter issue is what the Court now resolves.

The *sanggunian* is a collegial body performing several legislative and non-legislative functions.[13] Under the LGC, the

[13] *Id.* at 490.

voting requirement for an affirmative action on the part of the *sanggunian* varies depending on the particular power to be exercised or the measure to be adopted. The voting requirement could be (i) two-thirds (2/3) of all its members;[14] or (ii) two-thirds (2/3) vote of the members present, there being quorum;[15] or (iii) three-fourths (¾) of all its members;[16] or (iv) majority vote of all the members;[17] or (vi) simply concurrence of the *sanggunian* concerned;[18] or (vii) affirmative vote of a majority of the members present, there being a quorum;[19] or (viii) unanimous vote of the *sanggunian* concerned.[20]

If the voting level required would engage the ***entirety*** of the *sanggunian* as a collegial body, making the quorum requirement least significant, there is no rhyme or reason to include the presiding officer's personality at all. The possibility of that one instance where he may be allowed to vote is nil. To include him in *sanggunian* membership without this qualification would adversely affect the statutory rule that generally prohibits him from voting.

To illustrate, in disciplining members of the *sanggunian* where the penalty involved is suspension or expulsion, the LGC requires the concurrence of two-thirds (2/3) of all the members of the *sanggunian*.[21] If the Sanggunian has thirteen (13) regular members (excluding the presiding officer), the votes needed to impose

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[14] Local Government Code, Section 11, Section 50 b(5), Section 54 a, Section 447 a(2)(xii) and Section 458.

[15] *Id.*, Section 52(d).

[16] *Id.*, Section 125.

[17] *Id.*, Section 447 a(2)ii, Section 447 a(2)iii, Section 447 a(2)iv, Section 447 a(2)v, Section 447 a(3)vii, Section 443 d; Section 458 a(2)ii, Section 458 a(2)iii, Section 458 a (2)iv, Section 458 a(2)v, Section 458, a(3) vii, Section 454 d; and Section 468 a(2)ii, Section 468 a(2)iii, Section 468 a(2)iv, Section 468, a(2)v, Section 463 d.

[18] *Id.*, Section 36.

[19] *Id.*, Section 52(c).

[20] *Id.*, Section 13(d).

[21] *Id.*, Section 50 b(5).

either of the penalty is eight. However, should the presiding officer be also included, therefore raising the membership to fourteen (14), — on the premise that he is also *sanggunian* member — even if he cannot vote in this instance, an additional one vote is required — *i.e.*, nine votes are required — before the penalty is imposed. The presiding officer's innocuous inclusion as *sanggunian* member negatively impacts on the prohibition against him from voting since his mere inclusion affects the numerical value of the required voting level on a matter where generally and by law he has no concern.

For the foregoing reasons and qualifications, I vote to **DISMISS** the petition and join the result of Justice Carpio's *ponencia*.

DISSENTING OPINION

DEL CASTILLO, *J.*:

The best interpreter of a statute is the statute itself.[1]

Among the questions raised in the petition is whether respondent's resignation from the *Sangguniang Panlungsod* was effective. According to Section 82 of Republic Act (RA) No. 7160 or the Local Government Code (LGC), the resignation is effective when it is presented before an open session of the concerned *sanggunian* and duly entered in its records.[2] Relating

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[1] *Optima statuti interpretatrix est ipsum statutum.*

[2] SEC. 82. *Resignation of Elective Local Officials.* (a) Resignations by elective local officials shall be deemed effective only upon acceptance by the following authorities:

x x x x x x x x x

(3) The *sanggunian* concerned, in case of *sanggunian* members;

x x x

x x x x x x x x x

(d) Irrevocable resignations by *sanggunian* members shall be deemed accepted upon presentation before an open session of the *sanggunian* concerned and duly entered in its records: *Provided, however,* That this subsection does not apply to *sanggunian* members who are subject to recall elections or to cases where existing laws prescribe the manner of acting upon such resignations.

this to Section 53,[3] the session where the resignation is read must have a quorum, which is defined as the majority "of all the members of the *sanggunian*." Majority is defined as a number greater than half of the total.[4]

In the instant case, respondent's resignation was read in a session where six councilors and the presiding officer were in attendance, while six other councilors were absent. Given that councilors in attendance and *in absentia* were equal in number, it became imperative to determine whether the presiding officer should be counted for purposes of quorum. If he is counted, there was a quorum of the *sanggunian* and respondent's resignation was effective. If the presiding officer is not counted, there was no quorum and respondent's resignation was ineffective. Thus, the resolution of the controversy is centered on whether the phrase **"of all the members of the *sanggunian*"** in Section 53 of the LGC refers to the entire composition of the *sanggunian* (including the presiding officer) or only the members of the *sanggunian* (excluding the presiding officer).

While both parties referred to Section 457 of the LGC on the composition of the *Sangguniang Panlungsod* for their respective positions, they emphasized different phrases thereof. For the respondent, the phrase "of all the members of the *sanggunian*" includes the presiding officer because he is included in the composition of the legislative body. Respondent's reading of Section 457 thus made the following emphasis:

> Section 457. Composition. (a) The *sangguniang panglungsod*, the legislative body of the city, **shall be composed of** the city vice-mayor as presiding officer, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president

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[3] SEC. 53. *Quorum.* (a) A majority of all the members of the *sanggunian* who have been elected and qualified shall constitute a quorum to transact official business. Should a question of quorum be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results.

[4] *Zamora v. Caballero*, 464 Phil. 471, 488-489 (2004), citing *Perez v. Hon. Dela Cruz*, 137 Phil. 393, 410 (1969).

of the *panglungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members.

Respondent contends that since the presiding officer is included in the composition of the *sanggunian,* he should also be included in the phrase "of all the members of the *sanggunian*."

On the other hand, petitioners argue that the presiding officer is not included in the phrase "of all the members of the *sanggunian*" because Section 457 does not make him a member of the *sanggunian*. Petitioners' reading of Section 457 focuses on the following qualifying phrases:

> Section 457. Composition. (a) The *sangguniang panglungsod*, the legislative body of the city, shall be composed of the city vice-mayor **as presiding officer**, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panglungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, **as members**.

In finding that the presiding officer is also a member counted for purposes of quorum, the *ponencia* cites three grounds: First, it argues that Section 457 clearly includes the presiding officer in the composition of the *sanggunian*, which necessarily means that he is a member counted for purposes of quorum. It submits that a contrary construction would present an anomaly where the presiding officer has the power to break a tie-vote in the *sanggunian* but is not counted for purposes of quorum. Second, it claims that in *Zamora v. Caballero,*[5] this Court has ruled that the Vice Governor, as Presiding Officer of the *Sangguniang Panlalawigan*, is part of the entire membership of the *sanggunian* who must be included in computing the quorum. Finally, it cites DILG Opinion Nos. 46, S. 2007 and 13, S. 2010 stating that the vice-mayor is included in determining the quorum of the *sanggunian*.

I regret that I cannot accept the *ponencia's* arguments.

I. Section 457 of the LGC does not include the presiding officer

[5] *Id.*

as member of the sanggunian for purposes of quorum.

The vice-mayor is not a member, even if he is a part of the composition of the *Sanggunian*. Section 457 itself does **not** treat everyone in the composition of the *sanggunian* as members. Instead, Section 457 divides the composition of the *sanggunian* into two: (a) the vice-mayor, as presiding officer, and (b) the rest, as members. This division is not an imaginary distinction, but is dictated by the very language of Section 457:

> Section 457. *Composition*. (a) The *sangguniang panglungsod*, the legislative body of the city, shall be composed of the city vice-mayor **as presiding officer**, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panglungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, **as members**.

There are two qualifying phrases in this provision — "as presiding officer" and "as members." Qualifying phrases refer only to the words to which they are immediately associated. The phrase "as presiding officer" refers only to the vice- mayor, while the phrase "as members" refers only to the component parts that are mentioned after the phrase "as presiding officer." Since the phrase "as members" cannot in any manner refer to the vice-mayor, Section 457 itself does not support the argument that the vice-mayor is a member that is included in the quorum requirement "*of all the members* of the *sanggunian*."

With due respect, the *ponencia* ignores the foregoing division or distinction made by Section 457, by the expedient of ignoring the qualifiers found in Section 457. I am unable to accept this because no valid reason was offered for such selective reading of Section 457. It is a basic rule of statutory construction that all the words in a statute should be given effect; thus, the qualifiers cannot be disregarded without doing violence to the provision.

Going over the relevant provisions of the LGC, I find nothing therein which makes the presiding officer also a member of the legislative body. Even in Section 457, which respondent cites,

the city vice-mayor was described as the presiding officer of the *sanggunian*, not a member:

> SEC. 457. *Composition.* — (a) The *sangguniang panlungsod*, the legislative body of the city, shall be composed of the city vice-mayor ***as presiding officer***, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panlungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members.
>
> (b) In addition thereto, there shall be three (3) sectoral representatives: one (1) from the women; and, as shall be determined by the *sanggunian* concerned within ninety (90) days prior to the holding of the local elections, one (1) from the agricultural or industrial workers; and one (1) from the other sectors, including the urban poor, indigenous cultural communities, or disabled persons.
>
> (c) The regular members of the *sangguniang panlungsod* and the sectoral representatives shall be elected in the manner as may be provided by law.

In describing the composition of the *sangguniang panlungsod*, Section 457 states that it has the city vice-mayor as its presiding officer, and the regular members, *ex officio* members, and sectoral representatives, as members. The present wording of the *sanggunian's* composition, when read in conjunction with Section 53, which describes quorum as "a majority of *all* the members," leads to the conclusion that quorum refers to the majority of the regular, *ex officio* and sectoral members. The word "all" was added to encompass the three kinds of members of the *sanggunian*; not to encompass its entire composition.

The inclusion of the presiding officer in the composition of the *sangguniang panlungsod* is only logical considering that the presiding officer *is* the administrative head of the said body. But his inclusion as such does not automatically make him a member thereof. If it was the lawmakers' intent to make him a member of the body, the provision could have easily been made to reflect such an intention.

Moreover, the Local Government Code treats the vice-mayor and his office separately from that of the *Sangguniang Panlungsod*.

The powers and duties of the vice-mayor are provided in Section 456 and there is nothing therein which states or even suggests that he is also a member of the *Sangguniang Panlungsod*:

Article Two. — The City Vice-Mayor

SEC. 456. *Powers, Duties and Compensation.* — (a) The city vice-mayor shall:

(1) ***Be the presiding officer*** of the *sangguniang panlungsod* and sign all warrants drawn on the city treasury for all expenditures appropriated for the operation of the *sangguniang panlungsod*;

(2) Subject to civil service law, rules and regulations, appoint all officials and employees of the *sangguniang panlungsod*, except those whose manner of appointment is specifically provided in this Code;

(3) Assume the office of the city mayor for the unexpired term of the latter in the event of permanent vacancy as provided for in Section 44, Book I of this Code;

(4) Exercise the powers and perform the duties and functions of the city mayor in cases of temporary vacancy as provided for in Section 46, Book I of this Code; and

(5) Exercise such other powers and functions as may be prescribed by law or ordinance.

(b) The city vice-mayor shall receive a monthly compensation corresponding to Salary Grade twenty eight (28) for a highly urbanized city and Salary Grade twenty six (26) for a component city, as prescribed under R.A. No. 6758 and the implementing guidelines issued pursuant thereto.

Chapter 3, Title II of Book I of the Local Government Code, which is entitled Local Legislation also did not describe the city vice-mayor as a member of the *Sangguniang Panlungsod*. Section 49 thereof was devoted to designating the vice-mayor as the presiding officer of the *sanggunian*, nothing more.

The law is clear: the city vice-mayor is the presiding officer of the *sangguniang panlungsod*, and not a member. As such, the vice-mayor should not be counted for purposes of quorum.

This interpretation of the Vice-Mayor's role in the *Sangguniang Panlungsod* also finds support from the congressional deliberations of the bills which eventually became Republic Act (RA) No. 7160 or the LGC. The deliberations on the Senate floor reveal that the city vice-mayor's role in the *Sangguniang Panlungsod* was that of a presiding officer with *administrative* duties. Not once did our lawmakers intimate that the vice-mayor's powers extend to the legislative functions of a *Sangguniang Panlungsod* member.

On August 6, 1990, Senator Ernesto Maceda (Sen. Maceda) suggested that, unlike *sanggunian* members who are allowed limited practice of profession, the incumbent vice-mayors should be prohibited from practicing their professions because they will be busy with their administrative functions in the *sanggunian*. He stated that the vice-mayors will now "be administrative heads. They will sign appointments; they will prepare the budget for the x x x *sanggunian*. The vice-mayor, as presiding officer acquires a lot of administrative duties."[6] Sen. Maceda also proposed that the vice mayors be given monthly salaries instead of per diems because they now have administrative duties as presiding officers of their respective *sanggunian*.[7]

On September 11, 1990, Sen. Pimentel revealed that some mayors resist the proposal to make the vice-mayors the presiding officers of the *sanggunian*.[8]

The deliberations before the House of Representatives also revealed that the only intention of its members was to make the vice-mayor the presiding officer of the *sanggunian*. No mention was ever made that the vice-mayor would also have the role and prerogatives of a *sanggunian* member.[9]

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[6] Deliberations on the Local Government Code, Part II, August 6, 1990, pp. 45-46.

[7] *Id.* at 51.

[8] Deliberations on the Local Government Code, Part II, September 11, 1990, p. 11.

[9] Deliberations on the Local Government Code, Part I, August 14, 1990.

In maintaining that the presiding officer should be counted for purposes of quorum, the *ponencia* puts emphasis on the presiding officer's tie-breaking vote in the *sanggunian*.[10] According to the *ponencia*, the conferment of this power on the presiding officer naturally makes him a member of the *sanggunian.*

I disagree. Contrary to the inference drawn by the *ponencia*, the fact that a presiding officer can only vote on *very limited and exceptional occasions* (in case of a tie) would tend to show that he is *not* considered a member of the *sanggunian.* A presiding officer's right to vote is highly *contingent*, very much unlike the actual members whose right to vote is *absolute* (*i.e.*, they can always vote).

Just like other deliberative assemblies, the *sanggunian* acts through voting. Official business is transacted by a majority vote (or 2/3 vote in some cases), where each member gets one vote. When the law deprived the presiding officer of the right to vote on the business of the *sanggunian*, the law declares that his presence is not determinative of whether the body can or cannot transact official business. His tie-breaking vote would not alter this, as it is merely an exigency measure to prevent deadlocks in the legislative body. It is no different from drawing straws or flipping a coin to settle a deadlocked situation. Thus, if the presiding officer's presence is not determinative of the body's ability to transact official business, why should he be counted for purposes of quorum?

According to American Jurisprudence, the conferment of a tie-breaking vote does not necessarily confer membership on a presiding officer:

§6. Presiding officer

x x x x x x x x x

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[10] SEC. 49. *Presiding Officer*. — (a) The vice-governor shall be the presiding officer of the *sangguniang panlalawigan*; the city vice-mayor, of the *sangguniang panlungsod*; the municipal vice-mayor, of the *sangguniang bayan*; and the *punong barangay*, of the *sangguniang barangay*. **The presiding officer shall vote only to break a tie.**

Usually, the presiding officer of a body does not have a vote except in case of a tie, but this power does not of itself make the officer a member of the body. Where the presiding officer is a member of the body, and as such member is entitled to vote with the other members, the fact of being chosen to act as presiding officer does not remove that privilege.[11] (Emphasis supplied.)

§7. Quorum

x x x x x x x x x

The fact that a statute gives a certain official the right to cast the deciding vote in case of a tie in a governmental body does not of itself make that official a member of that body for the purposes of ascertaining a quorum or majority, or for any other purpose. However, when an official is made a member of a governmental body by its charter, the fact that he is given the right to vote only in case of a tie does not affect his membership, and he must be counted toward a quorum and in determining the number of votes necessary to pass a measure.[12] (Emphasis supplied.)

Simply put, the presiding officer is not a member by the mere fact that he is the presiding officer of the body and that he has a tie-breaking vote. He only becomes a member when the law says he is so.

The authority on the issue of whether a presiding officer of a local legislative body is also a member thereof is *Perez v. Hon. Dela Cruz.*[13] The Court held therein that a city vice-mayor who serves as presiding officer of the local legislative board cannot be considered a member thereof, in the absence of any specific statutory authority constituting him as a member. Otherwise stated, a presiding officer will only have the same rights as the members of the local legislative council when the law itself confers on him such membership status:

[I]n the absence of any statutory authority constituting the vice-mayor as a member of the municipal board, in addition to being the

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[11] 59 Am. Jur. 2d (1987 ed.), Parliamentary Law, Section 6.

[12] 59 Am. Jur. 2d (1987 ed.), Parliamentary Law, Section 7.

[13] 137 Phil. 393 (1969).

presiding officer thereof, we cannot read into the law something which is not there. **For, as aptly put, differences in law beget differences in legal effects.**[14] (Emphasis supplied.)

In *Perez*, the charter of Naga City[15] simply provided that "the vice-mayor shall be the presiding officer of the City Council or Municipal Board." On that basis the Court said that the vice-mayor is *not* a member of the municipal board:

In no manner does the law, either in its original form under Rep. Act 305, or in its amendatory shape under Rep. Act 2259, constitute the vice- mayor as a member of the municipal board. It simply says that "the vice-mayor shall be the presiding officer of the City Council or Municipal Board." Nothing more.

In this connection, *American Jurisprudence* has this to say:

> "When the statutes provide that the mayor shall preside at the meetings of the municipal council, he is a constituent part of the council for certain purposes, and he sits and acts therein, but he is not in any proper sense a member of the council, unless the statutes expressly so provide."

x x x x x x x x x

The mere fact, therefore, that the vice-mayor was made the 'presiding officer' of the board did not *ipso jure* make him a member thereof; and even if he "is an integral part of the Municipal Board" such fact does not necessarily confer on him "either the status of a regular member of its municipal board or the powers and attributes of a municipal councilor." In sum, the vice-mayor of Naga possesses in the municipal board of Naga no more than the prerogatives and authority of a "presiding officer" as such, and no more.[16] (Emphasis supplied.)

While *Perez* was decided prior to the enactment of the LGC, the principle remains the same. The law determines whether the vice-mayor, as presiding officer of the local legislative body,

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[14] *Id.* at 402-403.

[15] REPUBLIC ACT No. 305, as deemed amended by REPUBLIC ACT No. 2259.

[16] *Perez v. Hon. Dela Cruz*, *supra* note 13 at 404-405.

is considered a member thereof. If the law provides that he is a member, the presiding officer should have all the rights and privileges of a member, in addition to being a presiding officer. This includes the right to be counted for purposes of determining quorum. On the other hand, if the law does *not* make the presiding officer a member, there is no basis for conferring membership on him. In the language of *Perez*, "[t]he mere fact, therefore, that the vice-mayor was made the 'presiding officer' of the board did not *ipso jure* make him a member thereof."

The ruling in *Perez* that a presiding officer is not always a member of the body is not alone in the legal wilderness. There are a number of American decisions supporting *Perez*.

The facts of *People* ex rel. *Lewis v. Brush*[17] are similar to the case at bar. Under the charter of the city of Mt. Vernon, the city's common council is composed of 10 aldermen, with the mayor as its presiding officer. A quorum for the transaction of the council's business is defined as a majority of the common council.

After the mayoral elections, the canvass was conducted by the common council (as mandated by the charter), but only the mayor and five aldermen[18] were present. The other five aldermen were absent.

Lewis filed a *mandamus* petition to compel the defendants (the common council and mayor of the city of Mt. Vernon) to recognize him as the new mayor of the said city. He maintained that there was a proper quorum during the canvassing because the mayor is also a member of the common council. He cited as his basis Section 159 of the charter which states that "[i]n the proceedings of the common council each member present shall have a vote except the mayor when presiding, who shall have only a casting vote when the votes of the *other members* are tied."

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[17] 83 Hun 613, 64 N.Y. St. Rep. 139, 31 N.Y.S. 586 (1894).

[18] Aldermen are members of legislative bodies in cities (Webster's New International Dictionary, unabridged version, 1981).

The Court denied Lewis' application. It held that there was no quorum of the common council during the canvassing of the votes because there were only five members of the council present. The Court held that the mayor is not a member of the common council because the statute itself does not say in express terms that he is a member. It explained that "[w]hen the common council x x x convene[s] to make a canvass, [the mayor's] functions are merely those of a presiding officer, without any voting power except in case of a tie. He is no more to be counted in ascertaining whether a quorum is present than the lieutenant governor can be counted to make up a quorum of the state senate because the constitution gives that officer a casting vote therein."

In *City of Somerset v. Smith*,[19] the City of Somerset, through its board of council entered into a contract with Smith for the franchise of an electric light and power plant. The resolution was approved by three members and the mayor, who is the chairman of the board. The other three members were absent.

The Court invalidated the contract between the city and Smith for not having been passed by a majority of the board of council. It was explained that the mayor who is designated as the "chairman of the board" and has a tie-breaking vote should not be considered as a member of the board in computing a quorum for the transaction of business. This is because a quorum necessarily means a majority of the members of the council, elected as such. The mayor, who serves as the chairman of the board, should not be included in the determination of quorum.

Bybee v. Smith[20] is also relevant. Under the statute governing the City of Glasgow, "a majority of the members shall constitute a quorum for the transaction of business." It likewise provided that "the mayor shall preside at all meetings of the council, and may vote in case of a tie vote of the council." Based on these provisions, the Court of Appeals of Kentucky invalidated an ordinance that was passed by only three attending members and

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[19] 20 Ky. L. Rptr. 1488, 105 Ky. 678, 49 S.W. 456 (1899).

[20] 22 Ky. L. Rptr. 1684, 61 S.W. 15 (1901).

the mayor (three other members were absent). The Court explained that the mayor should not be included in the determination of quorum because the statute excluded him from the privileges of a member, except for a vote in case of a tie. It clarified that a quorum of the council means at least four members must have been present, not counting the mayor therein.

These jurisprudence show that a presiding officer is not necessarily a member of the body over which he presides. His authority to break a tie does not in itself make him a member.

Relating these doctrines to Section 457 of RA 7160, which referred to the vice-mayor only as the presiding officer of the *sanggunian*, the inevitable conclusion is that the law only designated the vice-mayor as the presiding officer of the *sanggunian* and not a member of the *sanggunian*. Thus, he should not be considered a member, even if he has a tie-breaking vote. We cannot read into Section 457 what is not there.

Aside from the fact that the presiding officer *cannot* vote in the regular transaction of *sanggunian* business (where there is no tie vote to break), it is also noteworthy that the presiding officer can *never* vote in important legislative matters where a supermajority or a 2/3 vote of all the members is required (*e.g.*, to override an executive veto,[21] closure and opening of roads,[22] suspension or expulsion of members,[23] grant of tax exemptions, incentives or reliefs to entities engaged in community growth-inducing industries).[24] In these instances where a 2/3 vote is required, the presiding officer will never be called upon to break a tie. When the body is tied or equally divided, it would simply mean that the proposal fails to pass, as the supermajority requirement of 2/3 is not met.

As mentioned before, the *sanggunian* transacts its official business by *voting*. The severe limitations on the voting right

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[21] REPUBLIC ACT NO. 7160, Sec. 54(a) and Sec. 55(c).

[22] REPUBLIC ACT NO. 7160, Sec. 21.

[23] REPUBLIC ACT No. 7160, Sec. 50(5) First Proviso.

[24] REPUBLIC ACT NO. 7160, Sec. 458(2) (xii).

of the presiding officer reveal that, for the most part, he cannot take part in transacting official business in the *sanggunian*. Since the quorum requirement is intended to ensure the presence of a majority of the body capable of transacting business, an official who is not necessary for transacting business should not be counted in determining the quorum.

II. Zamora v. Caballero is not in point because it did not resolve the issue of whether the phrase "of all the members of the sanggunian" in Section 53 of the LGC refers to the entire composition or only to the members.

The *ponencia* cites *Zamora v. Caballero*[25] as authority for the proposition that the entire membership of the *sanggunian* should be taken into account in the determination of quorum.

Two important issues on quorum were resolved in *Zamora*: (1) whether a member, sitting as temporary presiding officer, can vote even without a tie;[26] and (2) whether a board member on leave of absence due to foreign travel should still be included for purposes of quorum.[27]

On the first issue, the Court held that a board member who sits as temporary presiding officer cannot exercise his right to vote as a regular member. He can only vote in case there is a tie.[28]

On the second issue, the Court held that a board member who is on foreign travel is counted for purposes of quorum so long as that board member has already been "elected and qualified." The Court explained that Section 53 of the LGC provides an exacting definition of quorum, which is "majority of *all* the members of the *sanggunian ... elected and qualified*." It goes on to explain:

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[25] *Supra* note 4.

[26] *Zamora v. Caballero, id.* at 491-492.

[27] *Id.* at 487-490.

[28] *Id.* at 491-492.

On the applicability of *Avelino*[*v. Cuenco*][29] to the present case: The issue in said case was whether there was a quorum in a meeting attended by only 12 of 24 senators, one having been in the hospital while another was out of the country. This Court held that although the total membership of the Senate was 24, the presence of 12 members already constituted a quorum since the 24th member was outside the country and beyond the coercive power of the Senate.

In the instant case, there is nothing on record, save for respondents' allegation, to show that Board Member Sotto was out of the country and to thereby conclude that she was outside the coercive power of the *Sanggunian* when the February 8 and 26, 2001 sessions were held. x x x

x x x x x x x x x

Also, in *Avelino*, the legislative body involved was the Senate and the applicable rule on quorum was that embodied in Article VI, Section 10 of the 1935 Constitution x x x

x x x x x x x x x

The present case, however, involves a local legislative body, the *Sangguniang Panlalawigan* of Compostela Valley Province, and the applicable rule respecting quorum is found in Section 53 (a) of the LGC x x x

x x x x x x x x x

The difference in the wordings of the Constitution [on senate quorum requirement] and the LGC is not merely "a matter of style and writing" as respondents would argue, but is actually a matter of "meaning and intention." **The qualification in the LGC that the majority be based on those "elected and qualified"** was meant to allow *sanggunians* to function even when not all members thereof have been proclaimed. And, while the intent of the legislature in qualifying the quorum requirement was to allow *sanggunians* to function even when not all members thereof have been proclaimed and have assumed office, the provision necessarily applies when, after all the members of the *sanggunian* have assumed office, one or some of its members file for leave. ***What should be important then is the concurrence of election to and qualification for the office.*** And election to, and qualification as member of, a local

[29] 83 Phil. 17 (1949).

legislative body are not altered by the simple expedient of filing a leave of absence.

The trial court should thus have based its determination of the existence of a quorum on the *total number of members of the Sanggunian* without regard to the filing of a leave of absence by Board Member Sotto. The fear that a majority may, for reasons of political affiliation, file leaves of absence in order to cripple the functioning of the *sanggunian* is already addressed by the grant of coercive power to a mere majority of the *sanggunian* members present when there is no quorum.[30]

Zamora thus construed quorum of the *sanggunian* with respect to the phrase "*elected and qualified*" (*vis-à-vis* the yardstick of "within the coercive power of the body," as pronounced in *Avelino*). It did not in any manner resolve the issue of whether the phrase in Section 53 of the LGC "of all the members of the *sanggunian*" refers to the entire composition in Section 457, or only to the members. It was never the issue because the parties in *Zamora* presented their case upon the assumption that the presiding officer is counted in the quorum. Neither party raised this matter as an issue; hence, *Zamora* did not resolve the issue.

III. The DILG Opinions are mere declarations of the DILG as the implementing agency; they do not bind the Court which has the primary mandate and duty to interpret the law.

The *ponencia* also cites the opinions emanating from the Department of Interior and Local Government (DILG) that the presiding officer is included for purposes of quorum. A careful reading of the DILG opinions, however, will expose them as totally bereft of rational and legal basis. These opinions, in a nutshell, state that the presiding officer is included in the quorum merely because he is included in the composition of the *sanggunian*. It assumes that everyone in the composition of the *sanggunian* is a member, which assumption is false because, as I have already discussed, Section 457 itself divides the

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[30] *Zamora v. Caballero, supra* note 4 at 489-490. Emphasis supplied.

composition of the *sanggunian* into two: (a) the vice-mayor, as presiding officer, and (b) the rest, as members.

While these DILG opinions may have persuasive effect because the DILG is the implementing agency of the LGC, this Court is not in any way bound by the DILG's pronouncements, especially when its opinion does not seek to persuade a critical mind but merely makes a declaration. The Court has the primary duty to interpret the law, and any construction that is clearly erroneous cannot prevent the Court from exercising its duty. The court's mandate is to the law and laws remain despite non-use, non-observance and customs to the contrary.[31]

The resistance to the idea that a presiding officer is not necessarily a member, may perhaps spring from the fact that in our political system, the two houses of Philippine Congress have presiding officers who are also members thereof. But what must be remembered is that the House Speaker and the Senate President were elected first and foremost as a congressman and a senator, respectively.[32] They are both elected by their respective constituency as legislators, just as the rest of the members of their respective houses. Their roles of presiding officers are mere adjuncts to their primary duties as legislators.

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[31] CIVIL CODE, Art. 7.

[32] CONSTITUTION, Article VI, Sec. 2. The Senate shall be composed of twenty-four Senators who shall be elected at large by the qualified voters of the Philippines, as may be provided by law.

x x x x x x x x x

Sec. 5 (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

x x x x x x x x x

Sec. 16 (1). The Senate shall elect its President and the House of Representatives its Speaker, by a majority vote of all its respective Members.

x x x x x x x x x

Clearly, the role of the vice-mayor is different from that of the House Speaker and the Senate President. Unlike the two, the vice-mayor is not elected as a legislator. He is elected as an executive or, more particularly, as the successor of the local chief executive.

Of interest and distinct nature is the Judicial and Bar Council (JBC). Article VIII, Sections 8 and 9 of the Constitution describes the Judicial and Bar Council and its duties, as follows:

> Sec. 8 (1). A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice **as *ex officio* Chairman**, the Secretary of Justice, and a representative of the Congress **as *ex officio* Members**, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.
>
> (2) The **regular members** of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. x x x
>
> x x x x x x x x x
>
> (5) T**he Council** shall have the principal function of recommending appointees to the Judiciary. **It** may exercise such other functions and duties as the Supreme Court may assign to it.
>
> Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees **prepared by the Judicial and Bar Council** for every vacancy. Such appointments need no confirmation.
>
> For the lower courts, the President shall issue the appointments within ninety days from the submission of the list. (Emphasis supplied.)

At first blush, Section 8(1) above may appear to be the same as that of Section 457 of the LGC on the composition of the *Sangguniang Panlungsod*, because it describes the Chief Justice "as Chairman" and the others as "Members." However, unlike the LGC provisions on the *sanggunian*, the constitutional provisions on the JBC do not include any provision that refers solely to the members of the JBC. Thus, any apparent distinction between the JBC chairman and the JBC members is not real.

The JBC chairman and the members are on equal terms in performing tasks within the JBC, as shown by the phrases "prepared **by the** Judicial and Bar Council," "**the Council** shall have the principal function of recommending appointees," and "**it** (the Council) may exercise such other functions and duties as the Supreme Court may assign to it." This is in stark contrast to the LGC provisions on quorum and voting, which do not refer to "the *Sangguniang Panlungsod*" as a whole, but only to "all the members of the *sanggunian*."

The conclusion that the vice-mayor, as presiding officer of the *Sangguniang Panlungsod*, is not a member for purposes of determining quorum also serves to protect the checks and balances between the executive and the legislative powers within the local government units.

It must be remembered that while the vice-mayor is not strictly speaking vested with executive power while he sits as presiding officer of the *sanggunian*, among his functions is to take over the chief executive position, either temporarily or permanently.[33] When he does take over, one of the crucial functions of the mayor that he assumes is the power to approve or veto[34] ordinances of the *sanggunian*. If we construe the quorum requirement to include the vice-mayor, the vice-mayor will occupy a unique position of affecting an ordinance both at the legislative and executive levels. The presiding officer could affect legislation by his attendance or absence from sessions (thereby creating or preventing a quorum for the transaction of official business) and, if he later occupies the mayoral seat in a temporary or permanent capacity, he would also affect the same legislation by approving or vetoing the *sanggunian*'s actions. This potential

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[33] LOCAL GOVERNMENT CODE, Sections 44 and 46.

[34] SEC. 54. *Approval of Ordinances.* — (a) Every ordinance enacted by the *sangguniang panlalawigan, sangguniang panlungsod,* or *sangguniang bayan* shall be presented to the provincial governor or city or municipal mayor, as the case may be. If the local chief executive concerned approves the same, he shall affix his signature on each and every page thereof; otherwise, he shall veto it and return the same with his objections to the sanggunian, which may proceed to reconsider the same. x x x

fusion of powers is inimical to the checks and balances created by the separation of powers between the local chief executives and the legislative bodies.

My position, in sum, is this: The presiding officer of the *sanggunian*, while a part thereof, is not a member that should be counted for purposes of quorum. He is not defined by the law as a member; and the law, by denying him the right to vote as the other members, does not make his presence determinative of whether the body can proceed to transact its business. Quorum is not just a matter of counting attendance. It requires counting the people that matter for the conduct of a valid business. Otherwise stated, to be a presiding officer, whether a member or not, is to be part of the *sanggunian*.[35] But while he is a part of the *sanggunian*, the law simply does not make him a member thereof such that he will be counted for purposes of quorum.

In view of the foregoing, I vote to **GRANT** the petition.

EN BANC

[G.R. Nos. 184379-80. April 24, 2012]

RODOLFO NOEL LOZADA, JR., VIOLETA LOZADA and ARTURO LOZADA, *petitioners, vs.* **PRESIDENT GLORIA MACAPAGAL-ARROYO, EDUARDO ERMITA, AVELINO RAZON, ANGEL ATUTUBO and SPO4 ROGER VALEROSO,*** *respondents.*

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[35] *Perez v. Hon. Dela Cruz, supra* note 9 at 402-403.

* Corrected by the Office of the Solicitor General (OSG) to be Rodolfo — and not Roger — Valeroso.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO LIFE, LIBERTY AND SECURITY; WRIT OF *AMPARO*; DEFINED AND CONSTRUED.— The writ of *amparo* is an independent and summary remedy that provides rapid judicial relief to protect the people's right to life, liberty and security. Having been originally intended as a response to the alarming cases of extrajudicial killings and enforced disappearances in the country, it serves both preventive and curative roles to address the said human rights violations. It is preventive in that it breaks the expectation of impunity in the commission of these offenses, and it is curative in that it facilitates the subsequent punishment of perpetrators by inevitably leading to subsequent investigation and action. As it stands, the writ of *amparo* is confined only to cases of extrajudicial killings and enforced disappearances, or to threats thereof. Considering that this remedy is aimed at addressing these serious violations of or threats to the right to life, liberty and security, it cannot be issued on amorphous and uncertain grounds, or in cases where the alleged threat has ceased and is **no longer imminent or continuing**. Instead, it must be granted judiciously so as not to dilute the extraordinary and remedial character of the writ, thus: The privilege of the writ of *amparo* is envisioned basically to protect and guarantee the rights to life, liberty, and security of persons, free from fears and threats that vitiate the quality of this life. It is an extraordinary writ conceptualized and adopted in light of and in response to the prevalence of extra-legal killings and enforced disappearances. Accordingly, **the remedy ought to be resorted to and granted judiciously, lest the ideal sought by the *Amparo* Rule be diluted and undermined by the indiscriminate filing of *amparo* petitions for purposes less than the desire to secure *amparo* reliefs and protection and/or on the basis of unsubstantiated allegations**.

2. ID.; ID.; ID.; ID.; ID.; WHEN GRANTED; NOT APPLICABLE IN CASE AT BAR.— Sections 17 and 18 of the Rule on the Writ of *Amparo* requires the parties to establish their claims by substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The use of this evidentiary threshold reveals the clear intent of the framers of the Rule on the Writ of *Amparo* to have the equivalent of an administrative proceeding, albeit judicially conducted,

in addressing *amparo* situations. In cases where the violation of the right to life, liberty or security has already ceased, it is necessary for the petitioner in an *amparo* action to prove the existence of a continuing threat. x x x There is no basis to grant Lozada the privilege of the writ of *amparo*, considering that the illegal restraint alleged in this case had already ceased and there is no imminent or continuing restriction on his liberty. In *Castillo v. Cruz*, this Court held as follows: "Although respondents' release from confinement does not necessarily hinder supplication for the writ of *amparo*, **absent any evidence or even an allegation in the petition that there is undue and continuing restraint on their liberty**, and/or that there exists threat or intimidation that destroys the efficacy of their right to be secure in their persons, the issuance of the writ cannot be justified." Further, it appears that Lozada had already filed before the Department of Justice (DOJ) a Complaint charging respondents with kidnapping and attempted murder, docketed as I.S. No. 2008-467. x x x Thus, if the Complaint filed before the DOJ had already progressed into a criminal case, then the latter action can more adequately dispose of the allegations made by petitioners. After all, one of the ultimate objectives of the writ of *amparo* as a curative remedy is to facilitate the subsequent punishment of perpetrators. On the other hand, if there is no actual criminal case lodged before the courts, then the denial of the Petition is without prejudice to the filing of the appropriate administrative, civil or criminal case, if applicable, against those individuals whom Lozada deems to have unduly restrained his liberty.

3. ID.; ID.; ID.; ID.; ID.; FAILURE TO ESTABLISH THAT THE PUBLIC OFFICIAL OBSERVED EXTRAORDINARY DILIGENCE IN THE PERFORMANCE OF DUTY DOES NOT RESULT IN THE AUTOMATIC GRANT OF THE PRIVILEGE; CASE AT BAR.— This Court has squarely passed upon this contention in *Yano v. Sanchez*, to wit: "The failure to establish that the public official observed extraordinary diligence in the performance of duty does not result in the automatic grant of the privilege of the *amparo* writ. It does not relieve the petitioner from establishing his or her claim by substantial evidence." Thus, in *amparo* actions, petitioners must establish their claims by substantial evidence, and they cannot merely rely on the supposed failure of respondents to prove either their defenses or their exercise of extraordinary diligence. In this case, the totality of the evidence presented

by petitioners fails to meet the requisite evidentiary threshold, and the privilege of the writ of *amparo* has already been rendered moot and academic by the cessation of the restraint to Lozada's liberty. Finally, with respect to the interim reliefs sought by petitioners, this Court, in *Yano v. Sanchez*, declined to grant the prayer for the issuance of a TPO, as well as Inspection and Production Orders, upon a finding that the implicated public officials were not accountable for the disappearance subject of that case. Analogously, it would be incongruous to grant herein petitioners' prayer for a TPO and Inspection and Production Orders and at the same time rule that there no longer exists any imminent or continuing threat to Lozada's right to life, liberty and security. Thus, there is no basis on which a prayer for the issuance of these interim reliefs can be anchored.

4. ID.; EXECUTIVE DEPARTMENT; PRESIDENT; IMMUNITY FROM SUIT; THE PRESIDENTIAL PRIVILEGE CANNOT BE INVOKED BY A NON-SITTING PRESIDENT EVEN FOR ACTS COMMITTED DURING HIS OR HER TENURE; APPLICATION IN CASE AT BAR.— It is settled in jurisprudence that the President enjoys immunity from suit during his or her tenure of office or actual incumbency. Conversely, this presidential privilege of immunity cannot be invoked by a non-sitting president even for acts committed during his or her tenure. In the case at bar, the events that gave rise to the present action, as well as the filing of the original Petition and the issuance of the CA Decision, occurred during the incumbency of former President Arroyo. In that respect, it was proper for the court *a quo* to have dropped her as a respondent on account of her presidential immunity from suit. It must be underscored, however, that since her tenure of office has already ended, former President Arroyo can no longer invoke the privilege of presidential immunity as a defense to evade judicial determination of her responsibility or accountability for the alleged violation or threatened violation of the right to life, liberty and security of Lozada. Nonetheless, examining the merits of the case still results in the denial of the Petition on the issue of former President Arroyo's alleged responsibility or accountability. A thorough examination of the allegations postulated and the evidence adduced by petitioners reveals their failure to sufficiently establish any unlawful act or omission on her part that violated, or threatened with violation, the right to life, liberty and security of Lozada.

5. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; SUBPOENA, DEFINED AND CONSTRUED.— This Court, in *Roco v. Contreras*, ruled that for a subpoena to issue, it must first appear that the person or documents sought to be presented are *prima facie* relevant to the issue subject of the controversy, to wit: "A subpoena is a process directed to a person requiring him to attend and to testify at the hearing or trial of an action or at any investigation conducted under the laws of the Philippines, or for the taking of his deposition. In this jurisdiction, there are two (2) kinds of subpoena, to wit: subpoena *ad testificandum* and subpoena *duces tecum.* The first is used to compel a person to testify, while the second is used to compel the production of books, records, things or documents therein specified. As characterized in *H.C. Liebenow vs. The Philippine Vegetable Oil Company*: **The subpoena *duces tecum* is, in all respects, like the ordinary subpoena *ad testificandum*** with the exception that it concludes with an injunction that the witness shall bring with him and produce at the examination the books, documents, or things described in the subpoena. Well-settled is the rule that before a subpoena *duces tecum* may issue, the court must first be satisfied that the following requisites are present: (1) the books, documents or other things requested must **appear *prima facie* relevant to the issue subject of the controversy (test of relevancy)**; and (2) such books must be reasonably described by the parties to be readily identified (test of definiteness)."

APPEARANCES OF COUNSEL

Reynaldo R. Princesa, Lacierda & Bermudez Law Offices and *Rex J.M.A. Fernandez* for petitioners.

The Solicitor General for respondents.

Juanito I. Velasco, Jr. and Jhonelle Estrada for Gen. Angel Atutubo.

D E C I S I O N

SERENO, *J.*:

What the Court decides today has nothing to do with the substance or merits surrounding the aborted deal of the Philippine

government with the National Broadband Network and ZTE Corporation, or any allegation of petitioner Rodolfo Noel "June" Lozada, Jr., (Lozada) regarding the same. There is only one issue that we decide today — whether circumstances are adequately alleged and proven by petitioner Lozada to entitle him to the protection of the *writ of amparo*. Before us is a Petition for Review on *Certiorari* of the Decision dated 12 September 2008 of the Court of Appeals (CA), dismissing the Petition for the Issuance of a Writ of *Amparo*.[1]

Petitioner Lozada was the former President and Chief Executive Officer of the Philippine Forest Corporation (PFC), a government-owned-and-controlled corporation under the Department of Environment and Natural Resources (DENR).[2] Petitioner Violeta Lozada (Violeta) is his wife, while petitioner Arturo Lozada (Arturo) is his brother.

At the time the Petition for the Writ of *Amparo* was filed, respondent former President Gloria Macapagal Arroyo (former President Arroyo) was the incumbent President of the Philippines. Meanwhile, Eduardo Ermita (ES Ermita) was then the Executive Secretary; Avelino Razon (Razon), the Director General of the Philippine National Police (PNP); Angel Atutubo (Atutubo), the Assistant General Manager for Security and Emergency Services of the Manila International Airport Authority; and Rodolfo Valeroso (Valeroso), an agent of the Aviation Security Group (ASG) of the PNP.

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[1] *In the Matter of the Petition for the Writ of Amparo in favor of Rodolfo Noel I. Lozada, Jr., Arturo Lozada v. President Gloria Macapagal-Arroyo, Eduardo Ermita, Avelino Razon, Angel Atutubo and SPO4 Roger Valeroso*, CA-G.R. SP No. 00017; *In the Matter of the Petition for Issuance of [the] Writ of Habeas Corpus of Rodolfo Noel Lozada, Jr., Rodolfo Noel Lozada, Jr. and Violeta Cruz Lozada, for herself and in representation of Rodolfo Noel Lozada, Jr., v. General Angel Atutubo, General Avelino Razon, Lt. Gen. Pedrio Cadungog, General Octavio Lina, Brig. Gen. Romeo C. Prestoza, and SPO1 Roger Valeroso*, CA-G.R. SP No. 102251, 12 September 2008. Penned by CA Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr., *rollo*, pp. 61-144.

[2] Complaint-Affidavit dated 22 February 2008, at 1; *rollo*, p. 453.

Antecedent Facts

The instant Petition stems from the alleged corruption scandal precipitated by a transaction between the Philippine government, represented by the National Broadband Network (NBN), and ZTE Corporation (ZTE), a Chinese manufacturer of telecommunications equipment.[3] Former National Economic Development Authority (NEDA) Secretary Romulo Neri (Sec. Neri) sought the services of Lozada as an unofficial consultant in the ZTE-NBN deal.[4] The latter avers that during the course of his engagement, he discovered several anomalies in the said transaction involving certain public officials.[5] These events impelled the Senate of the Philippines Blue Ribbon Committee (Blue Ribbon Committee) to conduct an investigation thereon,[6] for which it issued a subpoena directing Lozada to appear and testify on 30 January 2008.[7]

On that date, instead of appearing before the Blue Ribbon Committee, Lozada left the country for a purported official trip to London, as announced by then DENR Secretary Lito Atienza (Sec. Atienza).[8] In the Petition, Lozada alleged that his failure to appear at the scheduled hearing was upon the instructions of then Executive Assistant Undersecretary Manuel Gaite (Usec. Gaite).[9] Consequently, the Senate issued an Order dated 30 January 2008: (a) citing Lozada for contempt; (b) ordering his arrest and detention; and (c) directing the Senate Sergeant-at-Arms to implement the Order and make a return thereon.[10]

While overseas, Lozada asked Sec. Atienza whether the former could be allowed to go back to the Philippines.[11] Upon the approval

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[3] Petition dated 23 September 2008, at 8; *rollo*, p. 9.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] Petition, p. 7; *rollo*, p. 8.

[8] *Id.*

[9] Petition, p. 8; *rollo*, p. 9.

[10] Senate Order dated 30 January 2008, CA *rollo*, pp. 8-10.

[11] Petition, p. 9; *rollo*, p. 10.

of Sec. Atienza, Lozada informed his family that he was returning from Hong Kong on 5 February 2008 on board Cathay Pacific Flight No. 919, bound to arrive in Manila at 4:40 p.m. on the same day.[12]

In the Petition, Lozada claims that, upon disembarking from the aircraft, several men held his arms and took his bag. Although he allegedly insisted on meeting with his family, he later realized that it was wiser to just follow them, especially when he overheard from their handheld radio: "[*H*]*wag kayong dumaan diyan sir nandyan ang mga taga senado*."[13]

Lozada asked if he could go to the comfort room, an opportunity he used to call up his brother, petitioner Arturo, and inform him of his situation.[14] The men thereafter led him through the departure area of the airport and into a car waiting for them.[15] They made him sit alone at the back of the vehicle, while a man, whom he later discovered to be respondent Valeroso, took the passenger seat and was always in contact with other individuals.[16] Lozada observed that other cars tailed their vehicle.[17]

Sec. Atienza then phoned Lozada, assuring the latter that he was with people from the government, and that the former was going to confer with "ES and Ma'[a]m." Lozada surmised that these individuals referred to ES Ermita and former President Arroyo, respectively.[18] Sec. Atienza also purportedly instructed Lozada to pacify his wife, petitioner Violeta, who was making public statements asking for her husband's return.[19]

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[12] Petition, p. 7; *rollo*, p. 8.

[13] Petition, pp. 9-10; *rollo*, pp. 10-11.

[14] Petition, p. 10; *rollo*, p. 11.

[15] Petition, p. 11; *rollo*, p. 12.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

The vehicle traversed the South Luzon Expressway and drove towards the direction of Laguna.[20] Along the way, the men asked Lozada to draft an antedated letter requesting police protection.[21]

Lozada requested that he be brought home to Pasig, but the men were allegedly compelled to deny his request on account of unidentified security risks.[22] Eventually, however, the vehicle turned around and drove to Libis, Quezon City. The group stopped at The Outback restaurant to meet with certain individuals, who turned out to be Atty. Antonio Bautista (Atty. Bautista) and Colonel Paul Mascarinas (Col. Mascarinas) of the Police Special Protection Office (PSPO). At the restaurant, Lozada claimed that he was made to fill in the blanks of a prepared affidavit.[23]

After the meeting, the men informed Lozada that they were going to billet him in a hotel for a night, but he suggested that they take him to La Salle Green Hills instead. The men acquiesced.[24]

Upon arriving in La Salle Green Hills, Lozada was met by Violeta and his sister, Carmen Lozada (Carmen).[25] He observed that the perimeter was guarded by policemen, purportedly restraining his liberty and threatening not only his security, but also that of his family and the De La Salle brothers.[26]

On 6 February 2008, at around 10:00 a.m., Col. Mascarinas supposedly brought Lozada to the office of Atty. Bautista to finalize and sign an affidavit.[27]

At about 1:00 p.m., Violeta filed before this Court a Petition for *Habeas Corpus*, docketed as G.R. No. 181342 (the *Habeas*

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[20] Petition, pp. 11-12; *rollo*, pp. 12-13.

[21] Petition, p. 12; *rollo*, p. 13.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] Petition, p. 13; *rollo*, p. 14.

[26] *Id.*

[27] Petition, p. 14; *rollo*, p. 15.

Corpus case).[28] Arturo likewise filed before this Court a Petition for a Writ of *Amparo*, docketed as G.R. No. 181356 (the *Amparo* case), and prayed for the issuance of (a) the writ of *amparo*; (b) a Temporary Protection Order (TPO); and (c) Inspection and Production Orders as regards documents related to the authority ordering custody over Lozada, as well as any other document that would show responsibility for his alleged abduction.[29]

At around the same time that Arturo filed the Petition for a Writ of *Amparo*, Col. Mascarinas drove Lozada back to La Salle Green Hills.[30] Lozada was then made to sign a typewritten, antedated letter requesting police protection.[31] Thereafter, former Presidential Spokesperson Michael Defensor (Sec. Defensor) supposedly came and requested Lozada to refute reports that the latter was kidnapped and to deny knowledge of alleged anomalies in the NBN-ZTE deal. Sec. Defensor then purportedly gave Lozada ₱50,000 for the latter's expenses.[32]

On 7 February 2008, Lozada decided to hold a press conference and contact the Senate Sergeant-at-Arms, who served the warrant of arrest on him.[33] Lozada claimed that after his press conference and testimony in the Senate, he and his family were since then harassed, stalked and threatened.[34]

On the same day, this Court issued a Resolution (a) consolidating the *Habeas Corpus* case and the *Amparo* case; (b) requiring respondents in the *Habeas Corpus* case to comment on the Petition; (c) issuing a Writ of *Amparo*; (d) ordering respondents in the *Amparo* case to file their verified Return; (e) referring

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[28] *Id.*

[29] Petition, p. 14; *rollo*, p. 15; Petition for a Writ of *Amparo*, CA *rollo*, pp. 2-7.

[30] Petition, p. 14; *rollo*, p. 15.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] Petition, p. 15; *rollo*, p. 16.

the consolidated Petitions to the CA; and (f) directing the CA to set the cases for hearing on 14 February 2008.[35] Accordingly, the court *a quo* set both cases for hearing on 14 February 2008.[36]

On 12 February 2008, respondents filed before the CA a Manifestation and Motion, praying for the dismissal of the *Habeas Corpus* case.[37] They asserted that Lozada was never illegally deprived of his liberty and was, at that time, no longer in their custody. They likewise averred that, beginning 8 February 2008, Lozada had already been under the supervision of the Senate and, from then on, had been testifying before it.[38]

In their verified Return, respondents claimed that Sec. Atienza had arranged for the provision of a security team to be assigned to Lozada, who was then fearful for his safety.[39] In effect, respondents asserted that Lozada had knowledge and control of the events that took place on 5 February 2008, voluntarily entrusted himself to their company, and was never deprived of his liberty. Hence, respondents prayed for the denial of the interim reliefs and the dismissal of the Petition.[40]

During the initial hearing on 14 February 2008, Lozada and Violeta ratified the Petition in the *Amparo* case[41] to comply with Section 2 of the Rule on the Writ of Amparo,[42] which

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[35] Petition, p. 26; *rollo*, p. 27; Resolution dated 7 February 2008, CA *rollo*, pp. 11-14.

[36] CA Resolution dated 8 February 2008, CA *rollo*, pp. 17-19. The *Habeas Corpus* case was docketed as CA-G.R. SP No. 102251; the *Amparo* case, CA-G.R. SP No. 00017.

[37] Manifestation and Motion (in lieu of Comment on the Petition for Issuance of Writ of *Habeas Corpus* dated 6 February 2008) dated 12 February 2008, CA *rollo*, pp. 20-25.

[38] CA *rollo*, p. 22.

[39] Return dated 13 February 2008, *rollo*, pp. 275-333.

[40] *Id.*

[41] CA Resolution dated 20 February 2008, p. 3; CA *rollo*, p. 133.

[42] A.M. No. 07-9-12-SC. Section 2 of the Rule on the Writ of *Amparo* provides:

imposes an order to be followed by those who can sue for the writ.[43] The CA also dismissed the *Habeas Corpus* case in open court for being moot and academic, as Lozada was physically present and was not confined or detained by any of the respondents.[44] Considering that petitioners failed to question the dismissal of the *Habeas Corpus* case, the said dismissal had lapsed into finality, leaving only the *Amparo* case open for disposition.

Thereafter, Lozada filed a Motion for Temporary Protection Order and Production of Documents,[45] while Arturo filed a Motion for Production of Documents.[46] Additionally, Arturo also filed a Motion for the Issuance of *Subpoena Ad Testificandum* and Presentation of Hostile Witnesses and Adverse Parties Romulo Neri, Benjamin Abalos, [Sr.], Rodolfo Valeroso, "Jaime" the Driver and Other Respondents. Respondents opposed these motions.[47] The CA denied the Motion for the Issuance of *Subpoena*

Who May File. – The petition may be filed by the aggrieved party or by any qualified person or entity in the following order:

a. Any member of the immediate family, namely: the spouse, children and parents of the aggrieved party;

b. Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph; or

c. Any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party.

The filing of a petition by the aggrieved party suspends the right of all other authorized parties to file similar petitions. Likewise, the filing of the petition by an authorized party on behalf of the aggrieved party suspends the right of all others, observing the order established herein.

[43] Annotation to the Rule on the Writ of *Amparo*, Supreme Court, p. 4.

[44] CA Resolution dated 20 February 2008, CA *rollo*, pp.131-136.

[45] CA *rollo*, pp. 100-114.

[46] Motion for the Issuance of Subpoena dated 22 February 2008, CA *rollo*, pp.149-156.

[47] Opposition to Petitioner's Motion for Temporary Protection Order and Production of Documents dated 22 February 2008, CA *rollo* pp.171-180;

on the ground that the alleged acts and statements attributed to Sec. Neri and Benjamin Abalos (Abalos) were irrelevant to the *Amparo* case, and that to require them to testify would only result in a fishing expedition.[48] The CA likewise denied Arturo's subsequent Motion for Reconsideration.[49]

In its Resolution dated 5 March 2008, the CA dropped former President Arroyo as a respondent on the ground that at the time the Petition in the *Amparo* case was filed, she was still the incumbent President enjoying immunity from suit.[50] Arturo filed a Motion for Reconsideration,[51] which the CA denied in its Resolution dated 25 March 2008.[52]

On 12 September 2008, the CA rendered its Decision denying petitioners the privilege of the Writ of *Amparo* and dismissing the Petition.[53] The CA found that petitioners were unable to prove through substantial evidence that respondents violated, or threatened with violation, the right to life, liberty and security of Lozada.

Petitioners thus filed the instant Petition, praying for: (a) the reversal of the assailed CA Decision; (b) the issuance of the TPO; and (c) the accreditation of the Association of Major Religious Superiors of the Philippines and the De La Salle Brothers as the sanctuaries of Lozada and his family.[54] In the alternative, petitioners pray that this Court remand the case to

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Opposition to Petitioner's Motion for Issuance of *Subpoena Ad Testificandum* and Presentation of Hostile Witnesses and Adverse Parties Romulo Neri, Benjamin Abalos, [Sr.], Rodolfo Valeroso, "Jaime" the Driver, and Other Respondents dated 3 March 2008; CA *rollo*, pp. 240-251.

[48] CA Resolution dated 12 March 2008, CA *rollo*, pp. 338-344.

[49] CA Resolution dated 8 April 2008, CA *rollo*, pp. 414-417.

[50] *Rollo*, pp. 468-478; CA *rollo*, pp. 254-264.

[51] Motion for Reconsideration dated 10 March 2008, CA *rollo*, pp. 287-303.

[52] CA *rollo*, pp. 371-374.

[53] CA Decision, *rollo*, pp. 60-147.

[54] *Rollo*, pp. 2-59.

the CA for further hearings and reverse the latter's Orders: (a) denying the Motion to Issue a *Subpoena Ad Testificandum* and (b) dropping former President Arroyo as a respondent. Petitioners raise the following issues:

> (1) Whether the Court *a [q]uo* erred in ruling to dismiss the petition for a writ of amparo and deny Petitioners' prayer for a Temporary Protection Order, *inter alia*, because there is no substantial evidence to prove that the right to life, liberty or security of Jun Lozada was violated or threatened with violation. This rule is not in accord with the rule on the writ of amparo and Supreme Court jurisprudence on substantial evidence[.]
>
> (2) Whether the *Ponencia* erred and gravely abused its discretion by prematurely ruling that the testimony of witnesses which Petitioners sought to present and who are subject of the Motion for Issuance of Subpoena ad testificandum were irrelevant to the Petition for a Writ of Amparo in a way not in accord with the Rules of Court and Supreme Court decisions.
>
> (3) Whether the Court *a quo* erred in using and considering the affidavits of respondents in coming up with the questioned decision when these were not offered as evidence and were not subjected to cross-examination. This ruling is not in accord with the Rules of Court and jurisprudence.
>
> (4) Whether the Court *a [q]uo* erred in dropping as respondent Pres. Gloria Arroyo despite her failure to submit a verified return and personally claim presidential immunity in a way not in accord with the Rule on the Writ of *Amparo*.[55]

The Office of the Solicitor General (OSG) asserts that petitioners failed to adduce substantial evidence, as the allegations they propounded in support of their Petition were largely hearsay.[56] The OSG also maintains that it was proper for the CA to have dropped former President Arroyo as respondent on account of her presidential immunity from suit.[57]

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[55] *Id.* at 34-35.

[56] Comment dated 5 November 2008, *rollo*, pp. 161-274.

[57] *Id.*

Respondent Atutubo also alleges, among others, that: (a) Lozada voluntarily asked for security and protection; (b) Lozada willingly submitted himself to the company of the police escorts; (c) Atutubo merely accompanied him to pass through the contingency route customarily provided to VIP passengers, public figures, foreign dignitaries, and the like; and (d) Atutubo only performed his job to ensure security and maintain order at the airport upon the arrival of Lozada.[58]

In the face of these assertions by respondents, petitioners nevertheless insist that while they have sufficiently established that Lozada was taken against his will and was put under restraint, respondents have failed to discharge their own burden to prove that they exercised extraordinary diligence as public officials.[59] Petitioners also maintain that it was erroneous for the CA to have denied their motion for subpoena *ad testificandum* for being irrelevant, given that the relevancy of evidence must be examined after it is offered, and not before.[60] Finally, petitioners contend that the presidential immunity from suit cannot be invoked in *amparo* actions.[61]

Issues

In ruling on whether the CA committed reversible error in issuing its assailed Decision, three issues must be discussed:

I. Whether the CA committed an error in dropping former President Arroyo as a respondent in the *Amparo* case.

II. Whether the CA committed an error in denying petitioners' Motion for the Issuance of a Subpoena *Ad Testificandum*.

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[58] Comment/Opposition (To: Petition for Review) dated 17 November 2008, *rollo*, pp. 484-504.

[59] Reply to Respondent[s'] Comment dated 26 January 2009, *rollo*, pp. 510-524; Reply to the Comment of Respondent Atutubo dated 6 February 2009, *rollo*, pp. 547-564.

[60] *Id.*

[61] Reply to Respondent[s'] Comment dated 26 January 2009, *rollo*, pp. 510-524.

III. Whether petitioners should be granted the privilege of the writ of *amparo*.

Discussion

The writ of *amparo* is an independent and summary remedy that provides rapid judicial relief to protect the people's right to life, liberty and security.[62] Having been originally intended as a response to the alarming cases of extrajudicial killings and enforced disappearances in the country, it serves both preventive and curative roles to address the said human rights violations. It is preventive in that it breaks the expectation of impunity in the commission of these offenses, and it is curative in that it facilitates the subsequent punishment of perpetrators by inevitably leading to subsequent investigation and action.[63]

As it stands, the writ of *amparo* is confined only to cases of extrajudicial killings and enforced disappearances, or to threats thereof.[64] Considering that this remedy is aimed at addressing these serious violations of or threats to the right to life, liberty and security, it cannot be issued on amorphous and uncertain grounds,[65] or in cases where the alleged threat has ceased and is **no longer imminent or continuing**.[66] Instead, it must be granted judiciously so as not to dilute the extraordinary and remedial character of the writ, thus:

> The privilege of the writ of *amparo* is envisioned basically to protect and guarantee the rights to life, liberty, and security of persons, free from fears and threats that vitiate the quality of this life. It is an extraordinary writ conceptualized and adopted in light of and in

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[62] Section 1, Rule on the Writ of *Amparo*; *Rodriguez v. Arroyo*, G.R. Nos. 191805 and 193160.

[63] *Secretary of National Defense v. Manalo*, G.R. No. 180906, 7 October 2008, 568 SCRA 1, 43.

[64] *Id.* at 38, reiterated in *Reyes v. Court of Appeals*, G.R. No. 182161, 3 December 2009, 606 SCRA 580.

[65] *Tapuz v. Del Rosario*, G.R. No. 182484, 17 June 2008, 554 SCRA 768, 784.

[66] *Id.* at 789.

response to the prevalence of extra-legal killings and enforced disappearances. Accordingly, **the remedy ought to be resorted to and granted judiciously, lest the ideal sought by the *Amparo* Rule be diluted and undermined by the indiscriminate filing of *amparo* petitions for purposes less than the desire to secure *amparo* reliefs and protection and/or on the basis of unsubstantiated allegations**.[67] (Emphasis supplied.)

Using this perspective as the working framework for evaluating the assailed CA decision and the evidence adduced by the parties, this Court denies the Petition.

First issue: Presidential immunity from suit

It is settled in jurisprudence that the President enjoys immunity from suit during his or her tenure of office or actual incumbency.[68] Conversely, this presidential privilege of immunity cannot be invoked by a non-sitting president even for acts committed during his or her tenure.[69]

In the case at bar, the events that gave rise to the present action, as well as the filing of the original Petition and the issuance of the CA Decision, occurred during the incumbency of former President Arroyo. In that respect, it was proper for the court *a quo* to have dropped her as a respondent on account of her presidential immunity from suit.

It must be underscored, however, that since her tenure of office has already ended, former President Arroyo can no longer invoke the privilege of presidential immunity as a defense to evade judicial determination of her responsibility or accountability for the alleged violation or threatened violation of the right to life, liberty and security of Lozada.

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[67] *Rubrico v. Arroyo*, G.R. No. 183871, 18 February 2010, 613 SCRA 233, 261.

[68] *David v. Arroyo,* 522 Phil. 705, 763-764 (2006).

[69] *Rodriguez v. Arroyo,* G.R. Nos. 191805 and 193160, 15 November 2011, citing *Estrada v. Desierto,* 408 Phil. 194, 242 (2001).

Nonetheless, examining the merits of the case still results in the denial of the Petition on the issue of former President Arroyo's alleged responsibility or accountability. A thorough examination of the allegations postulated and the evidence adduced by petitioners reveals their failure to sufficiently establish any unlawful act or omission on her part that violated, or threatened with violation, the right to life, liberty and security of Lozada. Except for the bare claims that: (a) Sec. Atienza mentioned a certain "Ma'[a]m,"[70] whom Lozada speculated to have referred to her, and (b) Sec. Defensor told Lozada that "the President was 'hurting' from all the media frenzy,"[71] there is nothing in the records that would sufficiently establish the link of former President Arroyo to the events that transpired on 5-6 February 2010, as well as to the subsequent threats that Lozada and his family purportedly received.

Second issue: Denial of the issuance of a subpoena ad testificandum

This Court, in *Roco v. Contreras*,[72] ruled that for a subpoena to issue, it must first appear that the person or documents sought to be presented are *prima facie* relevant to the issue subject of the controversy, to wit:

> A subpoena is a process directed to a person requiring him to attend and to testify at the hearing or trial of an action or at any investigation conducted under the laws of the Philippines, or for the taking of his deposition.
>
> In this jurisdiction, there are two (2) kinds of subpoena, to wit: subpoena *ad testificandum* and subpoena *duces tecum.* The first is used to compel a person to testify, while the second is used to compel the production of books, records, things or documents therein specified. As characterized in *H.C. Liebenow vs. The Philippine Vegetable Oil Company*:
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> **The subpoena *duces tecum* is, in all respects, like the ordinary subpoena *ad testificandum*** with the exception that

[70] Petition, p. 11; *rollo*, p. 12.

[71] Petition, p. 14; *rollo*, p. 15.

[72] 500 Phil. 275 (2005).

> it concludes with an injunction that the witness shall bring with him and produce at the examination the books, documents, or things described in the subpoena.
>
> Well-settled is the rule that before a subpoena *duces tecum* may issue, the court must first be satisfied that the following requisites are present: (1) the books, documents or other things requested must **appear *prima facie* relevant to the issue subject of the controversy (test of relevancy)**; and (2) such books must be reasonably described by the parties to be readily identified (test of definiteness).[73] (Emphasis supplied.)

In the present case, the CA correctly denied petitioners' Motion for the Issuance of Subpoena *Ad Testificandum* on the ground that the testimonies of the witnesses sought to be presented during trial were *prima facie* irrelevant to the issues of the case. The court *a quo* aptly ruled in this manner:

> The alleged acts and statements attributed by the petitioner to Neri and Abalos are not relevant to the instant *Amparo* Petition where the issue involved is whether or not Lozada's right to life, liberty and security was threatened or continues to be threatened with violation by the unlawful act/s of the respondents. Evidence, to be relevant, must have such a relation to the fact in issue as to induce belief in its existence or nonexistence. Further, Neri, Abalos and a certain driver "Jaime" are not respondents in this *Amparo* Petition and the vague allegations averred in the Motion with respect to them do not pass the test of relevancy. To Our mind, petitioner appears to be embarking on a "fishing expedition." Petitioner should present the aggrieved party [Lozada], who has been regularly attending the hearings, to prove the allegations in the *Amparo* Petition, instead of dragging the names of other people into the picture. **We have repeatedly reminded the parties, in the course of the proceedings, that the instant *Amparo* Petition does not involve the investigation of the ZTE-[NBN] contract**. Petitioner should focus on the fact in issue and not embroil this Court into said ZTE-NBN contract, which is now being investigated by the Senate Blue Ribbon Committee and the Office of the Ombudsman.[74] (Emphasis supplied.)

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[73] *Id.* at 283-284.

[74] CA Resolution dated 12 March 2008, pp. 4-5; CA *rollo*, pp. 341-342.

All the references of petitioners to either Sec. Neri or Abalos were solely with respect to the ZTE-NBN deal, and not to the events that transpired on 5-6 February 2008, or to the ensuing threats that petitioners purportedly received. Although the present action is rooted from the involvement of Lozada in the said government transaction, the testimonies of Sec. Neri or Abalos are nevertheless not *prima facie* relevant to the main issue of whether there was an unlawful act or omission on the part of respondents that violated the right to life, liberty and security of Lozada. Thus, the CA did not commit any reversible error in denying the Motion for the Issuance of Subpoena *Ad Testificandum*.

Third issue: Grant of the privilege of the writ of amparo

A. Alleged violation of or threat to the right to life, liberty and security of Lozada

Sections 17 and 18 of the Rule on the Writ of *Amparo* requires the parties to establish their claims by substantial evidence,[75] or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[76] The use of this evidentiary

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[75] Section 17. *Burden of Proof and Standard of Diligence Required.* — The parties shall establish their claims by substantial evidence.

The respondent who is a private individual or entity must prove that ordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.

Section 18. *Judgment.* — The court shall render judgment within ten (10) days from the time the petition is submitted for decision. If the allegations in the petition are proven by substantial evidence, the court shall grant the privilege of the writ and such reliefs as may be proper and appropriate; otherwise, the privilege shall be denied.

[76] *Razon v. Tagitis*, G.R. No. 182498, 3 December 2009, 606 SCRA 598, 688, citing *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642 (1940).

threshold reveals the clear intent of the framers of the Rule on the Writ of *Amparo* to have the equivalent of an administrative proceeding, albeit judicially conducted, in addressing *amparo* situations.[77]

In cases where the violation of the right to life, liberty or security has already ceased, it is necessary for the petitioner in an *amparo* action to prove the existence of a continuing threat.[78] Thus, this Court held in its Resolution in *Razon v. Tagitis*:[79]

> *Manalo* is different from *Tagitis* in terms of their factual settings, as **enforced disappearance was no longer a problem in that case. The enforced disappearance of the brothers Raymond and Reynaldo Manalo effectively ended when they escaped from captivity and surfaced**, while Tagitis is still nowhere to be found and remains missing more than two years after his reported disappearance. **An *Amparo* situation subsisted in *Manalo*, however, because of the continuing threat to the brothers' right to security**; the brothers claimed that since the persons responsible for their enforced disappearance were still at large and had not been held accountable, the former were still under the threat of being once again abducted, kept captive or even killed, which threat constituted a direct violation of their right to security of person.[80] (Emphasis supplied.)

In the present case, the totality of the evidence adduced by petitioners failed to meet the threshold of substantial evidence. Sifting through all the evidence and allegations presented, the crux of the case boils down to assessing the veracity and credibility of the parties' diverging claims as to what actually transpired on 5-6 February 2008. In this regard, this Court is in agreement with the factual findings of the CA to the extent that Lozada was not illegally deprived of his liberty from the point when he

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[77] *Razon v. Tagitis*, G.R. No. 182498, 3 December 2009, 606 SCRA 598, 687.

[78] *Supra* note 66.

[79] *Razon v. Tagitis* (Resolution), G.R. No. 182498, 16 February 2010, 612 SCRA 685.

[80] *Id.* at 696-697.

disembarked from the aircraft up to the time he was led to the departure area of the airport,[81] as he voluntarily submitted himself to the custody of respondents:

> [Lozada] was one of the first few passengers to get off the plane because he was instructed by Secretary Atienza, th[r]ough a phone call on the night of 04 February 2008, while he was still in Hong Kong, to **proceed directly to the Bureau of Immigration so that few people would notice him and he could be facilitated in going out of the airport** without any hassle from the people of the Senate Sergeant-at-Arms. Again, [Lozada] stated that he wanted to get away from the Senate people. [Lozada] even went to the men's room of the airport, after he was allegedly "grabbed," where he made a call to his brother Arturo, using his Globe phone, and he was not prevented from making said call, and was simply advised by the person who met him at the tube to (sic) "*sir, bilisan mo na.*" When they proceeded out of the tube and while walking, [Lozada] heard from the radio track down, "*wag kayo dyan, sir, nandyan yong mga taga Senado*," so they took a detour and went up to the departure area, did not go out of the normal arrival area, and proceeded towards the elevator near the Duty Free Shop and then down towards the tarmac. **Since [Lozada] was avoiding the people from the Office of the Senate Sergeant-at-Arms, said detour appears to explain why they did not get out at the arrival area**, where [Lozada] could have passed through immigration so that his passport could be properly stamped.
>
> **This Court does not find any evidence on record that [Lozada] struggled or made an outcry for help when he was allegedly "grabbed" or "abducted" at the airport. [Lozada] even testified that nobody held him, and they were not hostile to him nor shouted at him.** With noon day clarity, this Court finds that the reason why [Lozada] was fetched at the airport was to help him avoid the Senate contingent, who would arrest and detain him at the Office of the Senate Sergeant-at-Arms, until such time that he would appear and give his testimony, pursuant to the Order of the Senate on the NBN-ZTE Project. **[Lozada] clearly knew this because at that time, it was still his decision not to testify before the Senate. He agreed with that plan.**[82] (Emphases supplied.)

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[81] Petition, p. 11; *rollo*, p. 12.

[82] CA Decision, pp. 76-77; *rollo*, pp. 136-137.

The foregoing statements show that Lozada personally sought the help of Sec. Atienza to avoid the Senate personnel, and thus knew that the men who met him at the airport were there to aid him in such objective. Surely, the actions of Lozada evinced knowledge and voluntariness, uncharacteristic of someone who claims to have been forcibly abducted.

However, these men's subsequent acts of directing Lozada to board the vehicle and driving him around, without disclosing the exact purpose thereof, appear to be beyond what he had consented to and requested from Sec. Atienza. These men neither informed him of where he was being transported nor provided him complete liberty to contact his family members to assure them of his safety. These acts demonstrated that he lacked absolute control over the situation, as well as an effective capacity to challenge their instructions.

Nevertheless, it must be emphasized that if Lozada had in fact been illegally restrained, so much so that his right to liberty and security had been violated, the acts that manifested **this restraint had already ceased** and has consequently rendered the grant of the privilege of the writ of *amparo* **moot**. Whether or not Lozada was deprived of his liberty from the point when he was led inside the vehicle waiting for him at the airport up to the time he was taken to La Salle Green Hills, petitioners' assertions that Lozada and his family continue to suffer various threats from respondents remain unproven. The CA correctly found as follows:

> **The supposed announcement of General Razon over the radio that [Lozada] was in the custody of the PNP** can neither be construed as a threat to [Lozada's] life, liberty and security. Certainly, **no person in his right mind would make that kind of media announcement if his intent was indeed to threaten somebody's life, liberty and security**.
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> x x x x x x x x x
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> He claims that he is threatened by the alleged **presence of armed men riding in motorcycle** passing outside the De La Salle premises where he and his family are staying and by alleged threats of armed men around him at places where he went to. Again, these alleged

threats were **not proven by any evidence at all, as having originated from any of the respondents**.

[Lozada] also considers the **installation of the surveillance camera at the De La Salle and at St. Scholastica** as indirect threat to his right to life, liberty and security. He claims that these are spy cameras. However, save for [Lozada's] self-serving claim, he simply **failed to prove that they were installed or ordered installed by the respondents** for the purpose of threatening his right to life, liberty and security.

[Lozada] further maintains that there is an alleged trend, *i.e.*, wherever he goes, there is a **bomb threat**. There were bomb threats in the places where he went to like in [the Polytechnic University of the Philippines], Dagupan, Cebu and Bohol. However, [Lozada] himself testified that he did not try to ascertain where the bomb threats emanated. Plainly, there is **no evidence on record that the bomb threats were made by the respondents or done upon their instigation**.

Moreover, [Lozada] views the pronouncement of the Secretary of Justice that he was *put on the watch list of the Bureau of Immigration* as a threat to his life, liberty and security. This alleged threat is again unsupported by evidence, as in fact, [Lozada] testified that **he did not ascertain from the Bureau of Immigration whether his name was actually in the official watch list of the Bureau.** At any rate, the Secretary of Justice is not one of the respondents in the *amparo* petition, and there is no showing in the record that it was the respondents who ordered the same for the purpose of threatening him.

[Lozada] harps on the filing of alleged **frivolous cases against him and his family** as threat to his life, liberty and security. xxx However, **[Lozada] himself testified that he does not know whether the respondents or any of the respondents ordered the filing of these cases against him. In any event, said purported cases are to be determined based on their own merits and are clearly beyond the realm of the instant *amparo* petition filed against the respondents**.[83] (Emphasis supplied.)

Finally, petitioners insist that while they were able to sufficiently establish their case by the required evidentiary

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[83] CA Decision, pp. 79-81; *rollo*, pp. 139-141.

standard, respondents failed to discharge their burden to prove their defenses by substantial evidence and to show that respondents exercised extraordinary diligence as required by the Rule on the Writ of *Amparo.*[84] This Court has squarely passed upon this contention in *Yano v. Sanchez*,[85] to wit:

> The failure to establish that the public official observed extraordinary diligence in the performance of duty does not result in the automatic grant of the privilege of the *amparo* writ. It does not relieve the petitioner from establishing his or her claim by substantial evidence.

Thus, in *amparo* actions, petitioners must establish their claims by substantial evidence, and they cannot merely rely on the supposed failure of respondents to prove either their defenses or their exercise of extraordinary diligence. In this case, the totality of the evidence presented by petitioners fails to meet the requisite evidentiary threshold, and the privilege of the writ of *amparo* has already been rendered moot and academic by the cessation of the restraint to Lozada's liberty.

B. Propriety of the privilege of the writ of amparo and its interim reliefs

As previously discussed, there is no basis to grant Lozada the privilege of the writ of *amparo*, considering that the illegal restraint alleged in this case had already ceased and there is no imminent or continuing restriction on his liberty. In *Castillo v. Cruz*,[86] this Court held as follows:

> Although respondents' release from confinement does not necessarily hinder supplication for the writ of *amparo*, **absent any evidence or even an allegation in the petition that there is undue and continuing restraint on their liberty**, and/or that there exists

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[84] Reply to Respondent[s'] Comment dated 26 January 2009, pp. 4-5; *rollo*, pp. 513-514.

[85] G.R. No. 186640, 11 February 2010, 612 SCRA 347, 360.

[86] *Castillo v. Cruz*, G.R. No. 182165, 25 November 2009, 605 SCRA 628, 638.

threat or intimidation that destroys the efficacy of their right to be secure in their persons, the issuance of the writ cannot be justified. (Emphasis supplied.)

Further, it appears that Lozada had already filed before the Department of Justice (DOJ) a Complaint charging respondents with kidnapping and attempted murder, docketed as I.S. No. 2008-467.[87] In this regard, this Court's ruling in *Rubrico v. Arroyo*[88] is worth considering:

> First, **a criminal complaint for kidnapping and, alternatively, for arbitrary detention rooted in the same acts and incidents leading to the filing of the subject *amparo* petition has been instituted with the OMB, docketed as OMB-P-C-O7-0602-E.** The usual initial steps to determine the existence of a *prima facie* case against the five (5) impleaded individuals suspected to be actually involved in the detention of Lourdes have been set in motion. It must be pointed out, though, that the filing of the OMB complaint came before the effectivity of the *Amparo* Rule on October 24, 2007.
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> Second, Sec. 22 of the *Amparo* Rule proscribes the filing of an *amparo* petition should a criminal action have, in the meanwhile, been commenced. The succeeding Sec. 23, on the other hand, provides that when the criminal suit is filed subsequent to a petition for *amparo*, the petition shall be consolidated with the criminal action where the *Amparo* Rule shall nonetheless govern the disposition of the relief under the Rule. Under the terms of said Sec. 22, the present petition ought to have been dismissed at the outset. But as things stand, the outright dismissal of the petition by force of that section is no longer technically feasible in light of the interplay of the following factual mix: (1) the Court has, pursuant to Sec. 6 of the Rule, already issued *ex parte* the writ of *amparo*; (2) the CA, after a summary hearing, has dismissed the petition, but not on the basis of Sec. 22; and (3) the complaint in OMB-P-C-O7-0602-E named as respondents only those believed to be the actual abductors of Lourdes, while the instant petition impleaded, in addition, those tasked to investigate the kidnapping and detention incidents and their superiors at the top. Yet, the acts and/or omissions subject of the criminal complaint and the *amparo* petition are so linked as to call for the consolidation

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[87] Complaint-Affidavit dated 22 February 2008, *rollo*, pp. 453-467.

[88] *Supra* note 67, at 263-265.

of both proceedings to obviate the mischief inherent in a multiplicity-of-suits situation.

Given the above perspective and to fully apply the beneficial nature of the writ of *amparo* as an inexpensive and effective tool to protect certain rights violated or threatened to be violated, the Court hereby adjusts to a degree the literal application of Secs. 22 and 23 of the *Amparo* Rule to fittingly address the situation obtaining under the premises. Towards this end, two things are at once indicated: (1) the consolidation of the probe and fact-finding aspects of the instant petition with the investigation of the criminal complaint before the OMB; and (2) the incorporation in the same criminal complaint of the allegations in this petition bearing on the threats to the right to security. Withal, the OMB should be furnished copies of the investigation reports to aid that body in its own investigation and eventual resolution of OMB-P-C-O7-0602-E. Then, too, the OMB shall be given easy access to all pertinent documents and evidence, if any, adduced before the CA. Necessarily, Lourdes, as complainant in OMB-P-C-O7-0602-E, should be allowed, if so minded, to amend her basic criminal complaint if the consolidation of cases is to be fully effective. (Emphasis supplied.)

Thus, if the Complaint filed before the DOJ had already progressed into a criminal case, then the latter action can more adequately dispose of the allegations made by petitioners. After all, one of the ultimate objectives of the writ of *amparo* as a curative remedy is to facilitate the subsequent punishment of perpetrators.[89] On the other hand, if there is no actual criminal case lodged before the courts, then the denial of the Petition is without prejudice to the filing of the appropriate administrative, civil or criminal case, if applicable, against those individuals whom Lozada deems to have unduly restrained his liberty.

Finally, with respect to the interim reliefs sought by petitioners, this Court, in *Yano v. Sanchez*,[90] declined to grant the prayer

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[87] Complaint-Affidavit dated 22 February 2008, *rollo*, pp. 453-467.

[88] *Supra* note 67, at 263-265.

[89] *Supra* note 67; *supra* note 78 at 668.

[90] *Supra* note 85.

for the issuance of a TPO, as well as Inspection and Production Orders, upon a finding that the implicated public officials were not accountable for the disappearance subject of that case. Analogously, it would be incongruous to grant herein petitioners' prayer for a TPO and Inspection and Production Orders and at the same time rule that there no longer exists any imminent or continuing threat to Lozada's right to life, liberty and security. Thus, there is no basis on which a prayer for the issuance of these interim reliefs can be anchored.

WHEREFORE, the instant petition is **DENIED** for being moot. The Court of Appeals' denial of the privilege of the writ of *amparo* is hereby **AFFIRMED.**

SO ORDERED.

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

EN BANC

[G.R. No. 191970. April 24, 2012]

ROMMEL APOLINARIO JALOSJOS, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and DAN ERASMO, SR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE; PROVINCIAL GOVERNOR; A CANDIDATE FOR GOVERNOR MUST BE A RESIDENT OF THE PROVINCE FOR AT LEAST ONE YEAR BEFORE THE ELECTION; RESIDENCY REQUIREMENT; CONSTRUED.— The Local Government Code requires a candidate seeking the position

of provincial governor to be a resident of the province for at least one year before the election. For purposes of the election laws, the requirement of residence is synonymous with domicile, meaning that a person must not only intend to reside in a particular place but must also have personal presence in such place coupled with conduct indicative of such intention. There is no hard and fast rule to determine a candidate's compliance with residency requirement since the question of residence is a question of intention. Still, jurisprudence has laid down the following guidelines: (a) every person has a domicile or residence somewhere; (b) where once established, that domicile remains until he acquires a new one; and (c) a person can have but one domicile at a time. It is inevitable under these guidelines and the precedents applying them that Jalosjos has met the residency requirement for provincial governor of Zamboanga Sibugay. x x x To hold that Jalosjos has not establish a new domicile in Zamboanga Sibugay despite the loss of his domicile of origin (Quezon City) and his domicile of choice and by operation of law (Australia) would violate the settled maxim that a man must have a domicile or residence somewhere.

2. ID.; ELECTIONS; QUALIFICATION OF CANDIDATES; RESIDENCY REQUIREMENT; A CANDIDATE IS NOT REQUIRED TO HAVE A HOUSE IN A COMMUNITY TO ESTABLISH HIS RESIDENCE OR DOMICILE IN A PARTICULAR PLACE.— The Court has repeatedly held that a candidate is not required to have a house in a community to establish his residence or domicile in a particular place. It is sufficient that he should live there even if it be in a rented house or in the house of a friend or relative. To insist that the candidate own the house where he lives would make property a qualification for public office. What matters is that Jalosjos has proved two things: actual physical presence in Ipil and an intention of making it his domicile.

3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF AN ADMINISTRATIVE BODY; GENERALLY RESPECTED ON APPEAL; EXCEPTION; PRESENT IN CASE AT BAR.— While the Court ordinarily respects the factual findings of administrative bodies like the COMELEC, this does not prevent it from exercising its review powers to correct palpable misappreciation of evidence or wrong or irrelevant considerations. The evidence Jalosjos presented

is sufficient to establish Ipil, Zamboanga Sibugay, as his domicile. The COMELEC gravely abused its discretion in holding otherwise.

APPEARANCES OF COUNSEL

Romulo B. Macalintal & Edgardo Carlo L. Vistan II for petitioner.

The Solicitor General for public respondent.

George Erwin M. Garcia for private respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the proof required to establish the domicile of a reinstated Filipino citizen who seeks election as governor of a province.

The Facts and the Case

Petitioner Rommel Jalosjos was born in Quezon City on October 26, 1973. He migrated to Australia in 1981 when he was eight years old and there acquired Australian citizenship. On November 22, 2008, at age 35, he decided to return to the Philippines and lived with his brother, Romeo, Jr., in Barangay Veteran's Village, Ipil, Zamboanga Sibugay. Four days upon his return, he took an oath of allegiance to the Republic of the Philippines, resulting in his being issued a Certificate of Reacquisition of Philippine Citizenship by the Bureau of Immigration.[1] On September 1, 2009 he renounced his Australian citizenship, executing a sworn renunciation of the same[2] in compliance with Republic Act (R.A.) 9225.[3]

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[1] *Rollo*, p. 110.

[2] *Id.* at 112.

[3] *An Act making the Citizenship of the Philippines who acquire Foreign Citizenship permanent, amending for the purpose Commonwealth Act 63, as amended and for other purposes.*

From the time of his return, Jalosjos acquired a residential property in the same village where he lived and a fishpond in San Isidro, Naga, Zamboanga Sibugay. He applied for registration as a voter in the Municipality of Ipil but respondent Dan Erasmo, Sr., the Barangay Captain of Barangay Veteran's Village, opposed the same. Acting on the application, the Election Registration Board approved it and included Jalosjos' name in the Commission on Elections' (COMELEC's) voters list for Precinct 0051F of Barangay Veterans Village, Ipil, Zamboanga Sibugay.[4]

Undaunted, Erasmo filed before the 1st Municipal Circuit Trial Court (MCTC) of Ipil-Tungawan-R.T. Lim in Ipil a petition for the exclusion of Jalosjos' name from the official voters list. After hearing, the MCTC rendered a decision, denying the petition.[5] On appeal,[6] the Regional Trial Court (RTC) affirmed the MCTC decision. The RTC decision became final and executory.

On November 28, 2009 Jalosjos filed his Certificate of Candidacy (COC) for Governor of Zamboanga Sibugay Province for the May 10, 2010 elections. Erasmo promptly filed a petition to deny due course or to cancel Jalosjos' COC[7] on the ground that the latter made material misrepresentation in the same since he failed to comply with (1) the requirements of R.A. 9225 and (2) the one-year residency requirement of the Local Government Code.

After hearing, the Second Division of the COMELEC ruled that, while Jalosjos had regained Philippine citizenship by complying with the requirements of R.A. 9225, he failed to prove the residency requirement for a gubernatorial candidate. He failed to present ample proof of a *bona fide* intention to establish his domicile in Ipil, Zamboanga Sibugay. On motion

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[4] *Rollo,* p. 111.

[5] Docketed as Election Case 589.

[6] Docketed as RTC Election Case 0007-2K9.

[7] Docketed as SPA 09-115 (DC).

for reconsideration, the COMELEC *En Banc* affirmed the Second Division's decision, ruling that Jalosjos had been a mere guest or transient visitor in his brother's house and, for this reason, he cannot claim Ipil as his domicile.

Acting on Jalosjos' prayer for the issuance of a temporary restraining order, the Court resolved on May 7, 2010 to issue a *status quo ante* order, enjoining the COMELEC from enforcing its February 11, 2010 decision pending further orders. Meanwhile, Jolosjos won the election and was proclaimed winner of the 2010 gubernatorial race in the Province of Zamboanga Sibugay.[8]

The Issue Presented

The sole issue presented in this case is whether or not the COMELEC acted with grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that Jalosjos failed to present ample proof of a *bona fide* intention to establish his domicile in Ipil, Zamboanga Sibugay.

The Court's Ruling

The Local Government Code requires a candidate seeking the position of provincial governor to be a resident of the province for at least one year before the election.[9] For purposes of the election laws, the requirement of residence is synonymous with domicile,[10] meaning that a person must not only intend to reside in a particular place but must also have personal presence in such place coupled with conduct indicative of such intention.[11]

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[8] *Rollo*, p. 445.

[9] Republic Act 7160, Section 39.

[10] Domicile is classified into: (a) domicile of origin, which is acquired by every person at birth; (b) domicile of choice, which is acquired upon abandonment of the domicile of origin; and (c) domicile by operation of law, which attributes to a person independently of his residence or intention (See *Ugdoracion, Jr. v. Commission on Elections*, G.R. No. 179851, April 18, 2008, 552 SCRA 231, 240-241).

[11] *Limbona v. Commission on Elections*, G.R. No. 181097, June 25, 2008, 555 SCRA 391, 401.

There is no hard and fast rule to determine a candidate's compliance with residency requirement since the question of residence is a question of intention.[12] Still, jurisprudence has laid down the following guidelines: (a) every person has a domicile or residence somewhere; (b) where once established, that domicile remains until he acquires a new one; and (c) a person can have but one domicile at a time.[13]

It is inevitable under these guidelines and the precedents applying them that Jalosjos has met the residency requirement for provincial governor of Zamboanga Sibugay.

One. The COMELEC appears hasty in concluding that Jalosjos failed to prove that he successfully changed his domicile to Zamboanga Sibugay. The COMELEC points out that, since he was unable to discharge the burden of proving Zamboanga Sibugay to be his rightful domicile, it must be assumed that his domicile is either Quezon City or Australia.

But it is clear from the facts that Quezon City was Jalosjos' domicile of origin, the place of his birth. It may be taken for granted that he effectively changed his domicile from Quezon City to Australia when he migrated there at the age of eight, acquired Australian citizenship, and lived in that country for 26 years. Australia became his domicile by operation of law and by choice.[14]

On the other hand, when he came to the Philippines in November 2008 to live with his brother in Zamboanga Sibugay, it is evident that Jalosjos did so with intent to change his domicile for good. He left Australia, gave up his Australian citizenship, and renounced his allegiance to that country. In addition, he reacquired his old citizenship by taking an oath of allegiance to

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[12] *Id.* at 402.

[13] *Pundaodaya v. Commission on Elections*, G.R. No. 179313, September 17, 2009, 600 SCRA 178, 184-185.

[14] See *Caasi v. Court of Appeals*, G.R. Nos. 88831 and 84508, November 8, 1990, 191 SCRA 229, 235.

the Republic of the Philippines, resulting in his being issued a Certificate of Reacquisition of Philippine Citizenship by the Bureau of Immigration. By his acts, Jalosjos forfeited his legal right to live in Australia, clearly proving that he gave up his domicile there. And he has since lived nowhere else except in Ipil, Zamboanga Sibugay.

To hold that Jalosjos has not establish a new domicile in Zamboanga Sibugay despite the loss of his domicile of origin (Quezon City) and his domicile of choice and by operation of law (Australia) would violate the settled maxim that a man must have a domicile or residence somewhere.

Two. The COMELEC concluded that Jalosjos has not come to settle his domicile in Ipil since he has merely been staying at his brother's house. But this circumstance alone cannot support such conclusion Indeed, the Court has repeatedly held that a candidate is not required to have a house in a community to establish his residence or domicile in a particular place. It is sufficient that he should live there even if it be in a rented house or in the house of a friend or relative.[15] To insist that the candidate own the house where he lives would make property a qualification for public office. What matters is that Jalosjos has proved two things: actual physical presence in Ipil and an intention of making it his domicile.

Jalosjos presented the affidavits of next-door neighbors, attesting to his physical presence at his residence in Ipil. These adjoining neighbors are no doubt more credible since they have a better chance of noting his presence or absence than his other neighbors, whose affidavits Erasmo presented, who just sporadically passed by the subject residence. Further, it is not disputed that Jalosjos bought a residential lot in the same village where he lived and a fish pond in San Isidro, Naga, Zamboanga Sibugay. He showed correspondences with political leaders, including local and national party-mates, from where he lived.

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[15] *Co v. Electoral Tribunal of the House of Representatives*, G.R. Nos. 92191-92 and 92202-03, July 30, 1991, 199 SCRA 692, 715, citing *De los Reyes v. Solidum*, 61 Phil. 893, 899 (1935).

Moreover, Jalosjos is a registered voter of Ipil by final judgment of the Regional Trial Court of Zamboanga Sibugay.

Three. While the Court ordinarily respects the factual findings of administrative bodies like the COMELEC, this does not prevent it from exercising its review powers to correct palpable misappreciation of evidence or wrong or irrelevant considerations.[16] The evidence Jalosjos presented is sufficient to establish Ipil, Zamboanga Sibugay, as his domicile. The COMELEC gravely abused its discretion in holding otherwise.

Four. Jalosjos won and was proclaimed winner in the 2010 gubernatorial race for Zamboanga Sibugay. The Court will respect the decision of the people of that province and resolve all doubts regarding his qualification in his favor to breathe life to their manifest will.

WHEREFORE, the Court **GRANTS** the petition and **SETS ASIDE** the Resolution of the COMELEC Second Division dated February 11, 2010 and the Resolution of the COMELEC *En Banc* dated May 4, 2010 that disqualified petitioner Rommel Jalosjos from seeking election as Governor of Zamboanga Sibugay.

SO ORDERED.

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

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[16] *Mitra v. Commission on Elections*, G.R. No. 191938, July 2, 2010, 622 SCRA 744, 767.

EN BANC

[G.R. No. 192791. April 24, 2012]

DENNIS A. B. FUNA, *petitioner, vs.* **THE CHAIRMAN, COMMISSION ON AUDIT, REYNALDO A. VILLAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MOOT AND ACADEMIC PRINCIPLE; ELUCIDATED.— A case is considered moot and academic when its purpose has become stale, or when it ceases to present a justiciable controversy owing to the onset of supervening events, so that a resolution of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which will anyway be negated by the dismissal of the basic petition. As a general rule, it is not within Our charge and function to act upon and decide a moot case. However, in *David v. Macapagal-Arroyo*, We acknowledged and accepted certain exceptions to the issue of mootness, thus: 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.

2. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; WHEN PROPER; REQUISITES.— The procedural aspect comes down to the question of whether or not the following requisites for the exercise of judicial review of an executive act obtain in this petition, viz: (1) there must be an actual case or justiciable controversy before the court; (2) the question before it must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue

of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case.

3. ID.; ID.; ID.; EXPANDED CONCEPT; CLARIFIED.— For under the expanded concept of judicial review under the 1987 Constitution, the corrective hand of *certiorari* may be invoked not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." "Grave abuse of discretion" denotes: such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.

4. REMEDIAL LAW; CIVIL ACTIONS; PARTIES; *LOCUS STANDI*; DEFINED AND CONSTRUED.— As a general rule, a petitioner must have the necessary personality or standing (*locus standi*) before a court will recognize the issues presented. In *Integrated Bar of the Philippines v. Zamora*, We defined *locus standi* as: x x x a personal and substantial interest in the case such that the party has sustained or will sustain a direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." To have legal standing, therefore, a suitor must show that he has sustained or will sustain a "direct injury" as a result of a government action, or have a "material interest" in the issue affected by the challenged official act. However, the Court has time and again acted liberally on the *locus standi* requirements and has accorded certain individuals, not otherwise directly injured, or with material interest affected, by a Government act, standing to sue provided a constitutional issue of critical significance

is at stake. The rule on *locus standi* is after all a mere procedural technicality in relation to which the Court, in a *catena* of cases involving a subject of **transcendental import**, has waived, or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act.

5. ID.; ID.; ID.; ID.; MINIMUM NORM BEFORE THE SO-CALLED "NON-TRADITIONAL SUITORS" MAY BE EXTENDED STANDING TO SUE, EXPLAINED.— In *David*, the Court laid out the bare minimum norm before the so-called "non-traditional suitors" may be extended standing to sue, thusly: 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question; 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.

6. POLITICAL LAW; STATUTES; *VERBAL LEGIS* RULE; DEFINED AND CONSTRUED.— The rule is that if a statute or constitutional provision is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is known as the plain meaning rule enunciated by the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure. The primary source whence to ascertain constitutional intent or purpose is the language of the provision itself. If possible, the words in the Constitution must be given their ordinary meaning, save where technical terms are employed. x x x Much weight and due respect must be accorded to the intent of the framers of the Constitution in interpreting its provisions.

7. ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; APPOINTMENT OF MEMBERS; RESTRICTING FEATURES DESIGNED TO SAFEGUARD THE INDEPENDENCE AND IMPARTIALITY OF THE COMMISSION, ENUMERATED.— At once clear from a

perusal of Sec. 1 (2), Art. IX(D) of the Constitution are the defined restricting features in the matter of the composition of COA and the appointment of its members (commissioners and chairman) designed to safeguard the independence and impartiality of the commission as a body and that of its individual members. These are, *first*, the rotational plan or the staggering term in the commission membership, such that the appointment of commission members subsequent to the original set appointed after the effectivity of the 1987 Constitution shall occur every two years; *second*, the maximum but a fixed term-limit of seven (7) years for all commission members whose appointments came about by reason of the expiration of term save the aforementioned first set of appointees and those made to fill up vacancies resulting from certain causes; *third*, the prohibition against reappointment of commission members who served the full term of seven years or of members first appointed under the Constitution who served their respective terms of office; *fourth*, the limitation of the term of a member to the unexpired portion of the term of the predecessor; and *fifth*, the proscription against temporary appointment or designation.

8. ID.; ID.; ID.; ID.; PROMOTIONAL APPOINTMENT FROM COMMISSIONER TO CHAIRMAN; NOT PRECLUDED BY THE CONSTITUTION; CONDITIONS, EXPLAINED. — The Constitutional Convention barred reappointment to be extended to commissioner-members first appointed under the 1987 Constitution to prevent the President from controlling the commission. Thus, the first Chairman appointed under the 1987 Constitution who served the full term of seven years can no longer be extended a reappointment. Neither can the Commissioners first appointed for the terms of five years and three years be eligible for reappointment. This is the plain meaning attached to the second sentence of Sec. 1(2), Article IX(D). On the other hand, the provision, on its face, does not prohibit a promotional appointment from commissioner to chairman as long as the commissioner has not served the full term of seven years, further qualified by the third sentence of Sec. 1(2), Article IX (D) that "the appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor." In addition, such promotional appointment to the position of Chairman must conform to the rotational plan or the staggering of terms in the commission membership such that the aggregate of the service of the Commissioner in said

position and the term to which he will be appointed to the position of Chairman must not exceed seven years so as not to disrupt the rotational system in the commission prescribed by Sec. 1(2), Art. IX(D). In conclusion, there is nothing in Sec. 1(2), Article IX(D) that explicitly precludes a promotional appointment from Commissioner to Chairman, provided it is made under the aforestated circumstances or conditions.

9. ID.; ID.; PUBLIC OFFICERS; TERM OF OFFICE; THE APPOINTING POWER IS WITHOUT AUTHORITY TO SPECIFY IN THE APPOINTMENT A TERM SHORTER OR LONGER THAN WHAT THE LAW PROVIDES; APPLICATION IN CASE AT BAR.— Where the Constitution or, for that matter, a statute, has fixed the term of office of a public official, the appointing authority is without authority to specify in the appointment a term shorter or longer than what the law provides. If the vacancy calls for a full seven-year appointment, the President is without discretion to extend a promotional appointment for more or for less than seven (7) years. There is no in between. He or she cannot split terms. It is not within the power of the appointing authority to override the positive provision of the Constitution which dictates that the term of office of members of constitutional bodies shall be seven (7) years. A contrary reasoning "would make the term of office to depend upon the pleasure or caprice of the [appointing authority] and not upon the will [of the framers of the Constitution] of the legislature as expressed in plain and undoubted language in the law." In net effect, then President Macapagal-Arroyo could not have had, under any circumstance, validly appointed Villar as COA Chairman, for a full 7-year appointment, as the Constitution decrees, was not legally feasible in light of the 7-year aggregate rule. Villar had already served 4 years of his 7-year term as COA Commissioner. A shorter term, however, to comply with said rule would also be invalid as the corresponding appointment would effectively breach the clear purpose of the Constitution of giving to every appointee so appointed subsequent to the first set of commissioners, a fixed term of office of 7 years.

CARPIO, *J.*, *concurring and dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; COMPOSITION; CHAIRMAN

AND COMMISSIONER, DISTINGUISHED.— It is indisputable that the office of the Chairman is a ***different*** office from the office of a Commissioner. The Chairman has a salary grade higher than that of a Commissioner, and is the presiding officer of the Commission while a Commissioner is not. The Chairman is specifically authorized by the Constitution to re-align savings of the Commission, while a Commissioner has no such authority. The Chairman is the head of the Commission, while a Commissioner is not, in the same manner that the Chief Justice is the head of the Judiciary while an Associate Justice is not.

2. ID.; ID.; ID.; ID.; PROHIBITION ON REAPPOINTMENT; PROMOTIONAL APPOINTMENT FROM COMMISSIONER TO CHAIRMAN, INCLUDED.— There is no doubt whatsoever that the framers of the 1987 Constitution clearly intended to forbid reappointment of "***any kind***," **including specifically a situation where, in the words of Commissioner Aquino, *"a commissioner is upgraded to a position of chairman."*** x x x The prohibition must apply to all kinds of reappointment if we are to honor the purpose behind the prohibition. **The purpose is to ensure and preserve the independence of the COA and its members**. x x x A COA member, like members of the other independent constitutional commissions, may no longer act with independence if he or she can be rewarded with a promotion or reappointment, for he or she will likely do the bidding of the appointing power in the expectation of being promoted or reappointed. This Court has a sacred duty to safeguard the independence of the constitutional commissions, not make them subservient to the appointing power by adopting a view that is grossly and manifestly contrary to the letter and intent of the Constitution. x x x The Court already had occasion to explain the prohibition on reappointments to the independent constitutional commissions under the 1987 Constitution. x x x [T]he constitutional ban on reappointment, expressed in the words "without reappointment," does not distinguish between appointments to the same or different positions. There are only two possible positions — that of Commissioner and Chairman. The words "without reappointment" have no conditions, distinctions or qualifications that limit the ban on reappointments only to the same position. When the framers **twice** used the plain, simple and unconditional words "without reappointment," they meant exactly what the words mean — ***no reappointment***.

When the people ratified the Constitution, they naturally and logically understood the plain, simple and unconditional words "without reappointment" to mean ***no reappointment***.

3. ID.; ID.; ID.; ID.; TERMS OF OFFICE; THE PRESIDENT HAS NO DISCRETION TO SHORTEN OR LENGTHEN THE APPOINTEE'S TERM; CLARIFIED.— The Constitution states, "The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments **for a term of seven years** without reappointment." **The Constitution uses the word "shall," which makes it mandatory for the President to appoint to a *fixed* term of seven years.** The only exception is an appointment to a vacancy caused by death, resignation, or impeachment. In such exceptional causes, however, the Constitution directs that the appointment "**shall be *only for the unexpired portion* of the term of the predecessor.**" The President cannot give the appointee a term that is more, or less, than the unexpired term of the predecessor. x x x Thus, apart from the constitutional prohibition on reappointment, Villar's appointment as Chairman for a three-year term is in itself unconstitutional for violation of the mandated fixed seven-year term prescribed by the Constitution. x x x Any appointment of more than the unexpired term will immediately disturb the rotational scheme of succession and violate the Constitution. Similarly, any appointment of less than seven years – since the predecessor's term has already expired – will violate the constitutional requirement that the appointment shall be for a full seven-year term if the predecessor has fully served his seven-year term.

4. ID.; ID.; ID.; ID.; THE CONSTITUTION EXPRESSLY PROHIBITS APPOINTMENTS OR DESIGNATIONS IN TEMPORARY OR ACTING CAPACITY; EFFECT OF VIOLATION; CASE AT BAR.— Section 1(2), Article IX-D of the Constitution expressly prohibits appointments or designations in a temporary or acting capacity. The last sentence of Section 1(2) states: "**In no case shall any Member be appointed or designated in a temporary or acting capacity**." Yet, after COA Chairman Guillermo Carague's (Chairman Carague) term of office expired, Villar was appointed as ***acting*** chairman from 4 February 2008 to 4 April 2008, in violation of this express constitutional prohibition. Clearly, Villar's designation as temporary or acting COA Chairman was

unconstitutional. This Court must declare such appointment unconstitutional to prevent a recurrence of ***temporary or acting*** appointments to the independent constitutional commissions.

5. ID.; ID.; ID.; ID.; STAGGERING OF TERMS; RATIONALE. — Under the staggering of terms, there will be a vacancy in the COA only once every two years arising from the expiration of terms of office. No two vacancies will occur at the same time arising from the expiration of terms. There are two reasons for staggering the terms of office of the members of the constitutional commissions. First is to ensure the continuity of the body. For the COA, this means that at any given time, there will always be at least two members — barring death, resignation, or impeachment in the meantime — discharging the functions of the COA. Second, staggering of terms ensures that the same President will not appoint all the three members of the COA, unless the unexpected happens *i.e.*, when vacancies arise out of death, resignation, or impeachment. This is necessary to safeguard the independence of the COA. This staggering of terms mandated by the Constitution must be observed by the President as the appointing authority. It is the duty of this Court to ensure that this constitutional mandate is followed. x x x In *Republic v. Imperial*, the Court held that the staggering of terms, taken together with the prescribed term of office, without reappointment, "evidences a deliberate plan to have a regular rotation or cycle in the membership of the commission, by having subsequent members appointable only once every three years."

6. ID.; LAW ON PUBLIC OFFICERS; TERM OF OFFICE AND TENURE OF OFFICE, DISTINGUISHED.— On several occasions, the Court had clarified the distinction between **term** and **tenure**. The *term of office* is the period when an elected officer or appointee is entitled to perform the functions of the office and enjoy its privileges and emoluments. The **term is fixed by statute** and it does not change simply because the office may have become vacant for some time, or because the incumbent holds over in office beyond the end of the term due to the fact that a successor has not been elected and has failed to qualify. In the case of the independent constitutional commissions, the Constitution not only fixes the terms of office but also staggers the terms of office with a fixed common starting date, which is the date of ratification of the 1987 Constitution.

On the other hand, *tenure* is the period during which the incumbent ***actually holds the office***. In length of time, *tenure* may be as long as, or longer or shorter than, the *term* for reasons within or beyond the power of the incumbent. The phrase "actually holds office" means the discharge of the duties of the office after due appointment and qualification. x x x The dates when the ***terms of office*** start and end **never change**, even when an appointment is made in mid-term. This is the reason why someone appointed to replace a Chairman or Commissioner, who leaves office before the end of the term, can only be appointed to the remainder of that term — known as the "unexpired portion of the term" — to preserve the rotational cycle of succession. Neither the President nor this Court can change these dates.

7. ID.; CONSTITUTION; SUPREMACY OF THE CONSTITUTION; DUTY OF THE COURT TO MAINTAIN CONSTITUTIONAL SAFEGUARDS TO ENFORCE THE INDEPENDENCE OF THE CONSTITUTIONAL COMMISSIONS.— The Constitution is the supreme law of the land and the bible of this Court. Every member of this Court has taken an oath to defend and protect the Constitution. This Court must apply and interpret the Constitution faithfully without fear or favor. This Court must not twist or distort the letter and intent of the Constitution to favor anyone, for the Constitution is larger and far more important than any party, personality, group or institution in this country. The safeguards to ensure the independence of the constitutional commissions, as designed and written in the Constitution, are vital to the survival of our democracy and the development of our nation. It is the sacred duty of this Court to preserve and maintain these safeguards.

MENDOZA, *J., separate concurring and dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; APPOINTMENT OF MEMBERS; CLEAR AND UNDISPUTED LIMITATIONS, ENUMERATED. — From the pleadings and memoranda, it appears that the principal issue is whether or not the constitutional proscription on reappointment includes the promotion of an incumbent commissioner as chairman of a

constitutional commission. The resolution of the issue entails the proper interpretation of Section 2, Article IX-D of the Constitution which reads: (2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointment for **a term of seven years without reappointment.** Of those first appointed, the Chairman shall hold office for seven years, one commissioner for five years, and the other commissioner for three years, **without reappointment**. **Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.** In no case shall any member be appointed or designated in a temporary or acting capacity. x x x The Framers were clear in setting these limitations. They could very well have been as clear and explicit with respect to promotions if it was their intention to do so.

2. ID.; ID.; ID.; ID.; ID.; PROMOTIONAL APPOINTMENT OF A COMMISSIONER TO CHAIRMAN; THERE IS NO EXPRESS NOR IMPLIED PROSCRIPTION THEREOF IN THE CONSTITUTION.— I convey my concurrence with the wll-studied position of Justice Presbitero J. Velasco, Jr. that Section 1(2), Article IX-(D) of the 1987 Constitution does not proscribe the promotion or upgrade of a commissioner to a chairman, provided that his tenure in office will not exceed seven (7) years in all. The appointment is not covered by the qualifying or restricting phrase "without reappointment" twice written in that section. x x x The position that a commissioner cannot be promoted in case of *expiration* of a term of chairman has no clear and concrete constitutional basis. There is nothing at all in the subject constitutional provision which expressly or impliedly restricts the promotion of a commissioner in situations where the tenure of his predecessor is cut short by *death, disability, resignation* or *impeachment* only. Likewise, there is no express provision prohibiting a promotion in case of the *expiration* of the term of a predecessor. The *ponencia* mentioned some distinctions but they were not clear or substantial. There were no discussions about it either in the debates of the constitutional commission. What is unchallenged is the prohibition on reappointment of either a commissioner or chairman *after* he has served his term of office (expiration of term), or his term has been cut short by disability or resignation. In promotions, naturally the predecessor is a chairman. In case of expiration of his term, an incumbent

commissioner can be appointed. Note that in the Constitution, there is *no distinction whether the predecessor is a chairman or a mere commissioner*. For said reason, among others, it is my considered view that a commissioner can be promoted in case of expiration of term of the chairman.

APPEARANCES OF COUNSEL

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D E C I S I O N

VELASCO, JR., *J.*:

In this Petition for *Certiorari* and Prohibition under Rule 65, Dennis A. B. Funa challenges the constitutionality of the appointment of Reynaldo A. Villar as Chairman of the Commission on Audit and accordingly prays that a judgment issue "declaring the unconstitutionality" of the appointment.

The facts of the case are as follows:

On February 15, 2001, President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) appointed Guillermo N. Carague (Carague) as Chairman of the Commission on Audit (COA) for a term of seven (7) years, pursuant to the 1987 Constitution.[1] Carague's term of office started on February 2, 2001 to end on February 2, 2008.

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[1] Art. IX(D), Sec. 1(2).–– The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one Commissioner for five years, and the other Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.

Meanwhile, on February 7, 2004, President Macapagal-Arroyo appointed Reynaldo A. Villar (Villar) as the third member of the COA for a term of seven (7) years starting February 2, 2004 until February 2, 2011.

Following the retirement of Carague on February 2, 2008 and during the fourth year of Villar as COA Commissioner, Villar was designated as Acting Chairman of COA from February 4, 2008 to April 14, 2008. Subsequently, on April 18, 2008, Villar was nominated and appointed as Chairman of the COA. Shortly thereafter, on June 11, 2008, the Commission on Appointments confirmed his appointment. He was to serve as Chairman of COA, as expressly indicated in the appointment papers, until the expiration of the original term of his office as COA Commissioner or on February 2, 2011. Challenged in this recourse, Villar, in an obvious bid to lend color of title to his hold on the chairmanship, insists that his appointment as COA Chairman accorded him a fresh term of seven (7) years which is yet to lapse. He would argue, in fine, that his term of office, as such chairman, is up to **February 2, 2015**, or 7 years reckoned from February 2, 2008 when he was appointed to that position.

Meanwhile, Evelyn R. San Buenaventura (San Buenaventura) was appointed as COA Commissioner to serve the unexpired term of Villar as Commissioner or up to February 2, 2011.

Before the Court could resolve this petition, Villar, via a letter dated February 22, 2011 addressed to President Benigno S. Aquino III, signified his intention to step down from office upon the appointment of his replacement. True to his word, Villar vacated his position when President Benigno Simeon Aquino III named Ma. Gracia Pulido-Tan (Chairman Tan) COA Chairman. This development has rendered this petition and the main issue tendered therein moot and academic.

A case is considered moot and academic when its purpose has become stale,[2] or when it ceases to present a justiciable

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[2] *Joya v. PCGG*, G.R. No. 96541, August 24, 1993, 225 SCRA 568.

controversy owing to the onset of supervening events,[3] so that a resolution of the case or a declaration on the issue would be of no practical value or use.[4] In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which will anyway be negated by the dismissal of the basic petition.[5] As a general rule, it is not within Our charge and function to act upon and decide a moot case. However, in *David v. Macapagal-Arroyo*,[6] We acknowledged and accepted certain exceptions to the issue of mootness, thus:

> 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.

Although deemed moot due to the intervening appointment of Chairman Tan and the resignation of Villar, We consider the instant case as falling within the requirements for review of a moot and academic case, since it asserts at least four exceptions to the mootness rule discussed in *David*, namely: there is a grave violation of the Constitution; the case involves a situation of exceptional character and is of paramount public interest; the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; and the case is capable of repetition yet evading review.[7] The situation

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[3] *Prov. of Batangas v. Romulo,* G.R. No. 152774, May 27, 2004, 429 SCRA 736.

[4] *Go v. Sandiganbayan*, G.R. Nos. 150329-30, September 11, 2007, 532 SCRA 574; citing *Vda. De Davao v. Court of Appeals*, G.R. No. 116526, March 23, 2004, 426 SCRA 91 and other cases.

[5] *Olanolan v. COMELEC*, G.R. No. 165491, March 31, 2005, 807 SCRA 454.

[6] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 161.

[7] *Id.*

presently obtaining is definitely of such exceptional nature as to necessarily call for the promulgation of principles that will henceforth "guide the bench, the bar and the public" should like circumstance arise. Confusion in similar future situations would be smoothed out if the contentious issues advanced in the instant case are resolved straightaway and settled definitely. There are times when although the dispute has disappeared, as in this case, it nevertheless cries out to be addressed. To borrow from *Javier v. Pacificador*,[8] "Justice demands that we act then, not only for the vindication of the outraged right, though gone, but also for the guidance of and as a restraint in the future."

Both procedural and substantive issues are raised in this proceeding. The procedural aspect comes down to the question of whether or not the following requisites for the exercise of judicial review of an executive act obtain in this petition, viz: (1) there must be an actual case or justiciable controversy before the court; (2) the question before it must be ripe for adjudication; (3) the person challenging the act must be a proper party; and (4) the issue of constitutionality must be raised at the earliest opportunity and must be the very *litis mota* of the case.[9]

To Villar, all the requisites have not been met, it being alleged in particular that petitioner, suing as a taxpayer and citizen, lacks the necessary standing to challenge his appointment.[10] On the other hand, the Office of the Solicitor General (OSG), while recognizing the validity of Villar's appointment for the period ending February 11, 2011, has expressed the view that petitioner should have had filed a petition for declaratory relief or *quo warranto* under Rule 63 or Rule 66, respectively, of the Rules of Court instead of *certiorari* under Rule 65.

Villar's posture on the absence of some of the mandatory requisites for the exercise by the Court of its power of judicial review must fail. As a general rule, a petitioner must have the

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[8] G.R. Nos. 68379-81, September 22, 1986, 144 SCRA 194.

[9] Herrera, *REMEDIAL LAW* 96 (2000).

[10] *Rollo*, pp. 270, 274-275.

necessary personality or standing (*locus standi*) before a court will recognize the issues presented. In *Integrated Bar of the Philippines v. Zamora*, We defined *locus standi* as:

> x x x a personal and substantial interest in the case such that the party has sustained or will sustain a direct injury as a result of the governmental act that is being challenged. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure the concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."[11]

To have legal standing, therefore, a suitor must show that he has sustained or will sustain a "direct injury" as a result of a government action, or have a "material interest" in the issue affected by the challenged official act.[12] However, the Court has time and again acted liberally on the *locus standi* requirements and has accorded certain individuals, not otherwise directly injured, or with material interest affected, by a Government act, standing to sue provided a constitutional issue of critical significance is at stake.[13] The rule on *locus standi* is after all a mere procedural technicality in relation to which the Court, in a *catena* of cases involving a subject of **transcendental import**, has waived, or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act.[14] In *David*, the Court laid out the bare minimum norm before the

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[11] G.R. No. 141284, August 15, 2000, 338 SCRA 81; citing *Baker v. Carr*, 369 U.S. 186.

[12] *Id.*

[13] *David v. Macapagal-Arroyo*, *supra* note 6.

[14] *Abaya v. Ebdane*, G.R. No. 167919, February 14, 2007, 515 SCRA 720; *Agan v. Philippine International Air Terminals Co., Inc.*, 450 Phil. 744 (2003); *Del Mar v. PAGCOR*, 400 Phil. 307 (2000).

so-called "non-traditional suitors" may be extended standing to sue, thusly:

> 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
> 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
> 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
> 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.

This case before Us is of transcendental importance, since it obviously has "far-reaching implications," and there is a need to promulgate rules that will guide the bench, bar, and the public in future analogous cases. We, thus, assume a liberal stance and allow petitioner to institute the instant petition.

Anent the aforestated posture of the OSG, there is no serious disagreement as to the propriety of the availment of *certiorari* as a medium to inquire on whether the assailed appointment of respondent Villar as COA Chairman infringed the constitution or was infected with grave abuse of discretion. For under the expanded concept of judicial review under the 1987 Constitution, the corrective hand of *certiorari* may be invoked not only "to settle actual controversies involving rights which are legally demandable and enforceable," but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."[15] "Grave abuse of discretion" denotes:

> such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.[16]

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[15] CONSTITUTION, Art. VIII, Sec. 1.

[16] *Benito v. COMELEC*, G.R. No. 134913, January 19, 2001, 349 SCRA 705.

We find the remedy of *certiorari* applicable to the instant case in view of the allegation that then President Macapagal-Arroyo exercised her appointing power in a manner constituting grave abuse of discretion.

This brings Us to the pivotal substantive issue of whether or not Villar's appointment as COA Chairman, while sitting in that body and after having served for four (4) years of his seven (7) year term as COA commissioner, is valid in light of the term limitations imposed under, and the circumscribing concepts tucked in, Sec. 1 (2), Art. IX(D) of the Constitution, which reads:

(2) The **Chairman and Commissioners [on Audit]** shall be **appointed** by the President with the consent of the Commission on Appointments **for a term of seven years without reappointmen**t. Of those first appointed, the Chairman shall hold office for seven years, one commissioner for five years, and the other commissioner for three years, without reappointment. **Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor**. In no case shall any member be appointed or designated in a temporary or acting capacity. (Emphasis added.)[17]

And if valid, for how long can he serve?

At once clear from a perusal of the aforequoted provision are the defined restricting features in the matter of the composition of COA and the appointment of its members (commissioners and chairman) designed to safeguard the independence and impartiality of the commission as a body and that of its individual members.[18] These are, *first*, the rotational plan or the staggering term in the commission membership, such that the appointment of commission members subsequent to the original set appointed after the effectivity of the 1987 Constitution shall occur every two years; *second*, the maximum but a fixed term-limit of seven (7) years for all commission members whose appointments came

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[17] An identical provision is repeated for the Civil Service Commission and the COMELEC, differing only in the case of the COMELEC as to the numerical composition and the number of appointees involved in the staggered appointments.

[18] *Republic v. Imperial*, 96 Phil. 770 (1955).

about by reason of the expiration of term save the aforementioned first set of appointees and those made to fill up vacancies resulting from certain causes; *third*, the prohibition against reappointment of commission members who served the full term of seven years or of members first appointed under the Constitution who served their respective terms of office; *fourth*, the limitation of the term of a member to the unexpired portion of the term of the predecessor; and *fifth*, the proscription against temporary appointment or designation.

To elucidate on the mechanics of and the adverted limitations on the matter of COA-member appointments with fixed but staggered terms of office, the Court lays down the following postulates deducible from pertinent constitutional provisions, as construed by the Court:

1. The terms of office and appointments of the first set of commissioners, or the seven, five and three-year termers referred to in Sec. 1(2), Art. IX(D) of the Constitution, had already expired. Hence, their respective terms of office find relevancy for the most part only in understanding the operation of the rotational plan. In *Gaminde v. Commission on Audit*,[19] the Court described how the smooth functioning of the rotational system contemplated in said and like provisions covering the two other independent commissions is achieved thru the staggering of terms:

> x x x [T]he terms of the first Chairmen and Commissioners of the Constitutional Commissions under the 1987 Constitution must start *on a common date* [February 02, 1987, when the 1987 Constitution was ratified] *irrespective of the variations in the dates of appointments and qualifications of the appointees* in order that the expiration of the first terms of seven, five and three years should lead to the **regular recurrence of the two-year interval between the expiration of the terms**.
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> x x x In case of a **belated appointment, the interval between the start of the terms and the actual appointment shall be *counted against the appointee***.[20] (Italization in the original; emphasis added.)

[19] G.R. No. 140335, December 13, 2000, 347 SCRA 655, 662-663; citing *Republic v. Imperial, supra* note 18.

[20] *Id.*

Early on, in *Republic v. Imperial*,[21] the Court wrote of two conditions, "**both indispensable to [the] workability**" of the rotational plan. These conditions may be described as follows: (a) that the terms of the first batch of commissioners should start on a common date; and (b) **that any vacancy due to death, resignation or disability before the expiration of the term should be filled only for the unexpired balance of the term.** Otherwise, *Imperial* continued, "the regularity of the intervals between appointments would be destroyed." There appears to be near unanimity as to the purpose/s of the rotational system, as originally conceived, *i.e.*, to place in the commission a new appointee at a fixed interval (every two years presently), thus preventing a four-year administration appointing more than one permanent and regular commissioner,[22] or to borrow from Commissioner Monsod of the 1986 CONCOM, "to prevent one person (the President of the Philippines) from dominating the commissions."[23] It has been declared too that the rotational plan ensures continuity in, and, as indicated earlier, secure the independence of, the commissions as a body.[24]

2. An appointment to any vacancy in COA, which arose from an expiration of a term, after the first chairman and commissioners appointed under the 1987 Constitution have bowed out, shall, by express constitutional fiat, be for a term of **seven (7) years**, save when the appointment is to fill up a vacancy for the corresponding unserved term of an outgoing member. In that case, the appointment shall only be for the **unexpired portion** of the departing commissioner's term of office. There can only be an unexpired portion when, as a direct result of his demise, disability, resignation or impeachment, as the case

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[21] *Supra* note 18.

[22] *Id.*

[23] 1986 Constitutional Commission, Record of Proceedings and Debates, Vol. 1, pp. 574-575.

[24] *Republic v. Imperial, supra* note 18; Concurring Opinion of Justice Angelo Bautista in *Visarra v. Miraflor*, 8 Phil. 1 (1963); Record of Proceeding and Debates, 1986 Constitutional Commission, Vol. 1, p. 585; *Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002, 380 SCRA 49.

may be, a sitting member is unable to complete his term of office.[25] To repeat, should the vacancy arise out of the expiration of the term of the incumbent, then there is technically no unexpired portion to speak of. The vacancy is for a new and complete seven-year term and, *ergo*, the appointment thereto shall in all instances be for a maximum seven (7) years.

3. Sec. 1(2), Art. IX(D) of the 1987 Constitution prohibits the "**reappointment**" of a member of COA after his appointment for seven (7) years. Writing for the Court in *Nacionalista Party v. De Vera*,[26] a case involving the promotion of then COMELEC Commissioner De Vera to the position of chairman, then Chief Justice Manuel Moran called attention to the fact that the prohibition against "reappointment" comes as a continuation of the requirement that the commissioners — referring to members of the COMELEC under the 1935 Constitution — shall hold office for a term of nine (9) years. This sentence formulation imports, notes Chief Justice Moran, that reappointment is not an absolute prohibition.

4. The adverted system of regular rotation or the staggering of appointments and terms in the membership for all three constitutional commissions, namely the COA, Commission on Elections (COMELEC) and Civil Service Commission (CSC) found in the 1987 Constitution was patterned after the amended 1935 Constitution for the appointment of the members of COMELEC[27] with this difference: the 1935 version entailed a regular interval of vacancy every three (3) years, instead of the present two (2) years and there was no express provision on appointment to any vacancy being limited to the unexpired portion of the his predecessor's term. The model 1935 provision reads:

> Section 1. There shall be an independent Commission on Elections composed of a Chairman and two other members to be appointed by the President with the consent of the Commission on Appointments,

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[25] *Republic v. Imperial, supra* note 18.

[26] No. L-3474, December 7, 1949, 85 SCRA 126.

[27] *Gaminde v. COA, supra* note 19. The COMELEC, then a 3-man body, is now composed of a Chairman and six (6) Commissioners.

who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years and the third for three years. x x x

Petitioner now asseverates the view that Sec. 1(2), Art. IX(D) of the 1987 Constitution proscribes reappointment of any kind within the commission, the point being that a second appointment, be it for the same position (commissioner to another position of commissioner) or upgraded position (commissioner to chairperson) is a prohibited reappointment and is a nullity *ab initio*. Attention is drawn in this regard to the Court's disposition in *Matibag v. Benipayo*.[28]

Villar's promotional appointment, so it is argued, is void from the start, constituting as it did a reappointment enjoined by the Constitution, since it actually needed another appointment to a different office and requiring another confirmation by the Commission on Appointments.

Central to the adjudication of the instant petition is the correct meaning to be given to Sec. 1(2), Article IX(D) of the Constitution on the ban against reappointment in relation to the appointment issued to respondent Villar to the position of COA Chairman.

Without question, the parties have presented two (2) contrasting and conflicting positions. Petitioner contends that Villar's appointment is proscribed by the constitutional ban on reappointment under the aforecited constitutional provision. On the other hand, respondent Villar initially asserted that his appointment as COA Chairman is valid up to February 2, 2015 pursuant to the same provision.

The Court finds petitioner's position bereft of merit. The flaw lies in regarding the word "reappointment" as, in context, embracing any and all species of appointment.

The rule is that if a statute or constitutional provision is clear, plain and free from ambiguity, it must be given its literal

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[28] G.R. No. 149036, April 2, 2002, 380 SCRA 49.

meaning and applied without attempted interpretation.[29] This is known as the plain meaning rule enunciated by the maxim *verba legis non est recedendum*, or from the words of a statute there should be no departure.[30]

The primary source whence to ascertain constitutional intent or purpose is the language of the provision itself.[31] If possible, the words in the Constitution must be given their ordinary meaning, save where technical terms are employed. *J.M. Tuason & Co., Inc. v. Land Tenure Administration* illustrates the *verbal legis* rule in this wise:

> We look to the language of the document itself in our search for its meaning. We do not of course stop there, but that is where we begin. It is to be assumed that the **words in which constitutional provisions are couched express the objective sought to be attained**. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails. As the Constitution is not primarily a lawyer's document, it being essential for the rule of law to obtain that it should ever be present in the people's consciousness, **its language as much as possible should be understood in the sense they have in common use**. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. Thus there are cases where the need for construction is reduced to a minimum.[32] (Emphasis supplied.)

Let us dissect and examine closely the provision in question:

(2) The **Chairman and Commissioners [on Audit]** shall be **appointed** by the President with the consent of the Commission on Appointments **for a term of seven years without reappointment**. Of those first appointed, the Chairman shall hold office for seven

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[29] Agpalo, *STATUTORY CONSTRUCTION 94* (1990).

[30] *Globe-Mackay Cable and Radio Corporation v. NLRC*, G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711.

[31] *Ang Bagong Bayani-OFW Labor Party v. Commission on Elections*, G.R. Nos. 147589 & 147613, June 26, 2001, 359 SCRA 698, 724.

[32] No. L-21064, February 18, 1970, 31 SCRA 413.

years, one commissioner for five years, and the other commissioner for three years, without reappointment. **Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor**. x x x (Emphasis added.)

The first sentence is unequivocal enough. The COA Chairman shall be appointed by the President for a term of seven years, and if he has served the full term, then he can no longer be reappointed or extended another appointment. In the same vein, a Commissioner who was appointed for a term of seven years who likewise served the full term is barred from being reappointed. In short, once the Chairman or Commissioner shall have served the full term of seven years, then he can no longer be reappointed to either the position of Chairman or Commissioner. The obvious intent of the framers is to prevent the president from "dominating" the Commission by allowing him to appoint an additional or two more commissioners.

The same purpose obtains in the second sentence of Sec. 1(2). The Constitutional Convention barred reappointment to be extended to commissioner-members first appointed under the 1987 Constitution to prevent the President from controlling the commission. Thus, the first Chairman appointed under the 1987 Constitution who served the full term of seven years can no longer be extended a reappointment. Neither can the Commissioners first appointed for the terms of five years and three years be eligible for reappointment. This is the plain meaning attached to the second sentence of Sec. 1(2), Article IX(D).

On the other hand, the provision, on its face, does not prohibit a promotional appointment from commissioner to chairman as long as the commissioner has not served the full term of seven years, further qualified by the third sentence of Sec. 1(2), Article IX (D) that "the appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor." In addition, such promotional appointment to the position of Chairman must conform to the rotational plan or the staggering of terms in the commission membership such that the aggregate of the service of the Commissioner in said position and the term to which he will be appointed to the position of Chairman must not exceed

seven years so as not to disrupt the rotational system in the commission prescribed by Sec. 1(2), Art. IX(D).

In conclusion, there is nothing in Sec. 1(2), Article IX(D) that explicitly precludes a promotional appointment from Commissioner to Chairman, provided it is made under the aforestated circumstances or conditions.

It may be argued that there is doubt or ambiguity on whether Sec. 1(2), Art. IX(D), as couched, allows a promotional appointment from Commissioner to Chairman. Even if We concede the existence of an ambiguity, the outcome will remain the same. *J.M. Tuason & Co., Inc.*[33] teaches that in case of doubt as to the import and react of a constitutional provision, resort should be made to extraneous aids of construction, such as debates and proceedings of the Constitutional Convention, to shed light on and ascertain the intent of the framers or the purpose of the provision being construed.

The understanding of the Convention as to what was meant by the terms of the constitutional provision which was the subject of the deliberation goes a long way toward explaining the understanding of the people when they ratified it. The Court applied this principle in *Civil Liberties Union v. Executive Secretary*:

> A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. **The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.**[34] (Emphasis added.)

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[33] *Id.*

[34] G.R. No. 83896, February 22, 1991, 194 SCRA 317, 325.

And again in *Nitafan v. Commissioner of Internal Revenue*:

x x x The ascertainment of that intent is but in keeping with **the fundamental principle of constitutional construction that the intent of the framers of the organic law and of the people adopting it should be given effect.** The primary task in constitutional construction is to ascertain and thereafter assure the realization of the purpose of the framers and of the people in the adoption of the Constitution. **It may also be safely assumed that the people in ratifying the Constitution were guided mainly by the explanation offered by the framers**.[35] (Emphasis added.)

Much weight and due respect must be accorded to the intent of the framers of the Constitution in interpreting its provisions.

Far from prohibiting reappointment of any kind, including a situation where a commissioner is upgraded to the position of chairman, the 1987 Constitution in fact unequivocally allows promotional appointment, but subject to defined parameters. The ensuing exchanges during the deliberations of the 1986 Constitutional Commission (CONCOM) on a draft proposal of what would eventually be Sec. 1(2), Art. IX(D) of the present Constitution amply support the thesis that a promotional appointment is allowed provided no one may be in the COA for an aggregate threshold period of 7 years:

MS. AQUINO: In the same paragraph, I would propose an amendment x x x. Between x x x the sentence which begins with "In no case," insert THE APPOINTEE SHALL IN NO CASE SERVE AN AGGREGATE PERIOD OF MORE THAN SEVEN YEARS. I was thinking that this may approximate the situation wherein a commissioner is first appointed as chairman. I am willing to withdraw that amendment if there is a representation on the part of the Committee that there is an implicit **intention to prohibit a term that in the aggregate will exceed more than seven years. If that is the intention, I am willing to withdraw my amendment.**

MR. MONSOD: If the [Gentlewoman] will read the whole Article, she will notice that there is no reappointment of any kind and, therefore, as a whole **there is no way somebody can serve for more**

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[35] No. 78780, July 23, 1987, 152 SCRA 284, 291-292.

than seven years. The purpose of the last sentence is to make sure that this does not happen by including in the appointment both temporary and acting capacities.

MS. AQUINO. Yes. Reappointment is fine; that is accounted for. **But I was thinking of a situation wherein a commissioner is upgraded to a position of chairman**. But if this provision is intended to cover that kind of situation, then I am willing to withdraw my amendment.

MR. MONSOD. It is covered.

MR. FOZ. There is a provision on line 29 precisely to cover that situation. It states: "Appointment to any vacancy shall be only for the unexpired portion of the predecessor." In other words, **if there is upgrading of position from commissioner to chairman, the appointee can serve only the unexpired portion of the term of the predecessor**.

MS. AQUINO: **But we have to be very specific x x x because it might shorten the term because he serves only the unexpired portion of the term of the predecessor.**

MR. FOZ: **He takes it at his own risk. He knows that he will only have to serve the unexpired portion of the term of the predecessor**. (Emphasis added.)[36]

The phrase "upgrading of position" found in the underscored portion unmistakably shows that Sec. 1(2), Art. IX(D) of the 1987 Constitution, for all its caveat against reappointment, does not *per se* preclude, in any and all cases, the promotional appointment or upgrade of a commissioner to chairman, subject to this proviso: the appointee's tenure in office does not exceed 7 years in all. Indeed, such appointment does not contextually come within the restricting phrase "**without reappointment**" twice written in that section. Delegate Foz even cautioned, as a matter of fact, that a sitting commissioner accepting a promotional appointment to fill up an unexpired portion pertaining to the higher office does so at the risk of shortening his original

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[36] I Records of the Constitutional Convention Proceedings and Debates, p. 586 *et seq.;* cited in Bernas, *THE INTENT OF THE 1986 CONSTITUTION WRITERS* 591-592 (1995).

term. To illustrate the Foz's concern: assume that Carague left COA for reasons other than the expiration of his threshold 7-year term and Villar accepted an appointment to fill up the vacancy. In this situation, the latter can only stay at the COA and served the unexpired portion of Carague's unexpired term as departing COA Chairman, even if, in the process, his (Villar's) own 7-year term as COA commissioner has not yet come to an end. In this illustration, the inviolable regularity of the intervals between appointments in the COA is preserved.

Moreover, jurisprudence tells us that the word "reappointment" means a second appointment to one and the same office.[37] As Justice Arsenio Dizon (Justice Dizon) aptly observed in his dissent in *Visarra v. Miraflor*,[38] the constitutional prohibition against the reappointment of a commissioner refers to his second appointment to the same office after holding it for nine years.[39] As Justice Dizon observed, "[T]he occupant of an office obviously needs no such second appointment unless, for some valid cause, such as the expiration of his term or resignation, he had ceased to be the legal occupant thereof."[40] The inevitable implication of Justice Dizon's cogent observation is that a promotion from commissioner to chairman, albeit entailing a second appointment, involves a different office and, hence, not, in the strict legal viewpoint, a reappointment. Stated a bit differently, "reappointment" refers to a movement to one and the same office. Necessarily, a movement to a different position within the commission (from Commissioner to Chairman) would constitute an appointment, or a second appointment, to be precise, but not reappointment.

A similar opinion was expressed in the same *Visarra* case by the concurring Justice Angelo Bautista, although he expressly

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[37] Sibal, P*HILIPPINE LEGAL ENCYCLOPEDIA* 826 (1995 reprint); citing *Visarra v. Miraflor, supra* note 24.

[38] *Supra* note 24.

[39] Referring to a COMELEC commissioner who was then entitled to a 9-year term of office.

[40] *Visarra v. Miraflor, supra* note 24, at 46.

alluded to a promotional appointment as not being a prohibited appointment under Art. X of the 1935 Constitution.

Petitioner's invocation of *Matibag* as additional argument to contest the constitutionality of Villar's elevation to the COA chairmanship is inapposite. In *Matibag*, then President Macapagal-Arroyo appointed, *ad interim*, Alfredo Benipayo as COMELEC Chairman and Resurreccion Borra and Florentino Tuason as Commissioners, each for a term of office of seven (7) years. All three immediately took their oath of, and assumed, office. These appointments were twice renewed because the Commission on Appointments failed to act on the first two *ad interim* appointments. Via a petition for prohibition, some disgruntled COMELEC officials assail as infirm the appointments of Benipayo, *et al.*

Matibag lists (4) four situations where the prohibition on reappointment would arise, or to be specific, where the proviso "[t]he Chairman and the Commissioners shall be appointed x x x for a term of seven years without reappointment" shall apply. Justice Antonio T. Carpio declares in his dissent that Villar's appointment falls under a combination of two of the four situations.

Conceding for the nonce the correctness of the premises depicted in the situations referred to in *Matibag*, that case is of doubtful applicability to the instant petition. Not only is it cast against a different milieu, but the *lis mota* of the case, as expressly declared in the main opinion, "is the very constitutional issue raised by petitioner."[41] And what is/are this/these issue/s? Only two defined issues in *Matibag* are relevant, viz: (1) the nature of an *ad interim* appointment and subsumed thereto the effect of a by-passed *ad interim* appointment; and (2) the constitutionality of renewals of *ad interim* appointments. The opinion defined these issues in the following wise: "Petitioner [Matibag] filed the instant petition questioning the appointment and the right to remain in office of Benipayo, Borra and Tuason as Chairman and Commissioners of the COMELEC, respectively.

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[41] *Supra* note 28, at 65.

Petitioner claims that the *ad interim* appointments of Benipayo, *et al*. violate the constitutional provisions on the independence of COMELEC, as well as on the prohibitions on temporary appointments and reappointments of its Chairman and members." As may distinctly be noted, an upgrade or promotion was not in issue in *Matibag*.

We shall briefly address the four adverted situations outlined in *Matibag*, in which, as there urged, the uniform proviso on no reappointment—after a member of any of the three constitutional commissions is appointed for a term of seven (7) years—shall apply. *Matibag* made the following formulation:

> The *first situation* is where an *ad interim* appointee after confirmation by the Commission on Appointments serves his full 7-year term. Such person cannot be reappointed whether as a member or as chairman because he will then be actually serving more than seven (7) years.
>
> The *second situation* is where the appointee, after confirmation, serves part of his term and then resigns before his seven-year term of office ends. Such person cannot be reappointed whether as a member or as chair to a vacancy arising from retirement because a reappointment will result in the appointee serving more than seven years.
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> The *third situation* is where the appointee is confirmed to serve the unexpired portion of someone who died or resigned, and the appointee completes the unexpired term. Such person cannot be reappointed whether as a member or as chair to a vacancy arising from retirement because a reappointment will result in the appointee also serving more than seven (7) years.
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> **The *fourth situation* is where the appointee has previously served a term of less than seven (7) years, and a vacancy arises from death or resignation. Even if it will not result in his serving more than seven years, a reappointment of such person to serve an unexpired term is also prohibited because his situation will be similar to those appointed under the second sentence of Sec. 1(20), Art. IX-C of the Constitution [referring to the first set of appointees (the 5 and 3 year termers) whose term of office are**

less than 7 years but are barred from being reappointed under any situation]."[42] (Words in brackets and emphasis supplied.)

The situations just described constitute an *obiter dictum*, hence without the force of adjudication, for the corresponding formulation of the four situations was not in any way necessary to resolve any of the determinative issues specifically defined in *Matibag*. An opinion entirely unnecessary for the decision of the case or one expressed upon a point not necessarily involved in the determination of the case is an *obiter*.[43]

There can be no serious objection to the scenarios depicted in the *first*, *second* and *third* situations, both hewing with the proposition that no one can stay in any of the three independent commissions for an aggregate period of more than seven (7) years. The *fourth* situation, however, does not commend itself for concurrence inasmuch as it is basically predicated on the postulate that reappointment, as earlier herein defined, of any kind is prohibited under any and all circumstances. To reiterate, the word "reappointment" means a second appointment to one and the same office; and Sec. 1(2), Art. IX(D) of the 1987 Constitution and similar provisions do not peremptorily prohibit the promotional appointment of a commissioner to chairman, provided the new appointee's tenure in both capacities does not exceed seven (7) years in all. The statements in *Matibag* enunciating the ban on reappointment in the aforecited fourth situation, perforce, must be abandoned, for, indeed, a promotional appointment from the position of Commissioner to that of Chairman is constitutionally permissible and not barred by Sec. 1(2), Art. IX (D) of the Constitution.

One of the aims behind the prohibition on reappointment, petitioner urges, is to ensure and preserve the independence of COA and its members,[44] citing what the dissenting Justice J.B.L

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[42] *Id.* at 82.

[43] *American Home Assurance Co. v. NLRC*, 328 Phil. 606 (1996); *City of Manila v. Entote*, 156 Phil. 498 (1974).

[44] *Rollo*, p. 25.

Reyes wrote in *Visarra*, that once appointed and confirmed, the commissioners should be free to act as their conscience demands, without fear of retaliation or hope or reward. Pursued to its logical conclusion, petitioner's thesis is that a COA member may no longer act with independence if he or she can be rewarded with a promotion or appointment, for then he or she will do the bidding of the appointing authority in the hope of being promoted or reappointed.

The unstated reason behind Justice J.B.L. Reyes' counsel is that independence is really a matter of choice. Without taking anything away from the gem imparted by the eminent jurist, what Chief Justice Moran said on the subject of independence is just as logically sound and perhaps even more compelling, as follows:

> A Commissioner, hopeful of reappointment may strive to do good. Whereas, without that hope or other hope of material reward, his enthusiasm may decline as the end of his term approaches and he may even lean to abuses if there is no higher restrain in his moral character. Moral character is no doubt the most effective safeguard of independence. With moral integrity, a commissioner will be independent with or without the possibility of reappointment.[45]

The Court is likewise unable to sustain Villar's proposition that his promotional appointment as COA Chairman gave him a completely fresh 7-year term—from February 2008 to February 2015—given his four (4)-year tenure as COA commissioner devalues all the past pronouncements made by this Court, starting in *De Vera*, then *Imperial*, *Visarra*, and finally *Matibag*. While there had been divergence of opinion as to the import of the word "reappointment," there has been unanimity on the dictum that in no case can one be a COA member, either as chairman or commissioner, or a mix of both positions, for an aggregate term of more than 7 years. A contrary view would allow a circumvention of the aggregate 7-year service limitation and would be constitutionally offensive as it would wreak havoc to the spirit of the rotational system of succession. *Imperial*, passing

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[45] *Nacionalista Party v. De Vera, supra* note 26, at 136.

upon the rotational system as it applied to the then organizational set-up of the COMELEC, stated:

> The provision that of the first three commissioners appointed "one shall hold office for 9 years, another for 6 years and the third for 3 years," when taken together with the prescribed term of office for 9 years without reappointment, evinces a deliberate plan to have a regular rotation or cycle in the membership of the commission, by having subsequent members appointable only once every three years.[46]

To be sure, Villar's appointment as COA Chairman partakes of a promotional appointment which, under appropriate setting, would be outside the purview of the constitutional reappointment ban in Sec 1(2), Art. IX(D) of the Constitution. Nonetheless, such appointment, even for the term appearing in the underlying appointment paper, ought still to be struck down as unconstitutional for the reason as shall be explained.

Consider:

In a mandatory tone, the aforecited constitutional provision decrees that the appointment of a COA member shall be for a fixed 7-year term if the vacancy results from the expiration of the term of the predecessor. We reproduce in its pertinent part the provision referred to:

> (2) The **Chairman and Commissioners [on Audit]** shall be **appointed** x x x **for a term of seven years** without reappointment. x x x **Appointment to any vacancy shall be** only for **the unexpired portion of the term of the predecessor**. x x x

Accordingly, the promotional appointment as COA Chairman of Villar for a **stated fixed** term of less than seven (7) years is void for violating a clear, but mandatory constitutional prescription. There can be no denying that the vacancy in the position of COA chairman when Carague stepped down in February 2, 2008 resulted from the expiration of his 7-year term. Hence, the appointment to the vacancy thus created ought to have been one for seven (7) years in line with the *verbal*

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[46] *Supra* note 18, at 775.

legis approach[47] of interpreting the Constitution. It is to be understood, however, following *Gaminde*, that in case of a belated appointment, the interval between the start of the term and the actual appointment shall be counted against the 7-year term of the appointee. Posing, however, as an insurmountable barrier to a full 7-year appointment for Villar is the rule against one serving the commission for an aggregate term of more than seven (7) years.

Where the Constitution or, for that matter, a statute, has fixed the term of office of a public official, the appointing authority is without authority to specify in the appointment a term shorter or longer than what the law provides. If the vacancy calls for a full seven-year appointment, the President is without discretion to extend a promotional appointment for more or for less than seven (7) years. There is no in between. He or she cannot split terms. It is not within the power of the appointing authority to override the positive provision of the Constitution which dictates that the term of office of members of constitutional bodies shall be seven (7) years.[48] A contrary reasoning "would make the term of office to depend upon the pleasure or caprice of the [appointing authority] and not upon the will [of the framers of the Constitution] of the legislature as expressed in plain and undoubted language in the law."[49]

In net effect, then President Macapagal-Arroyo could not have had, under any circumstance, validly appointed Villar as COA Chairman, for a full 7-year appointment, as the Constitution decrees, was not legally feasible in light of the 7-year aggregate rule. Villar had already served 4 years of his 7-year term as COA Commissioner. A shorter term, however, to comply with said rule would also be invalid as the corresponding appointment would effectively breach the clear purpose of the Constitution of giving to every appointee so appointed subsequent to the

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[47] Whenever possible, the words used in the Constitution must be given their ordinary meaning, except when technical terms are employed.

[48] See *rollo*, p. 315.

[49] *Baker v. Kirk*, 33 Ind. 517; cited in *Republic v. Imperial*, *supra* note 18.

first set of commissioners, a fixed term of office of 7 years. To recapitulate, a COA commissioner like respondent Villar who serves for a period less than seven (7) years cannot be appointed as chairman when such position became vacant as a result of the expiration of the 7-year term of the predecessor (Caragüe). Such appointment to a full term is not valid and constitutional, as the appointee will be allowed to serve more than seven (7) years under the constitutional ban.

On the other hand, a commissioner who resigned before serving his 7-year term can be extended an appointment to the position of chairman for the unexpired period of the term of the latter, provided the aggregate of the period he served as commissioner and the period he will serve as chairman will not exceed seven (7) years. This situation will only obtain when the chairman leaves the office by reason of death, disability, resignation or impeachment. Let us consider, in the concrete, the situation of then Chairman Caragüe and his successor, Villar. Caragüe was appointed COA Chairman effective February 2, 2001 for a term of seven (7) years, or up to February 2, 2008. Villar was appointed as Commissioner on February 2, 2004 with a 7-year term to end on February 2, 2011. If Caragüe for some reason vacated the chairmanship in 2007, then Villar can resign as commissioner in the same year and later be appointed as chairman to serve only up to February 2, 2008, the end of the unexpired portion of Caragüe's term. In this hypothetical scenario, Villar's appointment to the position of chairman is valid and constitutional as the aggregate periods of his two (2) appointments will only be five (5) years which neither distorts the rotational scheme nor violates the rule that the sum total of said appointments shall not exceed seven (7) years. Villar would, however, **forfeit** two (2) years of his original seven (7)-year term as Commissioner, since, by accepting an upgraded appointment to Caragüe's position, he agreed to serve the unexpired portion of the term of the predecessor. As illustrated earlier, following Mr. Foz's line, if there is an upgrading of position from commissioner to chairman, the appointee takes the risk of cutting short his original term, knowing pretty well before hand that he will serve only the unexpired portion of the term of his predecessor, the outgoing COA chairman.

In the extreme hypothetical situation that Villar vacates the position of chairman for causes other than the expiration of the original term of Carague, the President can only appoint the successor of Villar for the unexpired portion of the Carague term in line with Sec. 1(2), Art. IX(D) of the Constitution. Upon the expiration of the original 7-year term of Carague, the President can appoint a new chairman for a term of seven (7) full years.

In his separate dissent, my esteemed colleague, Mr. Justice Mendoza, takes strong exception to the view that the promotional appointment of a sitting commissioner is plausible only when he is appointed to the position of chairman for the unexpired portion of the term of said official who leaves the office by reason of any the following reasons: death, disability, resignation or impeachment, **not** when the vacancy arises out as a result of the expiration of the 7-year term of the past chairman. There is nothing in the Constitution, so Justice Mendoza counters, that restricts the promotion of an **incumbent** commissioner to the chairmanship only in instances where the tenure of his predecessor was cut short by any of the four events referred to. As earlier explained, the majority view springs from the interplay of the following premises: The explicit command of the Constitution is that the "Chairman and the Commissioners shall be appointed by the President x x x for a term of seven years [and] appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor." To repeat, the President has two and only two options on term appointments. Either he extends an appointment for a full 7-year term when the vacancy results from the expiration of term, or for a shorter period corresponding to the unexpired term of the predecessor when the vacancy occurs by reason of death, physical disability, resignation or impeachment. If the vacancy calls for a full seven-year appointment, the Chief Executive is barred from extending a promotional appointment for less than seven years. Else, the President can trifle with terms of office fixed by the Constitution.

Justice Mendoza likewise invites attention to an instance in history when a commissioner had been promoted chairman after the **expiration of the term** of his predecessor, referring specifically to the appointment of then COMELEC Commissioner

Gaudencio Garcia to succeed Jose P. Carag after the expiration of the latter's term in 1959 as COMELEC chairman. Such appointment to the position of chairman is not constitutionally permissible under the 1987 Constitution because of the policy and intent of its framers that a COA member who has served his full term of seven (7) years or even for a shorter period can no longer be extended another appointment to the position of chairman for a full term of seven (7) years. As revealed in the deliberations of the Constitutional Commission that crafted the 1987 Constitution, a member of COA who also served as a commissioner for less than seven (7) years in said position cannot be appointed to the position of chairman for a full term of seven (7) years since the aggregate will exceed seven (7) years. Thus, the adverted Garcia appointment in 1959 made under the 1935 Constitution cannot be used as a precedent to an appointment of such nature under the 1987 Constitution. The dissent further notes that the upgrading remained uncontested. In this regard, suffice it to state that the promotion in question was either legal or it was not. If it were not, no amount of repetitive practices would clear it of invalidating taint.

Lastly, Villar's appointment as chairman ending February 2, 2011 which Justice Mendoza considers as valid is likewise unconstitutional, as it will destroy the rationale and policy behind the rotational system or the staggering of appointments and terms in COA as prescribed in the Constitution. It disturbs in a way the staggered rotational system of appointment under Sec. 1(2), Art. IX(D) of the 1987 Constitution. Consider: If Villar's term as COA chairman up to February 2, 2011 is viewed as valid and constitutional as espoused by my esteemed colleague, then two vacancies have simultaneously occurred and two (2) COA members going out of office at once, opening positions for two (2) appointables on that date as Commissioner San Buenaventura's term also expired on that day. This is precisely one of the mischiefs the staggering of terms and the regular intervals appointments seek to address. Note that San Buenaventura was specifically appointed to succeed Villar as commissioner, meaning she merely occupied the position vacated by her predecessor whose term as such commissioner expired on February 2, 2011. The result

is what the framers of the Constitution doubtless sought to avoid, a sitting President with a 6-year term of office, like President Benigno C. Aquino III, appointing all or at least two (2) members of the three-man Commission during his term. He appointed Ma. Gracia Pulido-Tan as Chairman for the term ending February 2, 2015 upon the relinquishment of the post by respondent Villar, and Heidi Mendoza was appointed Commissioner for a 7-year term ending February 2, 2018 to replace San Buenaventura. If Justice Mendoza's version is adopted, then situations like the one which obtains in the Commission will definitely be replicated in gross breach of the Constitution and in clear contravention of the intent of its framers. Presidents in the future can easily control the Commission depriving it of its independence and impartiality.

To sum up, the Court restates its ruling on Sec. 1(2), Art. IX(D) of the Constitution, *viz*:

1. The appointment of members of any of the three constitutional commissions, after the expiration of the uneven terms of office of the first set of commissioners, shall always be for a fixed term of seven (7) years; an appointment for a lesser period is void and unconstitutional.

The appointing authority cannot validly shorten the full term of seven (7) years in case of the expiration of the term as this will result in the distortion of the rotational system prescribed by the Constitution.

2. Appointments to vacancies resulting from certain causes (death, resignation, disability or impeachment) shall only be for the unexpired portion of the term of the predecessor, but such appointments cannot be less than the unexpired portion as this will likewise disrupt the staggering of terms laid down under Sec. 1(2), Art. IX(D).

3. Members of the Commission, *e.g.* COA, COMELEC or CSC, who were appointed for a full term of seven years and who served the entire period, are barred from reappointment to any position in the Commission. Corollarily, the first appointees

in the Commission under the Constitution are also covered by the prohibition against reappointment.

4. A commissioner who resigns after serving in the Commission for less than seven years is eligible for an appointment to the position of Chairman for the unexpired portion of the term of the departing chairman. Such appointment is not covered by the ban on reappointment, provided that the aggregate period of the length of service as commissioner and the unexpired period of the term of the predecessor will not exceed seven (7) years and provided further that the vacancy in the position of Chairman resulted from death, resignation, disability or removal by impeachment. The Court clarifies that "reappointment" found in Sec. 1(2), Art. IX(D) means a movement to one and the same office (Commissioner to Commissioner or Chairman to Chairman). On the other hand, an appointment involving a movement to a different position or office (Commissioner to Chairman) would constitute a new appointment and, hence, not, in the strict legal sense, a reappointment barred under the Constitution.

5. Any member of the Commission cannot be appointed or designated in a temporary or acting capacity.

WHEREFORE, the petition is **PARTLY GRANTED.** The appointment of then Commissioner Reynaldo A. Villar to the position of Chairman of the Commission on Audit to replace Guillermo N. Carague, whose term of office as such chairman has expired, is hereby declared **UNCONSTITUTIONAL** for violation of Sec. 1(2), Art. IX(D) of the Constitution.

SO ORDERED.

Corona, C.J., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, and *Perlas-Bernabe, JJ.,* concur.

Carpio and *Mendoza, JJ.,* see concurring and dissenting opinions.

Brion, J., joins the opinion of *J.* Mendoza.

Abad, J., joins the separate opinion of *J.* A.T. Carpio.

Sereno, J., joins the dissent of *J.* Carpio.

Reyes, J., joins the position of *J.* Mendoza.

CONCURRING AND DISSENTING OPINION

CARPIO, *J.*:

The appointment of respondent Reynaldo A. Villar (Villar) as Chairman of the Commission on Audit (COA) is clearly **unconstitutional**.

Villar's appointment as Chairman is a reappointment prohibited by the Constitution

Prior to his appointment as COA Chairman, Villar was a COA Commissioner serving the fourth year of his seven-year term. Villar's "promotional" appointment as Chairman on 18 April 2004 constituted a reappointment prohibited by the Constitution since it actually required ***another*** appointment by the President to a ***different*** office, ***another*** confirmation by the Commission on Appointments to that other office, and ***another*** oath of office to that other office. When Villar accepted the appointment as Chairman, he necessarily had to resign beforehand as Commissioner. In short, Villar resigned as Commissioner, and then accepted a new appointment as Chairman, his ***second*** appointment to the COA.

It is indisputable that the office of the Chairman is a ***different*** office from the office of a Commissioner. The Chairman has a salary grade higher than that of a Commissioner, and is the presiding officer of the Commission while a Commissioner is not. The Chairman is specifically authorized by the Constitution to re-align savings of the Commission,[1] while a Commissioner has no such authority. The Chairman is the head of the Commission, while a Commissioner is not,[2] in the same manner that the Chief Justice is the head of the Judiciary while an Associate Justice is not.

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[1] Section 24(5), Article VI, 1987 Constitution.

[2] *Id.*

Section 1(2), Article IX-D of the 1987 Constitution states:

> (2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years **without reappointment**. Of those first appointed, the Chairman shall hold office for seven years, one Commissioner for five years, and the other Commissioner for three years, **without reappointment**. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity. (Emphasis supplied)

The words "**without reappointment**" appear ***twice*** in Section 1(2) of Article IX-D, the first time in the first sentence and the second time in the second sentence.

The counterpart provision in the 1935 Constitution uses the phrase "**may not be reappointed**" and the phrase appears only ***once***. Section 1, Article XI of the 1935 Constitution provides:

> Section 1. There shall be a General Auditing Office under the direction and control of an Auditor General, who shall hold office for a term of ten years and **may not be reappointed**. The Auditor General shall be appointed by the President with the consent of the Commission on Appointments, and shall receive an annual compensation to be fixed by law which shall not be diminished during his continuance in office. Until the Congress shall provide otherwise, the Auditor General shall receive an annual compensation of twelve thousand pesos. (Emphasis supplied)

To repeat, while the first sentence of Section 1, Article XI of the 1935 Constitution contains the words "**may not be reappointed**," the succeeding sentences do not. In contrast, the words "**without reappointment**" appears in the **first *and* second** sentences of Section 1(2), Article IX-D of the 1987 Constitution. This difference is ***pivotal*** in the resolution of the present case.

The framers of the 1987 Constitution deliberately disallowed a situation where, in the words of Commissioner Vicente Foz, "***the appointee serves only for less than seven years, (and) would be entitled to reappointment***," which was the "***case of***

Visarra v. Miraflor,[3] ***to the effect that x x x in cases where the appointee serves only for less than seven years, he would be entitled to reappointment***." To specifically implement the rejection of the *Visarra* ruling, the framers intentionally added the words "**without reappointment**" in the second sentence of Section 1(2), even though the same words already appear in the first sentence of the same Section. This is the reason why the words "**without reappointment**" appear ***twice*** in Section 1(2). Thus, the 1987 Constitution has an ***additional*** **"safety valve"** compared to the 1935 Constitution.

The following exchange, during the deliberations of the Constitutional Commission, between Commissioner Hilario G. Davide, Jr. (later Chief Justice of this Court) and Commissioner

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[3] The 1963 case of *Visarra v. Miraflor* (118 Phil. 1) was decided under the 1935 Constitution, specifically, Section 1, Article X:

> Section 1. There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other Members of the Commission on Elections may be removed from the office ony by impeachment in the manner provided in this Constitution.

The Court upheld the apppointment of then incumbent Commission on Elections (Comelec) Commissioner Gaudencio Garcia to succeed Chairman Jose P. Carag, whose nine-year term had expired. Justice Angelo Bautista in his concurring opinion wrote:

> [T]o hold that the promotion of an Associate Commissioner to Chairman is banned by the Constitution merely by judicial fiat would be to relegate a member forever to his position as such without hope of enjoying the privileges incident to the chairmanship while giving a premium to an outsider who may be less deserving except probably his political ascendancy because of his lack of experience on the mechanics of that delicate and important position x x x its effect is to stimulate hard work, greater zeal and incresed efficiency for a member in the hope that his efforts would someday be regarded with a promotion. The contrary would relagate him to apathy, indifference, hopelessness and inaction. It is never a good policy to stultify one's legitimate ambition to betterment and progress.

Vicente Foz, bears out the rejection of the *Visarra* ruling, in particular the concurring opinion of Justice Angelo Bautista:

MR. DAVIDE: **I propose** another perfecting amendment on line 29, Section 2 (2). It consists in **the deletion** of the comma (,) after "years" and **the words** "**without reappointment**."

MR. FOZ: **In other words, the Gentleman is going to allow reappointment in this case.**

MR. DAVIDE: **No, because on line 25 there is already the phrase "without reappointment."**

MR. FOZ: **Yes, but in the past, that was a source of controversy. That was one of the points raised in one of the controversies in the Supreme Court.**

MR. DAVIDE: There would be no area of controversy because it is very clear.

The Chairman and the Commissioners shall be appointed by the President for a term of seven years without reappointment.

So, it would even apply to the first set of three commissioners.

MR. FOZ: ***But there is the argument made in the concurring opinion of Justice Angelo Bautista in the case of Visarra vs. Miraflor, to the effect that the prohibition on reappointment applies only when the term or the tenure is for seven years. But in cases where the appointee serves only for less than seven years, he would be entitled to reappointment. Unless we put the qualifying words "without reappointment" in the case of these appointees, then it is possible that an interpretation could be made later on that in their case, they can still be reappointed to serve for a total of seven years.***

Precisely, we are foreclosing that possibility by making it very clear that even in the case of those first appointed under this Constitution, no reappointment can be had.

MR. DAVIDE: Can it not be done by a mere interpretation because it would really appear to be repetitious? The wording itself on the first set of commissioners would clearly indicate that their term is really for seven years, but their tenure is staggered. So, we have to distinguish between term and tenure because the general term is really seven years. But of the first three to be appointed, the tenure of one is seven; the tenure of the second is five; and the tenure of

the third is three. But technically, the term for which they are appointed is seven years.

MR. FOZ: The Committee regrets to say that we cannot accept the amendment.

MR. DAVIDE: May I submit it to a vote, Mr. Presiding Officer.

VOTING

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The results show 2 votes in favor and 21 against[;] the amendment is lost.[4] (Emphasis supplied)

Thus, the framers of the 1987 Constitution added the words "**without reappointment**" in the second sentence of Section 1(2) of Article IX-D precisely to overturn *Visarra*, in particular the concurring opinion of Justice Bautista. The foregoing exchange between Commissioners Davide and Foz clearly proves that the framers specifically added the words "without reappointment" twice precisely **to foreclose the possibility** of an appointee, who has served for less than seven years, being reappointed to complete a seven-year term.

This Court can no longer resurrect *Visarra* because the 1987 Constitution itself has rejected *Visarra*, particularly, in the words of Commissioner Foz, "the concurring opinion of Justice Angelo Bautista." In his concurring opinion, Justice Bautista concluded that "***the appointment of Associate Commissioner Garcia to Chairman of the Commission is valid***." This Court has no power to undo what the framers have so clearly written in the Constitution. **To repeat, the framers of the 1987 Constitution expressly rejected the *Visarra* ruling, in particular the concurring opinion of Justice Bautista, and instead adopted the dissenting opinions of Justices Roberto Concepcion and JBL Reyes.**

Moreover, the framers of the 1987 Constitution ***emphatically*** made it clear that the words "without reappointment" apply to

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[4] Record of Proceedings and Debate of the Constitutional Commission, Vol. 1, p. 591.

a promotional appointment, or a situation where "**a commissioner is upgraded to a position of chairman**." The following exchange among Commissioners Felicitas Aquino, Christian Monsod, and Foz clearly established this:

MS. AQUINO: Thank you.

In the same paragraph, I would propose an amendment by addition on page 2, line 31 between the period (.) after the word 'predecessor' and the sentence which begins with 'In no case,' THE APPOINTEE SHALL IN NO CASE SERVE AN AGGREGATE PERIOD OF MORE THAN SEVEN YEARS. **I was thinking that this may approximate the situation wherein a commissioner is first appointed as an ordinary commissioner and later on appointed as chairman.** I am willing to withdraw that amendment if there is an implicit intention to prohibit a term that in the aggregate will exceed more than seven years.

MR. MONSOD: If the Gentleman will read the whole Article, she will notice that t**here is no reappointment of any kind** and, therefore, as a whole **there is no way that somebody can serve for more than seven years.** The purpose of the last sentence is to make sure that this does not happen by including in the appointment both temporary and acting capacities.

MS. AQUINO: Yes. Reappointment is fine; that is accounted for. **But I was thinking of *a situation wherein a commissioner is upgraded to a position of chairman*. But if this provision is intended to cover that kind of situation, then I am willing to withdraw my amendment.**

MR. MONSOD: ***It is covered*.**

MR. FOZ: There is a provision on line 29 precisely to cover that situation. It states: 'Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.' In other words, if there is upgrading of position from commissioner to chairman, the appointee can only serve the unexpired portion of the term of the predecessor.

MS. AQUINO: But we have to very specific about it; the provision does not still account for that kind of situation because in effect, it might even shorten the term because he serves only the unexpired portion of the vacant position.

MR. FOZ: He takes it at his own risk. He knows that he will only serve the unexpired portion of the term of the predecessor.

MS. AQUINO: **Regardless of that, my question is: Will this provision likewise apply to that kind of situation?** In other words, I am only asking for an assurance that the safety valve applies to this situation.

MR. FOZ: **The provision does take care of that situation.**[5] (Boldfacing and italicization supplied)

Commissioner Monsod, in reply to Commissioner Aquino's query whether "*a commissioner x x x first appointed as an ordinary commissioner and later appointed as chairman*" is covered by the prohibition on reappointment, answered that "there is no reappointment of *any kind.*" When Commissioner Aquino specifically pointed to the situation where "*a commissioner is upgraded to a position of chairman,*" Commissioner Monsod replied that "*it is covered,*" meaning that such upgrading is prohibited. When Commissioner Aquino still persisted in her line of inquiry on whether the prohibition on reappointment applied to "*that kind of situation*" where "a commissioner is upgraded to a position of chairman," Commissioner Foz, after a fuzzy initial response, finally answered that the "*provision does take care of that situation*."

In contrast, the *ponencia* of Justice Presbitero J. Velasco, Jr. concludes that "a promotion, albeit entailing a second appointment, involves a different office and hence not, in the strict legal viewpoint, a reappointment." This is grave and egregious error.

The *ponencia* insists that Section 1(2), Article IX-D of the 1987 Constitution "does not preclude the promotional appointment of a commissioner to chairman, provided the appointee's tenure in office does not exceed 7 years in all," citing the same deliberations of the Constitutional Commission quoted above. This is misleading. Commissioner Aquino's full statement reads:

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[5] Record of Proceedings and Debate of the Constitutional Commission, Vol. 1, p. 586.

MS. AQUINO: Yes. Reappointment is fine; that is accounted for. **But I was thinking of a situation wherein a commissioner is upgraded to a position of chairman. *But if this provision is intended to cover that kind of situation,* then I am willing to withdraw my amendment**.[6] (Boldfacing and italicization supplied)

Obviously, Commissioner Aquino wanted it clarified whether the situation where "**a commissioner is upgraded to a position of chairman**" is covered by the provision prohibiting reappointment, and to which Commissioner Monsod categorically stated, "**It is covered**."

Subsequent to the exchange among Commissioners Monsod, Aquino and Foz,[7] the Constitutional Commission **again deliberated** on the same issue when the framers discussed and voted whether the words "**without reappointment**" should be added in the second sentence of Section 1(2) of Article IX-D. Thus, whatever doubts remained on whether "promotional" appointments are prohibited were removed completely when the framers voted to add the words "**without reappointment**" in the second sentence of Section 1(2) to reject specifically the *Visarra* ruling, in particular the concurring opinion of Justice Bautista, which stated that the appointment of a Commissioner to Chairman of a Commission is valid.

There is no doubt whatsoever that the framers of the 1987 Constitution clearly intended to forbid reappointment of "***any kind***," **including specifically a situation where, in the words of Commissioner Aquino, *"a commissioner is upgraded to a position of chairman."***

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[6] *Id.*

[7] This took place on the Constitutional Commission's 15 July 1986 session. At that same session, but **subsequent** to the discussion among Commissioners Monsod, Aquino, and Foz, was the discussion on Commissioner Davide's proposal for a perfecting amendment to line 29, Section 2(2), cited previously. (Record of Proceedings and Debate of the Constitutional Commission, Vol. 1, pp. 586 and 591.) Taken together, these discussions show the deliberate intent of the framers of the Constitution to prohibit reappointments of any kind, including promotions from Commissioner to Chairman.

To allow the "promotional" appointment of Villar from Commissioner to Chairman is to put Villar in a far better, and uniquely privileged, position compared to the first two Commissioners who were barred from being promoted from Commissioners to Chairman. The second sentence of Section 1(2), Article IX-D of the 1987 Constitution provides, "Of those first appointed, the Chairman shall hold office for seven years, **one Commissioner for five years, and the other Commissioner for three years, *without reappointment***." Thus, the first Commissioner with a term of five years, and the second Commissioner with a term of three years, **could not be promoted to Chairman because of the words "without reappointment."** Indeed, the first two Commissioners could not even be reappointed as mere Commissioners, making their reappointment as Chairman an even greater constitutional anomaly. The first two Commissioners have the same rank and privileges as Commissioner Villar. Logically, and as clearly and emphatically intended by the framers of the 1987 Constitution, the same words "**without reappointment**" should bar the promotional appointment of Villar, as well as all future promotional appointments of Commissioners to Chairman.

On the other hand, the minority, through the dissent of Justice Jose C. Mendoza, claims that the second "**without reappointment**" in Section 1(2) of Article XI-D "does nothing more than limit the terms of the first batch of appointees to the COA." This is an absurd reading of the constitutional provision. There is no evidence whatsoever of the intent to make such a distinction in the status of the first appointees and the subsequent appointees. Moreover, this claim is belied by the exchange between Commissioners Davide and Foz. To quote again:

MR. DAVIDE: There would be no area of controversy because it is very clear:

The Chairman and the Commissioners shall be appointed by the President for a term of seven years without reappointment.

So, it would *even* apply to the first set of three commissioners.

MR. FOZ: But there is the argument made in the concurring opinion of Justice Angelo Bautista in the case of *Visarra vs. Miraflor*, to the effect that the prohibition on reappointment applies only when the term or the tenure is for seven years. But in cases where the appointee serves only for less than seven years, he would be entitled to reappointment. Unless we put the qualifying words "without reappointment" in the case of these appointees, then it is possible that an interpretation could be made later on that in their case, they can still be reappointed to serve for a total of seven years.

Precisely, we are foreclosing that possibility by making it very clear that *even* in the case of those first appointed under this Constitution, no reappointment can be had.[8] (Boldfacing and italicization supplied)

Commissioners Davide and Foz both used the word ***"even"*** to emphasize that the words "**without reappointment**" apply to all the chairmen and commissioners to be appointed by the President, **including *even*** the first set of three commissioners. That was the clear import of their discussion.

Justice JBL Reyes' Dissenting Opinion in *Visarra* further elucidated how Section 1, Article X of the 1935 Constitution, on the terms of office of the members of the Commission on Elections (Comelec), should be interpreted. Justice Reyes explained:

It is clear from the provisions above-quoted that, being, acutely conscious of the crucial importance of the functions of the Commission on Elections to candidates for elective positions, and aware of the consequent pressures and influences that would be brought to bear upon the Commissioners, the framers of this part of the Constitution sought as much as possible to shield the Commission members from any force or influence that might affect them in the discharge of their duties. To this end, the Constitution not only disqualified the Commissioners from holding outside interests that might be affected by their official functions (Section 3); it expressly protected the Commissioners against danger of possible retaliation by (a) giving them a fixed term of nine (9) years, not terminable except by impeachment, and by (b) prohibiting any diminution of their salaries

[8] *Supra* note 4.

during their term of office. The Constitution went even further: cognizant that human conduct may be influenced not only by fear of vindictiveness but also, and even more subtly and powerfully, by prospects of advancement, our fundamental law has likewise provided that members of the Commission on Elections (c) may not be reappointed, and that (d) their salaries may not be increased during their terms. **The plain purpose of all these safeguards is that the Commissioners, once appointed and confirmed, should be free to act as their conscience demands, without fear of retaliation or hope of reward; that they should never feel the inducement of either the stick or the carrot. For only the man who has nothing to fear, and nothing to expect, can be considered truly independent.**

Upon these premises, the promotion of Dr. Gaudencio Garcia from Associate Commissioner to Chairman of the Commission, with the attendant higher compensation and pre-requisites, violated the Constitutional prohibition against both reappointment and salary increase. **If, by express mandate of the fundamental charter, a Commissioner cannot be validly reappointed, not even to the same position that he has occupied, I can see no excuse for holding that he may validly be appointed again to a higher position within the Commission. It is undeniable that a promotion involves a second appointment, *i.e.*, a reappointment that is expressly forbidden by the Constitution.**

And if the legislature may not lawfully increase the Commissioners' salaries during their terms of office, by express constitutional inhibition, how in the name of good sense may the Chief Executive grant such an increase to an Associate Commissioner via a promotional appointment to the Chairmanship?

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Finally, in the *Republic vs. Imperial* case, upon which the majority opinion places so much reliance, this very Court expressly reiterated that the intention of the Constitution in staggering the terms of the Commissioners on Elections, so that one expires every three years, was that no President could appoint more than one Commissioner[.]

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By sanctioning promotion of one Associate Commissioner to the Chairmanship, the majority decision enables the President to appoint more Commissioners (the one promoted and the replacement for the latter) at one time whenever a chairman fails to complete his

own term. This despite the avowed intention of the constitutional plan of staggered terms, so that no President should appoint more than one Commissioner, unless unavoidable.[9] (Emphasis supplied)

Since the framers of the 1987 Constitution adopted the dissenting opinions in *Visarra*, Villar's "promotion" from Commissioner to Chairman is clearly a reappointment expressly prohibited by the 1987 Constitution.

The prohibition must apply to all kinds of reappointment if we are to honor the purpose behind the prohibition. **The purpose is to ensure and preserve the independence of the COA and its members.** The members of the independent constitutional commissions, in the wise words of Justice JBL Reyes —

> x x x should be free to act as their conscience demands, **without fear of retaliation or hope of reward;** that they should never feel the inducement of either the stick or the carrot. **For only the man who has nothing to fear, and nothing to expect, can be considered truly independent**.[10] (Emphasis supplied)

A COA member, like members of the other independent constitutional commissions, may no longer act with independence if he or she can be rewarded with a promotion or reappointment, for he or she will likely do the bidding of the appointing power in the expectation of being promoted or reappointed. This Court has a sacred duty to safeguard the independence of the constitutional commissions, not make them subservient to the appointing power by adopting a view that is grossly and manifestly contrary to the letter and intent of the Constitution.

The minority likewise points out that after the ratification of the 1987 Constitution, then President Corazon C. Aquino promoted then Commissioner Eufemio Domingo to Chairman, after Chairman Teofisto Guingona resigned to run for a Senate seat.

Commissioner Domingo was appointed as one of the first commissioners under the 1987 Constitution, with an original term of three years. When then Chairman Guingona resigned,

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[9] *Supra* note 3 at 34-38.

[10] *Supra* note 3 at 35.

he left a portion of his seven-year term. President Aquino then appointed Commissioner Domingo as Chairman to serve the unexpired portion of Guingona's term. Domingo, however, did not complete his term, and served less than seven years in the COA both as Commissioner and Chairman. In 1993, Pascacio Banaria was appointed to replace Domingo, and served as Chairman until 2 February 1994.

Domingo's appointment was never questioned before this Court and thus, the Court could not have made a definitive ruling on the constitutionality of Domingo's appointment. What is now under consideration before this Court is the appointment of Villar, and thus, the Court cannot evade its duty to make the proper ruling, based on the letter and intent of the Constitution. Suffice it to say that Domingo's promotional appointment does not in any way constitute binding precedent.

The Court already had occasion to explain the prohibition on reappointments to the independent constitutional commissions under the 1987 Constitution. In *Matibag v. Benipayo*,[11] the Court explained:

> Section 1 (2), Article IX-C of the Constitution provides that "[t]he Chairman and the Commissioners shall be appointed x x x *for a term of seven years without reappointment*." x x x There are four situations where this provision will apply. The first situation is where an ad interim appointee to the COMELEC, after confirmation by the Commission on Appointments, serves his full seven-year term. Such person cannot be reappointed to the COMELEC, whether as a member or as a chairman, because he will then be actually serving more than seven years. **The second situation is where the appointee, after confirmation, serves a part of his term and then resigns before his seven-year term of office ends. Such person cannot be reappointed, whether as a member or as a chair, to a vacancy arising from retirement because a reappointment will result in the appointee also serving more than seven years.** The third situation is where the appointee is confirmed to serve the unexpired term of someone who died or resigned, and the appointee completes the unexpired term. Such person cannot be reappointed, whether as a

[11] 429 Phil. 554 (2002).

member or chair, to a vacancy arising from retirement because a reappointment will result in the appointee also serving more than seven years.

The fourth situation is where the appointee has previously served a term of less than seven years, and a vacancy arises from death or resignation. Even if it will not result in his serving more than seven years, a reappointment of such person to serve an unexpired term is also prohibited because his situation will be similar to those appointed under the second sentence of Section 1 (2), Article IX-C of the Constitution. This provision refers to the first appointees under the Constitution whose terms of office are less than seven years, but are barred from ever being reappointed under any situation. x x x[12] (Emphasis supplied)

Villar's appointment falls under both the second and fourth situations. In order for him to take the position of Chairman, Villar had to cut short his seven-year term, which means Villar ***resigned*** as Commissioner. After such resignation, Villar could no longer be reappointed to the COA, either as Commissioner or Chairman. *First*, Villar's "promotional" appointment as Chairman falls under the second situation since Villar had to resign as Commissioner to be appointed Chairman to fill a vacancy arising from the expiration of the term of Chairman Carague. *Second*, Villar was given a term of only three years as Chairman, instead of the mandatory seven years, to avoid exceeding the maximum term of seven years. However, the term of office is **fixed by the Constitution at seven years**, and the President has no power to shorten this term because that would mean amending the Constitution. Thus, the "promotional" appointment of Villar as Chairman to a three-year term is, in itself, unconstitutional for violating the mandatory seven-year fixed term, apart from the prohibition on reappointment. On the other hand, had Villar's term as Chairman been made seven years, it would have also been unconstitutional since his total term would then exceed seven years. Thus, whether the upgrading of a Commissioner to Chairman is for a seven-year term or less, such upgrading would be unconstitutional, whatever is the term.

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[12] *Id.* at 596.

Villar's "promotional" appointment as Chairman for the ***unexpired portion*** of his own term as Commissioner also falls under the fourth situation, **similar to the situation of the first Commissioners appointed to the COA who served for less than seven years but *could not be promoted as Chairman* or reappointed as Commissioners.** In fact, the words "without reappointment" were specifically added in Section 1(2) of Article IX-D precisely to prohibit a situation where "**a commissioner is upgraded to a position of chairman**." The words "without reappointment" in the second sentence of Section 1(2) were the ***additional* "safety valve"** that the framers of the 1987 Constitution incorporated in the Constitution to prevent "promotional" appointments like that of Villar.

Moreover, to allow Villar to carry his unexpired term as Commissioner to his term as Chairman means crossing the lines of succession. This is also unconstitutional because it disrupts the rotational scheme of succession mandated in the Constitution.

The Court has already declared that the words "without reappointment," which appear twice in Section 1(2) of Article IX-D, were precisely incorporated to prohibit "***any reappointment of any kind***." As the Court held in *Matibag*:

> **The framers of the Constitution made it quite clear that any person who has served any term of office as COMELEC member — whether for a full term of seven years, a truncated term of five or three years, or even for an unexpired term of any length of time — can no longer be reappointed to the COMELEC.**
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> x x x [T]he phrase "without reappointment" appears twice in Section 1 (2), Article IX-C of the present Constitution. The first phrase prohibits reappointment of any person previously appointed for a term of seven years. The second phrase prohibits reappointment of any person previously appointed for a term of five or three years pursuant to the first set of appointees under the Constitution. **In either case, it does not matter if the person previously appointed completes his term of office for the intention is to prohibit *any reappointment of any kind*.**
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> x x x x x x x x x

The prohibition on reappointment is common to the three constitutional commissions. The framers of the present Constitution prohibited reappointments for two reasons. The first is to prevent a second appointment for those who have been previously appointed and confirmed even if they served for less than seven years. The second is to insure that the members of the three constitutional commissions do not serve beyond the fixed term of seven years. x x x

Plainly, **the prohibition on reappointment is intended to insure that there will be *no reappointment of any kind*.** On the other hand, the prohibition on temporary or acting appointments is intended to prevent any circumvention of the prohibition on reappointment that may result in an appointee's total term of office exceeding seven years. The evils sought to be avoided by the twin prohibitions are very specific — reappointment of any kind and exceeding one's term in office beyond the maximum period of seven years.[13] (Emphasis supplied)

To repeat, there is no doubt whatsoever that the prohibition in Section 1(2) of Article IX-D applies to "***any reappointment of any kind***," including promotional appointments from Commissioner to Chairman.

The terms of office of the Chairman and Commissioners are for a fixed term of seven years without reappointment.

The Constitution states, "The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments **for a term of seven years** without reappointment." **The Constitution uses the word "shall," which makes it mandatory for the President to appoint to a *fixed* term of seven years.** The only exception is an appointment to a vacancy caused by death, resignation, or impeachment. In such exceptional causes, however, the Constitution directs that the appointment "**shall be *only for the unexpired portion* of the term of the predecessor**." The President cannot give the appointee a term that is more, or less, than the unexpired term of the predecessor. **Thus, whether the appointment arises from a regular vacancy or from an exceptional cause, the President**

[13] *Id.* at 597, 598, 600.

has no discretion to shorten or lengthen the appointee's term because the *term is fixed by the Constitution*. The President must appoint to a *full* term of seven years to fill a vacancy from an expired term, or to the *full* unexpired portion of the term of the predecessor who vacated the office for an exceptional cause.

The *ponencia* posits that a seven-year appointment is not constitutionally feasible for Villar because Villar had already served as COA Commissioner for four years prior to his appointment as Chairman. Thus, under the circumstances of this case, giving Villar a seven-year term would violate the term of office prescribed in Section 1(2), Article IX-D of the Constitution. The *ponencia* contends, however, that far from prohibiting reappointment of any kind, the 1987 Constitution allows a promotional appointment, but subject to defined parameters.

The *ponencia* maintains that a promotion from Commissioner to Chairman is not *per se* unconstitutional. The *ponencia* argues that the ban on reappointment applies only to ***a new appointment to the same position***. On the other hand, a promotional appointment is disallowed only if the new appointment will lead to a tenure of more than seven years because no term or tenure can exceed seven years. The *ponencia* asserts that "[a]ppointment to the position of [C]hairman extended to a former [C]ommissioner is allowed and is not covered by the ban on reappointment, provided the aggregate period of the two (2) appointments will not exceed seven (7) years."

Under the *ponencia's* view, the words "without reappointment," which appear *twice* in Section 1(2) of Article IX-D, ***apply only to a reappointment to the same position***. Thus, the ban on reappointment applies only to the following situations: (1) a Commissioner is reappointed as Commissioner; and (2) a Chairman is reappointed as Chairman.

Conversely, according to the *ponencia*, the words "without reappointment" do not apply to the following situations: (1) a Chairman who has served for less than seven years is reappointed as Commissioner if his total term does not exceed seven years;

and (2) a Commissioner who has served for less than seven years is reappointed as Chairman if his total term does not exceed seven years.

The error in the *ponencia's* view is basic and quite obvious for three reasons. *First*, the constitutional ban on reappointment, expressed in the words "without reappointment," does not distinguish between appointments to the same or different positions. There are only two possible positions — that of Commissioner and Chairman. The words "without reappointment" have no conditions, distinctions or qualifications that limit the ban on reappointments only to the same position. When the framers **twice** used the plain, simple and unconditional words "without reappointment," they meant exactly what the words mean **— *no reappointment***. When the people ratified the Constitution, they naturally and logically understood the plain, simple and unconditional words "without reappointment" to mean ***no reappointment***.

Second, the rationale for the ban on reappointment applies to reappointments to the same or different positions because the intention is to safeguard the independence of the Commission and all of its Members. There is even greater reason to ban promotional appointments from Commissioner to Chairman to prevent Commissioners from kowtowing to the appointing power in the hope of being promoted to Chairman. It is more likely that a Commissioner would want to be promoted to Chairman than to be reappointed to the same position as Commissioner.

Third, the framers of the Constitution repeated the words "without reappointment" in the second sentence of Section 1(2) of Article IX-D ***precisely to prohibit promotional appointments*** from Commissioner to Chairman. The framers expressly rejected *Visarra*, in particular the concurring opinion of Justice Bautista, which construed the counterpart provision in the 1935 Constitution as allowing promotional appointments. For the Court to now allow promotional appointments is to utterly disregard the clear language of the Constitution, grossly ignore the clear intent of the framers, and wantonly rewrite the Constitution — in the process destroying the independence of the constitutional commissions.

To repeat, the Constitution prohibits reappointment of any kind, including the promotional appointment of a Commissioner to the position of Chairman. **Whether the promoted Commissioner's term will or will not exceed seven years, or will be exactly seven years, is irrelevant**. The constitutional prohibition on any kind of reappointment still applies to any promotional appointment.

The appointment or designation to the COA in a temporary or acting capacity is prohibited.

Section 1(2), Article IX-D of the Constitution expressly prohibits appointments or designations in a temporary or acting capacity. The last sentence of Section 1(2) states: "**In no case shall any Member be appointed or designated in a temporary or acting capacity**." Yet, after COA Chairman Guillermo Carague's (Chairman Carague) term of office expired, Villar was appointed as ***acting*** chairman from 4 February 2008 to 4 April 2008, in violation of this express constitutional prohibition. Clearly, Villar's designation as temporary or acting COA Chairman was unconstitutional. This Court must declare such appointment unconstitutional to prevent a recurrence of ***temporary or acting*** appointments to the independent constitutional commissions.

Term versus Tenure

On several occasions, the Court had clarified the distinction between **term** and **tenure**. The *term of office* is the period when an elected officer or appointee is entitled to perform the functions of the office and enjoy its privileges and emoluments.[14] The **term is fixed by statute** and it does not change simply because the office may have become vacant for some time, or because the incumbent holds over in office beyond the end of the term due to the fact that a successor has not been elected and has failed to qualify.[15] In the case of the independent constitutional

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[14] *Casibang v. Aquino,* 181 Phil. 190 (1979).

[15] *Valle Verde Country Club, Inc. v. Africa,* G.R. No. 151969, 4 September 2009, 598 SCRA 202, 210.

commissions, the Constitution not only fixes the terms of office but also staggers the terms of office with a fixed common starting date, which is the date of ratification of the 1987 Constitution.[16]

On the other hand, *tenure* is the period during which the incumbent ***actually holds the office***. In length of time, *tenure* may be as long as, or longer or shorter than, the *term* for reasons within or beyond the power of the incumbent.[17] The phrase "actually holds office" means the discharge of the duties of the office after due appointment and qualification.[18]

The term of office of the Chairman and Commissioners of the COA is *fixed by the Constitution* at seven years, except for the first appointees. Villar was appointed Commissioner for a term of seven years, but served only four years, which is his actual tenure. His four-year tenure as Commissioner cannot be tacked on to the term of office of Chairman for two reasons: first, it will give him a tenure of more than seven years, and second, crossing from one line of succession to another is prohibited.

This Court cannot also uphold Villar's appointment as Chairman for a term of three years because the Constitution specifically says that the term of office shall be seven years if the predecessor's term has expired, as in the case of Villar's predecessor, Chairman Carague. If the appointee is replacing a predecessor with an unexpired term, as in the case of Villar's successor, Commissioner Evelyn San Buenaventura (San Buenaventura), then the appointee's term of office shall be such unexpired term.

The President has no power to appoint a Chairman for less than a seven-year term in place of a predecessor whose full term has expired. To repeat, the Constitution expressly mandates that the Chairman "**shall be appointed by the President x x x**

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[16] *Gaminde v. Commission on Audit,* 401 Phil. 77, 88-89 (2000).

[17] *Topacio Nueno v. Angeles,* 76 Phil. 12, 22 (1946).

[18] See the Dissenting Opinion of Justice Roberto Concepcion in *Salaysay v. Castro,* 98 Phil. 364, 385 (1956)

for a term of seven years xxx." Thus, apart from the constitutional prohibition on reappointment, Villar's appointment as Chairman for a three-year term is in itself unconstitutional for violation of the mandated fixed seven-year term prescribed by the Constitution.

To this, the *ponencia* agrees:

> [T]he promotional appointment of Villar ending on February 2, 2011 constitutes [an] infringement of Section 1(2), Article IX-D of the 1987 Constitution, hence, void because the President is only authorized to appoint the new chairman to a full term of seven (7) years when the vacancy is created by the expiration of the term of the predecessor.

Rationale behind the staggering of terms

Fr. Joaquin Bernas, S.J., a member of the 1986 Constitutional Commission, explained the rationale for the staggering of terms of members of the three independent constitutional commissions:

> In prescribing that the term of each Commissioner shall be seven years but that of the Commissioners first appointed, three shall hold office for seven years, three for five years, and the last three for three years, the result achieved is that at any one time only three Commissioners (of the three independent constitutional commissions) retire together. **Continuity in the body is thus achieved. Moreover, it makes it unlikely that all the Commissioners at any one time are appointees of the same President.**[19] (Emphasis supplied)

Under the staggering of terms, there will be a vacancy in the COA only once every two years arising from the expiration of terms of office. No two vacancies will occur at the same time arising from the expiration of terms.

There are two reasons for staggering the terms of office of the members of the constitutional commissions. First is to ensure the continuity of the body. For the COA, this means that at any given time, there will always be at least two members — barring

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[19] Bernas, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY,* p. 929.

death, resignation, or impeachment in the meantime — discharging the functions of the COA.

Second, staggering of terms ensures that the same President will not appoint all the three members of the COA, unless the unexpected happens *i.e.*, when vacancies arise out of death, resignation, or impeachment. This is necessary to safeguard the independence of the COA. This staggering of terms mandated by the Constitution must be observed by the President as the appointing authority. It is the duty of this Court to ensure that this constitutional mandate is followed.

Villar's appointment as Chairman violates the staggering of terms mandated by the Constitution.

Villar insists that, since he is replacing Carague who has served his full seven-year term, he (Villar) must also be given a full seven-year term despite his four-year tenure as Commissioner. Villar justifies his stance by claiming that his appointment as Chairman is to "a totally different and distinct office."

This is outright error without any basis under the Constitution, law or jurisprudence. The Court cannot uphold Villar's appointment as Chairman without wreaking havoc on the constitutionally mandated staggering of terms or rotational system in the terms of office of the Chairman and Commissioners of the COA.

In *Republic v. Imperial*,[20] the Court held that the staggering of terms, taken together with the prescribed term of office,[21] without reappointment, "evidences a deliberate plan to have a regular rotation or cycle in the membership of the commission, by having subsequent members appointable only once every three years."[22]

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[20] 96 Phil. 7710 (1955).

[21] Seven years under the 1987 Constitution, nine years under the 1935 Constitution.

[22] *Republic v. Imperial, supra.*

The term of former Chairman Carague was from 2 February 2001 to 2 February 2008. Since Chairman Carague served his full seven-year term, whoever was appointed to replace him should have been given a full seven-year term, or from 2 February 2008 until 2 February 2015. However, since Villar was already a Commissioner for four years, he could not be given a full seven-year term because then he would serve the COA for more than seven years. Thus, Villar was given a term of only three years as Chairman, with the justification that Villar "carried with him his seven-year term" as Commissioner.

The minority views Villar's appointment thus:

> [I]n 2008, Chairman Carague's term expired. Again, either Commissioner may be promoted or upgraded to the position of chairman with the condition that they would only serve his or her remaining term. And this is exactly what happened to Commissioner Villar when President Arroyo promoted him as chairman. **This time, an outsider to be appointed should have a full seven-year term because he or she was not filling in an unexpired term of a member but was in fact replacing one whose term had expired. By this scheme, San Buenaventura would not have been appointed to the unexpired portion of then Commissioner Villar[**'**s term]** ***as the latter carried with him his seven-year term*****. San Buenaventura or any outsider should have been appointed to a full seven-year term.** (Emphasis supplied)

The minority insists that "in the case of San Buenaventura, she should have been considered a replacement of [Chairman] Carague and should have been appointed for a term of seven years." The minority rationalizes that San Buenaventura replaced Chairman Carague, not Villar, because at that time Villar was "**still a commissioner, albeit a chairman**."

It is undeniable that Villar resigned as Commissioner on the fourth year of his seven-year term before his term expired. It is also undeniable that San Buenaventura was appointed Commissioner to replace Villar for the unexpired term of Villar as Commissioner. It is further undeniable that Villar was appointed Chairman to replace Chairman Carague whose term had expired.

To appoint San Buenaventura as Commissioner with the seven-year term of the Chairman, instead of the unexpired term of her predecessor Villar, is to ***cross the lines of succession***. The minority's view would have the lines of succession crossed twice — the first, when Villar "**carried with him his seven-year term**," and the second, when San Buenaventura should have been given **a** "**full seven-year term**" for "**actually replacing an expired term of Chairman G. Carague**." To hold that San Buenaventura replaced Chairman Carague because Villar "**was still a member, albeit a chairman**" is to hold that Villar held simultaneously two positions — that of Commissioner and Chairman, in itself a constitutionally anomalous situation. And if indeed Villar held both positions simultaneously, then there would have been no vacancy and San Buenaventura could not have been appointed to replace Villar as Commissioner. The minority is caught in a tangled web of ridiculous self-contradictions and inconsistencies.

The minority further holds that the "**appointment of San Buenaventura to serve up to 2 February 2011 only disrupted the rotational cycle**." On the contrary, appointing San Buenaventura to a full term of seven-years or up to 2 February 2015 would mean that her term would expire ***simultaneously*** with the expiration of the term of the Chairman on 2 February 2015. This would disrupt the constitutional rotation cycle of one vacancy every two years, with no two vacancies occurring at the same time.

With Villar's resignation as Commissioner and appointment as Chairman, the only vacancy left, with its corresponding unexpired term, was for the office of Commissioner vacated by Villar. Hence, San Buenaventura was appointed Commissioner in place of the resigned Villar. When Villar resigned as Commissioner, the third sentence of Section 1(2), Article IX-D of the Constitution applied — that "appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor."

Thus, San Buenaventura merely assumed the unexpired term of the resigned Villar. Giving San Buenaventura the

seven-year term of the vacancy arising from the expiration of Chairman Carague's term is crossing the lines of succession, which even the minority agrees is prohibited by the Constitution.

The fact is the full seven-year term applies to whoever replaces Chairman Carague because he or she will not be filling an unexpired term but will be replacing one whose term has expired. Apart from the prohibition on reappointment, another reason why no incumbent Commissioner could be promoted to Chairman to replace Chairman Carague, whose term had expired, is that whoever is appointed must be given a full seven-year term as fixed by express command of the Constitution. A "promotional" appointment of an incumbent Commissioner to succeed Chairman Carague will automatically make the appointee's term exceed seven years. The President has no discretion to give the appointee a shorter term to avoid breaching the maximum seven-year term. **The term of office is fixed by the Constitution, not by the President**.

To allow Villar to take the position of Chairman without exceeding the maximum seven-year term, the minority had to justify that Villar brought with him his term of office as Commissioner into his term as Chairman. However, Villar could not have *carried* with him his seven-year term as Commissioner because there must be **no crossing of lines** — as expressed in the constitutional provision that "appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor." The remainder of Villar's term was *actually left in his line of succession as Commissioner* and, in fact, given to a new Commissioner, San Buenaventura. There is no denying that Villar's appointment as Chairman crossed the lines of succession, disrupted the rotational scheme, and breached the prohibition on reappointment, a prohibition that clearly includes "promotional" appointments. Hence, Villar's appointment as Chairman with a term of three years has no legal basis at all.

The minority brushes aside the stark fact that "promotion" disturbs the staggering of terms or rotational scheme of appointment. If a Commissioner, who has already served part

of his or her seven-year term, is appointed Chairman and brings with him or her the remainder of his or her term as Commissioner, the regular rotational scheme of appointment is immediately thrown into chaos.

As this case clearly shows, the rotational scheme of appointment is an integral element of the constitutionally mandated structure of the Constitutional Commissions. To ignore it is to invite exactly the kind of problems posed in this case.

To illustrate, the lines of succession and terms of office of the Chairman and Commissioners of the COA — which have been observed since 2 February 1987 until Villar's appointment in 2008 — are as follows:

Chairman	**Commissioner I**	**Commissioner II**
February 2, 1987 *to* *February 2, 1994* (7-year original term)	*February 2, 1987* *to* *February 2, 1992* (5-year original term)	*February 2, 1987* *to* *February 2, 1990* (3-year original term)
February 2, 1994 *to* *February 2, 2001*	*February 2, 1992* *to* *February 2, 1999*	*February 2, 1990* *to* *February 2, 1997*
February 2, 2001 *to* *February 2, 2008*	*February 2, 1999* *to* *February 2, 2006*	*February 2, 1997* *to* *February 2, 2004*
February 2, 2008 *to* *February 2, 2015*	*February 2, 2006* *to* *February 2, 2013*	*February 2, 2004* *to* *February 2, 2011*

As shown above, every two years a single vacancy arises due to the expiration of the term of office of a COA member. No two such vacancies occur at the same time.

However, with Villar's appointment, what actually happened is this:

Chairman	Commissioner I	Commissioner II
Teofisto Guingona[23]/ Eufemio Domingo[24]/ Pascacio Banaria[25] *February 2, 1987 to February 2, 1994* (7-year original term)[26]	Bartolome Fernandez *February 2, 1987 to February 2, 1992* (5-year original term)	Eufemio Domingo[27]/Alberto Cruz *February 2, 1987 to February 2, 1990* (3-year original term)
Celso Gangan[28] *February 2, 1994 to February 2, 2001*	Sofronio Ursal *February 2, 1992 to February 2, 1999*	Rogelio Espiritu *February 2, 1990 to February 2, 1997*
Guillermo Carague *February 2, 2001 to February 2, 2008*	Emmanuel Dalman *February 2, 1999 to February 2, 2006*	Raul Flores *February 2, 1997 to February 2, 2004*

[23] Guingona was appointed COA Chairman on 10 March 1986, prior to the ratification of the 1987 Constitution, and served in that capacity until March 1987.

[24] Appointed COA Chairman in March 1987 and served in that capacity until April 1993.

[25] Appointed COA Chairman in April 1993 and served in that capacity until February 1994.

[26] The Court explained in the case of *Gaminde v. Commission on Audit* (G.R. No. 140335, 13 December 2000) that "the terms of the first Chairmen and Commissioners of the Constitutional Commissions under the 1987 Constitution must start on a common date, irrespective of the variations in the dates of appointments and qualifications of the appointees, in order that the expiration of the first terms of seven, five ang three years should lead to the regular recurrence of the two-year interval between the expiration of the terms" and therefore, "the appropriate starting point of the terms of office of the first appointees to the Constitutional Commissions under the 1987 Constitution must be on February 02, 1987, the date of the adoption of the 1987 Constitution.

[27] Domingo was appointed COA Commissioner in April 1986 and served in that capacity until he was appointed Chairman in March 1987.

[28] Gangan was appointed Chairman on 3 February 1994.

Villar *February 2, 2008* *to* *February 2, 2011*	Juanito Espino *February 2, 2006* *to* *February 2, 2013*	**Villar** *February 2, 2004* *to* *February 2, 2008* **San Buenaventura** *February 2, 2008* *to* *February 2, 2011*
Ma. Garcia Pulido-Tan[29] *February 2, 2011* *to* *February 2, 2015*	*February 2, 2013* *to* *February 2, 2020*	**Heidi Mendoza**[30] *February 2, 2011* *to* *February 2, 2018*

Immediately apparent is the occurrence of two vacancies at the same time, namely, the expiration of San Buenaventura's term on 2 February 2011 and expiration of Villar's term also on the same date. This is contrary to the staggering of terms where **only one vacancy occurs every two years as a result of the expiration of the terms of office**.

LIkewise immediately apparent is the fact that incumbent COA Chairman Ma. Gracia Pulido-Tan — an "outsider," or one without any prior term within the COA — is given a term of office of only four years. This is contrary to Section 1(12) of Article IX-D, which states that the Chairman and Commissioners of the COA "***shall* be appointed x x x for a term of seven years**." The incumbent Chair's abbreviated term, however, is the result of Villar's reappointment as Chairman,

[29] Per the *Official Gazette*, Ma. Gracia M. Pulido-Tan was appointed COA Chairperson on 10 June 2011, for a term expiring on 02 February 2015 <http://www.gov.ph/2011/06/10/appointments-and-designations-june-10-2011/> (visited 22 July 2011).

[30] Per the *Official Gazette*, Heidi L. Mendoza was appointed COA Commissioner on 10 June 2011, for a term expiring on 02 February 2018 <http://www.gov.ph/2011/06/10/appointments-and-designations-june-10-2011/> (visited 22 July 2011).

for if incumbent Chairman Pulido-Tan is given a full seven-year term as prescribed in the 1987 Constitution, her term would end at the same time as Commissioner Mendoza and the staggering of terms or rotational scheme of succession would be disrupted again.

The disruptive effect of Villar's appointment is making itself obvious — it forced the incumbent President to appoint a new Chairman to a term shorter than that mandated by the Constitution, if only to restore tings in their proper rotational scheme. Even the minority conceded that the incumbent "*President has brought sanity and order to the otherwise disrputive appointments made by a former appointing power in the case of Villar and San Buenaventura*." Moroever, Villar's "promotin" as Chairman and San Buenaventura's appointment as Commissioner, *with their terms ending on the same date*, further disrupted the constitutional scheme of staggering the members' terms of office.

In every case that a Commissioner of the COA — or of any of the other constitutional commissions for that matter — is "promoted" to Chairman and brings with him or her the unexpired portion of his or her term, the same disruption in the constitutional rotation scheme will happen. This was never the intention of the framers of the Constitution, and this not what the clear language of the 1987 Constitution mandates.

The only way to prevent another **insane, disorderly and disruptive** appointment from happening again is to affirm that a "promotion" from Commissioner to Chairman is expressly prohibited by the 1987 Constitution, as clearly intended by the framers of the 1987 Constitution, and as specifically written in Section 1(2), Article IX-D of the 1987 Constitution. The framers of the 1987 Constitution added the words "**without reappointment**" ***twice*** in Section 1(2) of Article IX-D precisely to remove any doubt whatsoever that the prohibition applies to "***any reappointment of any kind***," categorically rejecting the *Visarra* ruling, in particular the concurring opinion of Justice Bautista, that allowed a "promotional appointment" from Commissioner to Chairman.

What then do we make of Villar's "promotional" appointment to a three-year term as COA Chairman? To stress the obvious, it is nothing but a blatant, barefaced violation of the 1987 Constitution that must be frankly characterized for what it is — grossly and manifestly unconstitutional.

The *ponente* posits:

> [A]ppointment to the COA, by express constitutional fiat, shall be for a term of seven (7) years, save when the appointment is to fill up a vacancy for the corresponding unserved term of an outgoing commissioner. x x x Should the vacancy arise out of the expiration of the term of the incumbent, then there is technically no unexpired portion to speak of. The vacancy is for the fresh 7-year term and, *ergo*, the appointment thereto shall in all instances be for seven (7) years.

Further, the *ponencia* asserts:

> The word 'reappointment' means a second appointment to one and the same office; and Sec. 1(2), Art. IX-D of the 1987 Constitution and similar provisions does not peremptorily prohibit the promotional appointment of a commissioner to chairman, provided the new appointee's tenure in both capacities does not exceed seven (7) years in all.

Following the *ponencia's* assertions, a Commissioner, with two years left to serve in the COA, can be promoted to Chairman to fill an unexpired portion of three years, following the death, resignation or impeachment of the Chaiman. This appointment, according to the *ponencia*, will not violate the constitutional prohibition because the promoted member will not be serving more than seven years in the COA.

There are, however, fundamental errors in the *ponencia's* premise.

First, as already previously discussed, a "promotion" is a reappointment prohibited by the Constitution. The ban on reappointment applies to any kind of appointment, including a promotional appointment.

Second, a promotional appointment violates the constitutional directive that all appointments shall be for a full seven-year

term, except when the appointee is filling the unexpired term of a members who died, resigned or was impeached.

Third, there will be disruption of the rotational scheme of succession if a promotional appointment is issued to fill an unexpired term of a Chairman.

*To illustrate, a Commissioner, who has served two years, is promoted to Chairman upon the resignation of the Chairman who served only one year. The new Chairman will serve a full seven-year term, counted from the time he was appointed as Commissioner. This means that the new Chairman will be appointed as Chairman for only five years; otherwise, he will serve for more than seven years. After he has served for seven years, the Chairman will mandatorily retire from the Commission. When he retires, he will leave one year in the Chairman's term of office, based on the dates set under the rotational scheme of succession, which is fixed starting on the date of the ratification of the 1987 Constitution. In order not to disturbed the rotational scheme of succession, any appointment to replace the retired Chairman must be for only one year. However, such appointment will violate the constitutional provision that the "Chairman x x x shall be appointed x x x for a term of seven years x x x" when the term of the predecessor has expired. In short, since the term of the retired Chairman has already expired, he leaves no unexpired term of his own since he served for seven years, and his successor must be given a full seven-year term. However, appointing a successor for a term of seven years will disturb the rotational scheme of succession. Either way, there will a violation of the requirement that upon the expiration of a predecessor's term the appointment of a successor shall be for a full term of seven years, or a violation of the rotational scheme of succession as envisioned in the Constitution.

To repeat, any appointment of more than the unexpired term will immediately disturb the rotational scheme of succession and violate the Constitution. Similarly, any appointment of less than seven years — since the predecessor's term has already expired — will violate the constitutional requirement that the appointment shall be for a full seven-year term if the predeccessor has fully served his seven-year term.

Finally, the minority posits so-called "guidelines" for future appointments in the Constitutional Commissions to maintain the rotational scheme of succession as mandated by the Constitution. The minority prescribes, among others, that "**commissioners may be promoted or upgraded to the position of chairman*, but they must maintain or keep their original seven-year term with them***." This guideline, however, *ipso facto* destroys the rotational scheme of succession. One needs only to reexamine the facts of this case to find a crystal clear illustration of how the guidelines that the minority prescribes, in fact, contradict the letter and spirit of the Constitution.

When Commissioner Villar was promoted as Chairman, and carried with him the remainder of his original seven-year term as argued by the minority, there was immediate disruption to the rotational scheme of succession. Since he could not be given a full seven-year term, as was proper since he was succeeding as Chairman whose term had expired, his term as Chairman would end in the middle of the term mandated by the rotational scheme of succession under the Constitution. Hence, whoever is appointed to succeed Villar will also be appointed in the middle of the mandated term. If Villar's successor is given a full seven-year term, his or her term will cut into the next successor's term, and the same cycle will continue ad *infinitum*, until the whole scheme of rotational succession in the Chairman's line is entirely lost.

The dates when the ***terms of office*** start and end **never change**, even when an appointment is made in mid-term. This is the reason why someone appointed to replace a Chairman or Commissioner, who leaves office before the end of the term, can only be appointed to the remainder of that term — known as the "unexpired portion of the term" — to preserve the rotational cycle of succession. Neither the President not this Court can change these dates.

The Constitution is the supreme law of the land and the bible of this Court. Every member of this Court has taken an oath to defend and protect the Constitution. This Court must apply and interpret the Constitution faithfully without fear or favor. This

Court must not twist or distort the letter and intent of the Constitution to favor anyone, for the Constitution is larger and far more important than any party, personality, group or institution in this country. The safeguards to ensure the independence of the constitutional commissions, as designed and written in the Constitution, are vital to the survival of our democracy and the development of our nation. It is the sacred duty of this Court to preserve and maintain these safeguards.

Accordingly, I vote to **GRANT** the petition and to declare respondent Reynaldo A. Villar's appointment as Acting Chairman, and as Chairman, of the Commission on Audit, **UNCONSTITUTIONAL**.

SEPARATE CONCURRING AND DISSENTING OPINION

MENDOZA, *J.*:

I convey my concurrence with the well-studied position of Justice Presbitero J. Velasco, Jr. that Section 1(2), Article IX-(D) of the 1987 Constitution does not proscribe the promotion or upgrade of a commissioner to a chairman, provided that his tenure in office will not exceed seven (7) years in all. The appointment is not covered by the qualifying or restricting phrase "without reappointment" twice written in that section.

From the records, the following appear to be the facts of the case:

1] On February 15, 2001, then President Arroyo appointed Carague as Chairman of the Commission on Audit *(COA)* for a term of seven (7) years from February 2, 2001 to February 2, 2008.

2] Three years later, on February 7, 2004, President Arroyo appointed Villar as the third member of the COA also for a term of seven years, or from **February 2, 2004 to February 2, 2011**.[1] When Carague's term of office expired, Villar was designated

[1] *Rollo*, pp. 12-13.

as "Acting Chairman" of the COA from February 4, 2008 to April 4, 2008. On April 18, 2008, on his fourth year as COA Commissioner, Villar was appointed to the position of COA Chairman with a term ending on **February 2, 2011**. His promotion was subsequently confirmed by the Commission on Appointments on June 11, 2008.[2]

3] On January 5, 2010, San Buenaventura was appointed as COA Commissioner by President Arroyo. As shown in her appointment papers, she was to serve only the unexpired term of Villar as commissioner or up to **February 2, 2011**.[3]

4] On July 26, 2010, Funa filed this petition for *certiorari* and prohibition challenging the constitutionality of the appointment of Villar as COA Chairman contending that the promotion of Villar, who had served as member therein for four (4) years, was a violation of the Constitution because it was, in effect, a prohibited "reappointment."

From the pleadings and memoranda, it appears that the principal issue is whether or not the constitutional proscription on reappointment includes the promotion of an incumbent commissioner as chairman of a constitutional commission.

The resolution of the issue entails the proper interpretation of Section 2, Article IX-D of the Constitution which reads:

> (2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointment for **a term of seven years without reappointment.** Of those first appointed, the Chairman shall hold office for seven years, one commissioner for five years, and the other commissioner for three years, **without reappointment**. **Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.** In no case shall any member be appointed or designated in a temporary or acting capacity. (Emphases supplied)

From the aforequoted provision, the following are clear and undisputed:

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[2] *Id.* at 13.

[3] *Id.* at 14.

- The **FIRST** sentence sets out that the members of the COA must be appointed by the President for a non-extendible term of seven years, thus, the phrase "without reappointment" at the end of the sentence;
- The **SECOND** sentence specifically directs that the first set of appointees to the COA starting with the Chairman shall have a non-extendible term of seven, five and three years, which provision sets the ball rolling for the staggered system of appointments;

  The terms of these first appointees to the COA are also non-extendible for the second sentence is also qualified by the phrase "without reappointment";
- The **THIRD** sentence instructs that an appointment to any vacancy in the COA shall only be for the unexpired term of the predecessor; and
- The **FOURTH** sentence imposes a restriction on the power of the appointing authority, the President, to designate a member of the COA in a temporary or acting capacity.

The Framers were clear in setting these limitations. They could very well have been as clear and explicit with respect to promotions if it was their intention to do so.

My reasons for being one with Justice Velasco on the issue are the following:

1] the Constitution does not explicitly proscribe such promotions;

2] before the 1987 Constitution, there were several unquestioned and upheld promotions of similar nature; and

3] after the 1987 Constitution, a commissioner was still promoted to succeed a chairman.

There is nothing at all in Section 2 which expressly or impliedly proscribes promotion of a commissioner to chairman. If it was the intention of the Framers to absolutely prohibit such movement, it would have been categorically specified and spelled out in the provision. Evidently, there was none. There were indeed

discussions about it in the constitutional commission but nothing definite was finally crafted.

The only thing clear was that members could not be reappointed either as commissioner or chairman after they had served their respective terms of office. Nothing even remotely suggested that there was an intention to do away with promotion or upgrade.

In the past (even under the 1987 Constitution), there were unquestioned promotions in the various constitutional commissions whether due to the death, disability, resignation, impeachment or expiration of the term of the predecessor, promotions were made and had, in fact, been unchallenged.

In *Visarra v. Miraflor*,[4] the appointment of Commissioner Gaudencio Garcia *(Garcia)* to succeed Chairman Jose P. Carag *(Carag)*, upon the expiration of the latter's term in 1959, was recognized by the Court without question. In *Nacionalista Party v. De Veyra*,[5] Vicente de Vera was among the first commissioners appointed to the Commission on Elections *(COMELEC)* under the 1935 Constitution. When the COMELEC chairmanship became vacant by the death of Chairman Jose Lopez Vito in 1947, De Vera was promoted to occupy this vacancy for the unexpired term of the former incumbent. De Vera's appointment to the chairmanship was met with protest, on the theory that his promotion thereto was considered a "reappointment" disallowed by the Constitution. The Court, through former Chief Justice Moran, upheld the appointment.

The reason therefor was embodied in the concurring opinion of Justice Angelo Bautista in *Visarra* that the ruling in *Nacionalista* remains to be a binding precedent on the validity of a promotion of an incumbent Commissioner to the position of Chairman. Thus:

[T]o hold that the promotion of an Associate Commissioner to Chairman is banned by the Constitution merely by judicial fiat **would be to relegate a member forever to his position as such without**

[4] 118 Phil. 1 (1963).

[5] 85 Phil. 126 (1949).

hope of enjoying the privileges incident to the chairmanship while giving a premium to an outsider who may be less deserving except probably his political ascendancy because of his lack of experience on the mechanics of that delicate and important position x x x its effect is to stimulate hard work greater zeal and increased efficiency for a member in the hope that his efforts would someday be rewarded with a promotion. The contrary would relegate him to apathy, indifference, hopelessness and inaction. It is never a good policy to stultify one's legitimate ambition to betterment and progress.[6]

Despite the deliberations in the constitutional commission, there was no discussion at all on such a prohibition. What was clearly discussed and settled was the safety valve that no appointee shall serve an aggregate period of more than seven (7) years. The records of the deliberations of the 1986 Constitutional Commission disclose the following:

"MS. AQUINO. Thank you.

In the same paragraph, I would propose an amendment by addition on page 2, line 31. Between the period (.) after the word 'predecessor' and the sentence which begins with 'In no case,' insert THE APPOINTEE SHALL IN NO CASE SERVE AN AGGREGATE PERIOD OF MORE THAN SEVEN YEARS. I was thinking that this may approximate the situation wherein a commissioner is **first appointed as an ordinary commissioner and later on appointed as chairman.** I am willing to withdraw that amendment if there is representation on the part of the Committee that this provision contemplates that kind of situation and that **there is an implicit intention to prohibit a term that in the aggregate will exceed more than seven years.** If that is the intention, I am willing to withdraw my amendment.

MR. MONSOD. If the Gentleman will read the whole Article, she will notice that there is no reappointment of any kind and, therefore, as a whole, **there is no way that somebody can serve for more than seven years.** The purpose of the last sentence is to make sure that this does not happen by including in the appointment both temporary and acting capacities.

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[6] Concurring Opinion of Justice Angelo Bautista in *Visarra v. Miraflor*, 118 Phil. 1, 13 (1963).

MS. AQUINO. Yes. Reappointment is fine; that is accounted for and appointment of a temporary or acting capacity is also accounted for. But **I was thinking of a situation wherein a commissioner is upgraded to a position of chairman.** But if this provision is intended to cover that kind of situation, then I am willing to withdraw my amendment.

MR. MONSOD. It is covered.

MR. FOZ. **There is a provision on line 29 precisely to cover that situation.** It states: 'Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.' In other words, **if there is upgrading of position from commissioner to chairman, the appointee can only serve the unexpired portion of the term of the predecessor.**

MS. AQUINO. But **we have to be very specific** about it; the provision does not still account for that kind of a situation because, in effect, it might even shorten the term because he serves only the unexpired portion of the vacant position.

MR. FOZ. He takes it at his own risk. He knows that he will only have to serve the unexpired portion of the term of the predecessor.

MS. AQUINO. Regardless of that, my question is: Will this provision apply likewise to that kind of a situation? In other words, I am only asking for an assurance that the safety valve applies to this situation.

MR. FOZ. The provision does take care of that situation.

MS. AQUINO. Thank you."

On the whole, Commissioner Aquino was of the position that the prohibition on re-appointment does not include the promotion or upgrade of an incumbent commissioner to the position of chairman. What she was firm about was "an implicit intention to prohibit a term that in the aggregate will exceed more than seven years." For her, a promotion or an upgrade was permissible for as long as the aggregate term would not exceed the seven-year limit.

Commissioner Monsod shared a similar position. Although he made a sweeping remark, a full and complete reading of his response would reveal that he was merely assuring Commissioner

Aquino that there would be no chance for anybody to serve for more than seven years.

The response of Commissioner Foz bares that he did not foreclose that situation of a commissioner being upgraded to a chairman.

After the 1987 Constitution was ratified, on February 2, 1987, former President Corazon C. Aquino *(President Aquino)* appointed Teofisto Guingona *(Guingona)* as COA Chairman for a term of seven years, Bartolome Fernandez *(Fernandez)* as commissioner for a term of five years, and Eufemio Domingo *(Domingo)* as commissioner for a term of three years. When Guingona resigned to run for a senate seat, President Aquino promoted Commissioner Domingo to the position of Chairman.[7]

With due respect to Justice Velasco, I part with him with respect to his position that a commissioner cannot be promoted as chairman in case of the expiration of the term of his predecessor. My view is that such a promotion is allowable not only in case of death, disability, resignation or impeachment.

It has been argued by the petitioner that since Carague had already completed his full term, Villar's appointment was a "constitutional impossibility"[8] because granting him a fresh term of seven (7) years as Chairman would give him more than the maximum term allowed, in view of his four-year tenure as Commissioner. This, for petitioner, completely debunks Villar's assertion that he must remain as COA Chairman until 2015. A similar view was aired when it was advocated that Villar's promotion was invalid because it "was not legally feasible in the light of the 7-year aggregate rule."[9] The explanation given was that "Villar has already served 4 years of his 7-year term as COA commissioner. A shorter term, however, to comply with said rule would effectively breach the clear purpose of the

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[7] *Rollo,* pp. 240 to 243 and pp. 315 to 316.

[8] Memorandum for Petitioner, *rollo,* p. 227.

[9] Concurring and Dissenting Opinion, dated October 7, 2011, of Mr. Justice Velasco, p. 10.

Constitution of giving every appointee so appointed subsequent to the first set of commissioners, a fixed term of office of 7 years."[10]

The undersigned finds himself unable to agree with such position for three reasons. *First,* it has no explicit constitutional basis. *Second,* in the past, commissioners were promoted to the chairmanship without any question. *Third,* it is unfair to an incumbent commissioner who cannot hope to be promoted in case of *expiration* of the term of a chairman.

The position that a commissioner cannot be promoted in case of *expiration* of a term of chairman has no clear and concrete constitutional basis. There is nothing at all in the subject constitutional provision which expressly or impliedly restricts the promotion of a commissioner in situations where the tenure of his predecessor is cut short by *death, disability, resignation* or *impeachment* only. Likewise, there is no express provision prohibiting a promotion in case of the *expiration* of the term of a predecessor. The *ponencia* mentioned some distinctions but they were not clear or substantial. There were no discussions about it either in the debates of the constitutional commission. What is unchallenged is the prohibition on reappointment of either a commissioner or chairman *after* he has served his term of office (expiration of term), or his term has been cut short by disability or resignation.

In promotions, naturally the predecessor is a chairman. In case of expiration of his term, an incumbent commissioner can be appointed. Note that in the Constitution, there is *no distinction whether the predecessor is a chairman or a mere commissioner.* For said reason, among others, it is my considered view that a commissioner can be promoted in case of expiration of term of the chairman.

In fact, in the past, a commissioner was promoted to chairman *after the expiration* of the term of his predecessor. He was Commissioner Garcia, who was promoted to succeed Chairman

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[10] *Id.* at 10-11.

Carag of the COMELEC, upon the expiration of the latter's term in 1959.

Premises considered, it is my considered view that the promotion of Villar was legal but he could serve up to February 15, 2011 only because his tenure should not exceed seven (7) years.

Respectfully submitted.

EN BANC

[G.R. No. 193261. April 24, 2012]

MEYNARDO SABILI, *petitioner, vs.* **COMMISSION ON ELECTIONS and FLORENCIO LIBREA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC'S RULES OF PROCEDURE; PROMULGATION AND FINALITY OF DECISION; SUSPENSION OF THE RULE ON NOTICE PRIOR TO PROMULGATION OF A DECISION DOES NOT AFFECT THE RIGHT OF THE PARTIES TO DUE PROCESS.— [W]e held x x x [in *Lindo v. Commission on Elections*] that the additional rule requiring notice to the parties prior to promulgation of a decision is not part of the process of promulgation. Since lack of such notice does not prejudice the rights of the parties, noncompliance with this rule is a procedural lapse that does not vitiate the validity of the decision. x x x Moreover, quoting *Pimping v. COMELEC*, citing *Macabingkil v. Yatco*, we further held in the same case that failure to receive advance notice of the promulgation of a decision is not sufficient to set aside the COMELEC's judgment,

as long as the parties have been afforded an opportunity to be heard before judgment is rendered x x x. In the present case, we read from the COMELEC Order that the exigencies attendant to the holding of the country's first automated national elections had necessitated that the COMELEC suspend the rule on notice prior to promulgation, and that it instead direct the delivery of all resolutions to the Clerk of the Commission for immediate promulgation. Notably, we see no prejudice to the parties caused thereby. The COMELEC's Order did not affect the right of the parties to due process. They were still furnished a copy of the COMELEC Decision and were able to reckon the period for perfecting an appeal. In fact, petitioner was able to timely lodge a Petition with this Court. Clearly, the COMELEC validly exercised its constitutionally granted power to make its own rules of procedure when it issued the 4 May 2010 Order suspending Section 6 of COMELEC Resolution No. 8696.

2. ID.; ID.; ID.; THE SUPREME COURT DOES NOT ORDINARILY REVIEW THE COMELEC'S APPRECIATION AND EVALUATION OF EVIDENCE; EXCEPTION.— As a general rule, the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, exceptions thereto have been established, including when the COMELEC's appreciation and evaluation of evidence become so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error. In *Mitra v. Commission on Elections*, (G.R. No. 191938, 2 July 2010), we explained that the COMELEC's use of wrong or irrelevant considerations in deciding an issue is sufficient to taint its action with grave abuse of discretion x x x.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE QUANTUM OF PROOF NECESSARY IN ELECTION CASES.— To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of the intention to make it one's fixed and permanent place of abode. As in all administrative cases, the quantum of proof necessary in election cases is substantial evidence, or such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.

4. POLITICAL LAW; ELECTION LAWS; QUALIFICATIONS OF CANDIDATES FOR LOCAL ELECTION; RESIDENCY REQUIREMENT; A CANDIDATE'S RESIDENCE IN A LOCALITY THROUGH ACTUAL RESIDENCE IN WHATEVER CAPACITY IS REQUIRED.— It is true that property ownership is not among the qualifications required of candidates for local election. Rather, it is a candidate's residence in a locality through actual residence in whatever capacity. Indeed, we sustained the COMELEC when it considered as evidence tending to establish a candidate's domicile of choice the mere lease (rather than ownership) of an apartment by a candidate in the same province where he ran for the position of governor. In the more recent case of *Mitra v. Commission on Elections*, we reversed the COMELEC ruling that a candidate's sparsely furnished, leased room on the mezzanine of a feedmill could not be considered as his residence for the purpose of complying with the residency requirement of Section 78 of the Omnibus Election Code. x x x We have long held that it is not required that a candidate should have his own house in order to establish his residence or domicile in a place. It is enough that he should live in the locality, even in a rented house or that of a friend or relative. What is of central concern then is that petitioner identified and established a place in Lipa City where he intended to live in and return to for an indefinite period of time.

5. ID.; ID.; ID.; ID.; ABSENCE FROM RESIDENCE TO PURSUE FURTHER STUDIES OR PRACTICE A PROFESSION OR REGISTRATION AS A VOTER OTHER THAN IN THE PLACE WHERE ONE IS ELECTED, DOES NOT CONSTITUTE LOSS OF RESIDENCE.— [I]t must be stressed that the children, like the wife, do not dictate the family domicile. Even in the context of marriage, the family domicile is jointly decided by both husband and wife. In addition, we note that the transfer to Lipa City occurred in 2007, when petitioner's children were already well into college and could very well have chosen to study elsewhere than in Lipa City. Also, it is petitioner's domicile which is at issue, and not that of his children. But even assuming that it was petitioner himself (rather than his children) who attended educational institutions or who registered as a voter in a place other than Lipa City, we have held that "absence from residence to pursue studies or practice a profession or registration as a voter other than

in the place where one is elected, does not constitute loss of residence." In fact, Section 117 of the Omnibus Election Code provides that transfer of residence to any other place by reason of one's "occupation; profession; employment in private and public service; educational activities; work in military or naval reservations; service in the army, navy or air force, the constabulary or national police force; or confinement or detention in government institutions in accordance with law" is not deemed as loss of residence.

6. ID.; ID.; ID.; ID.; PROPERTY OWNERSHIP OR BUSINESS INTEREST IN THE LOCALITY WHERE ONE INTENDS TO RUN FOR LOCAL ELECTIVE POST OR A PERSON'S PRESENCE IN HIS HOME TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK IS NOT REQUIRED.— [I]t is well-established that property ownership (and similarly, business interest) in the locality where one intends to run for local elective post is not a requirement of the Constitution. x x x The law does not require a person to be in his home twenty-four (24) hours a day, seven (7) days a week, to fulfill the residency requirement.

7. ID.; ID.; ID.; ID.; CHANGE OF RESIDENCE IS ALLOWED PROVIDED IT CAN BE PROVEN WITH CERTAINTY THAT IT HAS BEEN EFFECTED FOR ELECTION LAW PURPOSES FOR THE PERIOD REQUIRED BY LAW. — [W]e have gone so far as to rule that there is nothing "wrong in an individual changing residences so he could run for an elective post, for as long as he is able to prove with reasonable certainty that he has effected a change of residence for election law purposes for the period required by law."

8. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; ENTRIES IN OFFICIAL RECORDS; REQUISITES.— In *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-purpose Cooperative, Inc.*, we explained that the following three (3) requisites must concur for entries in official records to be admissible in evidence: (a) The entry was made by a public officer, or by another person specially enjoined by law to do so; (b) It was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and (c) The public officer or other person had sufficient

knowledge of the facts stated by him, which facts must have been acquired by him personally or through official information. As to the first requisite, the *Barangay* Secretary is required by the Local Government Code to "keep an updated record of all inhabitants of the *barangay*." Regarding the second requisite, we have explicitly recognized in *Mitra v. Commission on Elections*, that "it is the business of a *punong barangay* to know who the residents are in his own *barangay*." Anent the third requisite, the *Barangay* Captain's exercise of powers and duties concomitant to his position requires him to be privy to these records kept by the *Barangay* Secretary.

9. ID.; ID.; ID.; ID.; ID.; DECLARATION AGAINST INTEREST; PERTAINS ONLY TO THE ADMISSIBILITY OF, NOT THE WEIGHT ACCORDED TO, TESTIMONIAL EVIDENCE.— A declaration against interest, under the Rules of Evidence, refers to a "declaration made by a person deceased, or unable to testify against the interest of a declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true." A declaration against interest is an exception to the hearsay rule. As such, it pertains only to the admissibility of, not the weight accorded to, testimonial evidence.

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

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); COMELEC'S RULES OF PROCEDURE; PROMULGATION AND FINALITY OF DECISION; SUSPENSION OF THE RULE ON NOTICE PRIOR TO PROMULGATION OF A DECISION DOES NOT AFFECT THE RIGHT OF THE PARTIES TO DUE PROCESS OR VITIATE THE VALIDITY OF THE COMELEC'S RESOLUTION.— The suspension of Sec. 6, COMELEC Resolution No. 8696 and the consequential lack of advance notice regarding the date of promulgation of the COMELEC *En Banc*'s August 17, 2010 Resolution is in accordance with the COMELEC's constitutionally granted power to make its own rules of procedure. The suspension action, without more, did not violate the petitioner's right to due process or vitiate the validity of

the COMELEC's resolution. After all, as pointed out by Justice Sereno, the advance notice of the date of promulgation is not part of the process of promulgation. More than that, the COMELEC *En Banc*'s Resolution was sufficiently made known to petitioner who was able to timely file the present petition to assail and question the same Resolution. Clearly, the suspension of Sec. 6, COMELEC Resolution No. 8696 and the non-service of an advance notice to petitioner are of no consequence to the validity of the Resolution and the findings of the COMELEC, or to the opportunity granted to petitioner to assail the Resolution.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A LIMITED REMEDY TO CORRECT ONLY ERRORS OF JURISDICTION, NOT OF JUDGMENT.— Time and again, this Court has emphasized that a Rule 65 petition for *certiorari* is a limited remedy to correct only errors of jurisdiction, not of judgment. Its only function is to keep a lower tribunal within its jurisdiction and not to authorize the court exercising *certiorari* powers to review, reconsider, re-evaluate, and re-calibrate the evidence previously presented before and considered by the lower tribunal. x x x This rule holds greater force in an application for *certiorari* against the COMELEC as it is the institution created by the Constitution precisely to handle election matters and so presumed to be most competent in matters falling within its domain. Hence, the factual findings of the COMELEC *En Banc* are binding on this Court absent any showing of a grave abuse of its discretion.

3. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; WHEN PRESENT.— [N]ot every claim of an existence of a grave abuse of discretion deserves consideration; otherwise, every erroneous judgment will be void, appellate courts will be overburdened and the administration of justice will not survive. Mere abuse of discretion is not enough. "Grave abuse of discretion" exists only when there is a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." An unfavorable

evaluation of the sufficiency of the evidence presented by a party will not be inquired into unless it is shown that the evaluation was done in an "arbitrary manner by reason of passion, prejudice, or personal hostility."

4. POLITICAL LAW; ELECTION LAWS; QUALIFICATIONS OF CANDIDATES FOR LOCAL ELECTION; RESIDENCY REQUIREMENT; THE QUESTION OF DOMICILE IS MAINLY ONE OF INTENTION AND CIRCUMSTANCES. — This Court has previously ruled that "domicile" and "residence" are synonymous in election law. A domicile is "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found, at any given time, eventually **intends** to return and remain." Thus, the question of domicile is mainly one of intention and circumstances.

5. ID.; ID.; ID.; ID.; THERE IS A PRESUMPTION IN FAVOR OF A CONTINUANCE OF AN EXISTING DOMICILE. — In the consideration of circumstances, three rules must be borne in mind: (1) a man must have residence or domicile somewhere; (2) a residence once established remains until a new one is acquired; and (3) a man can only have one residence or domicile at a time. Clearly, therefore, **there is a presumption in favor of a continuance of an existing domicile**. When the evidence presented by the contending parties are in equipoise that it is impossible for the court to determine with certainty the real intent of the person whose domicile is in question, **the presumption requires the Court to decide against a change of domicile and the retention of a domicile in question. Hence, the burden of proving a change of domicile lies on the person who claims that a change has occurred**.

6. ID.; ID.; ID.; ID.; TO ESTABLISH A NEW DOMICILE OF CHOICE, PERSONAL PRESENCE IN THE PLACE MUST BE COUPLED WITH CONDUCT INDICATIVE OF THAT INTENTION. — For the petitioner to overcome the presumption of the continuity of his domicile of origin, he must show by clear and convincing evidence of (1) an actual removal or an actual change of domicile; (2) a *bona fide* intention of abandoning the former place of residence and establishing a new one; and (3) definite acts which correspond with the purpose. Thus, to **establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that**

intention. **Bodily presence in the new locality is not the only requirement; there must be a declared and probable intent to make it one's fixed and permanent place of abode**. Indeed, the most important requirements for the establishment of a new domicile is (1) an actual and physical presence in the new locality; and (2) a clear and declared intent to abandon the old domicile (*animus non revertendi*) and remain in the new place of residence (*animus manendi*).

7. ID.; ID.; ID.; ID.; REAL AND SUBSTANTIAL REASONS MUST BE CONSIDERED IN CASES OF CHANGE OF DOMICILE.— In the case of *Fernandez v. House of Representatives Electoral Tribunal*, this Court considered the existence of "real and substantial reason" to indicate *animus manendi* in the purported new domicile of choice x x x. Unlike in *Fernandez* where We sustained petitioner's change of domicile and qualification for his office, Sabili has no "real and substantial reason" to establish his domicile in Lipa City and abandon his domicile of origin in San Juan, Batangas. With no children or wife actually residing in Lipa City, or business interests therein, it is not "grossly unreasonable" for the COMELEC to conclude that petitioner had no "declared and probative intent" to adopt Lipa City as his domicile of choice in the absence of a real and substantial reason to do so.

APPEARANCES OF COUNSEL

Romulo B. Macalintal & Edgardo Carlo L. Vistan II for petitioner.

The Solicitor General for public respondent.

Manalo Jocson & Enriquez Law Offices for private respondent.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court, seeking to annul the Resolutions in SPA No. 09-047 (DC) dated 26 January 2010 and 17 August 2010 of the Commission on Elections (COMELEC), which denied due course to and canceled the Certificate of Candidacy (COC)

of petitioner Meynardo Sabili (petitioner) for the position of Mayor of Lipa City for the May 2010 elections. At the heart of the controversy is whether petitioner Sabili had complied with the one-year residency requirement for local elective officials.

When petitioner filed his COC[1] for mayor of Lipa City for the 2010 elections, he stated therein that he had been a resident of the city for two (2) years and eight (8) months. Prior to the 2010 elections, he had been twice elected (in 1995 and in 1998) as Provincial Board Member representing the 4th District of Batangas. During the 2007 elections, petitioner ran for the position of Representative of the 4th District of Batangas, but lost. The 4th District of Batangas includes Lipa City.[2] However, it is undisputed that when petitioner filed his COC during the 2007 elections, he and his family were then staying at his ancestral home in *Barangay* (Brgy.) Sico, San Juan, Batangas.

Private respondent Florencio Librea (private respondent) filed a "Petition to Deny Due Course and to Cancel Certificate of Candidacy and to Disqualify a Candidate for Possessing Some Grounds for Disqualification"[3] against him before the COMELEC, docketed as SPA No. 09-047 (DC). Citing Section 78 in relation to Section 74 of the Omnibus Election Code,[4]

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[1] *Rollo*, p. 79.

[2] The 4th district of Batangas is composed of the municipalities of Ibaan, Padre Garcia, Rosario, San Jose, San Juan and Taysan, and the City of Lipa. http://www.batangas.gov.ph/index.php?p=15 (last accessed on 30 January 2012).

[3] *Rollo*, p. 70-76.

[4] Section 78. *Petition to deny due course to or cancel a certificate of candidacy*. **— A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed** by any person **exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false.** The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

. . . . . .

Section 74. *Contents of certificate of candidacy*. — **The certificate of candidacy shall state that the person filing it is announcing his candidacy**

private respondent alleged that petitioner made material misrepresentations of fact in the latter's COC and likewise failed to comply with the one-year residency requirement under Section 39 of the Local Government Code.[5] Allegedly, petitioner falsely declared under oath in his COC that he had already been a resident of Lipa City for two years and eight months prior to the scheduled 10 May 2010 local elections.

In support of his allegation, private respondent presented the following:

1. Petitioner's COC for the 2010 elections filed on 1 December 2009[6]
2. 2009 Tax Declarations for a house and lot (TCT Nos. 173355, 173356 and buildings thereon) in Pinagtong-ulan, Lipa City registered under the name of Bernadette Palomares, petitioner's common-law wife[7]

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for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, **the province, including its component cities, highly urbanized city of district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation**; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; **and that the facts stated in the certificate of candidacy are true to the best of his knowledge**. (Emphasis supplied.)

[5] Section 39. *Qualifications.* —

(a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other **local** language or dialect. (Underscoring supplied.)

[6] *Id.* at 137.

[7] *Id.* at 138, 152-155.

3. Lipa City Assessor Certification of Property Holdings of properties under the name of Bernadette Palomares[8]
4. Affidavit executed by private respondent Florencio Librea[9]
5. *Sinumpaang Salaysay* executed by Eladio de Torres[10]
6. Voter Certification on petitioner issued by COMELEC Election Officer Juan D. Aguila, Jr.[11]
7. 1997 Voter Registration Record of petitioner[12]
8. National Statistics Office (NSO) Advisory on Marriages regarding petitioner[13]
9. Lipa City Assessor Certificate of No Improvement on Block 2, Lot 3, Brgy. Lood, Lipa City registered in the name of petitioner[14]
10. NSO Certificate of No Marriage of Bernadette Palomares[15]
11. Lipa City Assessor Certificate of No Improvement on Block 2, Lot 5, Brgy. Lood, Lipa City registered in the name of petitioner[16]
12. Lipa City Permits and Licensing Office Certification that petitioner has no business therein[17]

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[8] *Id.* at 139.

[9] *Id.* at 140-141.

[10] *Id.* at 142-143.

[11] *Id.* at 144.

[12] *Id.* at 145-146.

[13] *Id.* at 147.

[14] *Id.* at 148.

[15] *Id.* at 149.

[16] *Id.* at 150.

[17] *Id.* at 156.

13. Apparent printout of a Facebook webpage of petitioner's daughter, Mey Bernadette Sabili[18]
14. Department of Education (DepEd) Lipa City Division Certification that the names Bernadette Palomares, Mey Bernadette Sabili and Francis Meynard Sabili (petitioner's son) do not appear on its list of graduates[19]
15. Certification from the Office of the Election Officer of Lipa City that Bernadette Palomares, Mey Bernadette Sabili and Francis Meynard Sabili do not appear in its list of voters[20]
16. Affidavit executed by Violeta Fernandez[21]
17. Affidavit executed by Rodrigo Macasaet[22]
18. Affidavit Executed by Pablo Lorzano[23]
19. Petitioner's 2007 COC for Member of House of Representative[24]

For ease of later discussion, private respondent's evidence shall be grouped as follows: (1) Certificates regarding ownership of real property; (2) petitioner's Voter Registration and Certification (common exhibits of the parties); (3) petitioner's COCs in previous elections; (3) Certifications regarding petitioner's family members; and (4) Affidavits of Lipa City residents.

On the other hand, petitioner presented the following evidence to establish the fact of his residence in Lipa City:

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

[19] *Id.* at 159.

[20] *Id.* at 160.

[21] *Id.* at 161.

[22] *Id.* at 162.

[23] *Id.* at 163.

[24] *Id.* at 164.

1. Affidavit executed by Bernadette Palomares[25]
2. Birth Certificate of Francis Meynard Sabili[26]
3. Affidavit of Leonila Suarez (Suarez)[27]
4. Certification of Residency issued by Pinagtong-ulan Barangay Captain, Dominador Honrade[28]
5. Affidavit executed by Rosalinda Macasaet[29]
6. Certificate of Appreciation issued to petitioner by the parish of Sto. Nino of Pinagtong-ulan[30]
7. Designation of petitioner in the Advisory Body (AB) of Pinagtong-ulan, San Jose/Lipa City Chapter of Guardians Brotherhood, Inc.[31]
8. COMELEC Voter Certification on petitioner issued by Election Officer Juan Aguila, Jr.[32]
9. COMELEC Application for Transfer/Transfer with Reactivation dated 6 June 2009 signed by Election Officer Juan Aguila, Jr.[33]
10. Petitioner's Income Tax Return for 2007[34]
11. Official Receipt for petitioner's income tax payment for 2007[35]

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[25] *Id.* at 102.

[26] *Id.* at 103.

[27] *Id.* at 104.

[28] *Id.* at 105.

[29] *Id.* at 106.

[30] *Id.* at 107.

[31] *Id.* at 108.

[32] *Id.* at 109.

[33] *Id.* at 110.

[34] *Id.* at 111.

[35] *Id.* at 112.

12. Petitioner's Income Tax Return for 2008[36]
13. Official Receipt for petitioner's income tax payment for 2008[37]
14. Birth Certificate of Mey Bernadette Sabili[38]
15. Affidavit executed by Jacinto Cornejo, Sr.[39]
16. Joint Affidavit of twenty-one (21) Pinagtong-ulan residents, including past and incumbent Pinagtong-ulan officials.[40]

For ease of later discussion, petitioner's evidence shall be grouped as follows: (1) his Income Tax Returns and corresponding Official Receipts for the years 2007 and 2008; (2) Certification from the *barangay* captain of Pinagtong-ulan; (3) Affidavit of his common-law wife, Bernadette Palomares; and (4) Affidavits from a previous property owner, neighbors, Certificate of Appreciation from the *barangay* parish and Memorandum from the local chapter of Guardians Brotherhood, Inc.

The COMELEC Ruling

In its Resolution dated 26 January 2010,[41] the COMELEC Second Division granted the Petition of private respondent, declared petitioner as disqualified from seeking the mayoralty post in Lipa City, and canceled his Certificate of Candidacy for his not being a resident of Lipa City and for his failure to meet the statutory one-year residency requirement under the law.

Petitioner moved for reconsideration of the 26 January 2010 Resolution of the COMELEC, during the pendency of which

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[36] *Id.* at 113.

[37] *Id.* at 114.

[38] *Id.* at 187.

[39] *Id.* at 190.

[40] *Id.* at 211-212.

[41] *Id.* at 48-62.

the 10 May 2010 local elections were held. The next day, he was proclaimed the duly elected mayor of Lipa City after garnering the highest number of votes cast for the said position. He accordingly filed a Manifestation[42] with the COMELEC *en banc* to reflect this fact.

In its Resolution dated 17 August 2010,[43] the COMELEC *en banc* denied the Motion for Reconsideration of petitioner. Although he was able to receive his copy of the Resolution, no prior notice setting the date of promulgation of the said Resolution was received by him. Meanwhile, Section 6 of COMELEC Resolution No. 8696 (Rules on Disqualification Cases Filed in Connection with the May 10, 2012 Automated National and Local Elections) requires the parties to be notified in advance of the date of the promulgation of the Resolution.

> SEC. 6. Promulgation. — The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys personally, or by registered mail, telegram, fax, or thru the fastest means of communication.

Hence, petitioner filed with this Court a Petition (Petition for *Certiorari* with Extremely Urgent Application for the Issuance of a Status Quo Order and for the Conduct of a Special Raffle of this Case) under Rule 64 in relation to Rule 65 of the Rules of Court, seeking the annulment of the 26 January 2010 and 17 August 2010 Resolutions of the COMELEC. Petitioner attached to his Petition a Certificate of Canvass of Votes and proclamation of Winning Candidates for Lipa City Mayor and Vice-Mayor issued by the City/Municipal Board of Canvassers,[44] as well as a copy of his Oath of Office.[45] He also attached to his Petition another Certification of Residency[46] issued by Pinagtong-ulan

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[42] *Id.* at 296-299.

[43] *Id.* at 63-69.

[44] *Id.* at 294.

[45] *Id.* at 295.

[46] *Id.* at 300.

Barangay Captain Dominador Honrade and sworn to before a notary public.

On 7 September 2010, this Court issued a Status Quo Ante Order[47] requiring the parties to observe the status quo prevailing before the issuance of the assailed COMELEC Resolutions. Thereafter, the parties filed their responsive pleadings.

Issues

The following are the issues for resolution:

1. Whether the COMELEC acted with grave abuse of discretion when it failed to promulgate its Resolution dated 17 August 2010 in accordance with its own Rules of Procedure; and
2. Whether the COMELEC committed grave abuse of discretion in holding that Sabili failed to prove compliance with the one-year residency requirement for local elective officials.

The Court's Ruling

1. On whether the COMELEC acted with grave abuse of discretion when it failed to promulgate its Resolution dated 17 August 2010 in accordance with its own Rules of Procedure

Petitioner argues that the assailed 17 August 2010 COMELEC Resolution, which denied petitioner's Motion for Reconsideration, is null and void. The Resolution was allegedly not promulgated in accordance with the COMELEC's own Rules of Procedure and, hence, violated petitioner's right to due process of law.

The rules governing the Petition for Cancellation of COC in this case is COMELEC Resolution No. 8696 (Rules on Disqualification of Cases Filed in Connection with the May 10, 2010 Automated National and Local Elections), which was

[47] *Id.* at 314-315.

promulgated on 11 November 2009. Sections 6 and 7 thereof provide as follows:

> SEC. 6. Promulgation. — The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys personally, or by registered mail, telegram, fax or thru the fastest means of communication.
>
> SEC. 7. Motion for Reconsideration. — A motion to reconsider a Decision, Resolution, Order or Ruling of a Division shall be filed within three (3) days from the promulgation thereof. Such motion, if not pro-forma, suspends the execution for implementation of the Decision, Resolution, Order or Ruling.
>
> Within twenty-four (24) hours from the filing thereof, the Clerk of the Commission shall notify the Presiding Commissioner. The latter shall within two (2) days thereafter certify the case to the Commission *en banc*.
>
> The Clerk of the Commission shall calendar the Motion for Reconsideration for the resolution of the Commission *en banc* within three (3) days from the certification thereof.

However, the COMELEC Order dated 4 May 2010[48] suspended Section 6 of COMELEC Resolution No. 8696 by ordering that "all resolutions be delivered to the Clerk of the Commission for immediate promulgation" in view of "the proximity of the Automated National and Local Elections and lack of material time." The Order states:

> ORDER
>
> Considering the proximity of the Automated National and Local Elections and lack of material time, the Commission hereby suspends Sec. 6 of Resolution No. 8696 promulgated on November 11, 2009, which reads:
>
> > Sec. 6. Promulgation. — The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served

[48] *Id.* at 739.

upon the parties or their attorneys personally, or by registered mail, telegram, fax or thru the fastest means of communication."

Let all resolutions be delivered to the Clerk of the Commission for immediate promulgation.

SO ORDERED.

Petitioner claims that he did not receive notice of the said suspension of Section 6 of COMELEC Resolution No. 8696. Thus, his right to due process was still violated. On the other hand, the COMELEC claims that it has the power to suspend its own rules of procedure and invokes Section 6, Article IX-A of the Constitution, which gives it the power "to promulgate its own rules concerning pleadings and practice before it or before any of its offices."

We agree with the COMELEC on this issue.

In *Lindo v. Commission on Elections*,[49] petitioner claimed that there was no valid promulgation of a Decision in an election protest case when a copy thereof was merely furnished the parties, instead of first notifying the parties of a set date for the promulgation thereof, in accordance with Section 20 of Rule 35 of the COMELEC's own Rules of Procedure, as follows:

Sec. 20. Promulgation and Finality of Decision. — The decision of the court shall be promulgated on a date set by it of which due notice must be given the parties. It shall become final five (5) days after promulgation. No motion for reconsideration shall be entertained.

Rejecting petitioner's argument, we held therein that the additional rule requiring notice to the parties prior to promulgation of a decision is not part of the process of promulgation. Since lack of such notice does not prejudice the rights of the parties, noncompliance with this rule is a procedural lapse that does not vitiate the validity of the decision. Thus:

This contention is untenable. Promulgation is the process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with

[49] 271 Phil. 844 (1991).

notice to the parties or their counsel (*Neria v. Commissioner of Immigration*, L-24800, May 27, 1968, 23 SCRA 812). It is the delivery of a court decision to the clerk of court for filing and publication (*Araneta v. Dinglasan*, 84 Phil. 433). It is the filing of the signed decision with the clerk of court (*Sumbing v. Davide*, G.R. Nos. 86850-51, July 20, 1989, *En Banc* Minute Resolution). The additional requirement imposed by the COMELEC rules of notice in advance of promulgation is not part of the process of promulgation. Hence, We do not agree with petitioner's contention that there was no promulgation of the trial court's decision. The trial court did not deny that it had officially made the decision public. From the recital of facts of both parties, copies of the decision were sent to petitioner's counsel of record and petitioner's (sic) himself. Another copy was sent to private respondent.

What was wanting and what the petitioner apparently objected to was not the promulgation of the decision but the failure of the trial court to serve notice in advance of the promulgation of its decision as required by the COMELEC rules. The failure to serve such notice in advance of the promulgation may be considered a procedural lapse on the part of the trial court which did not prejudice the rights of the parties and did not vitiate the validity of the decision of the trial court nor (sic) of the promulgation of said decision.

Moreover, quoting *Pimping v. COMELEC*,[50] citing *Macabingkil v. Yatco*,[51] we further held in the same case that failure to receive advance notice of the promulgation of a decision is not sufficient to set aside the COMELEC's judgment, as long as the parties have been afforded an opportunity to be heard before judgment is rendered, *viz*:

The fact that petitioners were not served notice in advance of the promulgation of the decision in the election protest cases, in Our view, does not constitute reversible error or a reason sufficient enough to compel and warrant the setting aside of the judgment rendered by the Comelec. Petitioners anchor their argument on an alleged denial to them (sic) due process to the deviation by the Comelec from its own made rules. However, the essence of due process is that, the parties in the case were afforded an opportunity to be heard.

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[50] 224 Phil. 326, 359 (1985).

[51] 128 Phil. 165 (1967).

In the present case, we read from the COMELEC Order that the exigencies attendant to the holding of the country's first automated national elections had necessitated that the COMELEC suspend the rule on notice prior to promulgation, and that it instead direct the delivery of all resolutions to the Clerk of the Commission for immediate promulgation. Notably, we see no prejudice to the parties caused thereby. The COMELEC's Order did not affect the right of the parties to due process. They were still furnished a copy of the COMELEC Decision and were able to reckon the period for perfecting an appeal. In fact, petitioner was able to timely lodge a Petition with this Court.

Clearly, the COMELEC validly exercised its constitutionally granted power to make its own rules of procedure when it issued the 4 May 2010 Order suspending Section 6 of COMELEC Resolution No. 8696. Consequently, the second assailed Resolution of the COMELEC cannot be set aside on the ground of COMELEC's failure to issue to petitioner a notice setting the date of the promulgation thereof.

2. On whether the COMELEC committed grave abuse of discretion in holding that Sabili failed to prove compliance with the one-year residency requirement for local elective officials

As a general rule, the Court does not ordinarily review the COMELEC's appreciation and evaluation of evidence. However, exceptions thereto have been established, including when the COMELEC's appreciation and evaluation of evidence become so grossly unreasonable as to turn into an error of jurisdiction. In these instances, the Court is compelled by its bounden constitutional duty to intervene and correct the COMELEC's error.[52]

In *Mitra v. Commission on Elections*, (G.R. No. 191938, 2 July 2010), we explained that the COMELEC's use of wrong

[52] *Mitra v. Commission on Elections*, G.R. No. 191938, 19 October 2010, 633 SCRA 580.

or irrelevant considerations in deciding an issue is sufficient to taint its action with grave abuse of discretion —

As a concept, "grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction"; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. We have held, too, that the use of wrong or irrelevant considerations in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.

Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable. Substantial evidence is that degree of evidence that a reasonable mind might accept to support a conclusion.

In light of our limited authority to review findings of fact, we do not ordinarily review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction.

In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse mutate from error of judgment to one of jurisdiction.

Before us, petitioner has alleged and shown the COMELEC's use of wrong or irrelevant considerations in deciding the issue of whether petitioner made a material misrepresentation of his residency qualification in his COC as to order its cancellation. Among others, petitioner pointed to the COMELEC's inordinate emphasis on the issue of property ownership of petitioner's declared residence in Lipa City, its inconsistent stance regarding Palomares's relationship to the Pinagtong-ulan property, and

its failure to consider in the first instance the certification of residence issued by the *barangay* captain of Pinagtong-ulan. Petitioner bewails that the COMELEC required "more" evidence to show the change in his residence, notwithstanding the various pieces of evidence he presented and the fact that under the law, the quantum of evidence required in these cases is merely substantial evidence and not clear and convincing evidence. Petitioner further ascribes grave abuse of discretion in the COMELEC's brushing aside of the fact that he has been filing his ITR in Lipa City (where he indicates that he is a resident of Pinagtong-ulan) on the mere expedient that the law allows the filing of the ITR not only in the place of legal residence but, alternately, in his place of business. Petitioner notes that private respondent's own evidence shows that petitioner has no business in Lipa City, leaving only his residence therein as basis for filing his ITR therein.

Hence, in resolving the issue of whether the COMELEC gravely abused its discretion in ruling that petitioner had not sufficiently shown that he had resided in Lipa City for at least one year prior to the May 2010 elections, we examine the evidence adduced by the parties and the COMELEC's appreciation thereof.

In the present case, the parties are in agreement that the domicile of origin of Sabili was Brgy. Sico, San Juan, Batangas. He claims that he abandoned his domicile of origin and established his domicile of choice in Brgy. Pinagtong-ulan, Lipa City, thereby making him qualified to run for Lipa City mayor. On the other hand, respondent COMELEC held that no such change in domicile or residence took place and, hence, the entry in his Certificate of Candidacy showing that he was a resident of Brgy. Pinagtong-ulan, Lipa City constituted a misrepresentation that disqualified him from running for Lipa City mayor.

To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of the intention to make it one's fixed and permanent place of abode.[53] As in all administrative cases, the quantum of proof necessary in election

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[53] *Domino v. Commission on Elections*, 369 Phil. 798 (1999).

cases is substantial evidence, or such relevant evidence as a reasonable mind will accept as adequate to support a conclusion.[54]

The ruling on private respondent's evidence

We begin with an evaluation of the COMELEC's appreciation of private respondent's evidence.

a) Petitioner's Voter Certification, Registration and COCs in previous elections

Petitioner's Voter Certification is a common exhibit of the parties. It states, among others, that petitioner is a resident of Pinagtong-ulan, Lipa City, Batangas; that he had been a resident of Lipa City for two (2) years and three (3) months; and that he was so registered on 31 October 2009. The information therein was "certified correct" by COMELEC Election Officer Juan B. Aguila, Jr.

Private respondent presented this document as proof that petitioner misrepresented that he is a resident of Lipa City. On the other hand, the latter presented this document as proof of his residency.

The COMELEC correctly ruled that the Voter Certification issued by the COMELEC Election Officer, Atty. Juan B. Aguila, Jr., was not conclusive proof that petitioner had been a resident of Lipa City since April 2007. It noted that Aguila is not the competent public officer to certify the veracity of this claim, particularly because petitioner's COMELEC registration was approved only in October 2009.

The Voter Registration Record of petitioner accomplished on 21 June 1997 showing that he was a resident of Sico, San Juan, Batangas, as well as his various COCs dated 21 June 1997 and March 2007 indicating the same thing, were no longer discussed by the COMELEC — and rightly so. These pieces of evidence showing that he was a resident of Sico, San Juan,

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[54] *Enojas, Jr. v. Commission on Elections*, 347 Phil. 510 (1997).

Batangas on the said dates are irrelevant as, prior to April 2007, petitioner was admittedly a resident of Sico, San Juan Batangas. Rather, the relevant time period for consideration is that from April 2007 onwards, after petitioner's alleged change of domicile.

b) Certificates regarding ownership of real property

The various certificates and tax declarations adduced by private respondent showed that the Lipa property was solely registered in the name of petitioner's common-law wife, Bernadette Palomares. In discussing the import of this document, the COMELEC reasoned that, being a "seasoned politician," he should have registered the Lipa property (which he claimed to have purchased with his personal funds) in his own name. Such action "would have offered positive proof of intent to change actual residence" from San Juan, Batangas to Lipa City, considering that he had previously declared his ancestral home in San Juan, Batangas as his domicile. Since Palomares and petitioner are common-law spouses not capacitated to marry each other, the property relation between them is governed by Article 148 of the Family Code,[55] where only the parties' actual contributions are recognized. Hence, petitioner cannot prove ownership of a property and residence in Lipa City through the registered ownership of the common-law wife of the property in Lipa City.

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[55] Art. 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article. The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith.

On the other hand, petitioner bewails the inordinate emphasis that the COMELEC bestowed upon the question of whether the Lipa property could be considered as his residence, for the reason that it was not registered in his name. He stresses that the issue should be residence, not property ownership.

It is true that property ownership is not among the qualifications required of candidates for local election.[56] Rather, it is a candidate's residence in a locality through actual residence in whatever capacity. Indeed, we sustained the COMELEC when it considered as evidence tending to establish a candidate's domicile of choice the mere lease (rather than ownership) of an apartment by a candidate in the same province where he ran for the position of governor.[57] In the more recent case of *Mitra v. Commission on Elections*,[58] we reversed the COMELEC ruling that a candidate's sparsely furnished, leased room on the mezzanine of a feedmill could not be considered as his residence for the purpose of complying with the residency requirement of Section 78 of the Omnibus Election Code.[59]

The Dissent claims that the registration of the property in Palomares' name does not prove petitioner's residence as it merely showed "donative intent" without the necessary formalities or payment of taxes.

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[56] *Fernandez v. House of Representatives Electoral Tribunal*, G.R. No. 187478, 21 December 2009, 608 SCRA 733.

[57] *Perez v. Commission on Elections*, 375 Phil. 1106 (1999). The other pieces of evidence considered by the COMELEC in the *Perez* case were the candidate's marriage certificate, the birth certificate of his daughter, and various letters bearing the address, all showing that he was a resident of the province for at least one (1) year before the elections.

[58] G.R. No. 191938, 2 July 2010, 622 SCRA 744.

[59] As further proof of his change in residence, Mitra had adduced affidavits from the seller of the lot he purchased, the owner of Maligaya Feedmill, the *barangay* captain and *sangguniang barangay* members of Isaub, Aborlan, as well as an Aborlan councilor. He also presented photographs of the residential portion of Maligaya Feedmill where he resides, and of his experimental pineapple plantation and cock farm. He further submitted the community tax certificate he himself secured, and a House of Representatives Identification Card, both indicating that he resides in Aborlan.

However, whatever the nature of the transaction might be, this point is immaterial for the purpose of ascertaining petitioner's residence. We have long held that it is not required that a candidate should have his own house in order to establish his residence or domicile in a place. It is enough that he should live in the locality, even in a rented house or that of a friend or relative.[60] What is of central concern then is that petitioner identified and established a place in Lipa City where he intended to live in and return to for an indefinite period of time.

Hence, while the COMELEC correctly ruled that, of itself, Palomares' ownership of the Lipa property does not prove that she or — and in view of their common-law relations, petitioner — resides in Lipa City, nevertheless, the existence of a house and lot apparently owned by petitioner's common-law wife, with whom he has been living for over two decades, makes plausible petitioner's allegation of bodily presence and intent to reside in the area.

c) Certifications regarding the family members of petitioner

Private respondent presented a Certification from the DepEd, Lipa City Division, indicating that the names Bernadette Palomares, Mey Bernadette Sabili (petitioner's daughter) and Francis Meynard Sabili (petitioner's son) do not appear on the list of graduates of Lipa City. Private respondent also presented a Certification from the Office of the Election Officer of Lipa City that the names of these family members of petitioner do not appear in its list of voters.

As the issue at hand is petitioner's residence, and not the educational or voting record of his family, the COMELEC properly did not consider these pieces of evidence in arriving at its Resolution.

The Dissent nevertheless asserts that because his children do not attend educational institutions in Lipa and are not registered voters therein, and because petitioner does not maintain a business

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[60] *De los Reyes v. Solidum*, 61 Phil. 893 (1935).

therein nor has property in his name, petitioner is unable to show the existence of real and substantial reason for his stay in Lipa City.

As to the Dissent's first assertion, it must be stressed that the children, like the wife, do not dictate the family domicile. Even in the context of marriage, the family domicile is jointly decided by both husband and wife.[61] In addition, we note that the transfer to Lipa City occurred in 2007, when petitioner's children were already well into college and could very well have chosen to study elsewhere than in Lipa City.

Also, it is petitioner's domicile which is at issue, and not that of his children. But even assuming that it was petitioner himself (rather than his children) who attended educational institutions or who registered as a voter in a place other than Lipa City, we have held that "absence from residence to pursue studies or practice a profession or registration as a voter other than in the place where one is elected, does not constitute loss of residence."[62] In fact, Section 117 of the Omnibus Election Code provides that transfer of residence to any other place by reason of one's "occupation; profession; employment in private and public service; educational activities; work in military or naval reservations; service in the army, navy or air force, the constabulary or national police force; or confinement or detention in government institutions in accordance with law" is not deemed as loss of residence.

As to the Dissent's second assertion, petitioner apparently does not maintain a business in Lipa City. However, apart from the Pinagtong-ulan property which both Suarez (the previous property owner) and Palomares swear was purchased with petitioner's own funds, the records also indicate that there are two other lots in Lipa City, particularly in Barangay Lodlod, Lipa City[63] which are registered jointly in the name of petitioner

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[61] Family Code, Article 69.

[62] *Faypon v. Quirino*, 96 Phil. 294 (1954).

[63] *Rollo*, pp. 148 and 150, Office of the City Assessor of Lipa Certification dated 14 December 2009.

and Palomares. In fact, it was private respondent who presented the Lipa City Assessor's Certificate to this effect. Even assuming that this Court were to disregard the two Lodlod lots, it is well-established that property ownership (and similarly, business interest) in the locality where one intends to run for local elective post is not a requirement of the Constitution.[64]

More importantly, we have gone so far as to rule that there is nothing "wrong in an individual changing residences so he could run for an elective post, for as long as he is able to prove with reasonable certainty that he has effected a change of residence for election law purposes for the period required by law."[65]

d) Affidavits of Lipa City residents

Private respondent also presented the affidavits of Violeta Fernandez[66] and Rodrigo Macasaet,[67] who were also residents of Pinagtong-ulan. Both stated that petitioner did not reside in Pinagtong-ulan, as they had "rarely seen" him in the area. Meanwhile, Pablo Lorzano,[68] in his Affidavit, attested that although the Lipa property was sometimes used for gatherings, he did "not recall having seen" petitioner in their *barangay*. On the other hand, private respondent[69] and Eladio de Torres,[70] both residents of Brgy. Calamias, reasoned that petitioner was not a resident of Lipa City because he has no work or family there.

The COMELEC did not discuss these Affidavits in its assailed Resolution. It was correct in doing so, particularly considering that these Affidavits were duly controverted by those presented by petitioner.

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[64] *Maquerra v. Borra*, 122 Phil. 412 (1965).

[65] *Japzon v. Commission on Elections*, G.R. No. 180088, 19 January 2009, citing *Aquino v. Commission on Elections*, 318 Phil. 467 (1995).

[66] *Supra* note 21.

[67] *Supra* note 22.

[68] *Supra* note 23.

[69] *Rollo*, pp. 82-83.

[70] *Id.* at 84-85.

Moreover, even assuming the truth of the allegation in the Affidavits that petitioner was "rarely seen" in the area, this does not preclude the possibility of his residence therein. In *Fernandez v. House of Representatives Electoral Tribunal*,[71] we held that the averments of certain *barangay* health workers — that they failed to see a particular candidate whenever they made rounds of the locality of which he was supposed to be a resident — is of no moment. It is possible that the candidate was out of the house to attend to his own business at the time. The law does not require a person to be in his home twenty-four (24) hours a day, seven (7) days a week, to fulfill the residency requirement.

The ruling on petitioner's evidence

We now evaluate how the COMELEC appreciated petitioner's evidence:

a) Petitioner's Income Tax Returns for 2007 and 2008

The Income Tax Returns of petitioner presented below showed that petitioner had been paying his Income Tax (2007 and 2008) to the Revenue District Office of Lipa City. In waving aside his Income Tax Returns, the COMELEC held that these were not indications of residence since Section 51(B) of the National Internal Revenue Code does not only state that it shall be filed in a person's legal residence, but that it may alternatively be filed in a person's principal place of business.

In particular, Section 51(B) of the National Internal Revenue Code[72] provides that the Income Tax Return shall be filed either

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[71] G.R. No. 187478, 21 December 2009, 608 SCRA 733.

[72] **SEC. 51. Individual Return. —**

(A) Requirements. — ... ...

(B) Where to File. — Except in cases where the Commissioner otherwise permits, the return shall be filed with an authorized agent bank, Revenue District Officer, Collection Agent or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business in the Philippines, or if there be no legal residence or place of business in the Philippines, with the Office of the Commissioner. x x x

in the place where a person resides or where his principal place of business is located. However, private respondent's own evidence — a Certification from the City Permits and Licensing Office of Lipa City — showed that there was no business registered in the City under petitioner's name.

Thus, COMELEC failed to appreciate that precisely because an individual income tax return may only be filed either in the legal residence OR the principal place of business, as prescribed under the law, the fact that Sabili was filing his Income Tax Returns in Lipa City notwithstanding that he had no business therein showed that he had actively elected to establish his residence in that city.

The Dissent claims that since the jurisdiction of RDO Lipa City includes both San Juan and Lipa City, petitioner's filing of his ITR therein can also support an intent to remain in San Juan, Batangas — petitioner's domicile of origin.

However, a simple perusal of the Income Tax Returns and Revenue Official Receipts for 2007 and 2008 shows that petitioner invariably declares his residence to be Pinagtong-ulan, Lipa City, rather than San Juan, Batangas.[73] Hence, while petitioner may be submitting his income tax return in the same RDO, the declaration therein is unmistakable. Petitioner considers Lipa City to be his domicile.

b) Certification from the Barangay Captain of Pinagtong-ulan

The COMELEC did not consider in the first instance the Certification issued by Pinagtong-ulan *Barangay* Captain Dominador Honrade[74] (Honrade) that petitioner had been residing in Brgy Pinagtong-ulan since 2007. When this oversight was raised as an issue in petitioner's Motion for Reconsideration, the COMELEC brushed it aside on the ground that the said Certification was not sworn to before a notary public and, hence, "cannot be relied on." Subsequently, petitioner presented another,

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[73] *Rollo*, pp. 112-114.

[74] *Rollo*, p. 105.

substantially identical, Certification from the said Pinagtongulan *Barangay* Captain, save for the fact that it had now been sworn to before a notary public.

We disagree with the COMELEC's treatment of the *Barangay* Captain's Certification and find the same tainted with grave abuse of discretion.

Even without being sworn to before a notary public, Honrade's Certification would not only be admissible in evidence, but would also be entitled to due consideration.

Rule 130, Section 44 of the Rules of Court provides:

> SEC. 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

In *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-purpose Cooperative, Inc.*,[75] we explained that the following three (3) requisites must concur for entries in official records to be admissible in evidence:

(a) The entry was made by a public officer, or by another person specially enjoined by law to do so;

(b) It was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and

(c) The public officer or other person had sufficient knowledge of the facts stated by him, which facts must have been acquired by him personally or through official information.

As to the first requisite, the *Barangay* Secretary is required by the Local Government Code to "keep an updated record of all inhabitants of the *barangay*."[76] Regarding the second requisite,

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[75] 425 Phil. 511 (2002).

[76] SEC. 394. *Barangay Secretary: Appointment, Qualifications, Powers and Duties.* — (a) The *barangay* secretary shall be appointed by the *punong*

we have explicitly recognized in *Mitra v. Commission on Elections*,[77] *punong barangay*[78] *barangay* *Barangay* *Barangay*

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barangay with the concurrence of the majority of all the *sangguniang barangay* members. The appointment of the *barangay* secretary shall not be subject to attestation by the Civil Service Commission.

(b) The *barangay* secretary shall be of legal age, a qualified voter and an actual resident of the *barangay* concerned.

(c) No person shall be appointed *barangay* secretary if he is a *sangguniang barangay* member, a government employee, or a relative of the *punong barangay* within the fourth civil degree of consanguinity or affinity.

(d) The barangay secretary shall:

(1) Keep custody of all records of the *sangguniang barangay* and the *barangay* assembly meetings;

(2) Prepare and keep the minutes of all meetings of the *sangguniang barangay* and the *barangay* assembly;

(3) Prepare a list of members of the *barangay* assembly, and have the same posted in conspicuous places within the *barangay*;

(4) Assist in the preparation of all necessary forms for the conduct of *barangay* elections, initiatives, referenda or plebiscites, in coordination with the Comelec;

(5) Assist the municipal civil registrar in the registration of births, deaths, and marriages;

(6) Keep an updated record of all inhabitants of the *barangay* containing the following items of information: name, address, place and date of birth, sex, civil status, citizenship, occupation, and such other items of information as may be prescribed by law or ordinances;

(7) Submit a report on the actual number of *barangay* residents as often as may be required by the *sangguniang barangay*; and

(8) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

[77] *Supra* note 56.

[78] SEC. 389. *Chief Executive: Powers, Duties, and Functions.* — (a) The *punong barangay*, as the chief executive of the *barangay* government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

Accordingly, there is basis in faulting the COMELEC for its failure to consider Honrade's Certification on the sole ground that it was initially not notarized.

Meanwhile, the Dissent opines that the sworn affidavit of the *barangay* chair of Pinagtong-ulan that petitioner is a resident

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(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the *barangay* and its inhabitants pursuant to Section 16 of this Code, the *punong barangay* shall:

(1) Enforce all laws and ordinances which are applicable within the *barangay*;

(2) Negotiate, enter into, and sign contracts for and in behalf of the *barangay*, upon authorization of the *sangguniang barangay*;

(3) Maintain public order in the *barangay* and, in pursuance thereof, assist the city or municipal mayor and the *sanggunian* members in the performance of their duties and functions;

(4) Call and preside over the sessions of the *sangguniang barangay* and the barangay assembly, and vote only to break a tie;

(5) Upon approval by a majority of all the members of the *sangguniang barangay*, appoint or replace the *barangay* treasurer, the *barangay* secretary, and other appointive *barangay* officials;

(6) Organize and lead an emergency group whenever the same may be necessary for the maintenance of peace and order or on occasions of emergency or calamity within the *barangay*;

(7) In coordination with the *barangay* development council, prepare the annual executive and supplemental budgets of the *barangay*;

(8) Approve vouchers relating to the disbursement of *barangay* funds;

(9) Enforce laws and regulations relating to pollution control and protection of the environment;

(10) Administer the operation of the Katarungang Pambarangay in accordance with the provisions of this Code;

(11) Exercise general supervision over the activities of the *sangguniang kabataan*;

(12) Ensure the delivery of basic services as mandated under Section 17 of this Code;

(13) Conduct an annual *palarong barangay* which shall feature traditional sports and disciplines included in national and international games, in coordination with the Department of Education, Culture and Sports;

(14) Promote the general welfare of the *barangay*; and

(15) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

of Lipa City does not help petitioner's case because it was not shown that the term "resident" as used therein carries the same meaning as domicile, that is, not merely bodily presence but also, *animus manendi* or intent to return. This Court has ruled otherwise.

In *Mitra v. Commission on Elections*,[79] the declaration of Aborlan's *punong barangay* that petitioner resides in his *barangay* was taken to have the same meaning as domicile, inasmuch as the said declaration was made in the face of the Court's recognition that Mitra "might not have stayed in Aborlan nor in Palawan for most of 2008 and 2009 because his office and activities as a Representative were in Manila."

Assuming that the *barangay* captain's certification only pertains to petitioner's bodily presence in Pinagtong-ulan, still, the COMELEC cannot deny the strength of this evidence in establishing petitioner's bodily presence in Pinagtong-ulan since 2007.

c) Affidavit of petitioner's common law wife

To substantiate his claim of change of domicile, petitioner also presented the affidavit of Palomares, wherein the latter swore that she and petitioner began residing in Lipa City in 2007, and that the funds used to purchase the Lipa property were petitioner's personal funds. The COMELEC ruled that the Affidavit was self-serving for having been executed by petitioner's common-law wife. Also, despite the presentation by petitioner of other Affidavits stating that he and Palomares had lived in Brgy. Pinagtong-ulan since 2007, the latter's Affidavit was rejected by the COMELEC for having no independent collaboration.

Petitioner faults the COMELEC's stand, which it claims to be inconsistent. He argues that since the property regime between him and Palomares is governed by Article 148 of the Family Code (based on the parties' actual contribution) as the COMELEC stressed, then Palomares' Affidavit expressly stating that

[79] G.R. No. 191938, 2 July 2010.

petitioner's money alone had been used to purchase the Lipa property (notwithstanding that it was registered in her name) was not self-serving, but was in fact, a declaration against interest.

Petitioner's argument that Palomares' affidavit was a "declaration against interest" is, strictly speaking, inaccurate and irrelevant. A declaration against interest, under the Rules of Civil Procedure, refers to a "declaration made by a person deceased, or unable to testify against the interest of a declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true."[80] A declaration against interest is an exception to the hearsay rule.[81] As such, it pertains only to the admissibility of, not the weight accorded to, testimonial evidence.[82]

Nevertheless, we see the logic in petitioner's claim that the COMELEC had committed grave abuse of discretion in being inconsistent in its stand regarding Palomares, particularly regarding her assertion that the Lipa property had been purchased solely with petitioner's money. If the COMELEC accepts the registration of the Lipa property in her name to be accurate, her affidavit disavowing ownership thereof in favor of petitioner was far from self-serving as it ran counter to her (and her children's) property interest.

The Dissent states that it was not unreasonable for the COMELEC to believe that Palomares may have committed misrepresentations in her affidavit considering that she had perjured herself as an informant on the birth certificates of her children with respect to the supposed date and place of her marriage to petitioner. However, this was not the reason propounded by the COMELEC when it rejected Palomares' affidavit.

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[80] RULES OF COURT, Rule 130C (6), Sec. 38.

[81] *Unchuan v. Lozada*, G.R. No. 172671, 16 April 2009, 585 SCRA 421.

[82] *People v. Catalino*, 131 Phil. 194 (1968).

Moreover, it is notable that Palomares' assertion in her affidavit that she and petitioner have been living in the Pinagtong-ulan property since April 2007 is corroborated by other evidence, including the affidavits of Pinagtong-ulan *barangay* officials and neighbors.

d) Affidavits from a previous property owner, neighbors, certificate from parish and designation from socio-civic organization

The Affidavit issued by Leonila Suarez[83] (erstwhile owner of the Lipa house and lot) states that in April 2007, after she received the down payment for the Lipa property and signed an agreement that petitioner would settle her bank obligations in connection with the said transaction, he and Palomares actually started residing at Pinagtong-ulan. The COMELEC brushed this Affidavit aside as one that "merely narrates the circumstances surrounding the sale of the property and mentions in passing that Sabili and Palomares lived in Pinagtong-ulan since April 2007 up to the present."[84]

We disagree with the COMELEC's appreciation of the Suarez Affidavit. Since she was its owner, transactions for the purchase of the Lipa property was within her personal knowledge. Ordinarily, this includes the arrangement regarding who shall pay for the property and when, if ever, it shall be occupied by the buyers. We thus consider that her statements impact positively on petitioner's claim of residence.

The Dissent on the other hand argues that the claim that petitioner started living in the Lipa house and lot in April 2007 is made dubious by the fact that (1) there might not be enough time to effect an actual and physical change in residence a month before the May 2007 elections when petitioner ran for representative of the 4th District of Batangas; and (2) the Deed

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[83] *Rollo*, p. 104.

[84] *Id.* at 66.

of Absolute Sale was notarized, and the subsequent transfer of ownership in the tax declaration was made, only in August 2008.

Before further discussing this, it is pertinent to point out that these were not the reasons adduced by the COMELEC in the assailed Resolutions. Assuming that the above reasons were the unuttered considerations of the COMELEC in coming up with its conclusions, such reasoning still exhibits grave abuse of discretion.

As to the Dissent's first argument, it must be remembered that a transfer of domicile/residence need not be completed in one single instance. Thus, in *Mitra v. Commission on Elections*,[85] where the evidence showed that in 2008, petitioner Mitra had leased a small room at Maligaya Feedmills located in Aborlan and, in 2009 purchased in the same locality a lot where he began constructing his house, we recognized that petitioner "transferred by incremental process to Aborlan beginning 2008 and concluded his transfer in early 2009" and thus, he transferred his residence from Puerto Princesa City to Aborlan within the period required by law. We cannot treat the transfer to the Pinagtong-ulan house any less than we did Mitra's transfer to the Maligaya Feedmills room.

Moreover, the Joint Affidavit of twenty-one (21) Pinagtong-ulan residents, including former and incumbent barangay officials, attests that petitioner had begun living in the Pinagtong-ulan house and lot before the May 2007 elections such that it was where his coordinators for the May 2007 elections went to meet him.[86]

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[85] G.R. No. 191938, 19 October 2010.

[86] *Rollo*, pp. 211-212, *Pinagsama-Samang Salaysay* executed by 21 Barangay Pinagtong-ulan residents, namely Esmeraldo P. Macasaet (former *barangay* captain of Pinagtong-Ulan), Eduardo R. Lorzano (former *barangay* captain of Pinagtong-ulan), Patricia L. Alvarez (incumbent councilor of Pinagtong-ulan), Pedro Y. Montalba (former councilor of Pinagtong-ulan), Loida M. Macasaet, Mario P. Lingao, Sancho M. Garcia, Jr., Atilano H. Macasaet, Baby Jean A. Mercado, Ligaya C. Mercado, Rosalinda M. Macasaet, Olga M. Reyes, Jennifer D. Garcia, Sancho C. Garcia, Sr., Marissa G. Mercado, Wilma C. Mercado, Aireen M. Macasaet, Eden R. Suarez, Noemi R. Ubalde, Arthur A. del Rosario, and Norberto M. Layog.

Jacinto Cornejo Sr., the contractor who renovated the Pinagtong-ulan house when it was bought by petitioner, also swore that petitioner and his family began living therein even while it was being renovated.[87] Another Affidavit petitioner adduced was that of Rosalinda Macasaet, a resident of Brgy. Pinagtong-ulan,[88] who stated that she also sold a lot she owned in favor of petitioner and Palomares. The latter bought her lot since it was adjacent to the Lipa house and lot they had earlier acquired. Macasaet also swore that the couple had actually resided in the house located in Pinagtong-ulan since April 2007, and that she knew this because her own house was very near the couple's own. Macasaet's Affidavit is a positive assertion of petitioner's actual physical presence in Brgy. Pinagtong-ulan, Lipa City.

While private respondent had adduced affidavits of two Pinagtong-ulan residents (that of Violeta Fernandez[89] and Rodrigo Macasaet)[90] attesting that petitioner could not be a resident of Pinagtong-ulan as he was "rarely seen" in the area, these affidavits were controverted by the Joint affidavit of twenty-one (21) Pinagtong-ulan residents who plainly accused the two of lying. Meanwhile, the affidavits of private respondent[91] and Eladio de Torres[92] stating that petitioner is not a resident of Lipa City because he has no work or family there is hardly worthy of credence since both are residents of Barangay Calamias, which is, and private respondent does not contest this, about 15 kilometers from Pinagtong-ulan.

As to the Dissent's second argument, the fact that the notarization of the deed of absolute sale of the property was made months after April 2007 does not negate petitioner's claim that he started residing therein in April 2007. It is clear from

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[87] *Rollo*, p. 190.

[88] *Id.* at 106.

[89] *Rollo*, p. 161.

[90] *Rollo*, p. 162.

[91] *Rollo*, pp. 82-83.

[92] *Rollo*, pp. 84-85.

the Affidavit of the property's seller, Leonila Suarez, that it was not yet fully paid in April 2007, so it was understandable that a deed of absolute sale was not executed at the time. Thus:

> That initially, the contract to sell was entered into by and between Mr. & Mrs. Meynardo Asa Sabili and Bernadette Palomares and myself, but eventually the spouses changed their mind, and after the couple settled all my loan obligations to the bank, they requested me to put the name of Ms. Bernadette P. Palomares instead of Mr. & Mrs. Meynardo Asa Sabili and Bernadette Palomares in the absolute deed of sale;
>
> That it was Mr. Meynardo Asa Sabili who came to my former residence at Barangay Pinagtong-ulan sometime in the month of April 2007. At that time, Mr. Meynardo Asa Sabili was still running for Representative (Congressman) in the 4th District of Batangas;
>
> That after payment of the down payment and signing of an agreement that Mr. Meynardo Asa Sabili will be the one to settle my bank obligations, Mr. & Mrs. Meynardo A. Sabili and Bernadette Palomares had an actual transfer of their residence at Barangay Pinagtong-ulan, Lipa City;
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> That they started living and residing in Pinagtong-ulan in the month of April, 2007 up to this point in time; x x x[93]

As to the rest of the documents presented by petitioner, the COMELEC held that the Memorandum issued by the Guardians Brotherhood Inc. San Jose/Lipa City Chapter merely declares the designation of petitioner in the organization, without any showing that residence in the locality was a requirement for that designation. Meanwhile, the Certificate of Appreciation was nothing more than an acknowledgment of petitioner's material and financial support, and not an indication of residence.

We agree that considered separately, the Guardians Brotherhood Memorandum and the Pinagtong-ulan Parish Certificate of Appreciation do not establish petitioner's residence in Pinagtong-ulan, Lipa City. Nevertheless, coupled with the fact that petitioner had twice been elected as Provincial Board

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[93] *Rollo*, p. 188.

Member representing the Fourth District of Batangas, which encompasses Lipa City, petitioner's involvement in the religious life of the community, as attested to by the certificate of appreciation issued to him by the Pinagtong-ulan parish for his "material and financial support" as President of the Barangay Fiesta Committee in 2009, as well as his assumption of a leadership role in the socio-civic sphere of the locality as a member of the advisory body of the Pinagtong-ulan, San Jose/ Lipa City Chapter of the Guardians Brotherhood Inc., manifests a significant level of knowledge of and sensitivity to the needs of the said community. Such, after all, is the rationale for the residency requirement in our elections laws, to wit:

> The Constitution and the law requires residence as a qualification for seeking and holding elective public office, in order to give candidates the opportunity to be familiar with the needs, difficulties, aspirations, potentials for growth and all matters vital to the welfare of their constituencies; likewise, it enables the electorate to evaluate the office seekers' qualifications and fitness for the job they aspire for x x x.[94]

Considering all of the foregoing discussion, it is clear that while separately, each evidence presented by petitioner might fail to convincingly show the fact of his residence at Pinagtong-ulan since 2007, collectively, these pieces of evidence tend to sufficiently establish the said fact.

Petitioner's actual physical presence in Lipa City is established not only by the presence of a place (Pinagtong-ulan house and lot) he can actually live in, but also the affidavits of various persons in Pinagtong-ulan, and the Certification of its *barangay* captain. Petitioner's substantial and real interest in establishing his domicile of choice in Lipa City is also sufficiently shown not only by the acquisition of additional property in the area and the transfer of his voter registration, but also his participation in the community's socio-civic and religious life, as well as his declaration in his ITR that he is a resident thereof.

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[94] *Torayno v. Commission on Elections*, 392 Phil. 343 (2000).

We therefore rule that petitioner has been able to adduce substantial evidence to demonstrate compliance with the one-year residency requirement for local elective officials under the law.

In view of this Court's finding that petitioner has not misrepresented his residence at Pinagtong-ulan and the duration thereof, there is no need to further discuss whether there was material and deliberate misrepresentation of the residency qualification in his COC.

As a final note, we do not lose sight of the fact that Lipa City voters manifested their own judgment regarding the qualifications of petitioner when they voted for him, notwithstanding that the issue of his residency qualification had been raised prior to the elections. Petitioner has garnered the highest number of votes (55,268 votes as opposed to the 48,825 votes in favor of his opponent, Oscar Gozos)[95] legally cast for the position of Mayor of Lipa City and has consequently been proclaimed duly elected municipal Mayor of Lipa City during the last May 2010 elections.[96]

In this regard, we reiterate our ruling in *Frivaldo v. Commission on Elections*[97] that "(t)o successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people, would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote."

Similarly, in *Japzon v. Commission on Elections*,[98] we concluded that "when the evidence of the alleged lack of residence

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[95] http://www.comelec.gov.ph/results/2010_natl_local/res_reg1014000.html (last accessed on 3 April 2012).

[96] *Rollo*, p. 294.

[97] G.R. No. 137329, 9 August 2000, 337 SCRA 574.

[98] G.R. No. 180088, 19 January 2009, 576 SCRA 331.

qualification of a candidate for an elective position is weak or inconclusive and it clearly appears that the purpose of the law would not be thwarted by upholding the victor's right to the office, the will of the electorate should be respected. For the purpose of election laws is to give effect to, rather than frustrate, the will of the voters."

In sum, we grant the Petition not only because petitioner sufficiently established his compliance with the one-year residency requirement for local elective officials under the law. We also recognize that "(a)bove and beyond all, the determination of the true will of the electorate should be paramount. It is their voice, not ours or of anyone else, that must prevail. This, in essence, is the democracy we continue to hold sacred."[99]

WHEREFORE, premises considered, the Petition is **GRANTED.** The assailed COMELEC Resolutions dated 26 January 2010 and 17 August 2010 in *Florencio Librea v. Meynardo A. Sabili* [SPA No. 09-047(DC)] are **ANNULLED.** Private respondent's Petition to cancel the Certificate of Candidacy of Meynardo A. Sabili is **DENIED.** The Status Quo Ante Order issued by this Court on 7 September 2010 is **MADE PERMANENT.**

SO ORDERED.

Carpio, Brion, Peralta, Bersamin, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Corona, C.J., Leonardo-de Castro, and *Abad, JJ.,* join the dissent of Hon. Justice Velasco, Jr.

Velasco, Jr., J., see dissenting opinion.

Del Castillo and *Mendoza, JJ.,* no part.

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[99] *Sinaca v. Mula,* 373 Phil. 896 (1999) .

DISSENTING OPINION

VELASCO, JR., *J.*:

Before Us is a Petition for *Certiorari*[1] assailing and seeking to set aside the Resolutions[2] dated January 26, 2010 and August 17, 2010 of the Commission on Elections (COMELEC) in SPA No. 09-047 (DC), which denied due course to, and canceled, the Certificate of Candidacy (COC) of petitioner Meynardo Sabili (Sabili) for the position of Mayor of Lipa City in the May 2010 elections on the ground of his misrepresentation that he is a resident of *Barangay* (Brgy.) Pinagtong-ulan, Lipa City.

During the 1995 and 1998 elections, petitioner Sabili was elected as a member of the Provincial Board representing the 4th District of Batangas. During the 2007 elections, he ran for the office of Congressman of the 4th District of Batangas but lost. During these times, he admitted that he was a resident of Brgy. Sico, San Juan, Batangas. On December 1, 2009, however, petitioner Meynardo Sabili filed a COC for Mayor of Lipa City, Batangas for the May 2010 elections. In his COC, he wrote that he had been a resident of Brgy. Pinagtong-ulan, Lipa City for two (2) years and eight (8) months.

On December 5, 2009, private respondent Florencio Librea (Librea) filed a verified *Petition to Deny Due Course and to Cancel Certificate of Candidacy and to Disqualify a Candidate for Possessing Some Grounds for Disqualifications* with respondent COMELEC, which was docketed as SPA No. 09-047 (DC). In his petition, private respondent Librea maintained that petitioner made several material misrepresentations in his COC where he indicated that he was a resident of Brgy. Pinagtong-ulan for the last two years when in fact he was, and is, a resident of Brgy. Sico, San Juan, Batangas, and so failed to meet the one-year residence requirement under Section 39 of the Local Government Code.[3]

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[1] Under Rule 64 in relation to Rule 65 of the Rules of Court.

[2] Both penned by Judge Jose Emmanuel M. Castillo.

[3] Sec. 39. Qualifications.—

In resolving the controversy, the COMELEC held in its January 26, 2010 Resolution that the evidence presented by petitioner, as respondent in SPA No. 09-047 (DC), failed to establish an abandonment of his domicile of origin and the adoption of Lipa City as his domicile of choice or residence for election law purposes. Hence, petitioner was disqualified to run in the May 2010 elections for the mayoralty position in that city. The COMELEC stated:

> In the case before us, it is not denied that Respondent's domicile of origin is in San Juan, Batangas. What Respondent repeatedly asserts is that since 2007, he transferred his domicile to Lipa City after allegedly acquiring the Bgy. Pinagtong Ulan property and claiming that he continuously lived there.
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> In the first place, domicile or origin is not easily lost. **If one wishes to successfully effect a change of domicile, he must demonstrate by evidence an actual removal or an actual change of domicile, a *bona fide* intention of abandoning the former place of residence and establishing a new one, and definite acts which correspond with the purpose.** These elements must concur, and absent clear and positive proof of the concurrence of these three requirements, the domicile of origin continues x x x.
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> x x x x x x x x x
>
> **The above pieces of documentary evidence, all taken together however, fail to convince us that Respondent Sabili successfully effected a change of domicile.** In all, **the evidence adduced by Respondent Sabili plainly lacks the degree of persuasiveness required to convince this Commission that an abandonment of domicile or origin in favor of a domicile of choice indeed occurred.** The claim of an incidental change of residence, lacking evidence determinative of abandonment of domicile of origin, without more, would not be sufficient to break the principle, long followed in cases

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(a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sangguniang bayan*, the district where he intends to be elected; a resident therein for at least one (1) year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect. (Underscoring supplied.)

involving questions of domicile that there was clear intent to abandon and repudiate his domicile in San Juan, Batangas. **To effect abandonment requires the voluntary act of relinquishing Petitioner's former domicile *with* intent to supplant the former domicile with one of his own choosing.** Since he is a new voter of Lipa City, the records clearly indicating that officially, his registration came into effect only on October 31, 2009; the said voter's document hardly furnishes sufficient proof of abandonment of domicile of origin and a change of domicile of choice. Indeed, while we have ruled in the past that voting gives rise to a strong presumption of residence, it is not conclusive evidence thereof. **Sabili, in fact, has never even voted in Lipa City** x x x.

To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention. It requires not only such bodily presence in that place but also a declared and probable intent to make it one's fixed and permanent place of abode.

In this case, **Sabili's claim of a common law relationship with Bernadette Palomares does not establish his actual physical presence in Bgy. Pinagtong-ulan, Lipa City**. In fact, the documents pertaining to Palomares' actual place of residence are conflicting, since **she is listed as a resident of Parañaque City.** The Deed of Sale and registration of the house in Bgy. Pinagtong-ulan, Lipa City, merely proves Palomares' ownership or that she own property in the city. And it is not impossible that, as indicated in documents presented herein, she is a resident of Parañaque City owning property in Lipa City.[4]

On January 28, 2010, petitioner filed a Motion for Reconsideration of the COMELEC's January 26, 2010 Resolution, and a Supplemental Motion the following day.

On February 2, 2010, the case was elevated to the COMELEC *En Banc*. In the meantime, the May 10, 2010 elections were conducted and petitioner emerged as the winning candidate for Mayor of Lipa City.[5] He eventually took his oath and assumed office.[6]

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[4] *Rollo*, pp. 59-61. Emphasis supplied.

[5] Annex "P" to the Petition.

[6] *Rollo*, p. 293, Annex "Q" to the Petition.

In a Manifestation dated June 15, 2010, petitioner informed the COMELEC *En Banc* of these developments and again prayed for the setting aside of the January 26, 2010 Resolution.

In its August 17, 2010 Resolution, however, the COMELEC *En Banc* denied petitioner's Motion for Reconsideration. Discussing each point petitioner raised in that motion, the COMELEC *En Banc* held:

> We find that the Second Division fully appreciated the evidence presented by both parties and correctly found Sabili disqualified for failing to comply with the one (1) year residency requirement.
>
> Anent Sabili's first ground in his motion for reconsideration, We find it important to state that Sabili admitted in Paragraph 14 of his Answer that his domicile of origin is in Brgy. Sico, San Juan, Batangas. This admission on the part of Sabili was construed in conjunction with related jurisprudence that domicile of origin is not easily lost. In order "[t]o successfully effect a change of domicile, one must demonstrate an actual change of domicile; 2) a *bona fide* intention of abandoning the former place of residence and establishing a new one; and 3) acts which correspond with the purpose." Undoubtedly, Librea must prove his allegations in support of his petition for disqualification, but **since Sabili did not deny that his domicile of origin is different from the place where he intends to run, he now has to prove that he has abandoned his domicile of origin in favor of Lipa City. Unfortunately, he failed to prove the same to the satisfaction of the Second Division.**
>
> Sabili's second and third grounds refer to the Second Division's supposed failure to appreciate the evidence adduced in this case. We do not find basis for these arguments. The evidence presented, together with the arguments of the parties, were inextricably interrelated and were thoroughly discussed and resolved by the Second Division in the assailed 15-page Resolution. **The Second Division was correct in giving little or no weight to the following pieces of evidence presented by Sabili: a) Affidavit of Bernadette P. Palomares which is self-serving for being executed by the common-law wife, and has no independent corroboration that they are residing in Lipa City since 2007 or that the property was purchased with Sabili's personal funds; b) Affidavit of Lenila G. Suarez, the previous owners of the property in Lipa City supposedly occupied by Sabili and his family, which merely narrates the**

circumstances surrounding the sale of the property and mentions in passing that Sabili and Palomares lived in Pinagtong-ulan since April 2007 up to the present; c) Certification issued by Hon. Dominador B. Honrade, Barangay Captain of Brgy. Pinagtong-ulan, Lipa City, which is unsworn and thus cannot be relied on; d) Certificate of Appreciation issued by the Parish of Santo Niño, Brgy. Pinagtong-ulan, Lipa City which is nothing more than an acknowledgment of Sabili's material and financial support and not an indication of residence; e) Designation as member of the Advisory Body of Guardians Brotherhood, Inc., San Jose/Lipa City Chapter effective 02 January 2009 which merely declares the designation of Sabili without any showing that residence in the locality is a requirement for such designation; f) Voter Certification issued by Atty. Juan B. Aguila, Jr. Election Officer of COMELEC Lipa City and the Application for Transfer of Registration Record Due to Change of Residence filed with the COMELEC on 06 June 2009 which are not conclusive proof of change of domicile; g) Income Tax Returns of respondent for the years 2007 and 2008 and the corresponding Official Receipts which are not indications of residence since Sec. 51(B) of the National Internal Revenue Code does not only state that it shall be filed in a person's legal residence but that it may also be filed in a person's princip[al] place of business, and in most cases the return is filed where the individual earns his income. The only other evidence for Sabili on record are the affidavits he submitted which, standing alone, cannot be considered, no matter how many, as sufficient proof of one's change of domicile. There has to be more.

With regard to Sabili's fourth ground, We find that the Second Division made no pronouncement adding a property requirement as a qualification of an elective official.

As to the fifth ground, We will sustain the position of the Second Division when it ruled:

> In this case, Sabili's claim of a common law relationship with Bernadette Palomares does not establish his actual physical presence in Bgy. Pinagtong-ulan, Lipa City x x x as indicated in documents presented herein, she is a resident of Parañaque City owning property in Lipa City.

Sabili's sixth and seventh grounds deserve little merit. Nothing in the Assailed Resolution reveals that Sabili's relationship with

Palomares or the property regime governing such relationship had direct bearing on the Second Division's determination of Sabili's qualification. Sabili's relationship was merely discussed in relation to the allegations that Sabili bought a house using his personal funds but decided to register the property only in the name of Palomares which is quite peculiar.

Finally, on the eight ground, We hereby declare that Sabili's residence is a matter that will affect his qualification to run for public office in Lipa City. In view of the evidence presented in this case, his declaration in his certificate of candidacy that he is a resident of Lipa City, when in fact he had not yet abandoned his domicile of origin in San Juan, Batangas, may convince the voters that he has all the qualifications to run for the position of mayor, which tends to mislead the public from a fact that would otherwise render him ineligible, is precisely what is being referred to in the case of *Ugdoracion*.[7]

Aggrieved, petitioner filed with this Court a *Petition for Certiorari with Extremely Urgent Application for the Issuance of a Status Quo Order* under Rule 64 in relation to Rule 65 of the Rules of Court, seeking the nullification of the COMELEC's Resolutions for supposedly having been issued without or in excess of respondent COMELEC's jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. Among the documents attached to his petition is a new Certification of Residency issued by the Pinagtong-ulan *barangay* chairman Dominador Honrade that had been sworn before a notary public.[8]

On September 7, 2010, this Court issued a Status Quo Ante Order requiring the parties to observe the status quo before the issuance of the assailed COMELEC Resolutions.

As pointed out by Justice Sereno in her opinion, the following are the issues for Our Resolution:

(1) Whether the COMELEC acted with grave abuse of discretion when it failed to promulgate its Resolution dated 17 August 2010 in accordance with its own Rules of Procedure; and

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[7] Emphasis supplied.

[8] *Rollo*, p. 300, Annex "S" to the Petition.

(2) Whether the COMELEC committed grave abuse of discretion in holding that Sabili failed to prove compliance with the one-year residency requirement for local elective officials.

Failure to serve advance notice of the promulgation of the resolution does not affect the validity of the resolution

On the first issue, petitioner posits that the COMELEC acted with grave abuse of discretion when it failed to serve advance notice of the promulgation of the August 17, 2010 Resolution under Sec. 6, COMELEC Resolution No. 8696 (Rules on Disqualification of Cases Filed in Connection with the May 10, 2010 Automated National and Local Elections).[9] Hence, so petitioner claims, his right to due process was violated. Respondents, on the other hand, argue that Sec. 9 of COMELEC Resolution 8696 had been suspended by COMELEC Order dated May 4, 2010 in view of the exigencies attendant to the holding of the country's first automated national elections.

Justice Sereno is of the opinion that petitioner erred in his claim of having been deprived of due process, adding that the August 17, 2010 Resolution was validly promulgated. On this issue, I fully agree with my esteemed colleague.

The suspension of Sec. 6, COMELEC Resolution No. 8696 and the consequential lack of advance notice regarding the date of promulgation of the COMELEC *En Banc*'s August 17, 2010 Resolution is in accordance with the COMELEC's constitutionally granted power to make its own rules of procedure. The suspension action, without more, did not violate the petitioner's right to due process or vitiate the validity of the COMELEC's resolution. After all, as pointed out by Justice Sereno, the advance notice of the date of promulgation is not part of the process of promulgation. More than that, the COMELEC *En Banc*'s Resolution was sufficiently made known to petitioner who was

[9] SEC. 6. Promulgation. — The promulgation of a Decision or Resolution of the Commission or a Division shall be made on a date previously fixed, notice of which shall be served in advance upon the parties or their attorneys personally, or by registered mail, telegram, fax or thru the fastest means of communication.

able to timely file the present petition to assail and question the same Resolution. Clearly, the suspension of Sec. 6, COMELEC Resolution No. 8696 and the non-service of an advance notice to petitioner are of no consequence to the validity of the Resolution and the findings of the COMELEC, or to the opportunity granted to petitioner to assail the Resolution.

A *certiorari* writ is not available to correct errors in the appreciation of evidence by the lower tribunal

On the second issue, however, I respectfully disagree with Justice Sereno who maintains that the COMELEC committed errors in the appreciation and evaluation of evidence so that "the Court is compelled by it[s] bounden constitutional duty to intervene and correct the COMELEC's errors."[10]

Lest it be forgotten, the present recourse was filed under the aegis of Rule 64 in relation to Rule 65 of the Rules of Court. Time and again, this Court has emphasized that a Rule 65 petition for *certiorari* is a limited remedy to correct only errors of jurisdiction, not of judgment.[11] Its only function is to keep a lower tribunal within its jurisdiction[12] and not to authorize the court exercising *certiorari* powers to review, reconsider, re-evaluate, and re-calibrate the evidence previously presented before and considered by the lower tribunal. In *First Corporation v. Former Sixth Division of the Court of Appeals*,[13] We reiterated this elementary precept:

> It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* — beyond the ambit of appeal. **In *certiorari***

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[10] *Ponencia*, p. 12.

[11] *Lydia R. Pagaduan v. Commission on Elections*, G.R. No. 172278, March 29, 2007, 519 SCRA 512.

[12] *Angara v. Fedman Development Corporation*, 483 Phil. 495 (2004); quoted in *PCGG v. Silangan Investors and Managers, Inc.*, G.R. Nos. 167055-56 & 170673, March 25, 2010, 616 SCRA 382.

[13] G.R. No. 171989, July 4, 2007, 526 SCRA 564, 578 (emphasis supplied); quoted in *Soriano v. Marcelo*, G.R. No. 160772, July 13, 2009, 592 SCRA 394.

proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of the evidence. Any error committed in the evaluation of the evidence is merely an error of judgment that cannot be remedied by *certiorari*. An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An *error of jurisdiction* is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. ***Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo***.

This rule holds greater force in an application for *certiorari* against the COMELEC as it is the institution created by the Constitution precisely to handle election matters and so presumed to be most competent in matters falling within its domain.[14] Hence, the factual findings of the COMELEC *En Banc* are binding on this Court[15] absent any showing of a grave abuse of its discretion.

Expectedly, petitioner Sabili attributes grave abuse of discretion to respondent COMELEC to justify a review and re-evaluation of the evidence presented by the parties. However, not every claim of an existence of a grave abuse of discretion deserves consideration; otherwise, every erroneous judgment will be void, appellate courts will be overburdened and the administration of justice will not survive.[16] Mere abuse of discretion is not enough.

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[14] *Matalam v. Commission on Elections*, 338 Phil. 447, 470 (1997).

[15] *Japzon v. Commission on Elections*, G.R. No. 180088, January 19, 2009, 576 SCRA 331; citing *Dagloc v. Commision on Elections*, 463 Phil. 263, 288 (2003); *Mastura v. Commission on Elections*, 349 Phil. 423, 429 (1998).

[16] *San Fernando Rural Bank, Inc. v. Pampanga Omnibus Development Corporation*, G.R. No. 168088, April 4, 2007, 520 SCRA 564.

"Grave abuse of discretion" exists only when there is a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[17] An unfavorable evaluation of the sufficiency of the evidence presented by a party will not be inquired into unless it is shown that the evaluation was done in an "arbitrary manner by reason of passion, prejudice, or personal hostility."[18] This, the petitioner has failed to prove in his petition for *certiorari*.

In fact, petitioner has not disputed or even mottled the presumption that the COMELEC has "regularly performed"[19] its duties "in the lawful exercise of its jurisdiction."[20] Thus, this Court must not, as it cannot, stray beyond the confines of a *certiorari* review and go so far as to re-examine and re-assess the evidence of the parties and weigh anew its probative value.[21]

Nonetheless, Justice Sereno subscribes to the view that the COMELEC's appreciation and evaluation of evidence are so "grossly unreasonable as to turn into errors of jurisdiction."[22] I beg to disagree. Even if We consider the present case as an exception to the rule on the limitations of a *certiorari* review, the evidence presented by petitioner does not persuade an actual change of his domicile.

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[17] *Id.*; citing *Lee v. People*, G.R. No. 159288, October 19, 2004, 440 SCRA 662, 678-679.

[18] *Rimbunan Hijau Group of Companies v. Oriental Wood Processing Corporation*, G.R. No. 152228, September 23, 2005, 470 SCRA 650, 661.

[19] RULES OF COURT, Rule 131, Sec. 2(m).

[20] *Id., id.*, Sec. 2(n).

[21] *Macawaig v. Balindong*, G.R. No. 159210, September 20, 2006, 502 SCRA 454; citing *Garcia v. National Labor Relations Commission*, G.R. No. 147427, February 7, 2005, 450 SCRA 535, 547.

[22] *Ponencia*, p. 12.

Petitioner failed to establish compliance with all the requisites for a change of domicile

Petitioner admits that before April 2007 he was a resident of, and his domicile of origin was, San Juan, Batangas. This Court has previously ruled that "domicile" and "residence" are synonymous in election law. A domicile is "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found, at any given time, eventually **intends** to return and remain."[23] Thus, the question of domicile is mainly one of intention[24] and circumstances.[25]

In the consideration of circumstances, three rules must be borne in mind: (1) a man must have residence or domicile somewhere; (2) a residence once established remains until a new one is acquired; and (3) a man can only have one residence or domicile at a time.[26] Clearly, therefore, **there is a presumption in favor of a continuance of an existing domicile**.[27] When the evidence presented by the contending parties are in equipoise that it is impossible for the court to determine with certainty the real intent of the person whose domicile is in question, **the presumption requires the Court to decide against a change of domicile and the retention of a domicile in question.**[28] **Hence, the burden of proving a change of domicile lies on the person who claims that a change has occurred**.[29] In this case, the burden lies on the petitioner.

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[23] *Japzon v. COMELEC*, *supra* note 15; emphasis supplied.

[24] *Limbona v. Commission on Elections*, G.R. No. 186006, October 16, 2009, 604 SCRA 240.

[25] *Pundaodaya v. Commission on Elections*, G.R. No. 179313, September 17, 2009, 600 SCRA 178, 184-185; citing *Domino v. Commission on Elections*, 369 Phil. 798, 818 (1999).

[26] *Id.*

[27] *In the Matter of the Petition for Disqualification of Tess Dumpit-Michelena*, G.R. Nos. 163619-20, November 17, 2005, 475 SCRA 290, 303; Chesire, *PRIVATE INTERNATIONAL LAW*, pp. 218-219.

[28] *PRIVATE INTERNATIONAL LAW* by Chesire, pp. 218-219.

[29] *Bevilaqua v. Bernstein*, 642 F. Supp. 1072, 1073 (S.D.N.Y.1986); cited in *Israel v. Carpenter*, Not Reported in F.Supp., 1995 WL 640534

For the petitioner to overcome the presumption of the continuity of his domicile of origin, he must show by clear and convincing evidence of (1) an actual removal or an actual change of domicile; (2) a bona fide intention of abandoning the former place of residence and establishing a new one; and (3) definite acts which correspond with the purpose.[30] Thus, to **establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention**. **Bodily presence in the new locality is not the only requirement; there must be a declared and probable intent to make it one's fixed and permanent place of abode**.[31] Indeed, the most important requirements for the establishment of a new domicile is (1) an actual and physical presence in the new locality; and (2) a clear and declared intent to abandon the old domicile (*animus non revertendi*) and remain in the new place of residence (*animus manendi*).

Intending to establish that petitioner failed to meet the foregoing requisites, respondent Librea presented the following documentary exhibits:

1. Petitioner Sabili's COC filed on December 1, 2009;[32]
2. Tax Declaration issued in 2009 covering the property in Brgy. Pinagtong-ulan, Lipa City and in the name of Bernadette Palomares (Palomares);[33]
3. Certification of Property Holdings issued on November 24, 2009 covering the properties in Pinagtong-ulan, Lipa City in the name of Palomares;[34]

(S.D.N.Y.); *Rich Products Corp. v. Diamond*, 51 Misc.2d 675, 273 N.Y.S.2d 687, N.Y.Sup. 1966, October 11, 1966.

[30] *Id.*

[31] *Domino v. Commission on Elections*, *supra* note 25, at 820 (1999); emphasis supplied.

[32] *Rollo*, p. 431.

[33] *Id.*

[34] *Id.* at 433.

4. Palomares' Tax Declaration issued on December 14, 2009 over the lot bought from spouses Manolito and Leonila Suarez and covered by TCT No. T-173356;[35]
5. Palomares' Tax Declaration issued on December 14, 2009 over the lot bought from spouses Rodolfo and Rosalinda Macasaet and covered by TCT No. T-173355;[36]
6. Palomares' Tax Declaration issued on December 14, 2009 over the building on the lot covered by TCT No. T-173356 bought from the spouses Suarez and covered by TCT No. T-173355;[37]
7. Palomares' Tax Declaration issued on December 14, 2009 over the building on the lot covered by TCT No. T-173355 bought from the spouses Suarez and covered by TCT No. T-173355;[38]
8. Palomares' Tax Declaration issued on December 14, 2009 over the building on the lot no. 5553 bought from the spouses Suarez;[39]
9. Certification of No Improvement dated December 14, 2009 over Block 2, Lot 3, Brgy. Lodlod, Lipa City (TCT No. 164454) in the name of Sabili and Palomares;[40]
10. Certification of No Improvement dated December 14, 2009 over Block 2, Lot 5 Brgy. Lodlod, Lipa City (TCT No. T-164455) in the name of Sabili and Palomares;[41]
11. Affidavit of petitioner Florencio Librea dated December 4, 2009;[42]

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[35] *Id.* at 444.

[36] *Id.* at 445.

[37] *Id.* at 446.

[38] *Id.* at 447.

[39] *Id.* at 448.

[40] *Id.* at 442.

[41] *Id.* at 443.

[42] *Id.* at 434.

12. *Sinumpaang Salysay* Eladio de Torres dated December 4, 2009;[43]
13. Affidavit executed by Violeta Fernandez dated December 28, 2009;[44]
14. Affidavit executed by Rodrigo Macasaet dated December 28, 2009;[45]
15. Affidavit executed by Pablo Lorzano;[46]
16. Voter Certification on petitioner Sabili issued by COMELEC Election Officer Juan D. Aguila, Jr.;[47]
17. Voter's Registration Record No. 07361248 of petitioner Sabili approved on June 21, 1997;[48]
18. 1997 Voter Registration Record of petitioner;
19. Sabili's 2007 COC for Member of House of Representative;[49]
20. Certification of No Marriage for Bernadette Palomares issued by the National Statistics Office (NSO) on December 22, 2009;
21. National Statistics Office (NSO) Advisory on Marriages stating that as of November 28, 2009, Sabili is married to Daisy Cervas;[50]
22. NSO Certification issued on December 22, 2009 stating that Palomares does not appear in the National Indices of Marriages;[51]

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[43] *Id.* at 436.

[44] *Id.* at 454.

[45] *Id.* at 455.

[46] *Id.* at 456.

[47] *Id.* at 438.

[48] *Id.* at 440.

[49] *Id.* at 457.

[50] *Id.* at 441.

[51] *Id.* at 439.

23. Lipa City Permits and Licensing Office Certification that Sabili has no business therein dated December 11, 2009;[52]

24. Printout of a Facebook webpage of petitioner's daughter, Mey Bernadette Sabili stating that her hometown is "Portofino, Las Piñas, Philippines";[53]

25. Department of Education (DepEd) Lipa City Division Certification that the names Bernadette Palomares, Mey Bernadette Sabili and Francis Meynard Sabili (petitioner's son) do not appear on its list of graduates;[54]

26. Certification from the Office of the Election Officer of Lipa City dated December 28, 2009 that Bernadette Palomares, Mey Bernadette Sabili and Francis Meynard Sabili do not appear in its list of voters.[55]

On the other hand, to support his position that he has abandoned his domicile of origin and adopted Lipa City, Batangas as his domicile of choice, making him qualified to be elected as the City's Mayor, petitioner Sabili presented the following documentary evidence:

1. Affidavit of Bernadatte Palomares;[56]
2. Birth Certificate of Francis Meynard Sabili;[57]
3. Birth Certificate of Mey Bernadette Sabili;[58]
4. Affidavit of Leonila G. Suarez;[59]
5. Certification of Residency issued by Pinagtong-ulan Barangay Chairman Dominador Honrade dated October 30, 2009;[60]

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[52] *Id.* at 449.

[53] *Id.* at 450.

[54] *Id.* at 452.

[55] *Id.* at 453.

[56] Annex "1" to petitioner's Answer; *id*. at 102, 394.

[57] Annex "2" to Sabili's Answer; *id*. at 103, 395.

[58] Annex "3" to Sabili's Answer; *id*. at 394.

[59] Annex "4" to Sabili's Answer; *id*. at 104, 397.

[60] Annex "5" to Sabili's Answer; *id*. at 105, 398.

6. Notarized Certification of Residency issued by Pinagtong-ulan Barangay Chairman Dominador Honrade dated August 25, 2010;[61]
7. Affidavit executed by Jacinto Honrade Cornejo, Sr.;[62]
8. Affidavit executed by Rosalinda Macasaet;[63]
9. Certificate of Appreciation issued by the parish of Sto. Niño of Pinagtong-ulan;[64]
10. Designation of petitioner in the Advisory Body (AB) of Pinagtong-ulan, San Jose/Lipa City Chapter of Guardians Brotherhood, Inc.;[65]
11. COMELEC Voter Certification on petitioner issued by Election Officer Juan Aguila, Jr.;[66]
12. COMELEC Application for Transfer/Transfer with Reactivation dated June 6, 2009;[67]
13. Petitioner's Income Tax Return for 2007;[68]
14. Official Receipt for petitioner's income tax payment for 2007;[69]
15. Petitioner's Income Tax Return for 2008;[70]
16. Official Receipt for petitioner's income tax payment for 2008;[71]
17. *Pinagsama-samang Sinumpaang Salaysay* dated January 16, 2010;[72]

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[61] Annex "S" to Sabili's Petition for *Certiorari*; *id*. at 300.

[62] Annex "6" to Sabili's Answer; *id*. at 399.

[63] Annex "7" to Sabili's Answer; *id*. at 106, 400.

[64] Annex "8" to Sabili's Answer; *id*. at 107, 401.

[65] Annex "9" to Sabili's Answer; *id*. at 108, 402.

[66] Annex "10" to Sabili's Answer; *id*. at 109, 403.

[67] Annex "11" to Sabili's Answer; *id*. at 110, 404.

[68] Annex "12" to Sabili's Answer; *id*. at 111, 405.

[69] Annex "12-A" to Sabili's Answer; *id*. at 112, 407.

[70] Annex "13" to Sabili's Answer; *id*. at 113, 406.

[71] Annex "13-A" to Sabili's Answer; *id*. at 114, 408.

[72] *Rollo*, p. 212.

18. *Sinumpaang Salaysay* dated January 16, 2010 executed by Dominador Macuha;[73]
19. Certificate of Canvass of Votes and Proclamation of Winning Candidates for Lipa City Mayor and Vice-Mayor;[74]
20. Sabili's *Panunumpa sa Katungkulan* dated July 30, 2010.[75]

Petitioner claims that the foregoing documents are sufficient to constitute substantial evidence of his change of domicile pursuant to this Court's pronouncements in *Mitra v. COMELEC*.[76] A closer inquiry, however, will reveal a whale of difference between the present case and *Mitra*. Consider: While there were circumstances in *Mitra* that led the majority of this Court to conclude that petitioner Mitra made "incremental transfer moves" to change his domicile (by, among others, leasing a dwelling, purchasing a lot for his permanent home, building a house thereon, and maintaining substantial investments in the new locality in the form of an experimental pineapple plantation, farm, farmhouse, and a cock farm), the petitioner in this case, Sabili, failed to adduce any evidence that would substantially prove a change of his domicile from San Juan, Batangas to Lipa City whether by incremental acts or an immediate deed. There lies the difference.

As shown by the Certification of No Improvement issued by the Lipa City assessor, petitioner made no efforts to build a house on the lots located in Brgy. Lodlod that are actually registered in his own name.[77] Neither has he maintained any business in the locality despite his avowed profession as a businessman.[78] As implied by *Mitra*, having substantial investments and constructing improvements on properties bought

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[73] *Id.* at 213.

[74] Annex "P" to Petition for *Certiorari*.

[75] Annex "Q" to Petition for *Certiorari*.

[76] G.R. No. 191938, October 19, 2010.

[77] *Rollo*, pp. 442-443.

[78] *Id.* at 449.

in the new locality are indicative of *animus manendi*. Hence, the non-existence of such evidence in the present case supports respondents' claim of continuance of his domicile of origin in San Juan, Batangas.

Indeed, petitioner heavily anchors his claimed residency in Pinagtong-ulan, Lipa City since April 2007 primarily on his allegation that he purchased a house and lot thereat in the same month, registered the property in the name of his "common-law spouse," Bernadette Palomares (Palomares), and actually resided therein since April 2007 together with Palomares and their children.

To say the least, this claim is not only questionable but appalling. Petitioner's temerity in asserting that he had been living with Palomares for 20 years, **while he was legally married to another**, and so should be considered to have followed his paramour's residence simply goes against the norms of decency, if not the law against concubinage under Article 334 of the Revised Penal Code.

Thus, We cannot now recognize his residency in Lipa City on the pretext that his "common-law spouse" lives therein. ***Commodum ex injuria sua non habere debet.*** **No person ought to derive any advantage of his own wrong**.[79]

Even in *Romualdez-Marcos v. COMELEC*,[80] this Court did not consider Mrs. Marcos to have followed the residence of former President Marcos, her legal spouse. Why should this Court now consider Sabili to have adopted a domicile of choice in Lipa just because his "common-law spouse" has a house registered in her name located in the same city? To consider a

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[79] *Rimbunan Hijau Group of Companies and Niugini Lumber Merchants Pty., Ltd. v. Oriental Wood Processing Corporation*, G.R. No. 152228, September 23, 2005, 470 SCRA 650; *European Resources and Technologies, Inc. v. Ingenieuburo Birkhahn + Nolte, Ingeniurgesellschaft mbh*, G.R. No. 159586, July 26, 2004, 435 SCRA 246; *Communication Materials Design, Inc. v. Court of Appeals*, G.R. No. 102223, August 22, 1996, 260 SCRA 673.

[80] G.R. No. 119976, September 18, 1995, 248 SCRA 300.

man to follow the residence of the woman who he cannot marry is dangerous precedent.

If this Court is disposed to establish a rule that a man can follow the residence of a woman, that woman must be the man's lawful wife, not his concubine. This is corollary to the provisions of the Family Code explicitly imposing on the husband the obligation to establish his domicile with his wife and live with her:

> Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.
>
> Art. 69. The husband and wife shall fix the family domicile. In case of disagreement, the court shall decide.
>
> The court may exempt one spouse from living with the other if the latter should live abroad or there are other valid and compelling reasons for the exemption. However, such exemption shall not apply if the same is not compatible with the solidarity of the family.

Further, even assuming that it was petitioner who negotiated the purchase and paid for the property in Pinagtong-ulan (no deed of sale was presented), his act of having it registered in the name of his "common-law" spouse only indicates a donative intent without the necessary formalities or the payment of taxes, **not** the intent to abandon his domicile of origin and maintain a new domicile of choice.

In fact, Sabili's resounding omission to provide the COMELEC and this Court the deeds of sale over the properties in Pinagtong-ulan, Lipa City executed by the spouses Manolito and Leonila Suarez and the spouses Rodolfo and Rosalinda Macasaet in favor of Palomares, as well as the certificates of title, puts doubt on Sabili's allegation that there was a transfer of ownership over the properties to Palomares in April 2007 that would have allowed her and/or the petitioner to claim the right to reside in the properties. This doubt is aggravated by the fact that the tax declarations over the properties show that the deeds of sale were drawn up and notarized only in August 2008.[81]

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[81] *Rollo*, pp. 444-448; Private respondent's Annex "B".

Indeed, the claim of an actual and physical transfer on the same month of the negotiation, April 2007, strains credulity considering that it is admitted by Sabili that he ran for a position in the lower house of Congress in the May 2007 elections (for which he filed a COC indicating his domicile as San Juan, Batangas). Was there enough time to effect an actual and physical change a month before the elections? If there was time to relocate, why were the deeds of sale drawn up and notarized only in August 2008[82] and the tax declarations transferred in the name of Palomares only in the same month if they had already relocated in April 2007?

All these inconsistencies easily show that when Sabili stated in his COC that he had lived in Brgy. Pinagtong-ulan since April 2007, he had deliberately committed a material misrepresentation obviously to deceive the voting public.

It is also curious to note that even Sabili's common-law spouse, named as the owner of the property in Brgy. Pinagtong-ulan, is registered as a resident of 215 Elizalde Street, BF Homes, Parañaque City in the tax declarations covering the Pinagtong-ulan property.[83] Clearly, the COMELEC could not be held "grossly unreasonable" for holding that **while Palomares might be a Lipa City property owner, she was a resident of Parañaque City**. Official documents issued by the Office of the City Assessor of Lipa City clearly establish such fact. This official records cannot be defeated by a self-serving affidavit drawn up by petitioner's common-law wife that she resides in Lipa City in order to support petitioner's claim that he too is a resident of the city.

Parenthetically, Palomares' Affidavit cannot be considered as a declaration against her interest under the rules on evidence because the primary requisite of Sec. 38, Rule 130[84] is that the

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[82] *Id.*

[83] *Id.*

[84] Section 38. *Declaration against interest*. — The declaration made by a person deceased, or unable to testify, against the interest of the declarant,

declarant is dead or unable to testify, and it is not alleged that Palomares has died or is now unable to testify.

Instead, Palomares' Affidavit should be taken with the metaphorical grain of salt. The numerous falsities committed by Palomares in various official and governmental documents negate any faith on her word and betray her propensity to lie to favor her "family" so that it is not grossly unreasonable to hold that Palomares have committed a misrepresentation in her affidavit in order to support Sabili. This is readily apparent in the very documents presented by Sabili as his own evidence. For instance, Palomares had previously perjured herself as the informant in the birth certificates of her children sired by petitioner.[85] Palomares asserted in the birth certificate of her son that she married petitioner on December 2, 1980 in Bulacan, Bulacan. On the other hand, she claimed that she and petitioner were married on March 2, 1983 in Manila in the birth certificate of her daughter when the fact certified by the NSO is that she and petitioner had never been married.[86] These misrepresentations are undeniably important as they determine the legitimacy or illegitimacy of the children. Hence, the doctrine of *falsus in uno, falsus in omnibus* clearly applies and the COMELEC had reason not to find Palomares' statements worthy of credit.

So are Sabili's statements. It should not escape this Court that Sabili has adopted the untruthful statements of Palomares in the birth certificates of their children as his own evidence in the proceedings before the COMELEC and this Court. He has, therefore, clearly sanctioned the falsities boldly stated thereon. Worse, the same predilection for the untruth can be observed in Sabili's Voter's Certification that he presented as his own evidence. While it is not denied that he is married to Daisy

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if the fact is asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons.

[85] *Rollo*, pp. 58-59.

[86] *Id.* at 439; Respondent's Annex "F".

Cervas Sabili, he did not dispute the entry made on his status as "single." In fact, in his Income Tax Returns (ITRs) for 2007 and 2008 he claimed that his spouse's name was "Sabili Bernadette Palomares," when the NSO certified that as of November 2009, Sabili was still legally married to Daisy Cervas. Clearly, petitioner shows a pattern of false machinations intended to assume a coveted electoral position. Unfortunately for him, deceit cannot take the place of compliance with the statutory qualifications for office.

It is also notable that petitioners' children by Palomares have not attended any of the educational institutions in Lipa City,[87] nor have Palomares or the children been registered as voters of Lipa City[88] despite the fact that Sabili filed a COC for the Mayoralty position. Instead, Sabili's own daughter made an extra-judicial declaration that she considers "Portofino, Las Piñas" as her hometown, not Batangas.

In the case of *Fernandez v. House of Representatives Electoral Tribunal*,[89] this Court considered the existence of "real and substantial reason" to indicate *animus manendi* in the purported new domicile of choice:

> In the case at bar**, there are real and substantial reasons for petitioner to establish Sta. Rosa as his domicile of choice and abandon his domicile of origin and/or any other previous domicile. To begin with, petitioner and his wife have owned and operated businesses in Sta. Rosa since 2003. Their children have attended schools in Sta. Rosa at least since 2005.** Although ownership of property should never be considered a requirement for any candidacy, petitioner had sufficiently confirmed his intention to permanently reside in Sta. Rosa by purchasing residential properties in that city even prior to the May 2007 election, as evidenced by **certificates of title issued in the name of petitioner** and his wife. One of these properties is a residence in Bel-Air, Sta. Rosa which petitioner acquired even before 2006 but which petitioner had been leasing

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[87] *Id.* at 452.

[88] *Id.* at 453.

[89] G.R. No. 187478, December 21, 2009, 608 SCRA 733.

out. He claims that he rented out this property because prior to 2006 he had not decided to permanently reside in Sta. Rosa. This could explain why in early 2006 petitioner had to rent a townhouse in Villa de Toledo — his Bel-Air residence was occupied by a tenant. The relatively short period of the lease was also adequately explained by petitioner – they rented a townhouse while they were in the process of building their own house in Sta. Rosa. True enough**, petitioner and his spouse subsequently purchased a lot also in Villa de Toledo in April 2007, about a month before election day, where they have constructed a home for their family's use as a residence.** In all, petitioner had adequately shown that his transfer of residence to Sta. Rosa was bona fide and was not merely for complying with the residency requirement under election laws.[90]

Unlike in *Fernandez* where We sustained petitioner's change of domicile and qualification for his office, Sabili has no "real and substantial reason" to establish his domicile in Lipa City and abandon his domicile of origin in San Juan, Batangas. With no children or wife actually residing in Lipa City, or business interests therein, it is not "grossly unreasonable" for the COMELEC to conclude that petitioner had no "declared and probative intent" to adopt Lipa City as his domicile of choice in the absence of a real and substantial reason to do so.

Contrary to Justice Sereno's Opinion, Sabili's act of filing his ITR in Revenue District Office No. (RDO) 59 in Lipa City for the years 2007 and 2008 does not indicate a change of domicile from San Juan to Lipa City, Batangas. RDO 59's jurisdiction includes both San Juan and Lipa City[91] so that the intent to remain cannot immediately be ascribed to Lipa City. On the contrary, his filing of the ITR in RDO 59 can also be used to support his intent to remain in San Juan, Batangas—his domicile of origin. In fact, petitioner left the space for his residence in his 2007 ITR blank without indicating where he was actually residing. To reiterate, any doubt on residency or domicile shall be resolved in favor of the domicile of origin.

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[90] Emphasis supplied.

[91] <http://www.bir.gov.ph/directory/rdoinner.htm#66> visited March 15, 2012.

In the clear absence of the most important element in the establishment of a domicile—*animus manendi*-—it is of no use to discuss the consequence of testimonies as to his bodily presence in the locality. As stated, **all the requisites** for a valid change of domicile or residence is necessary for election law purposes. In the absence of even just one element, the presumption is in favor of the maintenance and continuity of the domicile of origin. Hence, in this case, petitioner is presumed to still be a resident of San Juan, Batangas and disqualified from taking the mayoralty position in Lipa City, Batangas.

The notarized certification of the *Baranggay Chairman* of Brgy. Pinagtong-ulan, Lipa City does not bar Us from holding this position contrary to Justice Sereno's opinion. My esteemed colleague bases her appreciation of the notarized certification on Section 44, Rule 130 of the Rules of Court, which states:

> Section 44. *Entries in official records.* — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

As is readily apparent, Section 44, Rule 130 pertains to "entries in official records." Needless to state, no such "entries" or "records" were referred to in the certification, much less presented before the COMELEC or this Court. Instead, the certification plainly states in a pro-forma way: "This is to certify that Meynardo A. Sabili, 53 years old is a resident of Zone 5 of Barangay Pinagtong-ulan Lipa City since April 2007." Neither does the certification mention any record kept by the Baranggay Secretary, or even cite any of its entries. Clearly, Section 44, Rule 130 cannot clothe the certification executed by the Baranggay Chairman of Pinagtong-ulan with finality and conclusiveness. Instead, as it is not the duty of the Baranggay Chairman, but the duty of the Baranggay Secretary, "to keep an updated record of all inhabitants of the *baranggay*,"[92] the certification must be dismissed as nothing but containing hearsay statements.

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[92] Section 394 (d) (6), Local Government Code.

In fact, even if we consider *arguendo* the Baranggay Chairman's certification stating that Sabili is a resident of his *baranggay*, there is no indication that the term "resident" used therein carries the same meaning as the "resident" used in the provision requiring residence as a qualification for candidacy, which is equivalent to domicile that requires not just physical presence but, again, *animus manendi*. At most, the certification may only attest to the bodily presence of petitioner in his *baranggay*, but not the element of Sabili's intent to remain therein which, as indicated by circumstances, is patently absent.

The certification is also negated given the *conflicting* testimonies of residents of the Brgy. Pinagtong-ulan where petitioner claims to be residing.[93] Again, the rule is in the presence of conflicting evidence on the issue of domicile, the Court is behooved to uphold the ***presumption of the continuity of the domicile of origin***.[94]

Both the Certificate of Appreciation issued by the Parish of Santo Niño and Sabili's Designation as a Member of the Advisory Body of Guardians Brotherhood Incorporated cannot be considered to establish Sabili's domicile in Brgy. Pinagtong-ulan since, as noted by the COMELEC, the first merely mentions material and financial support to the fiesta celebration. And there is nothing in the second document making residency in Brgy. Pinagtong-ulan as a requisite for the designation in the Advisory Board.

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[93] Respondent Librea presented his Affidavit as well as the Affidavits of Eladio de Torres, Violeta Fernandez, Rodrigo Macasaet and Pablo Lorzano. Sabili on the other hand, presented the Affidavits of Leonila Suarez, Jacinto Cornejo Sr. and Rosalinda Macasaet. Notably, the witnesses of Sabili all benefited from a business transaction with Palomares, Sabili's common-law wife. Suarez and Macasaet sold properties to Palomares while Cornejo was hired by her to renovate a house. Hence, it is not far-fetched to conclude that they would be biased in favour of Sabili. Furthermore, the *Pinagsama-samang Sinumpaang Salaysay* dated January 16, 2010 and the *Sinumpaang Salaysay* executed by Dominador Macuha attributed familial relations to the witnesses of Librea and the wife of Sabili's opponent for the mayoralty position.

[94] Bevilaqua, *supra* note 29.

Furthermore, it notable that Sabili applied for transfer of his registration record only on June 9, 2009 and the same was approved in October 31, 2009 as proven by Sabili's voter certification. Technically, therefore, Sabili is a registered voter of Lipa City only in October 2009, **seven** months prior to the May 2010 elections.

Indeed, it is not only that "each evidence presented by petitioner… fail(s) to convincingly show that fact of his residence at Pinagtong-ulan since 2007,"[95] even collectively considered, these pieces of evidence tend to sufficiently establish such failure.

As Sabili's acts belie his intent to change his domicile and be a resident of Lipa City, he had deliberately and falsely misrepresented in his COC that he is resident of Lipa City, knowing fully well that he is not, in order to qualify as a candidate for the office of the Mayor. Sabili's statement in the COC cannot be dismissed as a simple mistake that does not warrant its cancellation since residence being primarily a matter of intent, any falsehood with regards thereto, as in this case, reveals an intentional and deliberate misrepresentation that cannot be sanctioned by this Court. Hence, the misrepresentation committed by Sabili regarding his residence is a clear ground for the cancellation of his COC under Section 78 of the Omnibus Election Code (OEC) and his disqualification from the office he is presently occupying.

Sabili's subsequent election is of no consequence considering that an invalid COC cannot give rise to a valid candidacy, much less valid votes. More importantly, while the electorate's will is indeed primary, the electorate likewise deserves a person who is unwilling to resort to a Machiavellian circumvention of the laws and blatant falsehood just to suit his own purposes. He is not only disqualified from a public office but more importantly does not deserve the public's trust.

I, therefore, submit that the COMELEC's Resolutions be upheld and the instant petition for *certiorari* be denied.

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[95] *Ponencia,* pp. 23-24.

SECOND DIVISION

[A.M. No. P-11-3003. April 25, 2012]
(Formerly A.M. IPI No. 08-2970-P)

RE: COMPLAINT FILED BY PAZ DE VERA LAZARO AGAINST EDNA MAGALLANES, Court Stenographer III, Regional Trial Court, Branch 28; and BONIFACIO G. MAGALLANES, process server, Regional Trial Court, Branch 30, Bayombong, Nueva Vizcaya.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; WITHDRAWAL OF A COMPLAINT DOES NOT WARRANT DISMISSAL OF AN ADMINISTRATIVE CASE.—** This Court has consistently ruled that the withdrawal of a Complaint does not warrant its dismissal, because the issue in an administrative case is not whether the complainant has a cause of action against the erring court employee, but whether the latter has breached the court's norms and standards. This Court has an interest in the conduct and behavior of all employees of the judiciary.

2. **ID.; ID.; COURT PERSONNEL; CONDUCT; COURT PERSONNEL MUST COMPLY WITH JUST CONTRACTUAL OBLIGATIONS, ACT FAIRLY AND ADHERE TO HIGH ETHICAL STANDARDS; SUSTAINED.—** We find spouses Magallanes not guilty of willful failure to pay just debts, considering that they have paid their entire obligation including the interest on the loan. However, we note with strong displeasure the conduct of respondent spouses Magallanes, who obtained several loans without paying for them at the agreed time. It took more than six years for them to pay their entire obligation. x x x All these facts constitute conduct that reflects badly on the judiciary, diminishing the honor and integrity of the offices they hold. This is especially true when we consider that, respondents were admittedly given the loans because they were considered prominent persons in the community; and that they were considered as such, presumably because they worked in the judiciary. In *Villaseñor v. De Leon*, we emphasized that "to preserve decency within the judiciary, court personnel must comply with just contractual obligations, act fairly and adhere

to high ethical standards." In that case, we said that respondent was "expected to be a paragon of uprightness, fairness and honesty not only in all her official conduct but also in her personal actuations, including business and commercial transactions, so as to avoid becoming her court's albatross of infamy."

R E S O L U T I O N

SERENO, *J.*:

Before the Court is an administrative complaint for failure to pay just debts, dishonesty and extortion filed by Paz De Vera Lazaro (Lazaro), a retired schools district supervisor of Bambang, Nueva Vizcaya against respondents Edna and Bonifacio Magallanes (spouses Magallanes). Edna Magallanes is a Court Stenographer III, Regional Trial Court, Branch 28; while Bonifacio Magallanes is a Process Server, Regional Trial Court, Branch 30, both of Bayombong, Nueva Vizcaya.

The facts are as follows:

Complainant Lazaro lent to respondent spouses Magallanes a total of ₱135,000 on four separate occasions in the first half of 2005. Respondents offered two land titles and a revolver as collaterals for the loan. One of the land titles turned out to have been encumbered in the amount of ₱400,000.

Because respondents did not make any payment in spite of promises to do so, complainant was forced to bring the matter to the *Barangay Lupon* on 04 August 2007. The parties reached an amicable settlement, whereby respondents promised to pay their obligation by 30 August 2007. However, Lazaro received only token amounts of ₱5,000 and ₱3,000 from the spouses Magallanes.

In their Comment dated 30 October 2008, respondents admit incurring the aforesaid loans, but deny the charges in the Complaint. They also claim that they have already paid ₱77,000 of their total obligation. Moreover, they contend that, had they defaulted on their payments, Lazaro should have forfeited in her favor the collaterals they had offered to secure the loans.

On 03 December 2010, the Court received Lazaro's 29 November 2010 Affidavit of Desistance which stated that complainant did not want to pursue the administrative complaint anymore, and that she agreed to settle the matter amicably with respondents.

On 07 December 2010, we also received a handwritten amicable settlement dated 05 December 2010 signed by the parties. In the document, respondents promised to pay a total of ₱120,000 inclusive of the remaining loan balance of ₱70,000 and interest of ₱50,000 upon the dismissal of the case.

On 08 August 2011, the Court received a letter dated 29 July 2011 signed by complainant Lazaro, reporting that spouses Magallanes had paid her the whole amount of ₱120,000 on 23 June 2011. She also reported that respondents had expressed their sorrow and asked for pardon for the discomfort and trouble they had caused her. She then reiterated her request that the Complaint she filed be dismissed.

This Court has consistently ruled that the withdrawal of a Complaint does not warrant its dismissal, because the issue in an administrative case is not whether the complainant has a cause of action against the erring court employee, but whether the latter has breached the court's norms and standards.[1] This Court has an interest in the conduct and behavior of all employees of the judiciary.

Accordingly, we find spouses Magallanes not guilty of willful failure to pay just debts, considering that they have paid their entire obligation including the nterest on the loan.

However, we note with strong displeasure the conduct of respondent spouses Magallanes, who obtained several loans without paying for them at the agreed time. It took more than six years for them to pay their entire obligation.

To recall, complainant Lazaro was forced to bring the matter to the *Barangay Lupon*. Respondents promised therein to pay

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[1] *Vilar v. Angeles*, A.M. No. P-06-2276, 5 February 2007, 514 SCRA 147.

their obligation by 30 August 2007. However, she received only the token amounts of ₱5,000 and ₱3,000 from them.

We also note that one of the land titles that respondents gave as collateral turned out to have been encumbered in the amount of ₱400,000, a fact they did not deny.

Moreover, while we are pleased to learn from complainant Lazaro that, as promised, she has been paid the entire obligation of ₱120,000 on 23 June 2011, we note that respondent's promise to her was conditioned upon her execution of an Affidavit of Desistance which she accordingly executed.

All these facts constitute conduct that reflects badly on the judiciary, diminishing the honor and integrity of the offices they hold. This is especially true when we consider that, respondents were admittedly given the loans because they were considered prominent persons in the community; and that they were considered as such, presumably because they worked in the judiciary.

In *Villaseñor v. De Leon*,[2] we emphasized that "to preserve decency within the judiciary, court personnel must comply with just contractual obligations, act fairly and adhere to high ethical standards." In that case, we said that respondent was "expected to be a paragon of uprightness, fairness and honesty not only in all her official conduct but also in her personal actuations, including business and commercial transactions, so as to avoid becoming her court's albatross of infamy."

We expect nothing less than the same conduct from respondents in the present case.

WHEREFORE, the administrative Complaint is hereby **DISMISSED.** Respondents are warned that, whether official or personal, any future conduct that falls short of the high ethical standards expected of them as court employees shall be dealt with more severely.

SO ORDERED.

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

[2] 447 Phil. 457 (2003).

SECOND DIVISION

[A.M. No. P-12-3058. April 25, 2012]
(Formerly A.M. OCA I.P.I. No. 10-3357-P)

LEAVE DIVISION, OFFICE OF ADMINISTRATIVE SERVICES, OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **GEORGE E. GAREZA, Sheriff III, Municipal Trial Court in Cities, Victorias City, Negros Occidental,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; HABITUAL TARDINESS; PENALTIES.— Under Sec. 52 (C) (4), Rule VI of CSC Memorandum Circular No. 19, Series of 1999, habitual tardiness is penalized as follows: First offense-Reprimand; Second offense-Suspension for 1-30 days; Third offense-Dismissal from the service. Since it was proven that the present case is the second offense of Gareza for being habitually tardy, the OCA correctly recommended for the penalty of suspension for 30 days with warning that a similar offense in the future would be meted a more severe penalty.

R E S O L U T I O N

SERENO, *J.*:

George E. Gareza is a Sheriff III of the Municipal Trial Court in Cities in Victorias City, Negros Occidental. In a Report of Tardiness dated 03 March 2010 by Hermogena F. Bayani, Supreme Court Chief Judicial Staff Officer, Leave Division, Office of Administrative Services (OAS), Office of the Court Administrator (OCA), Gareza was found to have incurred tardiness as follows:

January 2009	12 times
April 2009	10 times
June 2009	10 times

October 2009	12 times
November 2009	14 times
January 2010	15 times

On 19 October 2010, the Court Administrator required Gareza to submit his Comment to the report about his tardiness.

On 19 November 2010, Gareza submitted his written comment to the OCA. In his letter dated 09 November 2010, Gareza did not deny the tardiness he had incurred and, in fact apologized for his infractions. He reasoned that his tardiness was brought about by his transfer of residence that made his travel to work longer than usual. Gareza asks that he be given another chance to "correct his errors."

On 22 February 2011, the Court Administrator promulgated its evaluation that found Gareza to have incurred repeated tardiness on the dates reported by the Leave Division of the OAS. It noted that Gareza was previously reprimanded in a Minute Resolution dated 12 December 2010 in Administrative Matter No. P-10-2876 for habitual tardiness, making the present report his second for the same offense.

Hence, it was recommended by the OCA that (a) the case be re-docketed as a regular administrative matter and (b) that Gareza be suspended for a period of thirty (30) days pursuant to Section 52 (C) (4) Rule VI of the Civil Service Memorandum Circular No. 19, Series of 1999 with warning that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

After a review of the records, we **ADOPT** the findings and recommendations of the OCA. Under Sec. 52 (C) (4), Rule VI of CSC Memorandum Circular No. 19, Series of 1999, habitual tardiness is penalized as follows:

First offense Reprimand

Second offense Suspension for 1-30 days

Third offense Dismissal from the service

Since it was proven that the present case is the second offense of Gareza for being habitually tardy, the OCA correctly recommended for the penalty of suspension for 30 days with warning that a similar offense in the future would be meted a more severe penalty.

WHEREFORE, we **AFFIRM** in all respects the report of the OCA finding Gareza guilty of habitual tardiness and **ADOPT** its recommendation as follows:

1.) To have the instant case **RE-DOCKETED** as a regular administrative matter; and

2.) **SUSPEND** Gareza for thirty (30) days with a warning that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. MTJ-11-1781. April 25, 2012]
(Formerly OCA I.P.I. No. 09-2161-MTJ)

DR. RAMIE G. HIPE, *complainant, vs.* **JUDGE ROLANDO T. LITERATO, MUNICIPAL TRIAL COURT, MAINIT, SURIGAO DEL NORTE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; JUDGES SHALL DISPOSE OF THE COURT'S BUSINESS PROMPTLY AND DECIDE CASES WITHIN THE REQUIRED PERIODS; SUSTAINED.— Rule 3.05, Canon 3 of the Code of Judicial Conduct mandates that a judge shall

dispose of the court's business promptly and decide cases within the required periods. In general, courts are required to decide cases submitted for decision within three months from the date of such submission. With respect to cases falling under the Rule on Summary Procedure, first level courts are only allowed 30 days following the receipt of the last affidavit and position paper, or the expiration of the period for filing the same, within which to render judgment. x x x The Court cannot stress enough the importance of prompt and expeditious resolution of cases. The Court reiterates its pronouncement in *Sanchez v. Vestil*: This Court has constantly impressed upon judges the need to decide cases promptly and expeditiously, for it cannot be gainsaid that justice delayed is justice denied. Delay in the disposition of cases undermines the people's faith and confidence in the judiciary. Hence, judges are enjoined to decide cases with dispatch. Their failure to do so constitutes gross inefficiency and warrants the imposition of administrative sanction on them.

2. **ID.; ID.; BASIC LEGAL PROCEDURES MUST BE AT THE PALM OF A JUDGE'S HANDS.—** Competence is a mark of a good judge. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. It is highly imperative that judges be conversant with the law and basic legal principles. Basic legal procedures must be at the palm of a judge's hands.

3. **ID.; ID.; GROSS IGNORANCE OF THE LAW, AS A SERIOUS CHARGE; PENALTY.—** Under Section 8(9), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge. Section 11(A) of the same Rule provides that the penalty to be imposed if a respondent Judge is found guilty of a serious charge is either a fine of more than ₱20,000.00 but not more than ₱40,000.00, suspension from office without salary and other benefits for more than three but not exceeding six months, or dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations.

4. **ID.; ID.; UNDUE DELAY IN RENDERING A DECISION, AS A LESS SERIOUS CHARGE; PENALTY.—** Section 9 of Rule 140, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision and violation of Supreme

Court circulars as a less serious charge for which the penalty is suspension from office without salary and other benefits for one month to three months, or a fine of ₱10,000.00 to ₱20,000.00.

5. ID.; ID.; JUDGES; WHEN FOUND GUILTY OF TWO OR MORE CHARGES OR COUNTS; IMPOSABLE PENALTY; APPLICATION IN CASE AT BAR.— Section 17 of the Omnibus Rules implementing the Civil Service Law states that if the respondent Judge is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or counts and the rest may be considered aggravating circumstances. The most serious of the charges against Judge Literato is his gross ignorance of the Rule on Summary Procedure, and his undue delay in deciding Civil Case No. 632 is considered an aggravating circumstance. Another aggravating circumstance is the fact that Judge Literato was previously charged and found guilty of gross inefficiency and gross negligence in A.M. No. 03-10-250-MCTC, for which he had been fined ₱20,000.00. However, the Court takes into consideration that aside from his regular station in MTC-Taganaan, Surigao del Norte, Judge Literato sits as acting judge in the MTC-Mainit, and the MCTCs of Dapa, Socorro; Claver, Gicaquit; Del Carmen-Numancia, San Isidro, San Benito; General Luna, Pilar; Malimono, San Francisco; Placer, Bacnag; Sta. Monica, Burgos; and Tubod, Alegria. Additionally, Judge Literato has been in the service of the judiciary for 26 years. Given the foregoing, the penalty of fine in the amount of ₱30,000.00 is deemed commensurate with Judge Literato's infractions.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is an administrative case[1] for gross ignorance of the law, gross incompetence, and gross dereliction of duty filed by Dr. Ramie G. Hipe against Judge Rolando T. Literato, acting judge of the Municipal Trial Court (MTC), Mainit, Surigao del Norte, in relation to Civil Case No. 632.

[1] *Rollo,* pp. 1-12.

Civil Case No. 632 was an action for unlawful detainer, damages, and attorney's fees instituted by the Municipality of Mainit, Surigao del Norte, represented by Municipal Mayor Ramon Beltran Mondano, against spouses Dr. Hector and Dr. Ramie Hipe (spouses Hipe), before the MTC on December 27, 2007.[2] Counsel for the Municipality of Mainit was Atty. Elmer T. Paniamogan, a vice-mayoralty candidate in the said municipality during the May 2007 elections who belongs to the same party as Mayor Mondano.

According to the complaint, Dr. Hector Hipe served as the Municipal Health Officer of Mainit until he resigned in April 2007 when he ran for Mayor in his hometown in Samar. As the Municipal Health Officer, Dr. Hector Hipe, together with his spouse, Dr. Ramie Hipe,[3] had the privilege of using as doctor's quarters a two-storey residential building at the back of the Rural Health Center, owned by the Municipality of Mainit (subject property). The spouses Hipe continued to stay at the subject property, notwithstanding Dr. Hector Hipe's resignation as Municipal Health Officer, at the mere tolerance of the Municipality of Mainit, which was then still searching for a new Municipal Health Officer. Despite several demands made by the Municipality of Mainit on July 17, 2007, October 8, 2007, and October 23, 2007, the spouses Hipe failed and refused to vacate the subject property, insisting that they had the right to stay thereat since Dr. Ramie Hipe was also serving the Municipality of Mainit. The spouses Hipe were unmindful of the fact that Dr. Ramie Hipe was not at all an employee of the Municipality of Mainit. Thus, the Municipality of Mainit prayed that the MTC render judgment ordering the spouses Hipe:

a. To vacate the doctor's quarter[s] located at the back of the Municipal Health Center, Mupas Street, Mainit, Surigao del Norte;

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[2] *Id.* at 13-18.

[3] Dr. Ramie Hipe is the Medical Director of the Medicare Hospital in Mainit, which is operated and maintained by the Provincial Government of Surigao del Norte.

b. To pay to [the Municipality of Mainit] the ₱2,000.00 monthly rentals for the use of said premises from May 1, 2007 until the [spouses Hipe] finally vacate the same;

c. To pay to [the Muncipality of Mainit] the sum of ₱20,000.00 as and by way of attorney's fees plus ₱2,000.00 per court appearance; and

To pay the costs of the suit.

[The Municipality of Mainit] prays for such other remedy as this Court may deem just and equitable in the premises.[4]

Summons was served upon the spouses Hipe on January 11, 2008.

Dr. Ramie Hipe, through counsel, filed her Answer on January 21, 2008, seeking the dismissal of Civil Case No. 632 "for being illegal, devoid of legal and factual bases and for utter lack of merit[;]"[5] and the grant of her counterclaims for ₱50,000.00 attorney's fees, ₱200,000.00 moral damages, and ₱50,000.00 exemplary damages.

Judge Literato set the preliminary conference of Civil Case No. 632 on February 29, 2008.[6]

On February 25, 2008, Dr. Ramie Hipe filed a motion[7] to transfer the date of the preliminary hearing from February 29, 2008 to March 14, 2008 or April 4, 2008, for the reason that her counsel of record would be attending the Mandatory Continuing Legal Education (MCLE) from February 27, 2008 to March 1, 2008. Judge Literato subsequently reset the preliminary conference for Civil Case No. 632 to April 25, 2008.

On March 31, 2009, Dr. Ramie Hipe filed a motion to resolve her affirmative defenses,[8] to wit:

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[4] *Rollo*, pp. 16-17.

[5] *Id.* at 34.

[6] *Id.* at 46.

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

[8] *Id.* at 50-56.

2. In her Answer, [Dr. Ramie Hipe] invokes the following affirmative defenses:

> 2-a. That she has the right to stay in the Doctor's Quarter[s] as part of the housing privilege granted to her as a Public Health Worker pursuant to Republic Act 7305, known as the Magna Carta for Public Health Workers. This is purely a question of law which can be resolved by this Honorable Court in the exercise of its inherent power to interpret a given provision of law.
>
> 2-b. That there is no necessity for her Ejectment as the Doctor's Quarter[s] is capable of accommodating even four (4) persons. This line of defense may be resolved by making reference to the physical structure of the edifice in question, which, in turn, may be substantiated thru the conduct of an actual ocular inspection.
>
> 2-c. That the filing of the instant case is illegal from the beginning since the Ejectment of [Dr. Ramie Hipe] interferes with, coerces or restrains her, as a public health worker, in the exercise of her functions as such, as well as her right to free housing granted by law, the resolution of which may be made by reference to Sections 32 and 39 of RA 7305.

3. In addition to the foregoing, [Dr. Ramie Hipe] beseeches this Honorable Court to take judicial notice of COA Circular No. 98-002 prohibiting employment by local government units of private lawyers to handle their legal cases and the decided cases of the Supreme Court x x x.[9]

Per the agreement of the parties, the preliminary conference was again reset by Judge Literato from April 25, 2008 to May 20, 2008. Apparently, however, the preliminary conference still did not take place on May 20, 2008.

Meanwhile, Judge Literato set for hearing on June 10, 2008 Dr. Ramie Hipe's motion to resolve her affirmative defenses. At the end of said hearing, Judge Literato issued an Order submitting the motion for resolution.

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

On April 28, 2009, Judge Literato rendered a Decision[10] in Civil Case No. 632 in favor of the Municipality of Mainit. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing, the [spouses Hipe] are hereby adjudged:
>
> 1. TO IMMEDIATELY VACATE the two (2)[-]story Building utilized as doctor's quarter[s] and residence of the Municipal Health Officer;
>
> 2. And that the [spouses Hipe] are hereby adjudged TO PAY the amount of Two Thousand Pesos (₱2,000.00) as filing fee;
>
> 3. The [Municipality of Mainit] is not entitled to attorney's fees for it is the Provincial Prosecutor who will represent the [Municipality of Mainit] in any Court if no Municipal Attorney having been appointed.
>
> In the case at bar, the payment for attorney's fee shall [be] chargeable to the Municipal Mayor and its Councilors in private capacity.
>
> They cannot claim reimbursement from the Municipal Government of Mainit, Surigao del Norte for being not authorized to do so unless by law. The Municipal Government of Mainit is authorized to engage the services of the private lawyer to protect and de[f]end his case.[11]

As a result of the aforementioned events, Dr. Ramie Hipe filed on June 17, 2009 the present administrative complaint against Judge Literato, based on the following grounds: (1) from June 10, 2008 until April 28, 2009, a period of 322 days, Judge Literato took no further action in Civil Case No. 632, in violation of the Revised Rule on Summary Procedure; (2) since June 10, 2008 up to the filing of the present administrative complaint, Judge Literato failed to resolve Dr. Ramie Hipe's affirmative defenses; (3) since June 10, 2008 until the filing of the present administrative complaint, Judge Literato failed to conduct a

[10] *Id.* at 63-68.

[11] *Id.* at 67-68.

preliminary conference in Civil Case No. 632; (4) Judge Literato already rendered on April 28, 2009 a judgment in favor of the Municipality of Mainit even though the parties had not been ordered to submit their positions papers, thus, violating Dr. Ramie Hipe's right to due process of law; and (5) Judge Literato's Decision dated April 28, 2009 in Civil Case No. 632 was grammatically flawed and displayed his gross incompetence.

In his defense, Judge Literato averred that the parties failed to appear at the preliminary conference set on February 29, 2008. Hence, the preliminary conference was reset to May 20, 2008, on which date, the parties were also required to file their respective position papers. While motions to reset the preliminary conference and resolve affirmative defenses are indeed prohibited pleadings, Judge Literato pointed out that Dr. Ramie Hipe herself filed said motions and that the Municipality of Mainit failed to object to the submission of the same.

In addition, Judge Literato argued that Dr. Ramie Hipe was not the real party-in-interest in Civil Case No. 632, but her husband, Dr. Hector Hipe. In any case, the issues and defenses raised by Dr. Ramie Hipe in her Answer in Civil Case No. 632 were already squarely passed upon in the Decision dated April 28, 2009. The proper recourse for Dr. Ramie Hipe should have been the timely filing of an appeal before the Regional Trial Court (RTC) of Judge Literato's Decision dated April 28, 2009 in Civil Case No. 632, not the institution of the present administrative complaint. Judge Literato also alleged that the parties in Civil Case No. 632 had reached an out-of-court settlement in which they agreed to divide the doctor's quarters between Dr. Ramie Hipe and the newly appointed municipal health officer.

Lastly, Judge Literato asserted that the periods provided under the Rules of Court should be leniently applied to his case as he presides over other salas throughout the Province of Surigao del Norte. Judge Literato further explained that he was able to conduct only five hearings in the MTC of Mainit from July 2008 to March 2009 owing to other official business (*i.e.*, attending seminars in Boracay and Manila) and personal constraints (*i.e.*, his hospitalization at Mernada Hospital, Surigao City).

On November 10, 2010, the Office of the Court Administrator (OCA) submitted its report[12] with the following recommendations:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court:

1. That the instant case be RE-DOCKETED as a regular administrative matter;

2. That Judge Rolando T. Literato be FINED Twenty Thousand Pesos (₱20,000.00) per Section 11 [B(2)], Rule 140, Rules of Court. However, he is ADMONISHED anew to be more circumspect in observing the reglementary periods for disposing of motions and cases, and that he be STERNLY WARNED with FINALITY that a repetition of a similar act shall be dealt with UTMOST SEVERITY; and

3. That Judge Rolando T. Literato's numerous court assignments be REDUCED in a number as the Honorable Court may deem appropriate.[13]

The Court agrees with the recommendations of the OCA, except as to the penalty imposed upon Judge Literato.

At the outset, the Court notes that Judge Literato's Decision dated April 28, 2009 in Civil Case No. 632 was appealed to the RTC. Thus, any issue concerning the propriety of said decision now rests with the RTC. The present administrative case is limited to Judge Literato's alleged disregard of the rules and delay in rendering judgment in Civil Case No. 632.

Significant herein is Section 7 of the Revised Rule on Summary Procedure, which provides:

Sec. 7. *Preliminary conference; appearance of parties.* — **Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held.** The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

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[12] *Id.* at 114-119.

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

The failure of the plaintiff to appear in the preliminary conference shall be a cause for the dismissal of his complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with Section 6 hereof. All cross-claims shall be dismissed.

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. This Rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference. (Emphasis supplied.)

There is no question that Civil Case No. 632, a case for ejectment, is covered by the Revised Rule on Summary Procedure. It is equally undisputed that in summary procedure, a preliminary conference should be held not later than 30 days after the last answer has been filed. Considering that no preliminary conference at all was held in Civil Case No. 632, Judge Literato evidently failed to comply with a basic rule of procedure for which he should accordingly be held accountable.

Judge Literato's inaction in Civil Case No. 632 for 322 days constitutes utter disregard for the summary nature of an ejectment case.

Rule 3.05, Canon 3 of the Code of Judicial Conduct mandates that a judge shall dispose of the court's business promptly and decide cases within the required periods. In general, courts are required to decide cases submitted for decision within three months from the date of such submission.[14] With respect to cases falling under the Rule on Summary Procedure, first level courts are only allowed 30 days following the receipt of the last affidavit and position paper, or the expiration of the period for filing the same, within which to render judgment.[15]

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[14] Constitution of the Philippines, Article VIII, Section 15.

[15] Section 10, Revised Rule on Summary Procedure, completely reads:

SEC.10. Rendition of judgment. — Within thirty (30) days after receipt of the last affidavits and position papers, or the expiration of the period for filing the same, the court shall render judgment.

However, should the court find it necessary to clarify certain material facts, it may, during the said period, issue an order specifying the matters

Competence is a mark of a good judge. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. It is highly imperative that judges be conversant with the law and basic legal principles. Basic legal procedures must be at the palm of a judge's hands.[16]

There is no showing herein that Judge Literato required the parties to file their position papers. Dr. Ramie Hipe filed her Answer in Civil Case No. 632 on **January 21, 2008**. Dr. Ramie Hipe also filed her motion to resolve her affirmative defenses on **March 31, 2009**, which was heard and submitted for resolution by Judge Literato on **June 10, 2008**. Judge Literato's next action thereafter was to render a Decision in Civil Case No. 632 on **April 28, 2009**. Even if the Court counts only from June 10, 2008 (the latest incident in Civil Case No. 632), it took Judge Literato 322 days to finally dispose of the case.

Judge Literato irrefragably failed to promptly decide Civil Case No. 632 in accordance with the Revised Rule on Summary Procedure. Judge Literato's inaction in Civil Case No. 632 is contrary to the rationale behind the Rule on Summary Procedure, which was precisely adopted to promote a more expeditious and inexpensive determination of cases, and to enforce the constitutional rights of litigants to the speedy disposition of cases.[17]

The Court cannot stress enough the importance of prompt and expeditious resolution of cases. The Court reiterates its pronouncement in *Sanchez v. Vestil*:[18]

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to be clarified, and require the parties to submit affidavits or other evidence on the said matters within ten (10) days from receipt of said order. Judgment shall be rendered within fifteen (15) days after the receipt of the last clarificatory affidavits, or the expiration of the period for filing the same.

The court shall not resort to the clarificatory procedure to gain time for the rendition of the judgment.

[16] *Nedia v. Laviña*, A.M. No. RTJ-05-1957, September 26, 2005, 471 SCRA 10, 18-19.

[17] *Sevilla v. Lindo*, A.M. No. MTJ-08-1714, February 9, 2011, 642 SCRA 277, 284-285.

[18] 358 Phil. 477 (1998).

This Court has constantly impressed upon judges the need to decide cases promptly and expeditiously, for it cannot be gainsaid that justice delayed is justice denied. Delay in the disposition of cases undermines the people's faith and confidence in the judiciary. Hence, judges are enjoined to decide cases with dispatch. Their failure to do so constitutes gross inefficiency and warrants the imposition of administrative sanction on them.[19]

Judge Literato explains his delay in resolving Civil Case No. 632 by citing his duties in other courts throughout Surigao del Norte. Such an excuse is unacceptable. The additional court assignments or designations imposed upon Judge Literato does not make him less liable for the delay.[20] As the Court ruled in *Española v. Panay*,[21] if the caseload of the judge prevents the disposition of cases within the reglementary periods, he should ask this Court for a reasonable extension of time to dispose of the cases involved. This is to avoid or dispel any suspicion that something sinister or corrupt is going on. Judge Literato never made such a request. Instead, he kept his silence and left Civil Case No. 632, an ejectment case falling under the Revised Rule for Summary Procedure, pending for nearly a year.

In sum, Judge Literato is administratively guilty of gross ignorance of the Rule on Summary Procedure and undue delay in rendering a decision.

Under Section 8(9), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge. Section 11(A) of the same Rule provides that the penalty to be imposed if a respondent Judge is found guilty of a serious charge is either a fine of more than ₱20,000.00 but not more than ₱40,000.00, suspension from office without salary and other benefits for more than three but not exceeding six months, or dismissal from the service,

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[19] *Id.* at 495.

[20] *Re: Judicial Audit of the RTC, Br. 14, Zamboanga City presided over by the Hon. Ernesto R. Gutierrez, formerly the Presiding Judge thereof*, 517 Phil. 507, 519 (2006).

[21] 319 Phil. 27, 31 (1995), citing *Cruz v. Basa*, A.M. No. MTJ-91-598, February 9, 1993, 219 SCRA 551, 557.

forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations.

Section 9 of Rule 140, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision and violation of Supreme Court circulars as a less serious charge for which the penalty is suspension from office without salary and other benefits for one month to three months, or a fine of ₱10,000.00 to ₱20,000.00.

Section 17 of the Omnibus Rules implementing the Civil Service Law states that if the respondent Judge is found guilty of two or more charges or counts, the penalty imposed should be that corresponding to the most serious charge or counts and the rest may be considered aggravating circumstances.

The most serious of the charges against Judge Literato is his gross ignorance of the Rule on Summary Procedure, and his undue delay in deciding Civil Case No. 632 is considered an aggravating circumstance. Another aggravating circumstance is the fact that Judge Literato was previously charged and found guilty of gross inefficiency and gross negligence in A.M. No. 03-10-250-MCTC, for which he had been fined ₱20,000.00. [22]

However, the Court takes into consideration that aside from his regular station in MTC-Taganaan, Surigao del Norte, Judge Literato sits as acting judge in the MTC-Mainit, and the MCTCs of Dapa, Socorro; Claver, Gicaquit; Del Carmen-Numancia, San Isidro, San Benito; General Luna, Pilar; Malimono, San Francisco; Placer, Bacnag; Sta. Monica, Burgos; and Tubod, Alegria. Additionally, Judge Literato has been in the service of the judiciary for 26 years.

Given the foregoing, the penalty of fine in the amount of ₱30,000.00[23] is deemed commensurate with Judge Literato's infractions.

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[22] *Report on the Judicial Audit Conducted in the MCTC-Dapa, Surigao del Norte*, A.M. No. 03-10-250-MCTC, September 30, 2004, 439 SCRA 487, 502.

[23] As revised.

WHEREFORE, respondent Judge Rolando T. Literato is **FINED** in the amount of ₱30,000.00 for gross ignorance of the Rule on Summary Procedure and unreasonable delay in rendering a judgment in Civil Case No. 632, and is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with utmost severity. Moreover, the Office of the Court Administrator is **ORDERED** to submit a report and recommendation on how Judge Rolando Literato's numerous court assignments could be reduced to a more reasonable and manageable number.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 161909. April 25, 2012]

PHILTRANCO SERVICE ENTERPRISES, INC., *petitioner, vs.* **FELIX PARAS and INLAND TRAILWAYS, INC., and HON. COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; MORAL DAMAGES; GENERALLY, MORAL DAMAGES ARE NOT RECOVERABLE IN AN ACTION PREDICATED ON A BREACH OF CONTRACT; EXCEPTIONS.— As a general rule, indeed, moral damages are not recoverable in an action predicated on a breach of contract. This is because such action is not included in Article 2219 of the *Civil Code* as one of the actions in which moral damages may be recovered. By way of exception, moral damages are recoverable in an action predicated on a breach of contract: (*a*) where the mishap results in the death of a passenger, as

provided in Article 1764, in relation to Article 2206, (3), of the *Civil Code*; and (*b*) where the common carrier has been guilty of fraud or bad faith, as provided in Article 2220 of the *Civil Code*.

2. REMEDIAL LAW; CIVIL PROCEDURE; THIRD PARTY COMPLAINT; REQUISITES; PRESENT IN CASE AT BAR.— [T]he requisites for a third-party action are, *firstly*, that the party to be impleaded must not yet be a party to the action; *secondly*, that the claim against the third-party defendant must belong to the original defendant; *thirdly*, the claim of the original defendant against the third-party defendant must be based upon the plaintiff's claim against the original defendant; and, *fourthly*, the defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff. As the foregoing indicates, the claim that the third-party complaint asserts against the third-party defendant must be predicated on substantive law. Here, the substantive law on which the right of Inland to seek such other relief through its third-party complaint rested were Article 2176 and Article 2180 of the *Civil Code*, which read: x x x Paras' cause of action against Inland (breach of contract of carriage) did not need to be the same as the cause of action of Inland against Philtranco and its driver (tort or *quasi*-delict) in the impleader. It is settled that a defendant in a contract action may join as third-party defendants those who may be liable to him in tort for the plaintiff's claim against him, or even directly to the plaintiff. x x x It is worth adding that allowing the recovery of damages by Paras based on *quasi*-delict, despite his complaint being upon contractual breach, served the judicial policy of avoiding multiplicity of suits and circuity of actions by disposing of the entire subject matter in a single litigation.

3. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; WHEN MAY BE RECOVERED; RATIONALE.— Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. The reason is that the court "cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages," but "there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts."

4. ID.; ID.; TEMPERATE DAMAGES; AWARD THEREOF, SUSTAINED; RATIONALE.— There is no question that Article 2224 of the *Civil Code* expressly authorizes the courts to award temperate damages despite the lack of certain proof of actual damages, to wit: x x x The rationale for Article 2224 has been stated in *Premiere Development Bank v. Court of Appeals* in the following manner: Even if not recoverable as compensatory damages, Panacor may still be awarded damages in the concept of temperate or moderate damages. When the court finds that some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proved with certainty, temperate damages may be recovered. Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss.

5. ID.; ID.; LOSS OF EARNING CAPACITY; AWARD THEREOF, WHEN PROPER; ELUCIDATED.— According to Article 2205, (1), of the *Civil Code*, damages may be recovered for loss or impairment of earning capacity in cases of temporary or permanent personal injury. Indeed, indemnification for damages comprehends not only the loss suffered (actual damages or *damnum emergens*) but also the claimant's lost profits (compensatory damages or *lucrum cessans*). Even so, the formula that has gained acceptance over time has limited recovery to *net earning capacity*; hence, the entire amount of ₱72,000.00 is not allowable. The premise is obviously that net earning capacity is the person's capacity to acquire money, less the necessary expense for his own living. To simplify the determination, therefore, the net earning capacity of Paras during the 9-month period of his confinement, surgeries and consequential therapy is pegged at only half of his unearned monthly gross income of ₱8,000.00 as a trader, or a total of ₱36,000.00 for the 9-month period, the other half being treated as the necessary expense for his own living in that period. It is relevant to clarify that awarding the temperate damages (for the substantial pecuniary losses corresponding to Paras' surgeries and rehabilitation and for the irreparability of Inland's damaged bus) and the actual damages to compensate lost earnings and costs of medicines give rise to no incompatibility. These damages cover distinct pecuniary losses suffered by Paras and

Inland, and do not infringe the statutory prohibition against recovering damages twice for the same act or omission.

6. ID.; ID.; ATTORNEY'S FEES; INCREASE IN AWARD, PROPER.— Although it is a sound policy not to set a premium on the right to litigate, we consider the grant to Paras and Inland of reasonable attorney's fees warranted. Their entitlement to attorney's fees was by virtue of their having been compelled to litigate or to incur expenses to protect their interests, as well as by virtue of the Court now further deeming attorney's fees to be just and equitable. In view of the lapse of a long time in the prosecution of the claim, the Court considers it reasonable and proper to grant attorney's fees to *each* of Paras and Inland equivalent to 10% of the total amounts hereby awarded to them, in lieu of only ₱20,000.00 for that purpose granted to Paras.

7. ID.; ID.; LEGAL INTERESTS; AWARDED.— Pursuant to *Eastern Shipping Lines, Inc. v. Court of Appeals,* legal interest at the rate of 6% *per annum* accrues on the amounts adjudged reckoned from July 18, 1997, the date when the RTC rendered its judgment; and legal interest at the rate of 12% *per annum* shall be imposed from the finality of the judgment until its full satisfaction, the interim period being regarded as the equivalent of a forbearance of credit.

APPEARANCES OF COUNSEL

Manuel V. Regondola for petitioner.
Virgilio Q. Bruno for Felix Paras.
Petronilo A. Dela Cruz for Inland Trailways, Inc.

D E C I S I O N

BERSAMIN, *J.*:

In an action for breach of contract of carriage commenced by a passenger against his common carrier, the plaintiff can recover damages from a third-party defendant brought into the suit by the common carrier upon a claim based on tort or *quasi*-delict. The liability of the third-party defendant is independent from the liability of the common carrier to the passenger.

Philtranco Service Enterprises, Inc. (Philtranco) appeals the affirmance with modifications by the Court of Appeals (CA) of the decision of the Regional Trial Court (RTC) awarding moral, actual and temperate damages, as well as attorney's fees and costs of suit, to respondent Felix Paras (Paras), and temperate damages to respondent Inland Trailways, Inc. (Inland), respectively the plaintiff and the defendant/third-party plaintiff in this action for breach of contract of carriage, upon a finding that the negligence of the petitioner and its driver had caused the serious physical injuries Paras sustained and the material damage Inland's bus suffered in a vehicular accident.

Antecedents

The antecedent facts, as summarized by the CA, are as follows:

Plaintiff-appellant [respondent] Felix Paras (Paras for brevity), who hails from Cainta, Rizal is engaged in the buy and sell of fish products. Sometime on 08 February 1987, on his way home to Manila from Bicol Region, he boarded a bus with Body No. 101 and Plate No. EVE 508, owned and operated by Inland Trailways, Inc. (Inland for brevity) and driven by its driver Calvin Coner (Coner for brevity).

At approximately 3:50 o'clock in the morning of 09 February 1987, while the said bus was travelling along Maharlika Highway, Tiaong, Quezon, it was bumped at the rear by another bus with Plate No. EVB 259, owned and operated by Philtranco Service Enterprises, Inc. (Philtranco for brevity). As a result of the strong and violent impact, the Inland bus was pushed forward and smashed into a cargo truck parked along the outer right portion of the highway and the shoulder thereof. Consequently, the said accident bought considerable damage to the vehicles involved and caused physical injuries to the passengers and crew of the two buses, including the death of Coner who was the driver of the Inland Bus at the time of the incident.

Paras was not spared from the pernicious effects of the accident. After an emergency treatment at the San Pablo Medical Center, San Pablo City, Laguna, Paras was taken to the National Orthopedic Hospital. At the latter hospital, he was found and diagnosed by Dr. Antonio Tanchuling, Jr. to be affected with the following injuries: a) contusion/hematoma; b) dislocation of hip upon fracture of the fibula on the right leg; c) fractured small bone on the right leg; and

d) close fracture on the tibial plateau of the left leg. (Exh. "A," p. 157, record)

On 04 March 1987 and 15 April 1987, Paras underwent two (2) operations affecting the fractured portions of his body. (Exhs. "A-2" and "A-3," pp. 159 and 160 respectively, record)

Unable to obtain sufficient financial assistance from Inland for the costs of his operations, hospitalization, doctors' fees and other miscellaneous expenses, on 31 July 1989, Paras filed a complaint for damages based on breach of contract of carriage against Inland.

In its answer, defendant Inland denied responsibility, by alleging, among others, that its driver Coner had observed an utmost and extraordinary care and diligence to ensure the safety of its passengers. In support of its disclaimer of responsibility, Inland invoked the Police Investigation Report which established the fact that the Philtranco bus driver of [sic] Apolinar Miralles was the one which violently bumped the rear portion of the Inland bus, and therefore, the direct and proximate cause of Paras' injuries.

On 02 March 1990, upon leave of court, Inland filed a third-party complaint against Philtranco and Apolinar Miralles (Third Party defendants). In this third-party complaint, Inland, sought for exoneration of its liabilities to Paras, asserting that the latter's cause of action should be directed against Philtranco considering that the accident was caused by Miralles' lack of care, negligence and reckless imprudence. (pp. 50 to 56, records).

After trial, the RTC (Branch 71) in Antipolo, Rizal rendered its judgment on July 18, 1997,[1] *viz*:

WHEREFORE, third-party defendant Philtranco and Apolinar Miralles are hereby ordered to pay plaintiff jointly and severally, the following amounts:

1. ₱54,000.00 as actual damages;
2. ₱50,000.00 as moral damages;
3. ₱20,000.00 as attorney's fees and costs.

SO ORDERED.

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[1] *Rollo*, pp. 66-70.

All the parties appealed to the CA on different grounds.

On his part, Paras ascribed the following errors to the RTC, to wit:

I. THE TRIAL COURT ERRED IN HOLDING THAT ONLY THIRD-PARTY DEFENDANT-APPELLANT PHILTRANCO IS LIABLE FOR THE DAMAGES SUFFERED BY APPELLANT PARAS.

II. THE TRIAL COURT ERRED IN NOT HOLDING APPELLANT INLAND TRAILWAYS INC. TO BE JOINTLY AND SEVERALLY LIABLE FOR THE DAMAGES SUFFERED BY PARAS.

III. THE TRIAL COURT ERRED IN NOT AWARDING UNEARNED INCOME AS ADDITIONAL ACTUAL DAMAGES SUFFERED BY APPELLANT PARAS AS HIS PHYSICAL DISABILITY IS PERMANENT IN NATURE.

IV. THE TRIAL COURT ERRED IN NOT AWARDING EXEMPLARY DAMAGES IN FAVOR OF APPELLANT PARAS.

On the other hand, Inland assigned the following errors to the RTC, namely:

THE TRIAL COURT ERRED WHEN IT FAILED TO AWARD DAMAGES UNTO THE THIRD PARTY PLAINTIFF NOTWITHSTANDING CLEAR FINDING THAT:

> *'It is clear from the evidence that the plaintiff sustained injuries because of the reckless, negligence, and lack of precaution of third party defendant Apolinar Miralles, an employee of Philtranco.'*

AND, COMPLETELY DISREGARDED THE UNCONTROVERTED ORAL AND DOCUMENTARY EVIDENCES ESTABLISHING THE EXTENT AND DEGREE OF DAMAGES SUSTAINED BY THE THIRD PARTY PLAINTIFF.

Lastly, Philtranco stated that the RTC erred thuswise:

I

THE COURT *A QUO* MISERABLY ERRED IN AWARDING ACTUAL DAMAGES GREATER THAN WHAT WAS ALLEGED IN THE COMPLAINT ITSELF, AND EVEN MUCH MORE GREATER THAN

WHAT WERE PROVED DURING THE TRIAL, HENCE, PERPETUATING UNJUST ENRICHMENT.

II

THE COURT *A QUO* SERIOUSLY ERRED IN AWARDING MORAL DAMAGES TO A CAUSE OF ACTION OF CULPA-CONTRACTUAL EVEN WITHOUT ANY EVIDENCE OF GROSS BAD FAITH; HENCE, CONTRARY TO THE ESTABLISHED DOCTRINE IN THE CASES OF PHIL. RABBIT BUS LINES VS. ESGUERRA; SOBERANO VS. BENGUET AUTO LINE AND FLORES VS. MIRANDA.

III

THE COURT *A QUO* MISERABLY ERRED IN HOLDING THAT MIRALLES WAS THE ONE AT FAULT MERELY ON THE STRENGHT OF THE TESTIMONY OF THE POLICE INVESTIGATOR WHICH IS IN TURN BASED ON THE STATEMENTS OF ALLEGED WITNESSES WHO WERE NEVER PRESENTED ON THE WITNESS STAND.

IV

THE COURT *A QUO* COMMITTED A GRIEVOUS ERROR IN DISREGARDING THE TESTIMONY OF APPELLANTS' WITNESSES WHO TESTIFIED AS TO THE DEFENSE OF EXERCISE OF DUE DILIGENCE IN THE SELECTION AND SUPERVISION OF EMPLOYEES PURSUANT TO ART. 2180, LAST PARAGRAPH, NEW CIVIL CODE.

On September 25, 2002, the CA promulgated its decision,[2] disposing:

WHEREFORE, in consideration of the foregoing premises, the assailed decision dated 18 July 19(9)7 is perforce affirmed with the following modifications:

1. Third party defendants-appellants Philtranco and Apolinar Miralles are ordered to pay plaintiff-appellant Felix Paras jointly and severally the following amounts:

a) ₱1,397.95 as actual damages;

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[2] CA *rollo*, pp. 115-132; penned by Associate Justice Bienvenido L. Reyes (now a Member of the Court), with Associate Justice Hilarion L. Aquino (retired) and Associate Justice Mario L. Guariña III (retired) concurring.

b) ₱50,000.00 as temperate damages;
c) ₱50,000.00 as moral damages; and
d) ₱20,000.00 as attorney's fees and costs of suit.

2. On the third party plaintiff-appellant Inland's claims, the third party defendant-appellants Philtranco and Apolinar Miralles are hereby ordered to pay the former (Inland) jointly and severally the amount of ₱250,000.00 as and by way of temperate damages.

SO ORDERED.

The CA agreed with the RTC's finding that no trace of negligence at the time of the accident was attributable to Inland's driver, rendering Inland not guilty of breach of contract of carriage; that faulty brakes had caused Philtranco's bus to forcefully bump Inland's bus from behind, making it hit the rear portion of a parked cargo truck; that the impact had resulted in considerable material damage to the three vehicles; and that Paras and others had sustained various physical injuries.

Accordingly, the CA: — (*a*) sustained the award of moral damages of ₱50,000.00 in favor of Paras pursuant to Article 2219 of the *Civil Code* based on *quasi*-delict committed by Philtranco and its driver; (*b*) reduced the actual damages to be paid by Philtranco to Paras from ₱54,000.00 to ₱1,397.95 because only the latter amount had been duly supported by receipts; (*c*) granted temperate damages of ₱50,000.00 (in lieu of actual damages in view of the absence of competent proof of actual damages for his hospitalization and therapy) to be paid by Philtranco to Paras; and (*d*) awarded temperate damages of ₱250,000.00 under the same premise to be paid by Philtranco to Inland for the material damage caused to Inland's bus.

Philtranco moved for reconsideration,[3] but the CA denied its motion for reconsideration on January 21, 2004.[4]

Issues

Hence, this appeal, in which the petitioner submits that the CA committed grave abuse of discretion amounting to lack of

[3] CA *rollo*, pp. 133-143.

[4] *Id.*, pp. 129-131.

jurisdiction in awarding moral damages to Paras despite the fact that the complaint had been anchored on breach of contract of carriage; and that the CA committed a reversible error in substituting its own judgment by *motu proprio* awarding temperate damages of ₱250,000.00 to Inland and ₱50,000.00 to Paras despite the clear fact that temperate damages were not raised on appeal by Paras and Inland.

Ruling

The appeal lacks merit.

The Court does not disturb the unanimous findings by the CA and the RTC on the negligence of Philtranco and its driver being the direct cause of the physical injuries of Paras and the material damage of Inland.

Nonetheless, we feel bound to pass upon the disparate results the CA and the RTC reached on the liabilities of Philtranco and its driver.

1.

Paras can recover moral damages in this suit based on *quasi*-delict

Philtranco contends that Paras could not recover moral damages because his suit was based on breach of contract of carriage, pursuant to which moral damages could be recovered only if he had died, or if the common carrier had been guilty of fraud or bad faith. It argues that Paras had suffered only physical injuries; that he had not adduced evidence of fraud or bad faith on the part of the common carrier; and that, consequently, Paras could not recover moral damages directly from it (Philtranco), considering that it was only being subrogated for Inland.

The Court cannot uphold the petitioner's contention.

As a general rule, indeed, moral damages are not recoverable in an action predicated on a breach of contract. This is because such action is not included in Article 2219 of the *Civil Code*[5]

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

as one of the actions in which moral damages may be recovered. By way of exception, moral damages are recoverable in an action predicated on a breach of contract: (*a*) where the mishap results in the death of a passenger, as provided in Article 1764,[6] in relation to Article 2206, (3),[7] of the *Civil Code*; and (*b*) where

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(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape, or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

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

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[6] Article 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

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

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

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

the common carrier has been guilty of fraud or bad faith,[8] as provided in Article 2220[9] of the *Civil Code*.

Although this action does not fall under either of the exceptions, the award of moral damages to Paras was nonetheless proper and valid. There is no question that Inland filed its third-party complaint against Philtranco and its driver *in order to establish in this action that they, instead of Inland, should be directly liable to Paras for the physical injuries he had sustained because of their negligence*. To be precise, Philtranco and its driver were brought into the action on the theory of liability that the proximate cause of the collision between Inland's bus and Philtranco's bus had been "the negligent, reckless and imprudent manner defendant Apolinar Miralles drove and operated his driven unit, the Philtranco Bus with Plate No. 259, owned and operated by third-party defendant Philtranco Service Enterprises, Inc."[10] The apparent objective of Inland was not to merely subrogate the third-party defendants for itself, as Philtranco appears to suggest,[11] but, rather, to obtain a different relief whereby the third-party defendants would be held directly, fully and solely liable to Paras and Inland *for whatever damages* each had suffered from the negligence committed by Philtranco and its driver. In other words, Philtranco and its driver were charged here as joint tortfeasors who would be jointly and severally be liable to Paras and Inland.

Impleading Philtranco and its driver through the third-party complaint filed on March 2, 1990 was correct. The device of the third-party action, also known as impleader, was in accord with Section 12, Rule 6 of the *Revised Rules of Court*, the rule then applicable, *viz*:

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[8] *Japan Airlines v. Simangan*, G.R. No. 170141, April 22, 2008, 552 SCRA 341, 361.

[9] Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[10] *Rollo*, p. 57.

[11] *Id.*, p. 13.

Section 12. *Third-party complaint*. — A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.[12]

Explaining the application of Section 12, Rule 6, *supra*, the Court said in *Balbastro v. Court of Appeals*,[13] to wit:

Section 12 of Rule 6 of the Revised Rules of Court authorizes a defendant to bring into a lawsuit any person "not a party to the action . . . for contribution, indemnity, subrogation or any other relief in respect of his opponent's claim." From its explicit language it does not compel the defendant to bring the third-parties into the litigation, rather it simply permits the inclusion of anyone who meets the standard set forth in the rule. The secondary or derivative liability of the third-party is central — whether the basis is indemnity, subrogation, contribution, express or implied warranty or some other theory. **The impleader of new parties under this rule is proper only when a right to relief exists under the applicable substantive law. This rule is merely a procedural mechanism, and cannot be utilized unless there is some substantive basis under applicable law.**

Apart from the requirement that the third-party complainant should assert a derivative or secondary claim for relief from the third-party defendant there are other limitations on said party's ability to implead. The rule requires that the third-party defendant is "not a party to the action" for otherwise the proper procedure for asserting a claim against one who is already a party to the suit is by means of counterclaim or cross-claim under Sections 6 and 7 of Rule 6. In addition to the aforecited requirement, the claim against the third-party defendant must be based upon plaintiff's claim against the original defendant (third-party claimant). The crucial characteristic of a claim under Section 12 of Rule 6, is that the original "defendant is

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[12] The rule, as revised in 1997, presently provides:

Section 11. *Third, (fourth, etc.)-party complaint*. — A third (fourth, *etc*.)-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, *etc*.)-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim. (12a)

[13] No. L-33255, November 29, 1972, 48 SCRA 231 (bold emphasis supplied).

attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff."

Accordingly, the requisites for a third-party action are, *firstly*, that the party to be impleaded must not yet be a party to the action; *secondly*, that the claim against the third-party defendant must belong to the original defendant; *thirdly*, the claim of the original defendant against the third-party defendant must be based upon the plaintiff's claim against the original defendant; and, *fourthly*, the defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff.[14]

As the foregoing indicates, the claim that the third-party complaint asserts against the third-party defendant must be predicated on substantive law. Here, the substantive law on which the right of Inland to seek such other relief through its third-party complaint rested were Article 2176 and Article 2180 of the *Civil Code*, which read:

> Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this chapter. (1902a)
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> Article 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
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> x x x x x x x x x
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> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
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> x x x x x x x x x
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> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (1903a)

[14] *Id.*, pp. 236-237.

Paras' cause of action against Inland (breach of contract of carriage) did not need to be the same as the cause of action of Inland against Philtranco and its driver (tort or *quasi*-delict) in the impleader. It is settled that a defendant in a contract action may join as third-party defendants those who may be liable to him in tort for the plaintiff's claim against him, or even directly to the plaintiff.[15] Indeed, Prof. Wright, *et al.*, commenting on the provision of the *Federal Rules of Procedure* of the United States from which Section 12, *supra*, was derived, observed so, to wit:[16]

> The third-party claim need not be based on the same theory as the main claim. For example, there are cases in which the third-party claim is based on an express indemnity contract and the original complaint is framed in terms of negligence. Similarly, there need not be any legal relationship between the third-party defendant and any of the other parties to the action. Impleader also is proper even though the third party's liability is contingent, and technically does not come into existence until the original defendant's liability has been established. In addition, the words 'is or may be liable' in Rule 14(a) make it clear that impleader is proper even though the third-party defendant's liability is not automatically established once the third-party plaintiff's liability to the original plaintiff has been determined.

Nor was it a pre-requisite for attachment of the liability to Philtranco and its driver that Inland be first declared and found liable to Paras for the breach of its contract of carriage with him.[17] As the Court has cogently discoursed in *Samala v. Judge Victor*:[18]

> Appellants argue that since plaintiffs filed a complaint for damages against the defendants on a breach of contract of carriage, they cannot

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[15] *Viluan v. Court of Appeals,* Nos. L-21477-81, April 29, 1966, 16 SCRA 742; *Samala v. Judge Victor,* G.R. No. 53969, February 21, 1989, 170 SCRA 453, 460.

[16] Wright, Miller & Kane, *Federal Practice and Procedure,* Vol. 6, §1446, 1990 Edition, pp. 372-373.

[17] *Viluan v. Court of Appeals*, *supra,* note 15.

[18] *Samala v. Judge Victor*, *supra*, note 15.

recover from the third-party defendants on a cause of action based on quasi-delict. The third party defendants, they allege, are never parties liable with respect to plaintiff s claim although they are with respect to the defendants for indemnification, subrogation, contribution or other reliefs. Consequently, they are not directly liable to the plaintiffs. Their liability commences only when the defendants are adjudged liable and not when they are absolved from liability as in the case at bar.

Quite apparent from these arguments is the misconception entertained by appellants with respect to the nature and office of a third party complaint.

Section 16, Rule 6 of the Revised Rules of Court defines a third party complaint as a "claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnification, subrogation, or any other relief, in respect of his opponent's claim." In the case of *Viluan vs. Court of Appeals, et al.*, 16 SCRA 742 [1966], this Court had occasion to elucidate on the subjects covered by this Rule, thus:

> . . . As explained in the Atlantic Coast Line R. Co. vs. U.S. Fidelity & Guaranty Co., 52 F. Supp. 177 (1943:)
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> 'From the sources of Rule 14 and the decisions herein cited, it is clear that this rule, like the admiralty rule, 'covers two distinct subjects, the addition of parties defendant to the main cause of action, and the bringing in of a third party for a defendant's remedy over.' x x x
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> **'If the third party complaint alleges facts showing a third party's direct liability to plaintiff on the claim set out in plaintiff's petition, then third party 'shall' make his defenses as provided in Rule 12 and his counterclaims against plaintiff as provided in Rule 13. In the case of alleged direct liability, no amendment (to the complaint) is necessary or required. The subject-matter of the claim is contained in plaintiff's complaint, the ground of third party's liability on that claim is alleged in third party complaint, and third party's defense to set up in his answer to plaintiff's complaint. At that point and without amendment, the plaintiff and third party are at issue as to their rights respecting the claim.**

> The provision in the rule that, 'The third-party defendant may assert any defense which the third-party plaintiff may assert to the plaintiffs claim,' applies to the other subject, namely, the alleged liability of third party defendant. The next sentence in the rule, 'The third-party defendant is bound by the adjudication of the third party plaintiffs liability to the plaintiff, as well as of his own to the plaintiff or to the third-party plaintiff applies to both subjects. If third party is brought in as liable only to defendant and judgment is rendered adjudicating plaintiff's right to recover against defendant and defendant's rights to recover against third party, he is bound by both adjudications.That part of the sentence refers to the second subject. If third party is brought in as liable to plaintiff, then third party is bound by the adjudication as between him and plaintiff. That refers to the first subject. If third party is brought in as liable to plaintiff and also over to defendant, then third party is bound by both adjudications. x x x

Under this Rule, a person not a party to an action may be impleaded by the defendant either (a) on an allegation of liability to the latter; (b) on the ground of direct liability to the plaintiff-; or, (c) both (a) and (b). The situation in (a) is covered by the phrase "for contribution, indemnity or subrogation"; while (b) and (c) are subsumed under the catch all "or any other relief, in respect of his opponent's claim."

The case at bar is one in which the third party defendants are brought into the action as directly liable to the plaintiffs upon the allegation that "the primary and immediate cause as shown by the police investigation of said vehicular collision between (sic) the above-mentioned three vehicles was the recklessness and negligence and lack of imprudence (sic) of the third-party defendant Virgilio (should be Leonardo) Esguerra y Ledesma then driver of the passenger bus." The effects are that "plaintiff and third party are at issue as to their rights respecting the claim" and "the third party is bound by the adjudication as between him and plaintiff." It is not indispensable in the premises that the defendant be first adjudged liable to plaintiff before the third-party defendant may be held liable to the plaintiff, as precisely, the theory of defendant is that it is the third party defendant, and not he, who is *directly liable* to plaintiff. The situation contemplated by appellants would properly pertain to situation (a) above wherein the third party

defendant is being sued for contribution, indemnity or subrogation, or simply stated, for a defendant's "remedy over."[19]

It is worth adding that allowing the recovery of damages by Paras based on *quasi*-delict, despite his complaint being upon contractual breach, served the judicial policy of avoiding multiplicity of suits and circuity of actions by disposing of the entire subject matter in a single litigation.[20]

2.
Award of temperate damages was in order

Philtranco assails the award of temperate damages by the CA considering that, *firstly*, Paras and Inland had not raised the matter in the trial court and in their respective appeals; *secondly*, the CA could not substitute the temperate damages granted to Paras if Paras could not properly establish his actual damages despite evidence of his actual expenses being easily available to him; and, *thirdly*, the CA gravely abused its discretion in granting *motu proprio* the temperate damages of ₱250,000.00 to Inland although Inland had not claimed temperate damages in its pleading or during trial and even on appeal.

The Court cannot side with Philtranco.

Actual damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. The reason is that the court "cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages," but "there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts."[21]

The receipts formally submitted and offered by Paras were limited to the costs of medicines purchased on various times in the period from February 1987 to July 1989 (Exhibits E to E-35,

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[19] *Id.*, at pp. 458-460 (bold underscoring supplied for emphasis).

[20] *Id.*, at p. 460.

[21] *Viron Transportation Co., Inc. v. Delos Santos*, G.R. No. 138296, November 22, 2000, 345 SCRA 509, 519.

inclusive) totaling only ₱1,397.95.[22] The receipts by no means included hospital and medical expenses, or the costs of at least two surgeries as well as rehabilitative therapy. Consequently, the CA fixed actual damages only at that small sum of ₱1,397.95. On its part, Inland offered no definite proof on the repairs done on its vehicle, or the extent of the material damage except the testimony of its witness, Emerlinda Maravilla, to the effect that the bus had been damaged beyond economic repair.[23] The CA rejected Inland's showing of unrealized income worth ₱3,945,858.50 for 30 months (based on alleged *average weekly income* of ₱239,143.02 multiplied by its *guaranteed revenue* amounting to 55% thereof, then spread over a period of 30 months, the equivalent to the remaining 40% of the vehicle's un-depreciated or net book value), finding such showing arbitrary, uncertain and speculative.[24] As a result, the CA allowed no compensation to Inland for unrealized income.

Nonetheless, the CA was convinced that Paras should not suffer from the lack of definite proof of his actual expenses for the surgeries and rehabilitative therapy; and that Inland should not be deprived of recourse to recover its loss of the economic value of its damaged vehicle. As the records indicated, Paras was first rushed for emergency treatment to the San Pablo Medical Center in San Pablo City, Laguna, and was later brought to the National Orthopedic Hospital in Quezon City where he was diagnosed to have suffered a dislocated hip, fracture of the fibula on the right leg, fracture of the small bone of the right leg, and closed fracture on the tibial plateau of the left leg. He underwent surgeries on March 4, 1987 and April 15, 1987 to repair the fractures.[25] Thus, the CA awarded to him temperate damages of ₱50,000.00 in the absence of definite proof of his actual expenses towards that end. As to Inland, Maravilla's testimony of the bus having been damaged beyond economic

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[22] Records, pp. 176-185.

[23] *Rollo,* p. 35.

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

[25] TSN, October 18, 1991, pp. 11-12.

repair showed a definitely substantial pecuniary loss, for which the CA fixed temperate damages of ₱250,000.00. We cannot disturb the CA's determination, for we are in no position today to judge its reasonableness on account of the lapse of a long time from when the accident occurred.[26]

In awarding temperate damages in lieu of actual damages, the CA did not err, because Paras and Inland were definitely shown to have sustained substantial pecuniary losses. It would really be a travesty of justice were the CA now to be held bereft of the discretion to calculate moderate or temperate damages, and thereby leave Paras and Inland without redress from the wrongful act of Philtranco and its driver.[27] We are satisfied that the CA exerted effort and practiced great care to ensure that the causal link between the physical injuries of Paras and the material loss of Inland, on the one hand, and the negligence of Philtranco and its driver, on the other hand, existed in fact. It also rejected arbitrary or speculative proof of loss. Clearly, the costs of Paras' surgeries and consequential rehabilitation, as well as the fact that repairing Inland's vehicle would no longer be economical justly warranted the CA to calculate temperate damages of ₱50,000.00 and ₱250,000.00 respectively for Paras and Inland.

There is no question that Article 2224 of the *Civil Code* expressly authorizes the courts to award temperate damages despite the lack of certain proof of actual damages, to wit:

> Article 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 cannot, from the nature of the case, be proved with certainty.

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[26] The *Civil Code* states:

> Article 2225. Temperate damages must be reasonable under the circumstances.

[27] *Government Service Insurance System v. Labung-Deang*, G.R. No. 135644, September 17, 2001, 365 SCRA 341, 350.

The rationale for Article 2224 has been stated in *Premiere Development Bank v. Court of Appeals*[28] in the following manner:

> Even if not recoverable as compensatory damages, Panacor may still be awarded damages in the concept of temperate or moderate damages. When the court finds that some pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proved with certainty, temperate damages may be recovered. Temperate damages may be allowed in cases where from the nature of the case, definite proof of pecuniary loss cannot be adduced, although the court is convinced that the aggrieved party suffered some pecuniary loss.
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> The Code Commission, in explaining the concept of temperate damages under Article 2224, makes the following comment:
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> > In some States of the American Union, temperate damages are allowed. There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act.

3.
Paras' loss of earning capacity must be compensated

In the body of its decision, the CA concluded that considering that Paras had a minimum monthly income of ₱8,000.00 as a trader he was entitled to recover compensation for unearned income during the 3-month period of his hospital confinement and the 6-month period of his recovery and rehabilitation; and aggregated his unearned income for those periods to ₱72,000.00.[29] Yet, the CA omitted the unearned income from the dispositive portion.

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[28] G.R. No. 159352, April 14, 2004, 427 SCRA 686, 699.

[29] *Rollo*, pp. 34-35.

The omission should be rectified, for there was credible proof of Paras' loss of income during his disability. According to Article 2205, (1), of the *Civil Code*, damages may be recovered for loss or impairment of earning capacity in cases of temporary or permanent personal injury. Indeed, indemnification for damages comprehends not only the loss suffered (actual damages or *damnum emergens*) but also the claimant's lost profits (compensatory damages or *lucrum cessans*).[30] Even so, the formula that has gained acceptance over time has limited recovery to *net earning capacity*; hence, the entire amount of ₱72,000.00 is not allowable. The premise is obviously that net earning capacity is the person's capacity to acquire money, less the necessary expense for his own living.[31] To simplify the determination, therefore, the net earning capacity of Paras during the 9-month period of his confinement, surgeries and consequential therapy is pegged at only half of his unearned monthly gross income of ₱8,000.00 as a trader, or a total of ₱36,000.00 for the 9-month period, the other half being treated as the necessary expense for his own living in that period.

It is relevant to clarify that awarding the temperate damages (for the substantial pecuniary losses corresponding to Paras' surgeries and rehabilitation and for the irreparability of Inland's damaged bus) and the actual damages to compensate lost earnings and costs of medicines give rise to no incompatibility. These damages cover distinct pecuniary losses suffered by Paras and Inland,[32] and do not infringe the statutory prohibition against recovering damages twice for the same act or omission.[33]

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[30] *Titan-Ikeda Construction and Development Corporation v. Primetown Property Group, Inc.*, G.R. No. 158768, February 12, 2008, 544 SCRA 466, 491.

[31] *Villa Rey Transit, Inc. v. Court of Appeals*, 31 SCRA 511, 515-517.

[32] See, *e.g.*, *Ramos v. Court of Appeals*, G.R. No. 124354, December 29, 1999, 321 SCRA 584, 624-625.

[33] The *Civil Code* provides:

Article 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant. (n)

4.
Increase in award of attorney's fees

Although it is a sound policy not to set a premium on the right to litigate,[34] we consider the grant to Paras and Inland of reasonable attorney's fees warranted. Their entitlement to attorney's fees was by virtue of their having been compelled to litigate or to incur expenses to protect their interests,[35] as well as by virtue of the Court now further deeming attorney's fees to be just and equitable.[36]

In view of the lapse of a long time in the prosecution of the claim,[37] the Court considers it reasonable and proper to grant attorney's fees to *each* of Paras and Inland equivalent to 10% of the total amounts hereby awarded to them, in lieu of only ₱20,000.00 for that purpose granted to Paras.

5.
Legal interest on the amounts awarded

Pursuant to *Eastern Shipping Lines, Inc. v. Court of Appeals*,[38] legal interest at the rate of 6% *per annum* accrues on the amounts adjudged reckoned from July 18, 1997, the date when the RTC rendered its judgment; and legal interest at the rate of 12% *per annum* shall be imposed from the finality of the judgment until its full satisfaction, the interim period being regarded as the equivalent of a forbearance of credit.

WHEREFORE, the Court **AFFIRMS WITH MODIFICATION** the decision of the Court of Appeals promulgated on September

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[34] *Durban Apartments Corporation v. Pioneer Insurance and Surety Corporation,* G.R. No. 179419, January 12, 2011, 639 SCRA 441, 454; see also *Bank of the Philippine Islands v. Casa Montessori International*, G.R. Nos. 149454 & 149507, May 28, 2004, 430 SCRA 261, 296.

[35] Article 2208, par. 2, *Civil Code*.

[36] Article 2208, par. 11, *Civil Code*.

[37] *New World International Development (Phils.), Inc. v. NYK-FilJapan Shipping Corp.,* G.R. Nos. 171468/174241, August 24, 2011.

[38] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 96-97.

25, 2002, by ordering **PHILTRANCO SERVICE ENTERPRISES, INC.** and **APOLINAR MIRALLES** to pay, jointly and severally, as follows:

1. To Felix Paras:

(a) ₱1,397.95, as reimbursement for the costs of medicines purchased between February 1987 and July 1989;

(*b*) ₱50,000.00 as temperate damages;

(*c*) ₱50,000.00 as moral damages;

(*d*) ₱36,000.00 for lost earnings;

(*e*) 10% of the total of items (*a*) to (*d*) hereof as attorney's fees; and

(*f*) Interest of 6% *per annum* from July 18, 1997 on the total of items (*a*) to (*d*) hereof until finality of this decision, and 12% *per annum* thereafter until full payment.

2. To Inland Trailways, Inc.:

(a) ₱250,000.00 as temperate damages;

(b) 10% of item (*a*) hereof; and

(c) Interest of 6% *per annum* on item (*a*) hereof from July 18, 1997 until finality of this decision, and 12% *per annum* thereafter until full payment.

3. The petitioner shall pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 170865. April 25, 2012]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES CHEAH CHEE CHONG and OFELIA CAMACHO CHEAH,** *respondents.*

[G.R. No. 170892. April 25, 2012]

SPOUSES CHEAH CHEE CHONG and OFELIA CAMACHO CHEAH, *petitioners, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; QUASI DELICTS; TORTS; PROXIMATE CAUSE; DEFINED.— "Proximate cause is 'that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.' x x x To determine the proximate cause of a controversy, the question that needs to be asked is: If the event did not happen, would the injury have resulted? If the answer is no, then the event is the proximate cause."

2. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS; CHECKS; PAYMENT OF THE AMOUNT OF CHECKS WITHOUT PREVIOUSLY CLEARING THEM WITH THE DRAWEE BANK IS CONTRARY TO NORMAL AND ORDINARY BANKING PRACTICE; VIOLATION IN CASE AT BAR.— This Court already held that the payment of the amounts of checks without previously clearing them with the drawee bank especially so where the drawee bank is a foreign bank and the amounts involved were large is contrary to normal or ordinary banking practice. Also, in *Associated Bank v. Tan*, wherein the bank allowed the withdrawal of the value of a check prior to its clearing, we said that "[b]efore the check shall have been cleared for deposit, the collecting bank can only 'assume' at its own risk x x x that the check would be cleared and paid out." The delay in the receipt by

PNB Buendia Branch of the November 13, 1992 SWIFT message notifying it of the dishonor of the subject check is of no moment, because had PNB Buendia Branch waited for the expiration of the clearing period and had never released during that time the proceeds of the check, it would have already been duly notified of its dishonor. Clearly, PNB's disregard of its preventive and protective measure against the possibility of being victimized by bad checks had brought upon itself the injury of losing a significant amount of money. It bears stressing that "the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. The highest degree of diligence is expected." PNB miserably failed to do its duty of exercising extraordinary diligence and reasonable business prudence. The disregard of its own banking policy amounts to gross negligence, which the law defines as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected." With regard to collection or encashment of checks, suffice it to say that the law imposes on the collecting bank the duty to scrutinize diligently the checks deposited with it for the purpose of determining their genuineness and regularity. "The collecting bank, being primarily engaged in banking, holds itself out to the public as the expert on this field, and the law thus holds it to a high standard of conduct." A bank is expected to be an expert in banking procedures and it has the necessary means to ascertain whether a check, local or foreign, is sufficiently funded.

3. CIVIL LAW; QUASI-CONTRACTS; *SOLUTIO INDEBITI*; REQUISITES; NOT PRESENT IN CASE AT BAR.— "[T]he indispensable requisites of the juridical relation known as *solutio indebiti*, are, (a) that he who paid was not under obligation to do so; and (b) that the payment was made by reason of an essential mistake of fact. In the case at bench, PNB cannot recover the proceeds of the check under the principle it invokes. In the first place, the gross negligence of PNB, as earlier discussed, can never be equated with a mere mistake of fact, which must be something excusable and which requires the exercise of prudence. No recovery is due if the mistake done is one of gross negligence.

4. ID.; OBLIGATIONS; CONTRIBUTORY NEGLIGENCE; DEFINED. — "Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection."

APPEARANCES OF COUNSEL

PNB Chief Legal Counsel for PNB.
Castro & Associates for Spouses Cheah.

D E C I S I O N

DEL CASTILLO, *J.*:

Law favoreth diligence, and therefore, hateth folly and negligence. — Wingate's Maxim.

In doing a friend a favor to help the latter's friend collect the proceeds of a foreign check, a woman deposited the check in her and her husband's dollar account. The local bank accepted the check for collection and immediately credited the proceeds thereof to said spouses' account even before the lapse of the clearing period. And just when the money had been withdrawn and distributed among different beneficiaries, it was discovered that all along, to the horror of the woman whose intention to accommodate a friend's friend backfired, she and her bank had dealt with a rubber check.

These consolidated[1] Petitions for Review on *Certiorari* filed by the Philippine National Bank (PNB)[2] and by the spouses Cheah Chee Chong and Ofelia Camacho Cheah (spouses Cheah)[3] both assail the August 22, 2005 Decision[4] and December 21,

[1] Consolidated pursuant to our Resolution dated April 26, 2006, *rollo* (G.R. No. 170865), p. 392 and *rollo* (G.R. No. 170892), p. 95.

[2] Docketed as G.R. No. 170865, *rollo*, pp. 105-129.

[3] Docketed as G.R. No. 170892, *id.* at 11-39.

[4] CA *rollo*, pp. 172-188; penned by Associate Justice Jose Catral Mendoza (now a member of this Court) and concurred in by Presiding Justice Romeo A. Brawner and Associate Justice Mario L. Guariña III.

2005 Resolution[5] of the Court of Appeals (CA) in CA-G.R. CV No. 63948 which declared both parties equally negligent and, hence, should equally suffer the resulting loss. For its part, PNB questions why it was declared blameworthy together with its depositors, spouses Cheah, for the amount wrongfully paid the latter, while the spouses Cheah plead that they be declared entirely faultless.

Factual Antecedents

On November 4, 1992, Ofelia Cheah (Ofelia) and her friend Adelina Guarin (Adelina) were having a conversation in the latter's office when Adelina's friend, Filipina Tuazon (Filipina), approached her to ask if she could have Filipina's check cleared and encashed for a service fee of 2.5%. The check is Bank of America Check No. 190[6] under the account of Alejandria Pineda and Eduardo Rosales and drawn by Atty. Eduardo Rosales against Bank of America Alhambra Branch in California, USA, with a face amount of $300,000.00, payable to cash. Because Adelina does not have a dollar account in which to deposit the check, she asked Ofelia if she could accommodate Filipina's request since she has a joint dollar savings account with her Malaysian husband Cheah Chee Chong (Chee Chong) under Account No. 265-705612-2 with PNB Buendia Branch.

Ofelia agreed.

That same day, Ofelia and Adelina went to PNB Buendia Branch. They met with Perfecto Mendiola of the Loans Department who referred them to PNB Division Chief Alberto Garin (Garin). Garin discussed with them the process of clearing the subject check and they were told that it normally takes 15 days.[7] Assured that the deposit and subsequent clearance of the check is a normal transaction, Ofelia deposited Filipina's

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[5] *Id*. at 261; penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justices Mario L. Guariña III and Celia C. Librea-Leagogo.

[6] Records, p. 199.

[7] TSN, July 3, 1998, pp. 14-17.

check. PNB then sent it for clearing through its correspondent bank, Philadelphia National Bank. Five days later, PNB received a credit advice[8] from Philadelphia National Bank that the proceeds of the subject check had been temporarily credited to PNB's account as of November 6, 1992. On November 16, 1992, Garin called up Ofelia to inform her that the check had already been cleared.[9] The following day, PNB Buendia Branch, after deducting the bank charges, credited $299,248.37 to the account of the spouses Cheah.[10] Acting on Adelina's instruction to withdraw the credited amount, Ofelia that day personally withdrew $180,000.00.[11] Adelina was able to withdraw the remaining amount the next day after having been authorized by Ofelia.[12] Filipina received all the proceeds.

In the meantime, the Cable Division of PNB Head Office in Escolta, Manila received on November 16, 1992 a SWIFT[13] message from Philadelphia National Bank dated November 13, 1992 with Transaction Reference Number (TRN) 46506218, informing PNB of the return of the subject check for insufficient funds.[14] However, the PNB Head Office could not ascertain to which branch/office it should forward the same for proper action. Eventually, PNB Head Office sent Philadelphia National Bank a SWIFT message informing the latter that SWIFT message

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[8] Records, p. 200.

[9] TSN, July 3, 1998, pp. 18-19; July 24, 1998, pp. 32-33.

[10] Records, pp. 201 and 425.

[11] *Id.* at 202.

[12] *Id.* at 206.

[13] Stands for 'Society for Worldwide Interbank Financial Telecommunication.' It is an international transaction processing system owned by and serving the financial community worldwide. It handles financial messages such as: a. customer transfers or payment orders; b. bank transfers; c. foreign exchange confirmation; d. debit confirmation; e. credit confirmation; f. statement of account; g. collections; h. documentary credits; i. syndications; j. traveler's checks; See Joint Affidavit of Gregorio SC Termulo and Leoncio M. David, Assistant Department Manager II and Division Chief III of the Cable Division, International Department of PNB, *id.* at 312-315.

[14] *Id.* at 316.

with TRN 46506218 has been relayed to PNB's various divisions/departments but was returned to PNB Head Office as it seemed misrouted. PNB Head Office thus requested for Philadelphia National Bank's advice on said SWIFT message's proper disposition.[15] After a few days, PNB Head Office ascertained that the SWIFT message was intended for PNB Buendia Branch.

PNB Buendia Branch learned about the bounced check when it received on November 20, 1992 a debit advice,[16] followed by a letter[17] on November 24, 1992, from Philadelphia National Bank to which the November 13, 1992 SWIFT message was attached. Informed about the bounced check and upon demand by PNB Buendia Branch to return the money withdrawn, Ofelia immediately contacted Filipina to get the money back. But the latter told her that all the money had already been given to several people who asked for the check's encashment. In their effort to recover the money, spouses Cheah then sought the help of the National Bureau of Investigation. Said agency's Anti-Fraud and Action Division was later able to apprehend some of the beneficiaries of the proceeds of the check and recover from them $20,000.00. Criminal charges were then filed against these suspect beneficiaries.[18]

Meanwhile, the spouses Cheah have been constantly meeting with the bank officials to discuss matters regarding the incident

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[15] *Id.* at 317.

[16] *Id.* at 384.

[17] *Id.* at 386-387.

[18] Based on the records of the case at bar, upon the NBI's investigation, the withdrawn money was divided among Transmedian Management (Adelina Guarin's office), Nilo Montalban, Patricio Valleser, and Lucresio Semblante, who all received a part of the proceeds as commissions, while the rest of the amount was divided between Felix Sajot and Eduardo Rosales, *id.* at 276-277. The NBI, suspecting a conspiracy among the bank officers and the beneficiaries, filed an estafa case against Adelina Guarin and PNB officials Lorenzo Bal, Ponciano Felix, Teresita Gregorio, and Domingo Posadas before the Office of the Ombudsman, but this was dismissed, *id*. at 402-407. Criminal case for estafa was likewise filed by the Makati Prosecutor against Filipina Tuazon, Nilo Montalban, Patricio Vallaser, Lucresio Semblante, Eduardo Rosales and Felix Sajot before the Regional Trial Court of Makati, *id.* at 426-427.

and the recovery of the value of the check while the cases against the alleged perpetrators remain pending. Chee Chong in the end signed a PNB drafted[19] letter[20] which states that the spouses Cheah are offering their condominium units as collaterals for the amount withdrawn. Under this setup, the amount withdrawn would be treated as a loan account with deferred interest while the spouses try to recover the money from those who defrauded them. Apparently, Chee Chong signed the letter after the Vice President and Manager of PNB Buendia Branch, Erwin Asperilla (Asperilla), asked the spouses Cheah to help him and the other bank officers as they were in danger of losing their jobs because of the incident. Asperilla likewise assured the spouses Cheah that the letter was a mere formality and that the mortgage will be disregarded once PNB receives its claim for indemnity from Philadelphia National Bank.

Although some of the officers of PNB were amenable to the proposal,[21] the same did not materialize. Subsequently, PNB sent a demand letter to spouses Cheah for the return of the amount of the check,[22] froze their peso and dollar deposits in the amounts of ₱275,166.80 and $893.46,[23] and filed a complaint[24] against them for Sum of Money with Branch 50 of the Regional Trial Court (RTC) of Manila, docketed as Civil Case No. 94-71022. In said complaint, PNB demanded payment of around ₱8,202,220.44, plus interests[25] and attorney's fees, from the spouses Cheah.

As their main defense, the spouses Cheah claimed that the proximate cause of PNB's injury was its own negligence of

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[19] TSN, July 3, 1998, pp. 43-48; July 24, 1998, p. 9.

[20] Records, pp. 207-208.

[21] *Id.* at 388-395.

[22] *Id.* at 399.

[23] Under Account Nos. 265-560184-0 and 265-705612-2.

[24] Records, pp. 1-9.

[25] Converted to peso at a rate of $1 = ₱27.695. The amount recovered was deducted from the $300,000, then computed at an interest rate of 7.5% per annum.

paying a US dollar denominated check without waiting for the 15-day clearing period, in violation of its bank practice as mandated by its own bank circular, *i.e.*, PNB General Circular No. 52-101/88.[26] Because of this, spouses Cheah averred that PNB is barred from claiming what it had lost. They further averred that it is unjust for them to pay back the amount disbursed as they never really benefited therefrom. As counterclaim, they prayed for the return of their frozen deposits, the recoupment of ₱400,000.00 representing the amount they had so far spent in recovering the value of the check, and payment of moral and exemplary damages, as well as attorney's fees.

Ruling of the Regional Trial Court

The RTC ruled in PNB's favor. The dispositive portion of its Decision[27] dated May 20, 1999 reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Philippine National Bank [and] against defendants Mr. Cheah Chee Chong and Ms. Ofelia Camacho Cheah, ordering the latter to pay jointly and severally the herein plaintiffs' bank the amount:
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> 1. of US$298,950.25 or its peso equivalent based on Central Bank Exchange Rate prevailing at the time the proceeds of the BA Check No. 190 were withdrawn or the prevailing Central Bank Rate at the time the amount is to be reimbursed by the defendants to plaintiff or whatever is lower. This is without prejudice however, to the rights of the defendants (accommodating parties) to go against the group of Adelina Guarin, Atty. Eduardo Rosales, Filipina Tuazon, *etc*., (Beneficiaries-accommodated parties) who are privy to the defendants.

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[26] Said Circular dated August 31, 1988, states:

> The existing cash letter services of our foreign correspondents [sic] bank make it possible for PNB to obtain immediate credit, subject to final payment for US dollar denominated checks withdrawn on banks in the U.S.A. negotiated with us by clients. The guarantee period 'and' notice of non-payment by telex features under such clearing item is made known to PNB within 15 days from date of receipts of checks by our collecting agent bank. Records, p. 525 as incorporated in the RTC Decision, p. 20.

[27] *Id.* at 506-541; penned by Judge Urbano Victorio, Sr.

No pronouncement as to costs.

No other award of damages for non[e] has been proven.

SO ORDERED.[28]

The RTC held that spouses Cheah were guilty of contributory negligence. Because Ofelia trusted a friend's friend whom she did not know and considering the amount of the check made payable to cash, the RTC opined that Ofelia showed lack of vigilance in her dealings. She should have exercised due care by investigating the negotiability of the check and the identity of the drawer. While the court found that the proximate cause of the wrongful payment of the check was PNB's negligence in not observing the 15-day guarantee period rule, it ruled that spouses Cheah still cannot escape liability to reimburse PNB the value of the check as an accommodation party pursuant to Section 29 of the Negotiable Instruments Law.[29] It likewise applied the principle of *solutio indebiti* under the Civil Code. With regard to the award of other forms of damages, the RTC held that each party must suffer the consequences of their own acts and thus left both parties as they are.

Unwilling to accept the judgment, the spouses Cheah appealed to the CA.

Ruling of the Court of Appeals

While the CA recognized the spouses Cheah as victims of a scam who nevertheless have to suffer the consequences of Ofelia's lack of care and prudence in immediately trusting a stranger, the appellate court did not hold PNB scot-free. It ruled in its August 22, 2005 Decision,[30] *viz*:

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[28] *Id.* at 540-541.

[29] Sec. 29. *Liability of accommodation party.* — An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of taking the instrument, knew him to be only an accommodation party.

[30] *Supra* note 4.

As both parties were equally negligent, it is but right and just that both parties should equally suffer and shoulder the loss. The scam would not have been possible without the negligence of both parties. As earlier stated, the complaint of PNB cannot be dismissed because the Cheah spouses were negligent and Ms. Cheah took an active part in the deposit of the check and the withdrawal of the subject amounts. On the other hand, the Cheah spouses cannot entirely bear the loss because PNB allowed her to withdraw without waiting for the clearance of the check. The remedy of the parties is to go after those who perpetrated, and benefited from, the scam.

WHEREFORE, the May 20, 1999 Decision of the Regional Trial Court, Branch 5, Manila, in Civil Case No. 94-71022, is hereby REVERSED and SET ASIDE and another one entered DECLARING both parties equally negligent and should suffer and shoulder the loss.

Accordingly, PNB is hereby ordered to credit to the peso and dollar accounts of the Cheah spouses the amount due to them.

SO ORDERED.[31]

In so ruling, the CA ratiocinated that PNB Buendia Branch's non-receipt of the SWIFT message from Philadelphia National Bank within the 15-day clearing period is not an acceptable excuse. Applying the last clear chance doctrine, the CA held that PNB had the last clear opportunity to avoid the impending loss of the money and yet, it glaringly exhibited its negligence in allowing the withdrawal of funds without exhausting the 15-day clearing period which has always been a standard banking practice as testified to by PNB's own officers, and as provided in its own General Circular No. 52/101/88. To the CA, PNB cannot claim from spouses Cheah even if the latter are accommodation parties under the law as the bank's own negligence is the proximate cause of the damage it sustained. Nevertheless, it also found Ofelia guilty of contributory negligence. Thus, both parties should be made equally responsible for the resulting loss.

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[31] CA *rollo*, pp. 187-188.

Both parties filed their respective Motions for Reconsideration[32] but same were denied in a Resolution[33] dated December 21, 2005.

Hence, these Petitions for Review on *Certiorari*.

Our Ruling

The petitions for review lack merit. Hence, we affirm the ruling of the CA.

PNB's act of releasing the proceeds of the check prior to the lapse of the 15-day clearing period was the proximate cause of the loss.

"Proximate cause is 'that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.' x x x To determine the proximate cause of a controversy, the question that needs to be asked is: If the event did not happen, would the injury have resulted? If the answer is no, then the event is the proximate cause."[34]

Here, while PNB highlights Ofelia's fault in accommodating a stranger's check and depositing it to the bank, it remains mum in its release of the proceeds thereof without exhausting the 15-day clearing period, an act which contravened established banking rules and practice.

It is worthy of notice that the 15-day clearing period alluded to is construed as 15 banking days. As declared by Josephine Estella, the Administrative Service Officer who was the bank's Remittance Examiner, what was unusual in the processing of the check was that the "lapse of 15 banking days was not observed."[35] Even PNB's agreement with Philadelphia National

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[32] See PNB's Motion for Reconsideration, *id*. at 194-207 and the spouses Cheah's Motion for Reconsideration, *id*. at 208-231.

[33] *Supra* note 5.

[34] *Allied Banking Corporation v. Lim Sio Wan*, G.R. No. 133179, March 27, 2008, 549 SCRA 504, 518.

[35] TSN, July 5, 1995, p. 26.

Bank[36] regarding the rules on the collection of the proceeds of US dollar checks refers to "business/ banking days." Ofelia deposited the subject check on November 4, 1992. Hence, the 15th banking day from the date of said deposit should fall on November 25, 1992. However, what happened was that PNB Buendia Branch, upon calling up Ofelia that the check had been cleared, allowed the proceeds thereof to be withdrawn on November 17 and 18, 1992, a week before the lapse of the standard 15-day clearing period.

This Court already held that the payment of the amounts of checks without previously clearing them with the drawee bank especially so where the drawee bank is a foreign bank and the amounts involved were large is contrary to normal or ordinary banking practice.[37] Also, in *Associated Bank v. Tan*,[38] wherein the bank allowed the withdrawal of the value of a check prior to its clearing, we said that "[b]efore the check shall have been cleared for deposit, the collecting bank can only 'assume' at its own risk x x x that the check would be cleared and paid out." The delay in the receipt by PNB Buendia Branch of the November 13, 1992 SWIFT message notifying it of the dishonor of the subject check is of no moment, because had PNB Buendia Branch waited for the expiration of the clearing period and had never released during that time the proceeds of the check, it would have already been duly notified of its dishonor. Clearly, PNB's disregard of its preventive and protective measure against the possibility of being victimized by bad checks had brought upon itself the injury of losing a significant amount of money.

It bears stressing that "the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. The highest degree of diligence is expected."[39] PNB

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[36] Records, pp. 281-285.

[37] *Banco Atlantico v. Auditor General,* 171 Phil. 298, 304 (1978).

[38] 487 Phil. 512, 525 (2004).

[39] *Philippine Savings Bank v. Chowking Food Corporation,* G.R. No. 177526, July 4, 2008, 557 SCRA 318, 330, citing *Bank of the Philippine Islands v. Court of Appeals*, 383 Phil. 538, 554 (2000); *Philippine Bank*

miserably failed to do its duty of exercising extraordinary diligence and reasonable business prudence. The disregard of its own banking policy amounts to gross negligence, which the law defines as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected."[40] With regard to collection or encashment of checks, suffice it to say that the law imposes on the collecting bank the duty to scrutinize diligently the checks deposited with it for the purpose of determining their genuineness and regularity. "The collecting bank, being primarily engaged in banking, holds itself out to the public as the expert on this field, and the law thus holds it to a high standard of conduct."[41] A bank is expected to be an expert in banking procedures and it has the necessary means to ascertain whether a check, local or foreign, is sufficiently funded.

Incidentally, PNB obliges the spouses Cheah to return the withdrawn money under the principle of *solutio indebiti,* which is laid down in Article 2154 of the Civil Code:[42]

> Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

"[T]he indispensable requisites of the juridical relation known as *solutio indebiti,* are, (a) that he who paid was not under

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of Commerce v. Court of Appeals, 336 Phil. 667, 681 (1997) and *Philippine Commercial International Bank v. Court of Appeals*, 403 Phil. 361, 388 (2001).

[40] *Victoriano v. People*, G.R. Nos. 171322-24, November 30, 2006, 509 SCRA 483, 493, citing *Fonacier v. Sandiganbayan*, G.R. Nos. 50691, 52263, 52766, 52821, 53350, 53397, 53415 and 53520, December 5, 1994, 238 SCRA 655, 687-688.

[41] *Metropolitan Bank and Trust Company v. Philippine Bank of Communications*, G.R. Nos. 141408 and 141429, October 18, 2007, 536 SCRA 556, 563, citing *Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corporation*, 241 Phil. 187, 200 (1988).

[42] N.B. *Solutio indebiti* also covers mistake in law under Article 2155 of the Civil Code.

obligation to do so; and (b) that the payment was made by reason of an essential mistake of fact.[43]

In the case at bench, PNB cannot recover the proceeds of the check under the principle it invokes. In the first place, the gross negligence of PNB, as earlier discussed, can never be equated with a mere mistake of fact, which must be something excusable and which requires the exercise of prudence. No recovery is due if the mistake done is one of gross negligence.

The spouses Cheah are guilty of contributory negligence and are bound to share the loss with the bank

"Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection."[44]

The CA found Ofelia's credulousness blameworthy. We agree. Indeed, Ofelia failed to observe caution in giving her full trust in accommodating a complete stranger and this led her and her husband to be swindled. Considering that Filipina was not personally known to her and the amount of the foreign check to be encashed was $300,000.00, a higher degree of care is expected of Ofelia which she, however, failed to exercise under the circumstances. Another circumstance which should have goaded Ofelia to be more circumspect in her dealings was when a bank officer called her up to inform that the Bank of America check has already been cleared way earlier than the 15-day clearing period. The fact that the check was cleared after only eight banking days from the time it was deposited or contrary to what Garin told her that clearing takes 15 days should have already put Ofelia on guard. She should have first verified the regularity of such hasty clearance considering that if something goes wrong with the transaction, it is she and her husband who would be put at risk and not the accommodated party. However,

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[43] *City of Cebu v. Judge Piccio,* 110 Phil. 558, 563 (1960).

[44] *Valenzuela v. Court of Appeals,* 323 Phil. 374, 388 (1996).

Ofelia chose to ignore the same and instead actively participated in immediately withdrawing the proceeds of the check. Thus, we are one with the CA in ruling that Ofelia's prior consultation with PNB officers is not enough to totally absolve her of any liability. In the first place, she should have shunned any participation in that palpably shady transaction.

In any case, the complaint against the spouses Cheah could not be dismissed. As PNB's client, Ofelia was the one who dealt with PNB and negotiated the check such that its value was credited in her and her husband's account. Being the ones in privity with PNB, the spouses Cheah are therefore the persons who should return to PNB the money released to them.

All told, the Court concurs with the findings of the CA that PNB and the spouses Cheah are equally negligent and should therefore equally suffer the loss. The two must both bear the consequences of their mistakes.

WHEREFORE, premises considered, the Petitions for Review on *Certiorari* in G.R. No. 170865 and in G.R. No. 170892 are both **DENIED.** The assailed August 22, 2005 Decision and December 21, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 63948 are hereby **AFFIRMED *in toto***.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 172538. April 25, 2012]

ISABELO ESPERIDA, LORENZO HIPOLITO, and ROMEO DE BELEN, *petitioners, vs.* **FRANCO K. JURADO, JR.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; PROCEDURAL REQUISITES.—** Sections 3 and 4, Rule 71 of the Rules of Court, specifically outlines the procedural requisites before the accused may be punished for indirect contempt. *First*, there must be an order requiring the respondent to show cause why he should not be cited for contempt. *Second*, the respondent must be given the opportunity to comment on the charge against him. *Third*, there must be a hearing and the court must investigate the charge and consider respondent's answer. *Finally*, only if found guilty will respondent be punished accordingly. The law requires that there be a charge in writing, duly filed in court, and an opportunity given to the person charged to be heard by himself or counsel. What is most essential is that the alleged contemner be granted an opportunity to meet the charges against him and to be heard in his defenses. This is due process, which must be observed at all times.

2. **ID.; ID.; ID.; CONTEMPT PROCEEDINGS; DUE PROCESS, EXPLAINED; APPLICATION IN CASE AT BAR.—** The case of *Mutuc v. Court of Appeals* is instructive as to what due process means in contempt proceedings. This Court stated: There is no question that the "essence of due process is a hearing before conviction and before an impartial and disinterested tribunal" x x x but due process as a constitutional precept does not always, and in all situations, require a trial-type proceeding x x x. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. x x x "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process. In the case at bar, petitioners were

indeed given ample opportunity to file their Answer. In denying petitioners' Omnibus Motion and Second Motion for Extension, the CA ratiocinated that the justifications advanced by petitioners do not warrant the grant of liberality in the application of the Rules and their omissions are unpardonable and should not be tolerated. It must be stressed, however, that indirect contempt proceedings partake of the nature of a criminal prosecution; hence, strict rules that govern criminal prosecutions also apply to a prosecution for criminal contempt; the accused is to be afforded many of the protections provided in regular criminal cases; and proceedings under statutes governing them are to be strictly construed. Moreover, in contempt proceedings, if the answer to the contempt charge is satisfactory, the contempt proceedings end.

3. ID.; ID.; ID.; ID.; IN CONTEMPT PROCEEDINGS, THE PRESCRIBED PROCEDURE MUST BE FOLLOWED; RATIONALE; CASE AT BAR.— In contempt proceedings, the prescribed procedure must be followed. To be sure, since an indirect contempt charge partakes the nature of a criminal charge, conviction cannot be had merely on the basis of written pleadings. A respondent in a contempt charge must be served with a copy of the motion/petition. Unlike in civil actions, the Court does not issue summons on the respondent. While the respondent is not required to file a formal answer similar to that in ordinary civil actions, the court must set the contempt charge for hearing on a fixed date and time on which the respondent must make his appearance to answer the charge. On the date and time of the hearing, the court shall proceed to investigate the charges and consider such answer or testimony as the respondent may make or offer. The mode of procedure and rules of evidence therein are assimilated to criminal prosecutions. If he fails to appear on that date after due notice without justifiable reason, the court may order his arrest, just like the accused in a criminal case who fails to appear when so required. The court does not declare the respondent in a contempt charge in default. Clearly, the contempt case against petitioners is still in the early stage of the proceedings. The proceedings have not reached that stage wherein the court below has set a hearing to provide petitioners with the opportunity to state their defenses. Verily, a hearing affords the contemner the opportunity to adduce before the court documentary or testimonial evidence in his behalf. The hearing will also allow

the court a more thorough evaluation of the defense of the contemner, including the chance to observe the accused present his side in open court and subject his defense to interrogation from the complainants or the court itself. In fine, the proper procedure must be observed and petitioners must be afforded full and real opportunity to be heard.

4. ID.; RULES OF COURT; A STRICT AND RIGID APPLICATION OF TECHNICALITIES MUST BE AVOIDED IF IT TENDS TO FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL JUSTICE; APPLICATION IN CASE AT BAR.— It is settled that "subsequent and substantial compliance may call for the relaxation of the rules of procedure." Time and again, this Court has held that a strict and rigid application of technicalities must be avoided if it tends to frustrate rather than promote substantial justice. Considering the nature of contempt proceedings and the fact that petitioners actually filed their Answer, *albeit* belatedly, the CA should have been more liberal in the application of the Rules and admitted the Answer. Moreover, this Court finds that the CA also erred in considering the case deemed submitted for resolution *sans* the answer of petitioners without setting and conducting a hearing on a fixed date and time on which petitioners may personally, or through counsel, answer the charges against them.

APPEARANCES OF COUNSEL

Daniel F. Furaque for petitioners.
Jaime M. Vibar for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Resolution[1] dated March 2, 2006 denying the Motion for Extension of Time to File Answer filed by petitioners Isabelo

[1] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), with Associate Justices Renato C. Dacudao and Celia C. Librea-Leagogo, concurring; *rollo*, pp. 27-28.

Esperida, Lorenzo Hipolito, and Romeo de Belen, and the Resolution[2] dated April 19, 2006 denying petitioners' Omnibus Motion and Second Motion for Extension, of the Court of Appeals in CA-G.R. SP No. 90525.

The factual and procedural antecedents are as follows:

On February 5, 2001, petitioners Isabelo Esperida, Lorenzo Hipolito, and Romeo de Belen filed a Complaint for illegal dismissal against respondent Franco K. Jurado, Jr. before the Labor Arbiter.

On March 14, 2002, the Labor Arbiter rendered a Decision[3] in favor of petitioners, declaring that they have been illegally dismissed and awarding them their corresponding backwages and separation pay. Respondent appealed the decision before the National Labor Relations Commission (NLRC), but the latter issued a Resolution[4] dismissing the appeal and affirming the decision of the Labor Arbiter *in toto*.

Aggrieved, respondent sought recourse before the Court of Appeals (CA) docketed as CA-G.R. SP No. 81118. On December 13, 2004, the CA rendered a Decision[5] dismissing the petition and affirming the assailed Resolution of the NLRC. Respondent then filed a motion for reconsideration of the decision, which was eventually denied in the Resolution[6] dated September 27, 2005.

However, during the pendency of the motion for reconsideration, or on July 21, 2005, respondent filed before the CA a Petition to Declare Petitioners in Contempt of Court[7] against the petitioners. In the said petition, respondent sought to declare herein petitioners guilty of indirect contempt of court on the

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

[3] CA *rollo*, pp. 106-111.

[4] *Id*. at 112-114.

[5] *Rollo*, pp. 70-84.

[6] CA *rollo*, pp. 131-132.

[7] *Rollo*, pp. 53-63.

basis of their alleged acts of dishonesty, fraud, and falsification of documents to mislead the CA to rule in their favor in CA-G.R. SP No. 81118.

Finding the petition to be sufficient in form and substance, the CA issued a Resolution[8] ordering herein petitioners to file their Answer within 15 days from notice, showing cause why they should not be adjudged guilty of indirect contempt of court.

On February 8, 2006, counsel for petitioners filed his entry of appearance, together with a motion for extension of time, seeking that petitioners be granted 15 days from February 3, 2006, or up to February 18, 2006, within which to submit their Answer to the petition.

On March 2, 2006, the CA issued one of the assailed Resolutions[9] denying the motion for extension, to wit:

> The entry of appearance filed by mail by Atty. Daniel F. Furaque is **NOTED**.
>
> The motion for extension filed together with the entry of appearance, seeking for the respondents fifteen (15) days from February 3, 2006 within which to submit their answer to the petition, is **DENIED,** considering that it was mailed only on February 8, 2006 despite the last day to file being on February 3, 2006, and considering that it did not contain any explanation why it was not served and filed personally.
>
> The case is now deemed submitted for resolution *sans* the answer of respondents Isabelo E. Esperida, Lorenzo Hipolito, and Romeo de Belen.
>
> SO ORDERED.[10]

On February 21, 2006, petitioners filed a Second Motion for Extension,[11] alleging that the Answer to the petition is due on February 18, 2006, but due to counsel's work load, they are

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[8] *Id.* at 86.

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

[10] *Id.*

[11] CA *rollo*, pp. 27-28.

praying that they be allowed to submit their Answer until February 28, 2006.

On March 20, 2006, petitioners' counsel also filed an Omnibus Motion (For Reconsideration of the March 02, 2006 Resolution; and For Admission of Respondent's Answer),[12] reasoning that the late filing of the motion for extension was because counsel was so tied up with the preparations of equally important paper works and pleadings for the other cases which he is also handling. Counsel explained that he failed to give instructions to his liaison officer to mail the motion on the same day. Also, personal service was not possible due to the considerable distance between the parties' respective offices. Ultimately, petitioners, through counsel, prayed that the Resolution be set aside and their Answer,[13] which is attached to said Omnibus Motion, be admitted.

On April 19, 2006, the CA issued the other assailed Resolution,[14] denying both the Omnibus Motion and Second Motion for Extension for lack of merit.

In denying the motions, the CA ratiocinated that petitioners did not file their Answer within the reglementary period and clearly disregarded the rules of procedure. Petitioners' plea for liberality is, therefore, undeserving of any sympathy.

Hence, the petition assigning the following errors:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DENYING PETITIONERS' MOTIONS FOR EXTENSION;

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN CONSIDERING THE CASE SUBMITTED FOR DECISION WITHOUT GIVING PETITIONERS THEIR INHERENT AND INALIENABLE RIGHT TO DUE PROCESS OF LAW; and

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[12] *Rollo,* pp. 36-40.

[13] CA *rollo*, pp. 43-57.

[14] *Rollo,* pp. 31-34.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN DENYING BOTH THE MOTION FOR RECONSIDERATION AND MOTION FOR ADMISSION OF PETITIONERS' ANSWER.[15]

Petitioners argue that the reasoning advanced by its counsel in failing to submit their Answer on time, and their failure to submit the Explanation why their answer was not served personally, erases any legal defect or impediment for the admission of their Answer by the CA. Petitioners maintain that the CA should have practiced liberality in interpreting and applying the rules in the interest of justice, fair play and equity.

Petitioners contend that if their Answer would not be considered and appreciated in the disposition of the case, they will be adjudged guilty of falsification and misrepresentation without being afforded an opportunity to explain their side of the controversy, in gross violation of their constitutional right to due process of law.

On his part, respondent maintains that the CA did not err in denying petitioners' motions and that they were not denied due process of law. Moreover, respondent avers that even if petitioners' Answer was not admitted, it does not mean that they will unceremoniously be adjudged in contempt of court. It only means that the contempt proceedings will commence without petitioners' Answer, in accordance with the Rules.

The petition is meritorious.

Sections 3[16] and 4,[17] Rule 71 of the Rules of Court, specifically outlines the procedural requisites before the accused may be

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[15] *Id.* at 16.

[16] SEC. 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt: x x x

[17] SEC. 4. *How proceedings commenced.* — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt

punished for indirect contempt. *First*, there must be an order requiring the respondent to show cause why he should not be cited for contempt. *Second*, the respondent must be given the opportunity to comment on the charge against him. *Third*, there must be a hearing and the court must investigate the charge and consider respondent's answer. *Finally*, only if found guilty will respondent be punished accordingly.[18] The law requires that there be a charge in writing, duly filed in court, and an opportunity given to the person charged to be heard by himself or counsel. What is most essential is that the alleged contemner be granted an opportunity to meet the charges against him and to be heard in his defenses. This is due process, which must be observed at all times.[19]

The case of *Mutuc v. Court of Appeals*[20] is instructive as to what due process means in contempt proceedings. This Court stated:

> There is no question that the "essence of due process is a hearing before conviction and before an impartial and disinterested tribunal" x x x but due process as a constitutional precept does not always, and in all situations, require a trial-type proceeding x x x. The essence of due process is to be found in the reasonable opportunity to be

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was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

[18] *In the Matter of the Contempt Orders against Lt. Gen. Jose M. Calimlim and Atty. Domingo A. Doctor, Jr.*, G.R. No. 141668, August 20, 2008, 562 SCRA 393, 399.

[19] *Bruan v. People*, G.R. No. 149428, June 4, 2004, 431 SCRA 90, 95.

[20] *Mutuc v. Court of Appeals*, G.R. No. L-48108, September 26, 1990, 190 SCRA 43.

heard and submit any evidence one may have in support of one's defense. x x x "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[21]

In the case at bar, petitioners were indeed given ample opportunity to file their Answer. In denying petitioners' Omnibus Motion and Second Motion for Extension, the CA ratiocinated that the justifications advanced by petitioners do not warrant the grant of liberality in the application of the Rules and their omissions are unpardonable and should not be tolerated.[22]

It must be stressed, however, that indirect contempt proceedings partake of the nature of a criminal prosecution; hence, strict rules that govern criminal prosecutions also apply to a prosecution for criminal contempt; the accused is to be afforded many of the protections provided in regular criminal cases; and proceedings under statutes governing them are to be strictly construed.[23] Moreover, in contempt proceedings, if the answer to the contempt charge is satisfactory, the contempt proceedings end.[24]

In the present recourse, petitioners plead for the liberal application of the Rules. Admittedly, in their Omnibus Motion before the appellate court, petitioners' counsel acknowledged his shortcomings in complying with the resolution of the court and took full responsibility for such oversight and omission. Petitioners' counsel also reasoned that the lack of personal service of the motion for extension was due to the considerable distance between the parties' respective offices and that the failure of filing the motion for extension on time was due to the fact that counsel's liaison officer failed to follow his instructions. Indeed, counsel's liaison officer attested such facts in his Explanation/

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[21] *Id.* at 49. (Citations omitted.)

[22] *Rollo,* pp. 32-34.

[23] *Aquino v. Ng*, G.R. No. 155631, July 27, 2007, 528 SCRA 277, 284.

[24] *Paredes-Garcia v. Court of Appeals*, G.R. No. 120654, September 11, 1996, 261 SCRA 693, 707.

Affidavit,[25] which was attached to the Omnibus Motion. More importantly, also attached to the Omnibus Motion was petitioners' Answer to the petition to cite them in contempt.

It is settled that "subsequent and substantial compliance may call for the relaxation of the rules of procedure."[26] Time and again, this Court has held that a strict and rigid application of technicalities must be avoided if it tends to frustrate rather than promote substantial justice.[27] Considering the nature of contempt proceedings and the fact that petitioners actually filed their Answer, *albeit* belatedly, the CA should have been more liberal in the application of the Rules and admitted the Answer.

Moreover, this Court finds that the CA also erred in considering the case deemed submitted for resolution *sans* the answer[28] of petitioners without setting and conducting a hearing on a fixed date and time on which petitioners may personally, or through counsel, answer the charges against them.

In contempt proceedings, the prescribed procedure must be followed.[29] To be sure, since an indirect contempt charge partakes the nature of a criminal charge, conviction cannot be had merely on the basis of written pleadings.[30] A respondent in a contempt charge must be served with a copy of the motion/petition. Unlike in civil actions, the Court does not issue summons on the respondent. While the respondent is not required to file a formal answer similar to that in ordinary civil actions, the court must set the contempt charge for hearing on a fixed date and time on which the respondent must make his appearance to answer the

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[25] CA *rollo*, pp. 36-37.

[26] *Security Bank Corporation v. Indiana Aerospace University*, 500 Phil. 51, 60 (2005).

[27] *Jaro v. CA*, G.R. No. 127536, February 19, 2002, 377 SCRA 282, 298.

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

[29] *Nazareno v. Barnes*, G.R. No. 59072, April 25, 1984, 136 SCRA 57, 71.

[30] *Soriano v. Court of Appeals*, G.R. No. 128938, June 4, 2004, 431 SCRA 1, 8.

charge. On the date and time of the hearing, the court shall proceed to investigate the charges and consider such answer or testimony as the respondent may make or offer. The mode of procedure and rules of evidence therein are assimilated to criminal prosecutions. If he fails to appear on that date after due notice without justifiable reason, the court may order his arrest, just like the accused in a criminal case who fails to appear when so required. The court does not declare the respondent in a contempt charge in default.[31]

Clearly, the contempt case against petitioners is still in the early stage of the proceedings. The proceedings have not reached that stage wherein the court below has set a hearing to provide petitioners with the opportunity to state their defenses. Verily, a hearing affords the contemner the opportunity to adduce before the court documentary or testimonial evidence in his behalf. The hearing will also allow the court a more thorough evaluation of the defense of the contemner, including the chance to observe the accused present his side in open court and subject his defense to interrogation from the complainants or the court itself.[32] In fine, the proper procedure must be observed and petitioners must be afforded full and real opportunity to be heard.

WHEREFORE, premises considered, the petition is **GRANTED.** The Resolutions dated March 2, 2006 and April 19, 2006 of the Court of Appeals are **REVERSED** and **SET ASIDE.** The Court of Appeals is **ORDERED** to admit petitioners' Answer.

The case shall not be deemed submitted for resolution until a hearing is conducted in accordance with the Rules. The Court of Appeals is **DIRECTED** to resume the proceedings below with dispatch.

SO ORDERED.

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

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[31] *Bruan v. People, surpra* note 19, at 96.

[32] *Aquino v. Ng, supra* note 23, at 285.

THIRD DIVISION

[G.R. No. 173840. April 25, 2012]

SAMAR II ELECTRIC COOPERATIVE, INC. (SAMELCO II) AND ITS BOARD OF DIRECTORS, composed of DEBORAH T. MARCO (Immediate Past President), ATTY. MEDINO L. ACUBA, ENGR. MANUEL C. OREJOLA, ALFONSO F. QUILAPIO, RAUL DE GUZMAN and PONCIANO R. ROSALES (General Manager and *Ex Officio* Director), *petitioners, vs.* **ANANIAS D. SELUDO, JR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; SUPERVISION AND CONTROL; DISTINGUISHED.— In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. Section 38 (1), Chapter 7, Book 4 of Executive Order No. 292, otherwise known as the *Administrative Code of 1987* provides, thus: Supervision and control shall include the authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; **restrain the commission of acts**; **review, approve, reverse or modify acts and decisions of subordinate officials or units**; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs x x x.

2. ID.; ID.; NATIONAL ELECTRIFICATION ADMINISTRATION (NEA); POWER OF SUPERVISION AND CONTROL OVER ELECTRIC COOPERATIVES, SUSTAINED.— A comparison of the original provisions of Sections 10 and 24 of P.D. No. 269 and the amendatory provisions under Sections

5 and 7 of P.D. No. 1645 would readily show that the intention of the framers of the amendatory law is to broaden the powers of the NEA. A clear proof of such expanded powers is that, unlike P.D. No. 269, P.D. No. 1645 expressly provides for the authority of the NEA to exercise supervision and control over electric cooperatives. x x x The Court, therefore, finds it erroneous on the part of the CA to rule that the doctrine of primary jurisdiction does not apply in the present case. It is true that the RTC has jurisdiction over the petition for prohibition filed by respondent. However, the basic issue in the present case is not whether the RTC has jurisdiction over the petition for prohibition filed by respondent; rather, the issue is who between the RTC and the NEA has primary jurisdiction over the question of the validity of the Board Resolution issued by SAMELCO II. A careful reading of the above-quoted provisions of P.D. No. 1645 clearly show that, pursuant to its power of supervision and control, the NEA is granted the authority to conduct investigations and other similar actions as well as to issue orders, rules and regulations with respect to all matters affecting electric cooperatives. Certainly, the matter as to the validity of the resolution issued by the Board of Directors of SAMELCO II, which practically removed respondent from his position as a member of the Board of Directors and further disqualified him to run as such in the ensuing election, is a matter which affects the said electric cooperative and, thus, comes within the ambit of the powers of the NEA as expressed in Sections 5 and 7 of P.D. No. 1645.

3. ID.; ID.; DOCTRINE OF PRIMARY JURISDICTION; WHEN APPLICABLE.— It may not be amiss to reiterate the prevailing rule that the doctrine of primary jurisdiction applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative agency. In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.

4. ID.; ID.; ID.; EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXPLAINED.— Corollary to the doctrine of

primary jurisdiction is the principle of exhaustion of administrative remedies. The Court, in a long line of cases, has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel*, the case may be dismissed for lack of cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.

5. ID.; ID.; ID.; ID.; EXCEPTIONS.— True, the doctrines of primary jurisdiction and exhaustion of administrative remedies are subject to certain exceptions, to wit: (a) where there is *estoppel* on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; IN ORDER THAT PROHIBITION WILL LIE, ALL

ADMINISTRATIVE REMEDIES MUST FIRST BE EXHAUSTED; APPLICATION IN CASE AT BAR.— Finally, the Court agrees with petitioners' contention that the availability of an administrative remedy *via* a complaint filed before the NEA precludes respondent from filing a petition for prohibition before the court. It is settled that one of the requisites for a writ of prohibition to issue is that there is no plain, speedy and adequate remedy in the ordinary course of law. In order that prohibition will lie, the petitioner must first exhaust all administrative remedies. Thus, respondent's failure to file a complaint before the NEA prevents him from filing a petition for prohibition before the RTC.

APPEARANCES OF COUNSEL

Polistico Law Office for petitioners.
Antonio D. Seludo for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] and Resolution[2] dated January 26, 2006 and July 12, 2006, respectively, of the Court of Appeals (CA) in CA-G.R. CEB SP No. 01175. The CA Decision dismissed petitioners' petition for *certiorari* and affirmed the Orders of the Regional Trial Court (RTC) of Calbiga, Samar, Branch 33, dated May 6, 2005 and September 15, 2005, while the CA Resolution denied petitioners' Motion for Reconsideration.

Herein petitioner Samar II Electric Cooperative, Inc. (SAMELCO II) was organized under the provisions of Presidential

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 50-55.

[2] Penned by Associate Justice Isaias P. Dicdican, Jr., with Associate Justices Apolinario D. Bruselas, Jr. and Marlene Gonzales-Sison, concurring, *id.* at 56-57.

Decree (P.D.) No. 269, otherwise known as the "National Electrification Administration Decree," as amended by P.D. No. 1645. The individual petitioners are members of SAMELCO II's Board of Directors. Respondent was also a member of the SAMELCO II Board of Directors having been elected thereto in 2002 and whose term of office expired in May 2005.

The antecedent facts, as summarized by the CA, are as follows:

As members of the Board of Directors (BOD) of the petitioner Samar II Electric Cooperative, Inc. (SAMELCO II), an electric cooperative providing electric service to all members-consumers in all municipalities within the Second Congressional District of the Province of Samar, individual petitioners passed Resolution No. 5 [Series] of 2005 on January 22, 2005.

The said resolution disallowed the private respondent to attend succeeding meetings of the BOD effective February 2005 until the end of his term as director. The same resolution also disqualified him for one (1) term to run as a candidate for director in the upcoming district elections.

Convinced that his rights as a director of petitioner SAMELCO II had been curtailed by the subject board resolution, private respondent filed an Urgent Petition for Prohibition against petitioner SAMELCO II, impleading individual petitioners as directors thereof, in the Regional Trial Court (RTC) in Calbiga, Samar. The case was docketed as Special Civil Case No. C-2005-1085 and was raffled to Branch 33 of the said court x x x.

In his petition, private respondent prayed for the nullification of Resolution No. 5, [Series] of 2005, contending that it was issued without any legal and factual bases. He likewise prayed that a temporary restraining order (TRO) and/or a writ of preliminary injunction be issued to enjoin the individual petitioners from enforcing the assailed board resolution.

Granting private respondent's prayer for a TRO, the public respondent issued one, effective for seventy-two (72) hours which effectivity was later on extended for another seventeen (17) days.

In their answer to the petition for prohibition, individual petitioners raised the affirmative defense of lack of jurisdiction of the RTC over the subject matter of the case. Individual petitioners assert

that, since the matter involved an electric cooperative, SAMELCO II, primary jurisdiction is vested on the National Electrification Administration (NEA).

In her assailed Order dated May 6, 2005, [the RTC judge] sustained the jurisdiction of the court over the petition for prohibition and barred the petitioners and/or their representatives from enforcing Resolution No. 5 [Series] of 2005.

x x x x x x x x x[3]

Petitioners filed a motion for reconsideration, but the same was denied by the RTC in its September 15, 2005 Order.

Petitioners then elevated the case to the CA *via* a special civil action for *certiorari*, imputing grave abuse of discretion on the part of the RTC in issuing its assailed Orders.

On January 26, 2006, the CA rendered its Decision dismissing petitioners' petition for *certiorari* and affirming the assailed Orders of the RTC.

Petitioners filed a motion for reconsideration, but it was denied by the CA in its July 12, 2006 Resolution.

Hence, the instant petition with the following assigned errors:

(1)

IN ITS INTERPRETATION AND APPLICATION OF THE DOCTRINE OF PRIMARY JURISDICTION, THE HONORABLE COURT OF APPEALS COMMITTED LEGAL ERRORS IN LIMITING THE DOCTRINE TO "CERTAIN MATTERS IN CONTROVERSIES INVOLVING SPECIALIZED DISPUTES" AND IN UPHOLDING THE JURISDICTION OF THE TRIAL COURT OVER THE URGENT PETITION FOR PROHIBITION FILED BY RESPONDENT SELUDO ON THE GROUND THAT THE ISSUES RAISED THEREIN "DO NOT REQUIRE THE TECHNICAL EXPERTISE OF THE NEA"

(2)

THE HONORABLE COURT OF APPEALS, IN SUSTAINING THE JURISDICTION OF THE TRIAL COURT, COMMITTED AN ERROR OF LAW BY HOLDING THAT "A PERUSAL OF THE

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[3] *Rollo,* pp. 51-52.

LAW CREATING THE NEA DISCLOSES THAT THE NEA WAS NOT GRANTED THE POWER TO HEAR AND DECIDE CASES INVOLVING THE VALIDITY OF BOARD RESOLUTIONS UNSEATING ANY MEMBER OF THE BOARD OF DIRECTORS" AND THAT "NEITHER WAS IT GRANTED JURISDICTION OVER PETITIONS FOR *CERTIORARI*, PROHIBITION OR *MANDAMUS*."

(3)

THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT SUSTAINED THE JURISDICTION OF [THE] TRIAL COURT OVER THE PETITION FOR PROHIBITION DESPITE THE EXISTENCE OF APPEAL OR OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY AVAILABLE TO THEREIN PETITIONER SELUDO.[4]

In their first assigned error, petitioners contend that the CA erred in interpreting the doctrine of primary jurisdiction in a very limited sense. Petitioners aver that in a number of cases, this Court applied the doctrine of primary jurisdiction even in cases where the issues involved do not require the technical expertise of administrative bodies.

Petitioners also argue, in their second assignment of error, that it is wrong for the CA to rule that there is nothing under the law creating the National Electrification Administration (NEA), which grants the said administrative body the power to ascertain the validity of board resolutions unseating any member of the Board of Directors of an electric cooperative. Citing the provisions of P.D. Nos. 269 and 1645, petitioners aver that the NEA is empowered to determine the validity of resolutions passed by electric cooperatives.

In their third assigned error, petitioners assert that respondent is precluded from filing a petition for prohibition considering that, under the applicable laws, it has an adequate remedy in the ordinary course of law.

The Court finds the petition meritorious. As the assigned errors are interrelated, the Court will discuss them jointly.

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[4] *Id.* at 30, 36 and 40.

Section 10, Chapter II of P.D. No. 269, as amended by Section 5 of P.D. No. 1645, provides:

Section 5. Section 10, Chapter II of Presidential Decree No. 269 is hereby amended to read as follows:

Section 10. *Enforcement Powers and Remedies*. " **In the exercise of its power of supervision and control over electric cooperatives** and other borrower, supervised or controlled entities, **the NEA is empowered to issue orders, rules and regulations and *motu proprio* or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters affecting said electric cooperatives** and other borrower, or supervised or controlled entities.

If the electric cooperative concerned or other similar entity fails after due notice to comply with NEA orders, rules and regulations and/or decisions, or with any of the terms of the Loan Agreement, the NEA Board of Administrators may avail of any or all of the following remedies:

x x x x x x x x x.

(e) Take preventive and/or disciplinary measures including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the Cooperative, other borrower institutions or supervised or controlled entities as the NEA Board of Administrators may deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide.

x x x x x x x x x
(Emphasis supplied.)

In addition, Subsection (a), Section 24, Chapter III of P.D. No. 269, as amended by Section 7 of P.D. No. 1645, states:

Section 7. Subsection (a), Section 24, Chapter III of Presidential Decree No. 269 is hereby amended to read as follows:

Section 24. *Board of Directors*. (a) **The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of NEA which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions.**

> The composition, qualifications, the manner of elections and filling of vacancies, the procedures for holding meetings and other similar provisions shall be defined in the by-laws of the Cooperative subject to NEA policies, rules and regulations.
>
> x x x x x x x x x.

(Emphasis supplied.)

A comparison of the original provisions of Sections 10 and 24 of P.D. No. 269 and the amendatory provisions under Sections 5 and 7 of P.D. No. 1645 would readily show that the intention of the framers of the amendatory law is to broaden the powers of the NEA.

A clear proof of such expanded powers is that, unlike P.D. No. 269, P.D. No. 1645 expressly provides for the authority of the NEA to exercise supervision and control over electric cooperatives. In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties.[5] If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties.[6] Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.[7] Section 38 (1), Chapter 7, Book 4 of Executive Order No. 292, otherwise known as the *Administrative Code of 1987* provides, thus:

> Supervision and control shall include the authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; **restrain the commission of acts**; **review, approve, reverse or modify acts and decisions of subordinate officials or units**; determine priorities in the execution

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[5] *Social Justice Society (SJS) v. Atienza, Jr.*, G.R. No. 156052, February 13, 2008, 545 SCRA 92, 152; *Veterans Federation of the Philippines v. Reyes*, G.R. No. 155027, February 28, 2006, 483 SCRA 526, 564; *Mondano v. Silvosa*, 97 Phil. 143, 147-148 (1955).

[6] *Id.*

[7] *Id.*

of plans and programs; and prescribe standards, guidelines, plans and programs x x x. (Emphasis supplied.)

The Court, therefore, finds it erroneous on the part of the CA to rule that the doctrine of primary jurisdiction does not apply in the present case. It is true that the RTC has jurisdiction over the petition for prohibition filed by respondent.[8] However, the basic issue in the present case is not whether the RTC has jurisdiction over the petition for prohibition filed by respondent; rather, the issue is who between the RTC and the NEA has primary jurisdiction over the question of the validity of the Board Resolution issued by SAMELCO II. A careful reading of the above-quoted provisions of P.D. No. 1645 clearly show that, pursuant to its power of supervision and control, the NEA is granted the authority to conduct investigations and other similar actions as well as to issue orders, rules and regulations with respect to all matters affecting electric cooperatives. Certainly, the matter as to the validity of the resolution issued by the Board of Directors of SAMELCO II, which practically removed respondent from his position as a member of the Board of Directors and further disqualified him to run as such in the ensuing election, is a matter which affects the said electric cooperative and, thus, comes within the ambit of the powers of the NEA as expressed in Sections 5 and 7 of P.D. No. 1645.

In this regard, the Court agrees with petitioners' argument that to sustain the petition for prohibition filed by respondent with the RTC would constitute an unnecessary intrusion into the NEA's power of supervision and control over electric cooperatives.

Based on the foregoing discussions, the necessary conclusion that can be arrived at is that, while the RTC has jurisdiction over the petition for prohibition filed by respondent, the NEA, in the exercise of its power of supervision and control, has primary jurisdiction to determine the issue of the validity of the subject resolution.

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[8] Section 21(1) of Batas Pambansa Blg. 129 provides that the RTC shall exercise original jurisdiction in the issuance, among others, of a writ of prohibition.

It may not be amiss to reiterate the prevailing rule that the doctrine of primary jurisdiction applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative agency.[9] In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.[10]

Corollary to the doctrine of primary jurisdiction is the principle of exhaustion of administrative remedies. The Court, in a long line of cases,[11] has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.[12] The premature resort to the court is fatal to one's cause of action.[13] Accordingly, absent any finding of waiver or *estoppel*, the case may be dismissed for lack of cause of action.[14]

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[9] *Rosito Bagunu v. Spouses Francisco Aggabao and Rosenda Acerit*, G.R. No. 186487, August 15, 2011; *Phil Pharmawealth, Inc. v. Pfizer, Inc. and Pfizer (Phil.) Inc.*, G.R. No. 167715, November 17, 2010, 635 SCRA 140, 153; *Euro-Med Laboratories Phil., Inc. v. The Province of Batangas*, G.R. No. 148106, July 17, 2006, 495 SCRA 301, 305.

[10] *Id*.

[11] *City Engineer of Baguio v. Baniqued*, G.R. No. 150270, November 26, 2008, 571 SCRA 617, 627-628; *Buston-Arendain v. Gil*, G.R. No. 172585, June 26, 2008, 555 SCRA 561, 572; *Province of Zamboanga del Norte v. Court of Appeals*, G.R. No. 109853, October 11, 2000, 342 SCRA 549, 557.

[12] *Id.*

[13] *Id*.

[14] *Id.*

The doctrine of exhaustion of administrative remedies is based on practical and legal reasons.[15] The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies.[16] Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.[17]

True, the doctrines of primary jurisdiction and exhaustion of administrative remedies are subject to certain exceptions, to wit: (a) where there is *estoppel* on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings.[18]

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[15] *Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc.*, G.R. No. 170599, September 22, 2010, 631 SCRA 73, 79; *Montanez v. Provincial Agrarian Reform Adjudicator (PARAD)*, G.R. No. 183142, September 17, 2009, 600 SCRA 217, 230.

[16] *Id.*

[17] *Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc., supra*, at 79-80; *Montanez v. Provincial Agrarian Reform Adjudicator (PARAD), supra*, at 230-231.

[18] *Vigilar v. Aquino*, G.R. No. 180388, January 18, 2011, 639 SCRA 772, 777, citing *Republic of the Philippines v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255, 265-266.

Respondent, however, failed to show that the instant case falls under any of the above-enumerated exceptions. While respondent alleged in his Urgent Petition for Prohibition that the subject resolution was issued with grave abuse of discretion and in violation of his right to due process, mere allegation of arbitrariness will not suffice to vest in the trial court the power that has been specifically granted by law to special government agencies.[19] Moreover, the issues raised in the petition for prohibition, particularly the issue of whether or not there are valid grounds to disallow respondent from attending SAMELCO's Board meetings and to disqualify him from running for re-election as a director of the said Board, are not purely legal questions. Instead, they involve a determination of factual matters which fall within the competence of the NEA to ascertain.

Finally, the Court agrees with petitioners' contention that the availability of an administrative remedy *via* a complaint filed before the NEA precludes respondent from filing a petition for prohibition before the court. It is settled that one of the requisites for a writ of prohibition to issue is that there is no plain, speedy and adequate remedy in the ordinary course of law.[20] In order that prohibition will lie, the petitioner must first exhaust all administrative remedies.[21] Thus, respondent's failure to file a complaint before the NEA prevents him from filing a petition for prohibition before the RTC.

WHEREFORE, the instant petition is **GRANTED.** The questioned Decision and Resolution of the Court of Appeals dated

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[19] *Province of Zamboanga del Norte v. Court of Appeals, supra* note 10, at 559.

[20] *Hon. Eduardo Ermita, in his official capacity as The Executive Secretary v. Hon. Jenny Lind R. Aldecoa-Delorino, Presiding Judge, Branch 137, Regional Trial Court, Makati City, Association of Petrochemical Manufacturers of the Philippines, representing JG Summit Petrochemical Corporation, et al.*, G.R. No. 177130, June 7, 2011; *Yusay v. Court of Appeals*, G.R. No. 156684, April 6, 2011, 647 SCRA 269, 283-284; *Ongsuco v. Malones*, G.R. No. 182065, October 27, 2009, 604 SCRA 499, 515.

[21] Regalado, *Remedial Law Compendium*, Vol. I, Sixth Revised Edition, p. 712, citing *Cebedo, et al. v. Director of Lands, et al.*, 111 Phil. 1049, 1053 (1961).

January 26, 2006 and July 12, 2006, respectively, as well as the Orders of the Regional Trial Court of Calbiga, Samar, Branch 33, dated May 6, 2005 and September 15, 2005, are **REVERSED** and **SET ASIDE.** A new judgment is entered **DISMISSING** the Urgent Petition for Prohibition (Special Civil Action No. C-2005-1085) filed by respondent Ananias D. Seludo, Jr.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 173870. April 25, 2012]

OSCAR DEL CARMEN, JR., *petitioner, vs.* **GERONIMO BACOY, Guardian and representing the children, namely: MARY MARJORIE B. MONSALUD, ERIC B. MONSALUD, METZIE ANN B. MONSALUD, KAREEN B. MONSALUD, LEONARDO B. MONSALUD, JR., and CRISTINA B. MONSALUD,** *respondent.*

SYLLABUS

1. CIVIL LAW; QUASI-DELICTS; DOCTRINE OF *RES IPSA LOQUITUR;* CONSTRUED.— Under the doctrine of *res ipsa loquitur*, "[w]here the thing that caused the injury complained of is shown to be under the management of the defendant or his servants; and the accident, in the ordinary course of things, would not happen if those who had management or control used proper care, it affords reasonable evidence — in the absence of a sufficient, reasonable and logical explanation by defendant — that the accident arose from or was caused by the defendant's want of care." *Res ipsa loquitur* is "merely evidentiary, a

mode of proof, or a mere procedural convenience, since it furnishes a substitute for, and relieves a plaintiff of, the burden of producing a specific proof of negligence." It "recognizes that parties may establish *prima facie* negligence without direct proof, thus, it allows the principle to substitute for specific proof of negligence. It permits the plaintiff to present along with proof of the accident, enough of the attending circumstances to invoke the doctrine, create an inference or presumption of negligence and thereby place on the defendant the burden of proving that there was no negligence on his part." The doctrine is based partly on "the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it while the plaintiff has no such knowledge, and is therefore compelled to allege negligence in general terms."

2. ID.; ID.; ID.; REQUISITES; PRESENT IN CASE AT BAR.— The requisites of the doctrine of *res ipsa loquitur* as established by jurisprudence are as follows: 1) the accident is of a kind which does not ordinarily occur unless someone is negligent; 2) the cause of the injury was under the exclusive control of the person in charge and 3) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured. The above requisites are all present in this case. First, no person just walking along the road would suddenly be sideswiped and run over by an on-rushing vehicle unless the one in charge of the said vehicle had been negligent. Second, the jeep which caused the injury was under the exclusive control of Oscar Jr. as its owner. When Oscar Jr. entrusted the ignition key to Rodrigo, he had the power to instruct him with regard to the specific restrictions of the jeep's use, including who or who may not drive it. As he is aware that the jeep may run without the ignition key, he also has the responsibility to park it safely and securely and to instruct his driver Rodrigo to observe the same precaution. Lastly, there was no showing that the death of the victims was due to any voluntary action or contribution on their part.

3. ID.; ID.; THE REGISTERED OWNER OF THE VEHICLE, EVEN IF NOT USED FOR PUBLIC SERVICE, WOULD PRIMARILY BE RESPONSIBLE TO THE PUBLIC OR TO THIRD PERSONS FOR INJURIES CAUSED THE LATTER WHILE THE VEHICLE WAS BEING DRIVEN

ON THE HIGHWAYS OR STREETS; RATIONALE.— Despite Article 2180, we still held the bank liable for damages for the accident as said provision should defer to the settled doctrine concerning accidents involving registered motor vehicles, *i.e.*, that the registered owner of any vehicle, even if not used for public service, would primarily be responsible to the public or to third persons for injuries caused the latter while the vehicle was being driven on the highways or streets. We have already ratiocinated that: The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. Instances are numerous where vehicles running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways. Absent the circumstance of unauthorized use or that the subject vehicle was stolen which are valid defenses available to a registered owner, Oscar Jr. cannot escape liability for *quasi-delict* resulting from his jeep's use.

4. ID.; DAMAGES; INTEREST; WHEN AWARDED.— All told and considering that the amounts of damages awarded are in accordance with prevailing jurisprudence, the Court concurs with the findings of the CA and sustains the awards made. In addition, pursuant to *Eastern Shipping Lines, Inc. v. Court of Appeals*, an interest of six percent (6%) per annum on the amounts awarded shall be imposed, computed from the time the judgment of the RTC is rendered on April 17, 2000 and twelve percent (12%) per annum on such amount upon finality of this Decision until the payment thereof.

APPEARANCES OF COUNSEL

Manileno N. Apiag for petitioner.

Alvarez Nuez Galang Espina & Lopez Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

In this Petition for Review on *Certiorari*,[1] the registered owner of a motor vehicle challenges the Decision[2] dated July 11, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 67764 which held him liable for damages to the heirs of the victims who were run over by the said vehicle.

Factual Antecedents

At dawn on New Year's Day of 1993, Emilia Bacoy Monsalud (Emilia), along with her spouse Leonardo Monsalud, Sr. and their daughter Glenda Monsalud, were on their way home from a Christmas party they attended in *Poblacion*, Sominot, Zamboanga Del Sur. Upon reaching *Purok* Paglaom in Sominot, they were run over by a Fuso passenger jeep bearing plate number UV-PEK-600 that was being driven by Allan Maglasang (Allan). The jeep was registered in the name of petitioner Oscar del Carmen, Jr. (Oscar Jr.) and used as a public utility vehicle plying the Molave, Zamboanga del Sur to Sominot, Zamboanga del Sur and vice versa route.

Because of the unfortunate incident, Criminal Case No. 93-10347[3] for Reckless Imprudence Resulting in Multiple Homicide was filed against Allan before the Regional Trial Court of Molave, Zamboanga del Sur, Branch 23. In a Decision dated March 13, 1997, said court declared Allan guilty beyond reasonable doubt of the crime charged.[4]

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[1] *Rollo*, pp. 13-31.

[2] CA *rollo*, pp. 142-173; penned by Associate Justice Teresita Dy-Liacco Flores and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Sixto C. Marella, Jr.

[3] Records, p. 145.

[4] As mentioned in the RTC Decision in Civil Case No. 96-20219 dated April 17, 2000, *id.* at 169-170. The accused was imposed the indeterminate penalty of 1 year of *prision correccional* to 6 years of *prision correccional* of imprisonment.

During the pendency of said criminal case, Emilia's father, Geronimo Bacoy (Geronimo), in behalf of the six minor children[5] of the Monsaluds, filed Civil Case No. 96-20219,[6] an independent civil action for damages based on *culpa aquiliana*. Aside from Allan, also impleaded therein were his alleged employers, namely, the spouses Oscar del Carmen, Sr. (Oscar Sr.) and Norma del Carmen (Spouses del Carmen) and the registered owner of the jeep, their son Oscar Jr. Geronimo prayed for the reimbursement of funeral and burial expenses, as well as the award of attorney's fees, moral and exemplary damages resulting from the death of the three victims, and loss of net income earnings of Emilia who was employed as a public school teacher at the time of her death.[7]

Defendants refused to assume civil liability for the victims' deaths. Oscar Sr. averred that the Monsaluds have no cause of action against them because he and his wife do not own the jeep and that they were never the employers of Allan.[8] For his part, Oscar Jr. claimed to be a victim himself. He alleged that Allan and his friends[9] stole his jeep while it was parked beside his driver's rented house to take it for a joyride. Both he and a vehicle mechanic testified that the subject jeep can easily be started by mere pushing *sans* the ignition key. The vehicle's

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[5] Namely Mary Marjorie, Eric, Metzie Ann, Kareen, Leonardo Jr., and Christian.

[6] See original complaint, records, pp. 1-5. The complaint was later amended to include the plaintiffs' demand for loss of earning capacity, see Amended Complaint, *id*. at 55-60.

[7] *Id.* at 59. Geronimo prayed for the following:

a) Reimbursement of expenses prior to burial at ₱73,112.00;
b) Attorney's fees of ₱20,000.00 plus ₱1,000.00 per hearing;
c) Moral damages of ₱1,000,000.00 for the death of Emilia and for the death of Leonardo and Glenda, ₱250,000.00 each;
d) Exemplary damages of ₱40,000.00;
e) Actual and compensatory damages of ₱3,016,000.00.

[8] See the Spouses del Carmen's Answer, *id.* at 12-13; TSN-Oscar del Carmen, Sr., July 5, 1999, pp. 4, 6.

[9] Namely Benjamin Andujar, Dioscoro Sol, Joven Orot, Jemar Alarcon, and Arniel Rizada.

engine shall then run but without any headlights on.[10] And implying that this was the manner by which the vehicle was illegally taken, Oscar Jr. submitted as part of his documentary evidence the statements[11] of Jemar Alarcon (Jemar) and Benjamin Andujar (Benjamin). The two, who were with Allan in the jeep at the time of the accident, declared before the investigating officer that during said time, the vehicle's headlights were off. Because of this allegation, Oscar Jr. even filed before the same trial court a carnapping case against Allan and his companions docketed as Criminal Case No. 93-10380.[12] The case was, however, dismissed for insufficiency of evidence.[13]

Oscar Jr. clarified that Allan was his jeep conductor and that it was the latter's brother, Rodrigo Maglasang (Rodrigo), who was employed as the driver.[14] In any event, Allan's employment as conductor was already severed before the mishap occurred on January 1, 1993 since he served as such conductor only from the first week of December until December 14, 1992.[15] In support of this, Oscar Jr. presented as witnesses Faustino Sismundo (Faustino) and Cresencio "Junior" Baobao (Cresencio). Faustino, a resident of Molave, testified that when he boarded the jeep heading to Sominot on December 31, 1992, it was Cresencio who was the conductor. He also believed that Crecencio started to work as such at around December 15 or 16, 1992.[16] Cresencio, for his part, testified that he worked as Oscar Jr.'s

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[10] TSN-Oscar del Carmen, Jr., July 5, 1999, pp. 18-19; TSN-Cecilio Cabahug, January 11, 2000, pp. 4-5. The motor involved is Fuso Motor No. 41066, *id*. at 3.

[11] Records, pp. 149-150.

[12] *Id*. at 15; TSN-Oscar del Carmen Jr., July 5, 1999, pp. 16-17. Benjamin Andojar, Dioscoro Sol, Joven Orot, Jumar Alarcon, and Arnel Rizada were the named co-accused.

[13] As mentioned in the RTC Decision in Civil Case No. 96-20219 dated April 17, 2000, *id*. at 171.

[14] TSN-Oscar del Carmen, Jr., July 5, 1999, pp. 9-10.

[15] *Id.* at 9-10, 13, 15.

[16] TSN-Faustino Sismundo, December 2, 1998, pp. 4-6, 8.

conductor from December 15, 1992 to January 1, 1993 and that Rodrigo was his driver.[17] He stated that upon learning that the jeep figured in an accident, he never bothered to verify the news. Instead, he went to Midsalip to work there as a conductor for his brother's vehicle, thereby terminating his employment with Oscar Jr.[18]

Oscar Jr. likewise testified that it was routinary that after a day's trip, the jeep would be parked beside Rodrigo's rented house[19] for the next early-morning operation.

Geronimo, on the other hand, averred that Allan was still Oscar Jr.'s employee subsequent to December 14, 1992. To prove this, he presented as witnesses Saturnino Jumawan (Saturnino) and Jose Navarro (Jose). Saturnino testified that he would pay his fare to Allan every time he would board the jeep in going to Molave and that the last time he rode the subject vehicle was on December 23, 1992. He also claimed that immediately before January 1, 1993, Rodrigo and Allan used to park the jeep at the yard of his house.[20] Jose likewise attested that Allan was still the jeep conductor during the said period as he had ridden the jeep many times in mid-December of 1992.[21]

Ruling of the Regional Trial Court

In its Decision[22] dated April 17, 2000, the RTC exculpated the spouses del Carmen from civil liability for insufficiency of evidence. However, their son Oscar Jr. was held civilly liable in a subsidiary capacity. The RTC anchored its ruling primarily on the principle of *res ipsa loquitur, i.e.*, that a presumption of negligence on the part of a defendant may be inferred if the thing that caused an injury is shown to be under his management

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[17] TSN-Cresencio Baobao, May 11, 1999, pp. 3-4.

[18] *Id.* at 5-6, 10, 13-15.

[19] TSN-Oscar del Carmen Jr., July 5, 1999, p. 12.

[20] TSN-Saturnino Jumawan, October 6, 1998, p. 8.

[21] TSN-Jose Navarro, February 28, 2000, pp. 2-3, 5-6.

[22] *Id.* at 169-176; penned by Judge Camilo E. Tamin.

and that in the ordinary course of things, the accident would not have happened had there been an exercise of care. Said court ratiocinated that Oscar Jr., as the registered owner of the jeep, managed and controlled the same through his driver Rodrigo, in whose house the jeep was usually parked. Since both Oscar Jr. and Rodrigo were well aware that the jeep could easily be started by a mere push even without the ignition key, they should have taken the necessary precaution to prevent the vehicle from being used by unauthorized persons like Allan. The RTC thus concluded that such lack of proper precaution, due care and foresight constitute negligence making the registered owner of the vehicle civilly liable for the damage caused by the same.

The RTC disposed of the case as follows:

> Wherefore, judgment is hereby entered in favor of the plaintiffs and against the defendants Allan Maglasang and Oscar del Carmen, Jr. ordering —
>
> 1. Defendant ALLAN MAGLASANG to pay the plaintiffs, and in case of insolvency, for defendant OSCAR DEL CARMEN, JR., to pay the plaintiffs, the following sums:
>
>   a. ₱73,112.00 for their funeral and burial expenses;
>   b. ₱1,000,000.00 moral damages for the death of the late Emilia Monsalud;
>   c. ₱250,000.00 moral damages for the death of the late Leonardo Monsalud, Sr.;
>   d. ₱250,000.00 moral damages for the death of the late Glenda Monsalud;
>   e. ₱40, 000.00, for exemplary damages;
>   f. ₱20,000.00 attorney's fees; and
>   g. The cost of this proceedings.
>
> 2. The dismissal of the complaint as against the spouses OSCAR DEL CARMEN SR. and NORMA DEL CARMEN.
>
> SO ORDERED.[23]

Oscar Jr. moved for reconsideration[24] contending that the provision on vicarious liability of the employer under Article

[23] *Id.* at 175-176.

[24] *Id.* at 177-186.

2180 of the Civil Code[25] requires the existence of employer-employee relationship and that the employee was acting within the scope of his employment when the tort occurred. He stressed that even assuming that Allan was his employee, he was hired not as a driver but as a conductor. Hence, Allan acted beyond the scope of his employment when he drove the jeep.

Oscar Jr. also stressed that the fact that the jeep was running without its headlights on at the time of the accident indubitably shows that the same was stolen. He further alleged that the jeep could not have been taken by only one person. As Rodrigo declared in Criminal Case No. 93-10380 (carnapping case), based on his experience, the jeep cannot be pushed by only one person but by at least five people in order for it to start. This was due to the vehicle's mass and the deep canal which separates the parking area from the curved road that was obstructed by a house.[26]

Setting aside its earlier decision, the lower court in its Order[27] dated June 21, 2000 granted the Motion for Reconsideration and absolved Oscar Jr. from civil liability. It cited Article 103 of the Revised Penal Code which provides that for an employer to be subsidiarily liable for the criminal acts of his employee, the latter should have committed the same in the discharge of his duties. The court agreed with Oscar Jr. that this condition is wanting in Allan's case as he was not acting in the discharge of his duties as a conductor when he drove the jeep.

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

x x x x x x x x x

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

x x x x x x x x x

[26] Records, p. 182, citing the TSN of Rodrigo Maglasang dated October 22, 1996 in Criminal Case No. 93-10380.

[27] *Id.* at 198-200.

The court also declared the doctrine of *res ipsa loquitur* inapplicable since the property owner cannot be made responsible for the damages caused by his property by reason of the criminal acts of another. It then adjudged that only Allan should bear the consequences of his criminal acts. Thus:

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION is granted, and defendant OSCAR DEL CARMEN JR. is hereby absolved from all civil liability arising from the felonious acts of convicted accused ALLAN MAGLASANG.

IT IS SO ORDERED.[28]

Geronimo appealed.

Ruling of the Court of Appeals

In its July 11, 2006 Decision,[29] the CA granted the appeal.

In resolving the case, the CA first determined the preliminary issue of whether there was an employer-employee relationship between Oscar Jr. and Allan at the time of the accident. It ruled in the affirmative and gave more credence to the testimonies of Geronimo's witnesses than to those of Oscar Jr.'s witnesses, Faustino and Cresencio. The CA ratiocinated that unlike the witness presented by Geronimo, Faustino never resided in *Poblacion* and thus has limited knowledge of the place. His testimony was also unreliable considering that he only rode the subject jeep twice[30] during the last two weeks of December 1992. As regards Cresencio's testimony, the appellate court found it puzzling why he appeared to have acted uninterested upon learning that the jeep was the subject of an accident when it was his bread and butter. Said court likewise considered questionable Oscar Jr.'s asseveration that Cresencio replaced Allan as conductor when Cresencio testified that he replaced a certain Sumagang Jr.[31]

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[28] *Id.* at 200.

[29] *Supra* note 2.

[30] TSN-Faustino Sismundo, December 2, 1998, p.5.

[31] TSN-Cresencio Baobao, May 11, 1999, p. 7.

With regard to the main issue, the CA adjudged Oscar Jr. liable to the heirs of the victims based on the principle that the registered owner of a vehicle is directly and primarily responsible for the injuries or death of third parties caused by the operation of such vehicle. It disbelieved Oscar Jr.'s defense that the jeep was stolen not only because the carnapping case filed against Allan and his companions was dismissed but also because, given the circumstances, Oscar Jr. is deemed to have given Allan the implied permission to use the subject vehicle. To support its conclusion, the CA cited the following circumstances: siblings Rodrigo and Allan were both employees assigned to the said jeep; after a day's work, said vehicle would be parked just beside Rodrigo's house where Allan also lived; the jeep could easily be started even without the use of an ignition key; the said parking area was not fenced or secured to prevent the unauthorized use of the vehicle which can be started even without the ignition key.

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is GRANTED. The assailed Order dated 21 June 2000 of the Regional Trial Court (Branch 23), Molave, Zamboanga del Sur, in Civil Case No. 96-20,219 is SET ASIDE and a new one is hereby entered. OSCAR DEL CARMEN, Jr. and ALLAN MAGLASANG are held primarily liable, jointly and severally, to pay plaintiffs-appellants:

1. Civil indemnity for the death of Emilia Bacoy Monsalud, Leonardo Monsalud Sr., and Glenda Monsalud in the amount of Fifty thousand pesos (₱50,000.00) each or for the total amount of One hundred fifty thousand pesos (₱150,000.00);

2. Temperate damages in the amount of Twenty-five Thousand Pesos (₱25,000.00) each for the death of Emilia Monsalud, Leonardo Monsalud Sr., and Glenda Monsalud (collectively the Monsaluds) or for the total amount of Seventy-five thousand pesos (₱75,000.00);

3. Moral damages in the amount of Fifty Thousand Pesos (₱50,000.00) each for the death of the Monsaluds or for a total amount of One Hundred Fifty Thousand Pesos (₱150,000.00);

4. Exemplary damages of Forty Thousand Pesos (₱40,000.00).

No pronouncement as to costs.

SO ORDERED. [32]

Issues

As a result of the adverse judgment, Oscar Jr. filed this Petition for Review on *Certiorari* alleging that the CA erred in:

1. x x x basing its conclusions and findings on speculations, surmises and conjectures; misapprehension of facts which are in conflict with the findings of the trial court;
2. x x x declaring a question of substance not in accord with law and with the applicable decisions of the Supreme Court;
3. x x x departing from the regular course of the judicial proceedings in the disposition of the appeal and [in going] beyond the issues of the case.[33]

Oscar Jr. points out that the CA failed to consider the RTC's ruling in its June 21, 2000 Order which was in accord with Article 2180 of the Civil Code, *i.e.*, that the tort committed by an employee should have been done 'within the scope of his assigned tasks' for an employer to be held liable under *culpa aquiliana*. However, the CA never touched upon this matter even if it was glaring that Allan's driving the subject vehicle was not within the scope of his previous employment as conductor. Moreover, Oscar Jr. insists that his jeep was stolen and stresses that the liability of a registered owner of a vehicle as to third persons, as well as the doctrine of *res ipsa loquitur,* should not apply to him. He asserts that although Allan and his companions were not found to have committed the crime of carnapping beyond reasonable doubt, it was nevertheless established that the jeep was illicitly taken by them from a well secured area. This is considering that the vehicle was running without its headlights on at the time of the accident, a proof that it was started without the ignition key.

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[32] CA *rollo,* pp. 172-173.

[33] *Rollo,* p. 22.

Our Ruling

Petitioner's own evidence casts doubt on his claim that his jeep was stolen by Allan and his alleged cohorts. Negligence is presumed under the doctrine of res ipsa loquitur.

Oscar Jr.'s core defense to release him from responsibility for the death of the Monsaluds is that his jeep was stolen. He highlights that the unauthorized taking of the jeep from the parking area was indeed carried out by the clandestine and concerted efforts of Allan and his five companions, notwithstanding the obstacles surrounding the parking area and the weight of the jeep.

Notably, the carnapping case filed against Allan and his group was already dismissed by the RTC for insufficiency of evidence. But even in this civil case and as correctly concluded by the CA, the evidentiary standard of preponderance of evidence required was likewise not met to support Oscar Jr.'s claim that his jeep was unlawfully taken.

Two of Allan's co-accused in the carnapping case, Jemar and Benjamin, declared before the police that when Allan invited them to ride with him, he was already driving the jeep:

04. Q- On that night, on or about 11:30 o'clock on December 31, 1992, where were you?
A- I went to the disco near [the] Public Market[,] Sominot, Zamboanga del Sur.

05. Q- While you were in disco place, do you know if there was an incident [that] happened?
A- No sir but when I was in the disco place, at about 3:30 at dawn more or less[,] January 1, 1993, Allan Maglasang arrived driving the jeep and he invited me to ride together with Benjamin Andujar, Dioscoro Sol, Arniel Rezada and Joven Orot.[34]

x x x x x x x x x

[34] Sworn Statement of Jemar Alarcon, records, p. 149.

04. Q- On that night, on or about 9:00 o'clock in the evening more or less on December 31, 1992, where were you?
A- I went to the disco at [the] Public Market[,] Sominot, Zamboanga del Sur.

05. Q- While you were in the disco place, do you know if there was an incident [that] happened?
A- No, sir, but when I was in the disco place, at about 3:30 at dawn more or less[,] January 1, 1993, Allan Maglasang arrive[d] driving the jeep and he invited me to ride together with Jemar Alarcon, Dioscoro Sol, Arniel Rizada and Joven Orot.[35]

There were six accused in the carnapping case. If Jemar and Benjamin were fetched by Allan who was driving the jeep, this would mean that only three men pushed the jeep contrary to Rodrigo's testimony in Criminal Case No. 93-10380 that it has to be pushed by at least five people so that it could start without the ignition key.

On direct examination,[36] Oscar Jr. was asked as to what Rodrigo, his driver who had informed him about the accident on January 1, 1993 at around 7:00 a.m., turned over to him after the incident, *viz*:

Q: When Rodrigo Maglasang, your driver informed you about the accident, what did he carry with him if any and turned over to you?
A: The OR (Official Receipt) and the CR (Certificate of Registration) Sir.

Q: How about the key of the vehicle?
A: It was not turned over, Sir.[37]

Assuming *arguendo* that Allan stole the jeep by having the same pushed by a group, the ignition key should then be with Rodrigo as he was entrusted with the jeep's possession. Thus, at the time Rodrigo faced his employer hours after the incident,

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[35] Sworn Statement of Benjamin Andujar, *id*. at 150.

[36] TSN-Oscar del Carmen, Jr., July 5, 1999, pp. 11-12.

[37] *Id.* at 12.

it is reasonable to expect that the driver should have also returned the key to the operator together with the Official Receipt and Certificate of Registration. Notably, Rodrigo did not do so and instead, the key was allegedly handed over to the police for reasons unexplained and not available from the records. Interestingly, Oscar Jr. never presented Rodrigo as his witness. Neither was he able to attest on cross-examination that Allan really stole the jeep by pushing or that the key was handed over to him by Rodrigo:

Q: On December 31, 1992, you did not know that it was Rodrigo Maglasang who gave the key to Allan Maglasang. Is that correct?
A: I was not there. So, I do not know but he had an affidavit to show that he turned it over to the police.

Q: What I was asking you is that, [o]n the night of December 31, 1992, when it was driven by Allan Maglasang, you did not know that the key was voluntarily given by Rodrigo Maglasang to Allan Maglasang?
A: I was not there.

Q: So, you could not testify on that, is that correct?
A: Yes Sir, I was not there.[38]

Furthermore, Oscar Jr. acknowledged the dismissal of the carnapping case, thus:

Q: Now, there was a case filed against Allan Maglasang and [his] x x x co-accused x x x [n]amely: Benjamin Andojar, Dioscoro Sol, Joven Orot, [Jemar Azarcon] and [Arniel] Rizada, for carnapping. Is that correct?
A: Yes Sir.

Q: That case was filed by you because you alleged that on December 31, 1992, your jeep was carnapped by Allan Maglasang and his co-accused, the said mentioned, is that correct?
A: Yes Sir.

Q: You testified on the case in Aurora, is that correct?
A: Yes, Sir.

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

Q: And you could well remember that this representation is the counsel of the co-accused of Allan Maglasang, is that correct?
A: Yes Sir.

Q: And that case for carnapping was dismissed, is that correct?
A: Yes Sir.

Q: Even the case of Allan Maglasang, was also dismissed, is that correct
A: Yes Sir.

Q: Because there was no sufficient evidence to establish that the jeep was carnapped, is that correct?
A: Yes Sir.[39]

While Oscar Jr. highlights that the headlights were not on to support his claim that his jeep was stolen, this circumstance by itself will not prove that it really was stolen. The reason why the headlights were not on at the time of the accident was not sufficiently established during the trial. Besides, the fact that the headlights were not on cannot be exclusively attributed to the lack of ignition key in starting the jeep as there may be other possibilities such as electrical problems, broken headlights, or that they were simply turned off.

Hence, *sans* the testimony of witnesses and other relevant evidence to support the defense of unauthorized taking, we cannot subscribe to Oscar Jr.'s claim that his jeep was stolen. The evidence on record brings forth more questions than clear-cut answers.

Oscar Jr. alleges that the presumption of negligence under the doctrine of *res ipsa loquitur* (literally, the thing speaks for itself) should not have been applied because he was vigilant in securing his vehicle. He claims that the jeep was parked in a well secured area not remote to the watchful senses of its driver Rodrigo.

Under the doctrine of *res ipsa loquitur*, "[w]here the thing that caused the injury complained of is shown to be under the management of the defendant or his servants; and the accident,

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

in the ordinary course of things, would not happen if those who had management or control used proper care, it affords reasonable evidence — in the absence of a sufficient, reasonable and logical explanation by defendant — that the accident arose from or was caused by the defendant's want of care."[40] *Res ipsa loquitur* is "merely evidentiary, a mode of proof, or a mere procedural convenience, since it furnishes a substitute for, and relieves a plaintiff of, the burden of producing a specific proof of negligence."[41] It "recognizes that parties may establish *prima facie* negligence without direct proof, thus, it allows the principle to substitute for specific proof of negligence. It permits the plaintiff to present along with proof of the accident, enough of the attending circumstances to invoke the doctrine, create an inference or presumption of negligence and thereby place on the defendant the burden of proving that there was no negligence on his part."[42] The doctrine is based partly on "the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it while the plaintiff has no such knowledge, and is therefore compelled to allege negligence in general terms."[43]

The requisites of the doctrine of *res ipsa loquitur* as established by jurisprudence are as follows:

1) the accident is of a kind which does not ordinarily occur unless someone is negligent;

2) the cause of the injury was under the exclusive control of the person in charge and

3) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured.[44]

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[40] *Tan v. Jam Transit, Inc.*, G.R. No. 183198, November 25, 2009, 605 SCRA 659, 667-668.

[41] *Id.* at 668.

[42] *Macalinao v. Ong*, 514 Phil. 127, 139 (2005).

[43] *Id.* at 140.

[44] *Perla Compania de Seguros, Inc. v. Spouses Sarangaya III*, 510 Phil. 676, 687 (2005), citing *Reyes v. Sisters of Mercy Hospital*, 396 Phil. 87, 98 (2000).

The above requisites are all present in this case. First, no person just walking along the road would suddenly be sideswiped and run over by an on-rushing vehicle unless the one in charge of the said vehicle had been negligent. Second, the jeep which caused the injury was under the exclusive control of Oscar Jr. as its owner. When Oscar Jr. entrusted the ignition key to Rodrigo, he had the power to instruct him with regard to the specific restrictions of the jeep's use, including who or who may not drive it. As he is aware that the jeep may run without the ignition key, he also has the responsibility to park it safely and securely and to instruct his driver Rodrigo to observe the same precaution. Lastly, there was no showing that the death of the victims was due to any voluntary action or contribution on their part.

The aforementioned requisites having been met, there now arises a presumption of negligence against Oscar Jr. which he could have overcome by evidence that he exercised due care and diligence in preventing strangers from using his jeep. Unfortunately, he failed to do so.

What this Court instead finds worthy of credence is the CA's conclusion that Oscar Jr. gave his implied permission for Allan to use the jeep. This is in view of Oscar Jr.'s failure to provide solid proof that he ensured that the parking area is well secured and that he had expressly imposed restrictions as to the use of the jeep when he entrusted the same to his driver Rodrigo. As fittingly inferred by the CA, the jeep could have been endorsed to Allan by his brother Rodrigo since as already mentioned, Oscar Jr. did not give Rodrigo any specific and strict instructions on matters regarding its use. Rodrigo therefore is deemed to have been given the absolute discretion as to the vehicle's operation, including the discretion to allow his brother Allan to use it.

The operator on record of a vehicle is primarily responsible to third persons for the deaths or injuries consequent to its operation, regardless of whether the employee drove the registered owner's vehicle in connection with his employment.

Without disputing the factual finding of the CA that Allan was stil his employee at the time of the accident, a finding which we see no reason to disturb, Oscar Jr. contends that Allan drove the jeep in his private capacity and thus, an employer's vicarious liability for the employee's fault under Article 2180 of the Civil Code cannot apply to him.

The contention is no longer novel. In *Aguilar Sr. v. Commercial Savings Bank*,[45] the car of therein respondent bank caused the death of Conrado Aguilar, Jr. while being driven by its assistant vice president. Despite Article 2180, we still held the bank liable for damages for the accident as said provision should defer to the settled doctrine concerning accidents involving registered motor vehicles, *i.e.*, that the registered owner of any vehicle, even if not used for public service, would primarily be responsible to the public or to third persons for injuries caused the latter while the vehicle was being driven on the highways or streets.[46] We have already ratiocinated that:

> The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. Instances are numerous where vehicles running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways.[47]

Absent the circumstance of unauthorized use[48] or that the subject vehicle was stolen[49] which are valid defenses available

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[45] 412 Phil. 834 (2001).

[46] See also *St. Mary's Academy v. Carpitanos*, 426 Phil. 878, 887 (2002) citing *Aguilar Sr. v. Commercial Savings Bank,* 412 Phil. 834, 841 (2001) and *Erezo v. Jepte*, 102 Phil. 103, 107 (1957).

[47] *Erezo v. Jepte*, 102 Phil 103, 108 (1957).

[48] *Duquillo v. Bayot,* 67 Phil. 131 (1939).

[49] *Duavit v. Court of Appeals*, 255 Phil. 470 (1989).

to a registered owner, Oscar Jr. cannot escape liability for *quasi-delict* resulting from his jeep's use.

All told and considering that the amounts of damages awarded are in accordance with prevailing jurisprudence, the Court concurs with the findings of the CA and sustains the awards made. In addition, pursuant to *Eastern Shipping Lines, Inc. v. Court of Appeals*,[50] an interest of six percent (6%) per annum on the amounts awarded shall be imposed, computed from the time the judgment of the RTC is rendered on April 17, 2000 and twelve percent (12%) per annum on such amount upon finality of this Decision until the payment thereof.

WHEREFORE, premises considered, the instant petition is **DENIED.** The Decision dated July 11, 2006 of the Court of Appeals in CA-G.R. CV No. 67764 is hereby **AFFIRMED** with further **MODIFICATION** that an interest of six percent (6%) per annum on the amounts awarded shall be imposed, computed from the time the judgment of the Regional Trial Court, Branch 23, Molave, Zamboanga del Sur is rendered on April 17, 2000 and twelve percent (12%) per annum on such amount upon finality of this Decision until the payment thereof.

SO ORDERED.

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

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[50] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97.

THIRD DIVISION

[G.R. No. 183308. April 25, 2012]

INSULAR INVESTMENT AND TRUST CORPORATION, *petitioner, vs.* **CAPITAL ONE EQUITIES CORP. (now known as CAPITAL ONE HOLDINGS CORP.) and PLANTERS DEVELOPMENT BANK,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS TO THE SUPREME COURT; AS A RULE, ISSUES RAISED WHICH ARE PURELY FACTUAL IN NATURE ARE NOT TO BE REVIEWED BY THE SUPREME COURT; EXCEPTIONS.—** The issue raised by IITC is factual in nature as it requires the Court to delve into the records and review the evidence presented by the parties to determine the validity of the findings of both the RTC and the CA as to IITC's role in the transactions in question. These are purely factual issues which this Court cannot review. Well-established is the principle that factual findings of the trial court, when adopted and confirmed by the Court of Appeals, are binding and conclusive on this Court and will generally not be reviewed on appeal.

2. **CIVIL LAW; CONTRACTS; INTERPRETATION OF; WHEN THE TERMS OF THE CONTRACT ARE CLEAR AND UNEQUIVOCAL, THE LITERAL AND PLAIN MEANING THEREOF SHOULD BE OBSERVED; APPLICATION IN CASE AT BAR.—** The confirmations of sale and purchase unequivocally state that IITC acted as a principal buyer and seller of treasury bills. The language used is as clear as day and cannot be more explicit. Thus, because the words of the documents in question are clear and readily understandable by any ordinary reader, there is no need for the interpretation or construction thereof. x x x COEC and PDB did not take advantage of any vagueness in the documents in question. They only seek to enforce the intention of the parties, in accordance with the terms of the confirmations of sale and purchase voluntarily entered into by the parties.

3. ID.; OBLIGATIONS; MODE OF EXTINGUISHMENT; COMPENSATION; WHEN VALID; REQUISITES; PRESENT IN CASE AT BAR.— The applicable provisions of law are Articles 1278, 1279 and 1290 of the Civil Code of the Philippines: Art. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other. Art. 1279. In order that compensation may be proper, it is necessary: (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (3) That the two debts be due; (4) That they be liquidated and demandable; (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. x x x Art. 1290. When all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation. Based on the foregoing, in order for compensation to be valid, the five requisites mentioned in the abovequoted Article 1279 should be present, as in the case at bench. The lower courts have already determined, to which this Court concurs, that IITC acted as a principal in the purchase of treasury bills from PDB and in the subsequent sale to COEC of the COEC T-Bills. Thus, COEC and IITC are principal creditors of each other in relation to the sale of the COEC T-Bills and IITC T-Bills, respectively. x x x Because all the stipulations under Article 1279 are present in this case, compensation can take place. COEC is allowed to set-off its obligation to deliver the IITC T-Bills against IITC's obligation to deliver the COEC T-Bills.

4. ID.; DAMAGES; AWARD OF LEGAL INTEREST; IMPOSABLE RATES; CASE AT BAR.— As regards the legal interest which should be imposed on the award, the Court directs the attention of the parties to the case of *Eastern Shipping Lines v. Court of Appeals* x x x. Because the obligation arose from a contract of sale and purchase of government securities, and not from a loan or forbearance of money, the applicable interest rate is 6% from June 10, 1994, when IITC received the demand letter from COEC. After the judgment becomes

final and executory, the legal interest rate increases to 12% until the obligation is satisfied.

5. ID.; HUMAN RELATIONS; PRINCIPLE AGAINST UNJUST ENRICHMENT; APPLICATION THEREOF IN CASE AT BAR; JUSTIFIED.— This Court rules that PDB should be liable for the delivery of ₱186,790,000.00 worth of treasury bills to IITC, or payment of the same, reduced by ₱50,000,000.00 which the former assigned to the latter under the Tripartite Agreement. The total liability of PDB is ₱136,790,000.00. x x x This shall be subject to interest at the rate of 6% per annum from the date of the filing of the Amended Complaint on March 21, 1995, considered as the date of judicial demand, then to 12% per annum from the date of finality of this decision until full payment. To rule otherwise would be to allow unjust enrichment on the part of PDB to the detriment of IITC. x x x The Court cannot condone a decision which is manifestly partial. Neither shall the Court be a party to the perpetration of injustice. As the last bastion of justice, this Court shall always rule pursuant to the precepts of fairness and equity in order to dispel any doubt in the integrity and competence of the Judiciary.

6. REMEDIAL LAW; CIVIL ACTIONS; CAUSE OF ACTION; TEST FOR DETERMINING EXISTENCE THEREOF; ELUCIDATED.— To ascertain whether IITC was able to adequately state an alternative cause of action against PDB in its Amended Complaint, the Court refers to *Perpetual Savings Bank v. Fajardo* where the test for determining the existence of a cause of action was extensively discussed: **The familiar test for determining whether a complaint did or did not state a cause of action against the defendants is whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, a judge may validly grant the relief demanded in the complaint.** In *Rava Development Corporation v. Court of Appeals*, the Court elaborated on this established standard x x x. Following the disquisition above, IITC's Amended Complaint, while not a model of superb draftsmanship in its struggle to maintain IITC's conduit theory, adequately sets forth a cause of action against PDB. Under its claim against PDB as alternative defendant, IITC alleged that, even if it acted as a direct buyer from PDB, (1) IITC is entitled to the delivery of the treasury bills worth ₱186,790,000.00 covered by the confirmations of sale issued

by PDB, (2) PDB has an obligation to deliver the same to IITC, and (3) PDB failed to deliver the said securities to IITC. It would be the height of injustice to hold IITC accountable for the delivery of the COEC T-Bills to COEC without similarly holding PDB liable for the release of the treasury bills worth ₱186,790,000.00 to IITC, which cannot be accomplished without allowing IITC's alternative cause of action against PDB to prosper.

APPEARANCES OF COUNSEL

Zamora Poblador Vasquez & Bretana for petitioner.
Estelito Mendoza for Capital One Equities Corp.
Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Offices for Planters Development Bank.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the June 6, 2008 Decision[1] of the Court of Appeals (*CA*) in C.A.-G.R. CV No. 79320 entitled "*Insular Investment and Trust Corporation v. Capital One Equities Corporation (now known as Capital One Holdings Corporation) and Planters Development Bank*."

THE FACTS

Based on the records of the case and on the September 2, 1999 Partial Stipulation of Facts and Documents[2] *(the Partial Stipulation)* agreed upon by the parties, the facts are as follows:

Petitioner Insular Investment and Trust Corporation *(IITC)* and respondents Capital One Equities Corporation *(COEC)* and

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[1] *Rollo*, pp. 249-276; penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justice Regalado E. Maambong and Associate Justice Celia C. Librea-Leagogo of the Sixteenth Division of the Court of Appeals.

[2] *Id.* at 434-441.

Planters Development Bank *(PDB)* are regularly engaged in the trading, sale and purchase of Philippine treasury bills.

On various dates in 1994, IITC purchased from COEC treasury bills with an aggregate face value of ₱260,683,392.51 *(the IITC T-Bills)*, as evidenced by the confirmations of purchase issued by IITC. The purchase price for the said treasury bills were fully paid by IITC to COEC which was able to deliver ₱121,050,000.00 worth of treasury bills to IITC.

On May 2, 1994, COEC purchased treasury bills with a face value of ₱186,774,739.49 *(the COEC T-Bills)*. IITC issued confirmations of sale in favor of COEC covering the said transaction. COEC paid the purchase price by issuing the following checks:

Check No.	Payee	Amount
(1) City Trust Manager's Check No. 001180	Planters Development Bank	₱154,802,341.59
(2) UCPB-Ayala Manager's Check No. AYLO43841	Planters Development Bank	₱16,975,883.89
(3) UCPB-Ayala Manager's Check No. AYLO43840	Planters Development Bank	₱10,413,043.78
(4) UCPB-Ayala Check No. AYL213346	Insular Investment and Trust Corporation	₱24,116.11

Both IITC and PDB received the proceeds of the checks.

On May 2, 1994, PDB issued confirmations of sale in favor of IITC for the sale of treasury bills and IITC, in turn, issued confirmations of purchase in favor of PDB over treasury bills with a total face value of ₱186,790,000.00.

Thereafter, PDB sent a letter[3] dated May 4, 1994 to IITC undertaking to deliver treasury bills worth ₱186,790,000.00, which IITC purchased from PDB on May 2, 1994, as soon as they would be available.

On May 10, 1994, COEC wrote a letter to IITC demanding the physical delivery of the treasury bills which the former purchased from the latter on May 2, 1994.

In its May 18, 1994 Letter[4] to PDB, IITC requested, on behalf of COEC, the delivery to IITC of treasury bills worth ₱186,790,000.00 which had been paid in full by COEC. COEC was furnished with a copy of the said letter.

On May 30, 1994, COEC protested the tenor of IITC's letter to PDB and took exception to IITC's assertion that it merely acted as a facilitator with regard to the sale of the treasury bills.

IITC sent COEC a letter[5] dated June 3, 1994, demanding that COEC deliver to it (IITC) the ₱139,833,392.00 worth of treasury bills or return the full purchase price. In either case, it also demanded that COEC (1) pay IITC the amount of ₱1,729,069.50 representing business opportunity lost due to the non-delivery of the treasury bills, and (2) deliver treasury bills worth ₱121,050,000 with the same maturity dates originally purchased by IITC.

COEC sent a letter-reply[6] dated June 9, 1994 to IITC in which it acknowledged its obligation to deliver the treasury bills worth ₱139,833,392.00[7] which it sold to IITC and formally demanded the delivery of the treasury bills worth ₱186,774,739.49 which it purchased from IITC. COEC also demanded the payment of lost profits in the amount of ₱3,253,250.00. Considering that

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[3] *Id.* at 309.

[4] *Id.* at 383.

[5] *Id.* at 310.

[6] *Id.* at 313.

[7] The correct amount is Php139,633,392 (based on COEC's admission in its Answer dated April 10, 1995; *id.* at 425).

COEC and IITC both have claims against each other for the delivery of treasury bills, COEC proposed that a legal set-off be effected, which would result in IITC owing COEC the difference of ₱46,941,446.49.

In its June 13, 1994 letter to COEC, IITC rejected the suggestion for a legal setting-off of obligations, alleging that it merely acted as a facilitator between PDB and COEC.

On June 27, 1994, COEC replied to IITC's letter, reiterating its demand and its position stated in its June 9, 1994 letter.

On July 1, 1994, IITC, COEC and PDB entered into a Tripartite Agreement[8] *(the Tripartite Agreement)* wherein PDB assigned to IITC, which in turn assigned to COEC, Central Bank Bills with a total face value of ₱50,000,000.00. These assignments were made in consideration of (a) IITC relinquishing all its rights to claim delivery under the confirmation of sale issued by PDB to IITC to the extent of ₱50,000,000.00 (face value) and (b) COEC relinquishing all its rights to claim delivery of the COEC T-Bills under the IITC confirmations of sale to COEC to the extent of ₱50,000,000.00 (face value).

On the same day, COEC and IITC entered into an Agreement[9] *(the COEC-IITC Agreement)* whereby COEC reassigned to IITC the Central Bank bills subject of the Tripartite Agreement to the extent of ₱20,000,000.00 in consideration of which IITC relinquished all its rights to claim from COEC the IITC T-Bills covered by the COEC confirmation of sale to the extent of an aggregate ₱20,000,000.00 face value.

Despite repeated demands, however, PDB failed to deliver the balance of ₱136,790,000.00 worth of treasury bills which IITC purchased from PDB allegedly for COEC. COEC was likewise unable to deliver the remaining IITC T-Bills amounting to ₱119,633,392.00. Neither PDB and COEC returned the purchase price for the duly paid treasury bills.[10]

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[8] *Rollo*, pp. 314-318.

[9] *Id.* at 319-322.

[10] *Id.* at 182.

This prompted IITC to file the Amended Complaint[11] dated March 20, 1995 before the Regional Trial Court, Branch 138, Makati City *(RTC)*, praying that COEC be ordered to deliver treasury bills worth ₱119,633,392.00 to IITC or pay the monetary equivalent plus legal interests; and, in the alternative, that PDB be ordered to comply with its obligations under the conduit transaction involving treasury bills worth ₱136,790,000.00 by delivering the treasury bills to IITC, in addition to actual and exemplary damages and attorney's fees.

COEC filed its Answer to Amended Complaint[12] dated April 10, 1995, admitting that it owed IITC treasury bills worth ₱119,633,392.00. It countered, however, that IITC had an outstanding obligation to deliver to COEC treasury bills worth ₱136,774,739.49.[13] COEC prayed that IITC be required to deliver ₱17,141,347.49 (the amount IITC still owed COEC after a legal off-setting of their debts against each other) to COEC in addition to moral and exemplary damages and attorney's fees.[14]

PDB, for its part, insisted in its Answer *Ad Cautelam*[15] that it had no knowledge or participation in the sale by IITC of treasury bills to COEC. It admitted that it sent a letter dated May 4, 1994 to IITC, undertaking to deliver treasury bills worth ₱186,790,000.00 which IITC purchased from PDB. PDB posited, however, that IITC was not entitled to the delivery of the said treasury bills because IITC did not remit payment to PDB. Neither did the subject securities become available to PDB.

In its Judgment[16] dated June 16, 2003, the RTC found that COEC still owed IITC ₱119,633,392.00 worth of treasury bills, pursuant to their transaction in early 1994. As regards the sale

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[11] *Id.* at 323-337.

[12] *Id.* at 421-427.

[13] *Id.* at 425.

[14] *Id.* at 426a.

[15] *Id.* at 428-433.

[16] *Id.* at 444-462; penned by Judge Sixto Marella, Jr. of the Regional Trial Court Branch 138, Makati City.

of treasury bills by IITC to COEC, however, the RTC determined that IITC was not merely a conduit in the purchase a sale of treasury bills between PDB and COEC. Rather, IITC acted as a principal in two transactions: as a buyer of treasury bills from PDB and as a seller to COEC. Taking into consideration the Tripartite Agreement, IITC was still liable to pay COEC the sum of ₱136,790,000.00. Since IITC and COEC were both debtors and creditors of each other, the RTC off-set their debts, resulting in a difference of ₱17,056,608.00 in favor of COEC. As to PDB's liability, it ruled that PDB had the obligation to pay ₱136,790,000.00 to IITC. Thus, the trial court ordered (a) IITC to pay COEC ₱17,056,608.00 with interest at the rate of 6% from June 10, 1994 until full payment and (b) PDB to pay IITC ₱136,790,000.00 with interest at the rate of 6% from March 21, 1995 until full payment.

Aggrieved, all parties appealed to the CA which promulgated its decision on June 6, 2008. The CA affirmed the RTC finding that IITC was not a mere conduit but rather a direct seller to COEC of the treasury bills.[17] The CA, however, absolved PDB from any liability, ruling that because PDB was not involved in the transactions between IITC and COEC, IITC should have alleged and proved that PDB sold treasury bills to IITC.[18] Moreover, PDB only undertook to deliver treasury bills worth ₱186,790,000.00 to IITC "as soon as they are available."[19] But, the said treasury bills did not become available. Neither did IITC remit payment to PDB. As such, PDB incurred no obligation to deliver ₱186,790,000.00 worth of treasury bills to IITC.

Hence, this petition.

THE ISSUES

IITC raises the following grounds for the grant of its petition:

A. The petition is not dismissible. The issue of whether IITC acted as a conduit is a question of law. Assuming for the sake of argument

[17] *Id.* at 268.

[18] *Id.* at 270.

[19] *Id.* at 271.

that the petition involves questions of fact, the Supreme Court may take cognizance of the petition under exceptional circumstances.

B. The Court of Appeals gravely erred and acted contrary to law and jurisprudence and the evidence on record in holding that IITC did not act as a conduit of Capital One and Plantersbank in the 2 May 1994 sale of COEC T-bills.

C. The Court of Appeals erred and acted contrary to law and the evidence on record in ruling that Plantersbank did not have any obligation to delivery the COEC T-Bills to IITC under IITC's alternative cause of action.

D. The Court of Appeals erred and acted contrary to law in holding that Capital One could validly set off its claims for the undelivered COEC T-Bills against the fully paid IITC T-Bills.

E. The Court of Appeals further erred and acted contrary to law in holding that Capital One and Plantersbank were not guilty of fraud.

F. The Court of Appeals violated IITC's right to due process in affirming, without citing any basis whatsoever, the erroneous holding of the trial court that there was insufficient evidence to prove the actual and consequential damages sustained by IITC.[20]

COEC puts forth the following issues:

Whether the Court of Appeals correctly held that IITC did not act as a conduit of Capital One and Plantersbank in the May 2, 1994 sale of the COEC T-Bills by IITC to Capital One.

Whether the Court of Appeals correctly held that Capital One may validly set off its claim for the undelivered COEC T-Bills against the balance of the IITC T-Bills.

Whether the Court of Appeals correctly affirmed the holding of the trial court that Capital One and Plantersbank are not guilty of fraud.

Whether the Petition raises questions of fact, and whether it is defective.

Whether Capital One is entitled to the correction of the mathematical error in the computation of the money judgment in its favor.[21]

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[20] *Id.* at 2587-2588.

[21] *Id.* at 2350.

For its part, PDB identifies the principal issue to be "whether it was obliged to deliver to petitioner Insular the treasury bills which the latter sold, as principal, to Capital One, and/or pay the value thereof."[22] The following are stated as corollary issues:

Whether petitioner Insular was acting as "facilitator" or "conduit" in the May 2, 1994 sales of the treasury bills;

Whether petitioner Insular may raise in this petition the issue of it being merely as "facilitator" or "conduit" after the Trial Court and Court of Appeals found that petitioner Insular was not a "facilitator" or "conduit."

Whether respondents Plantersbank and Capital One were guilty of fraud in their transactions with petitioner Insular.

Whether petitioner Insular was entitled to actual and consequential damages.[23]

The numerous issues can be simplified as follows:

(1) Whether IITC acted as a conduit in the transaction between COEC and PDB;

(2) Whether COEC can set-off its obligation to IITC as against the latter's obligation to it; and

(3) Whether PDB has the obligation to deliver treasury bills to IITC.

THE COURT'S RULING

The petition is partly meritorious.

Question of fact;

IITC did not act as conduit

Petitioner IITC insists that the issue of whether it acted as a conduit is a question of law which can properly be the subject of a petition for review before this Court. Because the parties already entered into a stipulation of facts and documents, the

[22] *Id.* at 2497.

[23] *Id.* at 2497-2498.

facts are no longer at issue; rather, the court must now determine the applicable law based on the admitted facts, thereby making it a question of law. Even assuming that the determination of IITC's role in the two transactions is a pure question of fact, it falls under the exceptions when the Court may decide to review a question of fact.[24]

Respondent COEC, on the other hand, argues that IITC raises questions of fact. An issue is one of fact when: (a) there is a doubt or difference as to the truth or falsehood of the alleged facts, (b) the issues raised invite a calibration, assessment, re-examination and re-evaluation of the evidence presented, (c) it questions the probative value of evidence presented or the proofs presented by one party are clear, convincing and adequate. Because the question of whether IITC was merely a conduit satisfies all the conditions enumerated, then it is a question of fact which this Court cannot pass upon. In addition, COEC calls attention to the principle that findings of fact of the trial court, especially when approved by the Court of Appeals, are binding and conclusive on the Supreme Court.[25]

PDB also maintains that the finding of the RTC that IITC did not act as a conduit between PDB and COEC was supported by substantial evidence and was sustained by the CA. Thus, it is already binding and conclusive upon this Court, whose jurisdiction is limited to reviewing only errors of law and not of fact.[26]

Respondents are correct.

The issue raised by IITC is factual in nature as it requires the Court to delve into the records and review the evidence presented by the parties to determine the validity of the findings of both the RTC and the CA as to IITC's role in the transactions in question. These are purely factual issues which this Court cannot review.[27] Well-established is the principle that factual

[24] *Id.* at 2588-2594.

[25] *Id.* at 2431-2435.

[26] *Id.* at 2508.

[27] *Dimaranan v. Heirs of Spouses Arayata*, G.R. No. 184193, March 29, 2010, 617 SCRA 101,112.

findings of the trial court, when adopted and confirmed by the Court of Appeals, are binding and conclusive on this Court and will generally not be reviewed on appeal.[28]

As discussed in *The Insular Life Assurance Company, Ltd. v. Court of Appeals*:[29]

> It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[30]

Contrary to IITC's claim, the circumstances surrounding the case at bench do not justify the application of any of the exceptions. At any rate, even if the Court would be willing to disregard this time-honored principle, the inevitable conclusion would be the same as that made by the RTC and the CA — that

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[28] *Eterton Multi-Resources Corporation v. Filipino Pipe and Foundry Corporation*, G.R. No. 179812, July 6, 2010, 624 SCRA 148,154.

[29] G.R. No. 126850, April 28, 2004, 428 SCRA 79.

[30] *Id.* at 85-86 (previous citations omitted).

IITC did not act as a conduit but rather as a principal in two separate transactions, one as the purchaser of treasury bills from PDB and, in another, as the seller of treasury bills to COEC.

The evidence against IITC cannot be denied.

The confirmations of sale issued by IITC to COEC unmistakably show that the former, as principal, sold the treasury bills to the latter:[31]

Gentlemen:

As principal, we confirm **having sold** to you on a without recourse basis the following securities against which you shall pay us clearing funds on value date.

IITC's confirmations of purchase to PDB likewise reflect that it acted as the principal in the transaction:[32]

Gentlemen:

As principal, we confirm **having purchased** from you on a without recourse basis the following securities against which we shall pay you clearing funds on value date.

There is nothing in these documents which mentions that IITC merely acted as a conduit in the sale and purchase of treasury bills between PDB and COEC. On the contrary, the confirmations of sale and of purchase all clearly and expressly indicate that IITC acted as a principal seller to COEC and as a principal buyer from PDB.

IITC then tries to shift the blame to PDB and COEC by alleging that it was the two parties which conceptualized the two-step or conduit transaction and dictated the documents to be used. As such, they cannot be allowed to "take advantage of the ambiguity created by the documentation which it, in conspiracy with Plantersbank, concocted to render IITC, an innocent party, liable."[33]

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[31] *Rollo*, pp. 303-304.

[32] *Id.* at 301-302.

[33] *Id.* at 2609.

This argument is far-fetched and borders on the incredible. At the outset, it should be pointed out that there is no ambiguity whatsoever in the language of the documents used. The confirmations of sale and purchase unequivocally state that IITC acted as a principal buyer and seller of treasury bills. The language used is as clear as day and cannot be more explicit. Thus, because the words of the documents in question are clear and readily understandable by any ordinary reader, there is no need for the interpretation or construction thereof.[34] This was emphasized in the case of *Pichel v. Alonzo*:[35]

> Xxx. To begin with, We agree with petitioner that construction or interpretation of the document in question is not called for. **A perusal of the deed fails to disclose any ambiguity or obscurity in its provisions, nor is there doubt as to the real intention of the contracting parties. The terms of the agreement are clear and unequivocal, hence the literal and plain meaning thereof should be observed.** Such is the mandate of the Civil Code of the Philippines which provides that:
>
> > "Art. 1370. 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…"
>
> **Pursuant to the aforequoted legal provision, the first and fundamental duty of the courts is the application of the contract according to its express terms, interpretation being resorted to only when such literal application is impossible.**[36] (Emphases supplied)

COEC and PDB did not take advantage of any vagueness in the documents in question. They only seek to enforce the intention of the parties, in accordance with the terms of the confirmations of sale and purchase voluntarily entered into by the parties.

The Court also finds it hard to believe that an entity would carelessly and imprudently expose itself to liability in the amount

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[34] *Henson v. Intermediate Appellate Court*, 232 Phil. 12 (1987), citing *San Mauricio Mining Company v. Ancheta*, 192 Phil. 624 (1981).

[35] G.R. No. L-36902, January 30, 1982, 111 SCRA 341.

[36] *Id.*

of millions of pesos by failing to ensure that the documents used in the transaction would be a faithful account of its true nature. It is important to note that the confirmations of sale were issued by IITC itself using its own documents. Therefore, it defies imagination how COEC and PDB could have foisted off these forms on IITC against its will.

In addition, a comparison of the confirmations of sale issued by IITC in favor of COEC as against the confirmations of sale issued by PDB in favor of IITC indicates that there is a difference in the interest rates of the treasury bills and in the face values:

PDB Confirmations of Sale to IITC[37]

Maturity Date	Yield	Face Value	Total Price
July 13, 1994	17.150%	₱44,170,000.00	₱42,998,169.00
July 6, 1994	17.150%	142,620,000.00	139,193,100.56
		₱186,790,000.00	₱182,191,269.56

IITC Confirmations of Sale to COEC[38]

Maturity Date	Yield	Face Value	Total Price
July 13, 1994	17.0%	₱ 44,161,700.44	₱ 43,000,000.00
July 6, 1994	17.0%	142,613,039.05	139,215,385.70
		₱186,774,739.49	₱182,215,385.70

IITC offered a lower interest rate of 17% to COEC, in contrast to the 17.15% interest rate given to it by PDB. There is also a notable difference in the face value of the treasury bills and in the total price paid for each set. If, as IITC insists, it only acted as a conduit to the sale between PDB and COEC, then there should be no disparity in the terms (the interest rate, the face value and the total price) of the sale of the treasury bills. Obviously, this is not the case. The figures lead to no other conclusion but that there were two separate transactions in both of which IITC played a principal role — as a buyer from PDB of treasury bills with an aggregate face value of ₱186,790,000.00

[37] *Rollo*, pp. 299-300.

[38] *Id.* at 303-304.

at an interest rate of 17.15% and as a seller to COEC of treasury bills with an aggregate face value of ₱186,774,739.49 at an interest rate of 17%.

Again, IITC attempts to hold PDB and COEC responsible for this questionable variation, alleging that it was PDB and COEC which dictated the details of the purchase and sale of the treasury bills. IITC heavily relies on the fact that COEC directly paid PDB the amount of ₱182,191,269.26 representing the amount covered in the confirmations of sale issued by PDB to strengthen its position that it merely acted as a conduit between PDB and COEC.[39] This was further supported by the internal trading sheets of IITC where the following handwritten notations were made: (1) in Purchase Trading Sheet No. 10856 covering the purchase of treasury bills by IITC from PDB: "don't prepare any check; payment will come from Capital One (See STS 10811)", and (2) in Sale Trading Sheet No. 10811 covering the sale of treasury bills by IITC to COEC: "for STS 10810 and 10811 will receive 2 checks payable to the ff: 1. Planters Devt Bank - ₱182,191,269.59 2. IITC - 24,116.11."

The Court is not convinced. That COEC directly paid PDB is of no moment and does not necessarily mean that COEC recognized IITC's conduit role in the transaction. Neither does it disprove the findings of both the RTC and the CA that IITC acted as principal in the two transactions — the purchase of treasury bills from PDB and the subsequent sale thereof to COEC. The Court agrees with the explanation of the RTC:

> The Court is aware that in the trading business, agreements are concluded even before the goods being traded are received by the "would be seller." Buyers in turn conclude their transactions even before they are paid. For this reason, the mere fact that in document for internal use, the instruction that "payment will come from Capital One" will not, by itself, prove that plaintiff was a mere conduit. Neither could it be considered as circumstantial to establish the fact in issue. At most, the instructions merely identified the source of funds but whether those funds are to be received by the plaintiff as purchase price or for remittance to whoever is entitled to it, none

[39] *Id.* at 2604-2606.

was indicated. The Court may look at the instruction differently if the entries were — "no payment required; COEC to pay PDB directly" or "this is a conduit transaction; servicing to be done by COEC" or "COEC to pay PDB directly."[40]

IITC also insists that the fact that the ₱24,116.11 which it claims to be a facilitation fee is exactly the difference between the principal amounts of the treasury bills purchased from PDB and the treasury bills sold to COEC constitutes "the smoking gun or the veritable elephant in the living room."[41] To IITC, it is apparent that the amount is a facilitation fee, adding credence to its contention that it only acted as a conduit.

The Court cannot sustain that view. There is nothing to prove that the amount of ₱24,116.11 received by IITC from COEC was a facilitation fee. As explained by COEC, the amount could easily have been the margin or spread earned by IITC in the buy-and-sell transaction.[42] This is, however, not for the Court to determine. As such, the Court relies on the findings of the RTC on this matter:

> Plaintiff's other evidence to prove its conduit role was the delivery to it by COEC by way of its corporate check of ₱24,116.11 in payment of plaintiff's conduit fee. The Court is hesitant to give probative value to this proof because nowhere does it appear in the trading sheets or any other document that it was collected by plaintiff and received by it from COEC in that concept. Business practice is to issue an official receipt because it is an income, but none was presented. The testimonial evidence was refuted. COEC presented controverting evidence on the original mode of payment which was requested to be changed by witness Bombaes. COEC presented the unsigned check and voucher. The latter was duly accomplished and bears the signatures or initials of the approving officers. On this particular issue, COEC's evidence deserves more weight.[43]

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[40] *Id.* at 454.

[41] *Id.* at 2617.

[42] *Id.* at 2393.

[43] *Id.* at 455.

Finally, as correctly observed by the RTC, the actions of IITC after the transaction were not those of a conduit but of a principal:

> The Court notes with particular interest the events which transpired on May 4, 1994, two (2) days after plaintiff through witness Mendoza learned of the non-delivery by PDB of the treasury bills. Witness Mendoza went to the office of PDB and secured the letter, Exhibit E, which contains the undertaking of PDB to deliver the treasury bills. This was procured by plaintiff and addressed to the plaintiff. The language used by PDB was "purchase[d] from us" and plaintiff accepted it.
>
> Plaintiff failed to explain the reason for demanding delivery of the treasury bills when it was not the buyer as it so claims. It also failed to object to the use by PDB of the words "purchase[d] from us," something which it could easily do or should do considering the amount involved.
>
> The conduct of the plaintiff after concluding the May 2, 1994 transaction [was] [that] of a buyer.[44]

From the foregoing, it is clear that IITC acted as principal purchaser from PDB and principal seller to COEC, and not simply as a conduit between PDB and COEC.

Set-off allowed

IITC argues that the RTC and the CA erred in holding that COEC can validly set off its claims for the undelivered IITC T-Bills against the COEC T-Bills.[45] IITC reiterates that COEC did not become a creditor of IITC because the former did not pay the latter for the purchased treasury bills. Rather, it was PDB which received the proceeds of the payment from COEC.[46] In addition, their obligations do not consist of a sum or money. Neither are they of the same kind because the obligations call for the delivery of specific determinate things — treasury bills

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[44] *Id.* at 458.

[45] *Id.* at 2637.

[46] *Id.* at 2637.

with specific maturity dates and various interest rates. Thus, legal compensation cannot take place.[47]

COEC, on the other hand, points out that it has already unquestionably proven that IITC acted as a principal, and not as a conduit, in the sale of treasury bills to COEC.[48] Furthermore, it asserts that the treasury bills in question are generic in nature because the confirmations of sale and purchase do not mention specific treasury bills with serial numbers.[49] The securities were sold as indeterminate objects which have a monetary equivalent, as acknowledged by the parties in the Tripartite Agreement.[50] As such, because both IITC and COEC are principal creditors of the other over debts which consist of consumable things or a sum of money, the RTC correctly ruled that COEC may validly set-off its claims for undelivered treasury bills against that of IITC's claims.[51]

The Court finds in favor of respondent COEC.

The applicable provisions of law are Articles 1278, 1279 and 1290 of the Civil Code of the Philippines:

Art. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

Art. 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

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[47] *Id.* at 2638.

[48] *Id.* at 2406.

[49] *Id.* at 2408.

[50] *Id.* at 2409.

[51] *Id.* at 2410.

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

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Art. 1290. When all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation.

Based on the foregoing, in order for compensation to be valid, the five requisites mentioned in the abovequoted Article 1279 should be present, as in the case at bench. The lower courts have already determined, to which this Court concurs, that IITC acted as a principal in the purchase of treasury bills from PDB and in the subsequent sale to COEC of the COEC T-Bills. Thus, COEC and IITC are principal creditors of each other in relation to the sale of the COEC T-Bills and IITC T-Bills, respectively.

IITC also claims that the COEC T-Bills cannot be set-off against the IITC T-Bills because the latter are specific determinate things which consist of treasury bills with specific maturity dates and various interest rates.[52] IITC's actions belie its own assertion. The fact that IITC accepted the assignment by COEC of Central Bank Bills with an aggregate face value of ₱20,000,000.00 as payment of part of the IITC T-Bills is evidence of IITC's willingness to accept other forms of security as satisfaction of COEC's obligation. It should be noted that the second requisite only requires that the thing be of the same kind and quality. The COEC T-Bills and the IITC T-Bills are both government securities which, while having differing interest rates and dates of maturity, have each been assigned a certain face value to determine their monetary equivalent. In fact, in the Tripartite Agreement, the COEC-IITC Agreement and in the memoranda of the parties, the parties recognized the monetary value of the treasury bills in question, and, in some instances, treated them

[52] *Id.* at 2638.

as sums of money.[53] Thus, they are of the same kind and are capable of being subject to compensation.

The third, fourth and fifth requirements are clearly present and are not denied by the parties. Both debts are due and demandable because both remain unsatisfied, despite payment made by IITC for the IITC T-Bills and by COEC for the COEC T-Bills. Moreover, COEC readily admits that it has an outstanding balance in favor of IITC.[54] Conversely, IITC has been found by the lower courts to be liable, as principal seller, for the delivery of the COEC T-Bills.[55] The debts are also liquidated because their existence and amount are determined.[56] Finally, there exists no retention or controversy over the COEC T-Bills and the IITC T-Bills.

Because all the stipulations under Article 1279 are present in this case, compensation can take place. COEC is allowed to set-off its obligation to deliver the IITC T-Bills against IITC's obligation to deliver the COEC T-Bills.

Correction of the amount due

Having established that compensation or set-off is allowed between COEC and IITC, the Court will now delve into the proper amount of the award and the applicable interest rates.

The RTC, in its Judgment, ordered IITC to pay COEC the amount of ₱17,056,608 with interest at the rate of 6% per annum until full payment. In arriving at the said amount, the trial court used, as its basis, COEC's claim against IITC for ₱186,790,000 worth of treasury bills less ₱50,000,000 which it received under the Tripartite Agreement. Then it deducted from this the ₱139,633,392.00 face value of the undelivered treasury bills

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[53] *Id.* at 314, 319, 2304, 2481, 2560.

[54] *Id.* at 2304.

[55] *Id.* at 268.

[56] *Montemayor v. Millora*, G.R. No. 168251, July 27, 2011, citing Tolentino, Arturo M., *IV Commentaries and Jurisprudence on the Civil Code of the Philippines*, 2002 ed., p. 371.

by COEC to IITC less the ₱20,000,000 which COEC assigned to IITC pursuant to the COEC-IITC Agreement.[57]

As correctly pointed out by COEC, there was a mistake in the arithmetic subtraction made by the RTC. Using the figures provided by the lower court, the correct result should have been ₱17,156,608.00, ₱100,000.00 more than what was adjudged in favor of COEC. To illustrate:

The trial court's computation

COEC's counterclaim against IITC	₱186,790,000.00	
Amount assigned by IITC to COEC	(50,000,000.00)	
Subtotal		₱136,790,000.00
IITC's claim against COEC	₱139,633,392.00	
Amount reassigned by COEC to IITC	(20,000,000.00)	
Subtotal		₱119,633,392.00
TOTAL		**₱17,156,608.00**

Aside from the error in the RTC's mathematical computation, a review of the records, particularly the March 20, 1995 Amended Complaint filed by IITC, the April 10, 1995 Answer to Amended Complaint (With Counterclaim) filed by COEC and the September 2, 1999 Partial Stipulation of Facts and Documents submitted by IITC, COEC and PDB to the trial court, reveals that there was some confusion as to the correct basis to be used for calculating the amount due to COEC. In COEC's Answer and in the Partial Stipulation, it explicitly stated that it purchased from IITC treasury bills with a face value of ₱186,774,739.49, as evidenced by the Confirmations of Sale issued by IITC. If this figure is used in computing COEC's award, the resulting amount would be ₱17,141,347.49, which is consistent with COEC's counterclaim.

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[57] *Rollo*, p. 460.

The revised computation

COEC's counterclaim against IITC	₱186,774,739.49	
Amount assigned by IITC to COEC	(50,000,000.00)	
Subtotal		₱136,774,739.49
IITC's claim against COEC	₱139,633,392.00	
Amount reassigned by COEC to IITC	(20,000,000.00)	
Subtotal		₱119,633,392.00
TOTAL		**₱17,141,347.49**

Lastly, as regards the legal interest which should be imposed on the award, the Court directs the attention of the parties to the case of *Eastern Shipping Lines v. Court of Appeals*,[58]

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. **When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum.** No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

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[58] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

3. **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction**, this interim period being deemed to be by then an equivalent to a forbearance of credit.[59] (Emphases supplied)

Because the obligation arose from a contract of sale and purchase of government securities, and not from a loan or forbearance of money, the applicable interest rate is 6% from June 10, 1994, when IITC received the demand letter from COEC.[60] After the judgment becomes final and executory, the legal interest rate increases to 12% until the obligation is satisfied.

In sum, the Court finds that after compensation is effected, IITC still owes COEC ₱17,141,347.49 worth of treasury bills, subject to the interest rate of 6% per annum from June 10, 1994, then subsequently to the increased interest rate of 12% from the date of finality of this decision until full payment.

PDB has an obligation to deliver the treasury bills to IITC

The CA, in absolving PDB from all liability, reasoned that: (1) PDB was not involved in the transactions for the purchase and sale of treasury bills between IITC and COEC; (2) IITC failed to allege in its Amended Complaint and prove during the trial that PDB directly and principally sold to IITC ₱186,790,000 worth of treasury bills; (3) while PDB undertook, in its May 4, 1994 letter to deliver to IITC the said treasury bills, the obligation did not ripen because the bills did not become available to PDB and IITC did not remit any payment to PDB; (4) IITC did not demand delivery of the treasury bills; (5) IITC merely sued PDB as an alternative defendant, implying that IITC did not have a principal and direct cause of action against PDB on the treasury bills; and (6) there was nothing in the records to support

[59] *Id.* at 95-96.

[60] *Rollo*, p. 388.

the trial court's finding that PDB owed IITC ₱186,790,000 worth of treasury bills.[61]

PDB essentially echoes the reasons set forth by the CA and reiterated that because IITC did not pay for the treasury bills subject of its (PDB) May 4 undertaking, then IITC had no right to demand delivery of the said securities from PDB. Moreover, the check payments made by COEC to PDB were not in payment of the treasury bills purchased by IITC from PDB, but for COEC's other obligations with PDB. The total amount of the checks ₱182,191,269.26 did not correspond to the treasury bills worth ₱186,790,000 which COEC allegedly purchased from PDB with IITC acting as conduit. PDB also points out that COEC did not interpose a cross-claim against it precisely because COEC was aware that it had no claim against PDB.[62] Also, the checks clearly indicated that they were made in payment for the account of COEC.[63]

IITC insists that it alleged in its Amended Complaint (by way of alternative cause of action) that PDB directly and principally sold to IITC treasury bills worth ₱186,790,000.00. By suing PDB as an alternative defendant, IITC did not acknowledge that PDB could not be held principally liable. On the contrary, by bringing suit against PDB under an alternative cause of action, IITC set forth a claim against PDB as the principal seller of the treasury bills. In addition, IITC categorically refuted PDB's allegation that the former did not pay for the treasury bills purchased from the latter. The judicial admissions of PDB during the course of the trial and in the Partial Stipulation, that PDB received the proceeds of the manager's checks issued by COEC as payment for COEC's purchase of treasury bills from IITC, contradict PDB's defense that no payment was made by IITC for the said treasury bills. Payment by COEC to PDB, upon IITC's instructions, should be treated as a payment by a third person with the knowledge of the debtor, under Article

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[61] *Id.* at 269-274.

[62] *Id.* at 2538.

[63] *Id.* at 2534-2538.

1236 of the Civil Code. Thus, when PDB accepted COEC's checks, it became duty bound to deliver the treasury bills sold to IITC as the principal buyer.[64]

Lastly, IITC points out the absurdity of the CA decision in allowing COEC to offset its liability to IITC against its liability to deliver the treasury bills purchased by COEC. The parties do not deny that COEC paid for the purchase price of the subject treasury bills by issuing manager's checks in the name of PDB and IITC. As such, unless COEC's payment to PDB is credited as payment by IITC to PDB for the securities purchased by IITC, under that theory that IITC acted as a principal buyer, there would be no obligation on the part of IITC against which a set-off can be effected by COEC.[65]

On this point, the Court agrees with IITC.

First, while it is true that PDB was not involved in the sale of the COEC T-Bills, it is irrelevant to the issue because it is IITC which interposed a claim, albeit an alternative one, against PDB for having sold to IITC treasury bills worth ₱186,790,000.00. This was alleged in IITC's Amended Complaint and was deemed by the RTC to have been successfully proven.[66] The findings of the RTC are supported by the confirmations of sale issued by PDB in favor of IITC and PDB's letter dated May 4, 1994 undertaking to deliver the treasury bills worth ₱186,790,000.00 to IITC.[67] The due execution and the veracity of the contents of the aforesaid documents have been admitted by the parties.[68]

Second, it is erroneous to say that IITC never made any demand upon PDB. IITC's letter dated May 18, 1994 addressed to PDB confirms that it demanded delivery by PDB of the treasury bills covered by the confirmations of sale issued by PDB in its favor.

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[64] *Id.* at 2629-2635.

[65] *Id.* at 2636.

[66] *Id.* at 330 and 458.

[67] *Id.* at 299-300 and 309.

[68] *Id.* at 437-438.

Although the demand was made on behalf of COEC, which allegedly purchased the treasury bills from PDB, consistent with IITC's assertion that it only facilitated the sale, it was nevertheless a demand for delivery. Even if this were to be considered an invalid demand because it was not made by IITC as the principal party to the transaction with PDB, the filing of the Amended Complaint by IITC is equivalent to demand, in keeping with the rule that the filing of a complaint constitutes judicial demand.[69]

Third, the CA ruling that IITC impliedly did not have a principal cause of action because it merely sued PDB as an alternative defendant is an extremely flawed and baseless supposition which runs counter to established law and jurisprudence. The filing of a suit against an alternative defendant and under an alternative cause of action should not be taken against IITC. Section 13, Rule 13 and Section 2, Rule 8 of the Rules of Civil Procedure explicitly allows such filing:

> Rule 13, Section 13: Alternative defendants. — Where the plaintiff is uncertain against who of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative, although a right to relief against one may be inconsistent with a right of relief against the other. (13a)

> Rule 8, Section 2: Alternative causes of action or defenses. — A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements.

As discussed earlier, the Court is not granting IITC's primary cause of action against COEC because IITC acted, not as a mere conduit for the sale of shares by PDB to COEC as alleged by IITC, but rather as a principal purchaser of securities from PDB and then later as a principal seller to COEC. By reason of this determination, COEC is allowed to offset its outstanding

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[69] *Oceaneering Contractors (Phils.), Inc. v. Barretto*, G.R. No. 184215, February 9, 2011, 642 SCRA 596, 609.

obligation to deliver the remaining IITC T-Bills against the latter's obligation to deliver the COEC T-Bills. Consequently, IITC's alternative action against the alternative defendant PDB should be considered in order for IITC to be able to recover from PDB the ₱186,790,000.00 worth of treasury bills which had already been fully paid for.

To ascertain whether IITC was able to adequately state an alternative cause of action against PDB in its Amended Complaint, the Court refers to *Perpetual Savings Bank v. Fajardo*[70] where the test for determining the existence of a cause of action was extensively discussed:

The familiar test for determining whether a complaint did or did not state a cause of action against the defendants is whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, a judge may validly grant the relief demanded in the complaint. In *Rava Development Corporation v. Court of Appeals*, the Court elaborated on this established standard in the following manner:

> "The rule is that a defendant moving to dismiss a complaint on the ground of lack of cause of action is regarded as having hypothetically admitted all the averments thereof. The test of the sufficiency of the facts found in a petition as constituting a cause of action is whether or not, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer thereof (*Consolidated Bank and Trust Corp. v. Court of Appeals*, 197 SCRA 663 [1991]).
>
> **In determining the existence of a cause of action, only the statements in the complaint may properly be considered.** It is error for the court to take cognizance of external facts or hold preliminary hearings to determine their existence. If the allegation in a complaint furnish sufficient basis by which the complaint may be maintained, the same should not be dismissed regardless of the defenses that may be assessed by the defendants (*supra*).
>
> A careful review of the records of this case reveals that the allegations set forth in the complaint sufficiently establish a

[70] G.R. No. 79760, June 28, 1993, 223 SCRA 720.

cause of action. **The following are the requisites for the existence of a cause of action: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect, or not to violate such right; and (3) an act or omission on the part of the said defendants constituting a violation of the plaintiff's right or a breach of the obligation of the defendant to the plaintiff** (*Heirs of Ildefonso Coscolluela, Sr., Inc. v. Rico General Insurance Corporation*, 179 SCRA 511 [1989]).”[71] (Emphases supplied)

Following the disquisition above, IITC's Amended Complaint, while not a model of superb draftsmanship in its struggle to maintain IITC's conduit theory, adequately sets forth a cause of action against PDB. Under its claim against PDB as alternative defendant, IITC alleged that, even if it acted as a direct buyer from PDB, (1) IITC is entitled to the delivery of the treasury bills worth ₱186,790,000.00 covered by the confirmations of sale issued by PDB, (2) PDB has an obligation to deliver the same to IITC, and (3) PDB failed to deliver the said securities to IITC.[72]

It would be the height of injustice to hold IITC accountable for the delivery of the COEC T-Bills to COEC without similarly holding PDB liable for the release of the treasury bills worth ₱186,790,000.00 to IITC, which cannot be accomplished without allowing IITC's alternative cause of action against PDB to prosper.

The Court now tackles the main argument of PDB for sustaining the ruling of the CA absolving it from liability — that IITC allegedly failed to make the required payment for the purchase. PDB claims that the manager's checks which it received from COEC were payment by the latter for its other obligations to the former. Conspicuously, PDB failed to elaborate on the supposed obligations of COEC.

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[71] *Id.* at 728, citing *Rava Development Corporation v. Court of Appeals*, G.R. No. 96825, July 3, 1992, 211 SCRA 144.

[72] *Rollo*, p. 330.

This flimsy allegation is patently untrue. In its Memorandum,[73] *COEC denied* that the checks were payment for an account which it had with PDB, as PDB so desperately alleges. COEC clarified that the manager's checks payable to PDB were issued by COEC upon the instructions of IITC in payment for the COEC T-Bills. PDB's theory was negated by COEC itself as the issuer of the checks. Moreover, PDB already judicially admitted, through the Partial Stipulation, that the checks were given by COEC as payment for the COEC T-Bills. Section 4, Rule 129 of the Revised Rules of Evidence provides that:

> Sec. 4. Judicial admissions. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

As such, PDB cannot now gainsay itself by claiming that the checks were payment by COEC for certain unidentified obligations to PDB. "It is well-settled that judicial admissions cannot be contradicted by the admitter who is the party himself and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it."[74]

Since it has been sufficiently established that it was IITC which instructed that payment be made to PDB, it is apparent that the said checks were delivered to PDB in consideration of a transaction between PDB and IITC. On May 2, 1994, the same date the checks were issued, IITC purchased treasury bills with a combined face value of ₱186,790,000.00 from PDB for the total price of ₱182,191,269.56. The Court notes that the ₱182,191,269.26 aggregate amount of the checks issued by COEC to PDB is almost exactly equal to the total price of the treasury

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[73] *Id.* at 2303-2453.

[74] *Landoil Resources Corporation v. Al Rabiah Lighting Company*, G.R. No. 174720, September 7, 2011, citing *Spouses Binarao v. Plus Builders, Inc.*, 524 Phil. 361 (2006).

bills which IITC purchased from PDB.[75] The payment by COEC on behalf of IITC can be considered as payment made by a third-party to the transaction between IITC and PDB which is allowed under Article 1236 of the Civil Code of the Philippines.[76]

The Court finds no logical reason either for PDB to execute the May 4, 1994 Letter to IITC undertaking to deliver treasury bills worth ₱186,790,000.00 if it had not received the payment from IITC. Especially so because there is nothing in the letter to indicate that PDB was still awaiting payment for the said securities. There is no other reasonable conclusion but that PDB received payment, in the form of three manager's checks issued by COEC, for the treasury bills purchased by IITC, and that having failed to promptly deliver the treasury bills despite having encashed the checks, PDB then executed the foregoing letter of undertaking.

Also telling is PDB's participation in the Tripartite Agreement with IITC and COEC where it assigned ₱50,000,000 worth of Central Bank Bills to IITC, in consideration of which, IITC relinquished its right to claim delivery under the confirmations of sale issued by PDB to the extent of ₱50,000,000. While the agreement stipulated that it was not in any way an admission of any liability by any one of them against another, the fact that PDB agreed to execute such an agreement is indicative of the existence of its obligation to IITC. In its Answer *Ad Cautelam* filed before the RTC, PDB explained that it gave up ₱50,000,000 worth of Central Bank Bills simply to assist COEC and IITC meet their financial difficulties. The Court finds this allegation highly inconceivable, preposterous and even ludicrous because no company in its right mind would willingly part with such a

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[75] *Rollo*, pp. 299-302 and 305-308.

[76] Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfilment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

huge amount of bank bills for no consideration whatsoever except for solely altruistic reasons.

Finally, PDB's argument that it had no obligation to deliver the treasury bills purchased by IITC because the same did not become available to PDB is evidently a frantic last ditch attempt to evade liability. That the subject securities did not become available to PDB should not be the concern of IITC. For as long as payment was made, PDB was obliged to deliver the securities subject of its confirmations of sale.

PDB's adroit maneuvering coupled with IITC's poorly conceived conduit theory led the CA to reach an erroneous conclusion. This Court, however, will not be similarly blinded. There is simply an incongruity in the CA decision. Accordingly, this Court rules that PDB should be liable for the delivery of ₱186,790,000.00 worth of treasury bills to IITC, or payment of the same, reduced by ₱50,000,000.00 which the former assigned to the latter under the Tripartite Agreement. The total liability of PDB is ₱136,790,000.00, computed as follows:

PDB's Liability	
Amount of treasury bills purchased by IITC	₱186,790,000.00
Amount assigned by PDB to IITC	50,000,000.00
TOTAL	**₱136,790,000.00**

This shall be subject to interest at the rate of 6% per annum from the date of the filing of the Amended Complaint on March 21, 1995, considered as the date of judicial demand, then to 12% per annum from the date of finality of this decision until full payment.

To rule otherwise would be to allow unjust enrichment on the part of PDB to the detriment of IITC. Article 22 of the Civil Code of the Philippines provides that:

> Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

In the recent case of *Flores v. Spouses Lindo*,[77] this Court expounded on the subject matter:

> There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.
>
> The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration.[78]

The Court cannot condone a decision which is manifestly partial. Neither shall the Court be a party to the perpetration of injustice. As the last bastion of justice, this Court shall always rule pursuant to the precepts of fairness and equity in order to dispel any doubt in the integrity and competence of the Judiciary.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The June 6, 2008 Decision of the Court of Appeals in C.A.-G.R. CV No. 79320 is **SET ASIDE.** Accordingly, the June 16, 2003 RTC Decision is **REINSTATED** though **MODIFIED** to read as follows:

FOR THE REASONS GIVEN, judgment is hereby rendered —

a] ordering Planters Development Bank to pay plaintiff ₱136,790,000.00 with interest at the rate of six (6%) percent per annum from March 21, 1995 until full payment;

b] ordering Insular and Trust Investment Corporation to pay Capital One Equities Corporation 17,156,608.00 with legal interest at the rate of six (6%) percent per annum from June 10, 1994 until full payment; and

c] dismissing the counterclaim of Planters Development Bank.

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[77] G.R. No. 183984, April 13, 2011, 648 SCRA 772.

[78] *Id.* at 782-783.

Any amount not paid upon the finality of this decision shall be subject to interest at the increased rate of twelve (12%) percent per annum reckoned from the date of finality of this decision until full payment thereof.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 183706. April 25, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAMSON ESCLETO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBILITY; ASSESSMENT THEREOF WHEN AFFIRMED BY THE APPELLATE COURT IS GENERALLY CONCLUSIVE AND BINDING; GUIDING RULES.— We emphasize that the assessment by the trial court of a witness' credibility, when affirmed by the Court of Appeals, is conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight or influence. This is so because of the judicial experience that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under grueling examination. When it comes to the matter of credibility of a witness, settled are the guiding rules, some of which are that "(1) the appellate court will not disturb the factual findings of the lower court, unless there is a showing that it had

overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case; (2) the findings of the trial court pertaining to the credibility of a witness is entitled to great respect since it had the opportunity to examine his demeanor as he testified on the witness stand, and, therefore, can discern if such witness is telling the truth or not; and (3) a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness."

2. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN PRESENT; ELEMENTS.— There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. We have also held that: "[i]n order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself."

3. ID.; ID.; MURDER; PENALTY.— Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the crime of murder. There being no aggravating or mitigating circumstance, the RTC, as affirmed by the Court of Appeals, properly imposed the penalty of *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the Revised Penal Code.

4. ID.; ID.; ID.; CIVIL LIABILITY; DAMAGES THAT MAY BE AWARDED; ELUCIDATED; CASE AT BAR.— As to damages, when death occurs due to a crime, the following may be awarded: "(1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages." Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the

commission of the crime. Moral damages in the sum of ₱50,000.00 shall be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. Also under Article 2230 of the Civil Code, exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, like treachery, as in this case. Thus, the award of ₱30,000.00 for exemplary damages is in order. As regards actual damages, Merly, Alfredo's widow, testified that she and her family incurred expenses for Alfredo's burial and wake; however, Merly failed to present receipts to substantiate her claim. Where the amount of actual damages for funeral expenses cannot be ascertained due to the absence of receipts to prove them, temperate damages in the sum of ₱25,000.00 may be granted in lieu thereof. Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved. In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% from date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated December 13, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01003, which affirmed an earlier Decision[2] dated March 2, 2005 of the Regional

[1] *Rollo*, pp. 2-14; penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevara-Salonga and Apolinario D. Bruselas, Jr., concurring.

[2] Records, pp. 230-238; penned by Presiding Judge Mariano A. Morales, Jr.

Trial Court (RTC), Branch 63, of Calauag, Quezon in Criminal Case No. 3471-C, finding accused-appellant Samson Escleto (Samson) guilty of murder under Article 248 of the Revised Penal Code.

In an Information dated January 7, 2000,[3] Samson was charged with the crime of murder committed as follows:

> That on or about the 4th day of November 1999, at sitio Maligasang, Brgy. Villahermosa, Municipality of Lopez, Province of Quezon, Philippines, and within the jurisdiction of this Hon. Court, the above-named accused, with intent to kill, and with evident pre-meditation and treachery, armed with a fan knife, (*balisong*), did then and there willfully, unlawfully and feloniously attack, assault and stab with the said *balisong* one ALFREDO MARCHAN, thereby inflicting upon the latter a stab wound on his body, which directly cause his death.

When arraigned on January 23, 2001, Samson pleaded not guilty to the crime charged.[4]

During trial, the prosecution presented the following witnesses: (a) Merly Marchan (Merly), the widow of the victim Alfredo Marchan (Alfredo); (b) Benjamin Austria (Benjamin), a *barangay tanod*, who was personally present during the stabbing; and (c) Dr. Jose Mercado (Mercado), who conducted the *postmortem* examination of Alfredo's body.

According to the prosecution, Alfredo and Merly attended the birthday party of the son of Jaime Austria (Jaime) on November 4, 1999. Samson was also at the party. While engaged in a drinking spree, Samson drew out a knife (*balisong or beinte-nueve*), which he also later hid upon someone's advice. Samson thereafter left the party, followed by Merly and Alfredo less than an hour later. On their way home on their carabao, Merly and Alfredo passed by Benjamin's house at around 11:00 p.m. Benjamin and Samson were drinking wine at the balcony of said house. Samson called Alfredo, saying "*pare, pwede kang*

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[3] *Id.* at 2.

[4] *Id.* at 55.

makausap." Samson went down from the balcony of Benjamin's house as Alfredo dismounted from the carabao and approached Samson. However, once Samson and Alfredo were facing one another, Samson suddenly stabbed Alfredo in the chest, thus, causing Alfredo's death. Samson fled right after the stabbing. Neither Merly nor Benjamin was aware of any previous argument or ill feelings between Alfredo and Samson. Dr. Mercado's *postmortem* examination of Alfredo's body conducted on November 5, 1999 revealed the following:

> FINDINGS:
>
> - Stab wound 2.5 cm. 4th Intercoastal Space (L) midclavicular line penetrating directed downward.
>
> CAUSE OF DEATH
>
> Cartio-Respiratory Arrest
> 2o Severe hemorrhage
> Due to stab wound[5]

Samson and his wife Florentina Escleto (Florentina) testified for the defense.

The defense presented a totally different version of the events that took place on November 4, 1999. Samson and Florentina arrived at Jaime's house at around 5:30 p.m. to attend a birthday party. A group of people were already drinking wine at the party. Eddie Marchan (Eddie) offered a jigger of wine to Samson but Samson refused to drink. While Florentina was in the kitchen, she heard a commotion among the men who were drinking. Florentina then saw Eddie and Alfredo talking to Samson. To prevent any trouble, Benjamin invited Samson to leave the party. Benjamin and Samson proceeded to Benjamin's house where they drank wine. Alfredo arrived at Benjamin's house and called Samson to go outside to talk. Samson complied but when he got outside, Alfredo met him carrying a weapon. While Samson and Alfredo grappled with each other, Benjamin approached them. Benjamin tried to stab Samson but accidentally hit Alfredo in the chest instead. Benjamin was also able to stab Samson's

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[5] Folder of Exhibits, p. 7.

hand so Samson ran away. One Dr. Enrique Agra sutured the wound on Samson's hand. Both Samson and Florentina did not divulge anything to the police. Florentina, for her part, explained that she did not tell the police about Benjamin stabbing Alfredo because she thought that a wife could not testify in her husband's (Samson's) favor. Florentina still did not disclose anything to the police authorities as she visited Samson in prison because the police officers did not ask her about the stabbing.

The RTC promulgated its Decision on March 2, 2005, finding Samson guilty beyond reasonable doubt of the crime of murder. The RTC gave full credence to the testimonies of the prosecution witnesses which "were given in clear, straightforward manner and have the ring of truth[;]" as opposed to Samson's testimony which was "was self-serving, a pure hogwash and evidently a concoction in order to exculpate himself from criminal liability."[6] The RTC further found that Samson employed treachery in killing Alfredo, therefore, qualifying the crime committed to murder. The disposition portion of said RTC decision reads:

> WHEREFORE, in view of all the foregoing considerations, this Court finds the accused Samson Escleto GUILTY beyond reasonable doubt of the crime of murder and in the absence of any aggravating or mitigating circumstances, hereby sentences him to suffer the penalty of *RECLUSION PERPETUA* and to pay the heirs of the victim Alfredo Merchan the sum of Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages.
>
> The accused is to be credited of his preventive imprisonment, if proper and any, pursuant to Article 29 of the Revised Penal Code as amended by R.A. No. 6127 and E.O. No. 214.[7]

Insisting on his innocence, Samson appealed to the Court of Appeals.[8] In a Decision dated December 13, 2006, the Court of Appeals affirmed the judgment of conviction rendered against Samson by the RTC. The Court of Appeals decreed:

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[6] Records, p. 236.

[7] *Id.* at 238.

[8] Records, p. 240.

WHEREFORE, premises considered, the March 2, 2005 Decision of the Regional Trial Court (RTC) of Calauag, Quezon, Branch 63, in Criminal Case No. 3471-C, is hereby **AFFIRMED**.

Pursuant to Section 13 (c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal filed with the Clerk of Court of the Court of Appeals.[9]

Refusing to accept the verdict of the RTC and Court of Appeals, Samson comes before this Court via the instant appeal. Both the People[10] and Samson[11] waived the filing of supplemental briefs and stood by the briefs they had already filed before the Court of Appeals.

Samson made the following assignment of errors in his appeal:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

ASSUMING *ARGUENDO* THAT THE ACCUSED-APPELLANT IS GUILTY IN CRIMINAL CASE NO. 3471-C, THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER.

III

ASSUMING FURTHER THAT A CRIME WAS COMMITTED, THE LOWER COURT ERRED IN FINDING THAT THE SAME WAS QUALIFIED BY TREACHERY.

Samson's appeal has no merit.

There are two entirely different versions of the events of November 4, 1999: The prosecution asserts that it was Samson

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[9] *Rollo*, pp. 13-14.

[10] *Id.* at 25-26.

[11] *Id.* at 30-31.

who stabbed Alfredo, while the defense maintains that it was Benjamin who actually stabbed Alfredo. The RTC, affirmed by the Court of Appeals, gave credence to the evidence of the prosecution, mainly consisting of witnesses' testimonies, and found Samson guilty of murdering Alfredo.

We emphasize that the assessment by the trial court of a witness' credibility, when affirmed by the Court of Appeals, is conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight or influence. This is so because of the judicial experience that trial courts are in a better position to decide the question of credibility, having heard the witnesses themselves and having observed firsthand their deportment and manner of testifying under grueling examination.[12]

When it comes to the matter of credibility of a witness, settled are the guiding rules, some of which are that "(1) the appellate court will not disturb the factual findings of the lower court, unless there is a showing that it had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case; (2) the findings of the trial court pertaining to the credibility of a witness is entitled to great respect since it had the opportunity to examine his demeanor as he testified on the witness stand, and, therefore, can discern if such witness is telling the truth or not; and (3) a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness."[13]

There is no compelling reason for us to depart from the foregoing rules. We are bound by the factual findings of the RTC absent any showing that it overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. The prosecution

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[12] *People v. Mirandilla, Jr.*, G.R. No. 186417, July 27, 2011.

[13] *People v. Clores*, G.R. No. 82362, April 26, 1990, 184 SCRA 638, 642-643.

witnesses positively and categorically identified Samson as the person who stabbed Alfredo to death.

Merly candidly recounted the stabbing incident on the witness stand:

Q After you left the house of Jaime Austria, what happened next?
A We passed in front of the house of Benjamin Austria and Samson Escleto was there and he called my husband.

Q According to you, Samson Escleto was in the house of Benjamin Austria, was Samson Escleto inside the house of Benjamin Austria?
A He was in the balcony.

Q When your husband was called by Samson Escleto, what did your husband do, it he did anything?
A He approached Samson Escleto.

Q At the time he approached Samson Escleto, was this Samson Escleto stayed (sic) in the balcony of the house of Benjamin Austria?
A He was already downstairs.

Q **What happened when Samson Escleto and your husband met?**
A **Samson Escleto stabbed my husband.**[14] (Emphasis ours.)

Benjamin corroborated Merly's testimony:

Q At that date and time and place at your house at Brgy. Villahermosa, Lopez, Quezon, was there any unusual incident that happened?

x x x x x x x x x

A Aflredo Marchan and his wife passed by. They were riding in a carabao.

Q When the husband and wife passed by in your house, was there any incident that happened?
A Yes, sir.

Q What was that?

[14] TSN, May 31, 2001, pp. 5-6.

A Samson Escleto called the couple that was in front of our house and Alfredo Marchan went down in the carabao and he just would like to talk with Samson Escleto.

Q What was the respon[se] of Aflredo Marchan?
A He approached Samson Escleto and Samson Escleto went down from the balcony.

Q **When Alfredo Marchan wait (sic) to Escleto and Escleto went down from your house, what happened next?**
A **Samson Escleto suddenly stabbed Alfredo Marchan in his chest.**[15] (Emphasis ours.)

In contrast, Samson's defense rests on his allegation that it was Benjamin who stabbed Alfredo. We agree with the RTC that the defense's version of the events of November 4, 1999 was a mere concoction meant to exculpate Samson from criminal liability. It was against human nature for Samson to endure his arrest and imprisonment without informing police authorities at all that it was actually Benjamin who stabbed Alfredo. It was just as unusual for Florentina, who visited her husband Samson several times in prison, to withhold from police authorities such a significant fact that supports her husband's innocence. Samson further failed to take any action, such as the filing of a complaint against Benjamin to hold the latter liable for the former's alleged injury (*i.e.*, hand wound) and Alfredo's death. Lastly, although Samson claimed that he sought medical assistance for his wound, which he also sustained from Benjamin's blow, Samson did not present as evidence the attending physician's testimony and/or medical certification.

We likewise affirm the finding of the RTC and the Court of Appeals that the stabbing of Alfredo by Samson was qualified by treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[16] We have

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[15] TSN, May 31, 2001, pp. 15-16.

[16] Article 14, par. 16 of the Revised Penal Code.

also held that: "[i]n order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself."[17]

While it is true that in this case the attack on Alfredo was frontal, the same was so sudden and unexpected. Alfredo was completely unaware of the imminent peril to his life. Alfredo was walking to meet Samson, expecting that they would only talk. Alfredo was unarmed while Samson had a knife. Alfredo was deprived of the opportunity to defend himself and repel Samson's attack. As correctly observed by the Court of Appeals:

> The victim was not even able to offer any form of resistance. He never saw it coming that he would be stabbed. He alighted from his carabao and even waited for a while for assailant to come down the balcony only to be surprised that the handshake was in the form of a knife being plunged towards his chest that he could not even block the blow or dodge it. He just stood there in surprise as assailant suddenly hacked him.[18]

Clearly, treachery attended Samson's stabbing to death of Alfredo, hence, qualifying the crime to murder.

Article 248[19] of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the crime of murder. There being no

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[17] *People v. Dolorido*, G.R. No. 191721, January 12, 2011, 639 SCRA 496, 505.

[18] *Rollo*, pp. 12-13.

[19] Art. 248. *Murder.* — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

aggravating or mitigating circumstance, the RTC, as affirmed by the Court of Appeals, properly imposed the penalty of *reclusion perpetua*, pursuant to Article 63, paragraph 2,[20] of the Revised Penal Code.

As to damages, when death occurs due to a crime, the following may be awarded: "(1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages."[21]

Civil indemnity in the amount of ₱75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime. Moral damages in the sum of ₱50,000.00 shall be awarded despite the absence of proof of mental and emotional suffering of the victim's heirs. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. Also under Article 2230 of the Civil Code, exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, like treachery, as in this case. Thus, the award of ₱30,000.00 for exemplary damages is in order.[22]

As regards actual damages, Merly, Alfredo's widow, testified that she and her family incurred expenses for Alfredo's burial

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1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

[20] Art. 63. *Rules for the application of indivisible penalties.* — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[21] *People v. Agacer*, G.R. No. 177751, December 14, 2011.

[22] *Id.*

and wake; however, Merly failed to present receipts to substantiate her claim. Where the amount of actual damages for funeral expenses cannot be ascertained due to the absence of receipts to prove them, temperate damages in the sum of ₱25,000.00 may be granted in lieu thereof. Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.[23]

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% from date of finality of this Decision until fully paid.[24]

WHEREFORE, the appeal is **DENIED.** The Decision dated December 13, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01003 is **AFFIRMED** with **MODIFICATIONS.** Appellant Samson Escleto is found **GUILTY** beyond reasonable doubt of **MURDER,** and is sentenced to suffer the penalty of *reclusion perpetua*. Appellant Samson Escleto is further ordered to pay the heirs of ALFREDO MARCHAN the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

SO ORDERED.

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

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[23] Article 2224 of the Civil Code.

[24] *Supra* note 17.

SECOND DIVISION

[G.R. No. 183916. April 25, 2012]

SPOUSES NICANOR MAGNO and CARIDAD MAGNO, *petitioners, vs.* **HEIRS OF PABLO PARULAN, represented by EMILIANO PARULAN, DEPARTMENT OF AGRARIAN REFORM, BALIUAG, BULACAN, OFFICE OF THE REGISTER OF DEEDS OF GUIGUINTO, BULACAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW; DEPARTMENT OF AGRARIAN REFORM (DAR); UNDER DAR ADMINISTRATIVE ORDER NO. 02, SERIES OF 1994, EMANCIPATION PATENTS MAY BE CANCELLED BY THE PROVINCIAL AGRARIAN REFORM ADJUDICATOR (PARAD) OR THE DEPARTMENT OF AGRARIAN ADJUDICATION BOARD (DARAB) FOR VIOLATIONS OF AGRARIAN LAWS, RULES AND REGULATIONS.— Under DAR Administrative Order No. 02, Series of 1994, emancipation patents may be cancelled by the PARAD or the DARAB for violations of agrarian laws, rules and regulations. The same administrative order further states that "administrative corrections may include non-identification of spouse, correction of civil status, corrections of technical descriptions and other matters related to agrarian reform"; and that the DARAB's decision "may include cancellation of registered EP/CLOA, reimbursement of lease rental as amortization to ARBs, reallocation of the land to qualified beneficiary, perpetual disqualification to become an ARB, and other ancillary matters related to the cancellation of the EP or CLOA."

2. ID.; ID.; SINCE THE DAR'S ISSUANCE OF AN EMANCIPATION PATENT AND THE CORRESPONDING ORIGINAL CERTIFICATE OF TITLE (OCT) COVERING THE CONTESTED LOT CARRIES WITH IT A PRESUMPTION OF REGULARITY, THE PETITION TO CORRECT/CANCEL AN EMANCIPATION PATENT CAN

PROSPER ONLY IF PETITIONERS ARE ABLE TO PRESENT SUBSTANTIAL EVIDENCE THAT A PORTION OF THEIR LOT WAS ERRONEOUSLY COVERED BY PATENT.— The DAR's issuance of an Emancipation Patent and the corresponding OCT covering the contested lot carries with it a presumption of regularity. The Petition to correct/cancel Pablo's Emancipation Patent can prosper only if petitioners are able to present substantial evidence that a portion of their lot was erroneously covered by the patent. Substantial evidence refers to such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. As correctly held by the DARAB and the CA, petitioners have failed to adduce substantial evidence to establish that the contested lot was part of their property.

3. ID.; ID.; EVIDENCE PRESENTED BY PETITIONERS ARE INSUFFICIENT TO CONTROVERT THE ACCURACY OF THE TECHNICAL DESCRIPTION OF THE LAND PROPERLY COVERED BY THE SUBJECT EMANCIPATION PATENT/ORIGINAL CERTIFICATE OF TITLE (EP/OCT); PETITIONERS SHOULD HAVE PRESENTED EXPERT WITNESSES OR INITIATED A RELOCATION SURVEY OF THE SUBJECT LOT TO ESTABLISH THE ALLEGED ERRORS IN THE TECHNICAL DESCRIPTION OF THE SUBJECT EMANCIPATION PATENT.— We therefore affirm the CA ruling that the evidence presented by petitioners was insufficient to controvert the accuracy of the technical description of the land properly covered by the subject EP/OCT. As pointed out by the DARAB, petitioners should have presented expert witnesses or initiated a relocation survey of Lot 1306 to establish the alleged errors in the technical description of the subject EP.

APPEARANCES OF COUNSEL

Villacorta and Associates Law Office for petitioners.
Arellano Law Firm for private respondents.

D E C I S I O N

SERENO, *J.*:

For resolution is a Petition for Review under Rule 45 assailing the 16 April 2008 Decision of the Court of Appeals (CA) in CA-G.R. SP No. 100781,[1] which affirmed the dismissal by the Department of Agrarian Reform Adjudication Board (DARAB) of the petitioners' Petition for Correction and/or Cancellation of the Original Certificate of Title issued in the name of private respondents' predecessor-in-interest. Also assailed in this petition is the CA Resolution dated 17 July 2008, which denied petitioners' Motion for Reconsideration.

On 17 January 1972, petitioner spouses Nicanor and Caridad Magno (petitioners) bought a 1.5520 hectare (or 15,520 sq. m.) riceland at Biñang 1st, Bocaue, Bulacan from Emilia de Guzman (Emilia), as evidenced by a notarized Deed of Sale.[2] According to the Deed of Sale, the purchased lot is covered by Tax Declaration No. 2386 and is bounded by lots owned by the following persons: in the north, by Apolonio Santos; in the east, by Apolonio Santos and Eleuterio Santiago; in the south, by Eleuterio Santiago; and in the west, by Apolonio Santos. Petitioners further allege that the purchased lot is also described in the year 2000 Tax Declaration/Property Index Number 020-04-006-03-010[3] in the name of Emilia de Guzman, with the following boundaries: lots 1468 and 1469 in the north; Lots 1303 and 1304 in the south; Lot 1306 in the east; and Lot 1301 in the west.

The property was enclosed within concrete posts and barbed wires when it was sold to petitioners. From the time of purchase, they occupied the lot without interruption and devoted it to rice

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[1] The assailed Court of Appeals (CA) Fifth Division Decision was penned by Justice Andres B. Reyes, Jr. and concurred in by Justices Jose C. Mendoza (now a Member of this Court) and Arturo G. Tayag, *rollo*, pp. 35-45.

[2] *Rollo*, pp. 82-83.

[3] *Id.* at 81.

cultivation. In 1995, they filed before the Department of Environment and Natural Resources (DENR) an Application for Free Patent, as well as a Petition with the Community Environment and Natural Resources Office (CENRO) to rectify the Cadastral Survey of Lot 1306, Cad 332, Bocaue Cadastre, for the purpose of excluding a portion of their land from Lot 1306-B, which was then being claimed by Pedro Lazaro's heirs.

Subsequently, petitioners' tenant and hired laborers were prevented from working on the subject land by Emiliano Parulan (Emiliano), son of Pablo Parulan (Pablo), whose heirs are named respondents herein. Petitioners discovered that a 2,171 square meter portion of their land was included in the 5,677 square meter lot registered under Original Certificate of Title (OCT) No. T-048-EP (EP No. 189669)[4] issued in the name of Pablo on 17 December 1999 and registered with the Register of Deeds on 5 January 2000.

Petitioners referred the matter to the Provincial Agrarian Reform Office (PARO) Legal Officer I of Baliuag, Bulacan, Homer Abraham, Jr. The latter issued a Report and Recommendation[5] dated 26 October 2000 to Miguel Mendoza, the Officer-in-Charge (OIC) of PARO, Baliuag, Bulacan, recommending the filing by the Magno spouses of a necessary petition for cancellation/correction of Pablo's Emancipation Patent (EP) before the DARAB.

Hence, on 15 December 2000, petitioners filed with the Provincial Agrarian Reform Adjudicator (PARAD) of Bulacan a Petition[6] for Correction of OCT No. T-048-EP, (EP No. 189669) issued in the name of Pablo Parulan. Apart from the Deed of Sale and the two Tax Declarations, petitioners adduced as documentary evidence the questioned EP/OCT,[7] photographs

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[4] *Id.* at 84-85.

[5] *Id.* at 90-91.

[6] The petition was docketed as DARAB Case No. 12275 (Regular Case No. R-03-02-2318-00).

[7] *Rollo,* pp. 84-85.

of the property,[8] as well as the Report and Recommendation of PARO Legal Officer I Abraham.

Presented by petitioners as witnesses during the hearing before the PARAD were Cynthia Mariano (Mariano), an Agrarian Reform Program Technologist (ARPT) of Bocaue, Bulacan; and Fe Jacinto (Jacinto), the Municipal Agrarian Reform Officer (MARO) of the same area. Mariano testified that she had been instructed by Jacinto to conduct an investigation of petitioners' landholding. On 3 May 2000, she, together with *Barangay* Agrarian Reform Committee (BARC) Chairperson Ricardo Benedicto, conducted an ocular inspection of the lot, with farmers from adjacent lots as witnesses. She thereafter prepared a report, which stated that the subject lot was fenced and that the actual tiller was Renato de Guzman. Renato informed her that his father, Mariano de Guzman, was the original tenant of the land; and that the adjacent lot outside the fenced lot was being tilled by Emiliano Parulan. According to ARPT Mariano, her ocular inspection yielded the finding that since 1976, the subject lot which has an area of 2,162 sq. m., had actually been tilled by Renato de Guzman, who had been paying lease rentals to spouses Nicanor and Caridad Magno. MARO Jacinto testified by identifying the report she had prepared on the matter.

On the other hand, private respondents presented the *Kasunduan sa Pamumuwisan* between Pedro and Pablo;[9] Pablo's request for a survey of Pedro's land;[10] an endorsements to survey Pedro's property issued by ARPT Mariano,[11] MARO Jacinto[12] and PARO Linda Hermogino (Hermogino);[13] DAR Regional Director Renato Herrera's grant of Pablo's request for survey;[14]

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[8] *Id.* at 86-89.

[9] *Id.* at 109.

[10] *Id.* at 110.

[11] *Id.* at 111.

[12] *Id.* at 112.

[13] *Id.* at 113.

[14] *Id.* at 114.

the Approved Subdivision Plan of Lot 1306, Cad 332, Bocaue Cadastre;[15] and the accompanying Lot Data Computation for the land of Pedro Lazaro[16] and Emilia de Guzman.[17]

Private respondents argued that the June 1973 *Kasunduan sa Pamumuwisan* between Pablo and Pedro Lazaro showed that the former was the agricultural lessee of the latter. In January 1999, Pablo requested the MARO for authority to survey the property of Pedro pursuant to his EP Application over the land he was then tenanting. On 1 February 1999, Bocaue ARPT Mariano reported to Bocaue MARO Jacinto that, based on the former's investigation/ocular inspection, Pedro's 15,178 sq. m. property was covered by the Operation Land Transfer under Presidential Decree 27. Since Pablo was the actual tiller of the land, the ARPT recommended the grant of a Survey Authority and Approval as requested. This recommendation was endorsed by MARO Jacinto to PARO Hermogino, who in turn endorsed it to DAR Regional Director Renato Herrera. Director Herrera granted Pablo's request for a survey pursuant to the latter's EP application.

As indicated in the resulting Approved Subdivision Plan (of Lot 1306, Cad 332 Bocaue Cadastre),[18] it was based on the Original Survey of Lot 1306 in May 1960. The Lot Data Computation accompanying the Subdivision Plan denominated Emilia's lot as Lot 1302 with an area of 9,604.82 sq. m.,[19] while that of Pedro was Lot 1306 with an area of 15,171.85 sq. m.[20] The Subdivision Plan also showed that Lot 1306 was subdivided into Lot 1306-A (or Lot 4557) containing an area of 7,601 sq. m.; Lot 1306-B (or Lot 4558) which had 5,677 sq. m.; and Lot 1306-C (or Lot 4559) with 1,900 sq. m. It appears

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[15] *Id.* at 97, 115-117.

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

[17] *Id.* at 119.

[18] *Id.* at 97, 115-117.

[19] *Id.* at 119.

[20] *Id.* at 121.

that Lot 1306-B or Lot 4558 was further subdivided into Lot 4558-A with an area of 2,162 sq. m. and Lot 4558-B with an area of 3,508 sq. m. The contested lot is Lot 4558-A. Clearly, private respondents argued, OCT No. T-048-EP(M), EP No. 189669, was properly issued to Pablo for his 5,677 sq. m. lot in Biñang, which encompassed the contested 2,162 sq. m. lot.

After the parties filed their respective pleadings with the attached Affidavits of witnesses and other evidence, the PARAD issued a Decision[21] dated 26 February 2003 granting the Petition. Relying on the Tax Declarations in the name of Emilia, the PARAD noted that Emilia had owned a 1.5 ha. riceland in Biñang 1st, which she sold to petitioners. Meanwhile, the Rice and Corn Production Survey and the report of ARPT Mariano showed that the contested lot was actually being tilled by Renato de Guzman, the son of Mariano de Guzman, who was the registered tenant of Emilia. Thus, the PARAD concluded that in the EP issued in favor of Pablo, there were technical errors that encroached upon petitioners' property. The dispositive portion of the PARAD Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in the following manner:
>
> 1. Ordering the correction and cancellation of OCT No. T-048-EP in the name of Pablo Parulan;
> 2. Ordering the correction of the approved subdivision plan of Lot 1306; Cad. 322, Bocaue, Cadastre Cad-03-012347-AR;
> 3. Ordering the DAR to conduct the necessary subdivision survey of Lot 4558 in the presence of both party-claimants to coincide with the actual and real possession and status of actual claimants of the two adjacent lots;
> 4. Ordering the Register of Deeds of Guiginto, Bulacan, to effect the correction and cancellation of EP No. 048 and register of the correct EP that will be issued by the DAR covering the corrected lot.
>
> All other claims and counter claims by the parties are hereby dismissed for lack of merit.
>
> SO ORDERED.

[21] *Id.* at 143-153. The Decision was rendered by Provincial Adjudicator Toribio E. Ilao, Jr.

Private respondents appealed[22] the PARAD Decision to the DARAB.

On 22 February 2007, the DARAB issued a Decision[23] reversing the PARAD, to wit:

> WHEREFORE, premises considered, the appealed decision dated February 26, 2003 is hereby REVERSED and SET ASIDE and a new Judgment rendered:
>
> 1. DISMISSING the instant petition for correction and/or cancellation of OCT No. T-048-EP (EP No. 189669) for lack of merit;
> 2. DECLARING the lot in question as part and parcel of lot 1306 as surveyed for Pablo Parulan ("Annex I");
> 3. MAINTAINING and AFFIRMING the validity and integrity of OCT No. T-048-EP (EP No. 189669) in the name of the late Pablo Parulan;
> 4. ORDERING petitioners-appellees to vacate the premises in question and surrender the possession and cultivation thereof to herein private respondent heirs of the late Pablo Parulan. Moreover, petitioners-appellees are likewise ordered to remove the fence they have constructed on the lot in question at their own expense.
>
> SO ORDERED.

Petitioners filed a Motion for Reconsideration, but it was denied by the DARAB in its Resolution[24] dated 2 July 2007.

Undaunted, petitioners appealed the DARAB Decision and Resolution to the CA.

In its 16 April 2008 Decision,[25] the CA affirmed *in toto* the assailed Decision and Resolution of the DARAB.

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[22] Private respondents' appeal to the DARAB was docketed as DCN R-03-02-2318'00.

[23] The DARAB Decision was penned by Assistant Secretary/Vice Chairperson Augusto P. Quijano and concurred in by Nasser C. Pangandaman, Nestor R. Acosta and Narciso B. Nieto, *rollo*, pp. 64-72.

[24] *Rollo*, pp. 75-76.

[25] See note 1.

Petitioners filed a Motion for Reconsideration, which the appellate court denied in its 17 July 2008 Resolution.[26] Hence, petitioners filed with this Court the present Petition for Review under Rule 45.

The issue for resolution is whether the CA committed reversible error in affirming the DARAB's dismissal of petitioners' Petition for Cancellation and/or Correction of OCT No. T-048-EP (EP No. 189969).

We deny the Petition.

Under DAR Administrative Order No. 02, Series of 1994, emancipation patents may be cancelled by the PARAD or the DARAB for violations of agrarian laws, rules and regulations.[27] The same administrative order further states that "administrative corrections may include non-identification of spouse, correction of civil status, corrections of technical descriptions and other matters related to agrarian reform;"[28] and that the DARAB's decision "may include cancellation of registered EP/CLOA, reimbursement of lease rental as amortization to ARBs, reallocation of the land to qualified beneficiary, perpetual disqualification to become an ARB, and other ancillary matters related to the cancellation of the EP or CLOA."[29]

However, the DAR's issuance of an Emancipation Patent and the corresponding OCT covering the contested lot carries with it a presumption of regularity.[30] The Petition to correct/cancel Pablo's Emancipation Patent can prosper only if petitioners are able to present substantial evidence that a portion of their

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[26] *Rollo*, p. 47.

[27] DAR Administrative Order No. 02, Series of 1994 [Rules Governing the Correction and Cancellation of Unregistered Emancipation Patents (EPs), and Certificates of Land Ownership Awards (CLOAs) due to Unlawful Acts and Omissions or Breach of Obligations of Agrarian Reform Beneficiaries (ARBs) and for Other Causes], Part IV, A.

[28] *Id.* at Part IV, C.

[29] *Id.* at Part IV, D.

[30] RULES OF COURT, Rule 131, Sec. 3 (m).

lot was erroneously covered by the patent. Substantial evidence refers to such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[31]

As correctly held by the DARAB and the CA, petitioners have failed to adduce substantial evidence to establish that the contested lot was part of their property.

Petitioners claim that their predecessor-in-interest, Emilia, became the owner of the lot in question by virtue of acquisitive prescription. Acquisitive prescription requires public, peaceful, uninterrupted and adverse possession of the land in the concept of an owner.[32] To prove this, petitioners offered in evidence two tax declarations in the name of Emilia declaring her ownership of a 1.552 ha. riceland in Biñang 1st Bocaue, Bulacan for tax purposes.

However, the DARAB and the CA were not swayed by these tax declarations, and rightly so. As we held in *Republic v. dela Paz*,[33]

> Well settled is the rule that tax declarations and receipts are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the names of the applicants for registration or of their predecessors-in-interest does not necessarily prove ownership. They are merely indicia of a claim of ownership.

A further examination of the tax declarations further confirms their lack of probative value.

As observed by the CA, Tax Declaration No. 2386 for the year 1967, like the 1972 Deed of Sale between petitioners and Emilia, did not contain any technical description of the property. Hence, these documents fail to establish ownership over the contested lot by Emilia or petitioners.

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[31] *Ang Tibay v. The Court of Industrial Relations*, 69 Phil. 635 (1940).

[32] *Imuan v. Cereno*, G.R. No. 167995, 11 September 2009, 599 SCRA 423.

[33] G.R. No. 171631, 15 November 2010, 634 SCRA 610.

On the other hand, the Tax Declaration for the year 2000 with Property Index Number 020-04-006-03-010 showed that petitioners' land is bound on the east by lot 1306. Hence, the DARAB logically concluded that lot 1306, of which the contested lot is a part of, is outside the boundaries of petitioners' land. Notably too, both the DARAB and the CA found it curious that the 2000 Tax Declaration was still in the name of Emilia, considering that petitioners were supposed to have bought the land from her 27 years ago. If petitioners exercise ownership over the land since 1972 when they purchased the same, it is they who should have been paying the realty tax thereon.

Also, we do not lose sight of the fact that the 2000 Tax Declaration was made only after the subject EP/OCT had already been issued. A mere tax declaration cannot defeat a certificate of title.[34]

Petitioners also presented ARPT Mariano and MARO Jacinto to prove their claim that they were the owners of the contested lot. However, as noted by the PARAD, ARPT Mariano's report relied only on the allegations of petitioners, and her ocular inspection was made in the absence of private respondents. Meanwhile, MARO Jacinto never verified ARPT Mariano's ocular inspection.

In contrast to the evidence adduced by petitioners, the EP/OCT they sought to impugn contained a technical description of the metes and bounds of Pablo's property. Moreover, that technical description was based on a 1999 Approved Subdivision Plan following the original May 1960 Cadastral Survey of Lot 1306, Cad 332, Bocaue Cadastre. The process by which this subdivision plan came into existence was also established by the documents showing the series of endorsements by the various government officials who acted on Pablo's application and request.

We therefore affirm the CA ruling that the evidence presented by petitioners was insufficient to controvert the accuracy of the technical description of the land properly covered by the subject

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[34] *Hemedes v. Court of Appeals*, 374 Phil. 692 (1999).

EP/OCT. As pointed out by the DARAB, petitioners should have presented expert witnesses or initiated a relocation survey of Lot 1306 to establish the alleged errors in the technical description of the subject EP.

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit. The 16 April 2008 Decision and 17 July 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 100781 are **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 184528. April 25, 2012]

NILO OROPESA, *petitioner, vs.* **CIRILO OROPESA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; GUARDIANSHIP; NATURE AND PURPOSE.— In *Francisco v. Court of Appeals*, we laid out the nature and purpose of guardianship in the following wise: A guardianship is a trust relation of the most sacred character, in which one person, called a "guardian" acts for another called the "ward" whom the law regards as incapable of managing his own affairs. A guardianship is designed to further the ward's well-being, not that of the guardian. It is intended to preserve the ward's property, as well as to render any assistance that the ward may personally require. It has been stated that while custody involves immediate care and control, guardianship indicates not only those responsibilities, but those of one in *loco parentis* as well.

2. ID.; ID.; ID.; A FINDING THAT A PERSON IS INCOMPETENT SHOULD BE ANCHORED ON CLEAR, POSITIVE AND DEFINITE EVIDENCE.— In a guardianship proceeding, a court may appoint a qualified guardian if the prospective ward is proven to be a minor or an incompetent. A reading of Section 2, Rule 92 of the Rules of Court tells us that persons who, though of sound mind but by reason of age, disease, weak mind or other similar causes, are incapable of taking care of themselves and their property without outside aid are considered as incompetents who may properly be placed under guardianship. x x x We have held in the past that a "finding that a person is incompetent should be anchored on clear, positive and definite evidence." We consider that evidentiary standard unchanged and, thus, must be applied in the case at bar.

3. ID.; ID.; ID.; PETITIONER'S DOCUMENTARY PROOF DOES NOT IN ANY WAY RELATE TO HIS FATHER'S ALLEGED INCAPACITY TO MAKE DECISIONS TO HIMSELF.— Even if we were to overlook petitioner's procedural lapse in failing to make a formal offer of evidence, his documentary proof were comprised mainly of certificates of title over real properties registered in his, his father's and his sister's names as co-owners, tax declarations, and receipts showing payment of real estate taxes on their co-owned properties, which do not in any way relate to his father's alleged incapacity to make decisions for himself. The only medical document on record is the aforementioned "Report of Neuropsychological Screening" which was attached to the petition for guardianship but was never identified by any witness nor offered as evidence. In any event, the said report, as mentioned earlier, was ambivalent at best, for although the report had negative findings regarding memory lapses on the part of respondent, it also contained findings that supported the view that respondent on the average was indeed competent.

4. ID.; ID.; ID.; WHERE THE SANITY OF PERSON IS AT ISSUE, EXPERT OPINION IS NOT NECESSARY, THE OBSERVATIONS OF THE TRIAL JUDGE COUPLED WITH EVIDENCE ESTABLISHING THE PERSON'S STATE OF MENTAL SANITY WILL SUFFICE.— In an analogous guardianship case wherein the soundness of mind of the proposed ward was at issue, we had the occasion to rule

that "where the sanity of a person is at issue, expert opinion is not necessary [and that] the observations of the trial judge coupled with evidence establishing the person's state of mental sanity will suffice." Thus, it is significant that in its Order dated November 14, 2006 which denied petitioner's motion for reconsideration on the trial court's unfavorable September 27, 2006 ruling, the trial court highlighted the fatal role that petitioner's own documentary evidence played in disproving its case and, likewise, the trial court made known its own observation of respondent's physical and mental state.

5. REMEDIAL LAW; CIVIL PROCEDURE; DEMURRER TO EVIDENCE; THE APPELLATE COURT'S GRANT OF RESPONDENT'S DEMURRER TO EVIDENCE IS PROPER UNDER THE CIRCUMSTANCES OBTAINING IN CASE AT BAR.— A demurrer to evidence is defined as "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue." We have also held that a demurrer to evidence "authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part, as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought." There was no error on the part of the trial court when it dismissed the petition for guardianship without first requiring respondent to present his evidence precisely because the effect of granting a demurrer to evidence other than dismissing a cause of action is, evidently, to preclude a defendant from presenting his evidence since, upon the facts and the law, the plaintiff has shown no right to relief.

APPEARANCES OF COUNSEL

Paras & Manlapaz Lawyers for petitioner.
Adaza Adaza & Adaza for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure of the Decision[1] dated February 29, 2008, as well as the Resolution[2] dated September 16, 2008, both rendered by the Court of Appeals in CA-G.R. CV No. 88449, entitled "*NILO OROPESA vs. CIRILO OROPESA*." The Court of Appeals' issuances affirmed the Order[3] dated September 27, 2006 and the Order[4] dated November 14, 2006 issued by the Regional Trial Court (RTC) of Parañaque City, Branch 260 in SP. Proc. Case No. 04-0016, which dismissed petitioner Nilo Oropesa's petition for guardianship over the properties of his father, respondent Cirilo Oropesa (a widower), and denied petitioner's motion for reconsideration thereof, respectively.

The facts of this case, as summed in the assailed Decision, follow:

> On January 23, 2004, the (petitioner) filed with the Regional Trial Court of Parañaque City, a petition for him and a certain Ms. Louie Ginez to be appointed as guardians over the property of his father, the (respondent) Cirilo Oropesa. The case was docketed as *SP Proc. No. 04-0016* and raffled off to Branch 260.
>
> In the said petition, it is alleged among others that the (respondent) has been afflicted with several maladies and has been sickly for over ten (10) years already having suffered a stroke on April 1, 2003 and June 1, 2003, that his judgment and memory [were] impaired and such has been evident after his hospitalization; that even before his stroke, the (respondent) was observed to have had lapses in memory and judgment, showing signs of failure to manage his property properly; that due to his age and medical condition, he cannot, without outside aid, manage his property wisely, and has become an easy

[1] *Rollo*, pp. 72-83; penned by Associate Justice Amelita G. Tolentino with Associate Justices Lucenito N. Tagle and Agustin S. Dizon, concurring.

[2] *Id.* at 85-86.

[3] *Id.* at 457-460.

[4] *Id.* at 468-469.

prey for deceit and exploitation by people around him, particularly Ms. Ma. Luisa Agamata, his girlfriend.

In an Order dated January 29, 2004, the presiding judge of the court *a quo* set the case for hearing, and directed the court social worker to conduct a social case study and submit a report thereon.

Pursuant to the abovementioned order, the Court Social Worker conducted her social case study, interviewing the (petitioner) and his witnesses. The Court Social Worker subsequently submitted her report but without any finding on the (respondent) who refused to see and talk to the social worker.

On July 6, 2004, the (respondent) filed his Opposition to the petition for guardianship. On August 3, 2004, the (respondent) filed his Supplemental Opposition.

Thereafter, the (petitioner) presented his evidence which consists of his testimony, and that of his sister Gianina Oropesa Bennett, and the (respondent's) former nurse, Ms. Alma Altaya.

After presenting evidence, the (petitioner) filed a manifestation dated May 29, 2006 resting his case. The (petitioner) failed to file his written formal offer of evidence.

Thus, the (respondent) filed his "Omnibus Motion (1) to Declare the petitioner to have waived the presentation of his Offer of Exhibits and the presentation of his Evidence Closed since they were not formally offered; (2) To Expunge the Documents of the Petitioner from the Record; and (3) To Grant leave to the Oppositor to File Demurrer to Evidence.

In an Order dated July 14, 2006, the court *a quo* granted the (respondent's) Omnibus Motion. Thereafter, the (respondent) then filed his Demurrer to Evidence dated July 23, 2006.[5] (Citations omitted.)

The trial court granted respondent's demurrer to evidence in an Order dated September 27, 2006. The dispositive portion of which reads:

WHEREFORE, considering that the petitioner has failed to provide sufficient evidence to establish that Gen. Cirilo O. Oropesa is

[5] *Id.* at 73-75.

incompetent to run his personal affairs and to administer his properties, Oppositor's Demurrer to Evidence is GRANTED, and the case is DISMISSED.[6]

Petitioner moved for reconsideration but this was denied by the trial court in an Order dated November 14, 2006, the dispositive portion of which states:

WHEREFORE, considering that the Court record shows that petitioner-movant has failed to provide sufficient documentary and testimonial evidence to establish that Gen. Cirilo Oropesa is incompetent to run his personal affairs and to administer his properties, the Court hereby affirms its earlier Order dated 27 September 2006.

Accordingly, petitioner's Motion for Reconsideration is DENIED for lack of merit.[7]

Unperturbed, petitioner elevated the case to the Court of Appeals but his appeal was dismissed through the now assailed Decision dated February 29, 2008, the dispositive portion of which reads:

WHEREFORE, premises considered the instant appeal is DISMISSED. The assailed orders of the court *a quo* dated September 27, 2006 and November 14, 2006 are AFFIRMED.[8]

A motion for reconsideration was filed by petitioner but this was denied by the Court of Appeals in the similarly assailed Resolution dated September 16, 2008. Hence, the instant petition was filed.

Petitioner submits the following question for consideration by this Court:

WHETHER RESPONDENT IS CONSIDERED AN "INCOMPETENT" PERSON AS DEFINED UNDER SECTION 2, RULE 92 OF THE RULES OF COURT WHO SHOULD BE PLACED UNDER GUARDIANSHIP[9]

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[6] *Id.* at 460.

[7] *Id.* at 469.

[8] *Id.* at 82.

[9] *Id.* at 667.

After considering the evidence and pleadings on record, we find the petition to be without merit.

Petitioner comes before the Court arguing that the assailed rulings of the Court of Appeals should be set aside as it allegedly committed grave and reversible error when it affirmed the erroneous decision of the trial court which purportedly disregarded the overwhelming evidence presented by him showing respondent's incompetence.

In *Francisco v. Court of Appeals*,[10] we laid out the nature and purpose of guardianship in the following wise:

> A guardianship is a trust relation of the most sacred character, in which one person, called a "guardian" acts for another called the "ward" whom the law regards as incapable of managing his own affairs. A guardianship is designed to further the ward's well-being, not that of the guardian. It is intended to preserve the ward's property, as well as to render any assistance that the ward may personally require. It has been stated that while custody involves immediate care and control, guardianship indicates not only those responsibilities, but those of one in *loco parentis* as well.[11]

In a guardianship proceeding, a court may appoint a qualified guardian if the prospective ward is proven to be a minor or an incompetent.

A reading of Section 2, Rule 92 of the Rules of Court tells us that persons who, though of sound mind but by reason of age, disease, weak mind or other similar causes, are incapable of taking care of themselves and their property without outside aid are considered as incompetents who may properly be placed under guardianship. The full text of the said provision reads:

> Sec. 2. *Meaning of the word "incompetent."* — Under this rule, the word "incompetent" includes persons suffering the penalty of civil interdiction or who are hospitalized lepers, prodigals, deaf and dumb who are unable to read and write, those who are of unsound

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[10] 212 Phil. 346 (1984).

[11] *Id.* at 352.

mind, even though they have lucid intervals, and persons not being of unsound mind, but by reason of age, disease, weak mind, and other similar causes, cannot, without outside aid, take care of themselves and manage their property, becoming thereby an easy prey for deceit and exploitation.

We have held in the past that a "finding that a person is incompetent should be anchored on clear, positive and definite evidence."[12] We consider that evidentiary standard unchanged and, thus, must be applied in the case at bar.

In support of his contention that respondent is incompetent and, therefore, should be placed in guardianship, petitioner raises in his Memorandum[13] the following factual matters:

a. Respondent has been afflicted with several maladies and has been sickly for over ten (10) years already;

b. During the time that respondent was hospitalized at the St. Luke's Medical Center after his stroke, he purportedly requested one of his former colleagues who was visiting him to file a loan application with the Armed Forces of the Philippines Savings and Loan Association, Inc. (AFPSLAI) for payment of his hospital bills, when, as far as his children knew, he had substantial amounts of money in various banks sufficient to cover his medical expenses;

c. Respondent's residence allegedly has been left dilapidated due to lack of care and management;

d. The realty taxes for respondent's various properties remain unpaid and therefore petitioner and his sister were supposedly compelled to pay the necessary taxes;

e. Respondent allegedly instructed petitioner to sell his Nissan Exalta car for the reason that the former would be purchasing another vehicle, but when the car had been sold, respondent did not procure another vehicle and refused to account for the money earned from the sale of the old car;

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[12] *Vda. de Baluyut v. Luciano*, 164 Phil. 55, 70 (1976), citing *Yangco v. Court of First Instance of Manila*, 29 Phil. 183, 190 (1915).

[13] *Rollo*, pp. 653-682.

f. Respondent withdrew at least $75,000.00 from a joint account under his name and his daughter's without the latter's knowledge or consent;

g. There was purportedly one occasion where respondent took a kitchen knife to stab himself upon the "orders" of his girlfriend during one of their fights;

h. Respondent continuously allows his girlfriend to ransack his house of groceries and furniture, despite protests from his children.[14]

Respondent denied the allegations made by petitioner and cited petitioner's lack of material evidence to support his claims. According to respondent, petitioner did not present any relevant documentary or testimonial evidence that would attest to the veracity of his assertion that respondent is incompetent largely due to his alleged deteriorating medical and mental condition. In fact, respondent points out that the only medical document presented by petitioner proves that he is indeed competent to run his personal affairs and administer his properties. Portions of the said document, entitled "Report of Neuropsychological Screening,"[15] were quoted by respondent in his Memorandum[16] to illustrate that said report in fact favored respondent's claim of competence, to wit:

General Oropesa spoke fluently in English and Filipino, he enjoyed and participated meaningfully in conversations and could be quite elaborate in his responses on many of the test items. He spoke in a clear voice and his articulation was generally comprehensible. x x x.

x x x x x x x x x

General Oropesa performed in the average range on most of the domains that were tested. He was able to correctly perform mental calculations and keep track of number sequences on a task of attention. He did BEST in visuo-constructional tasks where he had to copy

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[14] *Id.* at 659.

[15] Records, pp. 10-13.

[16] *Rollo,* pp. 684-705.

geometrical designs using tiles. Likewise, he was able to render and read the correct time on the Clock Drawing Test. x x x.

x x x x x x x x x

x x x Reasoning abilities were generally intact as he was able to suggest effective solutions to problem situations. x x x.[17]

With the failure of petitioner to formally offer his documentary evidence, his proof of his father's incompetence consisted purely of testimonies given by himself and his sister (who were claiming interest in their father's real and personal properties) and their father's former caregiver (who admitted to be acting under their direction). These testimonies, which did not include any expert medical testimony, were insufficient to convince the trial court of petitioner's cause of action and instead lead it to grant the demurrer to evidence that was filed by respondent.

Even if we were to overlook petitioner's procedural lapse in failing to make a formal offer of evidence, his documentary proof were comprised mainly of certificates of title over real properties registered in his, his father's and his sister's names as co-owners, tax declarations, and receipts showing payment of real estate taxes on their co-owned properties, which do not in any way relate to his father's alleged incapacity to make decisions for himself. The only medical document on record is the aforementioned "Report of Neuropsychological Screening" which was attached to the petition for guardianship but was never identified by any witness nor offered as evidence. In any event, the said report, as mentioned earlier, was ambivalent at best, for although the report had negative findings regarding memory lapses on the part of respondent, it also contained findings that supported the view that respondent on the average was indeed competent.

In an analogous guardianship case wherein the soundness of mind of the proposed ward was at issue, we had the occasion to rule that "where the sanity of a person is at issue, expert opinion is not necessary [and that] the observations of the trial

[17] Records, pp. 11-12.

judge coupled with evidence establishing the person's state of mental sanity will suffice."[18]

Thus, it is significant that in its Order dated November 14, 2006 which denied petitioner's motion for reconsideration on the trial court's unfavorable September 27, 2006 ruling, the trial court highlighted the fatal role that petitioner's own documentary evidence played in disproving its case and, likewise, the trial court made known its own observation of respondent's physical and mental state, to wit:

> The Court noted the absence of any testimony of a medical expert which states that Gen. Cirilo O. Oropesa does not have the mental, emotional, and physical capacity to manage his own affairs. On the contrary, Oppositor's evidence includes a Neuropsychological Screening Report which states that Gen. Oropesa, (1) performs on the average range in most of the domains that were tested; (2) is capable of mental calculations; and (3) can provide solutions to problem situations. The Report concludes that Gen. Oropesa possesses intact cognitive functioning, except for mildly impaired abilities in memory, reasoning and orientation. **It is the observation of the Court that oppositor is still sharp, alert and able.**[19] (Citation omitted; emphasis supplied.)

It is axiomatic that, as a general rule, "only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts."[20] We only take cognizance of questions of fact in certain exceptional circumstances;[21] however, we find them to be absent in the instant case. It is also long settled that "factual findings of the trial court, when affirmed by the Court of Appeals, will not be disturbed by this Court. As a rule, such findings by the lower courts are entitled to great

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[18] *Hernandez v. San Juan-Santos*, G.R. Nos. 166470 and 169217, August 7, 2009, 595 SCRA 464, 473-474.

[19] *Rollo*, p. 468.

[20] *Office of the Ombudsman v. Racho*, G.R. No. 185685, January 31, 2011, 641 SCRA 148, 155.

[21] *Heirs of Jose Lim v. Lim*, G.R. No. 172690, March 3, 2010, 614 SCRA 141, 147.

weight and respect, and are deemed final and conclusive on this Court when supported by the evidence on record."[22] We therefore adopt the factual findings of the lower court and the Court of Appeals and rule that the grant of respondent's demurrer to evidence was proper under the circumstances obtaining in the case at bar.

Section 1, Rule 33 of the Rules of Court provides:

> Section 1. *Demurrer to evidence*. — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

A demurrer to evidence is defined as "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue."[23] We have also held that a demurrer to evidence "authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part, as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought."[24]

There was no error on the part of the trial court when it dismissed the petition for guardianship without first requiring respondent to present his evidence precisely because the effect of granting a demurrer to evidence other than dismissing a cause of action is, evidently, to preclude a defendant from presenting his evidence since, upon the facts and the law, the plaintiff has shown no right to relief.

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[22] *Maxwell Heavy Equipment Corporation v. Yu*, G.R. No. 179395, December 15, 2010, 638 SCRA 653, 658.

[23] *Republic v. Estate of Alfonso Lim, Sr.*, G.R. No. 164800, July 22, 2009, 593 SCRA 404, 422.

[24] *Uy v. Chua*, G.R. No. 183965, September 18, 2009, 600 SCRA 806, 822.

WHEREFORE, premises considered, the petition is hereby **DENIED.** The assailed Decision dated February 29, 2008 as well as the Resolution dated September 16, 2008 of the Court of Appeals in CA-G.R. CV No. 88449 are **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185829. April 25, 2012]

ARMANDO ALILING, *petitioner, vs.* **JOSE B. FELICIANO, MANUEL F. SAN MATEO III, JOSEPH R. LARIOSA, and WIDE WIDE WORLD EXPRESS CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT HAS, WHEN A CASE IS ON APPEAL, THE AUTHORITY TO REVIEW MATTERS NOT SPECIFICALLY RAISED OR ASSIGNED AS ERROR IF THEIR CONSIDERATION IS NECESSARY IN REACHING A JUST CONCLUSION OF THE CASE.— On a procedural matter, petitioner Aliling argues that WWWEC, not having appealed from the judgment of CA which declared Aliling as a regular employee from the time he signed the employment contract, is now precluded from questioning the appellate court's determination as to the nature of his employment. Petitioner errs. The Court has, when a case is on appeal, the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case. We said as much in *Sociedad Europea de*

Financiacion, SA v. Court of Appeals, "It is axiomatic that an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case."

2. ID.; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE LABOR ARBITER, WHEN AFFIRMED BY THE NATIONAL LABOR RELATIONS COMMISSION AND THE COURT OF APPEALS ARE BINDING ON THE SUPREME COURT, UNLESS PATENTLY ERRONEOUS. — To repeat, the labor arbiter, NLRC and the CA are agreed, on the basis of documentary evidence adduced, that respondent WWWEC did not inform petitioner Aliling of the reasonable standards by which his probation would be measured against at the time of his engagement. The Court is loathed to interfere with this factual determination. As We have held: **Settled is the rule that the findings of the Labor Arbiter, when affirmed by the NLRC and the Court of Appeals, are binding on the Supreme Court, unless patently erroneous.** It is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below. The jurisdiction of this Court in a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PROBATIONARY EMPLOYMENT; PETITIONER IS CONSIDERED A REGULAR EMPLOYEE BY FORCE OF LAW SINCE HE WAS NOT APPRISED OF THE REASONABLE STANDARDS FOR HIS REGULARIZATION. — WWWEC, excepts on the argument that it put Aliling on notice that he would be evaluated on the 3rd and 5th months of his probationary employment. To WWWEC, its efforts translate to sufficient compliance with the requirement that a probationary worker be apprised of the reasonable standards for his regularization. WWWEC invokes the ensuing holding in *Alcira v. National Labor Relations Commission* to support its case. x x x WWWEC's contention is untenable. *Alcira* is cast under a

different factual setting. There, the labor arbiter, the NLRC, the CA, and even finally this Court were one in their findings that the employee concerned knew, having been duly informed during his engagement, of the standards for becoming a regular employee. This is in stark contrast to the instant case where the element of being informed of the regularizing standards does not obtain. As such, *Alcira* cannot be made to apply to the instant case. To note, the June 2, 2004 letter-offer itself states that the regularization standards or the performance norms to be used are **still to be agreed upon by Aliling and his supervisor**. WWWEC has failed to prove that an agreement as regards thereto has been reached. Clearly then, there were actually no performance standards to speak of. And lest it be overlooked, Aliling was assigned to GX trucking sales, an activity entirely different to the Seafreight Sales he was originally hired and trained for. Thus, at the time of his engagement, the standards relative to his assignment with GX sales could not have plausibly been communicated to him as he was under Seafreight Sales. Even for this reason alone, the conclusion reached in *Alcira* is of little relevant to the instant case. Based on the facts established in this case in light of extant jurisprudence, the CA's holding as to the kind of employment petitioner enjoyed is correct. So was the NLRC ruling, affirmatory of that of the labor arbiter. In the final analysis, one common thread runs through the holding of the labor arbiter, the NLRC and the CA, *i.e.*, petitioner Aliling, albeit hired from management's standpoint as a probationary employee, was deemed a regular employee by force of law.

4. ID.; ID.; ID.; ID.; THE IMPLEMENTING RULES OF BOOK VI, RULE VIII-A OF THE LABOR CODE SPECIFICALLY REQUIRES THE EMPLOYER TO INFORM THE PROBATIONARY EMPLOYEE OF THE REASONABLE STANDARDS, AT THE TIME OF ENGAGEMENT, NOT AT ANYTIME LATER.— Contrary to respondents' contention, San Mateo's email cannot support their allegation on Aliling being informed of the standards for his continued employment, such as the sales quota, **at the time of his engagement**. As it were, the email message was sent to Aliling more than a month after he signed his employment contract with WWWEC. The aforequoted Section 6 of the Implementing Rules of Book VI, Rule VIII-A of the Code specifically requires the employer to inform the probationary employee of such reasonable standards

at the time of his engagement, not at any time later; else, the latter shall be considered a regular employee. Thus, pursuant to the explicit provision of Article 281 of the Labor Code, Section 6(d) of the Implementing Rules of Book VI, Rule VIII-A of the Labor Code and settled jurisprudence, petitioner Aliling is deemed a regular employee as of June 11, 2004, the date of his employment contract.

5. ID.; ID.; ID.; PETITIONER WAS ILLEGALLY DISMISSED. — To repeat, the labor arbiter, NLRC and the CA are agreed, on the basis of documentary evidence adduced, that respondent WWWEC did not inform petitioner Aliling of the reasonable standards by which his probation would be measured against at the time of his engagement. The Court is loathed to interfere with this factual determination. As We have held: **Settled is the rule that the findings of the Labor Arbiter, when affirmed by the NLRC and the Court of Appeals, are binding on the Supreme Court, unless patently erroneous.** It is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below. The jurisdiction of this Court in a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts.

6. ID.; ID.; ID.; IN ORDER FOR THE QUOTA IMPOSED TO BE CONSIDERED A VALID PRODUCTIVITY STANDARD AND THEREBY VALIDATE DISMISSAL FOR GROSS INEFFICIENCY OR GROSS NEGLECT OF DUTY, MANAGEMENT'S PREROGATIVE OF FIXING THE QUOTA MUST BE EXERCISED IN GOOD FAITH FOR THE ADVANCEMENT OF ITS INTEREST.— An employee's failure to meet sales or work quotas falls under the concept of gross inefficiency, which in turn is analogous to gross neglect of duty that is a just cause for dismissal under Article 282 of the Code. However, in order for the quota imposed to be considered a valid productivity standard and thereby validate a dismissal, management's prerogative of fixing the quota must be exercised in good faith for the advancement of its interest. The duty to prove good faith, however, rests with WWWEC as part of its burden to show that the dismissal was for a just cause. WWWEC must show that such quota was

imposed in good faith. This WWWEC failed to do, perceptibly because it could not. The fact of the matter is that the alleged imposition of the quota was a desperate attempt to lend a semblance of validity to Aliling's illegal dismissal. It must be stressed that even WWWEC's sales manager, Eve Amador (Amador), in an internal e-mail to San Mateo, hedged on whether petitioner performed below or above expectation: Could not quantify level of performance as he as was tasked to handle a new product (GX). Revenue report is not yet administered by IT on a month-to-month basis. Moreover, this in a way is an experimental activity. Practically you have a close monitoring with Armand with regards to his performance. Your assessment of him would be more accurate. Being an experimental activity and having been launched for the first time, the sales of GX services could not be reasonably quantified. This would explain why Amador implied in her email that other bases besides sales figures will be used to determine Aliling's performance. And yet, despite such a neutral observation, Aliling was still dismissed for his dismal sales of GX services. In any event, WWWEC failed to demonstrate the reasonableness and the *bona fides* on the quota imposition.

7. ID.; ID.; ID.; WHILE PROBATIONARY EMPLOYEES DO NOT ENJOY PERMANENT STATUS, THEY ENJOY THE CONSTITUTIONAL PROTECTION OF SECURITY OF TENURE.— Employees must be reminded that while probationary employees do not enjoy permanent status, they enjoy the constitutional protection of security of tenure. They can only be terminated for cause or when they otherwise fail to meet the reasonable standards made known to them by the employer at the time of their engagement. Respondent WWWEC miserably failed to prove the termination of petitioner was for a just cause nor was there substantial evidence to demonstrate the standards were made known to the latter at the time of his engagement. Hence, petitioner's right to security of tenure was breached.

8. ID.; ID.; ID.; DUE PROCESS IN TERMINATION CASES; NOT PROPERLY OBSERVED IN CASE AT BAR.— The first and second notice requirements have not been properly observed, thus tainting petitioner's dismissal with illegality. The adverted memo dated September 20, 2004 of WWWEC supposedly informing Aliling of the likelihood of his termination

and directing him to account for his failure to meet the expected job performance would have had constituted the "charge sheet," sufficient to answer for the first notice requirement, but for the fact that there is no proof such letter had been sent to and received by him. In fact, in his December 13, 2004 Complainant's Reply Affidavit, Aliling goes on to tag such letter/memorandum as fabrication. WWWEC did not adduce proof to show that a copy of the letter was duly served upon Aliling. Clearly enough, WWWEC did not comply with the first notice requirement. Neither was there compliance with the imperatives of a hearing or conference. The Court need not dwell at length on this particular breach of the due procedural requirement. Suffice it to point out that the record is devoid of any showing of a hearing or conference having been conducted. On the contrary, in its October 1, 2004 letter to Aliling, or barely five (5) days after it served the notice of termination, WWWEC acknowledged that it was still evaluating his case. And the written notice of termination itself did not indicate all the circumstances involving the charge to justify severance of employment.

9. ID.; ID.; ID.; RIGHTS OF ILLEGALLY DISMISSED EMPLOYEES; PETITIONER IS ENTITLED TO BACKWAGES AND SEPARATION PAY IN LIEU OF REINSTATEMENT ON THE GROUND OF STRAINED RELATIONSHIP.— Aliling cannot be rightfully considered as a mere probationary employee. Accordingly, the probationary period set in the contract of employment dated June 11, 2004 was of no moment. In net effect, as of that date June 11, 2004, Aliling became part of the WWWEC organization as a regular employee of the company without a fixed term of employment. Thus, he is entitled to backwages reckoned from the time he was illegally dismissed on October 6, 2004, with a PhP 17,300.00 monthly salary, until the finality of this Decision. x x x Additionally, Aliling is entitled to separation pay in lieu of reinstatement on the ground of **strained relationship**. x x x As the CA correctly observed, "To reinstate petitioner [Aliling] would only create an atmosphere of antagonism and distrust, more so that he had only a short stint with respondent company." The Court need not belabor the fact that the patent animosity that had developed between employer and employee generated what may be considered as the arbitrary dismissal of the petitioner. Following the pronouncements of this Court *Sagales*

v. Rustan's Commercial Corporation, the computation of separation pay in lieu of reinstatement includes the period for which backwages were awarded: Thus, in lieu of reinstatement, it is but proper to award petitioner **separation pay computed at one-month salary for every year of service**, **a fraction of at least six (6) months considered as one whole year. In the computation of separation pay, the period where backwages are awarded must be included**. Thus, Aliling is entitled to both backwages and separation pay (in lieu of reinstatement) in the amount of one (1) month's salary for every year of service, that is, from June 11, 2004 (date of employment contract) until the finality of this decision with a fraction of a year of at least six (6) months to be considered as one (1) whole year. As determined by the labor arbiter, the basis for the computation of backwages and separation pay will be Aliling's monthly salary at PhP 17,300. Finally, Aliling is entitled to an award of PhP 30,000 as nominal damages in consonance with prevailing jurisprudence for violation of due process.

10. ID.; ID.; ID.; PETITIONER IS NOT ENTITLED TO MORAL AND EXEMPLARY DAMAGES ABSENT ANY CLEAR AND CONVINCING EVIDENCE TO SHOW BAD FAITH ON THE PART OF THE EMPLOYER.— In alleging that WWWEC acted in bad faith, Aliling has the burden of proof to present evidence in support of his claim, as ruled in *Culili v. Eastern Telecommunications Philippines, Inc.*: x x x Similarly, Aliling has failed to overcome such burden to prove bad faith on the part of WWWEC. Aliling has not presented any clear and convincing evidence to show bad faith. The fact that he was illegally dismissed is insufficient to prove bad faith. Thus, the CA correctly ruled that "[t]here was no sufficient showing of bad faith or abuse of management prerogatives in the personal action taken against petitioner."

11. ID.; ID.; ID.; THE OFFICERS OF THE COMPANY CANNOT BE HELD JOINTLY AND SEVERALLY LIABLE WITH THE COMPANY.— A review of the facts of the case does not reveal ample and satisfactory proof that respondent officers of WWEC acted in bad faith or with malice in effecting the termination of petitioner Aliling. Even assuming *arguendo* that the actions of WWWEC are ill-conceived and erroneous, respondent officers cannot be held jointly and

solidarily with it. Hence, the ruling on the joint and solidary liability of individual respondents must be recalled.

12. ID.; ID.; ID.; PETITIONER IS ENTITLED TO ATTORNEY'S FEES AND LEGAL INTEREST.— Petitioner Aliling is also entitled to attorney's fees in the amount of ten percent (10%) of his total monetary award, having been forced to litigate in order to seek redress of his grievances, pursuant to Article 111 of the Labor Code and following our ruling in *Exodus International Construction Corporation v. Biscocho*. x x x Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of 6% per annum from October 6, 2004 (date of nomination) until fully paid.

APPEARANCES OF COUNSEL

Yulo Aliling Pascua & Zuniga for petitioner.
Fernandez & Kasilag-Villanueva for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 assails and seeks to set aside the July 3, 2008 Decision[1] and December 15, 2008 Resolution[2] of the Court of Appeals (CA), in CA-G.R. SP No. 101309, entitled *Armando Aliling v. National Labor Relations Commission, Wide Wide World Express Corporation, Jose B. Feliciano, Manuel F. San Mateo III and Joseph R. Lariosa*. The assailed issuances modified the Resolutions dated May 31, 2007[3] and August 31, 2007[4] rendered by the National

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[1] *Rollo*, pp. 22-31. Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Josefina Guevara-Salonga and Normandie B. Pizarro.

[2] *Id.* at 33-34.

[3] CA *rollo*, pp. 38-48.

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

Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-10-11166-2004, affirming the Decision dated April 25, 2006[5] of the Labor Arbiter.

The Facts

Via a letter dated June 2, 2004,[6] respondent Wide Wide World Express Corporation (WWWEC) offered to employ petitioner Armando Aliling (Aliling) as "*Account Executive (Seafreight Sales)*," with the following compensation package: a monthly salary of PhP 13,000, transportation allowance of PhP 3,000, clothing allowance of PhP 800, cost of living allowance of PhP 500, each payable on a per month basis and a 14th month pay depending on the profitability and availability of financial resources of the company. The offer came with a six (6)-month probation period condition with this express caveat: "*Performance during [sic] probationary period shall be made as basis for confirmation to Regular or Permanent Status.*"

On June 11, 2004, Aliling and WWWEC inked an *Employment Contract*[7] under the following terms, among others:

- Conversion to regular status shall be determined on the basis of work performance; and
- Employment services may, at any time, be terminated for just cause or in accordance with the standards defined at the time of engagement.[8]

Training then started. However, instead of a Seafreight Sale assignment, WWWEC asked Aliling to handle Ground Express (GX), a new company product launched on June 18, 2004 involving domestic cargo forwarding service for Luzon. Marketing this product and finding daily contracts for it formed the core of Aliling's new assignment.

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[5] *Id.* at 135-143.

[6] *Id.* at 69-70.

[7] *Id.* at 71-74.

[8] *Id.* at 71.

Barely a month after, Manuel F. San Mateo III (San Mateo), WWWEC Sales and Marketing Director, emailed Aliling[9] to express dissatisfaction with the latter's performance, thus:

Armand,

My expectations is [sic] that GX Shuttles should be 80% full by the 3rd week (August 5) after launch (July 15). Pls. make that happen. It has been more than a month since you came in. I am expecting sales to be pumping in by now. Thanks.

Nonong

Thereafter, in a letter of September 25, 2004,[10] Joseph R. Lariosa (Lariosa), Human Resources Manager of WWWEC, asked Aliling to report to the Human Resources Department to explain his absence taken without leave from September 20, 2004.

Aliling responded two days later. He denied being absent on the days in question, attaching to his reply-letter[11] a copy of his timesheet[12] which showed that he worked from September 20 to 24, 2004. Aliling's explanation came with a query regarding the withholding of his salary corresponding to September 11 to 25, 2004.

In a separate letter dated September 27, 2004,[13] Aliling wrote San Mateo stating: "Pursuant to your instruction on September 20, 2004, I hereby tender my resignation effective October 15, 2004." While WWWEC took no action on his tender, Aliling nonetheless demanded reinstatement and a written apology, claiming in a subsequent letter dated October 1, 2004[14] to management that San Mateo had forced him to resign.

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[9] *Id.* at 109.

[10] *Id.* at 74.

[11] Letter dated Sept. 27, 2004; *id.* at 75.

[12] *Id.* at 76.

[13] *Id.* at 77.

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

Lariosa's response-letter of October 1, 2004,[15] informed Aliling that his case was **still in the process of being evaluated**. On October 6, 2004,[16] Lariosa again wrote, this time to advise Aliling of the termination of his services effective as of that date owing to his "*non-satisfactory performance*" during his probationary period. Records show that Aliling, for the period indicated, was paid his outstanding salary which consisted of:

PhP 4,988.18 (salary for the September 25, 2004 payroll)
1,987.28 (salary for 4 days in October 2004)

PhP 6,975.46 Total

Earlier, however, or on October 4, 2004, Aliling filed a Complaint[17] for illegal dismissal due to forced resignation, nonpayment of salaries as well as damages with the NLRC against WWWEC. Appended to the complaint was Aliling's Affidavit dated November 12, 2004,[18] in which he stated: "*5. At the time of my engagement, respondents did not make known to me the standards under which I will qualify as a regular employee*."

Refuting Aliling's basic posture, WWWEC stated in its Position Paper dated November 22, 2004[19] that, in addition to the letter-offer and employment contract adverted to, WWWEC and Aliling have signed a letter of appointment[20] on June 11, 2004 containing the following terms of engagement:

Additionally, **upon the effectivity of your probation, you and your immediate superior are required to jointly define your objectives** compared with the job requirements of the position. Based on the pre-agreed objectives**, your performance shall be reviewed on the 3rd month to assess your competence and work attitude. The 5th**

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[15] *Id.* at 81.

[16] *Id.* at 83.

[17] *Id.* at 51.

[18] *Id.* at 85-89.

[19] *Id.* at 90-101.

[20] *Id.* at 105.

month Performance Appraisal shall be the basis in elevating or confirming your employment status from Probationary to Regular.

Failure to meet the job requirements during the probation stage means that your services may be terminated without prior notice and without recourse to separation pay.

WWWEC also attached to its Position Paper a memo dated September 20, 2004[21] in which San Mateo asked Aliling to explain why he should not be terminated for failure to meet the expected job performance, considering that the load factor for the GX Shuttles for the period July to September was only 0.18% as opposed to the allegedly agreed upon load of 80% targeted for August 5, 2004. According to WWWEC, Aliling, instead of explaining himself, simply submitted a resignation letter.

In a Reply-Affidavit dated December 13, 2004,[22] Aliling denied having received a copy of San Mateo's September 20, 2004 letter.

Issues having been joined, the Labor Arbiter issued on April 25, 2006[23] a Decision declaring Aliling's termination as unjustified. In its pertinent parts, the decision reads:

The grounds upon which complainant's dismissal was based did not conform not only the standard but also the compliance required under Article 281 of the Labor Code, Necessarily, complainant's termination is not justified for failure to comply with the mandate the law requires. Respondents should be ordered **to pay salaries corresponding to the unexpired portion of the contract of employment** and all other benefits amounting to a total of THIRTY FIVE THOUSAND EIGHT HUNDRED ELEVEN PESOS (₱35,811.00) covering the period from October 6 to December 7, 2004, computed as follows:

Unexpired Portion of the Contract:

Basic Salary	₱13,000.00
Transportation	3,000.00

[21] *Id.* at 113.

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

[23] *Id.* at 135-143.

Clothing Allowance		800.00
ECOLA		500.00
		₱17,300.00
10/06/04 – 12/07/04		
₱17,300.00 x 2.7 mos.	**=**	**₱35,811.00**

Complainant's 13th month pay proportionately for 2004 was not shown to have been paid to complainant, respondent be made liable to him therefore computed at SIX THOUSAND FIVE HUNDRED THIRTY TWO PESOS AND 50/100 (₱6,532.50).

For engaging the services of counsel to protect his interest, complainant is likewise entitled to a 10% attorney's fees of the judgment amount. Such other claims for lack of basis sufficient to support for their grant are unwarranted.

WHEREFORE, judgment is hereby rendered ordering respondent company to pay complainant Armando Aliling the sum of THIRTY FIVE THOUSAND EIGHT HUNDRED ELEVEN PESOS (₱35,811.00) representing his salaries and other benefits as discussed above.

Respondent company is likewise ordered to pay said complainant the amount of TEN THOUSAND SEVEN HUNDRED SIXTY SIX PESOS AND 85/100 ONLY (₱10.766.85) representing his proportionate 13th month pay for 2004 plus 10% of the total judgment as and by way of attorney's fees.

Other claims are hereby denied for lack of merit. (Emphasis supplied.)

The labor arbiter gave credence to Aliling's allegation about not receiving and, therefore, not bound by, San Mateo's purported September 20, 2004 memo. The memo, to reiterate, supposedly apprised Aliling of the sales quota he was, but failed, to meet. Pushing the point, the labor arbiter explained that Aliling cannot be validly terminated for non-compliance with the quota threshold absent a prior advisory of the reasonable standards upon which his performance would be evaluated.

Both parties appealed the above decision to the NLRC, which affirmed the Decision *in toto* in its Resolution dated May 31, 2007. The separate motions for reconsideration were also denied by the NLRC in its Resolution dated August 31, 2007.

Therefrom, Aliling went on *certiorari* to the CA, which eventually rendered the assailed Decision, the dispositive portion of which reads:

> WHEREFORE, the petition is PARTLY GRANTED. The assailed Resolutions of respondent (Third Division) National Labor Relations Commission are AFFIRMED, with the following MODIFICATION/CLARIFICATION: Respondents Wide Wide World Express Corp. and its officers, Jose B. Feliciano, Manuel F. San Mateo III and Joseph R. Lariosa, are **jointly and severally liable** to pay petitioner Armando Aliling: (A) the sum of Forty Two Thousand Three Hundred Thirty Three & 50/100 (₱42,333.50) as the total money judgment, (B) the sum of Four Thousand Two Hundred Thirty Three & 35/100 (₱4,233.35) as attorney's fees, and (C) the additional sum equivalent to one-half (½) month of petitioner's salary as separation pay.
>
> SO ORDERED.[24] (Emphasis supplied.)

The CA anchored its assailed action on the strength of the following premises: (a) respondents failed to prove that Aliling's dismal performance constituted gross and habitual neglect necessary to justify his dismissal; (b) not having been informed at the time of his engagement of the reasonable standards under which he will qualify as a regular employee, Aliling was deemed to have been hired from day one as a regular employee; and (c) the strained relationship existing between the parties argues against the propriety of reinstatement.

Aliling's motion for reconsideration was rejected by the CA through the assailed Resolution dated December 15, 2008.

Hence, the instant petition.

The Issues

Aliling raises the following issues for consideration:

> A. The failure of the Court of Appeals to order reinstatement (despite its finding that petitioner was illegally dismissed from employment) is contrary to law and applicable jurisprudence.

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[24] *Rollo,* pp. 30-31.

B. The failure of the Court of Appeals to award backwages (even if it did not order reinstatement) is contrary to law and applicable jurisprudence.

C. The failure of the Court of Appeals to award moral and exemplary damages (despite its finding that petitioner was dismissed to prevent the acquisition of his regular status) is contrary to law and applicable jurisprudence.[25]

In their Comment,[26] respondents reiterated their position that WWWEC hired petitioner on a probationary basis and fired him before he became a regular employee.

The Court's Ruling

The petition is partly meritorious.

Petitioner is a regular employee

On a procedural matter, petitioner Aliling argues that WWWEC, not having appealed from the judgment of CA which declared Aliling as a regular employee from the time he signed the employment contract, is now precluded from questioning the appellate court's determination as to the nature of his employment.

Petitioner errs. The Court has, when a case is on appeal, the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case. We said as much in *Sociedad Europea de Financiacion, SA v. Court of Appeals*,[27] "It is axiomatic that an appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by

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[25] *Id.* at 11-12.

[26] *Id.* at 44-56.

[27] G.R. No. 75787, January 21, 1991, 193 SCRA 105, 114; citing *Maricalum Mining Corporation v. Brion*, G.R. Nos. 157696-97, February 9, 2006, 482 SCRA 87, 99; *Miguel v. Court of Appeals*, No. L-20274, October 30, 1969, 29 SCRA 760, 767-768; *Saura Import & Export Co., Inc. v. Philippine International Co., Inc.*, No. L-151, May 31, 1963, 8 SCRA 143, 148.

the parties, if their consideration is necessary in arriving at a just resolution of the case."

The issue of whether or not petitioner was, during the period material, a probationary or regular employee is of pivotal import. Its resolution is doubtless necessary at arriving at a fair and just disposition of the controversy.

The Labor Arbiter cryptically held in his decision dated April 25, 2006 that:

> Be that as it may, there appears no showing that indeed the said September 20, 2004 Memorandum addressed to complainant was received by him. Moreover, complainant's tasked where he was assigned was a new developed service. In this regard, it is noted:
>
> > "Due process dictates that an employee be apprised beforehand of the conditions of his employment and of the terms of advancement therein. Precisely, implicit in Article 281 of the Labor Code is the requirement that reasonable standards be previously made known by the employer to the employee at the time of his engagement (*Ibid*, citing Sameer Overseas Placement Agency, Inc. *vs.* NLRC, G.R. No. 132564, October 20, 1999).[28]

From our review, it appears that the labor arbiter, and later the NLRC, considered Aliling a probationary employee despite finding that he was not informed of the reasonable standards by which his probationary employment was to be judged.

The CA, on the other hand, citing *Cielo v. National Labor Relations Commission*,[29] ruled that petitioner was a regular employee from the outset inasmuch as he was not informed of the standards by which his probationary employment would be measured. The CA wrote:

> Petitioner was regularized from the time of the execution of the employment contract on June 11, 2004, although respondent company had arbitrarily shortened his tenure. As pointed out, **respondent company did not make known the reasonable standards under**

[28] CA *rollo*, p. 142.

[29] G.R. No. 78693, January 28, 1991, 193 SCRA 410.

which he will qualify as a regular employee at the time of his engagement. Hence, he was deemed to have been hired from day one as a regular employee.[30] (Emphasis supplied.)

WWWEC, however, excepts on the argument that it put Aliling on notice that he would be evaluated on the 3rd and 5th months of his probationary employment. To WWWEC, its efforts translate to sufficient compliance with the requirement that a probationary worker be apprised of the reasonable standards for his regularization. WWWEC invokes the ensuing holding in *Alcira v. National Labor Relations Commission*[31] to support its case:

> Conversely, an employer is deemed to substantially comply with the rule on notification of standards if he apprises the employee that he will be subjected to a performance evaluation on a particular date after his hiring. We agree with the labor arbiter when he ruled that:
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> > In the instant case, petitioner cannot successfully say that he was never informed by private respondent of the standards that he must satisfy in order to be converted into regular status. **This rans (sic) counter to the agreement between the parties that after five months of service the petitioner's performance would be evaluated.** It is only but natural that the evaluation should be made *vis-à-vis* the performance standards for the job. Private respondent Trifona Mamaradlo speaks of such standard in her affidavit referring to the fact that petitioner did not perform well in his assigned work and his attitude was below par compared to the company's standard required of him. (Emphasis supplied.)

WWWEC's contention is untenable.

Alcira is cast under a different factual setting. There, the labor arbiter, the NLRC, the CA, and even finally this Court were one in their findings that the employee concerned knew, having been duly informed during his engagement, of the standards for becoming a regular employee. This is in stark contrast to

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[30] *Rollo*, p. 28.

[31] G.R. No. 149859, June 9, 2004, 431 SCRA 508, 514.

the instant case where the element of being informed of the regularizing standards does not obtain. As such, *Alcira* cannot be made to apply to the instant case.

To note, the June 2, 2004 letter-offer itself states that the regularization standards or the performance norms to be used are **still to be agreed upon by Aliling and his supervisor**. WWWEC has failed to prove that an agreement as regards thereto has been reached. Clearly then, there were actually no performance standards to speak of. And lest it be overlooked, Aliling was assigned to GX trucking sales, an activity entirely different to the Seafreight Sales he was originally hired and trained for. Thus, at the time of his engagement, the standards relative to his assignment with GX sales could not have plausibly been communicated to him as he was under Seafreight Sales. Even for this reason alone, the conclusion reached in *Alcira* is of little relevant to the instant case.

Based on the facts established in this case in light of extant jurisprudence, the CA's holding as to the kind of employment petitioner enjoyed is correct. So was the NLRC ruling, affirmatory of that of the labor arbiter. In the final analysis, one common thread runs through the holding of the labor arbiter, the NLRC and the CA, *i.e.*, petitioner Aliling, albeit hired from management's standpoint as a probationary employee, was deemed a regular employee by force of the following self-explanatory provisions:

Article 281 of the Labor Code

ART. 281. *Probationary employment*. — Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance **with reasonable standards made known by the employer to the employee at the time of his engagement.** An employee who is allowed to work after a probationary period shall be considered a regular employee. (Emphasis supplied.)

Section 6(d) of the Implementing Rules of Book VI, Rule VIII-A of the Labor Code

Sec. 6. *Probationary employment*. — There is probationary employment where the employee, upon his engagement, is made to undergo a trial period where the employee determines his fitness to qualify for regular employment, based on reasonable standards made known to him at the time of engagement.

Probationary employment shall be governed by the following rules:

x x x x x x x x x

(d) In all cases of probationary employment**, the employer shall make known** to the employee **the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he** shall be **deemed a regular employee.** (Emphasis supplied.)

To repeat, the labor arbiter, NLRC and the CA are agreed, on the basis of documentary evidence adduced, that respondent WWWEC did not inform petitioner Aliling of the reasonable standards by which his probation would be measured against at the time of his engagement. The Court is loathed to interfere with this factual determination. As We have held:

Settled is the rule that the findings of the Labor Arbiter, when affirmed by the NLRC and the Court of Appeals, are binding on the Supreme Court, unless patently erroneous. It is not the function of the Supreme Court to analyze or weigh all over again the evidence already considered in the proceedings below. The jurisdiction of this Court in a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts.[32]

The more recent *Peñafrancia Tours and Travel Transport, Inc., v. Sarmiento*[33] has reaffirmed the above ruling, to wit:

Finally, the CA affirmed the ruling of the NLRC and adopted as its own the latter's factual findings. Long-established is the doctrine that findings of fact of quasi-judicial bodies x x x are accorded

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[32] *German Machineries Corporation v. Endaya*, G.R. No. 156810, November 25, 2004, 444 SCRA 329, 340.

[33] G.R. No. 178397, October 20, 2010, 634 SCRA 279, 289-290.

respect, even finality, if supported by substantial evidence. When passed upon and upheld by the CA, they are binding and conclusive upon this Court and will not normally be disturbed**.** Though this doctrine is not without exceptions, the Court finds that none are applicable to the present case.

WWWEC also cannot validly argue that "**the factual findings being assailed are not supported by evidence on record or the impugned judgment is based on a misapprehension of facts**." Its very own letter-offer of employment argues against its above posture. Excerpts of the letter-offer:

> Additionally, upon the effectivity of your probation, **you and your immediate superior are required to jointly define your objectives compared with the job requirements of the position.** Based on the pre-agreed objectives, your performance shall be reviewed on the 3rd month to assess your competence and work attitude. The 5th month Performance Appraisal shall be the basis in elevating or confirming your employment status from Probationary to Regular.
>
> Failure to meet the job requirements during the probation stage means that your services may be terminated without prior notice and without recourse to separation pay. (Emphasis supplied.)

Respondents further allege that San Mateo's email dated July 16, 2004 shows that the standards for his regularization were made known to petitioner Aliling at the time of his engagement. To recall, in that email message, San Mateo reminded Aliling of the sales quota he ought to meet as a condition for his continued employment, *i.e.*, that the GX trucks should already be 80% full by August 5, 2004. Contrary to respondents' contention, San Mateo's email cannot support their allegation on Aliling being informed of the standards for his continued employment, such as the sales quota, **at the time of his engagement**. As it were, the email message was sent to Aliling more than a month after he signed his employment contract with WWWEC. The aforequoted Section 6 of the Implementing Rules of Book VI, Rule VIII-A of the Code specifically requires the employer to inform the probationary employee of such reasonable standards **at the time of his engagement**, not at any time later; else, the latter shall be considered a regular employee. Thus, pursuant

to the explicit provision of Article 281 of the Labor Code, Section 6(d) of the Implementing Rules of Book VI, Rule VIII-A of the Labor Code and settled jurisprudence, petitioner Aliling is deemed a regular employee as of June 11, 2004, the date of his employment contract.

Petitioner was illegally dismissed

To justify fully the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause and that the employee was afforded due process prior to dismissal. As a complementary principle, the employer has the onus of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal.[34]

WWWEC had failed to discharge its twin burden in the instant case.

First off, the attendant circumstances in the instant case aptly show that the issue of petitioner's alleged failure to achieve his quota, as a ground for terminating employment, strikes the Court as a mere afterthought on the part of WWWEC. Consider: Lariosa's letter of September 25, 2004 already betrayed management's intention to dismiss the petitioner for alleged unauthorized absences. Aliling was in fact made to explain and he did so satisfactorily. But, lo and behold, WWWEC nonetheless proceeded with its plan to dismiss the petitioner for non-satisfactory performance, although the corresponding termination letter dated October 6, 2004 did not even specifically state Aliling's "non-satisfactory performance," or that Aliling's termination was by reason of his failure to achieve his set quota.

What WWWEC considered as the evidence purportedly showing it gave Aliling the chance to explain his inability to reach his quota was a purported September 20, 2004 memo of San Mateo addressed to the latter. However, Aliling denies having received such letter and WWWEC has failed to refute his contention of non-receipt. In net effect, WWWEC was at a loss to explain the exact just reason for dismissing Aliling.

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[34] *Dacuital v. L. M. Camus Engineering Corporation*, G.R. No. 176748, September 1, 2010, 629 SCRA 702, 715.

At any event, assuming for argument that the petitioner indeed failed to achieve his sales quota, his termination from employment on that ground would still be unjustified.

Article 282 of the Labor Code considers any of the following acts or omission on the part of the employee as just cause or ground for terminating employment:

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

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

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

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

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

In *Lim v. National Labor Relations Commission*,[35] the Court considered inefficiency as an analogous just cause for termination of employment under Article 282 of the Labor Code:

We cannot but agree with PEPSI that "gross inefficiency" falls within the purview of "other causes analogous to the foregoing," this constitutes, therefore, just cause to terminate an employee under Article 282 of the Labor Code. One is analogous to another if it is susceptible of comparison with the latter either in general or in some specific detail; or has a close relationship with the latter. "Gross inefficiency" is closely related to "gross neglect," for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business. In *Buiser vs. Leogardo*, this Court ruled that failure to observed prescribed standards to inefficiency may constitute just cause for dismissal. (Emphasis supplied.)

It did so anew in *Leonardo v. National Labor Relations Commission*[36] on the following rationale:

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[35] G.R. No. 118434, July 26, 1996, 259 SCRA 485, 496-497.

[36] G.R. No. 125303, June 16, 2000, 333 SCRA 589, 598-599.

An employer is entitled to impose productivity standards for its workers, and in fact, non-compliance may be visited with a penalty even more severe than demotion. Thus,

> **[t]he practice of a company in laying off workers because they failed to make the work quota has been recognized in this jurisdiction.** (Philippine American Embroideries *vs*. Embroidery and Garment Workers, 26 SCRA 634, 639). In the case at bar, the petitioners' failure to meet the sales quota assigned to each of them constitute a just cause of their dismissal, regardless of the permanent or probationary status of their employment. **Failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal.** Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results. **This management prerogative of requiring standards may be availed of so long as they are exercised in good faith for the advancement of the employer's interest.** (Emphasis supplied.)

In fine, an employee's failure to meet sales or work quotas falls under the concept of gross inefficiency, which in turn is analogous to gross neglect of duty that is a just cause for dismissal under Article 282 of the Code. However, in order for the quota imposed to be considered a valid productivity standard and thereby validate a dismissal, management's prerogative of fixing the quota must be exercised in good faith for the advancement of its interest. The duty to prove good faith, however, rests with WWWEC as part of its burden to show that the dismissal was for a just cause. WWWEC must show that such quota was imposed in good faith. This WWWEC failed to do, perceptibly because it could not. The fact of the matter is that the alleged imposition of the quota was a desperate attempt to lend a semblance of validity to Aliling's illegal dismissal. It must be stressed that even WWWEC's sales manager, Eve Amador (Amador), in an internal e-mail to San Mateo, hedged on whether petitioner performed below or above expectation:

Could not quantify level of performance as he as was tasked to handle a new product (GX). Revenue report is not yet administered by IT

on a month-to-month basis. Moreover, this in a way is an experimental activity. Practically you have a close monitoring with Armand with regards to his performance. Your assessment of him would be more accurate.

Being an experimental activity and having been launched for the first time, the sales of GX services could not be reasonably quantified. This would explain why Amador implied in her email that other bases besides sales figures will be used to determine Aliling's performance. And yet, despite such a neutral observation, Aliling was still dismissed for his dismal sales of GX services. In any event, WWWEC failed to demonstrate the reasonableness and the *bona fides* on the quota imposition.

Employees must be reminded that while probationary employees do not enjoy permanent status, they enjoy the constitutional protection of security of tenure. They can only be terminated for cause or when they otherwise fail to meet the reasonable standards made known to them by the employer at the time of their engagement.[37] Respondent WWWEC miserably failed to prove the termination of petitioner was for a just cause nor was there substantial evidence to demonstrate the standards were made known to the latter at the time of his engagement. Hence, petitioner's right to security of tenure was breached.

Aliling's right to procedural due process was violated

As earlier stated, to effect a legal dismissal, the employer must show not only a valid ground therefor, but also that procedural due process has properly been observed. When the Labor Code speaks of procedural due process, the reference is usually to the two (2)-written notice rule envisaged in Section 2 (III), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, which provides:

Section 2. *Standard of due process: requirements of notice*. — In all cases of termination of employment, the following standards of due process shall be substantially observed.

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[37] *Agoy v. NLRC*, G.R. No. 112096, January 30, 1996, 252 SCRA 588, 595.

I. For termination of employment based on just causes as defined in Article 282 of the Code:

(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;

(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and

(c) A written notice [of] termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

In case of termination, the foregoing notices shall be served on the employee's last known address.

MGG Marine Services, Inc. v. NLRC[38] tersely described the mechanics of what may be considered a two-part due process requirement which includes the two-notice rule, "x x x one, of the intention to dismiss, indicating therein his acts or omissions complained against, and two, notice of the decision to dismiss; and an opportunity to answer and rebut the charges against him, in between such notices."

King of Kings Transport, Inc. v. Mamac[39] expounded on this procedural requirement in this manner:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five calendar days from receipt of the notice x x x Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed

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[38] G.R. No. 114313, July 29, 1996, 259 SCRA 664, 677.

[39] G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125-26.

narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. *Lastly*, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 288 [of the Labor Code] is being charged against the employees

(2) After serving the first notice, the employees should schedule and conduct a **hearing** or **conference** wherein the employees will be given the opportunity to (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice x x x.

(3) After determining that termination is justified, the employer shall serve the employees a **written notice of termination** indicating that: (1) all the circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment. (Emphasis in the original.)

Here, the first and second notice requirements have not been properly observed, thus tainting petitioner's dismissal with illegality.

The adverted memo dated September 20, 2004 of WWWEC supposedly informing Aliling of the likelihood of his termination and directing him to account for his failure to meet the expected job performance would have had constituted the "charge sheet," sufficient to answer for the first notice requirement, but for the fact that there is no proof such letter had been sent to and received by him. In fact, in his December 13, 2004 Complainant's Reply Affidavit, Aliling goes on to tag such letter/memorandum as fabrication. WWWEC did not adduce proof to show that a copy of the letter was duly served upon Aliling. Clearly enough, WWWEC did not comply with the first notice requirement.

Neither was there compliance with the imperatives of a hearing or conference. The Court need not dwell at length on this particular breach of the due procedural requirement. Suffice it to point out that the record is devoid of any showing of a hearing or

conference having been conducted. On the contrary, in its October 1, 2004 letter to Aliling, or barely five (5) days after it served the notice of termination, WWWEC acknowledged that it was still evaluating his case. And the written notice of termination itself did not indicate all the circumstances involving the charge to justify severance of employment.

Aliling is entitled to backwages and separation pay in lieu of reinstatement

As may be noted, the CA found Aliling's dismissal as having been illegally effected, but nonetheless concluded that his employment ceased at the end of the probationary period. Thus, the appellate court merely affirmed the monetary award made by the NLRC, which consisted of the payment of that amount corresponding to the unserved portion of the contract of employment.

The case disposition on the award is erroneous.

As earlier explained, Aliling cannot be rightfully considered as a mere probationary employee. Accordingly, the probationary period set in the contract of employment dated June 11, 2004 was of no moment. In net effect, as of that date June 11, 2004, Aliling became part of the WWWEC organization as a regular employee of the company without a fixed term of employment. Thus, he is entitled to backwages reckoned from the time he was illegally dismissed on October 6, 2004, with a PhP 17,300.00 monthly salary, until the finality of this Decision. This disposition hews with the Court's ensuing holding in *Javellana v. Belen*:[40]

Article 279 of the Labor Code, as amended by Section 34 of Republic Act 6715 instructs:

> Art. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. **An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive**

[40] G.R. No. 181913, March 5, 2010, 614 SCRA 342, 350-351.

of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. (Emphasis supplied)

Clearly, the law intends the award of backwages and similar benefits to accumulate past the date of the Labor Arbiter's decision until the dismissed employee is actually reinstated. But if, as in this case, reinstatement is no longer possible, **this Court has consistently ruled that backwages shall be computed from the time of illegal dismissal until the date the decision becomes final.** (Emphasis supplied.)

Additionally, Aliling is entitled to separation pay in lieu of reinstatement on the ground of **strained relationship**.

In *Golden Ace Builders v. Talde*,[41] the Court ruled:

The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.

As to how both awards should be computed, *Macasero v. Southern Industrial Gases Philippines* instructs:

> [T]he award of separation pay is inconsistent with a finding that there was no illegal dismissal, for under Article 279 of the Labor Code and as held in a catena of cases, an employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof:
>
> **Thus, an illegally dismissed employee is entitled to two reliefs: backwages 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**

[41] G.R. No. 187200, May 05, 2010, 620 SCRA 283, 288-290.

> **employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.**
>
> The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages. x x x

Velasco v. National Labor Relations Commission emphasizes:

> The accepted doctrine is that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties. Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated. (emphasis in the original; italics supplied)

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.

Strained relations must be demonstrated as a fact, however, to be adequately supported by evidence — substantial evidence to show that the relationship between the employer and the employee is indeed strained as a necessary consequence of the judicial controversy.

In the present case, the Labor Arbiter found that actual animosity existed between petitioner Azul and respondent as a result of the filing of the illegal dismissal case. Such finding, especially when affirmed by the appellate court as in the case at bar, is binding upon the Court, consistent with the prevailing rules that this Court will not try facts anew and that findings of facts of quasi-judicial bodies are accorded great respect, even finality. (Emphasis supplied.)

As the CA correctly observed, "To reinstate petitioner [Aliling] would only create an atmosphere of antagonism and distrust, more so that he had only a short stint with respondent company."[42] The Court need not belabor the fact that the patent animosity that had developed between employer and employee generated what may be considered as the arbitrary dismissal of the petitioner.

Following the pronouncements of this Court *Sagales v. Rustan's Commercial Corporation*,[43] the computation of separation pay in lieu of reinstatement includes the period for which backwages were awarded:

> Thus, in lieu of reinstatement, it is but proper to award petitioner **separation pay computed at one-month salary for every year of service**, **a fraction of at least six (6) months considered as one whole year. In the computation of separation pay, the period where backwages are awarded must be included**. (Emphasis supplied.)

Thus, Aliling is entitled to both backwages and separation pay (in lieu of reinstatement) in the amount of one (1) month's salary for every year of service, that is, from June 11, 2004 (date of employment contract) until the finality of this decision with a fraction of a year of at least six (6) months to be considered as one (1) whole year. As determined by the labor arbiter, the basis for the computation of backwages and separation pay will be Aliling's monthly salary at PhP 17,300.

Finally, Aliling is entitled to an award of PhP 30,000 as nominal damages in consonance with prevailing jurisprudence[44] for violation of due process.

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[42] CA *rollo*, p. 248.

[43] G.R. No. 166554, November 27, 2008, 572 SCRA 89, 106; citing *Farrol v. Court of Appeals*, G.R. No. 133259, February 10, 2000, 325 SCRA 331, citing in turn *Jardine Davies, Inc. v. National Labor Relations Commission*, G.R. No. 76272, July 28, 1999, 311 SCRA 289, *Guatson International Travel and Tours, Inc. v. National Labor Relations Commission*, G.R. No. 100322, March 9, 1994, 230 SCRA 815.

[44] *Hilton Heavy Equipment Corporation v. Dy*, G.R. No. 164860, February 2, 2010, 611 SCRA 329, 339.

Petitioner is not entitled to moral and exemplary damages

In *Nazareno v. City of Dumaguete*,[45] the Court expounded on the requisite elements for a litigant's entitlement to moral damages, thus:

> Moral damages are awarded if the following elements exist in the case: (1) an injury clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission by the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated Article 2219 of the Civil Code. In addition, the person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, and serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive. **Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.** (Emphasis supplied.)

In alleging that WWWEC acted in bad faith, Aliling has the burden of proof to present evidence in support of his claim, as ruled in *Culili v. Eastern Telecommunications Philippines, Inc.*:[46]

> According to jurisprudence, "basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same." By imputing bad faith to the actuations of ETPI, Culili has the burden of proof to present substantial evidence to support the allegation of unfair labor practice. Culili failed to discharge this burden and his bare allegations deserve no credit.

This was reiterated in *United Claimants Association of NEA (UNICAN) v. National Electrification Administration (NEA)*,[47] in this wise:

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[45] G.R. No. 177795, June 19, 2009, 590 SCRA 110, 141-142.

[46] G.R. No. 165381, February 9, 2011, 642 SCRA 338, 361.

[47] G.R. No. 187107, January 31, 2012.

It must be noted that the burden of proving bad faith rests on the one alleging it. As the Court ruled in *Culili v. Eastern Telecommunications, Inc.*, "According to jurisprudence, 'basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same.'" Moreover, in *Spouses Palada v. Solidbank Corporation*, the Court stated, "Allegations of bad faith and fraud must be proved by clear and convincing evidence."

Similarly, Aliling has failed to overcome such burden to prove bad faith on the part of WWWEC. Aliling has not presented any clear and convincing evidence to show bad faith. The fact that he was illegally dismissed is insufficient to prove bad faith. Thus, the CA correctly ruled that "[t]here was no sufficient showing of bad faith or abuse of management prerogatives in the personal action taken against petitioner."[48] In *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*,[49] the Court ruled:

A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without authorized cause and due process.

The officers of WWWEC cannot be held jointly and severally liable with the company

The CA held the president of WWWEC, Jose B. Feliciano, San Mateo and Lariosa jointly and severally liable for the monetary awards of Aliling on the ground that the officers are considered "employers" acting in the interest of the corporation. The CA cited *NYK International Knitwear Corporation Philippines* (*NYK*) *v. National Labor Relations Commission*[50] in support of its argument. Notably, *NYK* in turn cited *A.C. Ransom Labor Union-CCLU v. NLRC*.[51]

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[48] *Rollo*, p. 29.

[49] G.R. No. 170464, July 12, 2010, 624 SCRA 705, 720.

[50] G.R. No. 146267, February 17, 2003, 397 SCRA 607.

[51] G.R. No. 69494, June 10, 1986, 142 SCRA 269.

Such ruling has been reversed by the Court in *Alba v. Yupangco*,[52] where the Court ruled:

By Order of September 5, 2007, the Labor Arbiter denied respondent's motion to quash the 3rd *alias* writ. Brushing aside respondent's contention that his liability is merely joint, the Labor Arbiter ruled:

Such issue regarding the personal liability of the officers of a corporation for the payment of wages and money claims to its employees, as in the instant case, has long been resolved by the Supreme Court in a long list of cases [*A.C. Ransom Labor Union-CLU vs. NLRC* (142 SCRA 269) and reiterated in the cases of *Chua vs. NLRC* (182 SCRA 353), *Gudez vs. NLRC* (183 SCRA 644)]. In the aforementioned cases, the Supreme Court has expressly held that the irresponsible officer of the corporation (*e.g.* President) is liable for the corporation's obligations to its workers. Thus, respondent Yupangco, being the president of the respondent YL Land and Ultra Motors Corp., is properly jointly and severally liable with the defendant corporations for the labor claims of Complainants Alba and De Guzman. x x x

x x x x x x x x x

As reflected above, the Labor Arbiter held that respondent's liability is solidary.

There is solidary liability when the obligation expressly so states, when the law so provides, or when the nature of the obligation so requires. *MAM Realty Development Corporation v. NLRC*, on solidary liability of corporate officers in labor disputes, enlightens:

> x x x A corporation being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents are not theirs but the direct accountabilities of the corporation they represent. True solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:
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> 1. When directors and trustees or, in appropriate cases, the officers of a corporation:

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[52] G.R. No. 188233, June 29, 2010, 622 SCRA 503, 506-508.

> (a) vote for or assent to patently unlawful acts of the corporation;
>
> (b) act in bad faith or with gross negligence in directing the corporate affairs;
>
> x x x x x x x x x

In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or in bad faith.

A review of the facts of the case does not reveal ample and satisfactory proof that respondent officers of WWEC acted in bad faith or with malice in effecting the termination of petitioner Aliling. Even assuming *arguendo* that the actions of WWWEC are ill-conceived and erroneous, respondent officers cannot be held jointly and solidarily with it. Hence, the ruling on the joint and solidary liability of individual respondents must be recalled.

Aliling is entitled to Attorney's Fees and Legal Interest

Petitioner Aliling is also entitled to attorney's fees in the amount of ten percent (10%) of his total monetary award, having been forced to litigate in order to seek redress of his grievances, pursuant to Article 111 of the Labor Code and following our ruling in *Exodus International Construction Corporation v. Biscocho*,[53] to wit:

> In *Rutaquio v. National Labor Relations Commission*, this Court held that:
>
> It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.
>
> In *Producers Bank of the Philippines v. Court of Appeals* this Court ruled that:
>
> Attorney's fees may be awarded when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party.

[53] G.R. No. 166109, February 23, 2011, 644 SCRA 76, 91.

While in *Lambert Pawnbrokers and Jewelry Corporation,*[54] the Court specifically ruled:

> However, the award of attorney's fee is warranted pursuant to Article 111 of the Labor Code. Ten (10%) percent of the total award is usually the reasonable amount of attorney's fees awarded. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.

Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of 6% per annum from October 6, 2004 (date of termination) until fully paid.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The July 3, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 101309 is hereby **MODIFIED** to read:

WHEREFORE, the petition is **PARTIALLY GRANTED.** The assailed *Resolutions* of respondent (Third Division) National Labor Relations Commission are **AFFIRMED**, with the following **MODIFICATION/CLARIFICATION**: Respondent Wide Wide World Express Corp. is liable to pay Armando Aliling the following: (a) backwages reckoned from October 6, 2004 up to the finality of this Decision based on a salary of PhP 17,300 a month, with interest at 6% per annum on the principal amount from October 6, 2004 until fully paid; (b) the additional sum equivalent to one (1) month salary for every year of service, with a fraction of at least six (6) months considered as one whole year based on the period from June 11, 2004 (date of employment contract) until the finality of this Decision, as separation pay; (c) PhP 30,000 as nominal damages; and (d) Attorney's Fees equivalent to 10% of the total award.

SO ORDERED.

Peralta, Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[54] *Supra* note 49, at 721.

SECOND DIVISION

[G.R. No. 187919. April 25, 2012]

RAFAEL H. GALVEZ and KATHERINE L. GUY, *petitioners, vs.* **HON. COURT OF APPEALS and ASIA UNITED BANK,** *respondents.*

[G.R. No. 187979. April 25, 2012]

ASIA UNITED BANK, *petitioner, vs.* **GILBERT G. GUY, PHILIP LEUNG, KATHERINE L. GUY, RAFAEL H. GALVEZ and EUGENIO H. GALVEZ, JR.,** *respondents.*

[G.R. No. 188030. April 25, 2012]

GILBERT G. GUY, PHILIP LEUNG and EUGENIO H. GALVEZ, JR., *petitioners, vs.* **ASIA UNITED BANK,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; ESTAFA; ELEMENTS OF ESTAFA BY MEANS OF DECEIT.—** The elements of *estafa* by means of deceit are the following: a. That there must be a false pretense, fraudulent act or fraudulent means; b. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; c. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means; d. That as a result thereof, the offended party suffered damage.

2. **ID.; ID.; ID.; CIRCUMSTANCES *INDICIA* OF DECEIT IN CASE AT BAR.—** Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez and Eugene Galvez, Jr., interlocking directors of RMSI and SPI, represented to AUB in their transactions that Smartnet Philippines and SPI were one and the same entity. While Eugenio H. Galvez, Jr. was not a director of SPI, he actively dealt with AUB in his capacity as RMSI's Chief Financial

Officer/Comptroller by falsely representing that SPI and RMSI were the same entity. Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez, and Eugene Galvez, Jr. used the business names Smartnet Philippines, RMSI, and SPI interchangeably and without any distinction. They successfully did this by using the confusing similarity of RMSI's business name, *i.e.*, Smartnet Philippines — its division, and, Smartnet Philippines, Inc. — the subsidiary corporation. Further, they were able to hide the identity of SPI, by having almost the same directors as that of RMSI. In order to let it appear that SPI is the same as that of Smartnet Philippines, they submitted in their application documents of RMSI, including its Amended Articles of Incorporation, third-party real estate mortgage of Goodland Company, in favor of Smartnet Philippines, and audited annual financial statement of SGV & Co. Gilbert Guy, *et al.* also used RMSI letterhead in their official communications with the bank and the contents of these official communications conclusively pointed to RMSI as the one which transacted with the bank. These circumstances are all *indicia* of deceit. Deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.

3. ID.; ID.; ID.; THE INTENT TO DECEIVED WAS MANIFEST FROM THE START.— The intent to deceive AUB was manifest from the start. Gilbert Guy, *et al.* laid down first all the necessary materials they need for this deception before defrauding the bank by first establishing Smartnet Philippines as a division of Radio Marine under which Radio Marine Network Inc. operated its business. Then it organized a subsidiary corporation, the SPI, with a capital of only ₱62,000.00. Later, it changed the corporate name of Radio Marine Network Inc. into RMSI. Undoubtedly, deceit here was conceived in relation to Gilbert Guy, *et al.'s* transaction with AUB. There was a plan, documented in corporation's papers, that led to the defraudation of the bank. The circumstances of the directors' and officers' acts in inserting in Radio Marine the name of Smartnet; the creation of its division — Smartnet Philippines; and its registration as business name as Smartnet Philippines with the Department of Trade and Industry, together with the incorporation of its subsidiary, the SPI, are *indicia* of a pre-conceived scheme to create this

elaborate fraud, victimizing a banking institution, which perhaps, is the first of a kind in Philippine business.

4. ID.; ID.; ID.; FRAUD IN ITS GENERAL SENSE; EXPLAINED. — We emphasize that fraud in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal duty or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can device and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. As early as 1903, in *U.S. v. Mendezona*, we held that an accused may be convicted for *estafa* if the deceit of false pretense is committed prior to or simultaneous with fraud and is the efficient cause or primary consideration which induced the offended party to part with his money or property.

5. ID.; ID.; ID.; SYNDICATED ESTAFA (P.D. 1689); APPLICABLE IN CASE AT BAR; ELEMENTS OF THE CRIME.— Anent the issue as to whether or not Gilbert Guy, *et al.* should be charged for syndicated *estafa* in relation to Section 1 of PD No. 1689. x x x We hold that the law applies to the case at bar, for the following reasons: Under Section 1 of PD No. 1689, the elements of syndicated *estafa* are: (a) *estafa* or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code is committed; (b) the *estafa* or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon[s]*," or farmers associations or of funds solicited by corporations/associations from the general public.

6. ID.; ID.; ID.; THE ESTAFA OR SWINDLING IS COMMITTED BY A SYNDICATE OF FIVE OR MORE PERSONS; ESTABLISHED IN CASE AT BAR.— As defined under Section 1 of PD No. 1689, a syndicate "consists of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme." Five

(5) accused, namely, Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy, and Eugenio H. Galvez, Jr. were, (a) all involved in the formation of the entities used to defraud AUB; and (b) they were the officers and directors, both of RMSI and SPI, whose conformities paved the way for AUB to grant the letter of credit subject of this case, in AUB's honest belief that SPI, as Gilbert Guy, *et al.* represented, was a mere division of RMSI. As already discussed, although Eugenio Galvez, Jr. was not a director of SPI, he, together with Gilbert Guy and Philip Leung, actively participated in the scheme through their signed correspondences with the bank and their attendance in the meetings with executives of AUB. Rafael Galvez and Katherine Guy, on the other hand, were the directors of RMSI and SPI who caused and authorized Gilbert Guy and Philip Leung to transact with AUB.

7. ID.; ID.; ID.; THE CIRCUMSTANCES OF THE CREATION OF THE TWO CORPORATIONS AND THEIR DEALINGS WITH THE BANK REVEAL THE CRIMINAL INTENT TO DEFRAUD AND TO DECEIVE THE LATTER.— While these corporations were established presumably in accordance with law, it cannot be denied that Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy, and Eugenio H. Galvez, Jr. used these corporations to carry out the illegal and unlawful act of misrepresenting SPI as a mere division of RMSI, and, despite knowing SPI's separate juridical personality, applied for a letter of credit secured by SPI's promissory note, knowing fully that SPI has no credit line with AUB. The circumstances of the creation of these entities and their dealings with the bank reveal this criminal intent to defraud and to deceive AUB.

8. ID.; ID.; ID.; P.D. 1689 APPLIES TO BANKING INSTITUTIONS; THE LAW ALSO APPLIES TO OTHER CORPORATIONS/ASSOCIATIONS OPERATING ON FUNDS SOLICITED FROM THE GENERAL PUBLIC.— Gilbert Guy, *et al.* want this Court to believe that AUB, being a commercial bank, is beyond the coverage of PD No. 1689. We hold, however, that a bank is a corporation whose fund comes from the general public. P.D. No. 1689 does not distinguish the nature of the corporation. It requires, rather, that the funds of such corporation should come from the general public. This is bolstered by the third "whereas clause" of the quoted law which states that the same also applies to other

"corporations/associations operating on funds solicited from the general public." This is precisely the very same scheme that PD No. 1689 contemplates that this species of *estafa* "be checked or at least be minimized by imposing capital punishment involving funds solicited by corporations/associations from the general public" because "this erodes the confidence of the public in the banking and cooperative system, contravenes public interest and constitutes economic sabotage that threatens the stability of the nation." Hence, for the stated reasons, we applied the law in *People v. Balasa*, a non-stock/non-profit corporation — the Panata Foundation of the Philippines, Inc. We held that PD No. 1689 also applies to other corporations/associations operating on funds solicited from the general public. In *People v. Romero*, we also applied the law to a stock corporation engaged in marketing, the Surigao San Andres Industrial Development Corporation. Likewise, in *People v. Menil*, we applied the law to another marketing firm known as ABM Appliance and Upholstery. In these cited cases, the accused used the legitimacy of their entities to perpetrate their unlawful and illegal acts. We see no reason not to apply this law to a banking institution, a corporation imbued with public interest, when a clear reading of the PD 1689 reveals that it is within its coverage.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; A FINDING OF PROBABLE CAUSE NEEDS ONLY TO REST ON EVIDENCE THAT MORE LIKELY THAN NOT, THE ACCUSED COMMITTED THE CRIME.— It is not in dispute that the bank suffered damage, which, including this controversy, amounted to hundreds of millions of pesos. It is worth emphasizing that under Section 1, Rule 112 of the Revised Rules on Criminal Procedure, the function of a preliminary investigation is to determine "whether there is a sufficient ground to engender a well-grounded belief that a crime x x x has been committed and that the respondent is probably guilty thereof and should be held for trial." A finding of probable cause needs only to rest on evidence showing that more likely than not, the accused committed the crime. Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof. The validity and merits of a party's accusation or defense, as well as admissibility of

testimonies and evidence, are better ventilated during the trial proper.

10. ID.; ID.; ID.; THE COURT'S FINDING OF PROBABLE CAUSE IS GROUNDED ON FRAUD COMMITTED THROUGH DECEIT BY PETITIONERS' VERY ACT OF DECEIVING RESPONDENT BANK IN ORDER FOR THE LATTER TO PART WITH ITS MONEY.— We, therefore, sustain the findings of the CA and the City Prosecutor's Resolution finding that probable cause exists against Gilbert Guy, *et al.* for the crime of *estafa* under Article 315 (2)(a) of the Revised Penal Code and that Gilbert Guy, *et al.* are probably guilty thereof and should be held for trial. AUB's voluminous documents submitted to this Court overcome this difficulty and established that there is sufficient ground to engender a well-grounded belief that a crime has been committed and that the respondents are probably guilty thereof and should be held for trial. Lest it be misunderstood, we reiterate that this Court's finding of probable cause is grounded on fraud committed through deceit which surrounded Gilbert Guy, *et al.* transaction with AUB, thus, violating Article 315 (2) (a) of the Revised Penal Code; it is neither their act of borrowing money and not paying them, nor their denial thereof, but their very act of deceiving AUB in order for the latter to part with its money. As early as the Penal Code of Spain, which was enforced in the Philippines as early as 1887 until it was replaced by the Revised Penal Code in 1932, the act of fraud through false pretenses or similar deceit was already being punished. Article 335 of the Penal Code of Spain punished a person who defrauded another "by falsely pretending to possess any power, influence, qualification, property, credit, agency or business, or by means of similar deceit."

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D E C I S I O N

PEREZ, *J.*:

THE FACTS

In 1999, Radio Marine Network (Smartnet) Inc. (RMSI) claiming to do business under the name Smartnet Philippines[1] and/or Smartnet Philippines, Inc. (SPI),[2] applied for an Omnibus Credit Line for various credit facilities with Asia United Bank (AUB). To induce AUB to extend the Omnibus Credit Line, RMSI, through its directors and officers, presented its Articles of Incorporation with its 400-peso million capitalization and its congressional telecom franchise. RMSI was represented by the following officers and directors occupying the following positions:

Gilbert Guy	-	Exec. V-Pres./Director
Philip Leung	-	Managing Director
Katherine Guy	-	Treasurer
Rafael Galvez	-	Executive Officer
Eugenio Galvez, Jr.	-	Chief Financial Officer/Comptroller

Satisfied with the credit worthiness of RMSI, AUB granted it a ₱250 million Omnibus Credit Line, under the name of Smartnet Philippines, RMSI's Division. On 1 February 2000, the credit line was increased to ₱452 million pesos after a third-party real estate mortgage by Goodland Company, Inc.,[3] an affiliate of Guy Group of Companies, in favor of Smartnet Philippines,[4] was offered to the bank. Simultaneous to the increase of the Omibus Credit Line, RMSI submitted a proof of authority to open the Omnibus Credit Line and peso and dollar accounts in

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[1] *Rollo* in G.R. No. 188030, p. 111.

[2] In Civil Case No. 68366, RMSI filed a complaint, claiming that it was doing business under the name Smartnet Philippines and **Smartnet Philippines, Inc.** *Id*. at 486.

[3] *Goodland Co., Inc. v Asia United Bank,* G.R. Nos. 195546 and 195561, 14 March 2012.

[4] *Rollo* in G.R. No. 188030, p. 471.

the name of Smartnet Philippines, Inc., which Gilbert Guy, *et al.* represented as a division of RMSI,[5] as evidenced by the letterhead used in its formal correspondences with the bank and the financial audit made by SGV & Co., an independent accounting firm. Attached to this authority was the Amended Articles of Incorporation of RMSI, doing business under the name of Smartnet Philippines, and the Secretary's Certificate of SPI authorizing its directors, Gilbert Guy and Philip Leung to transact with AUB.[6] Prior to this major transaction, however, and, unknown to AUB, while RMSI was doing business under the name of Smartnet Philippines, and that there was a division under the name Smartnet Philippines, Gilbert Guy, *et al.* formed a subsidiary corporation, the SPI with a paid-up capital of only ₱62,500.00.

Believing that SPI is the same as Smartnet Philippines — the division of RMSI - AUB granted to it, among others, Irrevocable Letter of Credit No. 990361 in the total sum of $29,300.00 in favor of Rohde & Schwarz Support Centre Asia Ptd. Ltd., which is the subject of these consolidated petitions. To cover the liability of this Irrevocable Letter of Credit, Gilbert Guy executed Promissory Note No. 010445 in behalf of SPI in favor of AUB. This promissory note was renewed twice, once, in the name of SPI (Promissory Note No. 011686), and last, in the name of Smartnet Philippines under Promissory Note No. 136131, bolstering AUB's belief that RMSI's directors and officers consistently treated this letter of credit, among others, as obligations of RMSI.

When RMSI's obligations remained unpaid, AUB sent letters demanding payments. RMSI denied liability contending that the transaction was incurred solely by SPI, a corporation which belongs to the Guy Group of Companies, but which has a separate and distinct personality from RMSI. RMSI further claimed that while Smartnet Philippines is an RMSI division, SPI, is a subsidiary of RMSI, and hence, is a separate entity.

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[5] *Id.* at 472.

[6] *Id.*

Aggrieved, AUB filed a case of syndicated *estafa* under Article 315 (2) (a) of the Revised Penal Code in relation to Section 1 of Presidential Decree (PD) No. 1689 against the interlocking directors of RMSI and SPI, namely, Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy, and Eugenio H. Galvez, Jr., before the Office of the City Prosecutor of Pasig City.

AUB alleged that the directors of RMSI deceived it into believing that SPI was a division of RMSI, only to insist on its separate juridical personality later on to escape from its liabilities with AUB. AUB contended that had it not been for the fraudulent scheme employed by Gilbert Guy, *et al.*, AUB would not have parted with its money, which, including the controversy subject of this petition, amounted to hundreds of millions of pesos.

In a Resolution dated 3 April 2006,[7] the Prosecutor found probable cause to indict Gilbert G. Guy, *et al.* for *estafa* but dismissed the charge of violation of PD No. 1689 against the same for insufficiency of evidence, thus:

> WHEREFORE, it is recommended that respondents be charged for ESTAFA under Article 315, par. 2(a) of the Revised Penal Code, and the attached information be filed with the Regional Trial Court in Pasig City, with a recommended bail of ₱40,000.00 for each respondent.
>
> It is further recommended that the charge of violation of P.D. 1689 against the said respondents be dismissed for insufficiency of evidence.[8]

Accordingly, an Information dated 3 April 2006[9] was filed against Gilbert Guy, *et al.* with the Regional Trial Court of Pasig City.

Both parties, *i.e.*, the AUB and Gilbert Guy, *et al.*, filed their respective Petitions for Review with the Department of

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[7] *Rollo* in G.R. No. 187919, pp. 137-148.

[8] *Id.* at 148.

[9] Filed before the Regional Trial Court of Pasig City, entitled *People of the Philippines v. Gilbert Guy, et al.*, Branch 57, docketed as Criminal Case No. 133010-PSG. *Id*. at 53.

Justice (DOJ) assailing the 3 April 2006 Resolution of the Office of the City Prosecutor of Pasig City.

In a Resolution dated 15 August 2006,[10] the DOJ reversed the City Prosecutor's Resolution and ordered the dismissal of the *estafa* charges against Gilbert Guy, *et al.* for insufficiency of evidence.

The AUB's Motion for Reconsideration was denied, constraining it to assail the DOJ Resolution before the Court of Appeals (CA).

The CA partially granted AUB's petition in a Decision dated 27 June 2008, thus:

> **WHEREFORE,** the instant petition is **GRANTED**, finding probable cause against private respondents for the crime of **ESTAFA** under Article 315, par 2 (a) of the Revised Penal Code. The assailed Resolution dated August 15, 2006 of the Department of Justice is **REVERSED AND SET ASIDE,** subject to our ruling that the private respondents are not liable under P.D. 1689. The April 3, 2006 Resolution of Assistant City Prosecutor Paudac is hereby **REINSTATED.**[11]

Aggrieved, Gilbert Guy, Philip Leung and Eugenio H. Galvez Jr. (in G.R. No. 188030) and separately, Rafael Galvez and Katherine Guy (in G.R. No. 187919) filed the present petitions before this Court assailing the CA Decision which reinstated the City Prosecutor's Resolution indicting them of the crime of estafa. The AUB also filed its own petition before us, docketed as G.R. No. 187979, assailing the Court of Appeals Decision for dismissing the charge in relation to Section 1 of PD No. 1689.

Hence, these consolidated petitions.

Gilbert Guy, *et al.* argue that this case is but a case for collection of sum of money, and, hence, civil in nature and that no fraud or deceit was present at the onset of the transaction

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[10] *Rollo* in G.R. No. 188030, p. 398.

[11] Penned by Associate Justice Vicente Veloso, with Associate Justices Rebecca de Guia-Salvador and Apolinario D. Bruselas, Jr., concurring. *Rollo* in G.R. No. 187919, pp. 8-41.

which gave rise to this controversy, an element indispensable for *estafa* to prosper.[12]

AUB, on the other, insists that this controversy is within the scope of PD No. 1689, otherwise known as syndicated *estafa*. It contends that Guy, *et al.,* induced AUB to grant SPI's letter of credit to AUB's damage and prejudice by misleading AUB into believing that SPI is one and the same entity as Smartnet Philippines which AUB granted an Omnibus Credit Transaction. After receiving and profiting from the proceeds of the aforesaid letter of credit, Gilbert Guy, *et al.* denied and avoided liability therefrom by declaring that the obligation should have been booked under SPI as RMSI never contracted, nor authorized the same. It is on this premise that AUB accuses Gilbert Guy, *et al.* to have committed the crime of *estafa* under Article 315 (2) (a) of the Revised Penal Code in relation to PD No. 1689.

At issue, therefore, is whether or not there is probable cause to prosecute Gilbert Guy, *et al.* for the crime of syndicated *estafa* on the basis of fraudulent acts or fraudulent means employed to deceive AUB into releasing the proceeds of Irrevocable Letter of Credit No. 990361 in favor of SPI.

Our Ruling

This controversy could have been just a simple case for collection of sum of money had it not been for the sophisticated fraudulent scheme which Gilbert Guy, *et al.* employed in inducing AUB to part with its money.

Records show that on 17 February 1995, Radio Marine Network, Inc. (Radio Marine) amended its corporate name to what it stands today — Radio Marine Network **(Smartnet),** Inc. This was a month after organizing its subsidiary corporation the **Smartnet Philippines, Inc.** with a capital of only ₱62,500.00.[13] A year earlier, Gilbert Guy, *et al.,* established **Smartnet Philippines** as a division of Radio Marine under which RMSI operated its business.

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[12] *Rollo* in G.R. No. 188030, p. 16.

[13] Incorporated on 24 January 1995. *Rollo* in G.R. No. 187919, p. 294.

It was, however, only on 26 March 1998, when the Securities and Exchange Commission approved the amended corporate name, and only in October 1999 did RMSI register Smartnet Philippines as its business name with the Department of Trade and Industry.[14]

It is in this milieu that RMSI transacted business with AUB under the name Smartnet Philippines and/or SPI.

Article 315 (2) (a) of the Revised Penal Code provides:

> **Art. 315.** *Swindling (estafa)* – any person who shall defraud another by any of the means mentioned herein below x x x:
>
> x x x x x x x x x
>
> 2. By means of any of the following **false pretenses or fraudulent acts executed prior to or simultaneous with the commission of the fraud:**
>
> (a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; **or by means of other similar deceits.** x x x.

The elements of *estafa* by means of deceit are the following:

a. That there must be a false pretense, fraudulent act or fraudulent means;
b. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;
c. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means;
d. That as a result thereof, the offended party suffered damage.[15]

First, Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez and Eugenio Galvez, Jr., interlocking directors of RMSI and SPI, represented to AUB in their transactions that Smartnet

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[14] *Rollo* in G.R. No. 188030, p. 111.

[15] *Montano v. People*, 423 Phil. 141, 147-148 (2001).

Philippines and SPI were one and the same entity. While Eugenio Galvez, Jr. was not a director of SPI, he actively dealt with AUB in his capacity as RMSI's Chief Financial Officer/Comptroller by falsely representing that SPI and RMSI were the same entity. Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez, and Eugenio Galvez, Jr. used the business names Smartnet Philippines, RMSI, and SPI interchangeably and without any distinction. They successfully did this by using the confusing similarity of RMSI's business name, *i.e.*, Smartnet Philippines — its division, and, Smartnet Philippines, Inc. — the subsidiary corporation. Further, they were able to hide the identity of SPI, by having almost the same directors as that of RMSI. In order to let it appear that SPI is the same as that of Smartnet Philippines, they submitted in their application documents of RMSI, including its Amended Articles of Incorporation,[16] third-party real estate mortgage of Goodland Company[17] in favor of Smartnet Philippines, and audited annual financial statement of SGV & Co.[18] Gilbert Guy, *et al.* also used RMSI letterhead in their official communications with the bank and the contents of these official communications[19] conclusively pointed to RMSI as the one which transacted with the bank.

These circumstances are all *indicia* of deceit. Deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.[20]

Second, the intent to deceive AUB was manifest from the start. Gilbert Guy, *et al.* laid down first all the necessary materials they need for this deception before defrauding the bank by first establishing Smartnet Philippines as a division of Radio Marine

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[16] *Rollo* in G.R. No. 188030, pp. 458-467.

[17] *Id.* at 114.

[18] *Id.* at 494-502.

[19] *Id.* at. 481, 492-493, 502, 505, 507-512.

[20] *People v. Balasa*, 356 Phil. 362, 382-383 (1998).

under which Radio Marine Network Inc. operated its business.[21] Then it organized a subsidiary corporation, the SPI, with a capital of only ₱62,000.00.[22] Later, it changed the corporate name of Radio Marine Network Inc. into RMSI.[23]

Undoubtedly, deceit here was conceived in relation to Gilbert Guy, *et al.'s* transaction with AUB. There was a plan, documented in corporation's papers, that led to the defraudation of the bank. The circumstances of the directors' and officers' acts in inserting in Radio Marine the name of Smartnet; the creation of its division — Smartnet Philippines; and its registration as business name as Smartnet Philippines with the Department of Trade and Industry, together with the incorporation of its subsidiary, the SPI, are *indicia* of a pre-conceived scheme to create this elaborate fraud, victimizing a banking institution, which perhaps, is the first of a kind in Philippine business.

We emphasize that fraud in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal duty or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.[24] It is a generic term embracing all multifarious means which human ingenuity can device and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated.[25]

As early as 1903, in *U.S. v. Mendezona*,[26] we held that an accused may be convicted for *estafa* if the deceit of false pretense

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[21] *Rollo* in G.R. No. 188030, p. 381.

[22] *Id.* at 89-100.

[23] *Id.* at 101.

[24] *Id.* at 382.

[25] *Id.* citing *Alleje v. Court of Appeals,* G.R. No. 107152, 25 January 1995, 240 SCRA 495, 500 citing further *Black's Law Dictionary*, 4th Edition., p. 788 (1951).

[26] 2 Phil. 353 (1903).

is committed prior to or simultaneous with fraud and is the efficient cause or primary consideration which induced the offended party to part with his money or property.

Third, AUB would not have granted the Irrevocable Letter of Credit No. 990361, among others, had it known that SPI which had only ₱62,500.00 paid-up capital and no assets, is a separate entity and not the division or business name of RMSI. Gilbert Guy, *et al.* however, contends that the transaction subject in this controversy is a letter of credit and not a loan, hence, SPI's capital does not matter.[27] This was also the contention of the DOJ in reversing the Resolution of the City Prosecutor's Office of Pasig. The DOJ contended that:

> It is also noted that the subject transaction, one of the several series of transactions between complainant AUB and SPI, is not a loan transaction. It is a letter of credit transaction intended to facilitate the importation of goods by SPI. The allegation as to the lack of capitalization of SPI is therefore immaterial and irrelevant since it is a letter of credit transaction. The seller gets paid only if it delivers the documents of title over the goods to the bank which issued the letter of credit, while the buyer/importer acquires title to the goods once it reimburses the issuing bank. The transaction secures the obligation of the buyer/importer to the issuing bank.[28]

It is true that ordinarily, in a letter of credit transaction, the bank merely substitutes its own promise to pay for the promise to pay of one of its customers, who in turn promises to pay the bank the amount of funds mentioned in the letters of credit plus credit or commitments fees mutually agreed upon. Once the issuing bank shall have paid the beneficiary after the latter's compliance with the terms of the letter of credit, the issuing bank is entitled to reimbursement for the amount it paid under the letter of credit.[29]

In the present case, however, no reimbursement was made outright, precisely because the letter of credit was secured by

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[27] *Rollo* in G.R. No. 188030, p. 22.

[28] Resolution of the Department of Justice. *Rollo* in G.R. No. 188030, p. 201.

[29] *Prudential Bank v. IAC,* 216 SCRA 257 (1992).

a promissory note executed by SPI. The bank would have not agreed to this transaction had it not been deceived by Gilbert Guy, *et al.* into believing the RMSI and SPI were one and the same entity. Guy and his cohorts' acts in (1) securing the letter of credit guaranteed by a promissory note in behalf of SPI; and, (2) their act of representing SPI as RMSI's Division, were *indicia* of fraudulent acts because they fully well know, even before transacting with the bank, that: (a) SPI was a separate entity from Smartnet Philippines, the RMSI's Division, which has the Omnibus Credit Line; and (b) despite this knowledge, they misrepresented to the bank that SPI is RMSI's division. Had it not for this false representation, AUB would have not granted SPI's letter of credit to be secured with a promissory note because SPI as a corporation has no credit line with AUB and SPI by its own, has no credit standing.

Fourth, it is not in dispute that the bank suffered damage, which, including this controversy, amounted to hundreds of millions of pesos.

It is worth emphasizing that under Section 1, Rule 112 of the Revised Rules on Criminal Procedure, the function of a preliminary investigation is to determine "whether there is a sufficient ground to engender a well-grounded belief that a crime x x x has been committed and that the respondent is probably guilty thereof and should be held for trial."[30]

A finding of probable cause needs only to rest on evidence showing that more likely than not, the accused committed the crime.[31] Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence.[32] It is for the presentation of such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof.[33] The validity and merits of

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[30] *Webb v. Hon. De Leon*, 317 Phil. 758. 777 (1995).

[31] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto,* 375 Phil. 697 (1999).

[32] *Id.*

[33] *Id.*

a party's accusation or defense, as well as admissibility of testimonies and evidence, are better ventilated during the trial proper.[34]

We, therefore, sustain the findings of the CA and the City Prosecutor's Resolution finding that probable cause exists against Gilbert Guy, *et al.* for the crime of *estafa* under Article 315 (2)(a) of the Revised Penal Code and that Gilbert Guy, *et al.* are probably guilty thereof and should be held for trial. AUB's voluminous documents submitted to this Court overcome this difficulty and established that there is sufficient ground to engender a well-grounded belief that a crime has been committed and that the respondents are probably guilty thereof and should be held for trial.

Lest it be misunderstood, we reiterate that this Court's finding of probable cause is grounded on fraud committed through deceit which surrounded Gilbert Guy, *et al.* transaction with AUB, thus, violating Article 315 (2) (a) of the Revised Penal Code; it is neither their act of borrowing money and not paying them, nor their denial thereof, but their very act of deceiving AUB in order for the latter to part with its money. As early as the Penal Code of Spain, which was enforced in the Philippines as early as 1887 until it was replaced by the Revised Penal Code in 1932, the act of fraud through false pretenses or similar deceit was already being punished. Article 335 of the Penal Code of Spain punished a person who defrauded another "by falsely pretending to possess any power, influence, qualification, property, credit, agency or business, or by means of similar deceit."[35]

Anent the issue as to whether or not Gilbert Guy, *et al.* should be charged for syndicated *estafa* in relation to Section 1 of PD No. 1689, which states that:

SEC 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to

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[34] *Id.*

[35] *Lozano v. Martinez*, G.R. No. 63419, 18 December 1986, 146 SCRA 323, 332.

death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon*(s)", or farmers associations, or of funds solicited by corporations/associations from the general public.

We hold that the afore-quoted law applies to the case at bar, for the following reasons:

Under Section 1 of PD No. 1689, the elements of syndicated *estafa* are: (a) *estafa* or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code is committed; (b) the *estafa* or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "*samahang nayon[s]*," or farmers associations or of funds solicited by corporations/associations from the general public.[36]

First, as defined under Section 1 of PD No. 1689, a syndicate "consists of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme." Five (5) accused, namely, Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy, and Eugenio H. Galvez, Jr. were, (a) all involved in the formation of the entities used to defraud AUB; and (b) they were the officers and directors, both of RMSI and SPI, whose conformities paved the way for AUB to grant the letter of credit subject of this case, in AUB's honest belief that SPI, as Gilbert Guy, *et al.* represented, was a mere division of RMSI. As already discussed, although Eugenio Galvez, Jr. was not a director of SPI, he, together with Gilbert Guy and Philip Leung, actively participated in the scheme through their signed correspondences with the bank and their attendance in the meetings with executives of AUB.[37] Rafael Galvez and Katherine Guy, on the other hand, were the directors of RMSI

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[36] *People v. Balasa, supra* note 20 at 395-396.

[37] *Rollo* in G.R. No. 188030, pp. 149-160.

and SPI who caused and authorized Gilbert Guy and Philip Leung to transact with AUB.[38]

Second, while these corporations were established presumably in accordance with law, it cannot be denied that Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy, and Eugenio H. Galvez, Jr. used these corporations to carry out the illegal and unlawful act of misrepresenting SPI as a mere division of RMSI, and, despite knowing SPI's separate juridical personality, applied for a letter of credit secured by SPI's promissory note, knowing fully that SPI has no credit line with AUB. The circumstances of the creation of these entities and their dealings with the bank reveal this criminal intent to defraud and to deceive AUB.

Third, the fact that the defraudation of AUB resulted to misappropriation of the money which it solicited from the general public in the form of deposits was substantially established.[39] Section 3.1 of the General Banking Law defines banks as "entities engaged in the lending of funds obtained in the form of deposits." The Old General Banking Act (R.A. No. 337) gave a fuller picture of the basic banking function of obtaining funds from the public by way of deposits and the lending of these funds as follows:

> Sec 2. Only entities duly authorized by the Monetary Board of the Central Bank may engage in the lending of funds obtained **from the public through the receipt of deposits of any kind,** and all entities regularly conducting such operations shall be considered as banking institutions, x x x.

Gilbert Guy, *et al.* want this Court to believe that AUB, being a commercial bank, is beyond the coverage of PD No. 1689. We hold, however, that a bank is a corporation whose fund comes from the general public. P.D. No. 1689 does not distinguish the nature of the corporation. It requires, rather, that the funds of such corporation should come from the general public. This

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[38] *Id.* at 115.

[39] **Section 95.** *Definition of Deposit Substitutes.* — The term deposit substitutes is defined as an alternative form of obtaining funds from the public, other than deposits, x x x.

is bolstered by the third "whereas clause" of the quoted law which states that the same also applies to other "corporations/ associations operating on funds solicited from the general public." This is precisely the very same scheme that PD No. 1689 contemplates that this species of *estafa* "be checked or at least be minimized by imposing capital punishment involving funds solicited by corporations/associations from the general public" because "this erodes the confidence of the public in the banking and cooperative system, contravenes public interest and constitutes economic sabotage that threatens the stability of the nation."[40]

Hence, for the stated reasons, we applied the law in *People v. Balasa*,[41] a non-stock/non-profit corporation — the Panata Foundation of the Philippines, Inc. We held that PD No. 1689 also applies to other corporations/associations operating on funds solicited from the general public.

In *People v. Romero*,[42] we also applied the law to a stock corporation engaged in marketing, the Surigao San Andres Industrial Development Corporation. Likewise, in *People v. Menil*,[43] we applied the law to another marketing firm known as ABM Appliance and Upholstery.

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[40] Preamble of PD No 1689:

WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, "samahang nayon (s)", and farmers' associations or corporations/associations operating on funds solicited from the general public; WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives, "samahang nayon(s)", or farmers' associations, or of funds solicited by corporations/associations from the general public, erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, "samahang nayon(s)", farmers' associations or corporations/associations operating on funds solicited from the general public;

[41] *Supra* note 20.

[42] 365 Phil. 531 (1999).

[43] G.R. Nos. 115054-66, 12 September 2000, 340 SCRA 125.

In these cited cases, the accused used the legitimacy of their entities to perpetrate their unlawful and illegal acts. We see no reason not to apply this law to a banking institution, a corporation imbued with public interest, when a clear reading of the PD 1689 reveals that it is within its coverage.

WHEREFORE, the Decision of the Court of Appeals dated 27 June 2008 in CA-G.R. SP No. 97160 is hereby **AFFIRMED** with **MODIFICATION** that Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy and Eugenio H. Galvez, Jr. be charged for **SYNDICATED *ESTAFA*** under Article 315 (2) (a) of the Revised Penal Code in relation to Section 1 of Presidential Decree No. 1689.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 188497. April 25, 2012]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PILIPINAS SHELL PETROLEUM CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); REMEDIES; REFUND; SECTION 229 OF THE NIRC ONLY ALLOWS THE RECOVERY OF TAXES ERRONEOUSLY OR ILLEGALLY COLLECTED AND NOT ON CLAIMS PREMISED ON TAX EXEMPTIONS. — Sec. 229 of the NIRC allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property

not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal. Respondent's locally manufactured petroleum products are clearly subject to excise tax under Sec. 148. Hence, its claim for tax refund may not be predicated on Sec. 229 of the NIRC allowing a refund of erroneous or excess payment of tax. Respondent's claim is premised on what it determined as a tax exemption "attaching to the goods themselves," which must be based on a statute granting tax exemption, or "the result of legislative grace." Such a claim is to be construed *strictissimi juris* against the taxpayer, meaning that the claim cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute. The exemption from excise tax payment on petroleum products under Sec. 135 (a) is conferred on international carriers who purchased the same for their use or consumption outside the Philippines. The only condition set by law is for these petroleum products to be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

2. ID.; ID.; EXCISE TAXES ON CERTAIN GOODS; PETROLEUM PRODUCTS SOLD TO INTERNATIONAL CARRIERS AND EXEMPT ENTITIES OR AGENCIES; THE TAX EXEMPTION IS CONFERRED ON SPECIFIED *BUYERS* OR *CONSUMERS* OF THE EXCISABLE ARTICLES OR GOODS WHICH ARE PETROLEUM PRODUCTS.— In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue* this Court held that petitioner manufacturer who sold its oxygen and acetylene gases to NPC, a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its buyer NPC is exempt from taxation. The Court explained that the percentage tax on sales of merchandise imposed by the Tax Code is due from the manufacturer and not from the buyer. Respondent attempts to distinguish this case from *Philippine Acetylene Co., Inc.* on grounds that what was involved in the latter is a tax on the transaction (sales) and not excise tax which is a tax on the goods themselves, and that the exemption sought therein was anchored merely on the tax-exempt status of the buyer and

not a specific provision of law exempting the goods sold from the excise tax. But as already stated, the language of Sec. 135 indicates that the tax exemption mentioned therein is conferred on specified *buyers* or *consumers* of the excisable articles or goods (petroleum products). Unlike Sec. 134 which explicitly exempted the article or goods itself (domestic denatured alcohol) without due regard to the tax status of the buyer or purchaser, Sec. 135 exempts from excise tax petroleum products which were sold to international carriers and other tax-exempt agencies and entities.

3. ID.; ID.; ID.; THE EXCISE TAX IMPOSED ON PETROLEUM PRODUCTS UNDER SEC. 148 IS THE DIRECT LIABILITY OF THE MANUFACTURER WHO CANNOT INVOKE THE EXCISE TAX EXEMPTION GRANTED TO ITS BUYERS WHO ARE INTERNATIONAL CARRIERS.— Considering that the excise taxes attaches to petroleum products "as soon as they are in existence as such," there can be no outright exemption from the payment of excise tax on petroleum products sold to international carriers. The sole basis then of respondent's claim for refund is the express grant of excise tax exemption in favor of international carriers under Sec. 135 (a) for their purchases of locally manufactured petroleum products. Pursuant to our ruling in *Philippine Acetylene*, a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller. The excise tax imposed on petroleum products under Sec. 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers.

4. ID.; ID.; ID.; AN EXCISE TAX IS BASICALLY AN INDIRECT TAX OR THOSE THAT ARE DEMANDED, IN THE FIRST INSTANCE, FROM, OR ARE PAID BY, ONE PERSON IN THE EXPECTATION AND INTENTION THAT HE CAN SHIFT THE BURDEN TO SOMEONE ELSE.— In *Maceda v. Macaraig, Jr.*, the Court specifically mentioned excise tax as an example of an indirect tax where the tax burden can be shifted to the buyer: On the other hand, "indirect taxes are taxes primarily paid by persons who can shift the burden upon someone else." For example, the excise and *ad valorem* taxes that the oil companies pay to the Bureau

of Internal Revenue upon removal of petroleum products from its refinery can be shifted to its buyer, like the NPC, by adding them to the "cash" and/or "selling price." An excise tax is basically an indirect tax. Indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.

5. ID.; ID.; ID.; BOTH THE EARLIER AMENDMENT (P.D. 1359) IN THE 1977 TAX CODE AND THE PRESENT SECTION 135 OF THE 1977 NIRC DID NOT EXEMPT THE OIL COMPANIES FROM THE PAYMENT OF EXCISE TAX ON PETROLEUM PRODUCTS MANUFACTURED AND SOLD BY THEM TO INTERNATIONAL CARRIERS.— Contrary to respondent's assertion that the above amendment to the former provision of the 1977 Tax Code supports its position that it was not liable for excise tax on the petroleum products sold to international carriers, we find that no such inference can be drawn from the words used in the amended provision or its introductory part. Founded on the principles of international comity and reciprocity, P.D. No. 1359 granted exemption from payment of excise tax but only to foreign international carriers who are allowed to purchase petroleum products free of specific tax provided the country of said carrier also grants tax exemption *to Philippine carriers.* Both the earlier amendment in the 1977 Tax Code and the present Sec. 135 of the 1997 NIRC did not exempt the oil companies from the payment of excise tax on petroleum products manufactured and sold by them to international carriers.

6. ID.; ID.; ID.; AN EXCISE TAX IS A TAX ON THE MANUFACTURER AND NOT ON THE PURCHASER.— Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers

of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135 (a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buys petroleum products from the local manufacturers. Said provision thus merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods.

7. ID.; ID.; ID.; TAX EXEMPTIONS MUST NOT REST ON VAGUE, UNCERTAIN OR INDEFINITE INFERENCE, BUT SHOULD BE GRANTED ONLY BY A CLEAR AND UNEQUIVOCAL PROVISION OF LAW ON THE BASIS OF LANGUAGE TOO PLAIN TO BE MISTAKEN.— Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted, it is never presumed nor be allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a *clear and unequivocal provision of law* on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Baniqued and Baniqued for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Petitioner Commissioner of Internal Revenue appeals the Decision[1] dated March 25, 2009 and Resolution[2] dated June 24, 2009 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 415. The CTA dismissed the petition for review filed by petitioner assailing the CTA First Division's Decision[3] dated April 25, 2008 and Resolution[4] dated July 10, 2008 which ordered petitioner to refund the excise taxes paid by respondent Pilipinas Shell Petroleum Corporation on petroleum products it sold to international carriers.

The facts are not disputed.

Respondent is engaged in the business of processing, treating and refining petroleum for the purpose of producing marketable products and the subsequent sale thereof.[5]

On July 18, 2002, respondent filed with the Large Taxpayers Audit & Investigation Division II of the Bureau of Internal Revenue (BIR) a formal claim for refund or tax credit in the total amount of ₱28,064,925.15, representing excise taxes it allegedly paid on sales and deliveries of gas and fuel oils to various international carriers during the period October to December 2001. Subsequently, on October 21, 2002, a similar claim for refund or tax credit was filed by respondent with the BIR covering the period January to March 2002 in the amount

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[1] *Rollo*, pp. 45-66. Penned by Associate Justice Erlinda P. Uy with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

[2] *Id.* at 68-71.

[3] *Id.* at 117-133. Penned by Associate Justice Caesar A. Casanova with Presiding Justice Ernesto D. Acosta and Lovell R. Bautista, concurring.

[4] *Id.* at 153-156.

[5] Joint Stipulation of Facts and Issues, records (CTA Case No. 6839), p. 206.

of ₱41,614,827.99. Again, on July 3, 2003, respondent filed another formal claim for refund or tax credit in the amount of ₱30,652,890.55 covering deliveries from April to June 2002.[6]

Since no action was taken by the petitioner on its claims, respondent filed petitions for review before the CTA on September 19, 2003 and December 23, 2003, docketed as CTA Case Nos. 6775 and 6839, respectively.

In its decision on the consolidated cases, the CTA's First Division ruled that respondent is entitled to the refund of excise taxes in the reduced amount of ₱95,014,283.00. The CTA First Division relied on a previous ruling rendered by the CTA *En Banc* in the case of "*Pilipinas Shell Petroleum Corporation v. Commissioner of Internal Revenue*"[7] where the CTA also granted respondent's claim for refund on the basis of excise tax exemption for petroleum products sold to international carriers of foreign registry for their use or consumption outside the Philippines. Petitioner's motion for reconsideration was denied by the CTA First Division.

Petitioner elevated the case to the CTA *En Banc* which upheld the ruling of the First Division. The CTA pointed out the specific exemption mentioned under Section 135 of the National Internal Revenue Code of 1997 (NIRC) of petroleum products sold to international carriers such as respondent's clients. It said that this Court's ruling in *Maceda v. Macaraig, Jr.*[8] is inapplicable because said case only put to rest the issue of whether or not the National Power Corporation (NPC) is subject to tax considering that NPC is a tax-exempt entity mentioned in Sec. 135 (c) of the NIRC (1997), whereas the present case involves the tax exemption of the sale of petroleum under Sec. 135 (a) of the same Code. Further, the CTA said that the ruling in *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*[9]

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[6] *Rollo,* p. 119.

[7] CTA Case No. 6554, November 28, 2006, *rollo,* pp. 125-126.

[8] G.R. No. 88291, June 8, 1993, 223 SCRA 217.

[9] No. L-19707, August 17, 1967, 20 SCRA 1056.

likewise finds no application because the party asking for the refund in said case was the seller-producer based on the exemption granted under the law to the tax-exempt buyers, NPC and Voice of America (VOA), whereas in this case it is the article or product which is exempt from tax and not the international carrier.

Petitioner filed a motion for reconsideration which the CTA likewise denied.

Hence, this petition anchored on the following grounds:

I

SECTION 148 OF THE NATIONAL INTERNAL REVENUE CODE EXPRESSLY SUBJECTS THE PETROLEUM PRODUCTS TO AN EXCISE TAX BEFORE THEY ARE REMOVED FROM THE PLACE OF PRODUCTION.

II

THE ONLY SPECIFIC PROVISION OF THE LAW WHICH GRANTS TAX CREDIT OR TAX REFUND OF THE EXCISE TAXES PAID REFERS TO THOSE CASES WHERE GOODS LOCALLY PRODUCED OR MANUFACTURED ARE ACTUALLY EXPORTED WHICH IS NOT SO IN THIS CASE.

III

THE PRINCIPLES LAID DOWN IN *MACEDA VS. MACARAIG, JR.* AND *PHILIPPINE ACETYLENE CO. VS. CIR* ARE APPLICABLE TO THIS CASE.[10]

The Solicitor General argues that the obvious intent of the law is to grant excise tax exemption to international carriers and exempt entities as buyers of petroleum products and not to the manufacturers or producers of said goods. Since the excise taxes are collected from manufacturers or producers before removal of the domestic products from the place of production, respondent paid the subject excise taxes as manufacturer or producer of the petroleum products pursuant to Sec. 148 of the NIRC. Thus, regardless of who the buyer/purchaser is, the excise tax on petroleum products attached to the said goods before

[10] *Rollo,* pp. 17-18.

their sale or delivery to international carriers, as in fact respondent averred that it paid the excise tax on its petroleum products when it "withdrew petroleum products from its place of production for eventual sale and delivery to various international carriers as well as to other customers."[11] Sec. 135 (a) and (c) granting exemption from the payment of excise tax on petroleum products can only be interpreted to mean that the respondent cannot pass on to international carriers and exempt agencies the excise taxes it paid as a manufacturer or producer.

As to whether respondent has the right to file a claim for refund or tax credit for the excise taxes it paid for the petroleum products sold to international carriers, the Solicitor General contends that Sec. 130 (D) is explicit on the circumstances under which a taxpayer may claim for a refund of excise taxes paid on manufactured products, which express enumeration did not include those excise taxes paid on petroleum products which were eventually sold to international carriers *(expressio unius est exclusio alterius)*. Further, the Solicitor General asserts that contrary to the conclusion made by the CTA, the principles laid down by this Court in *Maceda v. Macaraig, Jr.*[12] and *Philippine Acetylene Co. v. Commissioner of Internal Revenue*[13] are applicable to this case. Respondent must shoulder the excise taxes it previously paid on petroleum products which it later sold to international carriers because it cannot pass on the tax burden to the said international carriers which have been granted exemption under Sec. 135 (a) of the NIRC. Considering that respondent failed to prove an express grant of a right to a tax refund, such claim cannot be implied; hence, it must be denied.

On the other hand, respondent maintains that since petroleum products sold to qualified international carriers are exempt from excise tax, no taxes should be imposed on the article, to which goods the tax attaches, whether in the hands of the said international carriers or the petroleum manufacturer or producer.

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[11] *Id.* at 274.

[12] *Supra* note 8.

[13] *Supra* note 9.

As these excise taxes have been erroneously paid taxes, they can be recovered under Sec. 229 of the NIRC. Respondent contends that contrary to petitioner's assertion, Sections 204 and 229 authorizes respondent to maintain a suit or proceeding to recover such erroneously paid taxes on the petroleum products sold to tax-exempt international carriers.

As to the jurisprudence cited by the petitioner, respondent argues that they are not applicable to the case at bar. It points out that *Maceda v. Macaraig, Jr.* is an adjudication on the issue of tax exemption of NPC from direct and indirect taxes given the passage of various laws relating thereto. What was put in issue in said case was NPC's right to claim for refund of indirect taxes. Here, respondent's claim for refund is not anchored on the exemption of the buyer from direct and indirect taxes but on the tax exemption of the goods themselves under Sec. 135. Respondent further stressed that in *Maceda v. Macaraig, Jr.,* this Court recognized that if NPC purchases oil from oil companies, NPC is entitled to claim reimbursement from the BIR for that part of the purchase price that represents excise taxes paid by the oil company to the BIR. *Philippine Acetylene Co. v. CIR*, on the other hand, involved sales tax, which is a tax on the transaction, which this Court held as due from the seller even if such tax cannot be passed on to the buyers who are tax-exempt entities. In this case, the excise tax is a tax on the goods themselves. While indeed it is the manufacturer who has the duty to pay the said tax, by specific provision of law, Sec. 135, the goods are stripped of such tax under the circumstances provided therein. *Philippine Acetylene Co., Inc. v. CIR* was thus not anchored on an exempting provision of law but merely on the argument that the tax burden cannot be passed on to someone.

Respondent further contends that requiring it to shoulder the burden of excise taxes on petroleum products sold to international carriers would effectively defeat the principle of international comity upon which the grant of tax exemption on aviation fuel used in international flights was founded. If the excise taxes paid by respondent are not allowed to be refunded or credited based on the exemption provided in Sec. 135 (a), respondent

avers that the manufacturers or oil companies would then be constrained to shift the tax burden to international carriers in the form of addition to the selling price.

Respondent cites as an analogous case *Commissioner of International Revenue v. Tours Specialists, Inc.*[14] which involved the inclusion of hotel room charges remitted by partner foreign tour agents in respondent TSI's gross receipts for purposes of computing the 3% contractor's tax. TSI opposed the deficiency assessment invoking, among others, Presidential Decree No. 31, which exempts foreign tourists from paying hotel room tax. This Court upheld the CTA in ruling that while CIR may claim that the 3% contractor's tax is imposed upon a different incidence, *i.e.*, the gross receipts of the tourist agency which he asserts includes the hotel room charges entrusted to it, the effect would be to impose a tax, and though different, it nonetheless imposes a tax actually on room charges. One way or the other, said the CTA, it would not have the effect of promoting tourism in the Philippines as that would increase the costs or expenses by the addition of a hotel room tax in the overall expenses of said tourists.

The instant petition squarely raised the issue of whether respondent as manufacturer or producer of petroleum products is exempt from the payment of excise tax on such petroleum products it sold to international carriers.

In the previous cases[15] decided by this Court involving excise taxes on petroleum products sold to international carriers, what was only resolved is the question of who is the proper party to

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[14] G.R. No. 66416, March 21, 1990, 183 SCRA 402.

[15] *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 166482, January 25, 2012; *Exxonmobil Petroleum and Chemical Holdings, Inc.-Philippine Branch v. Commissioner of Internal Revenue*, G.R. No. 180909, January 19, 2011, 640 SCRA 203; *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 184398, February 25, 2010, 613 SCRA 639; *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 & 172379, November 14, 2008, 571 SCRA 141; and *Silkair (Singapore), Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. No. 173594, February 6, 2008, 544 SCRA 100.

claim the refund of excise taxes paid on petroleum products if such tax was either paid by the international carriers themselves or incorporated into the selling price of the petroleum products sold to them. We have ruled in the said cases that the statutory taxpayer, the local manufacturer of the petroleum products who is directly liable for the payment of excise tax on the said goods, is the proper party to seek a tax refund. Thus, a foreign airline company who purchased locally manufactured petroleum products for use in its international flights, as well as a foreign oil company who likewise bought petroleum products from local manufacturers and later sold these to international carriers, have no legal personality to file a claim for tax refund or credit of excise taxes previously paid by the local manufacturers even if the latter passed on to the said buyers the tax burden in the form of additional amount in the price.

Excise taxes, as the term is used in the NIRC, refer to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported into the Philippines. These taxes are imposed in addition to the value-added tax (VAT).[16]

As to petroleum products, Sec. 148 provides that excise taxes attach to the following refined and manufactured mineral oils and motor fuels *as soon as they are in existence as such*:

(a) Lubricating oils and greases;

(b) Processed gas;

(c) Waxes and petrolatum;

(d) Denatured alcohol to be used for motive power;

(e) Naphtha, regular gasoline and other similar products of distillation;

(f) Leaded premium gasoline;

(g) Aviation turbo jet fuel;

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[16] Sec. 129, NIRC (1997).

(h) Kerosene;

(i) Diesel fuel oil, and similar fuel oils having more or less the same generating power;

(j) Liquefied petroleum gas;

(k) Asphalts; and

(l) Bunker fuel oil and similar fuel oils having more or less the same generating capacity.

Beginning January 1, 1999, excise taxes levied on locally manufactured petroleum products and indigenous petroleum are required to be paid *before* their removal from the place of production.[17] However, Sec. 135 provides:

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

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

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

(c) Entities which are by law exempt from direct and indirect taxes.

Respondent claims it is entitled to a tax refund because those petroleum products it sold to international carriers are not subject to excise tax, hence the excise taxes it paid upon withdrawal of those products were erroneously or illegally collected and should

[17] Sec. 130, par. (2).

not have been paid in the first place. Since the excise tax exemption attached to the petroleum products themselves, the manufacturer or producer is under no duty to pay the excise tax thereon.

We disagree.

Under Chapter II "Exemption or Conditional Tax-Free Removal of Certain Goods" of Title VI, Sections 133, 137, 138, 139 and 140 cover conditional tax-free removal of specified goods or articles, whereas Sections 134 and 135 provide for tax exemptions. While the exemption found in Sec. 134 makes reference to the nature and quality of the goods manufactured (domestic denatured alcohol) without regard to the tax status of the buyer of the said goods, Sec. 135 deals with the tax treatment of a specified article (petroleum products) in relation to its buyer or consumer. Respondent's failure to make this important distinction apparently led it to mistakenly assume that the tax exemption under Sec. 135 (a) "attaches to the goods themselves" such that the excise tax should not have been paid in the first place.

On July 26, 1996, petitioner Commissioner issued Revenue Regulations 8-96[18] ("Excise Taxation of Petroleum Products") which provides:

SEC. 4. **Time and Manner of Payment of Excise Tax on Petroleum Products, Non-Metallic Minerals and Indigenous Petroleum —**

I. Petroleum Products

x x x x x x x x x

a) *On locally manufactured petroleum products*

The specific tax on petroleum products locally manufactured or produced in the Philippines shall be paid by the manufacturer, producer, owner or person having possession of the same, and

[18] REVENUE REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 8184, AN ACT RESTRUCTURING THE EXCISE TAX ON PETROLEUM PRODUCTS, AMENDING FOR THIS PURPOSE PERTINENT SECTIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED.

> such tax shall be paid within fifteen (15) days from date of removal from the place of production. (Underscoring supplied.)

Thus, if an airline company purchased jet fuel from an unregistered supplier who could not present proof of payment of specific tax, the company is liable to pay the specific tax on the date of purchase.[19] Since the excise tax must be paid upon withdrawal from the place of production, respondent cannot anchor its claim for refund on the theory that the excise taxes due thereon should not have been collected or paid in the first place.

Sec. 229 of the NIRC allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property *not subject to taxation* or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[20]

Respondent's locally manufactured petroleum products are clearly subject to excise tax under Sec. 148. Hence, its claim for tax refund may not be predicated on Sec. 229 of the NIRC allowing a refund of erroneous or excess payment of tax. Respondent's claim is premised on what it determined as a tax exemption "attaching to the goods themselves," which must be based on a statute granting tax exemption, or "the result of legislative grace." Such a claim is to be construed *strictissimi juris* against the taxpayer, meaning that the claim cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute.[21]

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[19] Sec. 5, *id.*

[20] *BLACK'S LAW DICTIONARY*, Fifth Edition, p. 486.

[21] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, G.R. No. 172129, September 12, 2008, 565 SCRA 154, 165, citing *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160, 183 and *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 546 SCRA 150, 163.

The exemption from excise tax payment on petroleum products under Sec. 135 (a) is conferred on international carriers who purchased the same for their use or consumption outside the Philippines. The only condition set by law is for these petroleum products to be stored in a bonded storage tank and may be disposed of only in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

On January 22, 2008, or five years after the sale by respondent of the subject petroleum products, then Secretary of Finance Margarito B. Teves issued Revenue Regulations No. 3-2008 "Amending Certain Provisions of Existing Revenue Regulations on the Granting of Outright Excise Tax Exemption on Removal of Excisable Articles Intended for Export or Sale/Delivery to International Carriers or to Tax-Exempt Entities/Agencies and Prescribing the Provisions for Availing Claims for Product Replenishment." Said issuance recognized the "tax relief to which the taxpayers are entitled" by availing of the following remedies: (a) a claim for excise tax exemption pursuant to Sections 204 and 229 of the NIRC; or (2) a product replenishment.

SEC. 2. IMPOSITION OF EXCISE TAX ON REMOVAL OF EXCISABLE ARTICLES FOR EXPORT OR SALE/DELIVERY TO INTERNATIONAL CARRIERS AND OTHER TAX-EXEMPT ENTITIES/AGENCIES. — **Subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment**, all manufacturers of articles subject to excise tax under Title VI of the NIRC of 1997, as amended, shall pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies: Provided, That in case the said articles are likewise being sold in the domestic market, the applicable excise tax rate shall be the same as the excise tax rate imposed on the domestically sold articles.

In the absence of a similar article that is being sold in the domestic market, the applicable excise tax shall be computed based on the value appearing in the manufacturer's sworn statement converted to Philippine currency, as may be applicable.

x x x x x x x x x
(Emphasis supplied.)

In this case, however, the Solicitor General has adopted a position contrary to existing BIR regulations and rulings recognizing the right of oil companies to seek a refund of excise taxes paid on petroleum products they sold to international carriers. It is argued that there is nothing in Sec. 135 (a) which explicitly grants exemption from the payment of excise tax in favor of oil companies selling their petroleum products to international carriers and that the only claim for refund of excise taxes authorized by the NIRC is the payment of excise tax on exported goods, as explicitly provided in Sec. 130 (D), Chapter I under the same Title VI:

(D) *Credit for Excise Tax on Goods Actually Exported.* — When goods locally produced or manufactured are removed and actually exported without returning to the Philippines, whether so exported in their original state or as ingredients or parts of any manufactured goods or products, any excise tax paid thereon shall be credited or refunded upon submission of the proof of actual exportation and upon receipt of the corresponding foreign exchange payment: *Provided,* That the excise tax on mineral products, except coal and coke, imposed under Section 151 shall not be creditable or refundable even if the mineral products are actually exported.

According to the Solicitor General, Sec. 135 (a) in relation to the other provisions on excise tax and from the nature of indirect taxation, may only be construed as prohibiting the manufacturers-sellers of petroleum products from passing on the tax to international carriers by incorporating previously paid excise taxes into the selling price. In other words, respondent cannot shift the tax burden to international carriers who are allowed to purchase its petroleum products without having to pay the added cost of the excise tax.

We agree with the Solicitor General.

In *Philippine Acetylene Co., Inc. v. Commissioner of Internal Revenue*[22] this Court held that petitioner manufacturer who sold

[22] *Supra* note 9.

its oxygen and acetylene gases to NPC, a tax-exempt entity, cannot claim exemption from the payment of sales tax simply because its buyer NPC is exempt from taxation. The Court explained that the percentage tax on sales of merchandise imposed by the Tax Code is due from the manufacturer and not from the buyer.

Respondent attempts to distinguish this case from *Philippine Acetylene Co., Inc.* on grounds that what was involved in the latter is a tax on the transaction (sales) and not excise tax which is a tax on the goods themselves, and that the exemption sought therein was anchored merely on the tax-exempt status of the buyer and not a specific provision of law exempting the goods sold from the excise tax. But as already stated, the language of Sec. 135 indicates that the tax exemption mentioned therein is conferred on specified *buyers* or *consumers* of the excisable articles or goods (petroleum products). Unlike Sec. 134 which explicitly exempted the article or goods itself (domestic denatured alcohol) without due regard to the tax status of the buyer or purchaser, Sec. 135 exempts from excise tax petroleum products which were sold to international carriers and other tax-exempt agencies and entities.

Considering that the excise taxes attaches to petroleum products "as soon as they are in existence as such,"[23] there can be no outright exemption from the payment of excise tax on petroleum products sold to international carriers. The sole basis then of respondent's claim for refund is the express grant of excise tax exemption in favor of international carriers under Sec. 135 (a) for their purchases of locally manufactured petroleum products. Pursuant to our ruling in *Philippine Acetylene*, a tax exemption being enjoyed by the buyer cannot be the basis of a claim for tax exemption by the manufacturer or seller of the goods for any tax due to it as the manufacturer or seller. The excise tax imposed on petroleum products under Sec. 148 is the direct liability of the manufacturer who cannot thus invoke the excise tax exemption granted to its buyers who are international carriers.

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[23] Sec. 148, par. 1.

In *Maceda v. Macaraig, Jr.*,[24] the Court specifically mentioned excise tax as an example of an indirect tax where the tax burden can be shifted to the buyer:

> On the other hand, "indirect taxes are taxes primarily paid by persons who can shift the burden upon someone else." For example, the excise and *ad valorem* taxes that the oil companies pay to the Bureau of Internal Revenue upon removal of petroleum products from its refinery can be shifted to its buyer, like the NPC, by adding them to the "cash" and/or "selling price."

An excise tax is basically an indirect tax. Indirect taxes are those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. Stated elsewise, indirect taxes are taxes wherein the liability for the payment of the tax falls on one person but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed upon goods before reaching the consumer who ultimately pays for it. When the seller passes on the tax to his buyer, he, in effect, shifts the tax burden, not the liability to pay it, to the purchaser as part of the price of goods sold or services rendered.[25]

Further, in *Maceda v. Macaraig, Jr.*, the Court ruled that because of the tax exemptions privileges being enjoyed by NPC under existing laws, the tax burden may not be shifted to it by the oil companies who shall pay for fuel oil taxes on oil they supplied to NPC. Thus:

> In view of all the foregoing, the Court rules and declares that the oil companies which supply bunker fuel oil to NPC have to pay the taxes imposed upon said bunker fuel oil sold to NPC. By the very nature of indirect taxation, the economic burden of such taxation is

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[24] G.R. No. 88291, May 31, 1991, 197 SCRA 771, 791, cited in *Silkair (Singapore) Pte. Ltd. v. Commissioner of Internal Revenue*, G.R. Nos. 171383 & 172379, November 14, 2008, *supra* note 15, at 155-156.

[25] *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company*, G.R. No. 140230, December 15, 2005, 478 SCRA 61, 72, citing *Commissioner of Internal Revenue v. Tours Specialists Inc.*, *supra* note 14, at 413.

expected to be passed on through the channels of commerce to the user or consumer of the goods sold. **Because, however, the NPC has been exempted from both direct and indirect taxation, the NPC must be held exempted from absorbing the economic burden of indirect taxation. This means, on the one hand, that the oil companies which wish to sell to NPC absorb all or part of the economic burden of the taxes previously paid to BIR, which they could shift to NPC if NPC did not enjoy exemption from indirect taxes.** This means also, on the other hand, that the NPC may refuse to pay that part of the "normal" purchase price of bunker fuel oil which represents all or part of the taxes previously paid by the oil companies to BIR. If NPC nonetheless purchases such oil from the oil companies — because to do so may be more convenient and ultimately less costly for NPC than NPC itself importing and hauling and storing the oil from overseas — NPC is entitled to be reimbursed by the BIR for that part of the buying price of NPC which verifiably represents the tax already paid by the oil company-vendor to the BIR.[26] (Emphasis supplied.)

In the case of international air carriers, the tax exemption granted under Sec. 135 (a) is based on "a long-standing international consensus that fuel used for international air services should be tax-exempt." The provisions of the 1944 Convention of International Civil Aviation or the "Chicago Convention," which form binding international law, requires the contracting parties not to charge duty on aviation fuel already on board any aircraft that has arrived in their territory from another contracting state. Between individual countries, the exemption of airlines from national taxes and customs duties on a range of aviation-related goods, including parts, stores and fuel is a standard element of the network of bilateral "Air Service Agreements."[27] Later, a Resolution issued by the International Civil Aviation Organization (ICAO) expanded the provision as

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[26] *Supra* note 8, at 256.

[27] Antony Seely, *"Taxing Aviation Fuel" House of Commons Library*, accessed at www.parliament.uk/briefing -papers/SN00523.pdf, citing "Indirect Taxes on International Aviation," by Michael Keen & John Strand, *Fiscal Studies*, Vol. 28 No. 1 2007 (pp. 6-7) and HM Treasury/Dept for Transport, *Aviation and the Environment: Using Economic Instruments*, March 2003 (p. 10).

to similarly exempt from taxes all kinds of fuel taken on board for consumption by an aircraft from a contracting state in the territory of another contracting State departing for the territory of any other State.[28] Though initially aimed at establishing uniformity of taxation among parties to the treaty to prevent double taxation, the tax exemption now generally applies to fuel used in international travel by both domestic and foreign carriers.

On April 21, 1978, then President Ferdinand E. Marcos issued Presidential Decree (P.D.) No. 1359:

PRESIDENTIAL DECREE No. 1359

AMENDING SECTION 134 OF THE NATIONAL INTERNAL REVENUE CODE OF 1977.

WHEREAS, under the present law oil products sold to international carriers are subject to the specific tax;

WHEREAS, *some countries allow the sale of petroleum products to Philippine Carriers without payment of taxes thereon*;

WHEREAS, *to foster goodwill and better relationship with foreign countries, there is a need to grant similar tax exemption in favor of foreign international carriers*;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the following:

Section 1. Section 134 of the National Internal Revenue Code of 1977 is hereby amended to read as follows:

> "Sec. 134. Articles subject to specific tax. Specific internal revenue taxes apply to things manufactured or produced in the Philippines for domestic sale or consumption and to things imported, but not to anything produced or manufactured here which shall be removed for exportation and is actually exported without returning to the Philippines, whether so exported in its original state or as an ingredient or part of any manufactured article or product.

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[28] "Prohibition Against Taxes On International Airlines", prepared by The International Air Transport Association (IATA), *globalwarming.house.gov/files/LTTR/ACES/IntlAirTransport...*

"HOWEVER, PETROLEUM PRODUCTS SOLD TO AN INTERNATIONAL CARRIER FOR ITS USE OR CONSUMPTION OUTSIDE OF THE PHILIPPINES SHALL NOT BE SUBJECT TO SPECIFIC TAX, PROVIDED, THAT THE COUNTRY OF SAID CARRIER EXEMPTS FROM TAX PETROLEUM PRODUCTS SOLD TO PHILIPPINE CARRIERS.

"In case of importations the internal revenue tax shall be in addition to the customs duties, if any."

Section 2. This Decree shall take effect immediately.

Contrary to respondent's assertion that the above amendment to the former provision of the 1977 Tax Code supports its position that it was not liable for excise tax on the petroleum products sold to international carriers, we find that no such inference can be drawn from the words used in the amended provision or its introductory part. Founded on the principles of international comity and reciprocity, P.D. No. 1359 granted exemption from payment of excise tax but only to foreign international carriers who are allowed to purchase petroleum products free of specific tax provided the country of said carrier also grants tax exemption *to Philippine carriers*. Both the earlier amendment in the 1977 Tax Code and the present Sec. 135 of the 1997 NIRC did not exempt the oil companies from the payment of excise tax on petroleum products manufactured and sold by them to international carriers.

Because an excise tax is a tax on the manufacturer and not on the purchaser, and there being no express grant under the NIRC of exemption from payment of excise tax to local manufacturers of petroleum products sold to international carriers, and absent any provision in the Code authorizing the refund or crediting of such excise taxes paid, the Court holds that Sec. 135 (a) should be construed as prohibiting the shifting of the burden of the excise tax to the international carriers who buys petroleum products from the local manufacturers. Said provision thus merely allows the international carriers to purchase petroleum products without the excise tax component as an added cost in the price fixed by the manufacturers or distributors/sellers. Consequently, the oil companies which sold such petroleum products to international carriers are not entitled to a refund of excise taxes previously paid on the goods.

Time and again, we have held that tax refunds are in the nature of tax exemptions which result to loss of revenue for the government. Upon the person claiming an exemption from tax payments rests the burden of justifying the exemption by words too plain to be mistaken and too categorical to be misinterpreted,[29] it is never presumed[30] nor be allowed solely on the ground of equity.[31] These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a *clear and unequivocal provision of law* on the basis of language too plain to be mistaken. Such exemptions must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.[32]

WHEREFORE, the petition for review on *certiorari* is **GRANTED.** The Decision dated March 25, 2009 and Resolution dated June 24, 2009 of the Court of Tax Appeals *En Banc* in CTA EB No. 415 are hereby **REVERSED** and **SET ASIDE.** The claims for tax refund or credit filed by respondent Pilipinas Shell Petroleum Corporation are **DENIED** for lack of basis.

No pronouncement as to costs.

SO ORDERED.

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

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[29] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166786, May 3, 2006, 489 SCRA 147, 155, citing *Commissioner of Internal Revenue v. Philippine Long Distance Telephone Company, supra* note 25, at 74 and *Commissioner of Internal Revenue v. Mitsubishi Metal Corporation,* G.R. Nos. 54908 & 80041, January 22, 1990, 181 SCRA 214, 224.

[30] *Province of Abra v. Hernando,* No. L-49336, August 31, 1981, 107 SCRA 104, 109, citing early cases.

[31] *Commissioner of Internal Revenue v. Court of Appeals,* G.R. Nos. 122161 & 120991, February 1, 1999, 302 SCRA 442, 453, citing *Davao Gulf Lumber Corporation v. Commissioner of Internal Revenue,* G.R. No. 117359, July 23, 1998, 293 SCRA 76, 91.

[32] *Silkair(Singapore) PTE. Ltd. v. Commissioner of Internal Revenue,* G.R. No. 184398, February 25, 2010, *supra* note 15, at 659, citing *Commissioner of Internal Revenue v. Solidbank Corporation,* G.R. No. 148191, November 25, 2003, 416 SCRA 436, 461.

SECOND DIVISION

[G.R. No. 189127. April 25, 2012]

NATIONAL POWER CORPORATION, *petitioner, vs.* **SPOUSES BERNARDO and MINDALUZ SALUDARES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; POWERS OF THE STATE; EMINENT DOMAIN; PETITIONER NATIONAL POWER CORPORATION (NAPOCOR) FAILED TO PROVE THAT IT HAD ADEQUATELY COMPENSATED RESPONDENTS FOR THE ESTABLISHMENT OF HIGH TENSION TRANSMISSION LINES OVER THEIR PROPERTY.— While it is true that respondent spouses' TCT No. T-109865 was indeed indirectly sourced from TCT No. T-15343, the CA correctly ruled that NAPOCOR failed to prove that the lands involved in *National Power Corporation v. Pereyras* and in the instant Petition are identical. One cannot infer that the subject lands in both cases are the same, based on the fact that one of the source titles of TCT No. T-109865 happens to be TCT No. T-38660, and that TCT No. T-38660 itself was derived from T-15343. Furthermore, the evidence before us supports respondent spouses' contention that the lands involved in both cases are different. *National Power Corporation v. Pereyras* involved Lot 481-B, Psd-11012718, which was a portion of Lot 481, Cad. 276 of Barrio Magugpo, Municipality of Tagum, Davao. On the other hand, the instant Petition involves Lot 15, Pcs-11-000704, Amd., which is a portion of Lots 481-D, Psd-11-012718; 480-B, Psd-51550; H-148559 and 463-A-2 (LRC), Psd-150796, in Barrio Magugpo, Municipality of Tagum, Davao. Clearly, these lots refer to different parcels of land. We rule, therefore, that NAPOCOR failed to prove its previous payment of just compensation for its expropriation of the land in question.

2. ID.; ID.; ID.; THE DEMAND FOR PAYMENT OF JUST COMPENSATION HAS NOT PRESCRIBED.— The right to recover just compensation is enshrined in no less than our Bill of Rights, which states in clear and categorical language

that "[p]rivate property shall not be taken for public use without just compensation." This constitutional mandate cannot be defeated by statutory prescription. Thus, we have ruled that the prescriptive period under Section 3 (i) of R.A. No. 6395 does not extend to an action to recover just compensation. It would be a confiscatory act on the part of the government to take the property of respondent spouses for a public purpose and deprive them of their right to just compensation, solely because they failed to institute inverse condemnation proceedings within five years from the time the transmission lines were constructed. To begin with, it was not the duty of respondent spouses to demand for just compensation. Rather, it was the duty of NAPOCOR to institute eminent domain proceedings before occupying their property. In the normal course of events, before the expropriating power enters a private property, it must first file an action for eminent domain and deposit with the authorized government depositary an amount equivalent to the assessed value of the property. Due to its omission, however, respondents were constrained to file inverse condemnation proceedings to demand the payment of just compensation before the trial court. We therefore rule that NAPOCOR cannot invoke the statutory prescriptive period to defeat respondent spouses' constitutional right to just compensation.

3. ID.; ID.; ID.; NAPOCOR IS LIABLE TO PAY THE FULL MARKET VALUE OF THE AFFECTED PROPERTY.— We have ruled that "when petitioner takes private property to construct transmission lines, it is liable to pay the full market value upon proper determination by the courts." [I]n this case, while respondent spouses could still utilize the area beneath NAPOCOR's transmission lines provided that the plants to be introduced underneath would not exceed three meters, danger is posed to the lives and limbs of respondents' farm workers, such that the property is no longer suitable for agricultural production. Considering the nature and effect of the Davao-Manat 138 KV transmission lines, the limitation imposed by NAPOCOR perpetually deprives respondents of the ordinary use of their land. Moreover, we have ruled that Section 3A of R.A. No. 6395, as amended, is not binding upon this Court. "[T]he determination of just compensation in eminent domain cases is a judicial function and . . . any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just

compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount." We therefore rule that NAPOCOR is liable to pay respondents the full market value of the affected property as determined by the court *a quo*.

4. ID.; ID.; ID.; THE TRIAL COURT DID NOT ERR IN AWARDING JUST COMPENSATION BASED ON THE APPROVED SCHEDULE OF MARKET VALUES FOR REAL PROPERTY FOR THE YEAR 2000.— Respondent spouses would be deprived of their right to just compensation if the value of the property is pegged back to its value in the 1970s. To reiterate, NAPOCOR should have instituted eminent domain proceedings before it occupied respondent spouses' property. Because it failed to comply with this duty, respondent spouses were constrained to file the instant Complaint for just compensation before the trial court. From the 1970s until the present, they were deprived of just compensation, while NAPOCOR continuously burdened their property with its transmission lines. This Court cannot allow petitioner to profit from its failure to comply with the mandate of the law. We therefore rule that, to adequately compensate respondent spouses from the decades of burden on their property, NAPOCOR should be made to pay the value of the property at the time of the filing of the instant Complaint when respondent spouses made a judicial demand for just compensation.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Melzar P. Galicia for respondents.

D E C I S I O N

SERENO, *J.*:

This Rule 45 Petition questions the 21 July 2009 Decision of the Court of Appeals (CA),[1] which affirmed the 10 September

[1] Court of Appeals (CA) Decision dated 21 July 2009, penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Jane Aurora C. Lantion and Edgardo T. Lloren, *rollo*, pp. 39-59.

2002 Decision of the Regional Trial Court (RTC),[2] Branch 31, Tagum City. The RTC had ruled that respondent spouses are entitled to ₱4,920,750 as just compensation for the exercise of the power of eminent domain by petitioner National Power Corporation (NAPOCOR).

Sometime in the 1970s, NAPOCOR constructed high-tension transmission lines to implement the Davao-Manat 138 KV Transmission Line Project.[3] These transmission lines traversed a 12,060-square meter portion of a parcel of agricultural land covered by Transfer Certificate of Title (TCT) No. T-15343 and owned by Esperanza Pereyras, Marciano Pereyras, Laureano Pereyras and Mindaluz Pereyras.

In 1981, NAPOCOR commenced expropriation proceedings covering TCT No. T-15343 in *National Power Corporation v. Esperanza Pereyras, Marciano Pereyras, Laureano Pereyras and Mindaluz Pereyras*.[4] These proceedings culminated in a final Decision ordering it to pay the amount of ₱300,000 as just compensation for the affected property.[5]

The trial court issued an Order[6] subrogating Tahanan Realty Development Corporation to the rights of the defendants in *National Power Corporation v. Pereyras*. Pursuant to this Order, NAPOCOR paid the corporation the judgment award of ₱300,000[7] and Tahanan Realty Development Corporation executed a Deed of Absolute Sale in favor of the former.[8] This Deed covered Lot 481-B, Psd-11012718, which was a portion of Lot 481, Cad. 276 of Barrio Magugpo, Municipality of Tagum, Davao.[9]

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[2] Regional Trial Court (RTC) Decision dated 10 September 2002, penned by Judge Erasto D. Salcedo, *id.* at 60-113.

[3] Petition for Review on *Certiorari* dated 25 September 2009, *id.* at 10.

[4] Special Civil Case No. 135, RTC, Branch II, Tagum City.

[5] Answer dated 27 October 1999, records, pp. 40-41.

[6] Order dated 15 February 1990, *id.* at 26.

[7] Disbursement Voucher, *id.* at 27.

[8] Deed of Absolute Sale dated 30 March 1990, *id.* at 28.

[9] *Id.*

Respondent Spouses Bernardo and Mindaluz Pereyras-Saludares are registered owners of a 6,561-square-meter parcel of land covered by TCT No. T-109865,[10] more particularly described as follows:

A parcel of land (Lot 15, Pcs-11-000704, Amd.), being a portion of Lots 481-D, Psd-11-012718; 480-B, Psd-51550; H-148559 & 463-A-2 (LRC) Psd-150796, situated in the Barrio of Magugpo, Mun. of Tagum, Province of Davao, Island of Mindanao. x x x[11]

On 19 August 1999, respondents filed the instant Complaint against NAPOCOR and demanded the payment of just compensation. They alleged that it had entered and occupied their property by erecting high-tension transmission lines therein and failed to reasonably compensate them for the intrusion.[12]

Petitioner averred that it already paid just compensation for the establishment of the transmission lines by virtue of its compliance with the final and executory Decision in *National Power Corporation v. Pereyras*. Furthermore, assuming that respondent spouses had not yet received adequate compensation for the intrusion upon their property, NAPOCOR argued that a claim for just compensation and damages may only be filed within five years from the date of installation of the transmission lines pursuant to the provisions of Republic Act (R.A.) No. 6395.[13]

Pretrial terminated without the parties having entered into a compromise agreement.[14] Thereafter, the court appointed Lydia Gonzales and Wilfredo Silawan as Commissioners for the purpose of determining the valuation of the subject land.[15] NAPOCOR recommended Loreto Monteposo as the third Commissioner,[16]

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[10] Complaint dated 21 July 1999, *id*. at 1.

[11] Transfer Certificate of Title No. T-109065, *id*. at 5.

[12] *Supra* note 10 at 1-3.

[13] *Supra* note 5.

[14] Order dated 6 June 2000, records, p. 75.

[15] Order dated 27 July 2000, *id*. at 83.

[16] Manifestation/Compliance dated 31 July 2000, *id*. at 85.

but later clarified that its conformity to the appointment of commissioners was only for the purpose of determining the exact portion of the subject land, and that it was not admitting its liability to pay just compensation.[17]

After the proceedings, the Commissioners recommended the amount of ₱750 per square meter as the current and fair market value of the subject property based on the Schedule of Market Values of Real Properties within the City of Tagum effective in the year 2000.[18]

Trial on the merits ensued. On 10 September 2002, the Court rendered judgment in favor of respondent spouses, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs, and against the defendant-National Power Corporation, ordering the latter to pay the plaintiffs the Just Compensation as herein fixed which they claimed for the use, occupation and utilization of their land from which it benefited and profited since January 1982, as follows:

First: To pay plaintiff Spouses Bernardo and Mindaluz Saludares as just compensation of their 6,561 square meters, more or less, titled land covered by TCT No. T-109865 of the Registry of Deeds of Davao del Norte hereby fixed in the amount of FOUR MILLION NINE HUNDRED TWENTY THOUSAND SEVEN HUNDRED FIFTY (₱4,920,750.00) PESOS, Philippine Currency, plus interest at the rate of 12% per annum reckoned from January 01, 1982, until said amount is fully paid, or deposited in Court;

Second: To pay plaintiffs-spouses Bernardo and Mindaluz Saludares attorney's fees of Fifty Thousand (₱50,000.00) Pesos, Philippine Currency, plus appearance fee of ₱2,000.00 per appearance and litigation expenses which shall be supported in a Bill of Costs to be submitted for the Court's approval;

Third. – To pay the costs of the suit.

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[17] Comment (to the Order dated 27 July 2000) dated 11 August 2000, *id*. at 90.

[18] Commissioner's Report dated 14 November 2000, *id*. at 106-110.

Fourth. – For utter lack of merit, the counterclaim is dismissed.

SO ORDERED.[19]

NAPOCOR appealed the trial court's Decision to the CA.[20] After a review of the respective parties' Briefs, the appellate court rendered the assailed Decision on 21 July 2009, denying NAPOCOR's appeal and affirming the trial court's Decision, but reducing the rate of interest to 6% per annum.[21]

Aggrieved, petitioner then filed the instant Rule 45 Petition before this Court.

The Issues

The pivotal issues as distilled from the pleadings are as follows:

1. Whether NAPOCOR has previously compensated the spouses for establishing high-tension transmission lines over their property;
2. Whether the demand for payment of just compensation has already prescribed;
3. Whether petitioner is liable for only ten percent of the fair market value of the property or for the full value thereof; and
4. Whether the trial court properly awarded the amount of ₱4,920,750 as just compensation, based on the Approved Schedule of Market Values for Real Property in Tagum City for the Year 2000.

The Court's Ruling

We uphold the Decisions of the CA and the RTC.

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[19] RTC Decision dated 10 September 2002, pp. 52-53; records, pp. 270-271.

[20] Notice of Appeal dated 11 October 2002, records, p. 285.

[21] CA Decision dated 21 July 2009, p. 21; CA *rollo*, p. 169.

I

NAPOCOR failed to prove that it had adequately compensated respondents for the establishment of high tension transmission lines over their property

NAPOCOR argues that the parcel of land involved in the instant Petition had already been expropriated in *National Power Corporation v. Pereyras*.[22] In support of this argument, it alleges that one of the sources of the spouses' TCT No. T-109865 is TCT No. 39660; and that TCT No. 39660 is a transfer from TCT No. T-15343, the subject land in *National Power Corporation v. Pereyras.*[23] Thus, having paid just compensation to Tahanan Realty Development Corporation, the successor-in-interest of defendants Pereyras in the aforementioned case, petitioner submits that it should no longer be made to pay just compensation in the present case.

We disagree.

While it is true that respondent spouses' TCT No. T-109865 was indeed indirectly sourced from TCT No. T-15343, the CA correctly ruled that NAPOCOR failed to prove that the lands involved in *National Power Corporation v. Pereyras* and in the instant Petition are identical. One cannot infer that the subject lands in both cases are the same, based on the fact that one of the source titles of TCT No. T-109865 happens to be TCT No. T-38660, and that TCT No. T-38660 itself was derived from T-15343.

Furthermore, the evidence before us supports respondent spouses' contention that the lands involved in both cases are different. *National Power Corporation v. Pereyras* involved Lot 481-B, Psd-11012718, which was a portion of Lot 481, Cad. 276 of Barrio Magugpo, Municipality of Tagum, Davao.[24] On the other hand, the instant Petition involves Lot 15, Pcs-

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[22] *Supra* note 3 at 20.

[23] *Id.* at 21.

[24] *Supra* note 8.

11-000704, Amd., which is a portion of Lots 481-D, Psd-11-012718; 480-B, Psd-51550; H-148559 and 463-A-2 (LRC), Psd-150796, in Barrio Magugpo, Municipality of Tagum, Davao. Clearly, these lots refer to different parcels of land.[25]

We rule, therefore, that NAPOCOR failed to prove its previous payment of just compensation for its expropriation of the land in question.

II

The demand for payment of just compensation has not prescribed

Petitioner maintains that, in the event respondent spouses have not been adequately compensated for the entry into their property, their claim for just compensation would have already prescribed,[26] pursuant to Section 3 (i) of R.A. No. 6395, as amended by Presidential Decrees Nos. 380, 395, 758, 938, 1360 and 1443. This provision empowers the NAPOCOR to do as follows:

> x x x [E]nter upon private property in the lawful performance or prosecution of its business or purposes, including the construction of the transmission lines thereon; Provided, that the owner of such private property shall be paid the just compensation therefor in accordance with the provisions hereinafter provided; **Provided, further, that any action by any person claiming compensation and/or damages shall be filed within five (5) years after the right-of-way, transmission lines, substations, plants or other facilities shall have been established**; Provided, finally, that after the said period no suit shall be brought to question the said right-of-way, transmission lines, substations, plants or other facilities nor the amounts of compensation and/or damages involved. (Emphasis supplied.)

NAPOCOR's reliance on this provision is misplaced.

The right to recover just compensation is enshrined in no less than our Bill of Rights, which states in clear and categorical

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[25] *Supra* note 11.

[26] *Supra* note 3 at 22-26.

language that "[p]rivate property shall not be taken for public use without just compensation."[27] This constitutional mandate cannot be defeated by statutory prescription.[28] Thus, we have ruled that the prescriptive period under Section 3 (i) of R.A. No. 6395 does not extend to an action to recover just compensation.[29] It would be a confiscatory act on the part of the government to take the property of respondent spouses for a public purpose and deprive them of their right to just compensation, solely because they failed to institute inverse condemnation proceedings within five years from the time the transmission lines were constructed. To begin with, it was not the duty of respondent spouses to demand for just compensation. Rather, it was the duty of NAPOCOR to institute eminent domain proceedings before occupying their property. In the normal course of events, before the expropriating power enters a private property, it must first file an action for eminent domain[30] and deposit with the authorized government depositary an amount equivalent to the assessed value of the property.[31] Due to its omission, however, respondents were constrained to file inverse condemnation proceedings to demand the payment of just compensation before the trial court. We therefore rule that NAPOCOR cannot invoke the statutory prescriptive period to defeat respondent spouses' constitutional right to just compensation.

III

NAPOCOR is liable to pay the full market value of the affected property

NAPOCOR submits that it should pay for only ten percent (10%) of the fair market value of the landowners' property

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[27] CONSTITUTION, Article III, Section 9.

[28] *NAPOCOR v. Heirs of Macabangkit Sangkay*, G.R. No. 165828, 24 August 2011.

[29] *Id.*

[30] RULES OF COURT, Rule 67, Section 1.

[31] RULES OF COURT, Rule 67, Section 2.

because, under its Charter,[32] it is only authorized to acquire easements of right-of-way over agricultural lands.[33]

Petitioner's arguments fail to convince.

We have ruled that "when petitioner takes private property to construct transmission lines, it is liable to pay the full market value upon proper determination by the courts."[34]

In *National Power Corporation v. Gutierrez*,[35] the petitioner likewise argued that it should only be made to pay easement fees instead of the full market value of the land traversed by its transmission lines. In striking down its argument and ruling that the property owners were entitled to the full market value of the land in question, we ruled:

x x x While it is true that plaintiff [is] only after a right-of-way easement, it nevertheless perpetually deprives defendants of their proprietary rights as manifested by the imposition by the plaintiff upon defendants that below said transmission lines no plant higher than three (3) meters is allowed. Furthermore, because of the high-tension current conveyed through said transmission lines, danger to life and limbs that may be caused beneath said wires cannot

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[32] The pertinent provision of Republic Act No. 6395, as amended, reads:

SECTION 3A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired x x x.

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall —

x x x x x x x x x

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

[33] *Supra* note 3 at 29-30.

[34] *National Power Corporation v. Ong Co*, G.R. No. 166973, 10 February 2009, 578 SCRA 234, 245.

[35] 271 Phil. 1 (1991).

altogether be discounted, and to cap it all, plaintiff only pays the fee to defendants once, while the latter shall continually pay the taxes due on said affected portion of their property.[36]

Similarly, in this case, while respondent spouses could still utilize the area beneath NAPOCOR's transmission lines provided that the plants to be introduced underneath would not exceed three meters,[37] danger is posed to the lives and limbs of respondents' farm workers, such that the property is no longer suitable for agricultural production.[38] Considering the nature and effect of the Davao-Manat 138 KV transmission lines, the limitation imposed by NAPOCOR perpetually deprives respondents of the ordinary use of their land.

Moreover, we have ruled that Section 3A of R.A. No. 6395, as amended, is not binding upon this Court.[39] "[T]he determination of just compensation in eminent domain cases is a judicial function and . . . any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount."[40]

We therefore rule that NAPOCOR is liable to pay respondents the full market value of the affected property as determined by the court *a quo*.

IV

The trial court did not err in awarding just compensation based on the Approved Schedule of Market Values for Real Property for the Year 2000

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[36] *Id.* at 6.

[37] TSN, 12 December 2001, p. 9.

[38] Appellee's Brief dated 23 February 2005, CA *rollo*, p. 37.

[39] *National Power Corporation v. Tuazon*, G.R. No. 193023, 29 June 2011, 653 SCRA 84.

[40] *National Power Corporation v. Bagui*, G.R. No. 164964, 17 October 2008, 569 SCRA 401, 410.

As its final argument, petitioner contends that the amount of just compensation fixed by the trial court is unjust, unlawful and contrary to existing jurisprudence, because just compensation in expropriation cases must be determined from the time of the filing of the complaint or the time of taking of the subject property, whichever came first.[41] It therefore posits that since the taking of the property happened in the 1970s, the trial court erred in fixing the amount of just compensation with reference to real property market values in the year 2000.[42]

Petitioner's contention holds no water.

We have ruled in *National Power Corporation v. Heirs of Macabangkit Sangkay*[43] that the reckoning value of just compensation is that prevailing at the time of the filing of the inverse condemnation proceedings for the following reason:

> [c]ompensation that is reckoned on the market value prevailing at the time either when NPC entered x x x would not be just, for it would compound the gross unfairness already caused to the owners by NPC's entering without the intention of formally expropriating the land x x x. NPC's entry denied elementary due process of law to the owners since then until the owners commenced the inverse condemnation proceedings. The Court is more concerned with the necessity to prevent NPC from unjustly profiting from its deliberate acts of denying due process of law to the owners. As a measure of simple justice and ordinary fairness to them, therefore, reckoning just compensation on the value at the time the owners commenced these inverse condemnation proceedings is entirely warranted.

Indeed, respondent spouses would be deprived of their right to just compensation if the value of the property is pegged back to its value in the 1970s. To reiterate, NAPOCOR should have instituted eminent domain proceedings before it occupied respondent spouses' property. Because it failed to comply with this duty, respondent spouses were constrained to file the instant Complaint for just compensation before the trial court. From

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[41] RULES OF COURT, Rule 67, Section 4.

[42] *Supra* note 3 at 27-28.

[43] *Supra* note 28.

the 1970s until the present, they were deprived of just compensation, while NAPOCOR continuously burdened their property with its transmission lines. This Court cannot allow petitioner to profit from its failure to comply with the mandate of the law. We therefore rule that, to adequately compensate respondent spouses from the decades of burden on their property, NAPOCOR should be made to pay the value of the property at the time of the filing of the instant Complaint when respondent spouses made a judicial demand for just compensation.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED,** and the Decision of the Court of Appeals in CA-G.R. CV No. 81098 dated 21 July 2009 is **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189434. April 25, 2012]

FERDINAND R. MARCOS, JR., *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the Presidential Commission on Good Government,** *respondent.*

[G.R. No. 189505. April 25, 2012]

IMELDA ROMUALDEZ-MARCOS, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; FORFEITURE LAW; (R.A. 1379); FORFEITURE PROCEEDINGS ARE CIVIL IN NATURE; RULE 35 OF

THE RULES OF SUMMARY JUDGMENT APPLIES.— Forfeiture cases impose neither a personal criminal liability, nor the civil liability that arises from the commission of a crime (*ex delicto).* The liability is based solely on a statute that safeguards the right of the State to recover unlawfully acquired properties. Executive Order No. 14 (E.O. No. 14), Defining the Jurisdiction Over Cases Involving the Ill-gotten Wealth of Former President Ferdinand Marcos, authorizes the filing of forfeiture suits **that will proceed independently of any criminal proceedings**. Section 3 of E.O. 14 empowered the PCGG to file independent civil actions separate from the criminal actions. Thus, petitioners cannot equate the present case with a criminal case and assail the proceedings before the Sandiganbayan on the bare claim that they were deprived of a "full-blown trial." In affirming the Sandiganbayan and denying petitioners' Motion for Reconsideration in the Swiss Deposits Decision. x x x As forfeiture suits under R.A. 1379 are civil in nature, it follows that Rule 35 of the Rules of Court on Summary Judgment may be applied to the present case. This is consistent with our ruling in the Swiss Deposits Decision upholding the summary judgment rendered by the Sandiganbayan over the Swiss deposits, which are subject of the same Petition for Forfeiture as the Arelma assets.

2. ID.; ID.; IN ACCORDANCE WITH THE PRINCIPLE OF IMMUTABILITY OF JUDGMENTS, PETITIONERS CAN NO LONGER USE THE PRESENT FORUM TO ASSAIL THE RULING IN THE SWISS DEPOSITS DECISION, WHICH HAS BECOME FINAL AND EXECUTORY.— In accordance with the principle of immutability of judgments, petitioners can no longer use the present forum to assail the ruling in the Swiss Deposits Decision, which has become final and executory. Aside from the fact that the method employed by petitioner is improper and redundant, we also find no cogent reason to revisit the factual findings of the Sandiganbayan in Civil Case No. 0141, which this Court in the Swiss Deposits Decision found to be thorough and convincing. In the first place, using a Rule 45 Petition to question a judgment that has already become final is improper, especially when it seeks reconsideration of factual issues, such as the earnings of the late President from 1940 to 1965 and the existence of real properties that petitioners claim were auctioned off to pay the taxes. Secondly, petitioners never raised the existence of these

earnings and real properties at the outset and never mentioned these alleged other incomes by way of defense in their Answer. In their Answer, and even in their subsequent pleadings, they merely made general denials of the allegations without stating facts admissible in evidence at the hearing. As will be discussed later, both the Sandiganbayan and the Supreme Court found that the Marcoses' unsupported denials of matters patently and necessarily within their knowledge were inexcusable, and that a trial would have served no purpose at all.

3. ID.; ID.; *PRIMA FACIE* PRESUMPTION OF UNLAWFULLY ACQUIRED WEALTH; THE RELEVANT PERIOD IS INCUMBENCY, OR THE PERIOD IN WHICH THE PUBLIC OFFICER SERVED IN THAT POSITION WHERE THE AMOUNT OF THE PUBLIC OFFICER'S SALARY AND LAWFUL INCOME IS COMPARED AGAINST ANY PROPERTY OR AMOUNT ACQUIRED FOR THAT SAME PERIOD.— R.A. 1379 provides that whenever any public officer or employee has acquired during his incumbency an amount of property manifestly out of proportion to his salary as such public officer and to his other lawful income, said property shall be presumed *prima facie* to have been unlawfully acquired. The elements that must concur for this *prima facie* presumption to apply are the following: (1) the offender is a public officer or employee; (2) he must have acquired a considerable amount of money or property during his incumbency; and (3) said amount is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and income from legitimately acquired property. Thus, in determining whether the presumption of ill-gotten wealth should be applied, the relevant period is incumbency, or the period in which the public officer served in that position. The amount of the public officer's salary and lawful income is compared against any property or amount acquired for that same period. In the Swiss Deposits Decision, the Court ruled that petitioner Republic was able to establish the *prima facie* presumption that the assets and properties acquired by the Marcoses "were manifestly and patently disproportionate to their aggregate salaries as public officials."

4. ID.; ID.; PETITIONERS FAILED TO OVERTURN THE PRESUMPTION WHEN THEY MERELY PRESENTED VAGUE DENIALS AND PLEADED "LACK OF SUFFICIENT

KNOWLEDGE" IN THEIR ANSWER. — For the final time, we soundly reiterate that the Republic was able to establish the *prima facie* presumption that the assets and properties acquired by the Marcoses were manifestly and patently disproportionate to their aggregate salaries as public officials. The Republic presented further evidence that they had bigger deposits beyond their lawful incomes, foremost of which were the Swiss accounts deposited in the names of five foundations spirited away by the couple to different countries. Petitioners herein thus failed to overturn this presumption when they merely presented vague denials and pleaded "lack of sufficient knowledge" in their Answer.

5. **ID.; ID.; THE SWISS DEPOSITS DECISION BECAME THE "LAW OF THE CASE" IN THE ORIGINAL PETITION FOR FORFEITURE.—** In any case, petitioners may no longer question the findings of the Sandiganbayan affirmed by the Supreme Court in the Swiss Deposits Decision, as these issues have long become the "law of the case" in the original Petition for Forfeiture. x x x In the case at bar, the same legal issues are being raised by petitioners. In fact, petitioner Marcos Jr. admits outright that what he seeks is a reversal of the issues *identical* to those already decided by the Court in the Swiss Deposits Decision. He may not resuscitate, via another petition for review, the same issues long laid to rest and established as the law of the case.

6. **ID.; ID.; CIVIL CASE NO. 0141 HAS NOT YET TERMINATED; THE 2000 MOTION FOR SUMMARY JUDGMENT WAS CONFINED ONLY TO THE FIVE ACCOUNTS AMOUNTING TO USD 356 MILLION HELD BY FIVE SWISS FOUNDATIONS AND THE OTHER PROPERTIES, WHICH WERE SUBJECTS OF THE PETITION FOR FORFEITURE, BUT WERE INCLUDED IN THE 2000 MOTION, CAN STILL BE SUBJECTS OF A SUBSEQUENT MOTION FOR SUMMARY JUDGMENT.—** The Swiss Deposits Decision dealt *only* with the summary judgment as to the five Swiss accounts, because the 2000 Motion for Partial Summary Judgment dated 7 March 2000 specifically identified the five Swiss accounts only. It did not include the Arelma account. There was a prayer for general reliefs in the 1996 Motion, but as has been discussed, this prayer was dismissed by the Sandiganbayan. The dismissal was based solely on the

existence of the Compromise Agreements for a global settlement of the Marcos assets, which the Supreme Court later invalidated. The 2000 Motion for Summary Judgment was confined only to the five accounts amounting to USD 356 million held by five Swiss foundations. x x x Thus, the other properties, which were subjects of the Petition for Forfeiture, but were not included in the 2000 Motion, can still be subjects of a subsequent motion for summary judgment. To rule otherwise would run counter to this Court's long established policy on asset recovery which, in turn, is anchored on considerations of national survival.

7. ID.; ID.; WITH THE MYRIAD OF PROPERTIES AND INTERCONNECTED ACCOUNTS USED TO HIDE ASSETS THAT ARE IN DANGER OF DISSIPATION, IT WOULD BE HIGHLY UNREASONABLE TO REQUIRE THE GOVERNMENT TO ASCERTAIN THEIR EXACT LOCATIONS AND RECOVER THEM SIMULTANEOUSLY, JUST SO THERE WOULD BE ONE COMPREHENSIVE JUDGMENT COVERING THE DIFFERENT SUBJECT MATTERS.— E.O. 14, Series of 1986, and Section 1(d) of Proclamation No. 3 declared the national policy after the Marcos regime. The government aimed to implement the reforms mandated by the people: protecting their basic rights, adopting a provisional constitution, and providing for an orderly transition to a government under a new constitution. The said Proclamation further states that "The President shall give priority to measures to achieve the mandate of the people to recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts." One of the "whereas" clauses of E.O. 14 entrusts the PCGG with the "just and expeditious recovery of such ill-gotten wealth in order that the funds, assets and other properties may be used to hasten national economic recovery." These clauses are anchored on the overriding considerations of national interest and national survival, always with due regard to the requirements of fairness and due process. With the myriad of properties and interconnected accounts used to hide these assets that are in danger of dissipation, it would be highly unreasonable to require the government to ascertain their exact locations and recover them simultaneously, just so there would be one comprehensive judgment covering the different subject matters.

8. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; SEPARATE JUDGMENTS; THE SANDIGANBAYAN RIGHTLY CHARACTERIZED THEIR RULING ON THE 2004 MOTION AS A SEPARATE JUDGMENT ALLOWED BY THE RULES OF COURT.— In any case, the Sandiganbayan rightly characterized their ruling on the 2004 Motion as a **separate judgment,** which is allowed by the Rules of Court under Section 5 of Rule 36. Rule 35 on summary judgments, admits of a situation in which a case is not fully adjudicated on motion, and judgment is not rendered upon *all* of the reliefs sought. In *Philippine Business Bank v. Chua*, we had occasion to rule that a careful reading of its Section 4 reveals that a partial summary judgment was never intended to be considered a "final judgment," as it does not "[put] an end to an action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for." In this case, there was never any final or complete adjudication of Civil Case No. 0141, as the Sandiganbayan's partial summary judgment in the Swiss Deposits Decision made no mention of the Arelma account. Section 4 of Rule 35 pertains to a situation in which separate judgments were necessary because some facts existed without controversy, while others were controverted. However, there is nothing in this provision or in the Rules that prohibits a subsequent separate judgment after a partial summary judgment on an entirely **different subject matter** had earlier been rendered. There is no legal basis for petitioners' contention that a judgment over the Swiss accounts bars a motion for summary judgment over the Arelma account. Thus, the Swiss Deposits Decision has finally and thoroughly disposed of the forfeiture case **only as to the five Swiss accounts**. Respondent's 2004 Motion is in the nature of a separate judgment, which is authorized under Section 5 of Rule 36. More importantly respondent has brought to our attention the reasons why a motion for summary judgment over the Arelma account was prompted only at this stage.

9. ID.; ID.; SUMMARY JUDGMENTS; PETITIONER'S SHAM DENIALS JUSTIFY THE APPLICATION OF SUMMARY JUDGMENT.— In the case at bar, petitioners give the same stock answer to the effect that the Marcoses did not engage in any illegal activities, and that *all* their properties were lawfully acquired. They fail to state with particularity the ultimate facts surrounding the alleged lawfulness of the mode of acquiring

the funds in Arelma (which totaled USD 3,369,975.00 back in 1983), considering that the entirety of their lawful income amounted only to USD 304,372.43, or only 9% of the entire Arelma fund. Then, as now, they employ what the Court in G.R. No. 152154 characterized as a "negative pregnant," not just in denying the criminal provenance of the Arelma funds, but in the matter of ownership of the said funds. x x x Due to the insufficiency of petitioners' denial of paragraph 59 which in effect denies only the qualifying circumstances, and by virtue of the Court's ruling in the Swiss Deposits Decision, petitioners are deemed to have admitted the factual antecedents and the establishment of Arelma. In paragraph 32 of their Answer, they only deny the first few sentences of paragraph 59, while conveniently neglecting to address subparagraphs 1 to 5 and the opening bank documents described in 5 (a) to (d) of the Petition for Forfeiture. Paragraphs 1 and 2 of the Petition discusses the establishment of a Panamanian company to be named either "Larema, Inc. or Arelma, Inc., or Relma, Inc."; the appointment of several people as directors; and the opening of a direct account with Merrill Lynch. Paragraphs 3 to 5 also of the Petition for Forfeiture detail correspondences between a "J.L. Sunier" and a letter addressed to Malacañang with the salutation "Dear Excellency."

10. ID.; ID.; PETITIONERS FAILED TO PROPERLY TENDER AN ISSUE.— We find that petitioners have again attempted to delay the goal of asset recovery by their evasiveness and the expedient profession of ignorance. It is well-established that a profession of ignorance about a fact that is necessarily within the pleader's knowledge or means of knowing is as ineffective as no denial at all. On a similar vein, there is a failure by petitioners to properly tender an issue, which as correctly ruled by the Sandiganbayan, justifies the Republic's resort to summary judgment. Summary judgment may be allowed where there is no genuine issue as to any material fact and where the moving party is entitled to a judgment as a matter of law. In *Yuchengco v. Sandiganbayan*, the Court has previously discussed the importance of summary judgment in weeding out sham claims or defenses at an early stage of the litigation in order to avoid the expense and loss of time involved in a trial. x x x Even if in the Answer itself there appears to be a tender of issues requiring trial, yet when the relevant affidavits, depositions, or admissions demonstrate that those issues are

not genuine but sham or fictitious, the Court is justified in dispensing with the trial and rendering summary judgment for plaintiff.

11. ID.; ID.; RESPONDENT REPUBLIC IS WELL WITHIN ITS RIGHT TO AVAIL ITSELF OF SUMMARY JUDGMENT AND OBTAIN IMMEDIATE RELIEF, CONSIDERING THE INSUFFICIENT DENIALS AND PLEAS OF IGNORANCE MADE BY PETITIONERS ON MATTERS THAT ARE SUPPOSEDLY WITHIN THEIR KNOWLEDGE.— Summary judgment, or accelerated judgment as it is sometimes known, may also call for a hearing so that both the movant and the adverse party may justify their positions. However, the hearing contemplated (with 10-day notice) is for the purpose of determining whether the issues are genuine or not, not to receive evidence of the issues set up in the pleadings. In *Carcon Development Corporation v. Court of Appeals*, the Court ruled that a hearing is not *de riguer*. The matter may be resolved, and usually is, on the basis of affidavits, depositions, and admissions. This does not mean that the hearing is superfluous; only that the court is empowered to determine its necessity. It is the law itself that determines when a summary judgment is proper. Under the rules, summary judgment is appropriate when there are no genuine issues of fact that call for the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the rules must ensue as a matter of law. What is crucial to a determination, therefore, is the presence or absence of a genuine issue as to any material fact. When the facts as pleaded appear uncontested or undisputed, then summary judgment is called for. Guided by the principles above indicated, we hold that under the circumstances obtaining in the case at bar, summary judgment is proper. The Sandiganbayan did not commit a reversible error in granting the corresponding 2004 Motion for Summary Judgment filed by respondent. The latter is well within its right to avail itself of summary judgment and obtain immediate relief, considering the insufficient denials and pleas of ignorance made by petitioners on matters that are supposedly within their knowledge. These denials and pleas constitute admissions of material allegations under paragraph

59 of the Petition for Forfeiture — a tact they have employed repeatedly in Civil Case No. 0141. As discussed, the purpose of summary judgment is precisely to avoid long drawn litigations and useless delays. We also affirm the Sandiganbayan's findings that the moving party, the Republic, is now entitled to judgment as a matter of law.

APPEARANCES OF COUNSEL

Most Law Firm for Ferdinand R. Marcos, Jr.
Mendoza Dizon Purugganan and Partners for Imelda R. Marcos.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *J.*:

These two consolidated Petitions filed under Rule 45 of the 1997 Rules of Civil Procedure pray for the reversal of the 2 April 2009 Decision of the Sandiganbayan in Civil Case No. 0141 entitled *Republic of the Philippines v. Heirs of Ferdinand E. Marcos and Imelda R. Marcos*.[1] The anti-graft court granted the Motion for Partial Summary Judgment filed by respondent Republic of the Philippines (Republic) and declared all assets and properties of Arelma, S.A., an entity created by the late Ferdinand E. Marcos, forfeited in favor of the government.

On 17 December 1991, the Republic, through the Presidential Commission on Good Government (PCGG), filed a Petition for Forfeiture[2] before the Sandiganbayan pursuant to the forfeiture law, Republic Act No. 1379 (R.A. 1379)[3] in relation to Executive

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[1] Penned by Justice Norberto Y. Geraldez (Chairperson) and concurred in by Associate Justices Efren N. de la Cruz, and Teresita V. Diaz Baldos.

[2] Petition for Forfeiture, *rollo* (G.R. No. 189434), pp. 110-188.

[3] An Act Declaring Forfeiture in Favor of the State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer or Employee and Providing for the Procedure Therefor.

Order Nos. 1, 2 and 14.[4] The petition was docketed as Civil Case No. 0141.

Respondent Republic, through the PCGG and the Office of the Solicitor General (OSG), sought the declaration of Swiss bank accounts totaling USD 356 million (now USD 658 million), and two treasury notes worth USD 25 million and USD 5 million, as ill-gotten wealth.[5] The Swiss accounts, previously held by five groups of foreign foundations,[6] were deposited in escrow with the Philippine National Bank (PNB), while the treasury notes were frozen by the *Bangko Sentral ng Pilipinas* (BSP).

Respondent also sought the forfeiture of the assets of dummy corporations and entities established by nominees of Marcos and his wife, Petitioner Imelda Romualdez-Marcos, as well as real and personal properties manifestly out of proportion to the spouses' lawful income. This claim was based on evidence collated by the PCGG with the assistance of the United States Justice Department and the Swiss Federal Police Department.[7] The Petition for Forfeiture described among others, a corporate entity by the name "Arelma, Inc.," which maintained an account and portfolio in Merrill Lynch, New York, and which was purportedly organized for the same purpose of hiding ill-gotten wealth.[8]

Before the case was set for pretrial, the Marcos children and PCGG Chairperson Magtanggol Gunigundo signed several

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[4] Series of 1986, issued by then President Corazon C. Aquino on 28 February 1986. E.O. 14, as amended by E.O. 14-A, tasked the PCGG with the conduct of investigations in criminal and civil actions for the recovery of unlawfully acquired property and vested the Sandiganbayan with exclusive and original jurisdiction over these cases.

[5] *Supra* note 2.

[6] Identified as the (1) Azio-Verso-Vibur Foundation accounts; (2) Xandy-Wintrop: Charis-Scolari-Valamo-Spinus-Avertina Foundation accounts; (3) Trinidad-Rayby-Palmy Foundation accounts; (4) Rosalys-Aguamina Foundation accounts, and (5) Maler Foundation accounts. *(Sandiganbayan* Decision dated 2 April 2009, p. 24); *rollo* [G.R. No. 189434], p. 74.

[7] *Supra* note 2, at 115.

[8] *Supra* note 2, at 170.

Compromise Agreements (a General Agreement and Supplemental Agreements) all dated 28 December 1993 for a global settlement of the Marcos assets. One of the "whereas" clauses in the General Agreement specified that the Republic "obtained a judgment from the Swiss Federal Tribunal on December 21, 1990, that the Three Hundred Fifty-six Million U.S. dollars (USD 356 million) belongs in principle to the Republic of the Philippines provided certain conditionalities are met x x x." This Decision was in turn based on the finding of Zurich District Attorney Peter Cosandey that the deposits in the name of the foundations were of illegal provenance.[9]

On 18 October 1996, respondent Republic filed a Motion for Summary Judgment and/or judgment on the pleadings (the 1996 Motion) pertaining to the forfeiture of the USD 356 million. The Sandiganbayan denied the 1996 Motion on the sole ground that the Marcoses had earlier moved for approval of the Compromise Agreements, and that this latter Motion took precedence over that for summary judgment. Petitioner Imelda Marcos filed a manifestation claiming she was not a party to the Motion for Approval of the Compromise Agreements, and that she owned 90% of the funds while the remaining 10% belonged to the Marcos estate.[10]

On 10 March 2000, the Republic filed another Motion for Summary Judgment (the 2000 Motion), based on the grounds that: (1) the essential facts that warrant the forfeiture of the funds subject of the Petition under R.A. 1379 are admitted by respondents in their pleadings and other submissions; and (2) the respondent Marcoses' pretrial admission that they did not have any interest or ownership over the funds subject of the action for forfeiture tendered no genuine issue or controversy as to any material fact.

In a 19 September 2000 Decision, the Sandiganbayan initially granted the 2000 Motion, declaring that the Swiss deposits held in escrow at the PNB were ill-gotten wealth, and, thus, forfeited

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[9] *Republic of the Philippines v. Sandiganbayan,* 453 Phil. 1059 (2003).

[10] *Id.,* citing the *Sandiganbayan* Resolution dated 20 November 1997.

in favor of the State.[11] In a Resolution dated 31 January 2002, the Sandiganbayan reversed its earlier ruling and denied the 2000 Motion. Alleging grave abuse of discretion on the part of the court in rendering the later Resolution, the Republic filed a Petition for *Certiorari* with the Supreme Court. In G.R. No. 152154 entitled *Republic of the Philippines v. Sandiganbayan* (for brevity, the "Swiss Deposits Decision"),[12] this Court set aside the 31 January 2002 Sandiganbayan Resolution and reinstated the 19 September 2000 Decision, including the declaration that the Swiss deposits are ill-gotten wealth. On 18 November 2003, the Court denied with finality petitioner Marcoses' Motion for Reconsideration.

On 16 July 2004, the Republic filed a Motion for Partial Summary Judgment (2004 Motion) to declare "the funds, properties, shares in and interests of ARELMA, wherever they may be located, as ill-gotten assets and forfeited in favor of the Republic of the Philippines pursuant to R.A. 1379 in the same manner (that) the Honorable Supreme Court forfeited in favor of the petitioner the funds and assets of similar 'Marcos foundations' such as AVERTINA, VIBUR, AGUAMINA, MALER and PALMY."[13] Petitioner contends that: (1) respondents are deemed to have admitted the allegations of the Petition as regards Arelma; and (2) there is no dispute that the combined lawful income of the Marcoses is grossly disproportionate to the deposits of their foundations and dummy corporations, including Arelma. Ferdinand Marcos, Jr., Imelda Marcos, and Imee Marcos-Manotoc filed their respective Oppositions. Irene Marcos-Araneta filed a Motion to Expunge on the ground that the proceedings in Civil Case No. 0141 had already terminated.

On 2 April 2009, the Sandiganbayan rendered the assailed Decision granting respondent's Motion for Partial Summary

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[11] Penned by Justice Catalino R. Castañeda and concurred in by Presiding Justice Francis E. Garchitorena and Associate Justice Gregory S. Ong (Special Division).

[12] *Republic of the Philippines v. Sandiganbayan, supra* note 9.

[13] Sandiganbayan Decision, *rollo* (G.R. No. 189505), p. 10.

Judgment.[14] It found that the proceedings in Civil Case No. 0141 had not yet terminated, as the Petition for Forfeiture included numerous other properties, which the Sandiganbayan and Supreme Court had not yet ruled upon. The Republic's 1996 Motion was merely held in abeyance to await the outcome of the global settlement of the Marcos assets. Further, this development had prompted the Republic to file the 2000 Motion, which was clearly limited only to the Swiss accounts amounting to USD 356 million. Thus, according to the Sandiganbayan, its 19 September 2000 Decision as affirmed by the Supreme Court in G.R. No. 152154, was in the nature of a *separate judgment* over the Swiss accounts and did not preclude a subsequent judgment over the other properties subject of the same Petition for Forfeiture, such as those of Arelma.[15] The Sandiganbayan held as follows:

> **WHEREFORE,** considering all the foregoing, the Motion for Partial Summary Judgment dated July 16, 2004 of petitioner is hereby **GRANTED**. Accordingly, Partial Summary Judgment is hereby rendered declaring the assets, investments, securities, properties, shares, interests, and funds of Arelma, Inc., presently under management and/or in an account at the Meryll (sic) Lynch Asset Management, New York, U.S.A., in the estimated aggregate amount of **US$3,369,975.00** as of 1983, plus all interests and all other income that accrued thereon, until the time or specific day that all money or monies are released and/or transferred to the possession of the Republic of the Philippines, are hereby forfeited in favor of petitioner Republic of the Philippines.
>
> **SO ORDERED.**[16]

On 22 October 2009, Ferdinand R. Marcos, Jr. filed the instant Rule 45 Petition, questioning the said Decision.[17] One week later, Imelda Marcos filed a separate Rule 45 Petition[18] on essentially identical grounds, which was later consolidated with

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[14] Sandiganbayan Decision, *rollo* (G.R. No. 189505), pp. 7-62.

[15] *Id.* at 43.

[16] *Id.* at 61.

[17] Petition, *rollo* (G.R. No. 189434), pp. 12-54.

[18] Petition, *rollo*, (G.R. No. 189505), pp. 65-101.

the first Petition. The grievances of both petitioners boil down to the following issues:

1. Whether the forfeiture proceeding, Civil Case No. 0141 with the Sandiganbayan is criminal in nature, such that summary judgment is not allowed;

2. Whether petitioner Republic complied with Section 3, subparagraphs c, d, and e of R.A. 1375;

3. Whether Civil Case No. 0141 has been terminated such that a motion for partial summary judgment may no longer be allowed; and

4. Whether in this case there are genuine, triable issues which would preclude the application of the rule on summary judgment.

I. Forfeiture proceedings are civil in nature

Petitioner Ferdinand Marcos, Jr. argues that R.A. 1379 is a penal law; therefore a person charged under its provisions must be accorded all the rights granted to an accused under the Constitution and penal laws.[19] He asserts that the Marcoses were entitled to all the substantial rights of an accused, one of these being the right "to present their evidence to a full blown trial as per Section 5 of R.A. 1379."[20] He relies on the 1962 case, *Cabal v. Kapunan*,[21] where the Court ruled that:

> We are not unmindful of the doctrine laid down in Almeda *vs.* Perez, L-18428 (August 30, 1962) in which the theory that, after the filing of respondents' answer to a petition for forfeiture under Republic Act No. 1379, said petition may not be amended as to substance pursuant to our rules of criminal procedure, was rejected by this Court upon the ground that said forfeiture proceeding is civil in nature. This doctrine refers, however, to the purely *procedural* aspect of said proceeding, and has no bearing on the substantial rights of the respondents therein, particularly their constitutional right against self-incrimination.

[19] Petition, *rollo* (G.R. No. 189434), p. 27.

[20] *Id.* at 32.

[21] 116 Phil. 1361, 1369 (1962).

This argument fails to convince. Petitioner conveniently neglects to quote from the preceding paragraphs of *Cabal*, which clearly classified forfeiture proceedings as quasi-criminal, not criminal. And even so, *Cabal* declared that forfeiture cases partake of a quasi-criminal nature only in the sense that the right against self-incrimination is applicable to the proceedings, *i.e.*, in which the owner of the property to be forfeited is relieved from the compulsory production of his books and papers:

> Generally speaking, informations for the forfeiture of goods that seek no judgment of fine or imprisonment against any person are deemed to be civil proceedings *in rem. Such proceedings are criminal in nature to the extent that where the person using the res illegally is the owner or rightful possessor of it, the forfeiture proceeding is in the nature of a punishment.*
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> x x x x x x x x x
>
> Proceedings for forfeitures are generally considered to be civil and in the nature of proceedings *in rem*. The statute providing that no judgment or other proceedings in civil cases shall be arrested or reversed for any defect or want of form is applicable to them. *In some aspects, however, suits for penalties and forfeitures are of quasi-criminal nature and within the reason of criminal proceedings for all the purposes of * * * that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself.* The proceeding is one against the owner, as well as against the goods; for it is his breach of the laws which has to be proved to establish the forfeiture and his property is sought to be forfeited.
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> x x x x x x x x x
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> As already observed, the various constitutions provide that no person shall be compelled in any criminal case to be a witness against himself. **This prohibition against compelling a person to take the stand as a witness against himself applies only to criminal, quasi-criminal, and penal proceedings, *including a proceeding civil in form for forfeiture of property by reason of the commission of an offense,* but not a proceeding in which the penalty recoverable is civil or remedial in nature.** (Emphasis supplied.)[22]

[22] *Id.* at 1366-1368, citing 23 Am. Jur. 612, 15 Am. Jur., Sec. 104, p. 368, 58 Am. Jur., Section 44, p. 49.

The right of the Marcoses against self-incrimination has been amply protected by the provisions of R.A. 1379, which prohibits the criminal prosecution of individuals for or on account of any transaction, matter or thing concerning which they are compelled — after having claimed the privilege against self-incrimination — to testify or produce evidence, documentary or otherwise.[23] Since this case's inception in 1991, petitioners have participated in the hearings, argued their case, and submitted their pleadings and other documents, never once putting at issue their right against self-incrimination or the violation thereof.[24]

More importantly, the factual context in the present case is wholly disparate from that in *Cabal,* which was originally initiated as an action *in personam*. Manuel C. Cabal, then Chief of Staff of the Armed Forces of the Philippines, was charged with "graft, corrupt practices, unexplained wealth, conduct unbecoming of an officer and gentleman, dictatorial tendencies, giving false statements of his assets and liabilities in 1958 and other equally reprehensible acts."[25] In contradistinction, the crux of the present case devolves solely upon the recovery of assets presumptively characterized by the law as ill-gotten, and owned by the State; hence, it is an action *in rem.* In *Republic v. Sandiganbayan,* this Court settled the rule that forfeiture proceedings are actions *in rem* and therefore civil in nature.[26] Proceedings under R.A. 1379 do not terminate in the imposition of a penalty but merely

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[23] Section 8. *Protection against self-incrimination.* Neither the respondent nor any other person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to prosecution; but no individual shall be prosecuted criminally for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and conviction for perjury or false testimony committed in so testifying or from administrative proceedings.

[24] *Republic of the Philippines v. Sandiganbayan* (18 November 2003, on the Marcoses' Motion for Reconsideration), 461 Phil. 598, 614 (2003).

[25] *Cabal v. Kapunan, supra* note 21, at 1362.

[26] G.R. No. 90529, 16 August 1991, 200 SCRA 667.

in the forfeiture of the properties illegally acquired in favor of the State.[27]

As early as *Almeda v. Judge Perez*,[28] we have already delineated the difference between criminal and civil forfeiture and classified the proceedings under R.A. 1379 as belonging to the latter, *viz*:

> "Forfeiture proceedings may be either civil or criminal in nature, and may be *in rem* or *in personam*. If they are under a statute such that if an indictment is presented the forfeiture can be included in the criminal case, they are criminal in nature, although they may be civil in form; and where it must be gathered from the statute that the action is meant to be criminal in its nature it cannot be considered as civil. If, however, the proceeding does not involve the conviction of the wrongdoer for the offense charged the proceeding is of a civil nature; and under statutes which specifically so provide, where the act or omission for which the forfeiture is imposed is not also a misdemeanor, such forfeiture may be sued for and recovered in a civil action."

In the first place a proceeding under the Act (Rep. Act No. 1379) does not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the state. (Sec. 6) In the second place the procedure outlined in the law leading to forfeiture is that provided for in a civil action. Thus there is a petition (Sec. 3), then an answer (Sec. 4), and lastly, a hearing. The preliminary investigation which is required prior to the filing of the petition, in accordance with Sec. 2 of the Act, is provided expressly to be one *similar* to a preliminary investigation in a criminal case. If the investigation is only similar to that in a criminal case, but the other steps in the proceedings are those for civil proceedings, it stands to reason that the proceeding is not criminal. x x x. (citations omitted)

Forfeiture cases impose neither a personal criminal liability, not the civil liability that arises from the commission of the crime (*ex delicto*). The liability is based solely on a statute that

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[27] *Supra* note 24, at 611.

[28] G.R. No. L-18428, 115 Phil. 120 (1962).

safeguards the right of the State to recover unlawfully acquired properties.[29] Executive Order No. 14 (E.O. No. 14), Defining the Jurisdiction Over Cases Involving the Ill-gotten Wealth of Former President Ferdinand Marcos, authorizes the filing of forfeiture suits **that will proceed independently of any criminal proceedings.** Section 3 of E.O. 14 empowered the PCGG to file independent civil actions separate from the criminal actions.[30]

Thus, petitioners cannot equate the present case with a criminal case and assail the proceedings before the Sandiganbayan on the bare claim that they were deprived of a "full-blown trial." In affirming the Sandiganbayan and denying petitioners' Motion for Reconsideration in the Swiss Deposits Decision, the Court held:

> Section 5 of RA 1379 provides:
>
> > The court shall set a date for a hearing which may be open to the public, and during which the respondent shall be given ample opportunity to explain, to the satisfaction of the court, how he has acquired the property in question.
>
> And pursuant to Section 6 of the said law, if the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the State.
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> x x x x x x x x x
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> A careful analysis of Section 5 of RA 1379 readily discloses that the word "hearing" does not always require the formal introduction of evidence in a trial, only that the parties are given the occasion to participate and explain how they acquired the property in question. If they are unable to show to the satisfaction of the court that they lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the State. There is no provision in the law that a full blown trial ought to be conducted before the court declares the forfeiture of the subject property. Thus, even if the forfeiture proceedings do not reach trial, the court is not

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[29] *Depakakibo Garcia v. Sandiganbayan,* G.R. Nos. 170122 & 171381, 12 October 2009, 603 SCRA 348.

[30] *Republic v. Sandiganbayan,* 255 Phil. 71 (1989).

precluded from determining the nature of the acquisition of the property in question even in a summary proceeding.[31]

As forfeiture suits under R.A. 1379 are civil in nature, it follows that Rule 35 of the Rules of Court on Summary Judgment may be applied to the present case. This is consistent with our ruling in the Swiss Deposits Decision upholding the summary judgment rendered by the Sandiganbayan over the Swiss deposits, which are subject of the same Petition for Forfeiture as the Arelma assets.

II. Republic complied with Section 3 (c), (d), and (e) of R.A. 1375

Petitioner Marcos, Jr. argues that there are genuine issues of fact as borne by the Pre-trial Order, Supplemental Pre-trial Order, and the Pre-trial Briefs of the parties. He laments that the Republic was unable to meet the necessary averments under the forfeiture law, which requires a comparison between the approximate amount of property acquired during the incumbency of Ferdinand Marcos, and the total amount of governmental salaries and other earnings.[32] While the Petition contained an analysis of Ferdinand Marcos' income from 1965 to 1986 (during his incumbency), there was purportedly no mention of the latter's income from 1940 to 1965 when he was a practicing lawyer, congressman and senator; other earnings until the year 1985; and real properties that were auctioned off to satisfy the estate tax assessed by the Bureau of Internal Revenue.[33]

Petitioner Marcos, Jr. implores us herein to revisit and reverse our earlier ruling in the Swiss Deposits Decision and argues that the pronouncements in that case are contrary to law and its basic tenets. The Court in that case allegedly applied a lenient standard for the Republic, but a strict one for the Marcoses. He finds fault in the ruling therein which was grounded on public policy and the ultimate goal of the forfeiture law, arguing that

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[31] *Supra* note 24 at 613-614.

[32] R.A. 1375, Sec. 3 c, d, and e.

[33] Petition for Review, *rollo* (G.R. No. 189434), p. 30.

public policy is better served if the Court gave more importance to the substantive rights of the Marcoses.

In accordance with the principle of immutability of judgments, petitioners can no longer use the present forum to assail the ruling in the Swiss Deposits Decision, which has become final and executory. Aside from the fact that the method employed by petitioner is improper and redundant, we also find no cogent reason to revisit the factual findings of the Sandiganbayan in Civil Case No. 0141, which this Court in the Swiss Deposits Decision found to be thorough and convincing. In the first place, using a Rule 45 Petition to question a judgment that has already become final is improper, especially when it seeks reconsideration of factual issues, such as the earnings of the late President from 1940 to 1965 and the existence of real properties that petitioners claim were auctioned off to pay the taxes. Secondly, petitioners never raised the existence of these earnings and real properties at the outset and never mentioned these alleged other incomes by way of defense in their Answer. In their Answer, and even in their subsequent pleadings, they merely made general denials of the allegations without stating facts admissible in evidence at the hearing. As will be discussed later, both the Sandiganbayan and the Supreme Court found that the Marcoses' unsupported denials of matters patently and necessarily within their knowledge were inexcusable, and that a trial would have served no purpose at all.[34]

R.A. 1379 provides that whenever any public officer or employee has acquired during his incumbency an amount of property manifestly out of proportion to his salary as such public officer and to his other lawful income, said property shall be presumed *prima facie* to have been unlawfully acquired.[35] The elements that must concur for this *prima facie* presumption to apply are the following: (1) the offender is a public officer or employee; (2) he must have acquired a considerable amount of money or property during his incumbency; and (3) said amount

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[34] *Republic of the Philippines v. Sandiganbayan, supra* note 9, at 1119.

[35] R.A. 1379, Sec. 2.

is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and income from legitimately acquired property.

Thus, in determining whether the presumption of ill-gotten wealth should be applied, the relevant period is incumbency, or the period in which the public officer served in that position. The amount of the public officer's salary and lawful income is compared against any property or amount acquired for that same period. In the Swiss Deposits Decision, the Court ruled that petitioner Republic was able to establish the *prima facie* presumption that the assets and properties acquired by the Marcoses "were manifestly and patently disproportionate to their aggregate salaries as public officials."[36]

For a petition to flourish under the forfeiture law, it must contain the following:

(a) The name and address of the respondent.

(b) The public officer or employment he holds and such other public offices or employment which he has previously held.

(c) The approximate amount of property he has acquired during his incumbency in his past and present offices and employments.

(d) A description of said property, or such thereof as has been identified by the Solicitor General.

(e) The total amount of his government salary and other proper earnings and incomes from legitimately acquired property, and

(f) Such other information as may enable the court to determine whether or not the respondent has unlawfully acquired property during his incumbency.[37] (Emphasis supplied)

Petitioners claim that the Republic failed to comply with subparagraphs c, d, and e above, because the latter allegedly never took into account the years when Ferdinand Marcos served

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[36] *Republic of the Philippines v. Sandiganbayan, supra* note 9, at 1143.

[37] R.A. 1375, Sec. 3.

as a war veteran with back pay, a practicing lawyer, a trader and investor, a congressman and senator. We find this claim to be a haphazard rehash of what has already been conclusively determined by the Sandiganbayan and the Supreme Court in the Swiss Deposits Decision. The alleged "receivables from prior years" were without basis, because Marcos never had a known law office nor any known clients, and neither did he file any withholding tax certificate that would prove the existence of a supposedly profitable law practice before he became President. As discussed in the Swiss Deposits Decision:

> The Solicitor General made a very thorough presentation of its case for forfeiture:
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> x x x x x x x x x
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> 4. Respondent Ferdinand E. Marcos (now deceased and represented by his Estate/Heirs) was a public officer for several decades continuously and without interruption as Congressman, Senator, Senate President and President of the Republic of the Philippines from December 31, 1965 up to his ouster by direct action of the people of EDSA on February 22-25, 1986.
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> 5. Respondent Imelda Romualdez Marcos (Imelda, for short) the former First Lady who ruled with FM (Ferdinand Marcos) during the 14-year martial law regime, occupied the position of Minister of Human Settlements from June 1976 up to the peaceful revolution in February 22-25, 1986. She likewise served once as a member of the Interim Batasang Pambansa during the early years of martial law from 1978 to 1984 and as Metro Manila Governor in concurrent capacity as Minister of Human Settlements.
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> x x x x x x x x x
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> 11. At the outset, however, it must be pointed out that based on the Official Report of the Minister of Budget, **the total salaries of former President Marcos as President from 1966 to 1976 was ₱60,000 a year and from 1977 to 1985, ₱100,000 a year; while that of the former First Lady, Imelda R. Marcos, as Minister of Human Settlements from June 1976 to February 22-25, 1986 was ₱75,000 a year.**[38]

[38] *Republic of the Philippines v. Sandiganbayan, supra* note 9, at 1089-90.

The Sandiganbayan found that neither the late Ferdinand Marcos nor petitioner Imelda Marcos filed any Statement of Assets and Liabilities, as required by law, from which their net worth could be determined. Coupled with the fact that the Answer consisted of general denials and a standard plea of "lack of knowledge or information sufficient to form a belief as to the truth of the allegations" — what the Court characterized as "foxy replies" and mere pretense — fairness dictates that what must be considered as lawful income should only be the accumulated salaries of the spouses and what are shown in the public documents they submitted, such as their Income Tax Return (ITR) and their Balance Sheets. The amounts representing the combined salaries of the spouses were admitted by petitioner Imelda Marcos in paragraph 10 of her Answer, and reflected in the Certification dated May 27, 1986 issued by then Minister of Budget and Management Alberto Romulo:

Ferdinand E. Marcos, as President		
1966-1976	at ₱60,000/year	₱660,000
1977-1984	at ₱100,000/year	800,000
1985	at ₱110,000/year	110,000
		₱1,570,000
Imelda R. Marcos, as Minister		
June 1976-1985	at ₱75,000/year	₱718,000

In addition to their accumulated salaries from 1966 to 1985 are the Marcos couple's combined salaries from January to February 1986 in the amount of ₱30,833.33. Hence, their total accumulated salaries amounted to ₱2,319,583.33. Converted to U.S. dollars on the basis of the corresponding peso-dollar exchange rates prevailing during the applicable period when said salaries were received, the total amount had an equivalent value of $304,372.43.[39]

The date contained in the ITRs and Balance Sheets filed by the Marcoses are summarized in Schedules A to D submitted

[39] *Republic of the Philippines v. Sandiganbayan, supra* note 8, at 1128-1129.

as evidence by the Republic. Schedule A showed that from 1965 to 1984, the Marcoses reported Php 16,408,442.00 or USD 2,414,484.91 in total income, comprised of:

Income Source		Amount		Percentage
Official Salaries	-	₱2,627,581.00	-	16.01%
Legal Practice	-	11,109,836.00	-	67.71%
Farm Income	-	149,700.00	-	.91%
Others	-	2,521,325.00	-	15.37%
Total		₱16,408,442.00	-	100.00%

The amount reported by the Marcos couple as their combined salaries more or less coincided with the Official Report submitted by the Minister of Budget. Yet what appeared anomalous was the Php 11,109,836 representing "Legal Practice," which accounted for 67% or more than three-fourths of their *reported* income. Out of this anomalous amount, Php 10,649,836, or ***96% thereof,*** represented "receivables from prior years" during the period 1967 to 1984. The Court cited the Solicitor General's findings:

> In the guise of reporting income using the cash method under Section 38 of the National Internal Revenue Code, FM made it appear that he had an extremely profitable legal practice before he became a President (FM being barred by law from practicing his law profession during his entire presidency) and that, incredibly, he was still receiving payments almost 20 years after. **The only problem is that in his Balance Sheet attached to his 1965 ITR immediately preceding his ascendancy to the presidency he did not show any Receivables from client at all, much less the ₱10.65-M that he decided to later recognize as income. There are no documents showing any withholding tax certificates. Likewise, there is nothing on record that will show any known Marcos client as he has no known law office. As previously stated, his net worth was a mere ₱120,000.00 in December, 1965.** The joint income tax returns of

FM and Imelda cannot, therefore, conceal the skeletons of their kleptocracy.[40]

In addition, the former President also reported a total of Php 2,521,325 which he referred to as "Miscellaneous Items" and "Various Corporations" under "Other Income" for 1972-1976. Spouses Marcos did not declare any income from any deposits that may be subject to a 5% withholding tax, nor did they file any capital gains tax returns from 1960 to 1965. The Bureau of Internal Revenue attested that there are no records pertaining to the tax transactions of the spouses in Baguio City, Manila, Quezon City, and Tacloban.

The Balance Sheet attached to the couple's ITR for 1965 indicates an ending net worth of Php 120,000, which covered the year immediately preceding their ascendancy to the presidency. As previously mentioned, the combined salaries of the spouses for the period 1966 to 1986, or in the two decades that they stayed in power, totaled only USD 304,372.43. In stark contrast, as shown by Schedule D, computations establish the total net worth of the spouses for the years 1965 until 1984 in the total amount of USD 957,487.75, assuming that the income from legal practice is real and valid.[41] **The combined salaries make up only 31.79% of the spouses' total net worth from 1965 to 1984. This means petitioners are unable to account for or explain more than two-thirds of the total net worth of the Marcos spouses from 1965 to 1984.**

Thus, for the final time, we soundly reiterate that the Republic was able to establish the *prima facie* presumption that the assets and properties acquired by the Marcoses were manifestly and patently disproportionate to their aggregate salaries as public officials. The Republic presented further evidence that they had bigger deposits beyond their lawful incomes, foremost of which were the Swiss accounts deposited in the names of five foundations spirited away by the couple to different countries. Petitioners herein thus failed to overturn this presumption when they merely

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[40] *Republic v. Sandiganbayan*, *supra* note 9, at 1091.

[41] *Supra* note 9, at 1092-1093.

presented vague denials and pleaded "lack of sufficient knowledge" in their Answer.

In any case, petitioners may no longer question the findings of the Sandiganbayan affirmed by the Supreme Court in the Swiss Deposits Decision, as these issues have long become the "law of the case" in the original Petition for Forfeiture. As held in *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic*:[42]

> Law of the case … is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, … so long as the facts on which such decision was predicated continue to be the facts of the case before the court.
>
> Otherwise put, the principle means that questions of law that have been previously raised and disposed of in the proceedings shall be controlling in succeeding instances where the same legal question is raised, provided that the facts on which the legal issue was predicated continue to be the facts of the case before the court.

In the case at bar, the same legal issues are being raised by petitioners. In fact, petitioner Marcos Jr. admits outright that what he seeks is a reversal of the issues *identical* to those already decided by the Court in the Swiss Deposits Decision.[43] He may not resuscitate, via another petition for review, the same issues long laid to rest and established as the law of the case.

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[42] G.R. Nos. 177857-58, 11 February 2010, 612 SCRA 255.

[43] Petitioner Marcos, Jr. states: "Thus, before the ground relied upon is discussed, Petitioner implores this Honorable Court to look at Civil Case No. 0141 anew and to not apply in this instance the pronouncements in S.C. G.r. No. 152154 entitled '*Republic of the Philippines vs. Hon. Sandiganbayan, et al.*' for, with all due respect, this Honorable Court should abandon its pronouncements therein for being contrary to law and its basic tenets." *Rollo* (G.R. No. 189434), p. 26.

III. Civil Case No. 0141 has not yet terminated

Petitioners next argue that the "law of the case" doctrine should be applied, not to the ruling affirming the forfeiture, but to the grant of the summary judgment over the Swiss accounts as affirmed by the Supreme Court in the Swiss Deposits Decision. They contend that since the Court's Decision mentioned only the deposits under the five Swiss foundations, then the Republic can no longer seek partial summary judgment for forfeiture over the Arelma account. And since the said Decision has long become final and has in fact been executed, they insist that the Sandiganbayan has lost its jurisdiction over the case.

Petitioners are under the mistaken impression that the Swiss Deposits Decision serves as the entire judgment in Civil Case No. 0141. Just because respondent Republic succeeded in obtaining summary judgment over the Swiss accounts does not mean it is precluded from seeking partial summary judgment over a different subject matter covered by the same petition for forfeiture. In fact, Civil Case No. 0141 pertains to the recovery of **all** the assets enumerated therein, such as (1) holding companies, agro-industrial ventures and other investments; (2) landholdings, buildings, condominium units, mansions; (3) New York properties; (4) bills amounting to Php 27,744,535, time deposits worth Php 46.4 million, foreign currencies and jewelry seized by the United States customs authorities in Honolulu, Hawaii; (5) USD 30 million in the custody of the Central Bank in dollar-denominated Treasury Bills; shares of stock, private vehicles, and real estate in the United States, among others.[44]

In the enumeration of properties included in the Petition, the Arelma assets were described as "Assets owned by Arelma, Inc., a Panamanian corporation organized in Liechtenstein, for sole purpose *(sic)* of maintaining an account in Merrill Lynch, New York."[45] Paragraph 59 of the Petition for Forfeiture states:

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[44] *See* Annexes to the Petition for Foreclosure, Annexes A to G, I to P, V, and their sub-annexes, as cited in footnote 25 of the Sandiganbayan Decision.

[45] Footnote 25 of the Sandiganbayan Decision, *rollo*, p. 80.

59. FM and Imelda used a number of their close business associations or favorite cronies in opening bank accounts abroad for the purpose of laundering their filthy riches. Aside from the foundations and corporations established by their dummies/nominees to hide their ill-gotten wealth as had already been discussed, several other corporate entities had been formed for the same purpose, to wit:

(1) ARELMA, INC — (T)his was organized for the sole purpose of maintaining an account and portfolio in Merrill Lynch, New York.

(2) Found among Malacañang documents is a letter dated September 21, 1972 by J.L. Sunier, Senior Vice President of SBC to Mr. Jose V. Campos, a known Marcos crony (See Annex "V-21" hereof). In the said letter, instructions were given by Sunier to their Panama office to constitute a Panamanian company, the name of which will be either Larema, Inc. or Arelma, Inc., or Relma, Inc. this company will have the same set-up as Maler; the appointment of Sunier and Dr. Barbey as attorneys and appointment of selected people in Panama as directors; the opening of direct account in the name of the new company with Merrill Lynch, New York, giving them authority to operate the account, but excluding withdrawals of cash, securities or pledging of portfolio; and sending of money in favor of the new company under reference AZUR in order to cut links with the present account already opened with Merrill Lynch under an individual's name.

(3) Also found was a letter dated November 14, 1972 and signed by Jose Y. Campos (Annex "V-21-a" hereof). The letter was addressed to SEC, Geneva, and Sunier duly authorized by their "mutual friend" regarding the opening of an account of Arelma, Inc. with Merrill Lynch, New York to the attention of Mr. Saccardi, Vice-President.

(4) On May 19, 1983, J. L. Sunier wrote a letter with a reference "SAPPHIRE" and a salutation "Dear Excellency" stating, among others, the current valuation by Merrill Lynch of the assets of Arelma, Inc. amounting to $3,369,975 (Annex "V-21-b" hereof).

(5) Included in the documents sent by SBC, Geneva, through the Swiss Federal Department of Justice and Police were those related to Arelma, Inc. as follows:

(a) Opening bank documents for Account No. 53.145 A.R. dated September 17, 1972, signed by Dr. Barbey and Mr. Sunier. This was later on cancelled as a result of the change in attorneys and

authorized signatories of the company (Annexes "V-21-c" and "V-21-d" hereof).

(b) Opening bank documents for Account No. 53. 145 A.R. signed by new attorneys led by Michel Amandruz (Annexes "V-21-e" and "V-21-f" hereof).

(c) Bank statements for Account No. 53.145 A.R. with ending balance of $26.10 as of 12-31-85 (Annex "V-21-g" and "V-21-h" hereof).

(d) An informative letter stating that Account 53. 145 A.R. was related to an account opened with Merrill Lynch Asset Management, Inc., New York for Arelma, Inc. The opening of this account slowly made Account 53. 145 A.R. an inactive account (See Annexes "V-21-I" and "V-21-j" hereof).[46]

When the Marcos family fled Manila in 1986, they left behind several documents that revealed the existence of secret bank deposits in Switzerland and other financial centers.[47] These papers, referred to by respondent as Malacañang documents, detailed how "Arelma, Inc."[48] was established. Attached as Annex V-21 was the Letter of Instruction sent to the Panamanian branch of the Sunier company to open Arelma. The latter was to have the same set-up as Maler, one of the five Swiss foundations, subject of the 2000 Motion. Annexes "V-21-c" to "V-21-j" pertained to documents to be used to open an account with Merrill Lynch Asset Management, Inc. in New York.

The Swiss Deposits Decision dealt *only* with the summary judgment as to the five Swiss accounts, because the 2000 Motion for Partial Summary Judgment dated 7 March 2000 specifically identified the five Swiss accounts only. It did not include the Arelma account. There was a prayer for general reliefs in the

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[46] Petition for Forfeiture, p. 61, *supra* note 2, at 170.

[47] Bautista, Jaime, S., "Recovery of the Marcos Assets," delivered at the International Law Association, presented by Levy V. Mendoza, Director of the Presidential Commission on Good Governance, www.unafei.or.jp/english/pdf/PDF.../Third_GGSeminar_P72-79.pdf, accessed on 7 March 2012.

[48] More accurately known as Arelma, S.A.

1996 Motion, but as has been discussed, this prayer was dismissed by the Sandiganbayan. The dismissal was based solely on the existence of the Compromise Agreements for a global settlement of the Marcos assets, which the Supreme Court later invalidated. The 2000 Motion for Summary Judgment was confined only to the five accounts amounting to USD 356 million held by five Swiss foundations.

As clarified by the Solicitor General during the hearing of 24 March 2000 in the Sandiganbayan:

> PJ: The Court is of the impression and the Court is willing to be corrected, that ones (sic) the plaintiff makes a claim for summary judgment it in fact states it no longer intends to present evidence and based on this motion to render judgment, is that correct?
>
> SOL. BALLACILLO: Yes, your Honors.
>
> PJ: In other words, on the basis of pre-trial, you are saying…because if we are talking of a partial claim, then there is summary judgment, unless there is preliminary issue to the claim which is a matter of stipulation.
>
> SOL. BALLACILLO: We submit, your Honors, that there can be partial summary judgment on this matter.
>
> **PJ: But in this instance, you are making summary judgment on the entire case?**
>
> **SOL. BALLACILLO: With respect to the $365 million.**
>
> **PJ: In the complaint you asked for the relief over several topics. You have $356 million, $25 million and $5 million. Now with regards to the $365 million, you are asking for summary judgment?**
>
> **SOL. BALLACILLO: Yes, your Honor.**
>
> **PJ: And, therefore, you are telling us now, "that's it, we need not have to prove."**
>
> **SOL. BALLACILLO: Yes, your Honors.**[49] (Emphasis supplied.)

The Court's discussion clearly did not include the Arelma account. The dispositive portion of the Swiss Deposits Decision states:

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[49] TSN, 24 March 2000, pp. 13-14.

WHEREFORE, the petition is hereby GRANTED. The assailed Resolution of the Sandiganbayan dated January 31, 2002 is SET ASIDE. The Swiss deposits which were transferred to and are now deposited in escrow at the Philippine National Bank in the estimated aggregate amount of US$658,175,373.60 as of January 31, 2002, plus interest, are hereby forfeited in favor of petitioner Republic of the Philippines.[50]

Thus, the other properties, which were subjects of the Petition for Forfeiture, but were not included in the 2000 Motion, can still be subjects of a subsequent motion for summary judgment. To rule otherwise would run counter to this Court's long established policy on asset recovery which, in turn, is anchored on considerations of national survival.

E.O. 14, Series of 1986,[51] and Section 1(d) of Proclamation No. 3[52] declared the national policy after the Marcos regime. The government aimed to implement the reforms mandated by the people: protecting their basic rights, adopting a provisional constitution, and providing for an orderly transition to a government under a new constitution. The said Proclamation further states that "The President shall give priority to measures to achieve the mandate of the people to recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts." One of the "whereas" clauses of E.O. 14 entrusts the PCGG with the "just and expeditious recovery of such ill-gotten wealth in order that the funds, assets and other properties may be used to hasten national economic recovery." These clauses are anchored on the overriding considerations of national interest and national survival, always with due regard to the requirements of fairness and due process.

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[50] *Supra* note 9, at 1150.

[51] E.O. 14, Series of 1984, Defining The Jurisdiction Over Cases Involving The Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of Their Immediate Family, Close Relatives, Subordinates, Close and/or Business Associates, Dummies, Agents and Nominees.

[52] Dated 25 March 1986.

With the myriad of properties and interconnected accounts used to hide these assets that are in danger of dissipation, it would be highly unreasonable to require the government to ascertain their exact locations and recover them simultaneously, just so there would be one comprehensive judgment covering the different subject matters.

In any case, the Sandiganbayan rightly characterized their ruling on the 2004 Motion as a **separate judgment,** which is allowed by the Rules of Court under Section 5 of Rule 36:

> *Separate judgments.* — When more than one claim for relief is presented in an action, the court, at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may render a separate judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is rendered, the court by order may stay its enforcement until the rendition of a subsequent judgment or judgments and may prescribe such conditions as may be necessary to secure the benefit thereof to the party in whose favor the judgment is rendered.[53]

Rule 35 on summary judgments, admits of a situation in which a case is not fully adjudicated on motion,[54] and judgment is not rendered upon *all* of the reliefs sought. In *Philippine Business Bank v. Chua*,[55] we had occasion to rule that a careful reading

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[53] 1997 Rules of Civil Procedure, Rule 36, Sec. 5.

[54] Sec. 4 states: "*Case not fully adjudicated on motion.* — If on motion under this Rule, judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly."

[55] G.R. No. 178899, 15 November 2010, 634 SCRA 635.

of its Section 4 reveals that a partial summary judgment was never intended to be considered a "final judgment," as it does not "[put] an end to an action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for." In this case, there was never any final or complete adjudication of Civil Case No. 0141, as the Sandiganbayan's partial summary judgment in the Swiss Deposits Decision made no mention of the Arelma account.

Section 4 of Rule 35 pertains to a situation in which separate judgments were necessary because some facts existed without controversy, while others were controverted. However, there is nothing in this provision or in the Rules that prohibits a subsequent separate judgment after a partial summary judgment on an entirely **different subject matter** had earlier been rendered. There is no legal basis for petitioners' contention that a judgment over the Swiss accounts bars a motion for summary judgment over the Arelma account.

Thus, the Swiss Deposits Decision has finally and thoroughly disposed of the forfeiture case **only as to the five Swiss accounts**. Respondent's 2004 Motion is in the nature of a separate judgment, which is authorized under Section 5 of Rule 36. More importantly respondent has brought to our attention the reasons why a motion for summary judgment over the Arelma account was prompted only at this stage. In *Republic of the Philippines v. Pimentel*,[56] a case filed by human rights victims in the United States decided by the US Supreme Court only in 2008, the antecedents of the Arelma account were described as follows:

> In 1972, Ferdinand Marcos, then President of the Republic, incorporated Arelma, S.A. (Arelma), under Panamanian law. Around the same time, Arelma opened a brokerage account with Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch) in New York, in which it deposited $2 million. As of the year 2000, the account had grown to approximately $35 million.
>
> Alleged crimes and misfeasance by Marcos during his presidency became the subject of worldwide attention and protest. A class action

[56] 553 U.S. 851, 858, 128 S. Ct. 2180.

by and on behalf of some 9,539 of his human rights victims was filed against Marcos and his estate, among others. The class action was tried in the United States District Court for the District of Hawaii and resulted in a nearly $2 billion judgment for the class. See *Hilao v. Estate of Marcos,* 103 F.3d 767 (C.A.9 1996). We refer to that litigation as the Pimentel case and to its class members as the Pimentel class. In a related action, the Estate of Roger Roxas and Golden Budha *[sic]* Corporation (the Roxas claimants) claim a right to execute against the assets to satisfy their own judgment against Marcos' widow, Imelda Marcos. See *Roxas v. Marcos,* 89 Hawaii 91, 113-115, 969 P.2d 1209, 1231-1233 (1998).

The Pimentel class claims a right to enforce its judgment by attaching the Arelma assets held by Merrill Lynch. The Republic and the Commission claim a right to the assets under a 1955 Philippine law providing that property derived from the misuse of public office is forfeited to the Republic from the moment of misappropriation. *See* An Act Declaring Forfeiture in Favor of the State Any Property Found To Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor, Rep. Act No. 1379, 51:9 O.G. 4457 (June 18, 1955).

After Marcos fled the Philippines in 1986, the Commission was created to recover any property he wrongfully took. Almost immediately the Commission asked the Swiss Government for assistance in recovering assets-including shares in Arelma-that Marcos had moved to Switzerland. In compliance the Swiss Government froze certain assets and, in 1990, that freeze was upheld by the Swiss Federal Supreme Court. In 1991, the Commission asked the Sandiganbayan, a Philippine court of special jurisdiction over corruption cases, to declare forfeited to the Republic any property Marcos had obtained through misuse of his office. That litigation is still pending in the Sandiganbayan. (Citations omitted.)

The pursuit of the Arelma account encountered several hindrances, as it was subject to not one, but **two** claims of human rights victims in foreign courts: the Pimentel class and the Roxas claimants. The government and the PCGG were able to obtain a Stay Order at the appellate level, but the trial court judge vacated the stay and awarded the Arelma assets to the Pimentel class of human rights victims.

As early as 1986, the PCGG had already sought assistance from the Swiss government to recover the Arelma assets; however, it was only in 2000 that the Swiss authorities turned over two Stock Certificates, which were assets of Arelma. The transfer by Switzerland of the Stock Certificates to the Republic was made under the same conditions as the bank deposits of the five Swiss foundations.[57]

Meanwhile, the Pimentel case was tried as a class action before Judge Manuel Real of the United States District Court for the Central District of California. Judge Real was sitting by designation in the District of Hawaii after the Judicial Panel on Multidistrict Litigation consolidated the various human rights Complaints against Marcos in that court.[58] Judge Real directed Merrill Lynch to file an action for interpleader in the District of Hawaii, where he presided over the matter, and where the Republic and the PCGG were named as defendants. In *Pimentel,* the Court further narrates how Judge Real ruled that the pending litigation in Philippine courts could not determine entitlement to the Arelma assets:

> After being named as defendants in the interpleader action, the Republic and the Commission asserted sovereign immunity under the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. § 1604. They moved to dismiss pursuant to Rule 19(b), based on the premise that the action could not proceed without them… Judge Real initially rejected the request by the Republic and the Commission to dismiss the interpleader action. They appealed, and the Court of Appeals reversed. It held the Republic and the Commission are entitled to sovereign immunity and that under Rule 19(a) they are required parties (or "necessary" parties under the old terminology). See *In re Republic of the Philippines,* 309 F.3d 1143, 1149-1152 (C.A.9 2002). The Court of Appeals entered a stay pending the outcome of the litigation in the Sandiganbayan over the Marcos assets.

After concluding that the pending litigation in the Sandiganbayan could not determine entitlement to the Arelma assets, Judge Real

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[57] *Supra* note 47.

[58] *Supra* note 56, at 859, citing *Hilao v. Estate of Marcos,* 103 F.3d 767 (C.A.9 1996), at 771.

vacated the stay, allowed the action to proceed, and awarded the assets to the Pimentel class. A week later, in the case initiated before the Sandiganbayan in 1991, the Republic asked that court to declare the Arelma assets forfeited, arguing the matter was ripe for decision. The Sandiganbayan has not yet ruled. In the interpleader case the Republic, the Commission, Arelma, and PNB appealed the District Court's judgment in favor of the Pimentel claimants. This time the Court of Appeals affirmed. Dismissal of the interpleader suit, it held, was not warranted under Rule 19(b) because, though the Republic and the Commission were required ("necessary") parties under Rule 19(a), their claim had so little likelihood of success on the merits that the interpleader action could proceed without them. One of the reasons the court gave was that any action commenced by the Republic and the Commission to recover the assets would be barred by New York's 6-year statute of limitations for claims involving the misappropriation of public property.[59] (Citations omitted)

The American Supreme Court reversed the judgment of the Court of Appeals for the Ninth Circuit and remanded the case with instructions to order the District Court to dismiss the interpleader action. The former held that the District Court and the Court of Appeals failed to give full effect to sovereign immunity when they held that the action could proceed without the Republic and the Commission:

> Comity and dignity interests take concrete form in this case. The claims of the Republic and the Commission arise from events of historical and political significance for the Republic and its people. The Republic and the Commission have a unique interest in resolving the ownership of or claims to the Arelma assets and in determining if, and how, the assets should be used to compensate those persons who suffered grievous injury under Marcos. There is a comity interest in allowing a foreign state to use its own courts for a dispute if it has a right to do so. The dignity of a foreign state is not enhanced if other nations bypass its courts without right or good cause. Then, too, there is the more specific affront that could result to the Republic and the Commission if property they claim is seized by the decree of a foreign court.[60]

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[59] *Supra* note 56, at 859.

[60] *Supra* note 56, at 866.

Thus it was only in 2008 that the Republic was finally able to obtain a favorable judgment from the American Supreme Court with regard to the different claims against the Arelma assets. Petitioners never intervened or lifted a finger in any of the litigation proceedings involving the enforcement of judgment against the Arelma assets abroad. We find merit in respondent's observation that petitioner Imelda Marcos's participation in the proceedings in the Philippines, particularly her invocation of her right against undue deprivation of property, is inconsistent with her and Ferdinand Marcos, Jr.'s insistence that the properties in question do not belong to them, and that they are mere beneficiaries.[61]

Indeed, it is clear that the Arelma assets are in danger of dissipation. Even as the United States Supreme Court gave weight to the likely prejudice to be suffered by the Republic when it dismissed the interpleader in *Pimentel*, it also considered that the "balance of equities may change in due course. One relevant change may occur if it appears that the Sandiganbayan cannot or will not issue its ruling within a reasonable period of time. If the Sandiganbayan rules that the Republic and the Commission have no right to the assets, their claims in some later interpleader suit would be less substantial than they are now."[62]

IV. Petitioners' sham denials justify the application of summary judgment

As already settled in the Swiss Deposits Decision and reiterated in the discussion above as the law of the case, the lawful income of the Marcoses is only USD 304,372.43. As discussed in paragraph 9 of the Petition for Forfeiture, Annex V-21-b states that Arelma's assets as of 19 May 1983 were worth USD 3,369,975.00.[63] **The entirety of the lawful income of the**

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[61] *Rollo* (G.R. No. 189434), p. 514.

[62] *Supra* note 56, at 873.

[63] Found among the Malacañang documents and attached as "Annex V-21-b" of the Petition was a letter written by J.L. Sunier with a reference to "SAPPHIRE" and a salutation "Dear Excellency" stating, among others, the current valuation by Merrill Lynch of Arelma, Inc. at USD 3,369,975.

Marcoses represents only 9% of the entire assets of Arelma, which petitioners remain unable to explain.

In their Answer to the Petition for Forfeiture, petitioners employ the same tactic, consisting of general denials based on a purported lack of knowledge regarding the whereabouts of the Arelma assets. Paragraph 32 of the said pleading states:

> Respondents **specifically DENY** paragraph 59 of the Petition insofar as it alleges that the Marcoses used their cronies and engaged in laundering their filthy riches for being false and conclusory of the truth being that the Marcoses did not engage in any such illegal acts and that all the properties they acquired were lawfully acquired; and specifically DENY the rest **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents are not privy to the alleged transactions.[64]

This particular denial mimics petitioners' similar denials of the allegations in the forfeiture Petition pertaining to the Swiss accounts and is practically identical to paragraphs 7 to 37 of the Answer. The Swiss Deposits Decision has characterized these as "sham" denials:

> 17. Respondents **specifically DENY** paragraph 18 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents cannot remember with exactitude the contents of the alleged ITRs.
>
> 18. Respondents **specifically DENY** paragraph 19 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents cannot remember with exactitude the contents of the alleged ITRs and that they are not privy to the activities of the BIR.
>
> 19. Respondents **specifically DENY** paragraph 20 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents cannot remember with exactitude the contents of the alleged ITRs.
>
> 20. Respondents **specifically DENY** paragraph 21 of the Petition **for lack of knowledge or information sufficient to form a belief**

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[64] *Rollo* (G.R. No. 189434), p. 196.

as to the truth of the allegation since Respondents cannot remember with exactitude the contents of the alleged ITRs.

21. Respondents **specifically DENY** paragraph 22 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents cannot remember with exactitude the contents of the alleged ITRs.

22. Respondents **specifically DENY** paragraph 23 insofar as it alleges that Respondents clandestinely stashed the country's wealth in Switzerland and hid the same under layers and layers of foundation and corporate entities for being false, the truth being that Respondents aforesaid properties were lawfully acquired.

23. Respondents **specifically DENY** paragraphs 24, 25, 26, 27, 28, 29 and 30 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents were not privy to the transactions regarding the alleged Azio-Verso-Vibur Foundation accounts, except that as to Respondent Imelda R. Marcos she specifically remembers that the funds involved were lawfully acquired.

24. Respondents **specifically DENY** paragraphs 31, 32, 33, 34, 35, 36,37, 38, 39, 40, and 41 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegations** since Respondents are not privy to the transactions and as to such transaction they were privy to they cannot remember with exactitude the same having occurred a long time ago, except that as to Respondent Imelda R. Marcos she specifically remembers that the funds involved were lawfully acquired.

25. Respondents **specifically DENY** paragraphs 42, 43, 44, 45, and 46, of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegations** since Respondents were not privy to the transactions and as to such transaction they were privy to they cannot remember with exactitude the same having occurred a long time ago, except that as to Respondent Imelda R. Marcos she specifically remembers that the funds involved were lawfully acquired.

26. Respondents **specifically DENY** paragraphs 49, 50, 51 and 52, of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegations** since Respondents were not privy to the transactions and as to such transaction they were privy to they cannot remember with exactitude the same having

occurred a long time ago, except that as to Respondent Imelda R. Marcos she specifically remembers that the funds involved were lawfully acquired.

Upon careful perusal of the foregoing, the Court finds that respondent Mrs. Marcos and the Marcos children indubitably failed to tender genuine issues in their answer to the petition for forfeiture. A genuine issue is an issue of fact which calls for the presentation of evidence as distinguished from an issue which is fictitious and contrived, set up in bad faith or patently lacking in substance so as not to constitute a genuine issue for trial. Respondents' defenses of "lack of knowledge for lack of privity" or "(inability to) recall because it happened a long time ago" or, on the part of Mrs. Marcos, that "the funds were lawfully acquired" are fully insufficient to tender genuine issues. Respondent Marcoses' defenses were a sham and evidently calibrated to compound and confuse the issues.[65] (Emphasis supplied.)

In the case at bar, petitioners give the same stock answer to the effect that the Marcoses did not engage in any illegal activities, and that *all* their properties were lawfully acquired. They fail to state with particularity the ultimate facts surrounding the alleged lawfulness of the mode of acquiring the funds in Arelma (which totaled USD 3,369,975.00 back in 1983), considering that the entirety of their lawful income amounted only to USD 304,372.43, or only 9% of the entire Arelma fund. Then, as now, they employ what the Court in G.R. No. 152154 characterized as a "negative pregnant," not just in denying the criminal provenance of the Arelma funds, but in the matter of ownership of the said funds. As discussed by the Court in the first *Republic* case, cited by the Sandiganbayan:

> Evidently, this particular denial had the earmark of what is called in the law on pleadings as a *negative pregnant*, that is, a denial pregnant with the admission of the substantial facts in the pleading responded to which are not squarely denied. It was in effect an admission of the averments it was directed at. Stated otherwise, a negative pregnant is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable

[65] *Supra* note 9 at 1101-1103.

to the adverse party. It is a denial pregnant with an admission of the substantial facts alleged in the pleading. **Where a fact is alleged with qualifying or modifying language and the words of the allegation as so qualified or modified are literally denied, it has been held that the qualifying circumstances alone are denied while the fact itself is admitted**.[66]

Due to the insufficiency of petitioners' denial of paragraph 59 which in effect denies only the qualifying circumstances, and by virtue of the Court's ruling in the Swiss Deposits Decision, petitioners are deemed to have admitted the factual antecedents and the establishment of Arelma. In paragraph 32 of their Answer, they only deny the first few sentences of paragraph 59, while conveniently neglecting to address subparagraphs 1 to 5 and the opening bank documents described in 5 (a) to (d) of the Petition for Forfeiture. Paragraphs 1 and 2 of the Petition discusses the establishment of a Panamanian company to be named either "Larema, Inc. or Arelma, Inc., or Relma, Inc."; the appointment of several people as directors; and the opening of a direct account with Merrill Lynch. Paragraphs 3 to 5 also of the Petition for Forfeiture detail correspondences between a "J.L. Sunier" and a letter addressed to Malacañang with the salutation "Dear Excellency."

Regarding the averment of petitioners that they lack knowledge sufficient to form a belief as to the truth of the above allegations in the Petition for Forfeiture, the Court's discussion in the Swiss Deposits Decision bears reiterating:

> Here, despite the serious and specific allegations against them, the Marcoses responded by simply saying that they had no knowledge or information sufficient to form a belief as to the truth of such allegations. Such a general, self-serving claim of ignorance of the facts alleged in the petition for forfeiture was insufficient to raise an issue. Respondent Marcoses should have positively stated how it was that they were supposedly ignorant of the facts alleged.[67]

Petitioners cannot escape the fact that there is manifest disparity between the amount of the Arelma funds and the lawful income

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[66] *Supra* note 9, at 1107.

[67] *Supra* note 9 at 1106.

of the Marcoses as shown in the ITRs filed by spouses Marcos. The Swiss Deposits Decision found that the genuineness of the said ITRs and balance sheets of the Marcos spouses have already been admitted by petitioners themselves:

> Not only that. Respondents' answer also technically admitted the genuineness and due execution of the Income Tax Returns (ITRs) and the balance sheets of the late Ferdinand E. Marcos and Imelda R. Marcos attached to the petition for forfeiture, as well as the veracity of the contents thereof.
>
> The answer again premised its denials of said ITRs and balance sheets on the ground of lack of knowledge or information sufficient to form a belief as to the truth of the contents thereof. Petitioner correctly points out that respondents' denial was not really grounded on lack of knowledge or information sufficient to form a belief but was based on lack of recollection. By reviewing their own records, respondent Marcoses could have easily determined the genuineness and due execution of the ITRs and the balance sheets. They also had the means and opportunity of verifying the same from the records of the BIR and the Office of the President. They did not.
>
> When matters regarding which respondents claim to have no knowledge or information sufficient to form a belief are plainly and necessarily within their knowledge, their alleged ignorance or lack of information will not be considered a specific denial. An unexplained denial of information within the control of the pleader, or is readily accessible to him, is evasive and is insufficient to constitute an effective denial.[68] (Footnotes omitted.)

We find that petitioners have again attempted to delay the goal of asset recovery by their evasiveness and the expedient profession of ignorance. It is well-established that a profession of ignorance about a fact that is necessarily within the pleader's knowledge or means of knowing is as ineffective as no denial at all. On a similar vein, there is a failure by petitioners to properly tender an issue, which as correctly ruled by the Sandiganbayan, justifies the Republic's resort to summary judgment.

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[68] *Supra* note 9 at 1111-1112.

Summary judgment may be allowed where there is no genuine issue as to any material fact and where the moving party is entitled to a judgment as a matter of law.[69] In *Yuchengco v. Sandiganbayan*, the Court has previously discussed the importance of summary judgment in weeding out sham claims or defenses at an early stage of the litigation in order to avoid the expense and loss of time involved in a trial, *viz*:

> Even if the pleadings appear, on their face, to raise issues, summary judgment may still ensue as a matter of law if the affidavits, depositions and admissions show that such issues are not genuine. The presence or absence of a genuine issue as to any material fact determines, at bottom, the propriety of summary judgment. A "genuine issue," as differentiated from a fictitious or contrived one, is an issue of fact that requires the presentation of evidence. To the party who moves for summary judgment rests the onus of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial.[70]

Even if in the Answer itself there appears to be a tender of issues requiring trial, yet when the relevant affidavits, depositions, or admissions demonstrate that those issues are not genuine but sham or fictitious, the Court is justified in dispensing with the trial and rendering summary judgment for plaintiff.[71]

Summary judgment, or accelerated judgment as it is sometimes known, may also call for a hearing so that both the movant and the adverse party may justify their positions. However, the hearing contemplated (with 10-day notice) is for the purpose of determining whether the issues are genuine or not, not to receive evidence of the issues set up in the pleadings. In *Carcon Development Corporation v. Court of Appeals*,[72] the Court ruled that a hearing is not *de riguer*. The matter may be resolved,

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[69] 1997 Rules of Civil Procedure, Rule 35, Sec. 3.

[70] 515 Phil. 1, 12 (2006).

[71] *Carcon Development Corporation v. Court of Appeals*, 259 Phil. 836, 840 (1989).

[72] *Supra*.

and usually is, on the basis of affidavits, depositions, and admissions. This does not mean that the hearing is superfluous; only that the court is empowered to determine its necessity.

It is the law itself that determines when a summary judgment is proper. Under the rules, summary judgment is appropriate when there are no genuine issues of fact that call for the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the rules must ensue as a matter of law. What is crucial to a determination, therefore, is the presence or absence of a genuine issue as to any material fact. When the facts as pleaded appear uncontested or undisputed, then summary judgment is called for.[73]

Guided by the principles above indicated, we hold that under the circumstances obtaining in the case at bar, summary judgment is proper. The Sandiganbayan did not commit a reversible error in granting the corresponding 2004 Motion for Summary Judgment filed by respondent. The latter is well within its right to avail itself of summary judgment and obtain immediate relief, considering the insufficient denials and pleas of ignorance made by petitioners on matters that are supposedly within their knowledge.

These denials and pleas constitute admissions of material allegations under paragraph 59 of the Petition for Forfeiture — a tact they have employed repeatedly in Civil Case No. 0141. As discussed, the purpose of summary judgment is precisely to avoid long drawn litigations and useless delays.[74] We also affirm the Sandiganbayan's findings that the moving party, the Republic, is now entitled to judgment as a matter of law.

WHEREFORE, the instant Petitions are **DENIED.** The Decision dated 2 April 2009 of the Sandiganbayan is **AFFIRMED.** All

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[73] *Evadel Realty v. Spouses Antero and Virginia Soriano,* 409 Phil. 450 (2001).

[74] *Nocom v. Camerino,* G.R. No. 182984, 10 February 2009, 578 SCRA 390, 409-410.

assets, properties, and funds belonging to Arelma, S.A., with an estimated aggregate amount of **USD 3,369,975** as of 1983, plus all interests and all other income that accrued thereon, until the time or specific day that all money or monies are released and/or transferred to the possession of the Republic of the Philippines, are hereby forfeited in favor of respondent Republic of the Philippines.

SO ORDERED.

Brion,[*] *(Acting Chairperson), Abad,*[**] *Perez,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 190321. April 25, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAMMY UMIPANG *y* ABDUL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); CHAIN OF CUSTODY RULE; NONCOMPLIANCE WITH THE REQUIRED PROCEDURE WILL NOT NECESSARILY RESULT IN THE ACQUITTAL OF THE ACCUSED IF THERE ARE JUSTIFIABLE GROUNDS.— Given the nature of buy-bust operations and the resulting preventive procedural safeguards crafted in R.A. 9165, courts must tread carefully before giving full credit to the testimonies of those who conducted the

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[*] Acting chairperson in lieu of Justice Antonio T. Carpio, who took no part due to previous inhibition in a related case.

[**] Per Raffle dated 25 April 2012.

operations. Although we have ruled in the past that mere procedural lapses in the conduct of a buy-bust operation are not *ipso facto* fatal to the prosecution's cause, so long as the integrity and the evidentiary value of the seized items have been preserved, **courts must still thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law.** Consequently, Section 21(a) of the IRR provides for a saving clause in the procedures outlined under Section 21(1) of R.A. 9165, which serves as a guide in ascertaining those procedural aspects that may be relaxed **under justifiable grounds.** x x x We have reiterated that "this saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds" after which, "the prosecution must show that the integrity and evidentiary value of the evidence seized have been preserved." To repeat, noncompliance with the required procedure will not necessarily result in the acquittal of the accused if: (1) the **noncompliance is on justifiable grounds**; and (2) the **integrity and the evidentiary value of the seized items are properly preserved by the apprehending team**.

2. ID.; ID.; ID.; SUBSTANTIVE LAW REQUIRES STRICT OBSERVANCE OF THE PROCEDURAL SAFEGUARDS OUTLINED IN R.A. 9165.— Accordingly, despite the presumption of regularity in the performance of the official duties of law enforcers, we stress that the step-by-step procedure outlined under R.A. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality. The provisions were crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment. x x x Consequently, in a line of cases, we have lain emphasis on the importance of complying with the prescribed procedure. Stringent compliance is justified under the rule that penal laws shall be construed strictly against the government and liberally in favor of the accused. Otherwise, "the procedure set out in the law will be mere lip service."

3. ID.; ID.; ID.; THE CIRCUMSTANCES SURROUNDING THE MARKING OF THE SEIZED ITEMS ARE SUSPECT.— The circumstances surrounding the marking of the seized items

are suspect. From their testimonies during the trial, PO2 Gasid and PO1 Ragos both admitted that they only knew their target by the name "Sam." They both testified that, after accused-appellant was handcuffed, frisked, and read his rights, they immediately brought him to the police precinct. They then said that it was a certain PO1 Saez who investigated him. In fact, in their joint affidavit, PO2 Gasid and PO1 Ragos stated thus: *Na* ***dinala namin siya*** [accused] ***sa aming opisina para sa pagsisiyasat at pagtatanong tungkol sa detalye ng kaniyang pagkatao*** *at sa layuning masampahan ng kaukulang reklamo sa paglabag ng* Sections 5 and 11 of RA 9165. Evidence on record does not establish that PO2 Gasid had prior knowledge of the *complete* name of accused-appellant, including the middle initial, which enabled the former to mark the seized items with the latter's *complete* initials. This suspicious, material inconsistency in the marking of the items raises questions as to *how* PO2 Gasid came to know about the initials of Umipang prior to the latter's statements at the police precinct, thereby creating a cloud of doubt on the issues of where the marking really took place and whether the integrity and evidentiary value of the seized items were preserved. All that was established was that it was PO1 Saez who asked accused-appellant about the latter's personal circumstances, including his true identity, and that the questioning happened when accused-appellant was already at the police station.

4. ID.; ID.; ID.; NO GENUINE AND SUFFICIENT EFFORT ON THE PART OF THE APPREHENDING POLICE OFFICERS TO LOOK FOR THE SAID REPRESENTATIVES PURSUANT TO SECTION 21 (1) OF R.A. 9165.— The SAID-SOTF failed to show genuine and sufficient effort to seek the third-party representatives enumerated under Section 21(1) of R.A. 9165. Under the law, the inventory and photographing of seized items must be conducted in the presence of a representative from the media, from the Department of Justice (DOJ), *and* from any elected public official. x x x Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show

whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest. Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. 9165. A sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.

5. **ID.; ID.; ID.; THE APPREHENDING POLICE OFFICERS FAILED TO DULY ACCOMPLISH THE CERTIFICATE OF INVENTORY AND TO TAKE PHOTOS OF THE SEIZED ITEMS PURSUANT TO SECTION 21 (1) OF R.A. 9165.—** The SAID-SOTF failed to duly accomplish the Certificate of Inventory and to take photos of the seized items pursuant to Section 21(1) of R.A. 9165. As pointed out by the defense during trial, the Certificate of Inventory did not contain any signature, including that of PO2 Gasid — the arresting officer who prepared the certificate — thus making the certificate defective. Also, the prosecution neither submitted any photograph of the seized items nor offered any reason for failing to do so. We reiterate that these requirements are specifically outlined in and required to be implemented by Section 21(1) of R.A. 9165.

6. **REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES CANNOT BE SIMPLY INVOKED FOR A GROSS, SYSTEMATIC, OR DELIBERATE DISREGARD OF PROCEDURAL SAFEGUARDS.—** Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were "recognized and explained in terms of [] justifiable grounds." There must also be a showing "that the police officers intended to comply with

the procedure but were thwarted by some justifiable consideration/reason." However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

7. ID.; ID.; ID.; THE TOTALITY OF THE PROCEDURAL LAPSES EFFECTIVELY PRODUCED SERIOUS DOUBTS ON THE INTEGRITY AND IDENTITY OF THE *CORPUS DELICTI*.— For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, "as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt."

APPEARANCES OF COUNSEL

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

D E C I S I O N

SERENO, *J.*:

Before the Court is an appeal from the 21 May 2009 Decision of the Court of Appeals (CA)[1] affirming the 24 July 2007 Joint

[1] The Decision in CA-G.R. CR-H.C. No. 02898 was penned by CA Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Arturo G. Tayag.

Decision of the Pasig City Regional Trial Court (RTC) in Criminal Cases No. 14935-D-TG and No. 14936-D-TG.[2] The RTC Decision convicted Sammy Umipang *y* Abdul (Umipang) for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Facts

The pertinent facts, as determined by the CA, are quoted as follows:

> Acting on a tip from a confidential informant that a person named Sam was selling drugs along Cagayan de Oro Street in Maharlika Village, Taguig City, a buy-bust team from the [Station Anti-Illegal Drugs — Special Operation Task Force (SAID-SOTF)] of the Taguig City Police was dispatched on April 1, 2006 at around 6:00 in the evening. [Police Officer (PO) 2] Gasid was assigned to act as poseur buyer and he was given a ₱500.00 marked money. The operation was coordinated with the Philippine Drug Enforcement Agency (PDEA).
>
> Upon arrival at the area, PO2 Gasid and the confidential informant sauntered the length of the street while the other members of the team strategically positioned themselves. The confidential informant saw the man called Sam standing near a store. The confidential informant and PO2 Gasid then approached Sam. Straight off, the confidential informant said "*Sam, pa-iskor kami*." Sam replied "*Magkano ang iiskorin nyo?*" The confidential informant said "*Five hundred pesos*." Sam took out three (3) plastic sachets containing white crystalline substance with various price tags–500, 300, and 100. After making a choice, PO2 Gasid handed the marked ₱500.00 to Sam who received the same.
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> Upon receipt by Sam of the marked money, PO2 Gasid took off his cap as the pre-arranged signal that the sale had been consummated. Sensing danger, Sam attempted to flee but PO2 Gasid immediately grabbed and arrested Sam. In a few seconds, the rest of the buy-bust team [comprised of their team leader, Police Senior Inspector (PS/INSP.) Obong, Senior Police Officer (SPO) 1 Mendiola, PO3

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[2] The Joint Decision in Criminal Cases Nos. 14935-D-TG and 14936-D-TG was penned by Judge Florito S. Macalino.

Hajan, PO3 Maglana, PO3 Salem, and PO1 Ragos] joined them. PO1 Ragos handcuffed Sam. Five (5) more plastic sachets containing the same white crystalline substance were recovered from Sam. PO2 Gasid marked the items with the initials "SAU" [which stood for Sammy A. Umipang, the complete name, including the middle initial, of accused-appellant]. Sam was forthwith brought to the police station where he was booked, investigated and identified as accused-appellant Sammy Umipang *y* Abdul. PO2 Gasid then brought the confiscated items to the crime laboratory for testing. The specimens all tested positive for Methylamphetamine Hydrochloride, popularly known as "*shabu*," a dangerous drug.

On the other hand, the defense presented accused-appellant himself and his brother Nash Rudin Umipang. According to them:

In the evening of April 1, 2006, while they were sleeping, accused-appellant and his family were awakened by loud knocking on the door. The persons outside shouted "*Mga pulis kami. Buksan mo ang pinto kung hindi gigibain namin ito*." Accused-appellant obliged and opened the door. Five (5) policemen barged into his house and pointed a gun at him. Against his will and amid the screams of his wife, accused-appellant was brought to a waiting vehicle and brought to the police headquarters. At the Taguig Police station, PO2 Gasid tried to extort from him ₱100,000.00 for his release. He denied the charges and that the alleged evidence were all "planted" by the police.[3]

Consequently, the following charges were brought against Umipang:

That on or about the 1st day of April 2006, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there, willfully, unlawfully and knowingly sell deliver and give away to poseur buyer PO2 Ruchyl Gasid, one heat sealed transparent plastic sachet containing 0.05 gram of white crystalline substance, which substance was found positive to the test for Methylamphetamine Hydrochloride also known as "*shabu*" a dangerous drug, in consideration of the amount of ₱500.00, in violation of the above-cited law.

That on or about the 1st day of April 2006, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the

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[3] CA Decision at 4-5, *rollo*, pp. 5-6.

above-named accused, without having been authorized by law, did then and there, willfully, unlawfully and knowingly possess and have in his custody and control five (5) heat sealed transparent plastic sachets, each containing 0.05 gram, 0.05 gram, 0.05 gram, 0.04 gram and 0.04 gram with a total weight of 0.23 gram of white crystalline substance, which substances were found positive to the tests for Methylamphetamine Hydrochloride also known as "*shabu*" a dangerous drug, in violation of the above-cited law.

RTC Ruling

In its 24 July 2007 Joint Decision, the Pasig City RTC found accused-appellant guilty of violating Section 5 (Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals) and Section 11 (Possession of Dangerous Drugs), Article II of R.A. 9165. The RTC gave more weight to the testimonies of the arresting officers on how they conducted the buy-bust operation than to accused-appellant's claim of frame-up by the police. Thus, for violating Section 5 (Criminal Case No. 14935-D-TG), Umipang was sentenced to suffer life imprisonment and to pay a fine of ₱500,000. For violating Section 11 (Criminal Case No. 14936-D-TG), he was sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years and twenty-one (21) days as maximum and to pay a fine of ₱300,000.

CA Ruling

In its 21 May 2009 Decision, the CA affirmed *in toto* the 24 July 2007 Joint Decision of the RTC. According to the appellate court, the elements necessary for the prosecution of the illegal possession and sale of dangerous drugs were present and established. Thus, it no longer disturbed the RTC's assessment of the credibility of the prosecution witnesses. Furthermore, the CA found that there was no showing of improper motive on the part of the police officers. With the presumption of regularity in the performance of official duties, it ruled against the denials of accused-appellant, and his defense of frame-up.

We have consistently declared that a review of the factual findings of the lower courts is not a function that is normally undertaken in appeals before this Court. However, after a careful scrutiny of the CA Decision, we find it proper to reevaluate the factual issues surrounding the present case, especially since it is not clear from the Decision whether the proper implementation of the strict procedural safeguards laid down in R.A. 9165 was established.

Issue

Whether or not the RTC and the CA erred in finding that the testimonial evidence of the prosecution witnesses were sufficient to convict accused-appellant of the alleged sale and possession of methylamphetamine hydrochloride, which are violations under Sections 5 and 11, respectively, of R.A. 9165.

Discussion

Accused-appellant argues[4] that since there were two versions presented during trial — one, that of the prosecution; and the other, that of the accused — the latter version must be adopted, because the presumption of regularity in the performance of official duties should not take precedence over the presumption of innocence of the accused. He also contends that a surveillance of just 30 minutes was insufficient to establish that Umipang was engaged in the sale of illegal drugs. Lastly, accused-appellant claims that the fact of possession of the confiscated plastic sachets was not clearly established, and that the evidence allegedly confiscated from him was merely planted.[5] Alluding to the testimony of PO1 Ragos, he points out that the former did not see him holding the drugs, and that the sachet was shown only to PO1 Ragos by PO2 Gasid.

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[4] Brief for the Accused-Appellant at 9-12 (*People v. Umipang*, CA-G.R. CR H.C. No. 02898, decided on 21 May 2009), CA *rollo*, pp. 47-50. In our 5 April 2010 Resolution, this Court noted the Manifestation of accused-appellant that he is adopting his 13 December 2007 Brief for the Accused-Appellant filed with the CA as his supplemental brief (*rollo*, p. 51).

[5] Brief for the Accused-Appellant at 11 (*People v. Umipang*, CA-G.R. CR H.C. No. 02898, decided on 21 May 2009), CA *rollo*, p. 49.

On the other hand, the Office of the Solicitor General (OSG) prays for the affirmation of the RTC Joint Decision in all respects, as it was decided in accord with law and evidence.[6] The OSG argues[7] that the necessary elements to convict a person under Sections 5 and 11 were proven beyond reasonable doubt. It then contends that, absent independent proof and substantiated evidence to the contrary, accused-appellant's bare-faced denial should be deemed merely as a self-serving statement that does not hold merit. Finally, the OSG asserts that, where there is no evidence of improper motive on the part of the prosecution witness to testify falsely against accused-appellant, the testimony must be given full faith and credence.

Substantive law requires strict observance of the procedural safeguards outlined in R.A. 9165

At the outset, we take note that the present case stemmed from a buy-bust operation conducted by the SAID-SOTF. We thus recall our pronouncement in *People v. Garcia*:

> A buy-bust operation gave rise to the present case. While this kind of operation has been proven to be an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, **a buy-bust operation has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion.** In *People v. Tan*, this Court itself recognized that "*by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility*

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[6] Brief for the Appellee at 19 (*People v. Umipang*, CA-G.R. CR H.C. No. 02898, decided on 21 May 2009), CA *rollo*, p. 97. In our 5 April 2010 Resolution, this Court noted the Manifestation of the Office of the Solicitor General that it is no longer filing a supplemental brief, as it has already exhaustively discussed all the issues in its 22 April 2008 Brief for the Appellee (*rollo*, p. 51).

[7] Brief for the Appellee at 8-19 (*People v. Umipang*, CA-G.R. CR H.C. No. 02898, decided on 21 May 2009), CA *rollo*, pp. 86-97.

of abuse is great. Thus, ***courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.***" Accordingly, **specific procedures relating to the seizure and custody of drugs have been laid down in the law (R.A. No. 9165) for the police to strictly follow**. The **prosecution must adduce evidence that these procedures have been followed** in proving the elements of the defined offense.[8] (Emphasis supplied and citations omitted.)

Section 21 of R.A. 9165 delineates the mandatory procedural safeguards[9] that are applicable in cases of buy-bust operations:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs **shall**, **immediately after seizure and confiscation**, **physically inventory and photograph the same in the presence of** the **accused** or the person/s from whom such items were confiscated and/or seized, or his/her **representative or counsel**, a **representative from the media and the Department of Justice (DOJ), and any elected public official** who **shall be required to sign the copies of the inventory and be given a copy thereof**;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same **shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination**;

(3) A **certification of the forensic laboratory examination results**, which shall be **done under oath** by the forensic laboratory

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[8] G.R. No. 173480, 25 February 2009, 580 SCRA 259, 266-267.

[9] *Id.*

examiner, **shall be issued within twenty-four (24) hours after the receipt of the subject item/s**: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a **final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours**;

(4) After the filing of the criminal case, the **Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/ paraphernalia and/or laboratory equipment,** and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further*, **That a representative sample, duly weighed and recorded is retained**;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the **representative sample/s shall be kept to a minimum quantity as determined by the Board**;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours

> before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former; x x x. (Emphasis supplied.)

Congress introduced another complementing safeguard through Section 86 of R.A. 9165, which requires the National Bureau of Investigation (NBI), Philippine National Police (PNP), and Bureau of Customs (BOC) to maintain close coordination with PDEA in matters of illegal drug-related operations:

> **Section 86.** *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions.* — x x x.
>
> x x x x x x x x x
>
> Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided, however*, That **when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency**. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, That the **NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.** (Emphasis supplied.)

Thus, the 2002 Implementing Rules and Regulations of R.A. 9165 (IRR) set the following procedure for maintaining close coordination:

> **SECTION 86.** *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions.* — x x x.
>
> x x x x x x x x x
>
> (a) Relationship/Coordination between PDEA and Other Agencies — The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: *Provided*, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; *Provided*,

further, that, **in any case, said agencies shall inform the PDEA of their anti-drug operations within twenty-four (24) hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations**; *Provided, furthermore*, that raids, seizures, and other anti-drug operations conducted by the PNP, the NBI, and other law enforcement agencies prior to the approval of this IRR shall be valid and authorized; *Provided, finally*, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court. (Emphasis supplied.)

Given the nature of buy-bust operations and the resulting preventive procedural safeguards crafted in R.A. 9165, courts must tread carefully before giving full credit to the testimonies of those who conducted the operations. Although we have ruled in the past that mere procedural lapses in the conduct of a buy-bust operation are not *ipso facto* fatal to the prosecution's cause, so long as the integrity and the evidentiary value of the seized items have been preserved,[10] **courts must still thoroughly evaluate and differentiate those errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law.** Consequently, Section 21(a) of the IRR provides for a saving clause in the procedures outlined under Section 21(1) of R.A. 9165, which serves as a guide in ascertaining those procedural aspects that may be relaxed **under justifiable grounds**, *viz*:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — x x x:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same

[10] *Imson v. People*, G.R. No. 193003, 13 July 2011, 653 SCRA 826.

> in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided, that the* ***physical inventory and photograph shall be conducted*** *at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that* ***non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved*** *by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items*; (Emphasis supplied.)

We have reiterated that "this saving clause applies only where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds" after which, "the prosecution must show that the integrity and evidentiary value of the evidence seized have been preserved."[11] To repeat, noncompliance with the required procedure will not necessarily result in the acquittal of the accused if: (1) the **noncompliance is on justifiable grounds**; and (2) the **integrity and the evidentiary value of the seized items are properly preserved by the apprehending team**.[12]

Accordingly, despite the presumption of regularity in the performance of the official duties of law enforcers,[13] we stress that the step-by-step procedure outlined under R.A. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality. The provisions were crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment. In *People v. Coreche*,[14] we explained thus:

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[11] *People v. Garcia*, *supra* note 8, at 272-273.

[12] *People v. De la Cruz*, G.R. No. 177222, 29 October 2008, 570 SCRA 273.

[13] *Imson v. People*, *supra* note 10.

[14] G.R. No. 182528, 14 August 2009, 596 SCRA 350, fn. 16 at 358-359.

The concern with **narrowing the window of opportunity for tampering with evidence** found legislative expression in Section 21 (1) of RA 9165 on the *inventory* of seized dangerous drugs and paraphernalia by putting in place a **three-tiered requirement on the *time, witnesses,* and *proof* of inventory** by imposing on the apprehending team having initial custody and control of the drugs the **duty to "immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof."** (Emphasis supplied.)

Consequently, in a line of cases,[15] we have lain emphasis on the importance of complying with the prescribed procedure. Stringent compliance is justified under the rule that penal laws shall be construed strictly against the government and liberally in favor of the accused.[16] Otherwise, "the procedure set out in the law will be mere lip service."[17]

Material irregularities in the conduct of the buy-bust operations

In the recent case of *People v. Relato*, we reiterated the following:

In a **prosecution of the sale and possession** of methamphetamine hydrochloride prohibited under Republic Act No. 9165, the State **not only carries the heavy burden of proving the elements of the offense** of, but also bears the **obligation to prove the *corpus delicti***, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that

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[15] *People v. Garcia*, *supra* note 8 (*citing People v. Nazareno*, G.R. No. 174771, 11 September 2007, 532 SCRA 630; *People v. Santos*, G.R. No. 175593, 17 October 2007, 536 SCRA 489; *People v. Dela Cruz*, G.R. No. 181545, 8 October 2008, 568 SCRA 273; and *People v. De la Cruz*, *supra* note 12).

[16] *People v. Garcia*, *supra* note 8 (*citing People v. De la Cruz*, *supra* note 12).

[17] *People v. Martin*, G.R. No. 193234, 19 October 2011.

the **State does not establish the *corpus delicti*** when the prohibited substance subject of the prosecution is missing or **when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court**. **Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.** Thus, Relato deserves exculpation, especially as we recall that his defense of frame-up became plausible in the face of the weakness of the Prosecution's evidence of guilt.[18] (Emphasis supplied and citations omitted.)

The conduct of the buy-bust operations was peppered with defects, which raises doubts on the preservation of the integrity and evidentiary value of the seized items from accused-appellant.

First, there were material inconsistencies in the marking of the seized items. According to his testimony, PO2 Gasid used the initials of the *complete* name, including the middle initial, of accused-appellant in order to mark the confiscated sachets. The marking was done immediately after Umipang was handcuffed. However, a careful perusal of the testimony of PO2 Gasid would reveal that his *prior* knowledge of the *complete* initials of accused-appellant, standing for the latter's *full* name, was not clearly established. Thus, doubt arises as to when the plastic sachets were actually marked, as shown by PO2 Gasid's testimony:

A: [PO2 Gasid]:	We conducted a buy-bust operation on April 1, 2006.
PROSEC. SANTOS:	Against whom did you conduct this buy-bust operation?
A:	Against ***alias* Sam**, sir.
PROSEC. SANTOS:	What prompted you to conduct this operation against this ***alias* Sam**?
A:	We **received information** from our confidential informant **that one *alias* Sam** is selling *shabu* at Cagayan De Oro Street, Maharlika Village, Taguig.

[18] G.R. No. 173794, 18 January 2012.

PROSEC. SANTOS: **Aside from this information that you received from your informant, was there anything more that your informant told you about the real identity of this *alias* Sam?**

A: **Nothing more, sir, he gave us only his *alias*, sir.**[19]

x x x x x x x x x

PROSEC. SANTOS: So, after you have taken the item and paid *alias* Sam and then you executed the pre-arranged signal that you have already purchased from him, what happened then?

A: After I made the pre-arranged signal, *mabilis po yung mata ni* ***alias Sam****, para ho bang balisa, siguro napansin nya na hindi lang kami dalawa (2), aakma syang tatakbo, sinunggaban ko na po sya.*

PROSEC. SANTOS: So, you held Sam already during that time?

A: Yes, sir.

PROSEC. SANTOS: What happened after that?

A: I introduced myself as police officer and at that time I arrested him.

PROSEC. SANTOS: What about your companions who serves [sic] as your immediate back up, what happened to them when you were already hold and arrested [sic] this ***alias* Sam**?

A: I noticed my companions approaching us.

x x x x x x x x x

PROSEC. SANTOS: And what did your colleague Ragos do when he arrived at your place?

A: When he arrived at the place, after arresting ***alias* Sam**, he was the one who handcuffed him.

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[19] Direct examination of Witness PO2 Gasid, TSN, 22 November 2006, p. 4, RTC records, p. 90.

PROSEC. SANTOS: Was there anything more that was done in that place of occurrence during that time, Officer?

A: Yes, sir.

PROSEC. SANTOS: Tell us please?

A: After arresting *alias* Sam, I frisk [sic] him for the remaining items he showed me and the buy-bust money I gave him.

x x x x x x x x x

PROSEC. SANTOS: Was there anything that you and your team did in the items that you confiscated from the possession of the accused during that time and the *shabu* that you bought from him?

A: I marked the items I confiscated at the place of incident.

PROSEC. SANTOS: **How did you marked** [sic] **the item that you bought from this *alias* Sam?**

A: **SAU**, sir.

PROSEC. SANTOS: **And what does that stand for? That SAU?**

A: **Stands for the initials of *alias* Sam.**

PROSEC. SANTOS: Is that the only thing that you placed on the plastic sachet containing the *shabu* that you bought from this alias Sam during that time?

A: I marked the *shabu* I bought as SAU-1.

PROSEC. SANTOS: How about the other five (5) plastic sachets containing the suspected *shabu*, what happened to that?

A: I marked them as SAU-2, SAU-3, SAU-4, SAU-5 and SAU-6.[20]

x x x x x x x x x

[20] *Id.* at 16-19, RTC records, pp. 102-105.

PROSEC. SANTOS: Now, **after you have marked and inventoried** the items that you bought and confiscated from this *alias* Sam during that time, what else happened?

A: **After** the **inventory of the evidences, I turn** [sic] **them over to the investigator.**

PROSEC. SANTOS: **Where did you turn these items to your investigator?**

A: **At the office**, sir.

PROSEC. SANTOS: Who was your investigator during that time?

A: PO1 Alexander Saez, sir.

PROSEC. SANTOS: When you turn these items to your investigator, where were you?

A: At the office, sir.

PROSEC. SANTOS: What happened to these items that you turn it over [sic] to your investigator?

A: He made a request for laboratory examination of the items confiscated.[21]

x x x x x x x x x

PROSEC. SANTOS: Now, Officer, **this Sam when you have already arrested him, were you able to know his real name?**

A: **Yes, sir.**

PROSEC. SANTOS: **What was his real name?**

A: **Sammy Umipang**, sir.

PROSEC. SANTOS: Is he present here in Court?

A: Yes, sir.[22]

x x x x x x x x x

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[21] *Id.* at 20, RTC records, p. 106.

[22] *Id.* at 25, RTC records, p. 111.

ATTY. HERNANDEZ: When you arrived at the place, by the way, where was your target area, Mr. Witness?

A: Cagayan De Oro Street, Barangay Maharlika, Taguig City.

ATTY. HERNANDEZ: When you were there, you did not buy [sic] anybody to buy *shabu* from the accused?

A: No, sir.

ATTY. HERNANDEZ: So, you did not conduct any test buy?

A: No, sir.

ATTY. HERNANDEZ: Nor did you make any inquiry with Cagayan De Oro Street regarding the accused?

A: Not anymore, sir.

ATTY. HERNANDEZ: **At that moment, you don't have any idea regarding the identity of the accused** and also whether he was engaged in illegal activity?

A: **Regarding the identity, he was described by the informant.**

ATTY. HERNANDEZ: **It was only the informant who knows the accused?**

A: **Yes, sir.**

ATTY. HERNANDEZ: **And also your other members, they did not know the accused?**

A: **Yes, sir.**[23] (Emphasis supplied.)

A clearer picture of what transpired during the buy-bust operation, from the marking of the confiscated items to the arrest of accused-appellant, is provided by the testimony of PO1 Ragos:

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[23] Cross-examination of Witness PO2 Gasid, *id*. at 32-33, RTC records, pp. 118-119.

PROSEC. SANTOS: And what is the effect to you of the act of Gasid taking off his cap?

A: That is the sign that he already bought the *shabu*.

PROSEC. SANTOS: When you saw Gasid acting that way, being the back up of him during that time, what did you do?

A: I run [sic] towards them.

PROSEC. SANTOS: Were you able to go near him when you run [sic] towards him?

A: Yes, sir.

PROSEC. SANTOS: What happened?

A: I saw him holding Sam.

PROSEC. SANTOS: When you saw Gasid already holding Sam, what did you do?

A: I handcuffed Sam.

PROSEC. SANTOS: After that, what happened?

A: The **items confiscated** by Gasid were **marked with his initials**.

PROSEC. SANTOS: Did you see Gasid marking those things that he took from this Sam during that time?

A: Yes, sir.

x x x x x x x x x

PROSEC. SANTOS: **What marked** [sic] **did he put on these plastic sachets?**

A: **SAU**, sir.

PROSEC. SANTOS: **Do you know what SAU connotes?**

A: Yes, sir.

PROSEC. SANTOS: Tell us?

A: **Sammy Abdul Umipang.**

PROSEC. SANTOS: **After that, what happened?**

A: **He was apprising** [sic] **of his constitutional rights.**

PROSEC. SANTOS: **After this person was apprised of his rights, was there anything more that was done?**

A: **We went back to the office.**

PROSEC. SANTOS: All the members of the team went back to the office?

A: Yes, sir.

PROSEC. SANTOS: And together **with this *alias* Sam**?

A: Yes, sir.

PROSEC. SANTOS: What happened in your office?

A: We turn [sic] over the evidence to the investigator.

PROSEC. SANTOS: Who was your investigator during that time?

A: PO1 Saez.

x x x x x x x x x

PROSEC. SANTOS: So, after the team has turn [sic] over the evidences to your investigator in the person of Officer Saez, was there anything more that transpired in relation to this event, this incident?

A: We prepared an affidavit of arrest.[24]

x x x x x x x x x

ATTY. HERNANDEZ: And this information regarding the accused was relayed to you by your immediate superior?

A: Yes, sir.

ATTY. HERNANDEZ: And **this information was the first information regarding the accused, is that correct?**

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[24] Direct examination of Witness PO1 Ragos, TSN, 6 December 2006, pp. 15-17, RTC records, pp. 151-153.

A: **Yes, sir.**

ATTY. HERNANDEZ: What was told you was that your target person was ***alias* Sam**?

A: Yes, sir.

ATTY. HERNANDEZ: **No photographs of *alias* Sam was shown to you?**

A: **None, sir.**

ATTY. HERNANDEZ: **You have no derogatory records of this *alias* Sam in your office?**

A: **None, sir.**

ATTY. HERNANDEZ: **You have no warrant of arrest?**

A: **None, sir.**

ATTY. HERNANDEZ: **This *alias* Sam was not included in your watch list?**

A: **No, sir.**[25]

x x x x x x x x x

ATTY. HERNANDEZ: So, the **markings were placed on the plastic sachets?**

A: **Yes, sir.**

ATTY. HERNANDEZ: **After that** Mr. Witness, **you brought the accused together with the items to your office?**

PROSEC. SANTOS: Already answered, Your Honor. We are just repeating the same pattern, Your Honor.

x x x x x x x x x

ATTY. HERNANDEZ: Mr. Witness, you investigated the accused?

A: No more, **it was PO1 Saez who investigated the accused.**

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[25] Cross-examination of Witness PO1 Ragos, *id*. at 21-22, RTC records, pp. 157-158.

ATTY. HERNANDEZ: **So, you did not ask the full name of the accused?**

A: **It was PO1 Saez who investigated him, sir.**

ATTY. HERNANDEZ: **It was PO1 Saez who got his full name and on you** [sic] **part, that was the first time that you were able to learned** [sic] **the full name of the accused?**

A: **Yes, sir.**

ATTY. HERNANDEZ: **Because you knew him only as *alias* Sam?**

A: Yes, sir.

ATTY. HERNANDEZ: **How about Officer Gasid, it was also the first time that he learned the full name of the accused?**

A: **Maybe not, sir.**

ATTY. HERNANDEZ: Mr. Witness, you mentioned that it was Officer Saez who delivered the items to the crime lab?

A: No sir, it was Gasid.

ATTY. HERNANDEZ: But you were not with him when he delivered the specimen to the crime laboratory?

A: Yes, sir.

ATTY. HERNANDEZ: No further question, Your Honor.

PROSEC. SANTOS: No re-direct, Your Honor. x x x[26] (Emphasis supplied.)

The circumstances surrounding the marking of the seized items are suspect. From their testimonies during the trial, PO2 Gasid and PO1 Ragos both admitted that they only knew their target by the name "Sam." They both testified that, after accused-appellant was handcuffed, frisked, and read his rights, they

[26] *Id.* at 30-32, RTC records, pp. 166-168.

immediately brought him to the police precinct. They then said that it was a certain PO1 Saez who investigated him. In fact, in their joint affidavit, PO2 Gasid and PO1 Ragos stated thus:

*Na **dinala namin siya*** [accused] ***sa aming opisina para sa pagsisiyasat at pagtatanong tungkol sa detalye ng kaniyang pagkatao** at sa layuning masampahan ng kaukulang reklamo sa paglabag ng* Sections 5 and 11 of RA 9165.[27] (Emphasis supplied.)

Evidence on record does not establish that PO2 Gasid had prior knowledge of the *complete* name of accused-appellant, including the middle initial, which enabled the former to mark the seized items with the latter's *complete* initials. This suspicious, material inconsistency in the marking of the items raises questions as to *how* PO2 Gasid came to know about the initials of Umipang prior to the latter's statements at the police precinct, thereby creating a cloud of doubt on the issues of where the marking really took place and whether the integrity and evidentiary value of the seized items were preserved. All that was established was that it was PO1 Saez who asked accused-appellant about the latter's personal circumstances, including his true identity, and that the questioning happened when accused-appellant was already at the police station. We thus reiterate:

Crucial in proving chain of custody is the marking of the seized drugs or other related items *immediately after* they are seized from the accused. **Marking after seizure is the starting point in the custodial link**, thus it is vital that the seized contraband[s] are immediately marked because succeeding handlers of the specimens will use the markings as reference. The **marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of** at the end of criminal proceedings, **obviating switching, "planting," or contamination of evidence**.

Long before Congress passed RA 9165, this Court has consistently held that **failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus***

[27] *Pinagsamang Salaysay ng Pag-Aresto at Paghaharap ng Reklamo o Demanda*, RTC records, p. 69.

***delicti* and suffices to rebut the presumption of regularity in the performance of official duties**, the doctrinal fallback of every drug-related prosecution. Thus, in *People v. Laxa* and *People v. Casimiro*, we held that the failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt. These rulings are refinements of our holdings in *People v. Mapa* and *People v. Dismuke* that **doubts on the authenticity of the drug specimen occasioned by the prosecution's failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt.**[28] (Emphasis supplied and citations omitted.)

It is true that the failure of the arresting officers to mark the seized items at the place of arrest does not by itself impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence.[29] We have already clarified that the marking upon "immediate" confiscation of the prohibited items contemplates even that which was done at the nearest police station or office of the apprehending team.[30] We will analyze this possible seed of doubt that has been planted by the unexplained marking of the *shabu* with the complete initials of Umipang, together with the other alleged irregularities.

Second, the SAID-SOTF failed to show genuine and sufficient effort to seek the third-party representatives enumerated under Section 21(1) of R.A. 9165. Under the law, the inventory and photographing of seized items must be conducted in the presence of a representative from the media, from the Department of Justice (DOJ), *and* from any elected public official. The testimony of PO2 Gasid, as quoted below, is enlightening:

ATTY. HERNANDEZ:	Mr. Witness, you also made the certificate of inventory, is that correct?
A:	Yes, sir.

[28] *Supra* note 14, at 357-358.

[29] *Imson v. People*, *supra* note 10.

[30] *Id.*

ATTY. HERNANDEZ: And since this is a drug operation, you are required by law to make a certificate of inventory?

A: Yes, sir.

ATTY. HERNANDEZ: And that inventory, you are required by law that there should be a signature of any representative from the media, is that correct?

A: Yes, sir.

ATTY. HERNANDEZ: And also representative from the Department of Justice, is that correct?

A: Yes, sir.

ATTY. HERNANDEZ: And also elected official, Mr. Witness?

A: Yes, sir.

ATTY. HERNANDEZ: I'm showing to you Mr. Witness your certificate of inventory, **do you confirm that there are no signatures placed by any member of the media, representative from the Department of Justice and any elected official?**

A: **Yes, sir, there is none**, sir.

ATTY. HERNANDEZ: And there appears to be an initial of RS above the type written name Sammy Umipang, who wrote this initial RS?

A: That stands for refuse [sic] to sign, sir.

ATTY. HERNANDEZ: Who refuse [sic] to sign?

A: Sammy Umipang, sir.[31]

x x x x x x x x x

PROSEC. SANTOS: **Why was the certificate of inventory not witnesses** [sic] **and signed by any**

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[31] Cross-examination of Witness PO2 Gasid, *supra* note 19 at 47-48, RTC records, pp. 133-134.

	members of the media, the DOJ and elected officials, Officer?
A:	That time **there is no available representative**, sir.
COURT:	**How did you exert effort to locate available representative of those officers or persons in the certificate of inventory?**
A:	The **investigator contacted representative from the media**, Your Honor.
COURT:	What *barangay* this incident happened?
A:	Barangay Maharlika, Your Honor.
COURT:	**Did you talk to the *barangay* captain?**
A:	**No**, Your Honor.
COURT:	**What about the *barangay* councilman?**
A:	**No**, Your Honor.[32] (Emphasis supplied.)

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the

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[32] Re-direct examination of Witness PO2 Gasid, *id*. at 49, RTC records, p. 135.

said representatives pursuant to Section 21(1) of R.A. 9165. A sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165,[33] or that there was a justifiable ground for failing to do so.[34]

Third, the SAID-SOTF failed to duly accomplish the Certificate of Inventory and to take photos of the seized items pursuant to Section 21(1) of R.A. 9165. As pointed out by the defense during trial,[35] the Certificate of Inventory did not contain any signature, including that of PO2 Gasid — the arresting officer who prepared the certificate[36] — thus making the certificate defective. Also, the prosecution neither submitted any photograph of the seized items nor offered any reason for failing to do so. We reiterate that these requirements are specifically outlined in and required to be implemented by Section 21(1) of R.A. 9165.[37]

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted.[38] This is especially true when the lapses in procedure were "recognized and explained in terms of [] justifiable grounds."[39] There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason."[40] However,

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[33] See *People v. Garcia*, *supra* note 8.

[34] See *People v. De la Cruz*, *supra* note 12.

[35] Cross-examination of Witness PO2 Gasid, *supra* note 19 at 47, RTC records, p. 133.

[36] RTC records, p. 73.

[37] *People v. Garcia, supra* note 8; *People v. De la Cruz*, *supra* note 12.

[38] *People v. Ulama*, G.R. No. 186530, 14 December 2011.

[39] *People v. Martin*, *supra* note 17.

[40] *Id.*

when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence.[41] This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties.[42] As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.[43]

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, "as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt."[44]

As a final note, we reiterate our past rulings calling upon the authorities "to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society."[45] The need to employ a more stringent approach to scrutinizing the evidence of the prosecution — especially when the pieces of evidence were derived from a buy-bust operation — "redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors."[46]

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[41] See *People v. Garcia*, *supra* note 8.

[42] See *id.*

[43] *Id.*

[44] *People v. De la Cruz*, *supra* note 12, at 286.

[45] *People v. Garcia*, *supra* note 8, at 278.

[46] *People v. Coreche*, *supra* note 14, at 365.

WHEREFORE, the appealed 21 May 2009 CA Decision affirming the 24 July 2007 RTC Joint Decision is **SET ASIDE.** Accused-appellant Sammy Umipang *y* Abdul is hereby **ACQUITTED** of the charges in Criminal Cases No. 14935-D-TG and No. 14936-D-TG on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby **ORDERED** to immediately *RELEASE* accused-appellant from custody, unless he is detained for some other lawful cause.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 190569. April 25, 2012]

P/INSP. ARIEL S. ARTILLERO, *petitioner, vs.* **ORLANDO C. CASIMIRO, Overall Deputy Ombudsman, Office of the Deputy Ombudsman; BERNABE D. DUSABAN, Provincial Prosecutor, Office of the Provincial Prosecutor of Iloilo; and EDITO AGUILLON, Brgy. Capt., Brgy. Lanjagan, Ajuy, Iloilo,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHTS OF AN ACCUSED; CANNOT BE INVOKED BY PETITIONER BECAUSE HE IS NOT THE ACCUSED IN THE CASE.— Petitioner insists that Section 3(c), Rule 112 of the Revised Rules on Criminal Procedure, was created "in order not to deprive party litigants of their basic constitutional right to be informed of the nature and cause of accusation against them." Deputy Ombudsman Casimiro contradicts the claim of petitioner and argues that the latter was not deprived of due process,

just because he was not able to file his Reply to the Counter-affidavit. The constitutional right to due process according to the Deputy Ombudsman, is guaranteed to the accused, and not to the complainant. Article III, Section 14 of the 1987 Constitution, mandates that no person shall be held liable for a criminal offense without due process of law. It further provides that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him. This is a right that cannot be invoked by petitioner, because he is not the accused in this case.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; A COMPLAINANT IN A PRELIMINARY INVESTIGATION DOES NOT HAVE A VESTED RIGHT TO FILE A REPLY TO THE ACCUSED'S COUNTER-AFFIDAVIT.— The law is vigilant in protecting the rights of an accused. Yet, notwithstanding the primacy put on the rights of an accused in a criminal case, even they cannot claim unbridled rights in Preliminary Investigations. x x x It is therefore clear that because a preliminary investigation is not a proper trial, the rights of parties therein depend on the rights granted to them by law and these cannot be based on whatever rights they believe they are entitled to or those that may be derived from the phrase "due process of law." A complainant in a preliminary investigation does not have a vested right to file a Reply — this right should be granted to him by law. There is no provision in Rule 112 of the Rules of Court that gives the Complainant or requires the prosecutor to observe the right to file a Reply to the accused's counter-affidavit. To illustrate the non-mandatory nature of filing a Reply in preliminary investigations, Section 3 (d) of Rule 112 gives the prosecutor, in certain instances, the right to resolve the Complaint even without a counter-affidavit. Provincial Prosecutor Dusaban correctly claims that it is discretionary on his part to require or allow the filing or submission of reply-affidavits.

3. ID.; ID.; ID.; RESPONDENT DEPUTY OMBUDSMAN DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN FINDING THAT THERE WAS NO PROBABLE CAUSE TO HOLD THE RESPONDENT *PUNONG BARANGAY* FOR TRIAL FOR ILLEGAL POSSESSION OF FIREARMS. — In the absence of a clear showing of arbitrariness, this Court

will give credence to the finding and determination of probable cause by prosecutors in a preliminary investigation. This Court has consistently adopted a policy of non-interference in the exercise of the Ombudsman's investigatory powers. It is incumbent upon petitioner to prove that such discretion was gravely abused in order to warrant this Court's reversal of the Ombudsman's findings. This, petitioner has failed to do. The Court hereby rules that respondent Deputy Ombudsman Casimiro did not commit grave abuse of discretion in finding that there was no probable cause to hold respondent Aguillon for trial.

4. **ID.; ID.; ID.; WHATEVER PROCEDURAL DEFECTS THE CASE SUFFERED FROM ITS INITIAL STAGES WERE CURED WHEN PETITIONER FILED A MOTION FOR RECONSIDERATION.—** Even though petitioner was indeed entitled to receive a copy of the Counter-affidavit filed by Aguillon, whatever procedural defects this case suffered from in its initial stages were cured when the former filed an MR. In fact, all of the supposed defenses of petitioner in this case have already been raised in his MR and adequately considered and acted on by the Office of the Ombudsman.

5. **ID.; ID.; ID.; THE ESSENCE OF DUE PROCESS IS SIMPLY AN OPPORTUNITY TO BE HEARD.—** The essence of due process is simply an opportunity to be heard. "What the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard." We have said that where a party has been given a chance to be heard with respect to the latter's motion for reconsideration there is sufficient compliance with the requirements of due process. At this point, this Court finds it important to stress that even though the filing of the MR cured whatever procedural defect may have been present in this case, this does not change the fact that Provincial Prosecutor Dusaban had the duty to send petitioner a copy of Aguillon's Counter-affidavit. Section 3(c), Rule 112 of the Revised Rules on Criminal Procedure, grants a complainant this right, and the Provincial Prosecutor has the duty to observe the fundamental and essential requirements of due process in the cases presented before it. That the requirements of due process are deemed complied with in the present case because of the filing of an MR by Complainant

was simply a fortunate turn of events for the Office of the Provincial Prosecutor.

6. POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991 (REPUBLIC ACT NO. 7160); SPECIFICALLY GIVES THE *PUNONG BARANGAY*, BY VIRTUE OF HIS POSITION, THE AUTHORITY TO CARRY THE NECESSARY FIREARM WITHIN HIS TERRITORIAL JURISDICTION. — Provincial Prosecutor Dusaban's standpoint on this matter is correct. All the guidelines and rules cited in the instant Petition "refers to civilian agents, private security guards, company guard forces and government guard forces." These rules and guidelines should not be applied to Aguillon, as he is neither an agent nor a guard. As *barangay* captain, he is the head of a local government unit; as such, his powers and responsibilities are properly outlined in the LGC. This law specifically gives him, by virtue of his position, the authority to carry the necessary firearm within his territorial jurisdiction. Petitioner does not deny that when he found Aguillon "openly carrying a rifle," the latter was within his territorial jurisdiction as the captain of the *barangay*.

7. ID.; ID.; ID.; THE AUTHORITY OF *PUNONG BARANGAYS* TO POSSESS THE NECESSARY FIREARM WITHIN THEIR JURISDICTION IS NECESSARY TO ENFORCE THEIR DUTY TO MAINTAIN PEACE AND ORDER WITHIN THE *BARANGAYS*.— The authority of *punong barangays* to possess the necessary firearm within their territorial jurisdiction is necessary to enforce their duty to maintain peace and order within the *barangays*. Owing to the similar functions, that is, to keep peace and order, this Court deems that, like police officers, *punong barangays* have a duty as a peace officer that must be discharged 24 hours a day. As a peace officer, a *barangay* captain may be called by his constituents, at any time, to assist in maintaining the peace and security of his *barangay*. As long as Aguillon is within his *barangay*, he cannot be separated from his duty as a *punong barangay*—to maintain peace and order.

8. ID.; ID.; ID.; THE PHRASE "SUBJECT TO APPROPRIATE RULES AND REGULATIONS" FOUND IN THE LOCAL GOVERNMENT CODE REFERS TO THOSE FOUND IN THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF THE CODE ITSELF OR THE IRR OF P.D. 1866

AND NOT THOSE THAT IT HAS ALREADY AMENDED. — As to the last phrase in Section 389 (b) of the LGC of 1991, stating that the exception it carved out is subject to "appropriate rules and regulations," suffice it to say that although P.D. 1866 was not repealed, it was modified by the LGC by specifically adding to the exceptions found in the former. Even the IRR of P.D. 1866 was modified by Section 389 (b) of the LGC as the latter provision already existed when Congress enacted the LGC. Thus, Section 389 (b) of the LGC of 1991 added to the list found in Section 3 of the IRR of P.D. 1866, which enumerated the persons given the authority to carry firearms outside of residence without an issued permit. The phrase "subject to appropriate rules and regulations" found in the LGC refers to those found in the IRR of the LGC itself or a later IRR of P.D. 1866 and not those that it has already amended.

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

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; FACT THAT RESPONDENT *PUNONG BARANGAY* FAILED TO PRESENT EVIDENCE THAT HE HAD LEGAL AUTHORITY TO CARRY THE FIREARM OUTSIDE OF HIS RESIDENCE SATISFIES THE STANDARD DEFINITION OF PROBABLE CAUSE.— I find the Ombudsman's dismissal of the criminal complaint tainted with grave abuse of discretion, as the dismissal was not supported by the established facts of the case and was also grossly contrary to applicable laws, rules and jurisprudence on the matter. In conducting a preliminary investigation, the investigating prosecutor merely determines whether probable cause exists that would warrant the filing of the corresponding information in court against a supposed offender. In turn, probable cause is simply the existence of such facts and circumstances, sufficient to create the belief in a reasonable mind that a crime has been committed and that the person charged is probably guilty of the crime charged. *The determination of probable cause only requires reasonable belief, not actual certainty, that a crime has been committed and that the person charged is probably guilty thereof.* In this regard, Edito Aguillon was charged with violation of Presidential Decree (*P.D.*) No. 1866, as amended by Republic Act No. 8294.

The last paragraph of Section 1 of P.D. No. 1866 as amended provides: "The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor." The established facts show that Edito Aguillon was found in possession of an M16 rifle with 20 live ammunitions outside his residence. While he was able to present a license to possess the firearm, ***he failed to present evidence that he had legal authority to carry the firearm outside of his residence***. These circumstances alone, to my mind, satisfy the standard definition of probable cause that the acts charged were committed, and that Edito Aguillon was probably guilty of its commission (violation of P.D. No. 1866). Whether or not he is indeed guilty beyond reasonable doubt of this crime is another matter that must be addressed in the trial proper of the criminal case.

2. CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARM (P.D. 1866 AS AMENDED); THE CRIME OF ILLEGAL POSSESSION OF FIREARM, ON ONE HAND, AND THE CRIME OF CARRYING A LICENSED FIREARM OUTSIDE ONE'S RESIDENCE WITHOUT LEGAL AUTHORITY, ON THE OTHER, ARE TWO SEPARATE OFFENSES PUNISHED BY P.D. NO. 1866 AS AMENDED. — The Ombudsman's dismissal of the criminal complaint based on the finding that Edito Aguillon did not commit a crime, as he was a *barangay* captain performing his peace and order functions and had a license for his M16 rifle, is contrary to the provisions of P.D. No. 1866 and the factual circumstances of the case. The crime of illegal possession of firearm, on one hand, and the crime of carrying a licensed firearm outside one's residence without legal authority, on the other, are *two separate offenses punished by P.D. No. 1866* as amended. In other words, while Edito Aguillon cannot be prosecuted for illegal possession of firearms, sufficient evidence exists to prosecute him for carrying a licensed firearm outside his residence without legal authority. In *Francisco I. Chavez v. Hon. Alberto G. Romulo, et al.*, we held that the right to bear arms is a *mere* statutory privilege, and not a constitutional right; and that the possession of firearms by citizens in the Philippines is the exception rather than the rule. Consequently, when a *prima facie* showing of a violation of the law on firearms is established, the prosecutor cannot peremptorily apply a statutory exception without weighing it against the facts and

evidence before him; otherwise, he would be committing grave abuse of discretion, warranting the corrective writ of *certiorari* — which brings me to my third point.

3. POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991 (R.A. 7160); FOUR (4) CONDITIONS THAT RESTRICT THE RIGHT OF THE *PUNONG BARANGAY* TO POSSESS AND CARRY FIREARMS.— Undoubtedly, Section 389 (c), Chapter 3, Book III of the Local Government Code (*LGC*) of the Philippines (Republic Act [*R.A.*] No. 7160) provides an exception to the rule on carrying of firearms outside one's residence. R.A. No. 7160 is a special law that allows the *barangay* captain (now the Punong Barangay) the right to possess and carry firearms within his territorial jurisdiction. As expressly stated in the law, however, the exercise of such right is not without restrictions. Section 389 (c) in fact mentions four (4) conditions that restrict the right of the *Punong Barangay* to possess and carry firearms: "In the performance of his peace and order functions, the Punong Barangay shall be entitled to possess and carry the necessary firearm within his territorial jurisdiction, subject to appropriate rules and regulations."

4. ID.; ID.; RESPONDENT *PUNONG BARANGAY* MADE NO CLAIM, NOT EVEN A PRETENSE, THAT HE WAS THEN IN THE COURSE OF PROTECTING AND PRESERVING PEACE IN HIS *BARANGAY* AT THE TIME HE WAS ARRESTED.— The records do not show that Edito Aguillon, as *barangay* captain, was in the performance of official duties to protect and preserve the peace and order of his community at the time the police confronted him. Contrary to the *ponencia's* claim — unsupported by law and evidence — a *barangay* captain cannot be performing his peace and order functions 24 hours a day. This is a preposterous claim that effectively says that the mere fact of being a *barangay* captain characterizes one as an official continuously exercising peace and order functions. At most, perhaps, such a presumption can exist; but a presumption should not apply when the attendant circumstances dictate otherwise. What the records establish are the following: that (i) the police responded to a call for assistance upon hearing successive gunfires; (ii) the police saw and confronted Edito Aguillon, ***wobbling and visibly drunk***, carrying an M16 rifle; and (iii) Edito Aguillon was then and there disarmed of his firearm and brought to the police station. None of these facts

was denied by Aguillon. Significantly, Aguillon made no claim, not even a pretense, that he was then in the course of protecting and preserving peace in his *barangay* at the time he was arrested.

5. ID.; ID.; THE FACTS ALSO FAILED TO SHOW HOW, SPECIFICALLY, AN M-16 RIFLE, A MILITARY WEAPON, BECAME NECESSARY FOR THE EXERCISE OF HIS OFFICIAL FUNCTION.— The second and third conditions were not clearly established. The records failed to show that Edito Aguillon was actually within the territorial jurisdiction of his *barangay* when the confrontation with the police took place. This is a matter of defense that the one charged must claim and support by evidence. No such effort appears to have taken place. The facts also failed to show how, specifically, an M16 rifle became necessary for the exercise of his official functions — if at all he was exercising his official functions at that time. We can take judicial notice that an M16 (as the prefix "M" denotes) is a military weapon, not a civilian one.

6. ID.; ID.; WHILE SECTION 389 (c) CHAPTER 3, BOOK III OF R.A. NO. 7160 GRANTS THE *PUNONG BARANGAY* THE RIGHT TO POSSESS AND CARRY FIREARMS, THE VERY WORDING OF THE LAW DID NOT RELIEVE THE *PUNONG BARANGAY* FROM COMPLYING WITH THE RULES AND REGULATIONS INVOLVING THE POSSESSION AND CARRYING OF FIREARMS.— The fourth condition on the "appropriate rules and regulations" is no other than the rules governing the possession and carrying of firearm, which are mainly found in the implementing rules and regulations of P.D. No. 1866. In this regard, Section 3 of the Implementing Rules and Regulations of P.D. No. 1866 impose the following restrictions on persons in possession of licensed firearms: x x x c. Except as other provided in Sections 4 (*Authority of personnel or certain civilian government entities and guards of private security agencies, company guard forces and government guard forces to carry firearms*) and 5 (*Authority to issue mission order involving the carrying of firearm*) hereof, the carrying of firearm outside of residence or official station in pursuance of an official mission or duty shall have prior approval of the Chief of Constabulary. Hence, while Section 389 (c) Chapter 3, Book III of R.A. No. 7160 grants the Punong Barangay the right to possess and carry firearms, the very

wording of the law did not relieve the Punong Barangay from complying with the rules and regulations involving the possession and carrying of firearms.

7. ID.; ID.; P.D. NO. 1866'S IMPLEMENTING RULES AND REGULATIONS (IRR) COULD NOT HAVE BEEN MODIFIED BY SECTION 389 (c) OF THE LOCAL GOVERNMENT CODE OF 1991 (R.A. NO. 7160).— I take exception to the *ponencia*'s (i) statement that "[e]ven the IRR of PD 1866 was modified by Section 389 (b) of the LGC as the latter provision already existed when Congress enacted the LGC" and (ii) conclusion that "Section 389 (b) of the LGC of 1991 added to the list found in Section 3 of the IRR of PD 1866." Contrary to the *ponencia*'s claim, P.D. No. 1866's IRR could not have been modified *by* Section 389 (c) of the LGC. On May 12, 1983 Batas Pambansa (*BP*) 337 (the old Local Government Code) took effect. Section 88 par. 3 of BP 337 ***similarly*** limits the *punong barangay's* otherwise broad authority to possess and carry firearms. It was only later (or in October 1983) that the IRR of P.D. No. 1866 was issued. Effectively, the promulgation of the IRR after BP 337 took effect served to limit (and continues to by the re-enactment of the same provision in Section 389 of the present LGC) the Punong Barangay's authority to carry firearms. *At any rate*, even granting that Section 389 (c) of R.A. No. 7160 does not require compliance with the ordinary rules regarding the licensing of firearms under P.D. No. 1866, the facts do not sufficiently show that Edito Aguillon falls within the exception provided under Section 389 (c) of R.A No. 7160 that would exempt him from compliance with the general rule on licensing of firearms. Given that the issue before us is the existence of grave abuse of discretion in the determination of the well-settled concept of probable cause, the petitioner's reliance on *People v. Monton*, which already involves the guilt or innocence of an accused, is misplaced.

8. ID.; ID.; BEING A MATTER OF EXCEPTION TO THE RULE ON CARRYING OF FIREARMS OUTSIDE ONE'S RESIDENCE, THE COURT CANNOT SIMPLY APPLY SECTION 389 (c) OF THE LOCAL GOVERNMENT CODE WITHOUT REGARD TO THE PLAIN QUALIFICATIONS STATED IN THAT PROVISION ALL OF WHICH ARE AIMED AT SERVING THE INTEREST OF THE *PUNONG*

BARANGAY'S **CONSTITUENCIES AND NOT HIS PERSONAL INTEREST.—** In short, being a matter of exception to the rule on carrying of firearms outside one's residence, the Court cannot simply apply Section 389 (c) of the LGC (as the *ponencia* did*) without regard* to the plain qualifications stated in that provision — all of which are aimed at serving the interest (maintenance of peace and order) of the *Punong Barangay's* constituencies and not his personal interests. As an exception, too, the burden lies with the person charged to show that he falls within the exception. No such showing is evident from the records of the case; thus, the application of the exception has no basis.

APPEARANCES OF COUNSEL

Jerilee V. Uy-Conlu for petitioner.
The Solicitor General for respondents.

D E C I S I O N

SERENO, *J.*:

This case pertains to the criminal charge filed by Private Inspector Ariel S. Artillero (petitioner) against *Barangay* Captain Edito Aguillon (Aguillon) for violation of Presidential Decree No. (P.D.) 1866[1] as amended by Republic Act No. (R.A.) 8249.

Petitioner is the Chief of Police of the Municipal Station of the Philippine National Police (PNP) in Ajuy, Iloilo.[2] According to him, on 6 August 2008, at about 6:45 in the evening, the municipal station received information that successive gun fires had been heard in *Barangay* Lanjagan, Ajuy Iloilo. Thus,

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[1] CODIFYING THE LAW ON ILLEGAL/UNLAWFUL POSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES, 29 June 1983.

[2] *Rollo*, p. 9.

petitioner, together with Police Inspector Idel Hermoso (Hermoso), and Senior Police Officer (SPO1) Arial Lanaque (Lanaque), immediately went to the area to investigate.[3]

Upon arriving, they saw Paquito Panisales, Jr. (Paquito)[4] standing beside the road, wearing a black sweat shirt with a "Barangay Tanod" print.[5] They asked Paquito if he had heard the alleged gunshots, but he answered in the negative.

Petitioner, Hermoso, and Lanaque decided to investigate further, but before they could proceed, they saw that Paquito had "turned his back from us that seems like bragging his firearm to us flagrantly displayed/tucked in his waist whom we observed to be under the influence of intoxicating odor."[6] Then, they frisked him to "verify the firearm and its supporting documents."[7] Paquito then presented his Firearm License Card and a Permit to Carry Firearm Outside Residence (PTCFOR).

Thereafter, they spotted two persons walking towards them, wobbling and visibly drunk. They further noticed that one of them, Aguillon, was openly carrying a rifle, and that its barrel touched the concrete road at times.[8] Petitioner and Hermoso disarmed Aguillon. The rifle was a Caliber 5.56 M16 rifle with Serial Number 101365 and with 20 live ammunitions in its magazine.

According to petitioner and Hermoso, although Aguillon was able to present his Firearm License Card, he was not able to present a PTCFOR.

Petitioner arrested Paquito, Aguillon and his companion Aldan Padilla, and brought them to the Ajuy Municipal Police Station.[9]

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[3] *Id.* at 53.

[4] *Id.* at 49.

[5] *Id.* at 53.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Rollo,* p. 10.

Paquito was released on the same night, because he was deemed to have been able to comply with the requirements to possess and carry firearm.[10] Thereafter, Aguillon was detained at the police station, but was released from custody the next day, 7 August 2008, after he posted a cash bond in the amount of ₱80,000. The present Petition does not state under what circumstances or when Padilla was released.

On 12 August 2008, petitioner and Hermoso executed a Joint Affidavit[11] alleging the foregoing facts in support of the filing of a case for illegal possession of firearm against Aguillon. Petitioner also endorsed the filing of a Complaint against Aguillon through a letter[12] sent to the Provincial Prosecutor on 12 August 2008.

For his part, Aguillon executed an Affidavit swearing that petitioner had unlawfully arrested and detained him for illegal possession of firearm, even though the former had every right to carry the rifle as evidenced by the license he had surrendered to petitioner. Aguillon further claims that he was duly authorized by law to carry his firearm within his *barangay*.[13]

According to petitioner, he never received a copy of the Counter-Affidavit Aguillon had filed and was thus unable to give the necessary reply.[14]

In a Resolution[15] dated 10 September 2008, the Office of the Provincial Prosecutor of Iloilo City recommended the dismissal of the case for insufficiency of evidence. Assistant Provincial Prosecutor Rodrigo P. Camacho (Asst. Prosecutor) found that there was no sufficient ground to engender a well-founded belief

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[10] *Id.*

[11] *Rollo*, pp. 53-54.

[12] *Rollo*, p. 51.

[13] *Id.* at 50.

[14] *Id.* at 10.

[15] *Rollo*, pp. 49-51; I.S. No. 2008-1281, penned by Assistant Provincial Prosecutor Rodrigo P. Camacho.

that Aguillon was probably guilty of the offense charged. The Asst. Prosecutor also recommended that the rifle, which was then under the custody of the PNP Crime Laboratory, be returned to Aguillon. Petitioner claims that he never received a copy of this Resolution.

Thereafter, Provincial Prosecutor Bernabe D. Dusaban (Provincial Prosectuor Dusaban) forwarded to the Office of the Deputy Ombudsman the 10 September 2008 Resolution recommending the approval thereof.[16]

In a Resolution[17] dated 17 February 2009, the Office of the Ombudsman, through Overall Deputy Ombudsman Orlando C. Casimiro (Deputy Ombudsman Casimiro), approved the recommendation of Provincial Prosecutor Dusaban to dismiss the case. It ruled that the evidence on record proved that Aguillon did not commit the crime of illegal possession of firearm since he has a license for his rifle. Petitioner claims that he never received a copy of this Resolution either.[18]

On 13 April 2009, Provincial Prosecutor Dusaban received a letter from petitioner requesting a copy of the following documents:

1. Copy of the Referral letter and the resolution if there is any which was the subject of the said referral to the Office of the Ombudsman, Iloilo City; and

2. Copy of the counter affidavit of respondent, Edito Aguillon and/or his witnesses considering that I was not furnished a copy of the pleadings filed by said respondent.[19]

On 22 June 2009, petitioner filed a Motion for Reconsideration (MR)[20] of the 17 February 2009 Resolution, but it was denied

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[16] *Rollo*, p. 59.

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

[18] *Rollo*, p. 10.

[19] *Id*. at 60.

[20] *Rollo*, pp. 34-46.

through an Order dated 23 July 2009.[21] Thus, on 8 December 2009, he filed the present Petition for *Certiorari*[22] via Rule 65 of the Rules of Court.

According to petitioner, he was denied his right to due process when he was not given a copy of Aguillon's Counter-affidavit, the Asst. Prosecutor's 10 September 2008 Resolution, and the 17 February 2009 Resolution of the Office of the Ombudsman. Petitioner also argues that public respondents' act of dismissing the criminal Complaint against Aguillon, based solely on insufficiency of evidence, was contrary to the provisions of P.D. 1866 and its Implementing Rules and Regulations (IRR).[23] He thus claims that the assailed Resolutions were issued "contrary to law, and/or jurisprudence and with grave abuse of discretion amounting to lack or excess of jurisdiction."[24]

The present Petition contains the following prayer:

WHEREFORE, premises considered petitioner most respectfully prays:

1. That this Petition for *Certiorari* be given due course;

2. That a Decision be rendered granting the petition by issuing the following:

a. Writ of *Certiorari* nullifying and setting aside the Order dated **July 23, 2009** and dated **February 17, 2009** both of the Office of the Ombudsman in OMB V-08-0406-J and the Resolution dated **September 10, 2008** of the Office of the Provincial Prosecutor of Iloilo in I.S. No. 2008-1281 (Annexes **A, C** and **D**, respectively);

b. To reverse and set aside said Orders and Resolution (Annexes A, C and D, respectively) finding PROBABLE CAUSE of the crime of Violation of Presidential Decree No. 1866 as amended by R.A. 8294 and other applicable laws and to direct

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[21] *Rollo*, p. 11.

[22] *Rollo*, pp. 3-26.

[23] *Rollo*, p. 12.

[24] *Id.*

the immediate filing of the information in Court against private respondent EDITO AGUILLON.

Such other relief just and equitable are likewise prayed for.[25] (Emphasis in the original.)

In his Comment,[26] Aguillon submits that the present Petition should not be given due course based on the following grounds:

a. The Deputy Ombudsman found that there was no sufficient evidence to warrant the prosecution for violation of P.D. No. 1866 as amended;

b. The present Petition is "frivolous and manifestly prosecuted for delay;"[27]

c. The allegations raised are too unsubstantial to merit consideration, because "Petitioner failed to specifically allege the manner in which the alleged Grave Abuse was committed by Respondent Deputy Ombudsman;"[28] and

d. The Deputy Ombudsman's findings are supported by substantial evidence.

Petitioner claims that Provincial Prosecutor Dusaban should have given him a copy of Aguillon's Counter-affidavit. In support of this claim, petitioner cites Section 3(c), Rule 112 of the Revised Rules on Criminal Procedure, which reads:

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

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[25] *Rollo*, pp. 25-26.

[26] *Rollo*, pp. 72-74.

[27] *Rollo*, p. 73.

[28] *Id.*

Petitioner faults the Asst. Prosecutor and the Office of the Ombudsman for supposedly committing grave abuse of discretion when they failed to send him a copy of the 10 September 2008 and 17 February 2009 Resolutions.

A perusal of the records reveal that in both the 10 September 2008 and 17 February 2009 Resolutions, the PNP Crime Laboratory and petitioner were included in the list of those who were furnished copies of the foregoing Resolutions.[29] Even though his name was listed in the "copy furnished" section, petitioner never signed to signify receipt thereof. Thus, none of herein respondents raise this fact as a defense. In fact, they do not even deny the allegation of petitioner that he never received a copy of these documents.

Aguillon does not deny that he never sent a copy of his counter-affidavit to petitioner. For his part, Provincial Prosecutor Dusaban explained in his Comment,[30] that he was not able to give petitioner a copy of Aguillon's Counter-affidavit and the 10 September 2008 Resolution, because "when petitioner was asking for them, the record of the case, including the subject Resolution, was sent to the Office of the Ombudsman for the required approval."[31]

As further proof that petitioner was not sent a copy of the 10 September 2008 Resolution, it can be seen from the document itself that one Atty. Jehiel Cosa signed in a "care of" capacity to signify his receipt thereof on behalf of petitioner, only on 23 June 2009 or after the latter's 12 April 2009 letter-request to Provincial Prosecutor Dusaban.

Nevertheless, the provincial prosecutor is of the opinion that petitioner was never deprived of his due process rights, to wit:

> 8. Even granting that private respondent Edito Aguillion failed to furnish the petitioner with a copy of his counter-affidavit as required of him by the Rules, petitioner was never deprived of anything. As aptly said by the Office of the Overall Deputy Ombudsman in its

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[29] See *Rollo*, pp. 48 and 51.

[30] *Rollo*, pp. 78-82.

[31] *Rollo*, p. 79.

Order dated 23 July 2009, "Complainant added that he was never furnished copies of the Counter-Affidavit of respondent nor of the Resolution of the Office of the Provincial Posecutor, Iloilo City."

"Anent the claim of the complainant that he was not furnished with a copy of the Resolution dated 10 September 2008 of the Office of the Provincial Prosecutor, Iloilo City, said Resolution did not attain finality until approved by the Office of the Ombudsman. Nevertheless, complainant was not deprived of due process, he can still avail to file a Motion for Reconsideration, which he did, to refute respondent's defense."[32]

We agree.

Petitioner insists that Section 3(c), Rule 112 of the Revised Rules on Criminal Procedure, was created "in order not to deprive party litigants of their basic constitutional right to be informed of the nature and cause of accusation against them."[33]

Deputy Ombudsman Casimiro contradicts the claim of petitioner and argues that the latter was not deprived of due process, just because he was not able to file his Reply to the Counter-affidavit. The constitutional right to due process according to the Deputy Ombudsman, is guaranteed to the accused, and not to the complainant.[34]

Article III, Section 14 of the 1987 Constitution, mandates that no person shall be held liable for a criminal offense without due process of law. It further provides that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him.[35] This is a right that cannot be invoked by petitioner, because he is not the accused in this case.

The law is vigilant in protecting the rights of an accused. Yet, notwithstanding the primacy put on the rights of an accused in a criminal case, even they cannot claim unbridled rights in

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[32] *Id.* at 80.

[33] *Id.* at 7.

[34] *Id.* at 92.

[35] *People v. Valdesancho*, 410 Phil. 556 (2001).

Preliminary Investigations. In *Lozada v. Hernandez*,[36] we explained the nature of a Preliminary Investigation in relation to the rights of an accused, to wit:

> It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. (U.S. *vs.* Yu Tuico, 34 Phil. 209; People vs. Badilla, 48 Phil. 716). The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. (II Moran, Rules of Court, 1952 ed., p. 673). And rights conferred upon accused persons to participate in preliminary investigations concerning themselves depend upon the provisions of law by which such rights are specifically secured, rather than upon the phrase "due process of law." (U.S. *vs.* Grant and Kennedy, 18 Phil., 122).[37]

It is therefore clear that because a preliminary investigation is not a proper trial, the rights of parties therein depend on the rights granted to them by law and these cannot be based on whatever rights they believe they are entitled to or those that may be derived from the phrase "due process of law."

A complainant in a preliminary investigation does not have a vested right to file a Reply—this right should be granted to him by law. There is no provision in Rule 112 of the Rules of Court that gives the Complainant or requires the prosecutor to observe the right to file a Reply to the accused's counter-affidavit. To illustrate the non-mandatory nature of filing a Reply in preliminary investigations, Section 3 (d) of Rule 112 gives the prosecutor, in certain instances, the right to resolve the Complaint even without a counter-affidavit, *viz*:

> (d) If the respondent cannot be subpoenaed, of if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

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[36] 92 Phil. 1051 (1953).

[37] *Id.* at 1053.

Provincial Prosecutor Dusaban correctly claims that it is discretionary on his part to require or allow the filing or submission of reply-affidavits.[38]

Furthermore, we agree with Provincial Prosecutor Dusaban that there was no need to send a copy of the 10 September 2008 Resolution to petitioner, since it did not attain finality until it was approved by the Office of the Ombudsman. It must be noted that the rules do not state that petitioner, as complainant, was entitled to a copy of this recommendation. The only obligation of the prosecutor, as detailed in Section 4 of Rule 112, was to forward the record of the case to the proper officer within five days from the issuance of his Resolution, to wit:

> SEC. 4. Resolution of investigating prosecutor and its review. — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.
>
> Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.
>
> No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.

Even though petitioner was indeed entitled to receive a copy of the Counter-affidavit filed by Aguillon, whatever procedural

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[38] *Id*. at 79.

defects this case suffered from in its initial stages were cured when the former filed an MR. In fact, all of the supposed defenses of petitioner in this case have already been raised in his MR and adequately considered and acted on by the Office of the Ombudsman.

The essence of due process is simply an opportunity to be heard. "What the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard."[39] We have said that where a party has been given a chance to be heard with respect to the latter's motion for reconsideration there is sufficient compliance with the requirements of due process.[40]

At this point, this Court finds it important to stress that even though the filing of the MR cured whatever procedural defect may have been present in this case, this does not change the fact that Provincial Prosecutor Dusaban had the duty to send petitioner a copy of Aguillon's Counter-affidavit. Section 3(c), Rule 112 of the Revised Rules on Criminal Procedure, grants a complainant this right, and the Provincial Prosecutor has the duty to observe the fundamental and essential requirements of due process in the cases presented before it. That the requirements of due process are deemed complied with in the present case because of the filing of an MR by Complainant was simply a fortunate turn of events for the Office of the Provincial Prosecutor.

It is submitted by petitioner that in dismissing Aguillon's Complaint, public respondents committed grave abuse of discretion by failing to consider Memorandum Circular No. 2000-016, which was supposedly the IRR issued by the PNP for P.D. 1866.[41]

Petitioner fails to persuade this Court.

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[39] *De Borja v. Tan*, 93 Phil. 167, 171(1953); *Embate v. Penolio*, 93 Phil. 782, 785 (1953).

[40] *Aguilar v. Tan*, G.R. No. L-23603, 30 January 1970, 31 SCRA 205 citing *De Borja vs. Tan, supra; Llanto vs. Dimaporo*, 123 Phil. 413, 417-418 (1966).

[41] *Rollo*, p. 13.

The original IRR[42] of P.D. 1866 was issued by then Lieutenant General of the Armed Forces of the Philippines (AFP) Fidel V. Ramos on 28 October 1983. The IRR provides that, except when specifically authorized by the Chief of Constabulary, lawful holders of firearms are prohibited from carrying them outside their residences, to wit:

> SECTION 3. Authority of Private Individuals to Carry Firearms Outside of Residence. —
>
> a. As a rule, persons who are lawful holders of firearms (regular license, special permit, certificate of registration or M/R) are prohibited from carrying their firearms outside of residence.
>
> b. However, the Chief of Constabulary may, in meritorious cases as determined by him and under such conditions as he may impose, authorize such person or persons to carry firearm outside of residence.
>
> c. Except as otherwise provided in Secs. 4 and 5 hereof, the carrying of firearm outside of residence or official station in pursuance of an official mission or duty shall have the prior approval of the Chief of Constabulary.

By virtue of R.A. 6975,[43] the PNP absorbed the Philippine Constabulary. Consequently, the PNP Chief succeeded the Chief of the Constabulary and, therefore, assumed the latter's licensing authority.[44]

On 31 January 2003, PNP Chief Hermogenes Ebdane issued Guidelines in the Implementation of the Ban on the Carrying of

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[42] RULES AND REGULATIONS IMPLEMENTING PRESIDENTIAL DECREE NUMBER 1866 DATED 29 JUNE 1983 CODIFYING THE LAWS ON ILLEGAL/UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION OF FIREARMS, AMMUNITION OR EXPLOSIVES OR INSTRUMENTS USED IN THE MANUFACTURE OF FIREARMS, AMMUNITION OR EXPLOSIVES, AND IMPOSING STIFFER PENALTIES FOR CERTAIN VIOLATIONS THEREOF AND FOR RELEVANT PURPOSES.

[43] AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES. Approved 13 December 1990.

[44] *Chavez v. Romulo*, G.R. No. 157036, 9 June 2004, 431 SCRA 534.

Firearms Outside of Residence (Guidelines). In these Guidelines, the PNP Chief revoked all PTCFOR previously issued, thereby prohibiting holders of licensed firearms from carrying these outside their residences, to wit:

> 4. Specific Instructions on the Ban on the Carrying of Firearms:
>
> a. All PTCFOR are hereby revoked. Authorized holders of licensed firearms covered with valid PTCFOR may re-apply for a new PTCFOR in accordance with the conditions hereinafter prescribed.
>
> b. All holders of licensed or government firearms are hereby prohibited from carrying their firearms outside their residence except those covered with mission/letter orders and duty detail orders issued by competent authority pursuant to Section 5, IRR, PD 1866, provided, that the said exception shall pertain only to organic and regular employees.

Section 4 of the IRR lists the following persons as those authorized to carry their duty-issued firearms outside their residences, even without a PTCFOR, whenever they are on duty:

> SECTION 4. Authority of Personnel of Certain Civilian Government Entities and Guards of Private Security Agencies, Company Guard Forces and Government Guard Forces to Carry Firearms. — The personnel of the following civilian agencies commanding guards of private security agencies, company guard forces and government guard forces are authorized to carry their duty issued firearms whenever they are on duty detail subject to the specific guidelines provided in Sec. 6 hereof:
>
> a. Guards of the National Bureau of Prisons, Provincial and City Jails;
>
> b. Members of the Bureau of Customs Police, Philippine Ports Authority Security Force, and Export Processing Zones Authority Police Force; and
>
> c. Guards of private security agencies, company guard forces, and government guard forces.

Section 5 of the guidelines, on the other hand, enumerates persons who have the authority to carry firearms outside their residences, *viz*:

> 5. The following persons may be authorized to carry firearms outside of residence.
>
> a. All persons whose application for a new PTCFOR has been approved, provided, that the persons and security of those so authorized are under actual threat, or by the nature of their position, occupation and profession are under imminent danger.
>
> b. All organic and regular employees with Mission/ Letter Orders granted by their respective agencies so authorized pursuant to Section 5, IRR, PD 1866, provided, that such Mission/Letter Orders is valid only for the duration of the official mission which in no case shall be more than ten (10) days.
>
> c. All guards covered with Duty Detail Orders granted by their respective security agencies so authorized pursuant to Section 4, IRR, PD 1866, provided, that such DDO shall in no case exceed 24-hour duration.
>
> d. Members of duly recognized Gun Clubs issued Permit to Transport (PTT) by the PNP for purposes of practice and competition, provided, that such firearms while in transit must not be loaded with ammunition and secured in an appropriate box or case detached from the person.
>
> e. Authorized members of the Diplomatic Corps.

It is true therefore, that, as petitioner claims, a *barangay* captain is not one of those authorized to carry firearms outside their residences unless armed with the appropriate PTCFOR under the Guidelines.[45]

However, we find merit in respondents' contention that the authority of Aguillon to carry his firearm outside his residence was not based on the IRR or the guidelines of P.D. 1866 but,

[45] *Rollo*, p. 19.

rather, was rooted in the authority given to him by Local Government Code (LGC).

In *People v. Monton*,[46] the house of Mariano Monton—the Barrio Captain of Bacao, General Trias, Cavite—was raided, and an automatic carbine with one long magazine containing several rounds of ammunition was found hidden under a pillow covered with a mat. He was charged with the crime of illegal possession of firearm, but this Court acquitted him on the basis of Section 88(3) of Batas Pambansa Bilang 337(B.P. 337), the LGC of 1983, which reads:

> In the performance of his peace and order functions, the *punong barangay* shall be entitled to possess and carry the necessary firearms within his territorial jurisdiction subject to existing rules and regulations on the possession and carrying of firearms.

Republic Act No. 7160, the LGC of 1991, repealed B.P. 337. It retained the foregoing provision as reflected in its Section 389 (b), *viz*:

> CHAPTER 3 — *THE PUNONG BARANGAY*
>
> SEC. 389. *Chief Executive: Powers, Duties, and Functions.*
>
> x x x x x x x x x
>
> (b) In the performance of his peace and order functions, the *punong barangay* shall be entitled to possess and carry the necessary firearm within his territorial jurisdiction, subject to appropriate rules and regulations.

Provincial Prosecutor Dusaban's standpoint on this matter is correct. All the guidelines and rules cited in the instant Petition "refers to civilian agents, private security guards, company guard forces and government guard forces." These rules and guidelines should not be applied to Aguillon, as he is neither an agent nor a guard. As *barangay* captain, he is the head of a local government unit; as such, his powers and responsibilities are properly outlined in the LGC. This law specifically gives him, by virtue of his position, the authority to carry the necessary firearm within

[46] G.R. No. L-48112, 29 February 1988.

his territorial jurisdiction. Petitioner does not deny that when he found Aguillon "openly carrying a rifle," the latter was within his territorial jurisdiction as the captain of the *barangay*.

In the absence of a clear showing of arbitrariness, this Court will give credence to the finding and determination of probable cause by prosecutors in a preliminary investigation.[47]

This Court has consistently adopted a policy of non-interference in the exercise of the Ombudsman's investigatory powers.[48] It is incumbent upon petitioner to prove that such discretion was gravely abused in order to warrant this Court's reversal of the Ombudsman's findings.[49] This, petitioner has failed to do.

The Court hereby rules that respondent Deputy Ombudsman Casimiro did not commit grave abuse of discretion in finding that there was no probable cause to hold respondent Aguillon for trial.

The Dissent contends that probable cause was already established by facts of this case, which show that Aguillon was found carrying a licensed firearm outside his residence without a PTCFOR. Thus, Deputy Ombudsman Casimiro committed grave abuse of discretion in dismissing the criminal Complaint. However, even though Aguillon did not possess a PTCFOR, he had the "legal authority" to carry his firearm outside his residence, as required by P.D. 1866 as amended by R.A. 8294. This authority was granted to him by Section 389 (b) of the LGC of 1991, which specifically carved out an exception to P.D. 1866.

Following the suggestion of the Dissent, prosecutors have the authority to disregard existing exemptions, as long as the requirements of the general rule apply. This should not be the case. Although the Dissent correctly declared that the prosecutor cannot peremptorily apply a statutory exception *without weighing*

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[47] *Drilon v. Court of Appeals*, 327 Phil. 916 (1996).

[48] *Vergara v. Ombudsman*, G.R. No. 174567, 12 March 2009, 580 SCRA 693.

[49] *Ombudsman v. Vda. de Ventura*, G.R. No. 151800, 5 November 2009, 605 SCRA 1.

it against the facts and evidence before him, we find that the facts of the case prove that there is no probable cause to charge Aguillon with the crime of illegal possession of firearm.

In interpreting Section 389 (b) of the LGC of 1991, the Dissent found that the factual circumstances of the present case show that the conditions set forth in the law have not been met. Thus, the exemption should not apply.

Contrary to the allegation of the dissent, there is no question as to the fact that Aguillon was within his territorial jurisdiction when he was found in possession of his rifle.

The authority of *punong barangays* to possess the necessary firearm within their territorial jurisdiction is necessary to enforce their duty to maintain peace and order within the *barangays*. Owing to the similar functions, that is, to keep peace and order, this Court deems that, like police officers, *punong barangays* have a duty as a peace officer that must be discharged 24 hours a day. As a peace officer, a *barangay* captain may be called by his constituents, at any time, to assist in maintaining the peace and security of his *barangay*.[50] As long as Aguillon is within his *barangay*, he cannot be separated from his duty as a *punong barangay*—to maintain peace and order.

As to the last phrase in Section 389 (b) of the LGC of 1991, stating that the exception it carved out is subject to "appropriate rules and regulations," suffice it to say that although P.D. 1866 was not repealed, it was modified by the LGC by specifically adding to the exceptions found in the former. Even the IRR of P.D. 1866 was modified by Section 389 (b) of the LGC as the latter provision already existed when Congress enacted the LGC. Thus, Section 389 (b) of the LGC of 1991 added to the list found in Section 3 of the IRR of P.D. 1866, which enumerated the persons given the authority to carry firearms outside of residence without an issued permit. The phrase "subject to appropriate rules and regulations" found in the LGC refers to

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[50] *Government Service Insurance System v. Court of Appeals*, G.R. No. 128524, 20 April 1999, 306 SCRA 41, 45.

those found in the IRR of the LGC itself or a later IRR of P.D. 1866 and not those that it has already amended.

Indeed, petitioner's mere allegation does not establish the fact that Aguillon was drunk at the time of his arrest. This Court, however, is alarmed at the idea that government officials, who are not only particularly charged with the responsibility to maintain peace and order within their *barangays* but are also given the authority to carry any form of firearm necessary to perform their duty, could be the very same person who would put their *barangays* in danger by carelessly carrying high-powered firearms especially when they are not in full control of their senses.

While this Court does not condone the acts of Aguillon, it cannot order the prosecutor to file a case against him since there is no law that penalizes a local chief executive for imbibing liquor while carrying his firearm. Neither is there any law that restricts the kind of firearms that *punong barangays* may carry in the performance of their peace and order functions. Unfortunately, it also appears that the term "peace and order function" has not been adequately defined by law or appropriate regulations.

WHEREFORE, we **DISMISS** the Petition. We **AFFIRM** the Resolution of the Office of the Provincial Prosecutor dated 10 September 2008, as well as the Resolution and the Order of the Office of the Ombudsman dated 17 February 2009 and 23 July 2009, respectively.

Let a copy of this Decision be served on the President of the Senate and the Speaker of the House of Representatives for whatever appropriate action they may deem warranted by the statements in this Decision regarding the adequacy of laws governing the carrying of firearms by local chief executives.

No costs.

SO ORDERED.

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

Brion, J., see dissenting opinion.

DISSENTING OPINION

BRION, *J.*:

I dissent from the *ponencia's* conclusion that the Office of the Overall Deputy Ombudsman (*Ombudsman*) committed no grave abuse of discretion in dismissing the criminal complaint against Edito Aguillon for insufficiency of evidence.

The Court consistently adheres to its policy of non-interference in the conduct of preliminary investigations. This policy leaves the investigating prosecutor with sufficient latitude of discretion in determining what constitutes sufficient evidence to establish probable cause for the purpose of filing information in court.[1] The inherently executive nature[2] of determining the existence of probable cause dictates this judicial course of action.

More particularly, the Court's policy of non-interference with the investigatory and prosecutory powers of the Office of the Ombudsman is anchored on the provisions of the Constitution, which guarantees the independence of this office.[3] However,

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[1] *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, April 23, 2010.

[2] ARTICLE VII, Section 17, second sentence, the 1987 CONSTITUTION (the Faithful execution clause).

[3] Section 5, Section 8 and Section 14 of Article XI of the 1987 Constitution reads:

Section 5. There is hereby created the **independent Office of the Ombudsman**, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

Section 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity **and independence**, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have, for ten years or more, been a judge or engaged in the practice of law in the Philippines.

During their tenure, they shall be subject to the same disqualifications and prohibitions as provided for in Section 2 of Article 1X-A of this Constitution.

given the Court's own duty under paragraph 2, Section 1, Article VIII of the Constitution, the Court is not precluded from reviewing the Ombudsman's action for the limited purpose of determining whether this action is tainted with grave abuse of discretion.[4]

In the present case, I find the Ombudsman's dismissal of the criminal complaint tainted with grave abuse of discretion, as the dismissal was not supported by the established facts of the case and was also grossly contrary to applicable laws, rules and jurisprudence on the matter.

First, in conducting a preliminary investigation, the investigating prosecutor merely determines whether probable cause exists that would warrant the filing of the corresponding information in court against a supposed offender. In turn, probable cause is simply the existence of such facts and circumstances, sufficient to create the belief in a reasonable mind that a crime has been committed and that the person charged is probably guilty of the crime charged.[5] *The determination of probable cause only requires reasonable belief, not actual certainty, that a crime has been committed and that the person charged is probably guilty thereof.*

In this regard, Edito Aguillon was charged with violation of Presidential Decree (*P.D.*) No. 1866, as amended by Republic Act No. 8294. The last paragraph of Section 1 of P.D. No. 1866 as amended provides:

"The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor."

Section 14. The Office of the Ombudsman shall enjoy **fiscal autonomy**. Its approved annual appropriations shall be automatically and regularly released.

[4] *Hilario P. Soriano v. Ombudsman Simeon V. Marcelo*, G.R. No. 160772, July 13, 2009, 592 SCRA 394 and *Marina B. Schroeder v. Attys. Mario A. Saldevar and Erwin C. Macalino*, G.R. No. 163656, April 27, 2007, 522 SCRA 624, 629.

[5] *Ibid*.

The established facts show that Edito Aguillon was found in possession of an M16 rifle with 20 live ammunitions outside his residence. While he was able to present a license to possess the firearm, ***he failed to present evidence that he had legal authority to carry the firearm outside of his residence***. These circumstances alone, to my mind, satisfy the standard definition of probable cause that the acts charged were committed, and that Edito Aguillon was probably guilty of its commission (violation of P.D. No. 1866). Whether or not he is indeed guilty beyond reasonable doubt of this crime is another matter that must be addressed in the trial proper of the criminal case.[6]

Second, the Ombudsman's dismissal of the criminal complaint based on the finding that Edito Aguillon did not commit a crime, as he was a *barangay* captain performing his peace and order functions and had a license for his M16 rifle, is contrary to the provisions of P.D. No. 1866 and the factual circumstances of the case.

The crime of illegal possession of firearm,[7] on one hand, and the crime of carrying a licensed firearm outside one's residence without legal authority, on the other, are *two separate offenses punished by P.D. No. 1866* as amended. In other words, while Edito Aguillon cannot be prosecuted for illegal possession of firearms, sufficient evidence exists to prosecute him for carrying a licensed firearm outside his residence without legal authority.

In *Francisco I. Chavez v. Hon. Alberto G. Romulo, et al.*,[8] we held that the right to bear arms is a *mere* statutory privilege, and not a constitutional right; and that the possession of firearms

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[6] *Ibid*.

[7] In *Villanueva v. People* (G.R. No. 159703 March 3, 2008), the Court stated that —

> The *corpus delicti* in the crime of illegal possession of firearms is the accused's lack of license or permit to possess or carry the firearm, as possession itself is not prohibited by law. To establish the *corpus delicti*, the prosecution has the burden of proving that the firearm exists and that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.

[8] G.R. No. 157036, June 9, 2004, 431 SCRA 534, 559.

by citizens in the Philippines is the exception rather than the rule.[9] Consequently, when a *prima facie* showing of a violation of the law on firearms is established, the prosecutor cannot peremptorily apply a statutory exception without weighing it against the facts and evidence before him; otherwise, he would be committing grave abuse of discretion, warranting the corrective writ of *certiorari* — which brings me to my third point.

Third. Undoubtedly, Section 389 (c), Chapter 3, Book III of the Local Government Code (*LGC*) of the Philippines (Republic Act [*R.A.*] No. 7160) provides an exception to the rule on carrying of firearms outside one's residence. R.A. No. 7160 is a special law[10] that allows the *barangay* captain (now the Punong Barangay) the right to possess and carry firearms within his territorial jurisdiction. As expressly stated in the law, however, the exercise of such right is not without restrictions. Section 389 (c) in fact mentions four (4) conditions that restrict the right of the Punong Barangay to possess and carry firearms:

"In the performance of his peace and order functions, the Punong Barangay shall be entitled to possess and carry the necessary firearm within his territorial jurisdiction, subject to appropriate rules and regulations."

The four (4) conditions are: *first*, the right must be exercised in performance of peace and order functions; *second*, the right must be exercised within the territorial jurisdiction of the Punong Barangay; *third*, the firearm must be necessary in the exercise of official functions; and *fourth*, the exercise of the right is subject to appropriate rules and regulations.

The available records do not establish compliance with the above conditions.

The records do not show that Edito Aguillon, as *barangay* captain, was in the performance of official duties to protect

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[9] *Id.* at 559.

[10] *Alex L. David v. Commission on Elections*, G.R. No. 127116, April 8, 1997, 271 SCRA 90, 102. The Court held that "RA 7160 is a codified set of laws that specifically applies to local government units."

and preserve the peace and order of his community at the time the police confronted him. Contrary to the *ponencia's* claim — unsupported by law and evidence — a *barangay* captain cannot be performing his peace and order functions 24 hours a day. This is a preposterous claim that effectively says that the mere fact of being a *barangay* captain characterizes one as an official continuously exercising peace and order functions. At most, perhaps, such a presumption can exist; but a presumption should not apply when the attendant circumstances dictate otherwise.

What the records establish are the following: that (i) the police responded to a call for assistance upon hearing successive gunfires; (ii) the police saw and confronted Edito Aguillon, ***wobbling and visibly drunk***, carrying an M16 rifle; and (iii) Edito Aguillon was then and there disarmed of his firearm and brought to the police station. None of these facts was denied by Aguillon. Significantly, Aguillon made no claim, not even a pretense, that he was then in the course of protecting and preserving peace in his *barangay* at the time he was arrested.

Similarly, the second and third conditions were not clearly established. The records failed to show that Edito Aguillon was actually within the territorial jurisdiction of his *barangay* when the confrontation with the police took place. This is a matter of defense that the one charged must claim and support by evidence. No such effort appears to have taken place. The facts also failed to show how, specifically, an M16 rifle became necessary for the exercise of his official functions — if at all he was exercising his official functions at that time. We can take judicial notice that an M16 (as the prefix "M" denotes) is a military weapon, not a civilian one.

The fourth condition on the "appropriate rules and regulations" is no other than the rules governing the possession and carrying of firearm, which are mainly found in the implementing rules and regulations of P.D. No. 1866. In this regard, Section 3 of the Implementing Rules and Regulations of P.D. No. 1866 impose the following restrictions on persons in possession of licensed firearms:

a. As a rule, persons who are lawful holders of firearms (regular license, special permit, certificate of registration or M/R) are prohibited from carrying their firearms outside of residence.

b. However, the Chief of Constabulary (now PNP Chief) may, in meritorious cases as determined by him and under such conditions as he may impose, authorize such person or persons to carry firearm outside of residence.

c. Except as other provided in Sections 4 (*Authority of personnel or certain civilian government entities and guards of private security agencies, company guard forces and government guard forces to carry firearms*) and 5 (*Authority to issue mission order involving the carrying of firearm*) hereof, the carrying of firearm outside of residence or official station in pursuance of an official mission or duty shall have prior approval of the Chief of Constabulary.

Hence, while Section 389 (c) Chapter 3, Book III of R.A. No. 7160 grants the Punong Barangay the right to possess and carry firearms, the very wording of the law did not relieve the Punong Barangay from complying with the rules and regulations involving the possession and carrying of firearms.

Specifically, I take exception to the *ponencia*'s (i) statement that "[e]ven the IRR of PD 1866 was modified by Section 389 (b)[11] of the LGC as the latter provision already existed when Congress enacted the LGC" and (ii) conclusion that "Section 389 (b) of the LGC of 1991 added to the list found in Section 3 of the IRR of PD 1866."

Contrary to the *ponencia*'s claim, P.D. No. 1866's IRR could not have been modified *by* Section 389 (c) of the LGC. On May 12, 1983 Batas Pambansa (*BP*) 337 (the old Local Government Code) took effect. Section 88 par. 3 of BP 337 ***similarly*** limits the *punong barangay's* otherwise broad authority to possess and carry firearms. It was only later (or in October 1983) that the IRR of P.D. No. 1866 was issued. Effectively, the promulgation of the IRR after BP 337 took effect served to

[11] Should be Section 389 (c).

limit (and continues to by the re-enactment of the same provision in Section 389 of the present LGC) the Punong Barangay's authority to carry firearms.

At any rate, even granting that Section 389 (c) of R.A. No. 7160 does not require compliance with the ordinary rules regarding the licensing of firearms under P.D. No. 1866, the facts do not sufficiently show that Edito Aguillon falls within the exception provided under Section 389 (c) of R.A No. 7160 that would exempt him from compliance with the general rule on licensing of firearms. Given that the issue before us is the existence of grave abuse of discretion in the determination of the well-settled concept of probable cause, the petitioner's reliance on *People v. Monton*,[12] which already involves the guilt or innocence of an accused, is misplaced.

In short, being a matter of exception to the rule on carrying of firearms outside one's residence, the Court cannot simply apply Section 389 (c) of the LGC (as the *ponencia* did*) without regard* to the plain qualifications stated in that provision — all of which are aimed at serving the interest (maintenance of peace and order[13] of the Punong Barangay's constituencies and not his personal interests. As an exception, too, the burden lies with the person charged to show that he falls within the exception. No such showing is evident from the records of the case; thus, the application of the exception has no basis.

For these reasons, I vote to GRANT the petition.

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[12] G.R. No. L-48112, February 29, 1988.

[13] Section 389 (b) 3 and 14 reads:

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the *barangay* and its inhabitants pursuant to Section 16 of this Code, the *punong barangay* shall:

x x x x x x x x x

(3) Maintain public order in the *barangay* and, in pursuance thereof, assist the city or municipal mayor and the *sanggunian* members in the performance of their duties and functions;

x x x x x x x x x

(14) Promote the general welfare of the *barangay*; and

SECOND DIVISION

[G.R. No. 190610. April 25, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff and appellee, vs.* **SATURNINO DE LA CRUZ and JOSE BRILLANTES *y* LOPEZ,** *accused.* **JOSE BRILLANTES *y* LOPEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXTINCTION OF CRIMINAL LIABILITY; THE PERSONAL PENALTY AND PECUNIARY PENALTY OF AN ACCUSED ARE EXTINGUISHED UPON HIS DEATH PENDING APPEAL OF HIS CONVICTION BY THE LOWER COURTS; THERE IS NO CIVIL LIABILITY INVOLVED IN VIOLATIONS OF THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.— It is plain that both the personal penalty of imprisonment and pecuniary penalty of fine of Brillantes were extinguished upon his death pending appeal of his conviction by the lower courts. We recite the rules laid down in *People v. Bayotas*, to wit: 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and *only* the civil liability *directly* arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*." 2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than *delict*. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission: a) Law b) Contracts c) Quasi-contracts d) . . . e) Quasi-delicts x x x There is no civil liability involved in violations of the *Comprehensive Dangerous Drugs Act of 2002*. No private offended party is involved as there is in fact no reference to civil liability in the decision of the trial court.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE EXTINGUISHMENT OF AN ACCUSED'S CRIMINAL AND PECUNIARY LIABILITIES PREDICATED UPON HIS DEATH AND NOT ON HIS ACQUITTAL, ALTHOUGH FAVORABLE, DOES NOT HAVE ANY EFFECT ON HIS CO-ACCUSED.— The appeal of Brillantes culminating in the extinguishment of his criminal liability does not have any effect on his co- accused De la Cruz who did not file a notice of appeal. The Rules on Criminal Procedure on the matter states: **RULE 122 — Appeal Section 11.** *Effect of appeal by any of several accused.* — (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is **favorable and applicable** to the latter; x x x The extinguishment of Brillantes' criminal and pecuniary liabilities is predicated on his death and not on his acquittal. Following the provision, the appeal taken by Brillantes and subsequent extinguishment of his liabilities is not applicable to De la Cruz.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Jessie Emmanuel A. Vizcarra for accused-appellant.

R E S O L U T I O N

PEREZ, *J.*:

Before the Court is an Appeal[1] filed by accused-appellant Jose Brillantes *y* Lopez (Brillantes) assailing the Decision[2] of the Court of Appeals (CA) dated 8 July 2009 in CA-G.R. CR No. 30897.

The decision of the Court of Appeals is an affirmance of the Decision of the Regional Trial Court (RTC) of Laoag City, Branch 13 in Criminal Case Nos. 11556, 11557 and 11558

[1] *Rollo,* pp. 40-41.

[2] *Id.* at 2-39. Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring.

convicting accused Brillantes and Saturnino de la Cruz (De la Cruz) for violation of Sections 5 and 11, Article II of RA 9165 entitled "*An Act Instituting the Comprehensive Dangerous Drugs Act Of 2002.*"[3]

In the Criminal Case No. 11556, De la Cruz y Valdez was charged as follows:

Criminal Case No. 11556

That on or about the 1st day of December 2004, in the city of Laoag, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, have in his possession, control and custody one (1) plastic sachet containing *shabu* weighing more or less 0.1 gram including plastic container without prescription or authority to possess the same in violation of the aforecited law.[4]

On the other hand, Jose Brillantes *y* Lopez was charged in Criminal Case Nos. 11557 and 11558 with illegal sale of *shabu* and illegal possession of dangerous drug of *shabu*. The two separate Informations follow:

Criminal Case No. 11557

That on or about the 1st day of December 2004, in the city of Laoag, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously, sell and deliver to a Public Officer, who acted as poseur buyer 0.1 gram including plastic container of Methamphetamine Hydrochloride, popularly known as "*shabu*," a dangerous drug, without any license or authority to do so, in violation of the aforecited law.[5]

Criminal Case No. 11558

That on or about the 1st day of December 2004, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously, have in his possession, control and custody

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[3] Promulgated on June 7, 2002.

[4] *Rollo*, p. 3.

[5] *Id.* at 3-4.

two (2) big plastic sachet containing *shabu* weighing more or less 2.6 grams including plastic container without being authorized and permitted by law to possess the same in violation of the aforecited law.[6]

When arraigned, both the accused pleaded not guilty of the crimes charged.

The RTC held that the prosecution successfully discharged the burden of proof in the cases of illegal sale and illegal possession of dangerous drugs, in this case *methamphetamine hydrochloride otherwise known as* "*shabu*." The trial court relied on the presumption of regularity in the performance of duty of the police officials who conducted the buy-bust operation. The dispositive portion reads:

> WHEREFORE, judgment is hereby rendered finding [the] accused Saturnino De la Cruz GUILTY beyond reasonable doubt as charged in Criminal Case No. 11556 for illegal possession of *shabu* with a weight of 0.0619 gram and is therefore sentenced to serve the indeterminate penalty of imprisonment ranging from TWELVE (12) YEARS AND ONE (1) DAY as minimum to FIFTEEN (15) YEARS as maximum and to pay a fine of ₱300,000.00.
>
> Accused Jose Brillantes is also found GUILTY beyond reasonable doubt as charged in Criminal Case No.11557 for illegal sale of *shabu* and is therefore sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00. Said accused is likewise found GUILTY beyond reasonable doubt as charged in Criminal Case No. 11558 for illegal possession of *shabu* with an aggregate weight of 0.2351 gram and is therefore further sentenced to serve the indeterminate penalty of imprisonment ranging from TWELVE (12) YEARS and ONE (1) DAY as minimum to FIFTEEN (15) YEARS as maximum and to pay a fine of ₱300,000.00.
>
> The contraband subject of these cases are hereby forfeited, the same to be disposed of as the law prescribes.[7]

The appellate court found no reason to depart from the ruling of the trial court. It upheld that all the elements of the offense

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[6] *Id.* at 4.

[7] CA *rollo*, p. 250.

of illegal sale of drugs were present and the finding against Brillantes well established by the prosecution. Further, it also found that all the elements constituting illegal possession of prohibited or regulated drugs were established beyond reasonable doubt to convict De la Cruz and Brillantes. On all the three charges, great weight was given to the testimonies of the members of the buy-bust team and arresting officers SPO3 Rovimanuel Balolong and PO2 Celso Pang-ag, who also acted as the poseur-buyer.

On 29 July 2009, a Notice of Appeal[8] was filed by Brillantes through counsel before the Supreme Court. His co-accused De la Cruz, did not appeal his conviction.

While this case is pending appeal, Prisons and Security Division Officer-in-Charge Romeo F. Fajardo[9] informed the Court that accused-appellant Brillantes died while committed at the Bureau of Corrections on 3 January 2012 as evidenced by a copy of death report[10] signed by New Bilibid Prison Hospital's Medical Officer Benevito A. Fontanilla, III.

Hence, we resolve the effect of death pending appeal of his conviction of accused-appellant Brillantes with regard to his criminal and pecuniary liabilities.

The Revised Penal Code is instructive on the matter. It provides in Article 89(1) that:

> Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

It is plain that both the personal penalty of imprisonment and pecuniary penalty of fine of Brillantes were extinguished upon his death pending appeal of his conviction by the lower courts.

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[8] *Rollo*, pp. 40-41.

[9] Through a Letter dated 3 January 2012 of OIC Romeo F. Fajardo to the Clerk of Court, Second Division of the Supreme Court, *id.* at 88.

[10] *Id.* at 89.

We recite the rules laid down in *People v. Bayotas*,[11] to wit:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and *only* the civil liability *directly* arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than *delict*. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law

b) Contracts

c) Quasi-contracts

d) . . .

e) Quasi-delicts

x x x x x x x x x

There is no civil liability involved in violations of the *Comprehensive Dangerous Drugs Act of 2002*.[12] No private offended party is involved as there is in fact no reference to civil liability in the decision of the trial court.

The appeal of Brillantes culminating in the extinguishment of his criminal liability does not have any effect on his co- accused De la Cruz who did not file a notice of appeal. The Rules on Criminal Procedure on the matter states:

RULE 122 — Appeal

Section 11. *Effect of appeal by any of several accused.* —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the

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[11] G.R. No. 102007, 2 September 1994, 236 SCRA 239, 255-256.

[12] R.A. 9165.

judgment of the appellate court is **favorable and applicable** to the latter; (emphasis ours)

x x x x x x x x x

The extinguishment of Brillantes' criminal and pecuniary liabilities is predicated on his death and not on his acquittal. Following the provision, the appeal taken by Brillantes and subsequent extinguishment of his liabilities is not applicable to De la Cruz.

WHEREFORE, in view of his death on 3 January 2012, the appeal of accused-appellant Jose Brillantes *y* Lopez from the Decision of the Court of Appeals dated 8 July 2009 in CA-G.R. CR No. 30897 affirming the Decision of the Regional Trial Court of Laoag City, Branch 13 in Criminal Case Nos. 11557 and 11558 convicting him of violation of Sections 5 and 11, Article II of RA 9165 is hereby declared **MOOT** and **ACADEMIC,** his criminal and pecuniary liabilities having been extinguished. No cost.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 190749. April 25, 2012]

VALENTIN ZAFRA *y* DECHOSA and EROLL MARCELINO *y* REYES, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE INCONSISTENCIES IN CASE AT BAR

ARE NOT MINOR ONES, AND CERTAINLY NOT AMONG THOSE WHICH STRENGTHENS THE CREDIBILITY OF A WITNESS.— While, it is hornbook doctrine that the evaluation of the trial court on the credibility of the witness and the testimony is entitled to great weight and is generally not disturbed upon appeal, such rule does not apply when the trial court has overlooked, misapprehended, or misapplied any fact of weight or substance. In the instant case, these circumstances are present, that, when properly appreciated, would warrant the acquittal of petitioners. Certainly, SPO4 Mendoza's credibility has to be thoroughly looked into, being the only witness in this case. While in his affidavit, SPO4 Mendoza claimed that he saw the sachet of *shabu* (0.30 gram) because Zafra was in the act of handing it to Marcelino, his testimony during the direct examination reveals another version, that is, from a distance, he saw Zafra and Marcelino holding *shabu*, respectively, hence, he approached them from behind and confiscated the *shabu* from both of them and the paraphernalia from Daluz. How he saw a 0.30 gram of *shabu* from a distance in a busy street, baffles this Court. Asked, however, on cross examination, who among the three were holding the *shabu* and drug paraphernalia, SPO4 Mendoza failed to be consistent with his earlier testimony and pointed to Daluz as the one holding *shabu* with a handkerchief in his hand and Zafra as the one in possession of drug paraphernalia. These inconsistencies are not minor ones, and, certainly, not among those which strengthens the credibility of a witness. Possession of drug paraphernalia *vis-à-vis shabu*, are two different offenses under RA No. 9165. That Zafra was holding drug paraphernalia and not *shabu* is material to this case, to the accusation against him, and to his defense.

2. **ID.; ID.; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS CANNOT BY ITS LONESOME OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.—** A reading of the RTC decision on this matter reveals that the conviction was arrived at upon reliance on the presumption of regularity in the performance of Mendoza's official duty. It is noteworthy, however, that presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence. Evidence of guilt beyond reasonable doubt and

nothing else can eclipse the hypothesis of guiltlessness. And this burden is met not by bestowing distrust on the innocence of the accused but by obliterating all doubts as to his culpability.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); CHAIN OF CUSTODY RULE; NOT PROPERLY OBSERVED IN CASE AT BAR; THE SOLO PERFORMANCE OF THE APPREHENDING POLICE OFFICER OF ALL THE ACTS FOR THE PROSECUTION OF THE OFFENSE IS UNEXPLAINED AND PUTS THE PROOF OF *CORPUS DELICTI*, WHICH IS THE ILLEGAL OBJECT ITSELF IN SERIOUS DOUBT.— SPO4 Mendoza was the lone arresting officer, who brought the petitioners to the police station, who himself marked the confiscated pieces of evidence ***sans*** witnesses, photographs, media, and in the absence of the petitioners. His colleagues were nowhere. And, worse, he was the same person who took custody of the same pieces of evidence, then, brought them on his own to the crime laboratory for testing. No inventory was ever done; no inventory was presented in court. The solo performance by SPO4 Mendoza of all the acts necessary for the prosecution of the offense is unexplained and puts the proof of *corpus delicti*, which is the illegal object itself in serious doubt. No definite answer can be established regarding the question as to who possessed what at the time of the alleged apprehension. More significantly, we are left in doubt whether not the two sachets of *shabu* allegedly seized from the petitioners were the very same objects offered in court as the *corpus delicti*.

4. ID.; ID.; ID.; IT IS ESSENTIAL THAT THE IDENTITY OF THE PROHIBITED DRUG BE ESTABLISHED BEYOND DOUBT.— Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed

in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.

5. ID.; ID.; ID.; REQUIREMENTS OF CHAIN OF CUSTODY RULE, AS A METHOD OF AUTHENTICATING EVIDENCE IN DRUG RELATED CASES.— As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

6. ID.; ID.; ID.; THE APPREHENDING POLICE OFFICER BLATANTLY BROKE ALL THE RULES ESTABLISHED BY LAW TO SAFEGAURD THE IDENTITY OF A *CORPUS DELECTI*.— The records readily raise significant doubts as to the identity of the sachets of *shabu* allegedly seized from Zafra and Marcelino. SPO4 Mendoza's claim that the two sachets of *shabu* presented in court were the same ones confiscated from the petitioners, cannot be taken at its face value, solely on the presumption of regularity of one's performance of duty. SPO4 Mendoza blatantly broke all the rules established by law to safeguard the identity of a *corpus delicti*. There was even no mention about the details of the laboratory examination of the allegedly seized drugs. To allow this to happen is to abandon everything that has been said about the necessity of proving an unbroken chain of custody. SPO4 Mendoza cannot alone satisfy the requirements in RA No. 9165 which is anchored on, expressly, the participation of several personalities and the execution of specified documents.

And, while jurisprudence has refined the enumerated duties of an apprehending officer in a drug case and has thus described the equivalent requirements for a proper chain of custody of the *corpus delicti*, still, the case at bar cannot pass the constitutional requirement of proof beyond reasonable doubt.

7. ID.; ID.; ID.; CONDITIONS THAT MUST BE MET TO JUSTIFY NON-COMPLIANCE WITH THE PRESCRIBED PROCEDURAL REQUIREMENTS ARE NOT OBTAINING IN CASE AT BAR.— Lest the chain of custody rule be misunderstood, we reiterate that non-compliance with the prescribed procedural requirements does not necessarily render the seizure and custody of the items void and invalid; the seizure may still be held valid, provided that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items are shown to have been properly preserved. These conditions, however, were not met in the present case as the prosecution did not even attempt to offer any justification for the failure of SPO4 Mendoza to follow the prescribed procedures in the handling of the seized items. As we held in *People v. De Guzman*, the failure to follow the procedure mandated under RA No. 9165 and its Implementing Rules and Regulations must be adequately explained. The justifiable ground for the non-compliance must be proven as a fact. The Court cannot presume what these grounds are or that they even exist.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

For review before this Court is the Decision of the Court of Appeals (CA) in CA-G.R. CR No. 31713 dated 30 October 2009,[1]

[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose Catral Mendoza (now an Associate Justice of the Supreme Court) and Marlene Gonzales Sison, concurring. CA *rollo*, pp. 126-141.

affirming the decision of the Regional Trial Court (RTC), Branch 76, Malolos, Bulacan,[2] which found petitioners Valentin Zafra *y* Dechosa (Zafra) and Eroll Marcelino *y* Reyes (Marcelino) guilty beyond reasonable doubt of Possession of Dangerous Drugs in violation of Section 11, Article II of Republic Act (RA) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002) and imposing on each of them the penalty of imprisonment of twelve (12) years and one (1) day as the minimum term, to thirteen (13) years as maximum, and of fine of Three Hundred Thousand Pesos (₱300,000.00).

The Facts

The prosecution charged Zafra and Marcelino with violation of Section 11, Article II of RA No. 9165[3] before the RTC of Bulacan under the Information below:

> That on or about the 12th day of June, 2003, in the municipality of Balagtas, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in **their possession and control dangerous drug consisting of two (2) heat-sealed transparent plastic sachet of *methylamphetamine hydrochloride* (*shabu*) weighing 0.061[4] gram, in conspiracy with one another.**[5]

The prosecution's **lone witness,** SPO4[6] Apolinario Mendoza (SPO4 Mendoza), Chief of the Investigation and Drug Enforcement Unit of the Philippine National Police of Balagtas, Bulacan, testified that on 12 January 2003, at around 4:30 in the afternoon, he conducted surveillance in front of a *sari-sari*

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[2] Penned by Presiding Judge Albert R. Fonacier. *Id*. at 66-78.

[3] Possession of Dangerous Drugs.

[4] Based on the findings of the RTC decision, the two (2) sachets of methylamphetamine hydrochloride (*shabu*) weighing 0.31 and 0.30 gram, respectively, which totals to 0.61 and not 0.061 gram.

[5] Records, p. 9.

[6] TSN, 27 June 2005, p. 2, identifies Mendoza with the rank of SPO4 though the RTC and the Court of Appeals decision identifies him with the rank of SPO3.

store at the corner of Miraflor Subdivision and P. Castro Street in Balagtas, Bulacan, due to reported drug trafficking in the area. SPO4 Mendoza found there the group of Zafra, Marcelino, and a certain Marlon Daluz (Daluz) standing and facing each other.[7] In that position, he saw Zafra and Marcelino holding *shabu*, while Daluz was holding an aluminum foil and a disposable lighter.[8] Seeing this illegal activity, SPO4 Mendoza single-handedly apprehended them. He grabbed the *shabu* from the hands of Zafra and Marcelino, and confiscated the drug paraphernalia from Daluz. Then, he ordered the three to lie down; he frisked them. Boarding a tricycle, he brought them to the Balagtas Police Station,[9] where he personally marked the confiscated two (2) sachets of *shabu*, one with VSD, the initials of Valentin Zafra *y* Dechosa and the other with EMR, the initials of Eroll Marcelino *y* Reyes.[10]

On the following day, 13 June 2003, SPO4 Mendoza brought the accused and the items to the crime laboratory for urine sampling and laboratory examination, respectively.[11] The test of the items resulted to positive presence of *methylamphetamine hydrochloride*.[12]

The RTC, Branch 76, Malolos, Bulacan, in a decision dated 11 June 2008, convicted Zafra and Marcelino for the crime of possession of *shabu*:

WHEREFORE, finding guilt of the accused beyond reasonable doubt in Criminal Case No. 2297-M-2003, accused **VALENTIN ZAFRA *y* DECHOSA and accused EROLL MARCELINO *y* REYES** are hereby **CONVICTED** for possession of sachets of methylamphetamine hydrochloride commonly known as *shabu*, with a weight of 0.31 gram and 0.30 gram, respectively, which are classified

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

[8] *Id.* at 7.

[9] *Id.* at 9.

[10] TSN, 23 January 2006, p. 3.

[11] *Id.* at 3-4.

[12] *Id.* at 4.

as dangerous drugs in violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" and are each **SENTENCED** to suffer the **IMPRISONMENT** of, applying the Indeterminate Sentence Law, **TWELVE (12) YEARS AND ONE DAY, AS THE MINIMUM TERM, TO THIRTEEN (13) YEARS, AS THE MAXIMUM TERM,** and to pay the **FINE of THREE HUNDRED THOUSAND PESOS (₱300,000.00).**[13]

Daluz, on the other hand, who was charged of possession of drug paraphernalia in violation of Section 12 of RA No. 9165 pleaded guilty to the charge and was released after serving his sentence of eight (8) months.[14]

Zafra and Marcelino appealed; but the CA affirmed *in toto* the RTC Decision:

WHEREFORE, premises considered, the instant appeal is **DENIED** for lack of merit. Accordingly, the assailed 11 June 2008 Decision of the Court *a quo* **STANDS.**[15]

Hence, this appeal on the following grounds: *first*, the arrest was unlawful; *second*, the prohibited drugs are inadmissible in evidence; *third*, Section 21 of RA No. 9165 was not complied with; and, *finally*, the prosecution failed to prove petitioners' guilt beyond reasonable doubt.

The Court's Ruling

We resolve to **ACQUIT** petitioners Zafra and Marcelino on the following grounds:

First, the prosecution's lone witness, SPO4 Mendoza,[16] testified that, from a distance, he saw Zafra and Marcelino holding *shabu* by their bare hands, respectively, while Daluz was holding an aluminum foil and a disposable lighter.[17] Seeing this illegal

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[13] CA *rollo*, p. 78.

[14] Records, pp. 113-114.

[15] CA *rollo*, p. 141.

[16] Records, pp. 13-30.

[17] *Id.* at 74.

activity, he single-handedly apprehended them.[18] He grabbed the *shabu* from the hands of Zafra and Marcelino, and confiscated the drug paraphernalia from Daluz.

In his affidavit, however, SPO4 Mendoza stated, that:

Na, nitong nakaraang Hunyo 12, 2003 ng 4:30 ng hapon humigit kumulang, sa P. Casto St., Barangay Borol-1, Balagtas Bulacan, habang ako ay nagsasagawa ng surveillance sa Suspected Drug Pusher sa nasabing lugar ay aking nakita ang tatlo (3) kalalakihan na nakatalikod sa isang corner ng tindahan sa P. Castro St., na nakilala ko na sina Valentine D. Zafra @ Val, Eroll R. Marcelino @ Eroll, at Marlon B. Daluz @ Marlon na pawang mga residente ng Borol-1, Balagtas, Bulacan.

Na, ako ay lumapit na naglalakad kina Valentine Zafra, Errol Marcelino at Marlon Daluz at sa aking paglapit sa kanilang tatlo ay aking nakita at naaktuhang ***inabot ni Valentine Zafra kay Eroll Marcelino ang isang (1) plastic sachet ng shabu*** *may timbang na 0.30 grams, at isa pang plastic sachet ng shabu na si Marlon Daluz ay hawak ang isang disposable lighter at 2 piraso ng aluminum foil na inaayos na nilalagyan ng lupi at 7 piraso ng empty plastic sachet.* (Emphasis supplied)[19]

x x x x x x x x x

On cross examination, SPO4 Mendoza testified that it was Zafra and not Daluz, who was holding the aluminum foil (contrary to his earlier testimony that Zafra was holding *shabu*);[20] that Daluz (whom he claimed during the direct examination to be holding the aluminum foil) and Marcelino were holding handkerchiefs and on top of them were *shabu*;[21] When the defense confronted SPO4 Mendoza about the inconsistency, he told the court that his version during his direct testimony was the correct one.[22]

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[18] RTC Decision, CA *rollo*, p. 48.

[19] *Id.* at 54.

[20] TSN, 29 May 2006, p. 3.

[21] *Id.* at 5.

[22] *Id.* at 6.

While, it is hornbook doctrine that the evaluation of the trial court on the credibility of the witness and the testimony is entitled to great weight and is generally not disturbed upon appeal,[23] such rule does not apply when the trial court has overlooked, misapprehended, or misapplied any fact of weight or substance.[24] In the instant case, these circumstances are present, that, when properly appreciated, would warrant the acquittal of petitioners.

Certainly, SPO4 Mendoza's credibility has to be thoroughly looked into, being the only witness in this case. While in his affidavit, SPO4 Mendoza claimed that he saw the sachet of *shabu* (0.30 gram) because Zafra was in the act of handing it to Marcelino, his testimony during the direct examination reveals another version, that is, from a distance, he saw Zafra and Marcelino holding *shabu,* respectively, hence, he approached them from behind and confiscated the *shabu* from both of them and the paraphernalia from Daluz. How he saw a 0.30 gram of *shabu* from a distance in a busy street, baffles this Court. Asked, however, on cross examination, who among the three were holding the *shabu* and drug paraphernalia, SPO4 Mendoza failed to be consistent with his earlier testimony and pointed to Daluz as the one holding *shabu* with a handkerchief in his hand and Zafra as the one in possession of drug paraphernalia. These inconsistencies are not minor ones, and, certainly, not among those which strengthens the credibility of a witness. Possession of drug paraphernalia *vis-à-vis shabu,* are two different offenses under RA No. 9165. That Zafra was holding drug paraphernalia and not *shabu* is material to this case, to the accusation against him, and to his defense.

Second, a reading of the RTC decision on this matter reveals that the conviction was arrived at upon reliance on the presumption of regularity in the performance of Mendoza's official duty.[25]

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[23] *People v. Casimiro,* G.R. No. 146277, 20 June 2002, 383 SCRA 390, 398; citations omitted.

[24] *Id.*

[25] RTC Decision, CA *rollo,* p. 37.

It is noteworthy, however, that presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence.[26] Evidence of guilt beyond reasonable doubt and nothing else can eclipse the hypothesis of guiltlessness. And this burden is met not by bestowing distrust on the innocence of the accused but by obliterating all doubts as to his culpability.[27]

Third, SPO4 Mendoza was the lone arresting officer, who brought the petitioners to the police station,[28] who himself marked the confiscated pieces of evidence ***sans*** witnesses, photographs, media, and in the absence of the petitioners. His colleagues were nowhere.[29] And, worse, he was the same person who took custody of the same pieces of evidence, then, brought them on his own to the crime laboratory for testing.[30] No inventory was ever done;[31] no inventory was presented in court.

The solo performance by SPO4 Mendoza of all the acts necessary for the prosecution of the offense is unexplained and puts the proof of *corpus delicti,* which is the illegal object itself in serious doubt. No definite answer can be established regarding the question as to who possessed what at the time of the alleged apprehension. More significantly, we are left in doubt whether not the two sachets of *shabu* allegedly seized from the petitioners were the very same objects offered in court as the *corpus delicti*.

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty.[32] The dangerous drug itself constitutes the very *corpus delicti* of the offense

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[26] *Malillin v. People,* G.R. No. 172953, 30 April 2008, 553 SCRA 619, 623.

[27] *Id.* at 623-624.

[28] TSN, 27 June 2005, p. 9.

[29] Petition. *Rollo,* p. 24.

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

[31] *Id.* at 24.

[32] *Malillin v. People, supra* note 26 at 631.

and the fact of its existence is vital to a judgment of conviction.[33] Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt.[34] Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt.[35] More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt.[36] The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[37]

Section 21, paragraph 1, Article II of RA No. 9165 reads:

(1) The apprehending team having initial custody and control of the drugs shall, immediately **after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.**

Section 21(a) Article II of the Implementing Rules and Regulations of RA No. 9165 reads:

(a) The apprehending officer/team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to**

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[33] *Id.* at 631-632.

[34] *Id.* at 632.

[35] *Id.*

[36] *Id.*

[37] *Id.*

sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

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.[38] It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.[39] 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.[40]

The records readily raise significant doubts as to the identity of the sachets of *shabu* allegedly seized from Zafra and Marcelino. SPO4 Mendoza's claim that the two sachets of *shabu* presented in court were the same ones confiscated from the petitioners, cannot be taken at its face value, solely on the presumption of regularity of one's performance of duty. SPO4 Mendoza blatantly broke all the rules established by law to safeguard the identity of a *corpus delicti*. There was even no mention about the details of the laboratory examination of the allegedly seized drugs. To allow this to happen is to abandon everything that has been

[38] *Id.*

[39] *Id.*

[40] *Id.* at 632-633.

said about the necessity of proving an unbroken chain of custody. SPO4 Mendoza cannot alone satisfy the requirements in RA No. 9165 which is anchored on, expressly, the participation of several personalities and the execution of specified documents.

And, while jurisprudence has refined the enumerated duties of an apprehending officer in a drug case and has thus described the equivalent requirements for a proper chain of custody of the *corpus delicti*, still, the case at bar cannot pass the constitutional requirement of proof beyond reasonable doubt.

We reiterate, that this Court will never waver in ensuring that the prescribed procedures in the handling of the seized drugs should be observed. In *People v. Salonga*,[41] we acquitted the accused for the failure of the police to inventory and photograph the confiscated items. We also reversed a conviction in *People v. Gutierrez*,[42] for the failure of the buy-bust team to inventory and photograph the seized items without justifiable grounds. *People v. Cantalejo*[43] also resulted in an acquittal because no inventory or photograph was ever made by the police.

We reached the same conclusions in the recent cases of *People v. Capuno*,[44] *People v. Lorena*,[45] and *People v. Martinez*.[46]

The present petition is the sum total of all the violations committed in the cases cited above.

Lest the chain of custody rule be misunderstood, we reiterate that non-compliance with the prescribed procedural requirements does not necessarily render the seizure and custody of the items void and invalid; the seizure may still be held valid, provided that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items

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[41] G.R. No. 186390, 2 October 2009, 602 SCRA 783, 794-795.

[42] G.R. No. 179213, 3 September 2009, 598 SCRA 92, 101.

[43] G.R. No. 182790, 24 April 2009, 586 SCRA 777, 783-784.

[44] G.R. No. 185715, 19 January 2011, 640 SCRA 233.

[45] G.R. No. 184954, 10 January 2011, 639 SCRA 139.

[46] G.R. No. 191366, 13 December 2010, 637 SCRA 791.

are shown to have been properly preserved.[47] These conditions, however, were not met in the present case as the prosecution did not even attempt to offer any justification for the failure of SPO4 Mendoza to follow the prescribed procedures in the handling of the seized items. As we held in *People v. De Guzman*,[48] the failure to follow the procedure mandated under RA No. 9165 and its Implementing Rules and Regulations must be adequately explained. The justifiable ground for the non-compliance must be proven as a fact. The Court cannot presume what these grounds are or that they even exist.

In our constitutional system, basic and elementary is the presupposition that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.[49] The rule is invariable whatever may be the reputation of the accused, for the law presumes his innocence unless and until the contrary is shown.[50] *In dubio pro reo.*[51] When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[52]

WHEREFORE, premises considered, we **REVERSE and SET ASIDE** the Decision of the Court of Appeals dated 30 October 2009 in CA-G.R. CR No. 31713. Petitioners Valentin Zafra *y* Dechosa and Eroll Marcelino *y* Reyes are hereby **ACQUITTED** for the failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered immediately **RELEASED** from detention, unless they are confined for another lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is

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[47] *Id.* at 813.

[48] G.R. No. 186498, 26 March 2010, 616 SCRA 652, 662.

[49] *Malillin v. People, supra* note 26 at 639.

[50] *Id.*

[51] *Id.*

[52] *Id.*

directed to report to this Court the action taken within five (5) days from receipt of this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192190. April 25, 2012]

BILLY M. REALDA, *petitioner, vs.* **NEW AGE GRAPHICS, INC. and JULIAN I. MIRASOL, JR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; WILLFUL DISOBEDIENCE TO A REASONABLE ORDER AND FAILURE TO OBSERVE COMPANY'S WORK STANDARDS ARE VALID CAUSES OF DISMISSAL. — Noticeably, this case and *R.B. Michael Press* share a parallelism. Similar to the dismissed employee in the above-quoted case, the petitioner exhibited willful disobedience to a reasonable order from his employer and this Court does not find any reason why the petitioner should be accorded a different treatment. *Second*, the petitioner's failure to observe Graphics, Inc.'s work standards constitutes inefficiency that is a valid cause for dismissal. Failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the alloted reasonable period, or by producing unsatisfactory results. As the operator of Graphics, Inc.'s printer, he is mandated to check whether the colors that would be printed are in accordance

with the client's specifications and for him to do so, he must consult the General Manager and the color guide used by Graphics, Inc. before making a full run. Unfortunately, he failed to observe this simple procedure and proceeded to print without making sure that the colors were at par with the client's demands. This resulted to delays in the delivery of output, client dissatisfaction, and additional costs on Graphics, Inc.'s part.

2. ID.; ID.; ID.; WHILE SECURITY OF TENURE IS CONSTITUTIONALLY GUARANTEED, IT SHOULD NOT BE INDISCRIMINATELY INVOKED TO DEPRIVE AN EMPLOYER OF ITS MANAGEMENT PREROGATIVES AND RIGHT TO SHIELD ITSELF FROM INCOMPETENCE, INEFFICIENCY AND DISOBEDIENCE DISPLAYED BY ITS EMPLOYEES.— Security of tenure is indeed constitutionally guaranteed. However, this should not be indiscriminately invoked to deprive an employer of its management prerogatives and right to shield itself from incompetence, inefficiency and disobedience displayed by its employees. The procedure laid down by Graphics, Inc. which the petitioner was bound to observe does not appear to be unreasonable or unnecessarily difficult. On the contrary, it is necessary and relevant to the achievement of Graphics, Inc.'s objectives. The petitioner's non-compliance is therefore hard to comprehend.

3. ID.; ID.; ID.; THE PRINCIPLE OF "TOTALITY OF INFRACTIONS" SANCTIONS THE ACT OF RESPONDENT COMPANY IN CONSIDERING PETITIONER'S PREVIOUS SUSPENSION FOR HABITUAL TARDINESS AND REPEATED ABSENTEEISM IN DECREEING DISMISSAL.— While a penalty in the form of suspension had already been imposed on the petitioner for his habitual tardiness and repeated absenteeism, the principle of "totality of infractions" sanctions the act of Graphics, Inc. of considering such previous infractions in decreeing dismissal as the proper penalty for his tardiness and unauthorized absences incurred afterwards, in addition to his refusal to render overtime work and conform to the prescribed work standards. x x x This Court cannot condone the petitioner's attempt to belittle his habitual tardiness and absenteeism as these are manifestations of lack of initiative,

diligence and discipline that are adverse to Graphics, Inc.'s interest. In *Challenge Socks Corporation v. Court of Appeals*, this Court said that it reflects an indifferent attitude to and lack of motivation in work. It is inimical to the general productivity and business of the employer. This is especially true when it occurred frequently and repeatedly within an extensive period of time and despite several warnings.

4. ID.; ID.; ID.; THE EMPLOYER'S ORDER TO RENDER OVERTIME WORK IS LEGAL AND PETITIONER'S UNEXPLAINED REFUSAL TO OBEY IS INSUBORDINATION THAT MERITS DISMISSAL FROM SERVICE.— This Court cannot likewise agree to the petitioner's attempt to brush aside his refusal to render overtime work as inconsequential when Graphics, Inc.'s order for him to do so is justified by Graphics, Inc.'s contractual commitments to its clients. Such an order is legal under Article 89 of the Labor Code and the petitioner's unexplained refusal to obey is insubordination that merits dismissal from service.

5. ID.; ID.; ID.; DUE PROCESS IN TERMINATION CASES; NOT COMPLIED WITH IN CASE AT BAR.— As correctly observed by the CA, Graphics, Inc. failed to afford the petitioner with a reasonable opportunity to be heard and defend himself. An administrative hearing set on the same day that the petitioner received the memorandum and the twenty-four (24) — hour period for him to submit a written explanation are far from being reasonable. Furthermore, there is no indication that Graphics, Inc. issued a second notice, informing the petitioner of his dismissal. The respondents admit that Graphics, Inc. decided to terminate the petitioner's employment after he ceased reporting for work from the time he received the memorandum requiring him to explain and subsequent to his failure to submit a written explanation. However, there is nothing on record showing that Graphics, Inc. placed its decision to dismiss in writing and that a copy thereof was sent to the petitioner.

6. ID.; ID.; ID.; AMOUNT OF NOMINAL DAMAGES AWARDED MODIFIED TO CONFORM TO CURRENT JURISPRUDENCE.— While the CA finding that the petitioner is entitled to nominal damages as his right to procedural due process was not respected despite the presence of just causes for his dismissal is affirmed, this Court finds the CA to have erred in fixing the amount that the Company is liable to pay.

The CA should have taken cognizance of the numerous cases decided by this Court where the amount of nominal damages was fixed at ₱30,000.00 if the dismissal was for a just cause.

APPEARANCES OF COUNSEL

IBP National Committee on Legal Aid for petitioner.
Caraan and Associates Law Offices for respondents.

R E S O L U T I O N

REYES, *J.*:

The petitioner, who was the former machine operator of respondent New Age Graphics Inc. (Graphics, Inc.), files this petition for review under Rule 45 of the Rules of Court of the Decision[1] dated June 9, 2009 and Resolution[2] dated April 14, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106928. By way of its June 9, 2009 Decision, the CA reversed and set aside the March 31, 2008 Decision[3] and October 28, 2008 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002759-07 affirming the August 15, 2007 Decision[5] of Labor Arbiter Danna M. Castillon (LA Castillon), which found the petitioner to be illegally dismissed.

The CA exonerated the petitioner from the charges of destroying Graphics, Inc.'s property and disloyalty to Graphics, Inc. and its objectives. However, the CA ruled that the petitioner's unjustified refusal to render overtime work, unexplained failure to observe prescribed work standards, habitual tardiness and

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[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring; *rollo*, pp. 34-64.

[2] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Mario L. Guariña III and Ricardo R. Rosario, concurring; *id*. at 66.

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

[4] *Id.* at 86-89.

[5] *Id.* at 67-77.

chronic absenteeism despite warning and non-compliance with the directive for him to explain his numerous unauthorized absences constitute sufficient grounds for his termination. Specifically:

> On the ground of repeated violations of company's rules and regulations, namely: insubordination, deliberate slowdown of work, habitual tardiness, absence without official leave and inefficiency; We find that public respondent commission, in affirming labor arbiter Castillon, rushed into conclusion that petitioner has failed to convince the commission *a quo* on what company rules and regulations private respondent had committed. x x x
>
> The foregoing, notwithstanding, we find that private respondent should be dismissed on the ground of willful disobedience of the warning and memoranda issued by petitioner. To be validly dismissed on the ground of willful disobedience requires the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.
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> Private respondent's continued refusal to acknowledge receipt and to present his defense against the notice of suspension and of dismissal, render him guilty of insubordination or willful disobedience of the reasonable and lawful order of petitioner. These orders were made with [regard] to his duties to the company as a punctual employee and as the sole and exclusive operator of the printing machine provided to him by petitioner. Therefore, the obligation to answer rests upon him who is alleged to have committed infractions against his employer, otherwise he is deemed to have waived his right to be heard and would be made to suffer the consequences of such refusal.
>
> Private respondent is also accused of insubordination for the reason that he stubbornly refused to follow the orders of his General Manager to show the latter and check on the computer using the CMYK guide, whether the colors he is running in his printing machine are correct. After initially following the said order, and confirming that the first color, cyan, running in the machine was correct, he failed to observe the same procedure on the second color magenta and did not even bother to remedy it after it was pointed out by the Computer Graphic Artist supervising him. Since this was not the first time

he was reprimanded for carelessly rushing the work assigned to him, disregarding certain procedures to ensure the quality of the same and thereby resulting in mediocre products which earn the ire of the company's clientele, his stubborn refusal to change shows a clear act of insubordination against private respondent.

x x x x x x x x x

Private respondent has pending work on La Salleño Magazine on May 25-26, 2004, but refused to do overtime in order to finish the same. Aside from this, he has two other works required for him to finish, mainly: PCU-Manila Brochure and Hijas de Maria souvenir program. In procuring absences during the times when workload was heavy, the printing deadlines for the months of April and May were not met and petitioner incurred losses from overtime pay for the other employees who were forced to take on the work left by private respondent and from penalties imposed by clients for every day of delay after the deadlines set for the delivery of the printed materials.

x x x x x x x x x

Furthermore, private respondent's refusal to render overtime work when required upon him, contributed to losses incurred by the petitioner. Public respondent commission has erred in ruling that rendition of the same is not mandatory. Art. 89 of the Labor Code empowers the employer to legally compel his employees to perform overtime work against their will to prevent serious loss or damage, to wit:

x x x x x x x x x

In the present case, petitioner's business is a printing press whose production schedule is sometimes flexible and varying. It is only reasonable that workers are sometimes asked to render overtime work in order to meet production deadlines.

On or before May 26, 2004, private respondent was asked to render overtime work but he refused to do so despite the "rush" orders of customers and petitioner's need to meet its deadlines set by the former. In fact, he reneged on his promise to do the same, after being issued an Overtime Slip Form by Mylene Altovar, and instead went out with another individual, as attested by his wife after calling the company to inform it of such absence. He knew that he was going to be unavailable for work on the following day, but instead

of trying to finish his work before that date by rendering overtime, due to the "rush" in meeting the deadlines, he opted to forego with the same, and thereby rejecting the order of petitioner.

x x x x x x x x x

Petitioner further alleges habitual tardiness on the part of private respondent for which he received a warning notice in April and May 2004. For the month of January and February 2004 alone, he reported late for work 23 times and on May 2004, just prior to his suspension, he was yet again late for 6 times. The Daily Time Records of private respondent contained the entries which [were] personally written by him. x x x

Finally, on petitioner's allegation on private respondent's absences without official leave, We hold that the latter's actions were indeed unjustified. Despite the warning issued to private respondent by petitioner on his AWOLs during the month of April and May, and instead of reporting to the company to deny or to refute the basis for recommendation of dismissal, he absented himself from Jun. 15 to Jul. 15, 2004, which prompted to (sic) the termination of his employment. The ruling of the labor arbiter that since the final recommendation of petitioner was "dismissal for cause," private respondent cannot be faulted for his failure to report for work on Jun. 15 does not hold water. What was given to private respondent on Jun. 15, 2004 was indeed in the form of a notice of dismissal. However, it was only recommended that he be dismissed from his employment and is still given the opportunity to present his defense to deny or refute the said recommendation of company.[6] x x x (Citations omitted)

Nonetheless, while the CA recognized the existence of just causes for petitioner's dismissal, it found the petitioner entitled to nominal damages in the amount of ₱5,000.00 due to Graphics, Inc.'s failure to observe the procedural requirements of due process.

Private respondent was not accorded due process when petitioner issued and served to the former the written notice of dismissal dated Jun. 15, 2004. A careful perusal of the records will show that the notice issued by the employer gives the employee only twenty-four

[6] *Id.* at 50-56.

(24) hours to answer and put up his defenses against the accusations laid upon him by the company, in contravention with the rule of a "reasonable" period as construed in *King of Kings Transport v. Mamac*. Moreover, the scheduled hearing in front of Leticia D. Lago was on the same date at 1:00 p.m., which left private respondent with no recourse to secure the services of a counsel, much less prepare a good rebuttal against the alleged evidences for the valid dismissal of the former.

x x x x x x x x x

x x x Considering that petitioner has made efforts in the past to afford private respondent the opportunity to be able to defend himself, but the latter, instead of availing such remedy, rejected the same; We have taken this into consideration, and impose [₱]5,000.00 as the penalty for the employer's failure to comply with the due process requirement.[7] (Citations omitted)

This Court finds no cogent reason to reverse the assailed issuances of the CA.

First, the petitioner's arbitrary defiance to Graphics, Inc.'s order for him to render overtime work constitutes willful disobedience. Taking this in conjunction with his inclination to absent himself and to report late for work despite being previously penalized, the CA correctly ruled that the petitioner is indeed utterly defiant of the lawful orders and the reasonable work standards prescribed by his employer.

This particular issue is far from being novel as this Court had the opportunity in *R.B. Michael Press v. Galit*[8] to categorically state that an employer has the right to require the performance of overtime service in any of the situations contemplated under Article 89 of the Labor Code and an employee's non-compliance is willful disobedience. Thus:

For willful disobedience to be a valid cause for dismissal, these two elements must concur: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse

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[7] *Id.* at 58-61.

[8] G.R. No. 153510, February 13, 2008, 545 SCRA 23.

attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

In the present case, there is no question that petitioners' order for respondent to render overtime service to meet a production deadline complies with the second requisite. Art. 89 of the Labor Code empowers the employer to legally compel his employees to perform overtime work against their will to prevent serious loss or damage:

> Art. 89. EMERGENCY OVERTIME WORK
>
> Any employee may be required by the employer to perform overtime work in any of the following cases:
>
> x x x x x x x x x
>
> (c) When there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to the employer or some other cause of similar nature;
>
> x x x x x x x x x

In the present case, petitioners' business is a printing press whose production schedule is sometimes flexible and varying. It is only reasonable that workers are sometimes asked to render overtime work in order to meet production deadlines.

x x x x x x x x x

The issue now is, whether respondent's refusal or failure to render overtime work was willful; that is, whether such refusal or failure was characterized by a wrongful and perverse attitude. In *Lakpue Drug Inc. v. Belga*, willfulness was described as "characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination." The fact that respondent refused to provide overtime work despite his knowledge that there is a production deadline that needs to be met, and that without him, the offset machine operator, no further printing can be had, shows his wrongful and perverse mental attitude; thus, there is willfulness.

Respondent's excuse that he was not feeling well that day is unbelievable and obviously an afterthought. He failed to present any evidence other than his own assertion that he was sick. Also, if it was true that he was then not feeling well, he would have taken the day off, or had gone home earlier, on the contrary, he stayed

and continued to work all day, and even tried to go to work the next day, thus belying his excuse, which is, at most, a self-serving statement.

After a re-examination of the facts, we rule that respondent unjustifiably refused to render overtime work despite a valid order to do so. The totality of his offenses against petitioner R.B. Michael Press shows that he was a difficult employee. His refusal to render overtime work was the final straw that broke the camel's back, and, with his gross and habitual tardiness and absences, would merit dismissal from service.[9] (Citations omitted)

Noticeably, this case and *R.B. Michael Press* share a parallelism. Similar to the dismissed employee in the above-quoted case, the petitioner exhibited willful disobedience to a reasonable order from his employer and this Court does not find any reason why petitioner should be accorded a different treatment.

Second, the petitioner's failure to observe Graphics, Inc.'s work standards constitutes inefficiency that is a valid cause for dismissal. Failure to observe prescribed standards of work, or to fulfill reasonable work assignments due to inefficiency may constitute just cause for dismissal. Such inefficiency is understood to mean failure to attain work goals or work quotas, either by failing to complete the same within the alloted reasonable period, or by producing unsatisfactory results. As the operator of Graphics, Inc.'s printer, he is mandated to check whether the colors that would be printed are in accordance with the client's specifications and for him to do so, he must consult the General Manager and the color guide used by Graphics, Inc. before making a full run. Unfortunately, he failed to observe this simple procedure and proceeded to print without making sure that the colors were at par with the client's demands. This resulted to delays in the delivery of output, client dissatisfaction, and additional costs on Graphics, Inc.'s part.

Security of tenure is indeed constitutionally guaranteed. However, this should not be indiscriminately invoked to deprive an employer of its management prerogatives and right to shield

[9] *Id.* at 33-35.

itself from incompetence, inefficiency and disobedience displayed by its employees. The procedure laid down by Graphics, Inc. which the petitioner was bound to observe does not appear to be unreasonable or unnecessarily difficult. On the contrary, it is necessary and relevant to the achievement of Graphics, Inc.'s objectives. The petitioner's non-compliance is therefore hard to comprehend.

While a penalty in the form of suspension had already been imposed on the petitioner for his habitual tardiness and repeated absenteeism, the principle of "totality of infractions" sanctions the act of Graphics, Inc. of considering such previous infractions in decreeing dismissal as the proper penalty for his tardiness and unauthorized absences incurred afterwards, in addition to his refusal to render overtime work and conform to the prescribed work standards. In *Merin v. National Labor Relations Commission*,[10] this Court expounded on the principle of totality of infractions as follows:

> The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty[.] Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests.[11] (Citations omitted)

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[10] G.R. No. 171790, October 17, 2008, 569 SCRA 576.

[11] *Id.* at 581-582.

This Court cannot condone the petitioner's attempt to belittle his habitual tardiness and absenteeism as these are manifestation of lack of initiative, diligence and discipline that are adverse to Graphics, Inc.'s interest. In *Challenge Socks Corporation v. Court of Appeals*,[12] this Court said that it reflects an indifferent attitude to and lack of motivation in work. It is inimical to the general productivity and business of the employer. This is especially true when it occurred frequently and repeatedly within an extensive period of time and despite several warnings.

This Court cannot likewise agree to the petitioner's attempt to brush aside his refusal to render overtime work as inconsequential when Graphics, Inc.'s order for him to do so is justified by Graphics, Inc.'s contractual commitments to its clients. Such an order is legal under Article 89 of the Labor Code and the petitioner's unexplained refusal to obey is insubordination that merits dismissal from service.

The petitioner harped on the improper motivations of Graphics, Inc. in ordering his dismissal, primary of which was the complaint he filed before the Department of Labor and Employment that eventually led to the finding of violations of laws on labor standards and tax regulations. However, the petitioner fails to convince that he is not the incorrigible employee portrayed by the evidence presented by the respondents. The petitioner does not deny that he had been habitually tardy and absent and continued being so even after he had been warned and thereafter suspended. Neither does he deny that he refused to render overtime work and that Graphics, Inc. had a legally acceptable reason for requiring him to do so. The petitioner can only argue that his refusal is not tantamount to willful disobedience, which of course, is disagreeable. In fact, the petitioner's refusal despite knowledge that his regular presence at work and extended hours thereat on some occasions were necessary for Graphics, Inc. to meet its obligations to its clients does not only suggest willfulness on his part but even bad faith. On the other hand, the petitioner only proffers a general denial of the claim that Graphics, Inc. earned the ire of its clients due to the defective output resulting

[12] G.R. No. 165268, November 8, 2005, 474 SCRA 356.

from the petitioner's failure to comply with the prescribed work standards.

Even assuming as true the petitioner's claim that such complaint gave rise to ill-feelings on Graphics, Inc.'s part, he cannot reasonably and validly suggest that the respondents have stripped themselves of the right to dismiss him for his deliberate disobedience and lack of discipline in regularly and punctually reporting for work.

Undoubtedly, Graphics, Inc. complied with the substantive requirements of due process in effecting employee dismissal. However, the same cannot be said insofar as the procedural requirements are concerned. In *King of Kings Transport, Inc. v. Mamac*,[13] this Court laid down the manner by which the procedural due requirements of due process can be satisfied:

> To clarify, the following should be considered in terminating the services of employees:
>
> (1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. *Lastly*, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.
>
> (2) After serving the first notice, the employers should schedule and conduct a **hearing** or **conference** wherein the employees will

[13] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[14]

As correctly observed by the CA, Graphics, Inc. failed to afford the petitioner with a reasonable opportunity to be heard and defend itself. An administrative hearing set on the same day that the petitioner received the memorandum and the twenty-four (24) — hour period for him to submit a written explanation are far from being reasonable.

Furthermore, there is no indication that Graphics, Inc. issued a second notice, informing the petitioner of his dismissal. The respondents admit that Graphics, Inc. decided to terminate the petitioner's employment after he ceased reporting for work from the time he received the memorandum requiring him to explain and subsequent to his failure to submit a written explanation. However, there is nothing on record showing that Graphics, Inc. placed its decision to dismiss in writing and that a copy thereof was sent to the petitioner.

Notably, the respondents do not question the findings of the CA. The respondents chose not to convince this Court otherwise by not filing an appeal, which reasonably suggests that Graphics, Inc.'s failure to comply with the procedural requirements of due process is admitted.

Nonetheless, while the CA finding that the petitioner is entitled to nominal damages as his right to procedural due process was

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[14] *Id.* at 125-126.

not respected despite the presence of just causes for his dismissal is affirmed, this Court finds the CA to have erred in fixing the amount that the Company is liable to pay. The CA should have taken cognizance of the numerous cases decided by this Court where the amount of nominal damages was fixed at ₱30,000.00 if the dismissal was for a just cause. One of such cases is *Agabon v. National Labor Relations Commission*,[15] on which the CA relied in the Assailed Decision and was reiterated in *Genuino v. National Relations Commission*[16] as follows:

> In view of Citibank's failure to observe due process, however, nominal damages are in order but the amount is hereby raised to PhP 30,000 pursuant to *Agabon v. NLRC*. The NLRC's order for payroll reinstatement is set aside.
>
> In *Agabon*, we explained:
>
> > The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. *Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at [₱]30,000.00.* We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.
>
> Thus, the award of PhP 5,000 to Genuino as indemnity for non-observance of due process under the CA's March 31, 2000 Resolution in CA-G.R. SP No. 51532 is increased to PhP 30,000.[17]

WHEREFORE, premises considered, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. SP No. 106928 is **AFFIRMED** with **MODIFICATION** in that respondent New Age Graphics, Inc. is hereby ordered to pay petitioner Billy M.

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[15] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[16] G.R. Nos. 142732-33, December 4, 2007, 539 SCRA 342.

[17] *Id.* at 362-363, citing *Agabon v. NLRC*, G.R. No. 158693, November 17, 2004, 442 SCRA 573, 617.

Realda nominal damages in the amount of Thirty Thousand Pesos (₱30,000.00).

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 192737. April 25, 2012]

NEMIA CASTRO, *petitioner, vs.* **ROSALYN GUEVARRA and JAMIR GUEVARRA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; JURISDICTION IS VESTED IN THE COURT, NOT IN THE JUDGE, SO THAT WHEN A COMPLAINT IS FILED BEFORE ONE BRANCH OR JUDGE, JURISDICTION DOES NOT ATTACH TO SAID BRANCH OF THE JUDGE ALONE, TO THE EXCLUSION OF OTHERS.— A case, once raffled to a branch, belongs to that branch unless re-raffled or otherwise transferred to another branch in accordance with established procedure. The primary responsibility over the case belongs to the presiding judge of the branch to which it has been raffled/re-raffled or assigned. x x x It bears to stress that while the RTC is divided into several branches, each of the branches is not a court distinct and separate from the others. Jurisdiction is vested in the court, not in the judge, so that when a complaint is filed before one branch or judge, jurisdiction does not attach to the said branch of the judge alone, to the exclusion of others. Succinctly, jurisdiction over Civil Case No. 2187-00 does not pertain solely to Branch 90 but to *all the branches of the RTC, Cavite*, including Branch 22 to where the case was subsequently re-raffled. The continuity of the court and the efficacy of its

proceedings are not affected by the death, retirement or cessation from service of the judge presiding over it. Evidently, the argument, that the December 15, 2004 Omnibus Order and all orders subsequently issued by Judge Mangrobang were invalid for want of jurisdiction because of alleged undue interference by one branch over another, holds no water.

2. ID.; CIVIL PROCEDURE; IT IS TOO LATE IN THE DAY FOR PETITIONER TO QUESTION THE LEGALITY OF THE DECEMBER 15, 2004 OMNIBUS ORDER, WHICH HAS ALREADY ATTAINED FINALITY.— At any rate, it is too late in the day for Castro to question the soundness and legality of the December 15, 2004 Omnibus Order, which has already attained finality. The Court notes that Castro never questioned the said Omnibus Order at the first opportunity by filing a motion for reconsideration within fifteen (15) days from receipt of a copy thereof. Neither did she elevate it to the CA via a petition for *certiorari* within sixty (60) days from notice of said Order, pursuant to Section 4 of Rule 65 of the Rules of Court. Castro kept her silence on the matter, indicating that she slept on her rights. Her failure to seasonably avail of these remedies effectively closed the door for a possible reconsideration or reversal of the subject Omnibus Order. Thus, if there was indeed error in the disposition of Spouses Guevarra's motion for reconsideration of the December 22, 2003 Decision, Castro was not entirely without blame.

3. ID.; ID.; NEW TRIAL; THE FILING OF A MOTION FOR NEW TRIAL IN CASE AT BAR WAS PREMATURE AND UNCALLED FOR BECAUSE A DECISION HAS YET TO BE RENDERED BY THE TRIAL COURT IN CIVIL CASE NO. 2187-00.— New trial is a remedy that seeks to temper the severity of a judgment or prevent the failure of justice. The effect of an order granting a new trial is to wipe out the previous adjudication so that the case may be tried *de novo* for the purpose of rendering a judgment in accordance with law, taking into consideration the evidence to be presented during the second trial. Consequently, a motion for new trial is proper only after the rendition or promulgation of a judgment or issuance of a final order. A motion for new trial is only available when relief is sought against a judgment and the judgment is not yet final. Verily, in the case at bench, the filing by Spouses Guevarra of a motion for new trial was

premature and uncalled for because a decision has yet to be rendered by the trial court in Civil Case No. 2187-00. Let it be underscored that the December 22, 2003 Decision of Judge Español was effectively set aside by the December 15, 2004 Omnibus Order of Judge Mangrobang. Hence, there is technically no judgment which can be the subject of a motion for new trial.

4. ID.; ID.; THE COURT DEEMS IT FAIR AND EQUITABLE IN THE INTEREST OF JUSTICE TO ALLOW RESPONDENTS TO ADDUCE EVIDENCE IN CIVIL CASE NO. 2187-00 BEFORE RTC- BR. 22 TO AFFORD THEM THE AMPLEST OPPORTUNITY TO HAVE THEIR CAUSES JUSTLY DETERMINED, FREE FROM THE CONSTRAINTS OF TECHNICALITIES.— At any rate, in the interest of justice, the Court deems it fair and equitable to allow Spouses Guevarra to adduce evidence in Civil Case No. 2187-00 before RTC- Br. 22. Note that what was granted by the March 23, 2007 Order of the RTC was respondents' motion which prayed, as principal relief, the revival of the proceedings and the grant of new trial only as an alternative. This is in consonance with the policy of the Court to afford party-litigants the amplest opportunity to enable them to have their causes justly determined, free from the constraints of technicalities. After all, it is but proper that the judge's mind be satisfied as to any and all questions presented during the trial in order to serve the cause of justice.

5. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RECOGNIZED EXCEPTIONS TO THE REQUIREMENT THAT A MOTION FOR RECONSIDERATION IS A CONDITION PRECEDENT TO THE FILING OF A PETITION FOR *CERTIORARI*; APPLICABLE IN CASE AT BAR.— A motion for reconsideration is a condition precedent to the filing of a petition for *certiorari*. However, the Court has recognized exceptions to the requirement, such as: (*a*) when it is necessary to prevent irreparable damages and injury to a party; (*b*) where the trial judge capriciously and whimsically exercised his judgment; (*c*) where there may be danger of a failure of justice; (*d*) where an appeal would be slow, inadequate, and insufficient; (*e*) where the issue raised is one purely of law; (*f*) where public interest is involved; and (*g*) in case of urgency. The circumstances obtaining in this case definitely placed Castro's

recourse under most of the above exceptions particularly because Judge Mangrobang ordered a new trial in the March 23, 2007 Order.

APPEARANCES OF COUNSEL

Ernesto R. Alejandro for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order, seeking to reverse and set aside the April 26, 2010 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No. 99763 and its June 29, 2010 Resolution,[2] denying petitioner's motion for reconsideration.

The Facts

The case stems from a complaint for cancellation and/or discharge of check and defamation/slander with damages filed by petitioner Nemia Castro *(Castro)* against respondents, spouses Rosalyn and Jamir Guevarra *(Spouses Guevarra)*, before the Regional Trial Court of Dasmariñas, Cavite, Branch 90 *(RTC–Br. 90)*, and docketed therein as Civil Case No. 2187-00. Castro sought the cancellation of her undated Far East Bank and Trust Company *(FEBTC)* Check No. 0133501 in the amount of ₱1,862,000.00, contending that the total obligation for which said check was issued had already been fully paid. Moreover, she prayed that FEBTC Check Nos. 0133574 and 0133575 be declared as without value; that Rosalyn Guevarra (*Rosalyn*) be ordered to return her excess payments totaling ₱477,257.00,

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[1] Penned by Associate Justice Antonio L. Villamor with Associate Justice Jose C. Reyes, Jr. and Associate Justice Rodil V. Zalameda, concurring; *rollo,* pp. 26-39.

[2] *Id.* at 40-41.

plus interest; and that she (Castro) be awarded exemplary damages, moral damages and attorney's fees.

In their answer with counterclaim, Spouses Guevarra claimed that there was no legal or factual basis to merit the discharge and cancellation of FEBTC Check No. 0133501. They stressed that the total partial payment made by Castro only amounted to ₱230,000.00, leaving an unpaid balance of ₱1,632,000.00.[3]

During the trial, Castro testified that pursuant to their rediscounting of check business arrangement, Rosalyn lent her cash of ₱1,362,000.00, which amount, they agreed, was to earn interest in the amount of ₱500,000.00. In turn, Castro issued to Rosalyn FEBTC Check No. 0133501 with a face value of ₱1,862,000.00. Later, Castro issued several postdated checks in favor of Rosalyn, representing installment payments on the amount covered by the subject check, which the latter subsequently encashed.

Sometime thereafter, Castro discovered that she had already settled the total obligation of ₱1,862,000.00 in full and had, in fact, overpaid. For said reason, Castro wrote a letter to Rosalyn informing the latter of her intention to order a "stop payment" of the postdated checks. On April 10, 2000, Castro instructed FEBTC to stop the payment of FEBTC Check No. 0133501. She later learned from the bank that the subject check dated July 15, 2000 had been deposited on September 19, 2000.

To substantiate her allegation of full payment, Castro presented as evidence FEBTC Check No. 0123739 encashed by Jamir Guevarra with the notation "Final Payment for Check No. 186A0133501" at the dorsal portion of the checks. On January 21, 2003, she made her formal offer of evidence. The evidence offered was admitted by RTC-Br. 90 in an Order dated February 10, 2003.

After Castro rested her case, Spouses Guevarra started presenting their documentary evidence to disprove the claim of full settlement of FEBTC Check No. 0133501. They also

[3] *Id.* at 57-58.

presented their witnesses: Olivia F. Yambao, representative of the Bank of the Philippine Islands, Nueno Ave., Imus Branch *(formerly FEBTC);* and Nenita M. Florido.

Records show that in the course of the presentation of their evidence, Atty. Ernesto R. Alejandro *(Atty. Alejandro),* counsel for the Spouses Guevarra, requested the issuance of a subpoena *duces tecum* and *ad testificandum* requiring the bank manager of FEBTC, Nueno Ave., Imus, Cavite Branch to produce the microfilm of FEBTC Check No. 186A0123739 and to testify thereon. According to Atty. Alejandro, this piece of evidence would prove that the words "Final Payment for Check No. 186A0133501" had been written at the dorsal portion of the check only after its encashment.[4]

Judge Dolores Español *(Judge Español),* then presiding judge of RTC- Br. 90, denied Atty. Alejandro's request in an order dated September 12, 2003, reasoning out that Castro had already been extensively cross-examined by him on matters relative to FEBTC Check No. 0133501. Spouses Guevarra moved for reconsideration but their motion was denied by the trial court in an order dated October 6, 2003. Spouses Guevarra, thus, filed a petition for *certiorari* with prayer for temporary restraining order (TRO) and/or writ of injunction with the CA, which case was docketed as CA-G.R. SP No. 80561.[5]

Meanwhile, Spouses Guevarra moved for the resetting of the October 30, 2003 hearing to another date. On November 6, 2003, RTC-Br. 90 issued an order denying this request and, instead, declared Spouses Guevarra to have waived the further presentation of their evidence and directed them to submit their formal offer of evidence. The respondent spouses moved for the reconsideration of the November 6, 2003 Order. The said motion was denied in an order dated November 28, 2003. In the same order, the case was deemed submitted for decision.[6]

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[4] *Id.* at 59-63.

[5] *Id.* at 104.

[6] *Id.* at 105.

Spouses Guevarra filed their motion to defer action on December 15, 2003, but the same was likewise denied, considering that no TRO or preliminary injunction was issued by the CA enjoining Judge Español from further proceeding with the case.

Thereafter, RTC-Br. 90 rendered its Decision dated December 22, 2003 in favor of Castro, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and against defendants Rosalyn Guevarra and Jamir Guevarra ordering the discharge of Far East Bank and Trust Co. (FEBTC) Check No. 0070789 and its replacement FEBTC Check No. 0133501, which, defendant subsequently affixed the date July 15, 2000 thereto, both in the amount of ₱1,862,000.00, the same are hereby cancelled if not returned to the plaintiff. Further, FEBTC Check Nos. 0133574 and 0133575 dated March 24, 2000 and March 30, 2000, respectively, each in the amount of ₱10,000.00 are also hereby declared as without value. Likewise, the defendants are ordered to return to the plaintiff the amount of ₱477,257.00 representing the excess payment made by plaintiff plus legal interest of 12% per annum, from the filing of this complaint until fully paid. Further, defendants are ordered to pay plaintiff moral damages of ₱400,000.00, exemplary damages of ₱100,000.00, attorney's fees of ₱200,000.00, and the costs of suit.
>
> Furthermore, for lack of factual and legal basis, Criminal Case No. 8624-01, entitled People of the Philippines *vs.* Nemia Castro, for Estafa under Article 315 (2-d), RPC in Relation to PD 818, is hereby DISMISSED. Thus, the Clerk of Court is directed to furnish the Municipal Trial Court of Imus, Cavite, with the copy of this Decision for its information and guidance with regard to the Criminal Cases involving FEBTC Check Nos. 0133574 and 0133575 pending before the said Court.
>
> SO ORDERED.[7]

On January 26, 2004, Spouses Guevarra filed a motion for reconsideration[8] assailing the validity of the decision on the

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[7] *Id.* at 64-65.

[8] *Id.* at 66-82.

ground that it was promulgated after the retirement of Judge Español from the service. They added that the decision was contrary to law and the facts of the case, and that they were denied the right to present evidence.

On January 28, 2004, Spouses Guevarra filed their motion to re-raffle the case,[9] which was granted on even date by Judge Norberto Quisumbing, Jr., Executive Judge of the RTC, Imus, Cavite.[10] Subsequently, Civil Case No. 2187-00 was raffled to RTC, Branch 22 *(RTC- Br. 22)*, presided by Judge Cesar Mangrobang *(Judge Mangrobang)*.

Meanwhile, on February 18, 2004, the CA issued its Resolution,[11] in CA-G.R. SP No. 80561, denying the application of Spouses Guevarra for the issuance of a TRO.

Resolving the Motion to Defer Action and the Motion for Reconsideration of Spouses Guevarra, RTC-Br. 22 issued its Omnibus Order[12] dated December 15, 2004 granting the motion, thus, setting aside the RTC-Br. 90 December 22, 2003 Decision on the ground that it was promulgated after Judge Español retired from the service, holding in abeyance the further proceedings in the case. The decretal portion of the Omnibus Order states:

> WHEREFORE, for being meritorious, defendants' Motion for Reconsideration is hereby granted, and the Court's decision dated December 22, 2003 is hereby reconsidered and set aside.
>
> Further, in order not to intricate matters in this case considering that a Petition for *Certiorari* had been filed by the defendants before the Honorable Court of Appeals, let the proceedings of this case be held in abeyance until after the Court of Appeals shall have ruled on the pending petition.
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> SO ORDERED.[13]

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[9] *Id.* at 84-86.

[10] *Id.* at 87.

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

[12] *Id.* at 43-48.

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

On July 20, 2006, the CA promulgated its Decision[14] in CA-G.R. No. 80561, dismissing the petition for *certiorari*. The CA held that the issues raised therein had become moot and academic because of the rendition by RTC- Br. 90 of its December 22, 2003 judgment in Civil Case No. 2187-00.

On October 20, 2006, Spouses Guevarra filed a motion[15] before RTC- Br. 22, praying for the revival of the proceedings and/or new trial to enable them to complete their presentation of evidence by submitting alleged newly discovered evidence which could disprove Castro's claims. On March 23, 2007, Judge Mangrobang issued the questioned Order[16] and disposed of the incident in this wise:

> WHEREFORE, premises considered, Defendants' Motion to Revive Proceedings and/or New Trial is hereby granted.
>
> Hence, the new trial of this case is hereby set on April 27, 2007 at 8:30 in the morning.
>
> SO ORDERED.[17]

Aggrieved, Castro filed a petition for *certiorari*[18] with prayer for TRO before the CA, assailing the March 23, 2007 Order of RTC-Br. 22 and collaterally attacking its December 15, 2006 Omnibus Order. She argued that Judge Mangrobang committed grave abuse of discretion in declaring the December 22, 2003 Decision as null and void and granting the motion of Spouses Guevarra for a new trial in Civil Case No. 2187-00.

On April 26, 2010, the CA denied the above petition. It opined that the petition should have been dismissed outright for failure of Castro to file a motion for reconsideration of the assailed Order. The CA also held that the issuance of the March 23, 2007 Order was not tainted with grave abuse of discretion, as

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[14] *Id.* at 51-55.

[15] *Id.* at 154-157.

[16] *Id.* at 88-92.

[17] *Id.* at 92.

[18] *Id.* at 100-125.

Judge Mangrobang acted within the bounds of his authority and in the exercise of his sound discretion. The *fallo* of said decision reads:

> WHEREFORE, premises considered, the instant petition is DENIED. The assailed Order of the RTC, Branch 22 of Imus, Cavite dated March 23, 2007 is AFFIRMED.[19]

Castro's motion for reconsideration was denied by the CA in its Resolution dated June 29, 2010.

ISSUES

Undaunted, Castro filed the present petition for review on *certiorari* before this Court and raised the following issues:

a) Whether a Motion for Reconsideration is required before filing a Petition for *Certiorari* under the circumstances of this case;

b) Whether the Court of Appeals committed grave abuse of discretion in denying the Petition for *Certiorari* for lack of a Motion for Reconsideration of the December 15, 2004 Omnibus Order issued by the Presiding Judge, Branch 22, RTC, Imus, Cavite;

c) Whether the service or mailing of copies of a judgment to the parties in a case is required in the promulgation of a judgment;

d) Whether the December 22, 2003 Decision of Branch 90, RTC, Dasmariñas, Cavite is a void judgment;

e) Whether the Court of Appeals committed grave abuse of discretion in denying the Petition for *Certiorari* in ruling that the Presiding Judge of Branch 22, RTC, Imus, Cavite did not abuse his discretion amounting to lack or excess of jurisdiction in issuing the March 23, 2007 Order.[20]

On November 15, 2010, the Court issued a resolution[21] denying Castro's application for the issuance of a TRO and/or writ of preliminary injunction.

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[19] *Id.* at 38.

[20] *Id.* at 10-11.

[21] *Id.* at 234.

A careful perusal of the pleadings filed by the parties leads the Court to conclude that this case revolves around the following core issues:

1) **Whether RTC- Br. 22 had the authority to pass upon and resolve the motion for reconsideration of the December 22, 2003 Decision of RTC- Br. 90 and all subsequent matters submitted to it in Civil Case No. 2187-00;**

2) **Whether a motion for reconsideration is required before the filing of a petition for *certiorari* under the circumstances of the case at bench; and**

3) **Whether RTC-Br. 22 erred in granting a new trial of the case.**

In her petition, Castro takes exception to the general rule which requires a motion for reconsideration prior to the institution of a petition for *certiorari*. She argues that the December 15, 2004 Omnibus Order and the March 23, 2007 Order were both patently void. She further questions the authority of Judge Mangrobang to assume and take over Civil Case No. 2187-00 and to set aside the December 22, 2003 *ponencia* of Judge Español. She claims that such acts constitute an encroachment on the adjudicatory prerogative of a co-equal court. She posits that all subsequent proceedings and orders issued by Judge Mangrobang were void by reason of this undue interference of one branch in another's case. Lastly, she insists that the December 22, 2003 Decision of Judge Español was filed with the Clerk of Court before she retired and, thus, was valid.

The Court's Ruling

A case, once raffled to a branch, belongs to that branch unless re-raffled or otherwise transferred to another branch in accordance with established procedure.[22] The primary responsibility over the case belongs to the presiding judge of the branch to which it has been raffled/re-raffled or assigned.

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[22] *Re: Cases Left Undecided by Judge Sergio D. Mabunay, RTC, Branch 24, Manila*, 354 Phil. 698, 704 (1998).

The records bear out that on January 26, 2004, Spouses Guevarra filed a motion for reconsideration of the December 22, 2003 Decision and two days later, moved for a re-raffle of Civil Case No. 2187-00, allegedly to ensure the early resolution of the motion as there was no certainty as to when a new judge would be appointed to replace Judge Español. The motion to re-raffle was granted by the Executive Judge on January 28, 2004. Civil Case No. 2187-00 was later raffled to RTC-Br. 22, presided by Judge Mangrobang. In the absence of clear and convincing proof that irregularity and manipulation attended the re-raffle of Civil Case No. 2187-00, the Court holds that said civil case was properly assigned and transferred to RTC-Br. 22, vesting Judge Mangrobang with the authority and competency to take cognizance, and to dispose, of the case and all pending incidents, such as Spouses Guevarra's motion for reconsideration of the December 22, 2003 Decision.

It bears to stress that while the RTC is divided into several branches, each of the branches is not a court distinct and separate from the others.[23] Jurisdiction is vested in the court, not in the judge, so that when a complaint is filed before one branch or judge, jurisdiction does not attach to the said branch of the judge alone, to the exclusion of others.[24] Succinctly, jurisdiction over Civil Case No. 2187-00 does not pertain solely to Branch 90 but to *all the branches of the RTC, Cavite,* including Branch 22 to where the case was subsequently re-raffled. The continuity of the court and the efficacy of its proceedings are not affected by the death, retirement or cessation from service of the judge presiding over it.[25] Evidently, the argument, that the December 15, 2004 Omnibus Order and all orders subsequently issued by Judge Mangrobang were invalid for want of jurisdiction because

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[23] *ABC Davao Auto Supply, Inc. v. Court of Appeals*, 348 Phil. 240, 245 (1998).

[24] *People v. CFI of Quezon City, Br. X*, G.R. No. L-48817, October 29, 1993, 227 SCRA 457, 461.

[25] *ABC Davao Auto Supply, Inc. v. Court of Appeals*, *supra* note 23 at 246.

of alleged undue interference by one branch over another, holds no water.

At any rate, it is too late in the day for Castro to question the soundness and legality of the December 15, 2004 Omnibus Order, which has already attained finality.

The Court notes that Castro never questioned the said Omnibus Order at the first opportunity by filing a motion for reconsideration within fifteen (15) days from receipt of a copy thereof. Neither did she elevate it to the CA via a petition for *certiorari* within sixty (60) days from notice of said Order, pursuant to Section 4 of Rule 65 of the Rules of Court. Castro kept her silence on the matter, indicating that she slept on her rights. Her failure to seasonably avail of these remedies effectively closed the door for a possible reconsideration or reversal of the subject Omnibus Order. Thus, if there was indeed error in the disposition of Spouses Guevarra's motion for reconsideration of the December 22, 2003 Decision, Castro was not entirely without blame.

Anent the issue of whether the non-filing by Castro of a motion for reconsideration of the March 23, 2007 Order is fatal to her petition for *certiorari*, the Court finds in the negative.

A motion for reconsideration is a condition precedent to the filing of a petition for *certiorari*. However, the Court has recognized exceptions to the requirement, such as: (*a*) when it is necessary to prevent irreparable damages and injury to a party; (*b*) where the trial judge capriciously and whimsically exercised his judgment; (*c*) where there may be danger of a failure of justice; (*d*) where an appeal would be slow, inadequate, and insufficient; (*e*) where the issue raised is one purely of law; (*f*) where public interest is involved; and (*g*) in case of urgency.[26] The circumstances obtaining in this case definitely placed Castro's recourse under most of the above exceptions particularly because Judge Mangrobang ordered a new trial in the March 23, 2007 Order.[27]

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[26] *Garrido v. Tortogo,* G.R. No. 156358, August 17, 2011.

[27] *Rollo,* p. 92

The Court deems the grant of new trial without legal basis. Sections 1 and 6 of Rule 37 of the Rules of Court read:

> SECTION 1. *Grounds of and period for filing motion for new trial.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:
>
> x x x x x x x x x
>
> (b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial and which if presented would probably alter the result.
>
> x x x x x x x x x
>
> SEC. 6. *Effect of granting of motion for new trial.* — If a new trial is granted in accordance with the provisions of this Rule, the original judgment or final order shall be vacated, and the action shall stand for trial *de novo* x x x.

New trial is a remedy that seeks to temper the severity of a judgment or prevent the failure of justice.[28] The effect of an order granting a new trial is to wipe out the previous adjudication so that the case may be tried *de novo* for the purpose of rendering a judgment in accordance with law, taking into consideration the evidence to be presented during the second trial. Consequently, a motion for new trial is proper only after the rendition or promulgation of a judgment or issuance of a final order. A motion for new trial is only available when relief is sought against a judgment and the judgment is not yet final.[29] Verily, in the case at bench, the filing by Spouses Guevarra of a motion for new trial was premature and uncalled for because a decision has yet to be rendered by the trial court in Civil Case No. 2187-00. Let it be underscored that the December 22, 2003 Decision of Judge Español was effectively set aside by the December 15, 2004 Omnibus Order of Judge Mangrobang. Hence, there is technically no judgment which can be the subject of a motion for new trial.

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[28] *Jose v. Court of Appeals*, 162 Phil. 364, 376 (1976).

[29] *Samonte v. Samonte*, 159-A Phil. 777, 786 (1975).

At any rate, in the interest of justice, the Court deems it fair and equitable to allow Spouses Guevarra to adduce evidence in Civil Case No. 2187-00 before RTC- Br. 22. Note that what was granted by the March 23, 2007 Order of the RTC was respondents' motion which prayed, as principal relief, the revival of the proceedings and the grant of new trial only as an alternative. This is in consonance with the policy of the Court to afford party-litigants the amplest opportunity to enable them to have their causes justly determined, free from the constraints of technicalities.[30] After all, it is but proper that the judge's mind be satisfied as to any and all questions presented during the trial in order to serve the cause of justice.

WHEREFORE, the petition is **DENIED.** The Regional Trial Court of Imus, Cavite, Branch 22, is ordered to proceed with the case and to allow the respondents, Rosalyn Guevarra and Jamir Guevarra, to continue their presentation of evidence and thereafter make their formal offer. If no rebuttal evidence will be presented, the trial court shall proceed to decide the case on the merits.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 193250. April 25, 2012]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **AMELIO TRIA and JOHN DOE,** *respondents.*

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[30] *Spouses Leyba v. Rural Bank of Cabuyao, Inc.*, G.R. No. 172910, November 14, 2008, 571 SCRA 160, 163.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; GRAVE ABUSE OF DISCRETION ATTENDED THE DECISION TO DROP THE CHARGES AGAINST RESPONDENT AS THERE WAS MORE THAN PROBABLE CAUSE TO PROCEED AGAINST HIM FOR QUALIFIED THEFT.—** While discretionary authority to determine probable cause in a preliminary investigation to ascertain sufficient ground for the filing of an information rests with the executive branch, such authority is far from absolute. It may be subject to review when it has been clearly used with grave abuse of discretion. And indeed, grave abuse of discretion attended the decision to drop the charges against Tria as **there was more than probable cause to proceed against him for qualified theft**.

2. **ID.; ID.; ID.; ID.; WHAT IS NECESSARY FOR THE FILING OF CRIMINAL INFORMATION IS NOT PROOF BEYOND REASONABLE DOUBT THAT THE PERSON ACCUSED IS GUILTY OF THE ACTS IMPUTED TO HIM, BUT ONLY THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT HE IS GUILTY OF THE CRIME CHARGED.—** It must be emphasized at the outset that what is necessary for the filing of a criminal information is not proof beyond reasonable doubt that the person accused is guilty of the acts imputed on him, but only that there is probable cause to believe that he is guilty of the crime charged. Probable cause, for purposes of filing a criminal information, are such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof. It is the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he is to be prosecuted. 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. The acts of Tria and the relevant circumstances that led to the encashment of the check provide more than sufficient basis for the finding of probable cause to file an information against him and John Doe/Atty. Reyes for qualified theft. In fact, it is easy to infer from the factual milieu of the instant case the existence of all

the elements necessary for the prosecution of the crime of qualified theft.

3. CRIMINAL LAW; THEFT; WHEN COMMITTED; ELEMENTS OF THE CRIME.— As defined, theft is committed by any person who, with intent to gain, but without violence against, or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent. If committed with grave abuse of confidence, the crime of theft becomes qualified. In précis, qualified theft punishable under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code (RPC) is committed when the following elements are present: 1. Taking of personal property; 2. That the said property belongs to another; 3. That the said taking be done with intent to gain; 4. That it be done without the owner's consent; 5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and 6. That it be done with grave abuse of confidence.

4. ID.; ID.; ID.; ID.; ALL THE ELEMENTS OF THE CRIME ARE PRESENT IN CASE AT BAR.— In the instant case, the first and second elements are unquestionably present. The money involved is the personal property of Tria's employer, PNB. Tria's argument that the amount does not belong to PNB even if it is the depositary bank is erroneous since it is well established that a bank acquires ownership of the money deposited by its clients. The third element, intent to gain or *animus lucrandi*, is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation. This element is immediately discernable from the circumstances narrated in the affidavits submitted by PNB's employees. In particular, it is plain from Tria's misrepresentation that the person he called Atty. Reyes was a valued client of PNB-MWSS who was authorized to encash the manager's check and his act of revising his functions as stated in the Minutes of the Meeting referred to by Veniegas to make it appear that he had been tasked with "accompanying valued client/clients to QC Circle Branch for encashment of MCs merely to identify the bearer/payee and confirmation of the MC whenever we are short in cash." The fifth element is undisputed, while the last element, that the taking be done with grave abuse of confidence, is sufficiently shown by the affidavits of PNB and Tria's own admission of the position he held at the Bank. A

bank's employees are entrusted with the possession of money of the bank due to the confidence reposed in them and as such they occupy positions of confidence. It is the existence of the fourth element––the taking be done without the owner's consent—that is the crux of contention. While the appellate court, together with the DOJ and OCP, maintains the negative and equates the cumulative acts of the other PNB employees as the consent of PNB in the issuance and encashment of the manager's check, this Court cannot find itself to sustain such opinion.

5. **ID.; ID.; ID.; ID.; THE FELONY OF QUALIFIED THEFT STARTED WITH THE USE OF THE MISSING FALSIFIED LETTER-REQUEST AND SUPPORTING DOCUMENTS FOR THE ISSUANCE OF THE MANAGER'S CHECK AND THE RE-ACTIVATION OF THE MWSS CURRENT ACCOUNT (C/A).—** Taking this fact into consideration, it cannot be denied that the wheels of the felony started turning days before the misrepresentations made by Tria at PNB-Circle. And the encashment was a mere culmination of the crime that was commenced in PNB-MWSS. The felony of qualified theft started with the use of the now missing falsified letter-request and supporting documents for the issuance of the manager's check and the re-activation of the MWSS C/A. **It was the pretense of an authority from MWSS that deprived PNB the liberty to either withhold or freely give its consent for the valid reactivation of the account and issuance of the check**. Quoting from *Black v. State*, this Court held in *Gaviola v. People* that **such pretense does not validate a taking**: In all cases where one in good faith takes another's property under claim of title in himself, he is exempt from the charge of larceny, however puerile or mistaken the claim may in fact be. And the same is true where the taking is on behalf of another, believed to be the true owner. Still, if the claim is dishonest, a mere pretense, it will not protect the taker.

6. **ID.; ID.; ID.; ID.; PETITIONER BANK DID NOT CONSENT TO THE ISSUANCE OF THE CHECK AND ITS EVENTUAL ENCASHMENT WHICH BOTH CONSTITUTE THE TAKING OF PERSONAL PROPERTY AS RESPONDENTS HAD MADE SURE THAT THE BANK WAS RENDERED INUTILE AND INCAPABLE TO GIVE ITS CONSENT.—** As standard banking practice intended

precisely to prevent unauthorized and fraudulent withdrawals, a bank manager verifies with the client-depositor to authenticate and confirm that he/she has validly authorized such withdrawal. Such failure of Tria as bank manager to verify the legitimacy of the requested withdrawal lends credence to the accusation that he colluded with Atty. Reyes to feloniously take money from PNB, and his complicity includes depriving the bank of its opportunity to deny and withhold the consent for the necessary issuance of Manager's Check No. 1165848. It cannot, therefore, be gainsaid that **PNB did not consent to the issuance of the check and its eventual encashment—which both constitute the taking of personal property—as respondents had made sure that the bank was rendered inutile and incapable to give its consent**. The fourth element of the crime clearly exists. x x x Nonetheless, nothing is more damning than the fact that Tria vouched for the identity of John Doe/Atty. Reyes, even claimed that Atty. Reyes is a valued client of PNB-MWSS, affixed his signature at the back portion of the check to guarantee that Atty. Reyes is the true and legal payee, and ultimately guaranteed that the Manager's check is legally effective and valid and everything is aboveboard. PNB-Circle could have verified from MWSS if the deduction is authorized especially considering that the money will be deducted from an account of a government corporation. The identification by Tria of Atty. Reyes as payee precluded and preempted the bank officials from verifying the transaction from MWSS. Thus, the identification made by Tria impliedly warranted to the PNB-Circle that said Manager's check was validly issued with the consent of PNB, and that the encashment is legal and warranted.

APPEARANCES OF COUNSEL

Mary Ann B. Del Prado-Arañas for petitioner.
Pedro Lazo for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the January 18, 2012 Decision[1] of the Court of Appeals in CA-G.R. SP No. 108571 entitled *Philippine National Bank v. Department of Justice, Amelio C. Tria and John Doe* which affirmed the Resolution dated December 26, 2007 issued by the Department of Justice.

The Facts

Respondent Amelio C. Tria (Tria) was a former Branch Manager of petitioner Philippine National Bank (PNB), assigned at PNB's Metropolitan Waterworks and Sewerage System Branch (PNB-MWSS) located within the Metropolitan Waterworks and Sewerage System (MWSS) Compound, Katipunan Road, Balara, Quezon City.

On September 21, 2001, MWSS opened Current Account (C/A) No. 244-850099-6 with PNB-MWSS and made an initial deposit of PhP 6,714,621.13 on October 10, 2001. The account was intended as a depository for a loan from the Asian Development Bank (ADB) to fund Contract No. MS-O1C.

To withdraw from the account, PNB checks must be issued and three signatures secured—one signatory each from MWSS, Maynilad Water Services, Inc. (MWSI), and the contractor, China-Geo Engineering Corporation (China-Geo).[2]

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[1] *Rollo*, pp. 10-20. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Normandie B. Pizarro and Florito S. Macalino.

[2] *Id.* at 55. The Capture Card (Annex "F", *rollo*, p. 97) accomplished upon the opening of the C/A stated the following: "Please recognize subject to the instruction given below, the following signature(s) in the operation of the deposit account by the application." The Capture Card had three boxes indicating the choice of signatures to be recognized, the last box of which was marked with an "x" indicating the word "ALL" with the phrases "any three (3)" and "one fr. each set" respectively typed above and below the box. The signature boxes contained the name and signatures of Marca

On April 16, 2003, C/A 244-850099-6 became dormant with a balance of PhP 5,397,154.07.[3]

In the meantime, Tria requested a listing of the dormant accounts of PNB-MWSS and borrowed the folders of MWSS and C/A 244-850099-6.[4] On one occasion, Tria also inquired about the irregularities involving manager's checks committed by the bank's former branch accountant.[5]

On April 22, 2004, PNB-MWSS received a letter-request from MWSS instructing the deduction of PhP 5,200,000 (plus charges) from C/A 244-850099-6 and the issuance of the corresponding manager's check in the same amount payable to a certain "Atty. Rodrigo A. Reyes." The letter-request was purportedly signed and approved by the duly authorized signatories of MWSS. Hence, C/A 244-850099-6 was re-activated in light of the letter-request.[6]

The letter-request, supporting documents, and Manager's Check Application Form were then evaluated by the bank's Sales and Service Officer (SSO), Agnes F. Bagasani, who found the same to be in order.[7]

Edsel B. Francisco (Francisco), who was also designated to perform the tasks of a Fund Transfer Processor (FTP), likewise verified the letter-request and the documents from the MWSS Current Account folder of the bank. He then effected the transaction requested by debiting C/A No. 244-850099-6 for the purchase of a Manager's Check payable to "Atty. Rodrigo A. Reyes" and prepared a *Batch Input Sheet* listing the supporting

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A. Cruz and Leonor Cleofas of MWSS, Arnulfo R. Ramirez and Salvador G. Tirona of MWSI, and Hua Zelin of Chine Geo.

[3] *Id.* at 94.

[4] *Id.* at 95.

[5] *Id.* at 96.

[6] *Id.* at 98.

[7] *Id.* at 55.

documents for the transaction together with the other transactions for that day.[8]

Manager's Check No. 1165848 was, thus, prepared and issued in the name of Atty. Rodrigo A. Reyes (Atty. Reyes) for the amount of PhP 5,200,000 (five million two hundred thousand pesos).[9]

On April 26, 2004, PNB-MWSS received cash delivery from PNB's Cash Center in the amount of PhP 8,660,000.[10] Nonetheless, at around 11:00 a.m. of the same day, respondent Tria accompanied Atty. Reyes in presenting Manager's Check No. 1165848 to PNB's Quezon City Circle Branch (PNB-Circle) for encashment and told PNB-Circle's SSO, George T. Flandez (Flandez), that PNB-MWSS had no available cash to pay the amount indicated in the Manager's Check. He also informed Flandez that Atty. Reyes was a valued client of his branch and was in a hurry to leave for a scheduled appointment.[11]

To confirm the issuance of Manager's Check No. 1165848, Flandez called PNB-MWSS and talked to its Sales and Service Head, Geraldine C. Veniegas (Veniegas).[12] Veniegas confirmed that PNB-MWSS issued a manager's check in favor of Atty. Reyes and sent a letter-confirmation through e-mail to PNB-Circle.[13]

While waiting for the confirmation, Flandez interviewed Atty. Reyes. Atty. Reyes told Flandez that he was an MWSS contractor and the amount covered by Manager's Check No. 1165848 represented the proceeds of his recent contract with MWSS. Atty. Reyes then showed his driver's license and Integrated Bar

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[8] Annex "H", *id*. at 100.

[9] *Id.* at 55.

[10] *Id.* at 96.

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

[12] *Id.* at 104.

[13] *Id*.

of the Philippines identification card to Flandez and wrote the numbers of these cards on the back of the manager's check.[14]

Upon receiving confirmation from PNB-MWSS regarding the manager's check, Flandez went to the Cash Center of PNB-Circle to pick up the cash requisition. Tria and Atty. Reyes, however, followed him with Tria telling Flandez: *"Pirmahan ko na lang 'tong check, George. Identify ko na lang siya kasi nagmamadali siya. Dito na lang i-receive. For security… kasi nag-iisa lang siya."*[15] Tria then placed his signature on the check above the handwritten note "PAYEE IDENTIFIED – AMELIO C. TRIA."[16]

In August 2004, Veniegas, the Sales and Service Head of PNB-MWSS, observed that Tria showed sudden concern with the Minutes of the Meeting dated August 6, 2004 even if he was no longer involved in the operations of the bank. Tria reminded her to prepare the Minutes of the Meeting. Tria then made revisions therein.[17] After the revised Minutes of the Meeting had been signed by all the attendees, Tria sought to further amend the Minutes, as follows:

> 9. For your information, BM Tria, per delineation of functions has no approving authority except in the opening of current and savings account. The BM is purely on marketing clients and giving services to existing and new clients. Sometimes, we are requesting his assistance like:
>
> - represent/follow up our operational needs in the Head Office;
> - handles client complaints;
> - assists in emergency cash requisitions;
> - assists in accompanying valued client/clients to QC Circle Branch for encashment of MCs merely to identify the bearer/payee and confirmation of the MC whenever we are short in cash;

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[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* at 94-95.

- we usually seek some advice and strategies on handling clients complaints and on other operational matters.[18]

On November 1, 2004, Tria retired as PNB-MWSS' Manager under PNB's regular retirement plan.[19]

On February 2, 2005, Zaida Pulida (Pulida), the MWSS employee in charge of C/A No. 244-850099-6,[20] inquired about the account's outstanding balance. While she was trying to reconcile the records of MWSS and PNB, she inquired about a debit entry dated April 22, 2004 to C/A No. 244-850099-6 in the amount of PhP 5,200,000.

Veniegas verified that PhP 5,200,000 was indeed debited and was encashed using Manager's Check No. 1165848 in favor of Atty. Rodrigo A. Reyes. Veniegas also attempted to retrieve the files for the transaction on April 22, 2004 but discovered that the duplicate copy of Manager's Check No. 1165848, the manager's check application form and the letter of authority were all missing.[21]

Pulida notified Veniegas that MWSS did not apply for the issuance of the manager's check payable to Atty. Reyes. Upon verification with the Integrated Bar of the Philippines, it was discovered that there was no Rodrigo A. Reyes included in its membership roster. Further, upon inspection of the PNB-MWSS microfilm copy of Manager's Check No. 1165848, it was shown that the check was negotiated and encashed at the PNB-Circle on April 26, 2004 and was annotated with "*ok for payment per confirmation and approval of PNB MWSS*" by Tria on the dorsal portion of the check.[22]

On February 14, 2005, MWSS wrote the new Branch Manager of PNB-MWSS, Ofelia Daway, about the unauthorized

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[18] *Id.* at 95.

[19] *Id.* at 110.

[20] Also referred to as "Zenaida Pulido" in other parts of the CA Decision.

[21] *Rollo*, p. 57.

[22] *Id.* at 95.

withdrawal from their PNB C/A No. 244-850099-6.[23] MWSS expressed surprise at the withdrawal of PhP 5,200,030 from its account when it had not issued any PNB checks. The MWSS letter also stated that:

> Our contractor has already submitted their final billing and we expect to withdraw the full amount deposited to the said account within a month's time. We therefore demand the refund or restoration within five (5) days after receipt of this letter of the amount of ₱5,200,030.00 to PNB Account No. 244-850099-6 representing the amount withdrawn without MWSS authorization/instructions. Otherwise, we will use all the legal means available to MWSS to recover the amount.

PNB conducted its own investigation and, at its conclusion, sought to hold Tria liable for qualified theft.[24]

Employees of PNB-MWSS, Veniegas, Bagasani, and Francisco, and PNB-Circle's SSO, Flandez, executed separate complaint-affidavits to recount the circumstances of the issuance and encashment of Manager's Check No. 1165848, and accused Tria guilty of qualified theft.

Tria, via his Counter-Affidavit, contended that (1) there was no taking of personal property; (2) there was no intent to gain on his part; (3) the personal property does not belong to PNB even if it is the depositary bank; (4) there was no grave abuse of confidence on his part; and (5) his alleged identification of the payee is not the operative act that triggered the payment of the manager's check by the PNB-MWSS Branch.[25] Instead, Tria argued that it was Flandez who approved and paid the manager's check even beyond his authority. He added that it was the other bank employees who should be held liable for the loss.

In his Reply-Affidavit dated February 20, 2006, Flandez contradicted Tria's claim that Tria left PNB-Circle immediately

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[23] *Id.* at 115. The letter was signed by MWSS Administrator Orlando C. Honrade.

[24] *Id.* at 57.

[25] *Id.*

after signing Manager's Check No. 1165848. According to Flandez, Tria helped Atty. Reyes count the PhP 5,200,000 by the bundle and even asked the bank's security guard for a plastic bag for the cash.[26]

Following a preliminary investigation, the Assistant City Prosecutor issued a Resolution[27] on August 15, 2006 stating that Tria's identification of the payee did not consummate the payment of the Manager's Check. Rather, it was held, the consummation of the payment occurred during Flandez' approval of the encashment. The Resolution's dispositive portion reads:

> WHEREFORE, in view of the foregoing, Undersigned respectfully recommends the approval of the above and the dismissal of the charge for Qualified Theft against respondent Amelio C. Tria due to lack of evidence and probable cause.

PNB moved for reconsideration but was denied in a Resolution[28] dated April 13, 2007.

Undaunted, PNB filed a petition for review with the Department of Justice (DOJ) and prayed for the reversal of the August 15, 2006 and April 13, 2007 Resolutions issued by the Office of the City Prosecutor of Quezon City (OCP).

On December 26, 2007, then Justice Secretary Raul M. Gonzales issued a Resolution dismissing PNB's petition for review. PNB's motion for reconsideration was denied in a Resolution dated February 27, 2009.

PNB sought recourse before the Court of Appeals (CA). It alleged that both the OCP and the DOJ committed grave abuse of discretion in failing to consider that Tria and Atty. Reyes/ John Doe conspired in committing the crime of qualified theft;

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[26] *Id.* at 58.

[27] The Resolution was issued by Assistant City Prosecutor Alessandro D. Jurado.

[28] The Resolution was issued by 2nd Assistant City Prosecutor Rogelio A. Velasco.

and the DOJ committed grave abuse of discretion in failing to consider the existence of probable cause in the instant case and affirming the OCP's findings that there is no probable cause to hold Tria and Atty. Reyes/John Doe for trial in the crime of qualified theft.

The Ruling of the CA

On January 18, 2010, the CA decided in favor of Tria. In affirming the DOJ Resolution issued by Secretary Gonzales, the CA took notice of how Manager's Check No. 1165848 was issued and paid by PNB after the verification made by PNB's own employees.

The CA ruled that probable cause against Tria and Atty. Reyes was not established since the employees of PNB made the encashment after their own independent verification of C/A No. 244-850099-6. Further, the CA deferred to the DOJ's determination of probable cause for the filing of an information in court as it is an executive function and ruled that the resolutions were not reversible as PNB was unable to show that these resolutions of the DOJ were tainted with grave abuse of discretion. The CA, thus, affirmed the OCP's finding that Tria's identification of the payee did not by itself bring about the payment of the subject manager's check and concluded that the element of taking of personal property belonging to another without the owner's consent is lacking since PNB consented to the taking by Atty. Reyes.

The dispositive portion of the CA Decision reads:

> WHEREFORE, the petition is DISMISSED. The assailed Resolutions dated December 26, 2007 and February 29, 2009, issued by Justice Secretary Raul M. Gonzales in I.S. No. 05-10093 are AFFIRMED.
>
> SO ORDERED.

PNB, thus, questions the Decision of the CA by the instant appeal.

The Ruling of this Court

We find petitioner's appeal meritorious.

According to the CA, it was the approval of the request for the issuance and for the encashment of the manager's check by the employees of PNB that resulted in the withdrawal of the amount encashed by Atty. Reyes/John Doe. Hence, according to the appellate court, the OCP was correct in not pursuing the criminal case against Tria.

Clearly, the CA in the instant case erroneously overlooked vital factual circumstances that call for a reversal of its ruling.

While discretionary authority to determine probable cause in a preliminary investigation to ascertain sufficient ground for the filing of an information rests with the executive branch,[29] such authority is far from absolute. It may be subject to review when it has been clearly used with grave abuse of discretion.[30] And indeed, grave abuse of discretion attended the decision to drop the charges against Tria as **there was more than probable cause to proceed against him for qualified theft**.

It must be emphasized at the outset that what is necessary for the filing of a criminal information is not proof beyond reasonable doubt that the person accused is guilty of the acts imputed on him, but only that there is probable cause to believe that he is guilty of the crime charged.

Probable cause, for purposes of filing a criminal information, are such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof.[31] It is the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the

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[29] *Asetre v. Asetre*, G.R. No. 171536, April 7, 2009, 584 SCRA 471, 483.

[30] *UCPB v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331.

[31] *Borlongan v. Peña*, G.R. No. 143591, November 23, 2007, 538 SCRA 221, 236; citing *Sarigumba v. Sandiganbayan*, G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533, 550.

facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he is to be prosecuted.[32] 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.[33]

The acts of Tria and the relevant circumstances that led to the encashment of the check provide more than sufficient basis for the finding of probable cause to file an information against him and John Doe/Atty. Reyes for qualified theft. In fact, it is easy to infer from the factual milieu of the instant case the existence of all the elements necessary for the prosecution of the crime of qualified theft.

As defined, theft is committed by any person who, with intent to gain, but without violence against, or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent.[34] If committed with grave abuse of confidence, the crime of theft becomes qualified.[35] In précis, qualified theft punishable under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code (RPC) is committed when the following elements are present:

1. Taking of personal property;
2. That the said property belongs to another;
3. That the said taking be done with intent to gain;
4. That it be done without the owner's consent;
5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; and
6. That it be done with grave abuse of confidence.

In the instant case, the first and second elements are unquestionably present. The money involved is the personal property of Tria's employer, PNB. Tria's argument that the amount does not belong to PNB even if it is the depositary bank

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[32] *Id.*

[33] *Id.*

[34] REVISED PENAL CODE, Art. 308, par. 1.

[35] *Id.,* Art. 310.

is erroneous since it is well established that a bank acquires ownership of the money deposited by its clients.[36]

The third element, intent to gain or *animus lucrandi*, is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation.[37] This element is immediately discernable from the circumstances narrated in the affidavits submitted by PNB's employees. In particular, it is plain from Tria's misrepresentation that the person he called Atty. Reyes was a valued client of PNB-MWSS who was authorized to encash the manager's check and his act of revising his functions as stated in the Minutes of the Meeting referred to by Veniegas to make it appear that he had been tasked with "accompanying valued client/clients to QC Circle Branch for encashment of MCs merely to identify the bearer/payee and confirmation of the MC whenever we are short in cash."

The fifth element is undisputed, while the last element, that the taking be done with grave abuse of confidence, is sufficiently shown by the affidavits of PNB and Tria's own admission of the position he held at the Bank. A bank's employees are entrusted with the possession of money of the bank due to the confidence reposed in them and as such they occupy positions of confidence.[38]

It is the existence of the fourth element—the taking be done without the owner's consent—that is the crux of contention. While the appellate court, together with the DOJ and OCP, maintains the negative and equates the cumulative acts of the other PNB employees as the consent of PNB in the issuance and encashment of the manager's check, this Court cannot find itself to sustain such opinion.

On the contrary, the facts portray the stark absence of consent on the part of PNB for the issuance of manager's check payable to "Atty. Rodrigo A. Reyes" and its felonious encashment by John Doe/Atty. Reyes in complicity with Tria.

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[36] *People v. Puig*, G.R. Nos. 173654-765, August 28, 2008, 563 SCRA 564, 575.

[37] *Matrido v. People*, G.R. No. 179061, July 13, 2009, 592 SCRA 534.

[38] *Id.*

Tria, it must be reiterated, was PNB's bank manager for its MWSS branch. **The check in question was a manager's check. A manager's check is one drawn by a bank's manager, Tria in this case, upon the bank itself**. We have held that it stands on the same footing as a certified check, which is deemed to have been accepted by the bank that certified it, as it is an order of the bank to pay, drawn upon itself, committing in effect its total resources, integrity and honor behind its issuance. By its peculiar character and general use in commerce**, a manager's check is regarded substantially to be as good as the money it represents**.[39] In fact, it is obvious from the PNB affidavits that the MWSS C/A was deducted upon the issuance of the manager's check and not upon its encashment. Indeed, as the bank's own check, a manager's check becomes the primary obligation of the bank and **is accepted in advance by the act of its issuance.**[40]

Taking this fact into consideration, it cannot be denied that the wheels of the felony started turning days before the misrepresentations made by Tria at PNB-Circle. And the encashment was a mere culmination of the crime that was commenced in PNB-MWSS.

The felony of qualified theft started with the use of the now missing falsified letter-request and supporting documents for the issuance of the manager's check and the re-activation of the MWSS C/A. **It was the pretense of an authority from MWSS that deprived PNB the liberty to either withhold or freely give its consent for the valid reactivation of the account and issuance of the check**. Quoting from *Black v. State*,[41] this Court held in *Gaviola v. People*[42] that **such pretense does not validate a taking**:

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[39] *Equitable PCI Bank v. Ong*, G.R. No. 156207, September 15, 2006, 502 SCRA 119, 132; citing *Tan v. Court of Appeals*, G.R. No. 108555, December 20, 1994, 239 SCRA 310, 322.

[40] *Security Bank and Trust Corporation v. Rizal Commercial Banking Corporation*, G.R. No. 170984, January 30, 2009, 577 SCRA 407, 414.

[41] 3 So. 814 (1888).

[42] G.R. No. 163927, January 27, 2006, 480 SCRA 436, 445-447.

In all cases where one in good faith takes another's property under claim of title in himself, he is exempt from the charge of larceny, however puerile or mistaken the claim may in fact be. And the same is true where the taking is on behalf of another, believed to be the true owner. Still, if the claim is dishonest, a mere pretense, it will not protect the taker.

In more conventional words, this Court sustained the finding of qualified theft in *People v. Salonga*,[43] where the taking was done through the issuance of a check by the very person responsible for, and in custody of, the said check, viz:

The crime charged is Qualified Theft through Falsification of Commercial Document. The information alleged that the accused took ₱36,480.30 with grave abuse of confidence by forging the signature of officers authorized to sign the subject check and had the check deposited in the account of Firebrake Sales and Services, a fictitious payee without any legitimate transaction with Metrobank. Theft is qualified if it is committed with grave abuse of confidence. The fact that accused-appellant as assistant cashier of Metrobank **had custody of the aforesaid checks and had access not only in the preparation but also in the release of Metrobank cashier's checks** suffices to designate the crime as qualified theft as he gravely abused the confidence reposed in him by the bank as assistant cashier. x x x (Emphasis supplied.)

Similar to the bank involved in *Salonga*, PNB was deprived of the discretion to withhold its consent since, as the circumstances establish, the very person responsible for the custody and the issuance of the check is the one guilty for its felonious issuance and encashment, its former branch manager Tria.

Indeed, the pretense made in PNB-MWSS that led to the issuance of the Manager's Check cannot be imputed on anyone other than Tria. His role as the branch manager of PNB-MWSS who had the responsibility over the functions of the employees of PNB-MWSS cannot be overlooked. As branch manager, Tria signs manager's checks. He serves as the last safeguard against any pretense resorted to for an illicit claim over the bank's money.

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[43] G.R. No. 131131, June 21, 2001, 359 SCRA 310, 323.

The acts of the other bank officials in the MWSS branch in processing the manager's checks pass through the supervision and approval of Tria. Thus, **the processing and approval of the check are the responsibility of Tria.**

As such, Tria is duty-bound to verify from the bank's client any supposed authority given for the issuance of a manager's check. He was, therefore, duty-bound to confirm with MWSS whether the letter-authorization for the deduction of ₱5.2 million from the MWSS C/A is genuine, legal and binding. Tria is required to exercise the highest degree of care since the degree of diligence required of banks is more than that of a good father of a family where the fiduciary nature of their relationship with their depositors is concerned.[44] This degree of diligence was wanting in Tria's failure to determine the veracity of said letter-authority considering that the amount to be deducted is large, with the withdrawal of almost the entire amount of the deposit leaving only less than PhP 200, more so when the account has been dormant since April 16, 2003.

As standard banking practice intended precisely to prevent unauthorized and fraudulent withdrawals, a bank manager verifies with the client-depositor to authenticate and confirm that he/she has validly authorized such withdrawal. Such failure of Tria as bank manager to verify the legitimacy of the requested withdrawal lends credence to the accusation that he colluded with Atty. Reyes to feloniously take money from PNB, and his complicity includes depriving the bank of its opportunity to deny and withhold the consent for the necessary issuance of Manager's Check No. 1165848. It cannot, therefore, be gainsaid that **PNB did not consent to the issuance of the check and its eventual encashment—which both constitute the taking of personal property—as respondents had made sure that the bank was rendered inutile and incapable to give its consent**. The fourth element of the crime clearly exists.

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[44] *Associated Bank v. Tan*, G.R. No. 156940, December 14, 2004, 446 SCRA 282, 291; citing *Philippine Bank of Commerce v. Court of Appeals*, 336 Phil. 667, 681 (1997).

Furthermore, a branch manager normally stays at his branch to perform his functions and duties in such position in said branch except on official business as prescribed by the bank. Certainly, it is not one of the duties of a branch manager to leave his office and personally accompany a payee of a manager's check it issued to another branch to encash said check. It is, therefore, unusual and highly suspicious for Tria to leave his office located in Balara, Diliman, Quezon City and travel to Quezon Avenue where the PNB-Circle is located to identify a fictitious payee and ensure the encashment of the check.

Tria could just have waited for a call from the branch manager of the PNB Quezon City Circle Branch to verify the authenticity of said check. Such extra effort and unexplained gesture on the part of Tria to provide assistance to Atty. Reyes, a fake lawyer, to ensure the encashment of the check leaves one to believe that he is in cahoots with the impostor.

What is more, it is curious that Tria accompanied John Doe/ Atty. Reyes to encash the manager's check in another branch under the pretext that his own branch is short of cash when in fact more than PhP 8 million has just been delivered to PNB-MWSS. Such misrepresentation can only be considered as an attempt to cover the crime and pass the blame to other PNB employees, as in fact the CA ruled that Flandez is to blame. This attempt is further reinforced by the curious case of the missing fictitious letter-request and its supporting documents, which were last seen in the vault of PNB-MWSS which can be accessed by Tria. Furthermore, the allegation of Veniegas that Tria unilaterally and secretly revised the bank's Minutes of the Meeting to reflect that he had "no approval authority" beyond opening accounts but was specifically requested by the bank to "assist valued clients" in encashing checks at the Quezon City Circle Branch shows an ingenious ploy by Tria to cover his tracks upon the eventual discovery of the theft and is in contravention of the *General Banking Law of 2000*.[45]

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[45] Republic Act No. 8791 states:

Sec. 55. Prohibited Transactions:

55.1. No director, officer, employee, or agent of any bank shall —

Nonetheless, nothing is more damning than the fact that Tria vouched for the identity of John Doe/Atty. Reyes, even claimed that Atty. Reyes is a valued client of PNB-MWSS, affixed his signature at the back portion of the check to guarantee that Atty. Reyes is the true and legal payee, and ultimately guaranteed that the Manager's check is legally effective and valid and everything is aboveboard. PNB-Circle could have verified from MWSS if the deduction is authorized especially considering that the money will be deducted from an account of a government corporation. The identification by Tria of Atty. Reyes as payee precluded and preempted the bank officials from verifying the transaction from MWSS. Thus, the identification made by Tria impliedly warranted to the PNB-Circle that said Manager's check was validly issued with the consent of PNB, and that the encashment is legal and warranted.

It must also be noted that Tria likewise made representations to the PNB-Circle that the Manager's check is legal and valid as evidenced by the annotation at the dorsal portion of the check "ok for payment per confirmation and approval of PNB MWSS." **The act of Tria in confirming and approving the encashment of the check by Reyes is the pretense of the consent given to him by PNB to authorize the issuance of the manager's check that resulted in the taking of PhP 5.2 million from PNB.** Tria must, therefore, be prosecuted and tried before the courts of justice.

While it is truly imperative to relieve a person from the pain of going through the rigors of trial, it is more imperative to proceed with the prosecution of a criminal case to ensure that the truth is revealed and justice served when there is a *prima facie* case against him.[46]

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals in CA-G.R. SP No. 108571 is **REVERSED**

(a) Make false entries in any bank report or statement or participate in any fraudulent transaction, thereby affecting the financial interest of, or causing damage to, the bank or any person.

[46] *People v. Puig*, *supra* note 36.

and **SET ASIDE.** The Office of the City Prosecutor of Quezon City is **ORDERED** to file an Information charging Amelio C. Tria and Atty. Reyes/John Doe for Qualified Theft.

SO ORDERED.

Peralta, Abad, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

THIRD DIVISION

[G.R. No. 194024. April 25, 2012]

PHILIP L. GO, PACIFICO Q. LIM and ANDREW Q. LIM, *petitioners, vs.* **DISTINCTION PROPERTIES DEVELOPMENT AND CONSTRUCTION, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER IS CONFERRED BY LAW AND DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT WHICH COMPRISE A CONCISE STATEMENT OF THE ULTIMATE FACTS CONSTITUTING THE PLAINTIFF'S CAUSE OF ACTION. — Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The **averments in the complaint** and the **character of the relief sought** are the ones to be consulted. Once vested by the allegations in the

complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. Thus, it was ruled that the jurisdiction of the HLURB to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved and the parties.

2. **ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTIES; THE PHOENIX HEIGHTS CONDOMINIUM CORPORATION (PHCC) IS AN INDISPENSABLE PARTY AND SHOULD HAVE BEEN IMPLEADED, EITHER AS PLAINTIFF OR AS A DEFENDANT.—** As it is clear that the acts being assailed are those of PHHC, this case cannot prosper for failure to implead the proper party, PHCC. An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest. x x x From all indications, PHCC is an indispensable party and should have been impleaded, either as a plaintiff or as a defendant, in the complaint filed before the HLURB as it would be directly and adversely affected by any determination therein. To belabor the point, the causes of action, or the acts complained of, were the acts of PHCC as a corporate body. Note that in the judgment rendered by the HLURB, the dispositive portion in particular, DPDCI was ordered (1) to pay ₱998,190.70, plus interests and surcharges, as condominium dues in arrears and turnover the administration office *to PHCC*; and (2) to refund *to PHCC* ₱1,277,500.00, representing the cost of the deep well, with interests and surcharges. Also, the HLURB declared as illegal the agreement regarding the conversion of the 22 storage units and Units GF4-A and BAS, to which agreement PHCC was a party.

3. **ID.; ID.; ID.; ID.; WITHOUT PHCC AS A PARTY, THERE CAN BE NO FINAL ADJUDICATION OF THE HOUSING AND LAND USE REGULATORY BOARD'S (HLURB) JUDGMENT.—** Evidently, the cause of action rightfully pertains to PHCC. Petitioners cannot exercise the same except through a derivative suit. In the complaint, however, there was no allegation that the action was a derivative suit. In fact, in the petition, petitioners claim that their complaint is not a derivative suit. In the cited case of *Chua v. Court of Appeals*,

the Court ruled: For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation **must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated** who may wish to join him in the suit. **It is a condition *sine qua non* that the corporation be impleaded as a party because not only is the corporation an indispensable party,** but it is also the present rule that it must be served with process. The judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring subsequent suit against the same defendants for the same cause of action. In other words, **the corporation must be joined as party because it is its cause of action that is being litigated** and because judgment must be a *res adjudicata* against it. Without PHCC as a party, there can be no final adjudication of the HLURB's judgment. The CA was, thus, correct in ordering the dismissal of the case for failure to implead an indispensable party.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; HOUSING AND LAND USE REGULATORY BOARD (HLURB); THE COMPLAINT FILED BY PETITIONERS ALLEGED CAUSES OF ACTIONS THAT ARE NOT COGNIZABLE BY THE HLURB CONSIDERING THE NATURE OF THE ACTION AND RELIEFS SOUGHT.— In this case, the complaint filed by petitioners alleged causes of action that apparently are not cognizable by the HLURB considering the nature of the action and the reliefs sought. A perusal of the complaint discloses that petitioners are actually seeking to nullify and invalidate the duly constituted acts of PHCC — the April 29, 2005 Agreement entered into by PHCC with DPDCI and its Board Resolution which authorized the acceptance of the proposed offsetting/settlement of DPDCI's indebtedness and approval of the conversion of certain units from saleable to common areas.

5. ID.; ID.; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; COMPLIANCE THEREOF MAY BE RELAXED WHERE THE CHALLENGED ADMINISTRATIVE ACT IS PATENTLY ILLEGAL, AMOUNTING TO LACK OF JURISDICTION OR WHERE

THE QUESTION INVOLVED IS PURELY LEGAL AND WILL ULTIMATELY HAVE TO BE DECIDED BY THE COURTS OF JUSTICE.— As to the alleged failure to comply with the rule on exhaustion of administrative remedies, the Court again agrees with the position of the CA that the circumstances prevailing in this case warranted a relaxation of the rule. The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. It has been held, however, that the doctrine of exhaustion of administrative remedies and the doctrine of primary jurisdiction are not ironclad rules. In the case of *Republic of the Philippines v. Lacap*, the Court enumerated the numerous exceptions to these rules, namely: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings. The situations (b) and (e) in the foregoing enumeration obtain in this case.

6. ID.; ID.; ID.; THE CHALLENGED DECISION OF THE HLURB IS PATENTLY ILLEGAL HAVING BEEN RENDERED IN EXCESS OF JURISDICTION, IF NOT WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— The challenged decision of the HLURB is patently illegal having been rendered in excess of jurisdiction, if not with grave abuse of discretion amounting to lack or excess of jurisdiction. Also, the issue on jurisdiction is purely legal which will have to be decided ultimately by a regular court of law. As the Court wrote in *Vigilar v. Aquino*: It does not involve an examination

of the probative value of the evidence presented by the parties. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts. Said question at best could be resolved only *tentatively* by the administrative authorities. The final decision on the matter rests not with them but with the courts of justice. Exhaustion of administrative remedies does not apply, because nothing of an administrative nature is to be or can be done. The issue does not require technical knowledge and experience but one that would involve the interpretation and application of law.

7. MERCANTILE LAW; CORPORATION CODE; SECURITIES AND EXCHANGE COMMISSION'S REORGANIZATION ACT (R.A. NO. 8799); THE CONTROVERSY IN CASE AT BAR IS ESSENTIALLY INTRA-CORPORATE IN CHARACTER, FOR BEING BETWEEN A CONDOMINIUM CORPORATION AND ITS MEMBERS-UNIT OWNERS.— Considering that petitioners, who are members of PHCC, are ultimately challenging the agreement entered into by PHCC with DPDCI, they are assailing, in effect, PHCC's acts as a body corporate. This action, therefore, partakes the nature of an "intra-corporate controversy," the jurisdiction over which used to belong to the Securities and Exchange Commission *(SEC)*, but transferred to the courts of general jurisdiction or the appropriate Regional Trial Court *(RTC)*, pursuant to Section 5b of P.D. No. 902-A, as amended by Section 5.2 of Republic Act *(R.A.)* No. 8799. An intra-corporate controversy is one which "pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves." Based on the foregoing definition, there is no doubt that the controversy in this case is essentially intra-corporate in character, for being between a condominium corporation and its members-unit owners. In the recent case of *Chateau De Baie Condominium Corporation v. Sps. Moreno*, an action involving the legality of assessment dues against the condominium owner/developer, the Court held

that, the matter being an intra-corporate dispute, the RTC had jurisdiction to hear the same pursuant to R.A. No. 8799.

APPEARANCES OF COUNSEL

Teodoro C. Alegro, Jr. for petitioners.
Reyes Francisco Tecson & Associates for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the March 17, 2010 Decision[1] and October 7, 2010 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 110013 entitled "*Distinction Properties Development & Construction, Inc. v. Housing Land Use Regulatory Board (NCR), Philip L. Go, Pacifico Q. Lim and Andrew Q. Lim*."

Factual and Procedural Antecedents:

Philip L. Go, Pacifico Q. Lim and Andrew Q. Lim *(petitioners)* are registered individual owners of condominium units in Phoenix Heights Condominium located at H. Javier/Canley Road, Bo. Bagong Ilog, Pasig City, Metro Manila.

Respondent Distinction Properties Development and Construction, Inc. *(DPDCI)* is a corporation existing under the laws of the Philippines with principal office at No. 1020 Soler Street, Binondo, Manila. It was incorporated as a real estate developer, engaged in the development of condominium projects, among which was the Phoenix Heights Condominium.

In February 1996, petitioner Pacifico Lim, one of the incorporators and the then president of DPDCI, executed a *Master*

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[1] *Rollo*, pp. 37-52. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justice Noel G. Tijam and Associate Justice Rodil V. Zalameda, concurring.

[2] *Id.* at 69-70.

Deed and Declaration of Restrictions (MDDR)[3] of Phoenix Heights Condominium, which was filed with the Registry of Deeds. As the developer, DPDCI undertook, among others, the marketing aspect of the project, the sale of the units and the release of flyers and brochures.

Thereafter, Phoenix Heights Condominium Corporation *(PHCC)* was formally organized and incorporated. Sometime in 2000, DPDCI turned over to PHCC the ownership and possession of the condominium units, except for the two saleable commercial units/spaces:

1. G/F Level BAS covered by Condominium Certificate of Title (CCT) No. 21030 utilized as the PHCC's administration office, and
2. G/F Level 4-A covered by CCT No. PT-27396/C-136-II used as living quarters by the building administrator.

Although used by PHCC, DPDCI was assessed association dues for these two units.

Meanwhile, in March 1999, petitioner Pacifico Lim, as president of DPDCI, filed an *Application for Alteration of Plan*[4] pertaining to the construction of 22 storage units in the spaces adjunct to the parking area of the building. The application, however, was disapproved as the proposed alteration would obstruct light and ventilation.

In August 2004, through its Board,[5] PHCC approved a settlement offer from DPDCI for the set-off of the latter's association dues arrears with the assignment of title over CCT Nos. 21030 and PT-27396/C-136-II and their conversion into common areas. Thus, CCT Nos. PT-43400 and PT-43399 were issued by the Registrar of Deeds of Pasig City in favor of PHCC in lieu of the old titles. The said settlement between the two corporations likewise included the reversion of the 22 storage

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[3] *Id.* at 103.

[4] *Id.* at 141.

[5] *Id.* at 144-145.

spaces into common areas. With the conformity of PHCC, DPDCI's application for alteration (conversion of unconstructed 22 storage units and units GF4-A and BAS from saleable to common areas) was granted by the Housing and Land Use Regulatory Board *(HLURB).*[6]

In August 2008, petitioners, as condominium unit-owners, filed a complaint[7] before the HLURB against DPDCI for unsound business practices and violation of the MDDR. The case was docketed as REM-080508-13906. They alleged that DPDCI committed misrepresentation in their circulated flyers and brochures as to the facilities or amenities that would be available in the condominium and failed to perform its obligation to comply with the MDDR.

In defense, DPDCI denied that it had breached its promises and representations to the public concerning the facilities in the condominium. It alleged that the brochure attached to the complaint was "a mere preparatory draft" and not the official one actually distributed to the public, and that the said brochure contained a disclaimer as to the binding effect of the supposed offers therein. Also, DPDCI questioned the petitioners' personality to sue as the action was a derivative suit.

After due hearing, the HLURB rendered its decision[8] in favor of petitioners. It held as invalid the agreement entered into between DPDCI and PHCC, as to the alteration or conversion of the subject units into common areas, which it previously approved, for the reason that it was not approved by the majority of the members of PHCC as required under Section 13 of the MDDR. It stated that DPDCI's defense, that the brochure was a mere draft, was against human experience and a convenient excuse to avoid its obligation to provide the facility of the project. The HLURB further stated that the case was not a derivative suit but one which involved contracts of sale of the respective

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[6] *Id.* at 175.

[7] Annex "D" of Petition, *id*. at 71.

[8] Dated May 25, 2009, Annex "H" of Petition, *id*. at 189-194.

units between the complainants and DPDCI, hence, within its jurisdiction pursuant to Section 1, Presidential Decree *(P.D.)* No. 957 (The Subdivision and Condominium Buyers' Protective Decree), as amended. The decretal portion of the HLURB decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered:
>
> 1. Ordering respondent to restore/provide proper gym facilities, to restore the hallway at the mezzanine floor.
>
> 2. Declaring the conversion/alteration of 22 storage units and Units GF4-A and BAS as illegal, and consequently, and ordering respondent to continue paying the condominium dues for these units, with interest and surcharge.
>
> 3. *Ordering the Respondent to pay the sum of Php998,190.70, plus interests and surcharges, as condominium dues in arrears and turnover the administration office to PHCC without any charges pursuant to the representation of the respondent in the brochures it circulated to the public with a corresponding credit to complainants' individual shares as members of PHCC entitled to such refund or reimbursements.*
>
> 4. *Ordering the Respondent to refund to the PHCC the amount of Php1,277,500.00, representing the cost of the deep well, with interests and surcharges with a corresponding credit to complainants' individual shares as members of PHCC entitled to such refund or reimbursements.*
>
> 5. Ordering the Respondent to pay the complainants moral and exemplary damages in the amount of ₱10,000.00 and attorney's fees in the amount of ₱10,000.00.
>
> All other claims and counterclaims are hereby dismissed accordingly.
>
> IT IS SO ORDERED.[9]

Aggrieved, DPDCI filed with the CA its Petition for *Certiorari* and Prohibition[10] dated August 11, 2009, on the ground that

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[9] *Rollo*, pp. 193-194.

[10] Annex "I" of Petition, *id.* at 195.

the HLURB decision was a patent nullity constituting an act without or beyond its jurisdiction and that it had no other plain, speedy and adequate remedy in the course of law.

On March 17, 2010, the CA rendered the assailed decision which disposed of the case in favor of DPDCI as follows:

> WHEREFORE, in view of the foregoing, the petition is GRANTED. Accordingly, the assailed *Decision* of the HLURB in Case No. REM-0800508-13906 is ANNULLED and SET ASIDE and a new one is entered DISMISSING the Complaint *a quo*.
>
> IT IS SO ORDERED.[11]

The CA ruled that the HLURB had no jurisdiction over the complaint filed by petitioners as the controversy did not fall within the scope of the administrative agency's authority under P.D. No. 957. The HLURB not only relied heavily on the brochures which, according to the CA, did not set out an enforceable obligation on the part of DPDCI, but also erroneously cited Section 13 of the MDDR to support its finding of contractual violation.

The CA held that jurisdiction over PHCC, an indispensable party, was neither acquired nor waived by estoppel. Citing *Carandang v. Heirs of De Guzman*,[12] it held that, in any event, the action should be dismissed because the absence of PHCC, an indispensable party, rendered all subsequent actuations of the court void, for want of authority to act, not only as to the absent parties but even as to those present.

Finally, the CA held that the rule on exhaustion of administrative remedies could be relaxed. Appeal was not a speedy and adequate remedy as jurisdictional questions were continuously raised but ignored by the HLURB. In the present case, however, "[t]he bottom line is that the challenged decision is one that had been rendered in excess of jurisdiction, if not with grave abuse of discretion amounting to lack or excess of jurisdiction."[13]

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[11] *Rollo*, p. 52.

[12] G.R. No. 160347, November 29, 2006, 508 SCRA 469.

[13] *Rollo*, pp. 51-52.

Petitioners filed a motion for reconsideration[14] of the said decision. The motion, however, was denied by the CA in its Resolution dated October 7, 2010.

Hence, petitioners interpose the present petition before this Court anchored on the following

GROUNDS

(1)

THE COURT OF APPEALS ERRED IN HOLDING THAT THE HLURB HAS NO JURISDICTION OVER THE INSTANT CASE;

(2)

THE COURT OF APPEALS ALSO ERRED IN FINDING THAT PHCC IS AN INDISPENSABLE PARTY WHICH WARRANTED THE DISMISSAL OF THE CASE BY REASON OF IT NOT HAVING BEEN IMPLEADED IN THE CASE;

(3)

THE COURT OF APPEALS HAS LIKEWISE ERRED IN RELAXING THE RULE ON NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES BY DECLARING THAT THE APPEAL MAY NOT BE A SPEEDY AND ADEQUATE REMEDY WHEN JURISDICTIONAL QUESTIONS WERE CONTINUOUSLY RAISED BUT IGNORED BY THE HLURB; and

(4)

THAT FINALLY, THE COURT *A QUO* ALSO ERRED IN NOT GIVING DUE RESPECT OR EVEN FINALITY TO THE FINDINGS OF THE HLURB.[15]

Petitioners contend that the HLURB has jurisdiction over the subject matter of this case. Their complaint with the HLURB clearly alleged and demanded specific performance upon DPDCI of the latter's contractual obligation under their individual contracts to provide a back-up water system as part of the amenities provided for in the brochure, together with an administration office, proper

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[14] Annex "B" of Petition, *id.* at 53-67.

[15] *Rollo*, p. 12.

gym facilities, restoration of a hallway, among others. They point out that the violation by DPDCI of its obligations enumerated in the said complaint squarely put their case within the ambit of Section 1, P.D. No. 957, as amended, enumerating the cases that are within the exclusive jurisdiction of the HLURB. Likewise, petitioners argue that the case was not a derivative suit as they were not suing for and in behalf of PHCC. They were suing, in their individual capacities as condominium unit buyers, their developer for breach of contract. In support of their view that PHCC was not an indispensable party, petitioners even quoted the dispositive portion of the HLURB decision to show that complete relief between or among the existing parties may be obtained without the presence of PHCC as a party to this case. Petitioners further argue that DPDCI's petition before the CA should have been dismissed outright for failure to comply with Section 1, Rule XVI of the 2004 Rules of Procedure of the HLURB providing for an appeal to the Board of Commissioners by a party aggrieved by a decision of a regional officer.

DPDCI, in its Comment,[16] strongly objects to the arguments of petitioners and insists that the CA did not err in granting its petition. It posits that the HLURB has no jurisdiction over the complaint filed by petitioners because the controversies raised therein are in the nature of "intra-corporate disputes." Thus, the case does not fall within the jurisdiction of the HLURB under Section 1, P.D. No. 957 and P.D. No. 1344. According to DPDCI, petitioners sought to address the invalidation of the corporate acts duly entered and executed by PHCC as a corporation of which petitioners are admittedly members of, and not the acts pertaining to their ownership of the units. Such being the case, PHCC should have been impleaded as a party to the complaint. Its non-inclusion as an indispensable party warrants the dismissal of the case. DPDCI further avers that the doctrine of exhaustion is inapplicable inasmuch as the issues raised in the petition with the CA are purely legal; that the challenged administrative act is patently illegal; and that the procedure of the HLURB does not provide a plain, speedy and adequate remedy and its application

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[16] Dated January 16, 2011, *id*. at 335-348.

may cause great and irreparable damage. Finally, it claims that the decision of the HLURB Arbiter has not attained finality, the same having been issued without jurisdiction.

Essentially, the issues to be resolved are: (1) whether the HLURB has jurisdiction over the complaint filed by the petitioners; (2) whether PHCC is an indispensable party; and (3) whether the rule on exhaustion of administrative remedies applies in this case.

The petition fails.

Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. The **averments in the complaint** and the **character of the relief sought** are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[17] Thus, it was ruled that the jurisdiction of the HLURB to hear and decide cases is determined by the nature of the cause of action, the subject matter or property involved and the parties.[18]

Generally, the extent to which an administrative agency may exercise its powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency.[19]

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[17] *City of Dumaguete v. Philippine Ports Authority*, G.R. No. 168973, August 24, 2011, citing *Gomez v. Montalban*, G.R. No. 174414, March 14, 2008, 548 SCRA 693, 705-706.

[18] *Peralta v. De Leon*, G.R. No. 187978, November 24, 2010, 636 SCRA 232, citing *De los Santos v. Sarmiento*, G.R. No. 154877, March 27, 2007, 519 SCRA 62, 73.

[19] *Peralta v. De Leon*, G.R. No. 187978, November 24, 2010, 636 SCRA 232, 242.

With respect to the HLURB, to determine if said agency has jurisdiction over petitioners' cause of action, an examination of the laws defining the HLURB's jurisdiction and authority becomes imperative. P.D. No. 957,[20] specifically Section 3, granted the National Housing Authority *(NHA)* the "exclusive jurisdiction to regulate the real estate trade and business." Then came P.D. No. 1344[21] expanding the jurisdiction of the NHA (now HLURB), as follows:

SECTION 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:

(a) Unsound real estate business practices;

(b) Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and

(c) Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

This provision must be read in light of the law's preamble, which explains the reasons for enactment of the law or the contextual basis for its interpretation.[22] A statute derives its vitality from the purpose for which it is enacted, and to construe it in a manner that disregards or defeats such purpose is to nullify or destroy the law.[23] P.D. No. 957, as amended, aims to

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[20] Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof.

[21] Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of Its Decision under Presidential Decree No. 957.

[22] *Lim v. Ruby Shelter Builders and Realty Development Corporation,* G.R. No. 182707, September 1, 2010, 629 SCRA 740, 743.

[23] *Luzon Development Bank v. Enriquez,* G.R. Nos. 168646 & 168666, January 12, 2011, 639 SCRA 332, 337-338, citing *Pilipinas Kao, Inc. v. Court of Appeals,* 423 Phil. 834, 858 (2001).

protect innocent subdivision lot and condominium unit buyers against fraudulent real estate practices.[24]

The HLURB is given a wide latitude in characterizing or categorizing acts which may constitute unsound business practice or breach of contractual obligations in the real estate trade. This grant of expansive jurisdiction to the HLURB does not mean, however, that all cases involving subdivision lots or condominium units automatically fall under its jurisdiction. The CA aptly quoted the case of *Christian General Assembly, Inc. v. Ignacio*,[25] wherein the Court held that:

> The **mere relationship** between the parties, *i.e.*, that of being subdivision owner/developer and subdivision lot buyer, does not automatically vest jurisdiction in the HLURB. For an action to fall within the exclusive jurisdiction of the HLURB, the **decisive element** is the **nature of the action** as enumerated in Section 1 of P.D. 1344. On this matter, we have consistently held that the concerned administrative agency, the National Housing Authority (NHA) before and now the HLURB, has jurisdiction over complaints aimed at compelling the subdivision developer to comply with its contractual and statutory obligations.[26] [Emphases supplied]

In this case, the complaint filed by petitioners alleged causes of action that apparently are not cognizable by the HLURB considering the nature of the action and the reliefs sought. A perusal of the complaint discloses that petitioners are actually seeking to nullify and invalidate the duly constituted acts of PHCC — the April 29, 2005 Agreement[27] entered into by PHCC with DPDCI and its Board Resolution[28] which authorized the

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[24] *Id.* at 350, citing *Metropolitan Bank and Trust Company, Inc. v. SLGT Holdings, Inc.*, G.R. Nos. 175181-175182, 175354 &175387-175388, September 14, 2007, 533 SCRA 516, 526.

[25] G.R. No. 164789, August 27, 2009, 597 SCRA 266.

[26] *Christian General Assembly, Inc. v. Ignacio*, G.R. No. 164789, August 27, 2009, 597 SCRA 266, 281-282, citing *Roxas v. Court of Appeals*, 439 Phil. 966, 976-977 (2002).

[27] *Rollo*, pp. 89-91.

[28] *Id.* at 144-145.

acceptance of the proposed offsetting/settlement of DPDCI's indebtedness and approval of the conversion of certain units from saleable to common areas. All these were *approved by the HLURB*. Specifically, the reliefs sought or prayers are the following:

1. Ordering the respondent to restore the gym to its original location;
2. Ordering the respondent to restore the hallway at the second floor;
3. Declaring the conversion/alteration of 22 storage units and Units GF4-A and BAS as illegal, and consequently, ordering respondent to continue paying the condominium dues for these units, with interest and surcharge;
4. Ordering the respondent to pay the sum of PHP998,190.70, plus interest and surcharges, as condominium dues in arrears and turnover the administration office to PHCC without any charges pursuant to the representation of the respondent in the brochures it circulated to the public;
5. Ordering the respondent to refund to the PHCC the amount of PHP1,277,500.00, representing the cost of the deep well, with interests and surcharges;
6. Ordering the respondent to pay the complainants moral/ exemplary damages in the amount of PHP100,000.00; and
7. Ordering the respondent to pay the complainant attorney's fees in the amount of PHP100,000.00, and PHP3,000.00 for every hearing scheduled by the Honorable Office.[29]

As it is clear that the acts being assailed are those of PHHC, this case cannot prosper for failure to implead the proper party, PHCC.

An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring

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[29] *Rollo,* pp. 76-77.

or affecting that interest.[30] In the recent case of *Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation*,[31] the Court had the occasion to state that:

> Under Section 7, Rule 3 of the Rules of Court, "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness. **It is "precisely 'when an indispensable party is not before the court (that) an action should be dismissed.' The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present."** The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties.[32] (Underscoring supplied)

Similarly, in the case of *Plasabas v. Court of Appeals*,[33] the Court held that a final decree would necessarily affect the rights of indispensable parties so that the Court could not proceed without their presence. In support thereof, the Court in *Plasabas* cited the following authorities, thus:

> "The general rule with reference to the making of parties in a civil action requires the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* of the exercise of judicial power. (Borlasa *v.* Polistico, 47 Phil. 345, 348) For this reason, our Supreme Court has held that when it appears of record

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[30] *Fort Bonifacio Development Corporation v. Hon. Sorongon*, G.R. No. 176709, May 8, 2009, 587 SCRA 613, 622-623, citing *Moldes v. Villanueva*, G.R. No. 161955, 31 August 2005, 48 SCRA 697, 707.

[31] G.R. No. 171115, August 9, 2010, 627 SCRA 179.

[32] *Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation*, G.R. No. 171115, August 9, 2010, 627 SCRA 179, 186-187.

[33] G.R. No. 166519, March 31, 2009, 582 SCRA 686.

that there are other persons interested in the subject matter of the litigation, who are not made parties to the action, it is the duty of the court to suspend the trial until such parties are made either plaintiffs or defendants. (Pobre, *et al. v.* Blanco, 17 Phil. 156). x x x Where the petition failed to join as party defendant the person interested in sustaining the proceeding in the court, the same should be dismissed. x x x **When an indispensable party is not before the court, the action should be dismissed**. (People, *et al. v.* Rodriguez, *et al.*, G.R. Nos. L-14059-62, September 30, 1959) (sic)

"Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. (Sec. 7, Rule 3, Rules of Court). **The burden of procuring the presence of all indispensable parties is on the plaintiff**. (39 Amjur [sic] 885). The evident purpose of the rule is to prevent the multiplicity of suits by requiring the person arresting a right against the defendant to include with him, either as co-plaintiffs or as co-defendants, all persons standing in the same position, so that the whole matter in dispute may be determined once and for all in one litigation. (Palarca *v.* Baginsi, 38 Phil. 177, 178).

From all indications, PHCC is an indispensable party and should have been impleaded, either as a plaintiff or as a defendant,[34] in the complaint filed before the HLURB as it would be directly and adversely affected by any determination therein. To belabor the point, the causes of action, or the acts complained of, were the acts of PHCC as a corporate body. Note that in the judgment rendered by the HLURB, the dispositive portion in particular, DPDCI was ordered (1) to pay ₱998,190.70, plus interests and surcharges, as condominium dues in arrears and turnover the administration office *to PHCC*; and (2) to refund *to PHCC* ₱1,277,500.00, representing the cost of the deep well, with interests and surcharges. Also, the HLURB declared as illegal the agreement regarding the conversion of the 22 storage units and Units GF4-A and BAS, to which agreement PHCC was a party.

Evidently, the cause of action rightfully pertains to PHCC. Petitioners cannot exercise the same except through a derivative

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[34] Section 7, Rule 3, Rules of Court

suit. In the complaint, however, there was no allegation that the action was a derivative suit. In fact, in the petition, petitioners claim that their complaint is not a derivative suit.[35] In the cited case of *Chua v. Court of Appeals*,[36] the Court ruled:

> For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation **must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated** who may wish to join him in the suit. **It is a condition *sine qua non* that the corporation be impleaded as a party because not only is the corporation an indispensable party,** but it is also the present rule that it must be served with process. The judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring subsequent suit against the same defendants for the same cause of action. In other words, **the corporation must be joined as party because it is its cause of action that is being litigated** and because judgment must be a *res adjudicata* against it. (Underscoring supplied)

Without PHCC as a party, there can be no final adjudication of the HLURB's judgment. The CA was, thus, correct in ordering the dismissal of the case for failure to implead an indispensable party.

To justify its finding of contractual violation, the HLURB cited a provision in the MDDR, to wit:

> Section 13. Amendment. After the corporation shall have been created, organized and operating, this MDDR may be amended, in whole or in part, by the affirmative vote of Unit owners constituting at least fifty one (51%) percent of the Unit shares in the Project at a meeting duly called pursuant to the Corporation By Laws and subject to the provisions of the Condominium Act.

This citation, however, is misplaced as the above-quoted provision pertains to the amendment of the MDDR. It should be stressed that petitioners are not asking for any change or

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[35] *Rollo,* p. 20

[36] 485 Phil. 644, 655-656 (2004).

modification in the terms of the MDDR. What they are really praying for is a declaration that the agreement regarding the alteration/conversion is illegal. Thus, the Court sustains the CA's finding that:

> There was nothing in the records to suggest that DPDCI sought the amendment of a part or the whole of such MDDR. The cited section is somewhat consistent only with the principle that an amendment of a corporation's *Articles of Incorporation* must be assented to by the stockholders holding more than 50% of the shares. The MDDR does not contemplate, by such provision, that all corporate acts ought to be with the concurrence of a majority of the unit owners.[37]

Moreover, considering that petitioners, who are members of PHCC, are ultimately challenging the agreement entered into by PHCC with DPDCI, they are assailing, in effect, PHCC's acts as a body corporate. This action, therefore, partakes the nature of an "intra-corporate controversy," the jurisdiction over which used to belong to the Securities and Exchange Commission *(SEC)*, but transferred to the courts of general jurisdiction or the appropriate Regional Trial Court *(RTC)*, pursuant to Section 5b of P.D. No. 902-A,[38] as amended by Section 5.2 of Republic Act *(R.A.)* No. 8799.[39]

An intra-corporate controversy is one which "pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves."[40]

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[37] *Id.* at 46.

[38] Reorganization of the Securities and Exchange Commission with Additional Power and Placing the said Agency under the Administrative Supervision of the Office of the President.

[39] The Securities Regulation Code.

[40] *Yujuico v. Quiambao*, G.R. No. 168639, January 29, 2007, 513 SCRA 243, 254.

Based on the foregoing definition, there is no doubt that the controversy in this case is essentially intra-corporate in character, for being between a condominium corporation and its members-unit owners. In the recent case of *Chateau De Baie Condominium Corporation v. Sps. Moreno*,[41] an action involving the legality of assessment dues against the condominium owner/developer, the Court held that, the matter being an intra-corporate dispute, the RTC had jurisdiction to hear the same pursuant to R.A. No. 8799.

As to the alleged failure to comply with the rule on exhaustion of administrative remedies, the Court again agrees with the position of the CA that the circumstances prevailing in this case warranted a relaxation of the rule.

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.[42] It has been held, however, that the doctrine of exhaustion of administrative remedies and the doctrine of primary jurisdiction are not ironclad rules. In the case of *Republic of the Philippines v. Lacap*,[43] the Court enumerated the numerous exceptions to these rules, namely: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine

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[41] G.R. No. 186271, February 23, 2011.

[42] *Universal Robina Corporation v. Laguna Lake Development Authority*, G.R. No. 191427, May 30, 2011, citing *Caballes v. Perez-Sison*, G.R. No. 131759, March 23, 2004, 426 SCRA 98.

[43] G.R. No. 158253, March 2, 2007, 517 SCRA 255.

may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in *quo warranto* proceedings.[44] [Underscoring supplied]

The situations (b) and (e) in the foregoing enumeration obtain in this case.

The challenged decision of the HLURB is patently illegal having been rendered in excess of jurisdiction, if not with grave abuse of discretion amounting to lack or excess of jurisdiction. Also, the issue on jurisdiction is purely legal which will have to be decided ultimately by a regular court of law. As the Court wrote in *Vigilar v. Aquino*:[45]

> It does not involve an examination of the probative value of the evidence presented by the parties. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts. Said question at best could be resolved only *tentatively* by the administrative authorities. The final decision on the matter rests not with them but with the courts of justice. Exhaustion of administrative remedies does not apply, because nothing of an administrative nature is to be or can be done. The issue does not require technical knowledge and experience but one that would involve the interpretation and application of law.

Finally, petitioners faulted the CA in not giving respect and even finality to the findings of fact of the HLURB. Their reliance on the case of *Dangan v. NLRC*,[46] reiterating the well-settled principles involving decisions of administrative agencies, deserves scant consideration as the decision of the HLURB in this case is manifestly not supported by law and jurisprudence.

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[44] *Vigilar v. Aquino*, G.R. No. 180388, January 18, 2011, 639 SCRA 772, 777.

[45] G.R. No. 180388, January 18, 2011, 639 SCRA 772, 778, citing *Republic of the Philippines v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255.

[46] G.R. Nos. 63127-28, 212 Phil. 653 (1984).

Petitioners, therefore, cannot validly invoke DPDCI's failure to fulfill its obligation on the basis of a plain draft leaflet which petitioners were able to obtain, specifically Pacifico Lim, having been a president of DPDCI. To accord petitioners the right to demand compliance with the commitment under the said brochure is to allow them to profit by their own act. This, the Court cannot tolerate.

In sum, inasmuch as the HLURB has no jurisdiction over petitioners' complaint, the Court sustains the subject decision of the CA that the HLURB decision is null and void *ab initio*. This disposition, however, is without prejudice to any action that the parties may rightfully file in the proper forum.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194813. April 25, 2012]

KAKAMPI and ITS MEMBERS, VICTOR PANUELOS, *et al.*, represented by DAVID DAYALO, KAKAMPI VICE PRESIDENT and ATTORNEY-IN-FACT, *petitioners, vs.* **KINGSPOINT EXPRESS and LOGISTIC and/or MARY ANN CO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; SERIOUS MISCONDUCT OR WILLFUL DISOBEDIENCE;

ELEMENTS.— An employer may terminate an employment on the ground of serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work. Willful disobedience requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge. Both elements are present in this case.

2. **ID.; ID.; ID.; ID.; ID.; PETITIONERS' UTTER LACK OF REASON OR JUSTIFICATION FOR THEIR INSUBORDINATION INDICATES THAT IT WAS PROMPTED BY MERE OBSTINACY, HENCE, WILLFUL AND WARRANTING OF DISMISSAL.—** As to the first element, that at no point did the dismissed employees deny Kingspoint Express' claim that they refused to comply with the directive for them to submit to a drug test or, at the very least, explain their refusal gives rise to the impression that their non-compliance is deliberate. The utter lack of reason or justification for their insubordination indicates that it was prompted by mere obstinacy, hence, willful and warranting of dismissal. It involves little difficulty to accuse Kingspoint Express of anti-unionism and allege that this was what motivated the dismissal of the petitioners, but the duty to prove such an accusation is altogether different. That the petitioners failed at the level of substantiation only goes to show that their claim of unfair labor practice is a mere subterfuge for their willful disobedience.

3. **ID.; ID.; ID.; ID.; ID.; IT IS COMMON KNOWLEDGE THAT THE USE OF DANGEROUS DRUGS HAS ADVERSE EFFECTS ON DRIVING ABILITIES THAT MAY RENDER THE DISMISSED EMPLOYEES INCAPABLE OF PERFORMING THEIR DUTIES TO THEIR EMPLOYER AND ACTING AGAINST THEIR INTEREST, IN ADDITION TO THE THREAT THEY POSE TO THE PUBLIC.—** As to the second element, no belabored and extensive discussion is necessary to recognize the relevance of the subject order in the performance of their functions as drivers of Kingspoint Express. As the NLRC correctly pointed out, drivers are indispensable to Kingspoint Express' primary

business of rendering door-to-door delivery services. It is common knowledge that the use of dangerous drugs has adverse effects on driving abilities that may render the dismissed employees incapable of performing their duties to Kingspoint Express and acting against its interests, in addition to the threat they pose to the public.

4. ID.; ID.; ID.; DUE PROCESS IN TERMINATION OF CASES; EMPLOYER'S SUPPOSED OBSERVANCE OF THE REQUIREMENTS OF PROCEDURAL DUE PROCESS IS PRETENTIOUS; AWARD OF NOMINAL DAMAGES, JUSTIFIED.— While Kingspoint Express had reason to sever their employment relations, this Court finds its supposed observance of the requirements of procedural due process pretentious. While Kingspoint Express required the dismissed employees to explain their refusal to submit to a drug test, the two (2) days afforded to them to do so cannot qualify as "reasonable opportunity," which the Court construed in *King of Kings Transport, Inc. v. Mamac* as a period of at least five (5) calendar days from receipt of the notice. Thus, even if Kingspoint Express' defective attempt to comply with procedural due process does not negate the existence of a just cause for their dismissal, Kingspoint Express is still liable to indemnify the dismissed employees, with the exception of Panuelos, Dizon and Dimabayao, who did not appeal the dismissal of their complaints, with nominal damages in the amount of ₱30,000.00.

APPEARANCES OF COUNSEL

Ricardo M. Perez for petitioners.
Voltaire A. Balitaan for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review under Rule 45 of the Rules of Court of the Amended Decision[1] dated March 16, 2010 and

[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Noel G. Tijam and Vicente S.E. Veloso, concurring; *rollo*, pp. 43-55.

Resolution[2] dated December 16, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106591.

Victor Panuelos (Panuelos), Bobby Dacara (Dacara), Alson Dizon (Dizon), Saldy Dimabayao (Dimabayao), Fernando Lupangco, Jr. (Lupangco), Sandy Paz (Paz), Camilo Tabarangao, Jr. (Tabarangao), Eduardo Hizole (Hizole) and Reginaldo Carillo (Carillo) were the former drivers of Kingspoint Express and Logistic (Kingspoint Express), a sole proprietorship registered in the name of Mary Ann Co (Co) and engaged in the business of transport of goods. They were dismissed from service on January 20, 2006 on the grounds of serious misconduct, dishonesty, loss of trust and confidence and commission of acts inimical to the interest of Kingspoint Express.

Prior thereto, Kingspoint Express issued separate notices to explain to the individual petitioners on January 16, 2006, uniformly stating that:

RE: CHARGES OF DISHONESTY
SERIOUS MISCONDUCT &
LOSS OF CONFIDENCE

Dear Mr. Dacara:

You are hereby formally charged with DISHONESTY, SERIOUS MISCONDUCT, LOSS OF CONFIDENCE, and acts inimical to the company, by filing with the National Labor Relations Commission (NLRC) false, malicious, and fabricated cases against the company. Further, your refusal to undergo drug testing is unwarranted and against company policy.

Please submit your answer or explanation to the foregoing charges within forty-eight (48) hours [from] receipt hereof. Your failure to do so would mean that you waive your right to submit your answer.

You may likewise opt for a formal investigation with the assistance of counsel, or proceed with the investigation as you may choose.

In the meantime, you are place[d] under preventive suspension for thirty (30) days effective on January 16, 2006. You are physically

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

barred from company premises while the preventive suspension exists[.][3]

The individual petitioners failed to submit their written explanation within the stated period. Subsequently, Kingspoint Express issued to them separate yet uniformly worded notices on January 20, 2006, informing them of their dismissal. Kingspoint Express expressed its decision in this wise:

> On January 16, 2006, you were formally charged with DISHONESTY, SERIOUS MISCONDUCT and LOSS OF CONFIDENCE and ACTS INIMICAL TO THE COMPANY based on the following acts:
>
> 1. FABRICATION OF BASELESS MONEY CLAIMS against the company;
>
> 2. MISLEADING FELLOW CO-WORKERS to sign the MALICIOUS COMPLAINT FOR MONEY CLAIMS against the company;
>
> 3. REFUSAL TO UNDERGO THE COMPANY'S GENERAL DRUG TEST[;]
>
> 4. EXTORTING MONEY FROM CO-WORKERS TO FUND ACTIVITIES THAT THEY WERE NEVER FULLY INFORMED OF;
>
> You were given two (2) days to respond to these charges, but you failed to do [so].[4]

In addition to the foregoing, Dacara was dismissed for consummating his sexual relations with one of Co's household helpers inside Co's residence thus impregnating her.[5]

A complaint for illegal dismissal was subsequently filed, alleging that the charges against them were fabricated and that their dismissal was prompted by Kingspoint Express' aversion to their union activities.

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[3] *Id.* at 203.

[4] *Id.* at 243.

[5] *Id.* at 212.

In a Decision[6] dated April 23, 2007, Labor Arbiter Cresencio G. Ramos, Jr. (LA Ramos) found Dacara, Lupangco, Paz, Tabarangao, Hizole and Carillo illegally dismissed. On the other hand, the complaint was dismissed insofar as Panuelos, Dizon and Dimabayao are concerned as they were deemed not to have filed their position papers. While the allegation of anti-unionism as the primordial motivation for the dismissal is considered unfounded, the respondents failed to prove that the dismissal was for a just cause. The pertinent portion of the decision reads:

> From a perusal and examination of the pieces of evidence adduced by the respondents in support of their defense, this Office finds the same as *not* being sufficient and substantial to establish the charges of serious misconduct and breach of trust. Consider the following:
>
> On the complainants' *alleged* refusal to undergo the company's general drug testing, the same is explicitly nothing but an *unsubstantiated allegation*, therefore, undeserving of judicial and quasi-judicial cognizance.
>
> On the *alleged* act of the complainants in extorting money from co-workers to fund activities that they were not fully informed of as well as the *alleged* misleading of co-workers to sign "malicious money claims" against the company, it is to be noticed that respondents' support or evidence thereto are the joint affidavit of drivers and helpers as well as that of one Ronie Dizon. On said pieces of evidence, this Office could not give much probative or evidentiary value and weight thereto as said sworn statements may definitely not be said to have genuinely emanated from the affiants (sic) drivers and helpers. To be precise, the joint-affidavit of the drivers and helpers (annex "B", respondents' position paper) obviously was "tailor-made," so to speak, to conform with the respondents' position or defense in the instant case. Said joint-affidavit in fact is couched in English, thus, tremendously lowering the probability that the statements therein really came from the "hearts and souls" of the lowly-educated drivers and helpers.
>
> On the breach of trust allegedly committed by Bobby Dacara with respect to the *alleged* act of repeatedly sneaking in the household of respondent Mary Ann Co and thereafter impregnating one of the latter's househelps, the same is *nothing* but an *unsubstantiated*

[6] *Id.* at 228-235.

allegation and therefore, undeserving of judicial and quasi-judicial cognizance. Jurisprudence definitely is explicit on this point that an *affirmative allegation* made by a party must duly be proven to merit acceptance (People *vs.* Calayca, 301 SCRA 192).[7]

On appeal, the National Labor Relations Commission (NLRC) affirmed LA Ramos' Decision dated April 23, 2007 in its Resolution[8] dated April 30, 2008, thus:

In the case at bar, We are persuaded to agree with the findings of the Labor Arbiter that "the pieces of evidence adduced by the respondents in support of their defense x x x not being sufficient and substantial to establish the charges of serious misconduct and breach of trust" (Records, p. 96).[9]

In addition, the NLRC ruled that the respondents failed to comply with the procedural requirements of due process. Specifically:

It is also observed that much is to be desired insofar as the observance of the procedural due process aspect is concerned. Firstly, there was no compliance with the due process requirement of the law considering that the uniformly worded first notice, all dated January 16, 2006, sent by respondents-appellants to the complainants-appellees, did not apprise them of the particular acts or omission for which their dismissal were sought. As clearly shown by the said individual notices, each of the complainants-appellees was merely informed that he or she is "formally charged with DISHONESTY, SERIOUS MISCONDUCT, LOSS OF CONFIDENCE and acts inimical to the Company" x x x without specifying the particular or specific acts or omissions constituting the grounds for their dismissal.

The purpose of the first notice is to sufficiently apprise the employee of the acts complained of and to enable the employee to prepare his defense. In this case, though, the said first notice did not identify the particular acts or omissions committed by each of the complainants-appellees. The extent of their knowledge and participation in the

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[7] *Id.* at 233-234.

[8] *Id.* at 236-245.

[9] *Id.* at 241.

generally described charges were not specified in the said first notice, hence, the complainants-appellee could not be expected to intelligently and adequately prepare their defense. The first notice should neither be pro-forma nor vague; that it should set out clearly what each of the employees is being held liable for. They should be given ample opportunity to be heard and not mere opportunity. Ample opportunity means that each of the complainants-appellees should be specifically informed of the charges in order to give each of them, an opportunity to refute such accusations. Since, the said first notices are inadequate, their dismissal could not be in accordance with due process x x x.

Secondly, there was no just or authorized cause for the respondents-appellants to terminate the complainants-appellees' services. It is observed that the Notices of Termination, all dated January 20, 2006, merely mentioned the ground relied upon, to wit:

x x x x x x x x x

Placing side by side the first (1st) notices and the Notice of Termination, We can easily notice the wide disparity between them. In the first (1st) notices, the alleged charges leveled against each of complainants-appellees were couched in general terms, such as: DISHONESTY, SERIOUS MISCONDUCT, LOSS OF CONFIDENCE and ACTS INIMICAL TO THE COMPANY, such that the complainants-appellees could not be expected to prepare their responsive pleadings; while the uniformly worded Notices of Termination, as earlier quoted, the charges leveled against of (sic) them are more specific.[10]

Respondents moved for reconsideration and in a Decision[11] dated July 17, 2008, the NLRC reversed itself and declared the individual petitioners legally dismissed:

Respondent company is an entity engaged in the delivery of goods called "door-to-door" business. As such, respondents are in custody of goods and moneys belonging to customers. Thus, respondents want to ensure that their drivers are drug-free and honest. It is undeniable that persons taking prohibited drugs tend to commit criminal activities when they are "high," as most of them are out of their minds. Complainants are drivers and are on the road most

[10] *Id.* at 241-244.

[11] *Id.* at 247-255.

of the time. Thus, they must see to it that they do not cause damage to other motor vehicles and pedestrians.

Likewise, when delivering goods and money, it is not impossible that they could commit acts inimical to the respondents' interest, like failure to deliver the money or goods to the right person or do a "hold-up me" scenario.

Thus, to guarantee complainants-drivers' safety and effective performance of their assigned tasks, respondents ordered complainants to undergo drug testing. However, they refused to follow the directive. Neither did they give a clear explanation for their refusal to the respondents. This shows complainants' wrongful attitude to defy the reasonable orders which undoubtedly pertain to their duties as drivers of the respondents. Such act is tantamount to willful disobedience of a lawful order, a valid ground for dismissal under the Labor Code, as amended.

Furthermore, employees who are not complainants in this case, in a sworn statement attested to the fact that complainants tricked them to sign papers which turned out to be a complaint for money claims. They also accused them of abusing their trust in order to achieve their selfish motives. Complainants even convinced them to shell out part of their salaries without authorization and consent, as "*panggatos para sa papeles, transportasyon ng abugado*" but said money was used for the Union's purposes. Worse, complainants even threatened them to file criminal charges against them if they did not follow the complainants' evil plans. x x x

In their Rejoinder, respondents also mentioned about the loss of cargoes to be delivered to Pampanga and Nueva Ecija. Complainants failed to refute the allegations nor comment on the matter. This led to respondents' loss of trust and confidence reposed in them. Considering that the drivers have in their possession money and goods to be delivered, the continuance of their employment depends on the trust and confidence in them. Undeniably, trust, once lost is hard to regain.

x x x x x x x x x

We disagree.

On January 16, 2006, respondents sent each of the complainants a letter stating the infractions committed by them. They directed them to explain the said infractions with a warning that failure to

do so would mean waiver of their right to submit their answer. They further advised them to "opt for a formal investigation with assistance of the counsel, or proceed with the investigation you may choose."

However, complainants failed to answer. Neither did they do any act to dispute the charges. They remained silent on the infractions which a person would not normally do if he is not guilty of the said charges. If they were really innocent, immediately, even without any notice, they should have reacted and did everything to dispute the charges. But they failed, despite the notice to explain. This would lead to the conclusion that they were guilty of the charges imputed against them. As a consequence thereof, the complainants are considered to have waived their right to defend themselves.[12]

Petitioners moved for reconsideration but the same was denied in a Resolution[13] dated September 30, 2008.

Subsequently, the petitioners filed a petition for *certiorari* with the CA. In a Decision[14] dated July 17, 2009, the CA reversed and set aside the NLRC Decision dated July 17, 2008 and Resolution dated September 30, 2008. Thus:

Initially, this Court must determine whether the petitioners violated the Company Policies as would warrant their dismissal from the service. However, a painstaking review of the records of this case negate[s] a finding of such culpability on the part of the petitioners.

The charges of dishonesty, serious misconduct and loss of confidence against the petitioners are nothing more than bare allegations as neither the show cause orders nor the termination letters specify in clear and unmistakable manner, the specific acts committed by the petitioners as would amount to dishonesty, serious misconduct or loss of confidence. Neither of these notices even contain any averments as to how and when the alleged infractions were committed by the petitioners.

x x x x x x x x x

In this case, respondent company had not been able to identify an act of dishonesty, serious misconduct or any illicit act, which

[12] *Id.* at 248-251.

[13] *Id.* at 62.

[14] *Id.* at 58-71.

the petitioners may have committed in connection with their work, except the allegation that petitioners filed false, malicious, and fabricated cases against the company which, under the Labor Code, is not a valid ground for termination of employment. There is even no mention of any company policy or rule violated by any of the petitioners to warrant their dismissal. The charges are clearly unfounded.

x x x x x x x x x

The superficial compliance with two notices and a hearing in this case cannot be considered valid where the notices to explain where issued four (4) days before the petitioners were terminated. The termination was obviously hurriedly effected, as the respondent failed to give the petitioners the avenue to contradict the charges against them either by submission of their answer or by the conduct of an actual investigation in order to give spirit to the requirement of due process. Petitioners were thus robbed of their rights to explain their side, to present evidence and rebut what was presented against them, rights ensured by the proper observance of procedural due process.[15]

Respondents promptly filed a motion for reconsideration. Similar to the NLRC, the CA reversed itself and retracted its earlier finding that the individual petitioners were illegally dismissed. In its Amended Decision[16] dated March 16, 2010, the CA concluded that the two (2) notices issued by Kingspoint Express complied with the requirements of the law:

In the assailed *Decision*, We conceded that all the petitioners were **actually furnished** with a letter dated 16 January 2006. In each letter, petitioners were individually charged with "*dishonesty, serious misconduct, loss of confidence for performing acts inimical to the company by filing with the NLRC false, malicious and fabricated cases against the company and their refusal to undergo drug testing.*" They were directed to submit an answer or explanation within forty-eight (48) hours and were even given the option to avail of a formal investigation with the assistance of counsel. They were further advised that failure to submit said answer/explanation would mean waiver

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[15] *Id.* at 65-69.

[16] *Supra* note 1.

on their part. Thus, when they failed to submit an explanation/Answer, and failed to inform their employer that they wanted a formal investigation on the matter, their employer was constrained to serve upon them on 20 January 2006, or four (4) days later, **separate notices of termination stating the offenses they committed**, *viz*.:

x x x x x x x x x

Show-cause letters/memoranda create a burden on the employees to explain their innocence. In turn, it is from such explanation that the employer will be obliged to prove his case in an investigation. Since the petitioners did not explain, much less invoke their right to investigation, it follows that they are deemed to have waived their rights under Art. 277(b) of the Labor Code. Technically, the law on evidence considers them to have admitted the charges against them. With such admission, the employer is discharged from the need to prove the offenses charged. It is well-settled that in any forum, whether judicial or administrative, **a party need not prove what is admitted**.[17] (Citations omitted)

The CA also held that the individual petitioners performed acts, which constitute serious misconduct:

The assailed Decision admits what constitutes **serious misconduct**.

Here, except for Bobby Dacara, each of the three petitioners conceded the existence of the following bases for their dismissal: (1) **complainants' refusal to undergo mandatory drug-testing**; (2) creating disharmony and distrust among the workers and misleading them to go against the employer; and (3) **losing cargo with a value of ₱250,000.00 entrusted to respondent company** for door-to-door delivery.

Verily, each of the aforestated grounds independently constitute[s] serious misconduct. Each of them were (sic) committed in relation to petitioners' work. And again, the commission of said infractions constitutes a ground to dismiss under Art. 282(a) of the Code. The Court, therefore, gravely erred when it held that no serious misconduct was committed by petitioners in this case.

On the other hand, in the case of Bobby Dacara, records show that he committed breach of trust and confidence by sneaking into

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[17] *Id.* at 48-50.

the house of private respondent Co and engaging one of Co's helpers in repeated sexual congress leading to her pregnancy. As held in *Santos, Jr. vs. NLRC*, such behavior amounts to immorality which is a case of serious misconduct; a just cause to dismiss an employee.[18] (Citation omitted)

Petitioners moved for reconsideration but this was denied by the CA in its Resolution[19] dated December 16, 2010.

The lone issue for the disposition of this Court is the validity of the individual petitioners' dismissal.

It is fundamental that in order to validly dismiss an employee, the employer is required to observe both substantive and procedural due process — the termination of employment must be based on a just or authorized cause and the dismissal must be effected after due notice and hearing.[20]

As to whether Kingspoint Express complied with the substantive requirements of due process, this Court agrees with the CA that the concerned employees' refusal to submit themselves to drug test is a just cause for their dismissal.

An employer may terminate an employment on the ground of serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work. Willful disobedience requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge. Both elements are present in this case.

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

[19] *Supra* note 2.

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

As to the first element, that at no point did the dismissed employees deny Kingspoint Express' claim that they refused to comply with the directive for them to submit to a drug test or, at the very least, explain their refusal gives rise to the impression that their non-compliance is deliberate. The utter lack of reason or justification for their insubordination indicates that it was prompted by mere obstinacy, hence, willful and warranting of dismissal.

It involves little difficulty to accuse Kingspoint Express of anti-unionism and allege that this was what motivated the dismissal of the petitioners, but the duty to prove such an accusation is altogether different. That the petitioners failed at the level of substantiation only goes to show that their claim of unfair labor practice is a mere subterfuge for their willful disobedience.

As to the second element, no belabored and extensive discussion is necessary to recognize the relevance of the subject order in the performance of their functions as drivers of Kingspoint Express. As the NLRC correctly pointed out, drivers are indispensable to Kingspoint Express' primary business of rendering door-to-door delivery services. It is common knowledge that the use of dangerous drugs has adverse effects on driving abilities that may render the dismissed employees incapable of performing their duties to Kingspoint Express and acting against its interests, in addition to the threat they pose to the public.

The existence of a single just cause is enough to order their dismissal and it is now inconsequential if the other charges against them do not merit their dismissal from service. It is therefore unnecessary to discuss whether the other acts enumerated in the notices of termination issued by Kingspoint Express may be considered as any of the just causes.

Nonetheless, while Kingspoint Express had reason to sever their employment relations, this Court finds its supposed observance of the requirements of procedural due process pretentious. While Kingspoint Express required the dismissed employees to explain their refusal to submit to a drug test, the two (2) days afforded to them to do so cannot qualify as

"reasonable opportunity," which the Court construed in *King of Kings Transport, Inc. v. Mamac*[21] as a period of at least five (5) calendar days from receipt of the notice.

Thus, even if Kingspoint Express' defective attempt to comply with procedural due process does not negate the existence of a just cause for their dismissal, Kingspoint Express is still liable to indemnify the dismissed employees, with the exception of Panuelos, Dizon and Dimabayao, who did not appeal the dismissal of their complaints, with nominal damages in the amount of ₱30,000.00.

WHEREFORE, premises considered, the Decision dated March 16, 2010 and Resolution dated December 16, 2010 of the Court of Appeals are **AFFIRMED** with **MODIFICATION** in that respondent Kingspoint Express and Logistic is hereby held liable for the payment of nominal damage, in the amount of ₱30,000.00 each to petitioners Bobby Dacara, Fernando Lupangco, Jr., Sandy Paz, Camilo Tabarangao, Jr., Eduardo Hizole and Reginaldo Carillo, for non-observance of procedural due process required in terminating employment.

SO ORDERED.

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

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[21] G.R. No. 166208, June 29, 2007, 526 SCRA 116.

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Just compensation — All non-compensation issues that the court has not resolved for determination and all resolved issues for implementation should be referred to the Department of Agrarian Reform (DAR). (Hacienda Luisita, Inc. *vs.* Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012; *Brion, J., separate opinion (concurring and dissenting opinion*) p. 377

— Computation of just compensation must conform to the factors listed in Section 17 of R.A. No. 6657; farming experience and thumb method of conversion tests are relevant to the factors listed in R.A. No. 6657. (Land Bank of the Phils. *vs.* Heirs of Salvador Encinas, G.R. No. 167735, April 18, 2012) p. 48

— Defined and explained. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012) p. 377

— Payment thereof based on outdated values of the expropriated lands is too confiscatory; the taking of the expropriated property to be reckoned from the time of the approval of the Stock Distribution Option Agreement (SDOA) is unjust; reasons. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012; *Sereno, J., separate opinion [concurring and dissenting opinion]*) p. 377

— Stock distribution option and compulsory land acquisition, distinguished. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012) p. 377

— The approval of the Stock Distribution Plan (SDP) operates and takes the place of a notice of coverage ordinarily issued under compulsory acquisition; the taking of the agricultural lands of Hacienda Luisita should be reckoned from the time of the approval of the Stock Distribution Plan (SDP) by the Presidential Agrarian Reform Council (PARC). *(Id.)*

Right to just compensation — The taking of land for the CARP, should not be done by sacrificing the constitutional right to fair and prompt determination of just compensation for the landowners because they are entitled, as the farm-worker beneficiaries, to the protection of the Constitution and the agrarian reform laws; the time of taking should be fully heard and settled initially by the Department of Agrarian Reform and Land Bank and subsequently by the RTC-SAC. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012; *Bersamin, J.,concurring and dissenting opinion*) p. 377

Stock distribution plan (SDP) — Nullification of the SDP, consequences thereof. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012; *Brion, J., separate opinion (concurring and dissenting opinion*) p. 377

— The agricultural land of the corporate owners became subject to the compulsory coverage of CARP and their rights of ownership over the said lands were transferred by law to the farmer-workers benificiaries (FWBS) when the PARC disapproved the stock distribution plan (SDP). *(Id.)*

— The illegality of the terms of the stock distribution plan (SDP) rendered the same null and void from the very beginning and was not cured by Presidential Agrarian Reform Council's (PARC) erroneous approval. *(Id.)*

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation — Procedural safeguards must be complied starting with the requirement relating to custody and disposition of confiscated dangerous drugs. (Reyes *vs*. Hon. CA, G.R. No. 180177, April 18, 2012) p. 137

Chain of custody rule — Despite the presumption of regularity in the performance of the official duties of law enforcers, the step-by-step procedure outlined under R.A. No. 9165 is a matter of substantive law, which cannot be simply brushed aside as a simple procedural technicality as the provisions were crafted by Congress as safety precautions to address potential police abuses. (People of the Phils. *vs*. Umipang *y* Abdul, G.R. No. 190321, April 25, 2012) p. 1024

— Non-compliance with the required procedure will not necessarily result in the acquittal of the accused if there are justifiable grounds. *(Id.)*

— Requirements of chain of custody rule, as a method of authenticating evidence in drug related cases, explained. (Zafra *y* Dechosa *vs*. People of the Phils., G.R. No. 190749, April 25, 2012) p. 1095

— The solo performance of the apprehending police officer of all the acts for the prosecution of the offense is unexplained and puts the proof of corpus delicti, which is the illegal object itself in serious doubt. *(Id.)*

Illegal sale and illegal possession of dangerous drugs — For the successful prosecution thereof, compliance with the "chain of custody" must be established. (Reyes *vs*. Hon. CA, G.R. No. 180177, April 18, 2012) p. 137

— Physical inventory and photographing of the seized articles must always be immediately executed at the place of seizure and confiscation. *(Id.)*

COMPROMISES

Quitclaims — Valid in the absence of any vice in consent thereof. (Jiao *vs*. NLRC, G.R. No. 182331, April 18, 2012) p. 171

CONTEMPT

Contempt proceedings — Due process therein, explained. (Esperida *vs*. Jurado, Jr., G.R. No. 172538, April 25, 2012) p. 775

— In contempt proceedings, the prescribed procedure must be followed; rationale. *(Id.)*

Indirect contempt — Procedural requisites under Rule 71 of the Rules of Court, cited. (Esperida *vs*. Jurado, Jr., G.R. No. 172538, April 25, 2012) p. 775

CONTRACTS

Interest — May be imposed notwithstanding absence of stipulation in the contract; interest rate absent any stipulation, discussed. (Estores *vs*. Sps. Arturo and Laura Supangan, G.R. No. 175139, April 18, 2012) p. 86

— Twelve percent (12%) interest per annum from date of demand as forbearance of money governing the delayed return of money in a transaction involving a conditional deed of sale; discussed. *(Id.)*

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. (Insular Investment and Trust Corp. *vs*. Capital One Equities Corp. [now known as Capital One Holdings Corp.], G.R. No. 183308, April 25, 2012) p. 819

CORPORATIONS

Derivative suit — The requisites for a derivative suit are as follows: a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; b) he has tried to exhaust intra-corporate remedies, i.e., has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and c) the cause of action actually devolves on the corporations, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit. (Lisam Enterprises, Inc. *vs*. Banco De Oro Unibank, Inc., [formerly PCIB], G.R. No. 143264, April 23, 2012) p. 293

Doctrine of separate corporate identity — A corporation has separate and distinct personality from other corporations with which it may be connected. (Steelcase, Inc. *vs*. Design Int'l. Selections, Inc., G.R. No. 171995, April 18, 2012) p. 59

Foreign corporations doing business in the Philippines — "Doing business" not appreciated where foreign corporation merely appointed a distributor. (Steelcase, Inc. *vs*. Design Int'l. Selections, Inc., G.R. No. 171995, April 18, 2012) p. 59

Foreign corporation doing business in the Philippines without a license — Defense that such corporation has no capacity to sue before the local courts, not appreciated in favor of one who had benefited therefrom. (Steelcase, Inc. *vs.* Design Int'l. Selections, Inc., G.R. No. 171995, April 18, 2012) p. 59

COURT PERSONNEL

Conduct of — Court personnel must comply with just contractual obligations, act fairly and adhere to high ethical standards. (*Re*: Complaint filed By Paz De Vera Lazaro against Edna Magallanes, A.M. No. P-11-3003 [Formerly A.M. IPI No. 08-2970-P], April 25, 2012) p. 717

Immorality — Defined; engaging in sexual relations with a married man is not only a violation of the moral standards expected of employees of the judiciary, but is also a desecration of the sanctity of the institution of marriage which the court abhors and is, thus, punishable. (Jallorina *vs*. Taneo-Regner, A.M. No. P-11-2948 [Formerly OCA I.P.I. No. 09-3049-P], April 23, 2012) p. 285

COURTS

Jurisdiction of — Courts acquire jurisdiction over the plaintiffs upon filing of the complaint, and to be bound by a decision, a party should first be subjected to the court's jurisdiction. (Cosco Phils. Shipping, Inc. *vs*. Kemper Ins. Co., G.R. No. 179488, April 23, 2012) p. 327

— Jurisdiction is vested in the court, not in the judge, so that when a complaint is filed before one branch or judge, jurisdiction does not attach to said branch of the judge alone, to the exclusion of others. (Castro *vs*. Guevarra, G.R. No. 192737, April 25, 2012) p. 1125

— The issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. (Cosco Phils. Shipping, Inc. *vs*. Kemper Ins. Co., G.R. No. 179488, April 23, 2012) p. 327

— The jurisdiction over the subject matter is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. (Go *vs.* Distinction Properties Dev't. and Construction, Inc., G.R. No. 194024, April 25, 2012) p. 1160

Powers — When a case is on appeal, the court has, the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case. (Aliling *vs.* Feliciano, G.R. No. 185829, April 25, 2012) p. 889

CRIMINAL LIABILITY, EXTINGUISHMENT OF

Death of the accused — Appellant's death during the pendency of his appeal extinguished not only his criminal liability for the crime of rape, but also his civil liability solely arising from or based on said crime; rationale. (People of the Phils. *vs.* Bayot *y* Satina, G.R. No. 200030, April 18, 2012) p. 270

— Decision of the Court of Appeals finding the accused criminally and civilly liable for the crime of rape become ineffectual upon the death of the accused. *(Id.)*

— The extinguishment of an accused's criminal and pecuniary liabilities predicated upon his death and not on his acquittal, although favorable, does not have any effect on his co-accused. (People of the Phils. *vs.* De la Cruz, G.R. No. 190610, April 25, 2012) p. 1089

— The personal penalty and pecuniary penalty of an accused are extinguished upon his death pending appeal of his conviction by the lower courts; there is no civil liability involved in violations of the Comprehensive Dangerous Drugs Act of 2002. *(Id.)*

DAMAGES

Actual damages — To be entitled to an award thereof, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent

proof and on the best evidence obtainable. (Philtranco Service Enterprises, Inc. *vs*. Paras, G.R. No. 161909, April 25, 2012) p. 736

Attorney's fees — May be awarded when one was compelled to litigate and incurred expenses to protect his interests or when the suit filed was baseless or when the defendant acted in bad faith in filing or impleading the litigant. (Estores *vs.* Sps. Arturo and Laura Supangan, G.R. No. 175139, April 18, 2012) p. 86

Award of — Injury alone does not give the party the right to recover damages; he must also have a right of action for the legal wrong inflicted by the other party. (Du *vs*. Jayoma, G.R. No. 175042, April 23, 2012) p. 317

Indemnity for loss of earning capacity — Award thereof, when proper. (Philtranco Service Enterprises, Inc. *vs*. Paras, G.R. No. 161909, April 25, 2012) p. 736

Liquidated damages — Parties to a contract may stipulate on liquidated damages to be paid in case of breach; it is in the nature of a penalty clause fixed by the contracting parties as a compensation or substitute for damages in case of breach of the obligation; the contractor is bound to pay the stipulated amount without need for proof of the existence and the measure of damages caused by the breach. (Phil. Charter Ins. Corp. *vs*. Petroleum Distributors & Service Corp., G.R. No. 180898, April 18, 2012) p. 154

Moral damages — Generally, moral damages are not recoverable in an action predicated on a breach of contract; exceptions. (Philtranco Service Enterprises, Inc. *vs.* Paras, G.R. No. 161909, April 25, 2012) p. 736

DENIAL OF THE ACCUSED

Defense of — Inherently a weak defense as it is negative and self-serving, and the weakest of all defenses, for it is easy to contrive and difficult to prove. (Jallorina *vs*. Taneo-Regner, A.M. No. P-11-2948 [Formerly OCA I.P.I. No. 09-3049-P], April 23, 2012) p. 285

DUE PROCESS

Nature — The essence of due process is simply an opportunity to be heard; what the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard. (P/Insp. Artillero *vs*. Casimiro, G.R. No. 190569, April 25, 2012) p. 1055

ELECTIONS

Qualification of candidates — Residency requirement, explained; a candidate is not required to have a house in a community to establish his residence or domicile in a particular place. (Jalosjos *vs*. The COMELEC, G.R. No. 191970, April 24, 2012) p. 563

Residency requirement — A candidate's residence in a locality through actual residence in whatever capacity is required. (Sabili *vs*. COMELEC, G.R. No. 193261, April 24, 2012) p. 649

— Absence from residence to pursue further studies or practice a profession or registration as a voter other than in the place where one is elected, does not constitute loss of residence. *(Id.)*

— Change of residence is allowed provided it can be proven with certainty that it has been effected for election law purposes for the period required by law. *(Id.)*

— Property ownership or business interest in the locality where one intends to run for local elective post or a person's presence in his home twenty-four hours a day, seven days a week is not required. *(Id.)*

— The question of domicile is mainly one of intention and circumstances. (Sabili *vs*. COMELEC, G.R. No. 193261, April 24, 2012; *Velasco, Jr., J., dissenting opinion*) p. 649

— There is a presumption in favor of a continuance of an existing domicile. *(Id.)*

— To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention. *(Id.)*

EMINENT DOMAIN

Exercise of — Two stages and their nature, elucidated. (Hacienda Luisita, Inc. vs. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012; *Bersamin, J., concurring and dissenting opinion*) p. 377

(Rep. of the Phils. [UP] *vs*. Legaspi, Sr., G.R. No. 177611, April 18, 2012) p. 100

Just compensation — Defined and explained. (Rep. of the Phils. [UP] *vs*. Legaspi, Sr., G.R. No. 177611, April 18, 2012) p. 100

— Determination of just compensation, factors to be considered. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012; *Bersamin, J., concurring and dissenting opinion*) p. 377

— The determination of just compensation in eminent domain cases is a judicial function and any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. (Nat'l. Power Corp. *vs*. Sps. Bernardo and Mindaluz Saludares, G. R. No. 189127, April 25, 2012) p. 967

— The right to recover just compensation is enshrined in no less than our Bill of Rights, which states that private property shall not be taken for public use without just compensation; this constitutional mandate cannot be defeated by statutory prescription. *(Id.)*

Taking of property for public use — A number of circumstances must be present in taking of property for purposes of eminent domain: (1) the expropriator must enter a private property; (2) the entrance into private property must be for more than a momentary period; (3) the entry into the property should be under warrant or color of legal authority; (4) the property must be devoted to a public use or otherwise informally appropriated or injuriously affected;

and (5) the utilization of the property for public use must be in such a way to oust the owner and deprive him of all beneficial enjoyment of the property. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012; *Bersamin, J., concurring and dissenting opinion*) p. 377

EMPLOYEES' COMPENSATION

Disability — A temporary total disability only becomes permanent when the company-designated physician, within the 240 day period, declares it to be so, or when after the lapse of the same, he fails to make such declaration. (Santiago *vs*. Pacbasin Shipmanagement, Inc. and/or Majestic Carriers, Inc., G.R. No. 194677, April 18, 2012) p. 255

EMPLOYER-EMPLOYEE RELATIONSHIP

Existence of — In determining the presence or absence of an employer-employee relationship, the Court has looked for the following incidents, to wit: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee on the means and methods by which the work is accomplished. (Jao *vs*. BCC Products Sales, Inc., G.R. No. 163700, April 18, 2012) p. 36

Management prerogative — In order for the quota imposed is to be considered a valid productivity standard and thereby validate dismissal for gross inefficiency or gross neglect of duty, management's prerogative of fixing the quota must be exercised in good faith for the advancement of its interest. (Aliling *vs*. Feliciano, G.R. No. 185829, April 25, 2012) p. 889

— While security of tenure is constitutionally guaranteed, it should not be indiscriminately invoked to deprive an employer of its management prerogatives and right to shield itself from incompetence, inefficiency and disobedience displayed by its employees. (Realda *vs*. New Age Graphics, Inc., G.R. No. 192190, April 25, 2012) p. 1110

EMPLOYMENT, KINDS

Probationary employment — An employee is considered a regular employee by force of law since he was not apprised of the reasonable standards for his regularization. (Aliling *vs*. Feliciano, G.R. No. 185829, April 25, 2012) p. 889

Project employment — Length of time is not the controlling test for project employment but it is vital in determining if the employee was hired for a specific undertaking or tasked to perform functions vital, necessary and indispensable to the usual business or trade of the employer. (D.M. Consunji, Inc. and/or David M. Consunji *vs*. Jamin, G.R. No. 192514, April 18, 2012) p. 220

Regular employment — Project or work pool employee, when deemed a regular employee; discussed. (D.M. Consunji, Inc. and/or David M. Consunji *vs*. Jamin, G.R. No. 192514, April 18, 2012) p. 220

EMPLOYMENT, TERMINATION OF

Dismissal — Disobedience to a reasonable order and failure to observe company's work standards are valid causes of dismissal. (Realda *vs*. New Age Graphics, Inc., G.R. No. 192190, April 25, 2012) p. 1110

— The principle of "totality of infractions" sanctions the act of an employer in considering employee's previous suspension for habitual tardiness and repeated absenteeism in decreeing dismissal. *(Id.)*

Retrenchment as a ground — Notice to the Department of Labor and Employment (DOLE) within 30 days prior to the intended date of retrenchment is necessary. (Int'l. Management Services/Marilyn C. Pascual *vs*. Logarta, G.R. No. 163657, April 18, 2012) p. 21

— Pertains to the reduction of work personnel usually due to poor financial returns, aimed to cut down costs for operation particularly on salaries and wages; it is one of the economic grounds to dismiss employees and is resorted by an employer primarily to avoid or minimize business losses. *(Id.)*

— Valid despite failure to comply with the one-month notice to the DOLE; separation pay and nominal damages, proper. *(Id.)*

Rights of illegally dismissed employees — Employee is entitled to backwages and separation pay in lieu of reinstatement on the ground of strained relationship. (Aliling *vs.* Feliciano, G.R. No. 185829, April 25, 2012) p. 889

Separation pay — Proper as long as amount required under the Labor Code is complied with. (Jiao *vs.* NLRC, G.R. No. 182331, April 18, 2012) p. 171

Serious misconduct or willful disobedience — Willful disobedience requires the concurrence of two elements: (1) the employee's assailed conduct must have been willful, that is, characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge. (KAKAMPI and Its Members, Victor Panuelos *vs.* Kingspoint Express and Logistic and/or Mary Ann Co, G.R. No. 194813, April 25, 2012) p. 1182

ESTAFA

Commission of — Elements. (Galvez *vs.* Hon. CA, G.R. No. 187919, April 25, 2012) p. 924

— Fraud in its general sense; explained. *(Id.)*

— The estafa or swindling is committed by a syndicate of five or more persons. *(Id.)*

Syndicated Estafa (P.D. No. 1689) — Elements. (Galvez *vs.* Hon. CA, G.R. No. 187919, April 25, 2012) p. 924

— P.D. No. 1689 applies to banking institutions; the law also applies to other corporations/associations operating on funds solicited from the general public. *(Id.)*

EVIDENCE

Circumstantial evidence — The settled rule is that a judgment of conviction based purely on circumstantial evidence can be upheld only if the following requisites concur: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce conviction beyond reasonable doubt. (People of the Phils. *vs*. Tanchanco *y* Pineda, G.R. No. 177761, April 18, 2012) p. 119

Proof beyond reasonable doubt — The accused can only be convicted when his guilt is established beyond reasonable doubt; with this standard, the appellate court is mandated to sift the records and search for every error, though unassigned in the appeal, in order to ensure that the conviction is warranted, and to correct every error that the lower court has committed in finding guilt against the accused. (Reyes *vs*. The Hon. CA, G.R. No. 180177, April 18, 2012) p. 137

Substantial evidence — The quantum of proof necessary in election cases. (Sabili *vs*. COMELEC, G.R. No. 193261, April 24, 2012) p. 649

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — Before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. (Samar Electric Cooperative, Inc. [SAMELCO] *vs*. Seludo, Jr., G.R. No. 173840, April 25, 2012) p. 786

— Compliance thereof may be relaxed where the challenged administrative act is patently illegal, amounting to lack of jurisdiction or where the question involved is purely legal and will ultimately have to be decided by the courts of justice. (Go *vs*. Distinction Properties Dev't. and Construction, Inc., G.R. No. 194024, April 25, 2012) p. 1160

— Courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence; when the law provides for a remedy against a certain action of an administrative board, body, or officer, relief to the courts can be made only after exhausting all remedies provided therein. (Addition Hills Mandaluyong Civic & Social Organization, Inc. *vs*. Megaworld Properties & Holdings, Inc., G.R. No. 175039, April 18, 2012) p. 76

— If a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought; exceptions. (Samar Electric Cooperative, Inc. [SAMELCO] *vs*. Seludo, Jr., G.R. No. 173840, April 25, 2012) p. 786

FORFEITURE OF IIL-GOTTEN WEALTH LAW (R.A. NO. 1379)

Application — Forfeiture proceedings are civil in nature; Rule 35 of the rules of summary judgment applies. (Marcos, Jr. *vs*. Rep. of the Phils., G.R. No. 189434, April 25, 2012) p. 980

Prima facie presumption of unlawfully acquired wealth — In determining whether the presumption of ill-gotten wealth should be applied, the relevant period is incumbency, or the period in which the public officer served in that position; the amount of the public officer's salary and lawful income is compared against any property or amount acquired for that same period. (Marcos, Jr. *vs*. Rep. of the Phils., G.R. No. 189434, April 25, 2012) p. 980

— R.A. No. 1379 provides that whenever any public officer or employee has acquired during his incumbency an amount of property manifestly out of proportion to his salary as such public officer and to his other lawful income, said property shall be presumed prima facie to have been unlawfully acquired. *(Id.)*

— The elements that must concur for this prima facie presumption to apply are the following: (1) the offender is a public officer or employee; (2) he must have acquired a considerable amount of money or property during his incumbency; and (3) said amount is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and income from legitimately acquired property. *(Id.)*

FORUM SHOPPING

Certification against forum shopping — A certification against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file the complaint on behalf of the corporation is fatally defective, and warrants the dismissal of the complaint. (Cosco Phils. Shipping, Inc. *vs*. Kemper Ins. Co., G.R. No. 179488, April 23, 2012) p. 327

— With respect to a corporation, the certification against forum shopping must be signed for and on behalf of the corporation by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document. *(Id.)*

Existence of — Requisites. (Sps. Daisy and Socrates M. Arevalo *vs*. Planters Dev't. Bank, G. R. No. 193415, April 18, 2012) p. 236

Rule against forum shopping — The grave evil sought to be avoided by the rule against forum-shopping is the rendition by two competent tribunals of two separate and contradictory decisions; violation of the rules results in the dismissal of a case. (Sps. Daisy and Socrates M. Arevalo *vs*. Planters Dev't. Bank, G. R. No. 193415, April 18, 2012) p. 236

GUARDIANSHIP

Petition for — A finding that a person is incompetent should be anchored on clear, positive and definite evidence. (Oropesa *vs*. Oropesa, G.R. No. 184528, April 25, 2012) p. 877

— Nature and purpose. *(Id.)*

— Where the sanity of person is at issue, expert opinion is not necessary, the observations of the trial judge coupled with evidence establishing the person's state of mental sanity will suffice. *(Id.)*

INJUNCTIONS

Writ of preliminary injunction — Deemed lifted upon dismissal of the main case, any appeal therefrom notwithstanding. (Sps. Daisy and Socrates M. Arevalo *vs*. Planters Dev't. Bank, G. R. No. 193415, April 18, 2012) p. 236

JUDGES

Duties — Basic legal procedures must be at the palm of a judge's hands. (Dr. Hipe *vs*. Judge Literado, A.M. No. MTJ-11-1781 [Formerly OCA I.P.I. No. 09-2161-MTJ], April 25, 2012) p. 723

— Judges shall dispose of the court's business promptly and decide cases within the required periods. *(Id.)*

Gross ignorance of the law — A serious charge; penalty.(Dr. Hipe *vs*. Judge Literado, A.M. No. MTJ-11-1781 [Formerly OCA I.P.I. No. 09-2161-MTJ], April 25, 2012) p. 723

JUDICIAL REVIEW

Concept — Actual case or controversy requirement, elucidated; a complaint of illegal disbursement of public funds derived from taxation is sufficient reason to consider that there exists a definite, concrete, real or substantial controversy before the court. (Lawyers Against Monopoly and Poverty [LAMP] *vs*. Sec. of Budget and Management, G.R. No. 164987, April 24, 2012) p. 357

— Expanded concept; clarified. (Funa *vs*. Chairman, COA, G.R. No. 192791, April 24, 2012) p. 571

— The court should not create issues sua ponte but should decide only the issues presented by the parties. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012; *Bersamin, J.,concurring and dissenting opinion*) p. 377

— The exercise of judicial power requires an actual case calling for it; courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however, intellectually challenging. (Sps. Daisy and Socrates M. Arevalo *vs*. Planters Dev't. Bank, G. R. No. 193415, April 18, 2012) p. 236

— The Judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. (Lawyers Against Monopoly and Poverty [LAMP] *vs*. Sec. of Budget and Management, G.R. No. 164987, April 24, 2012) p. 357

— The power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case. *(Id.)*

— When proper; requisites. (Funa *vs*. Chairman, COA, G.R. No. 192791, April 24, 2012) p. 571

Locus standi — Minimum norm before the so-called "non-traditional suitors" may be extended standing to sue, thus: 1) For taxpayers, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; 2) For voters, there must be a showing

of obvious interest in the validity of the election law in question; 3) For concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and 4) For legislators, there must be a claim that the official action complained of infringes their prerogatives as legislators. (Funa *vs*. Chairman, COA, G.R. No. 192791, April 24, 2012) p. 571

— Taxpayers have sufficient interest in preventing the illegal expenditure of money raised by taxation and may question the constitutionality of statutes requiring expenditure of public money; issues involving the unconstitutional spending of Priority Development Assistance Fund (PDAF) is impressed with paramount public interest. (Lawyers Against Monopoly and Poverty [LAMP] *vs*. Sec. of Budget and Management, G.R. No. 164987, April 24, 2012) p. 357

LOCAL GOVERNMENTS

Authority to issue license to operate a cockpit — A license authorizing the operation and exploitation of a cockpit is not property of which the holder may not be deprived without due process of law, but a mere privilege that may be revoked when public interests so require. (Du *vs*. Jayoma, G.R. No. 175042, April 23, 2012) p. 317

Sangguniang Bayan — The Sangguniang Bayan is empowered to authorize and license the establishment, operation and maintenance of cockpits, and regulate cockfighting and commercial breeding of gamecocks. (Du *vs*. Jayoma, G.R. No. 175042, April 23, 2012) p. 317

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Possession of firearms by the Punong Barangay — Under R.A. No. 7160, Section 389 (c) there are four (4) conditions that restrict the right of the Punong Barangay to possess and carry firearms: first, the right must be exercised in performance of peace and order functions; second, the right must be exercised within the territorial jurisdiction of the Punong Barangay; third, the firearm must be necessary in the exercise of official functions; and fourth, the exercise of

the right is subject to appropriate rules and regulations. (P/Insp. Artillero *vs*. Casimiro, G.R. No. 190569, April 25, 2012; *Brion, J., dissenting opinion*) p. 1055

— While Section 389 (c) Chapter 3, Book III of R.A. No. 7160 grants the Punong Barangay the right to possess and carry firearms, the very wording of the law did not relieve him from complying with the rules and regulations involving the possession and carrying of firearms. *(Id.)*

Provincial governor — A candidate for governor must be a resident of the province for at least one year before the election; residency requirement, construed. (Jalosjos *vs*. COMELEC, G.R. No. 191970, April 24, 2012) p. 563

Punong Barangay — R.A. No. 7160 specifically gives the punong barangay, by virtue of his position, the authority to carry the necessary firearm within his territorial jurisdiction; the authority of punong barangays to possess the necessary firearm within their jurisdiction is necessary to enforce their duty to maintain peace and order within the barangays. (P/Insp. Artillero *vs*. Casimiro, G.R. No. 190569, April 25, 2012) p. 1055

Sanggunian — Different voting requirement for an affirmative action on the part of Sanggunian, explained. (La Carlota City *vs*. Atty. Rojo, G.R. No. 181367, April 24, 2012; *Brion, J., concurring opinion*) p. 477

— Opinion from the Department of Interior and Local Government that the Vice-Mayor, as presiding officer, is included for purposes of quorum does not bind the court. (La Carlota City *vs*. Atty. Rojo, G.R. No. 181367, April 24, 2012; *Del Castillo, J., dissenting opinion*) p. 477

— The power to accept resignation of a Sanggunian member is lodged with the Sanggunian concerned; Vice-mayor's presence to constitute a quorum is material in accepting the resignation. (La Carlota City *vs*. Atty. Rojo, G.R. No. 181367, April 24, 2012; *Brion, J., concurring opinion*) p. 477

— The Vice-Mayor is a presiding officer of Sangguniang Panlunsod, and not a member; Vice-Mayor should not be counted for purposes of quorum. (La Carlota City *vs*. Atty. Rojo, G.R. No. 181367, April 24, 2012; *Del Castillo, J., dissenting opinion*) p. 477

Vice-Mayor — The Vice-Mayor is a member of Sangguniang Panlunsod and can vote only to break a tie. (La Carlota City *vs*. Atty. Rojo, G.R. No. 181367, April 24, 2012) p. 477

Vice-Mayor or Vice-Governor — The Vice-Mayor or the Vice-Governor, as presiding officer, shall be included in the determination of a quorum in the Sanggunian. (La Carlota City *vs*. Atty. Rojo, G.R. No. 181367, April 24, 2012) p. 477

MOTION FOR RECONSIDERATION

Second motion for reconsideration — As a rule, it is prohibited for being a mere reiteration of the issues assigned and the arguments raised by the parties. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012) p. 377

NEW TRIAL

Concept — New trial is a remedy that seeks to temper the severity of a judgment or prevent the failure of justice; the effect of an order granting a new trial is to wipe out the previous adjudication so that the case may be tried de novo for the purpose of rendering a judgment in accordance with law; a motion for new trial is proper only after the rendition or promulgation of a judgment or issuance of a final order. (Castro *vs*. Guevarra, G.R. No. 192737, April 25, 2012) p. 1125

OBLIGATIONS

Contributory negligence — Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection." (PNB *vs*. Sps. Cheah Chee Chong and Ofelia Camacho Cheah, G.R. No. 170865, April 25, 2012) p. 760

OBLIGATIONS, EXTINGUISHMENT OF

Compensation — When valid; requisites. (Insular Investment and Trust Corp. *vs*. Capital One Equities Corp. (now known as Capital One Holdings Corp.), G.R. No. 183308, April 25, 2012) p. 819

OVERSEAS EMPLOYMENT

POEA Standard Employment Contract — The standard terms of the POEA Standard Employment Contract agreed upon are intended to be read and understood in accordance with the Labor Code, as amended, and the applicable implementing rules and regulation in case of any dispute, claim or grievance. (Santiago *vs*. Pacbasin Shipmanagement, Inc. and/or Majestic Carriers, Inc., G.R. No. 194677, April 18, 2012) p. 255

— Where the doctor appointed by the seafarer makes a finding contrary to that of the assessment of the company-designated physician, the opinion of a third doctor may be agreed jointly between the employer and the seafarer, whose finding shall be final and binding. *(Id.)*

PLEADINGS

Amendments — Generally favored and should be liberally allowed to serve the higher interest of justice in order to provide the best opportunity for the issues among all parties to be thoroughly threshed out and the rights of all parties finally determined. (Lisam Enterprises, Inc. *vs*. Banco De Oro Unibank, Inc., (formerly PCIB), G.R. No. 143264, April 23, 2012) p. 293

— May substantially alter the cause of action or defense. *(Id.)*

Third party complaint — Requisites. (Philtranco Service Enterprises, Inc. *vs*. Paras, G.R. No. 161909, April 25, 2012) p. 736

PRELIMINARY INVESTIGATION

Nature — Because a preliminary investigation is not a proper trial, the rights of parties therein depend on the rights granted to them by law and these cannot be based on whatever rights they believe they are entitled to or those that may be derived from the phrase "due process of law;" a complainant in a preliminary investigation does not have a vested right to file a reply; this right should be granted to him by law. (P/Insp. Artillero *vs*. Casimiro, G.R. No. 190569, April 25, 2012) p. 1055

Probable cause — A finding of probable cause needs only to rest on evidence that more likely than not, the accused committed the crime. (Galvez *vs.* Hon. CA, G.R. No. 187919, April 25, 2012) p. 924

— Fact that respondent Punong Barangay failed to present evidence that he had legal authority to carry the firearm outside of his residence satisfies the standard definition of probable cause. (P/Insp. Artillero *vs*. Casimiro, G.R. No. 190569, April 25, 2012; *Brion, J., dissenting opinion*) p. 1055

— While discretionary authority to determine probable cause in a preliminary investigation to ascertain sufficient ground for the filing of an information rests with the executive branch, such authority is far from absolute; it may be subject to review when it has been clearly used with grave abuse of discretion. (PNB *vs*. Tria, G.R. No. 193250, April 25, 2012) p. 1139

PRESIDENT

Immunity from suit — The presidential privilege cannot be invoked by a non-sitting president even for acts committed during his or her tenure. (Lozada, Jr. *vs*. Pres. Gloria Macapagal Arroyo, G.R. No. 184379-80, April 24, 2012) p. 536

PRESUMPTIONS

Regularity in the performance of official duties — Cannot be simply invoked for a gross, systematic, or deliberate disregard of procedural safeguards. (People of the Phils. *vs.* Umipang *y* Abdul, G.R. No. 190321, April 25, 2012) p. 1024

— Cannot by its lonesome overcome the constitutional presumption of innocence. (Zafra *y* Dechosa *vs*. People of the Phils., G.R. No. 190749, April 25, 2012) p. 1095

PRIMARY JURISDICTION

Doctrine of —When applicable. (Samar Electric Cooperative, Inc. [SAMELCO] *vs*. Seludo, Jr., G.R. No. 173840, April 25, 2012) p. 786

PROCEDURAL RULES

Application — Obedience to the requirements of procedural rules is needed if we are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction. (Cosco Phils. Shipping, Inc. *vs*. Kemper Ins. Co., G.R. No. 179488, April 23, 2012) p. 327

— The authority of the party to appear on behalf of the corporation in the pre-trial and all stages of the proceedings must be evidenced by a board resolution or secretary's certificate. *(Id.)*

— Where the party was not duly authorized by the corporation to file the complaint and sign the certification against forum shopping, the complaint is considered not filed and ineffectual, and as a necessary consequence, is dismissible due to lack of jurisdiction. *(Id.)*

PROHIBITION

Petition for — In order that prohibition will lie, all administrative remedies must first be exhausted. (Samar Electric Cooperative, Inc. [SAMELCO] *vs*. Seludo, Jr., G.R. No. 173840, April 25, 2012) p. 786

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application for registration — Application of the five-year prohibition requires alienation of land after the grant of the free patent. (Abelgas, Jr. *vs*. Comia, G.R. No. 163125, April 18, 2012) p. 6

— Prior private ownership of land is not affected by issuance of a free patent. *(Id.)*

PUBLIC OFFICERS AND EMPLOYEES

Code of Conduct and Ethical Standards for Public Officials and Employees — Every public official and employee shall at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, and public interest; any conduct contrary to these standards would qualify as conduct unbecoming of a government employee. (Luarca *vs*. Judge Molato, A.M. No.MTJ-08-1711, April 23, 2012) p. 278

Term of office — Distinguished from tenure of office. (Funa *vs*. Chairman, COA, G.R. No. 192791, April 24, 2012; *Carpio, J., concurring and dissenting opinion*) p. 571

— The appointing power is without authority to specify in the appointment a term shorter or longer than what the law provides. (Funa *vs*. Chairman, COA, G.R. No. 192791, April 24, 2012) p. 571

QUALIFYING CIRCUMSTANCES

Treachery — In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself; and (2) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. (People of the Phils. *vs*. Escleto, G.R. No. 183706, April 25, 2012) p. 853

— The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself. *(Id.)*

QUASI-CONTRACTS

Solutio indebiti — The indispensable requisites of the juridical relation known as solutio indebiti, are: (a) that he who paid was not under obligation to do so; and (b) that the payment was made by reason of an essential mistake of fact. (PNB *vs.* Sps. Cheah Chee Chong and Ofelia Camacho Cheah, G.R. No. 170865, April 25, 2012) p. 760

QUASI-DELICTS

Doctrine of res ipsa loquitur — Construed. (Del Carmen, Jr. *vs*. Bacoy, G.R. No. 173870, April 25, 2012) p. 799

— The requisites of the doctrine of res *ipsa loquitur* as established by jurisprudence are as follows: 1) the accident is of a kind which does not ordinarily occur unless someone is negligent; 2) the cause of the injury was under the exclusive control of the person in charge; and 3) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured. *(Id.)*

RULES OF PROCEDURE

Application — A strict and rigid application of technicalities must be avoided if it tends to frustrate rather than promote substantial justice. (Esperida *vs.* Jurado, Jr., G.R. No. 172538, April 25, 2012) p. 775

— Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties; late filing of the motion for reconsideration rendered the appealed decision final and executory. (D.M. Consunji, Inc. and/or David M. Consunji *vs*. Jamin, G.R. No. 192514, April 18, 2012) p. 220

SEARCH WARRANT

Issuance of — Motion to suppress evidence seized under a search warrant may be filed by persons not parties to the search warrant proceeding; nature of search warrant proceeding, explained. (Sec. and Exchange Commission *vs*. Mendoza, G. R. No. 170425, April 23, 2012) p. 309

— Questions concerning both the issuance of the search warrant and the suppression of evidence seized under it are matters that can be raised only with the issuing court if no criminal action has in the meantime been filed in court; action to suppress the use as evidence of the items seized under the search warrant should be filed with the court that issued the said warrant. *(Id.)*

SECURITIES AND EXCHANGE COMMISSION REORGANIZATION ACT (P.D. NO. 902-A)

Intra-corporate controversy — An intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. (Go *vs.* Distinction Properties Dev't. and Construction, Inc., G.R. No. 194024, April 25, 2012) p. 1160

— The jurisdiction over an intra-corporate controversy, used to belong to the Securities and Exchange Commission (SEC), but transferred to the courts of general jurisdiction or the appropriate Regional Trial Court (RTC), pursuant to Section 5b of P.D. No. 902-A, as amended by Section 5.2 of R.A. No. 8799. *(Id.)*

SETTLEMENT OF ESTATE OF A DECEASED PERSON

Probate court — It is within the jurisdiction of the probate court to approve the sale of properties of a deceased person by his prospective heir before final adjudication; question as to the validity of the acts of the administrator of the estate is subject to the sole jurisdiction of the probate court. (Romero *vs.* Hon. CA, G.R. No. 188921, April 18, 2012) p. 203

— The determination of whether a property is conjugal or paraphernal for purposes of inclusion in the inventory of the estate rests with the probate court. *(Id.)*

— The probate court has to power to rescind or nullify the disposition of a property under administration that was effected without its authority. *(Id.)*

— The probate court may provisionally pass upon the issue of title where the only interested parties are all heirs to the estate. *(Id.)*

— The rule that a probate court's determination of ownership over properties which may form part of the estate is not final or ultimate in nature is applicable only as between the representatives of the estate and strangers thereto. *(Id.)*

SPECIAL AGRARIAN COURTS

Jurisdiction — The Regional Trial Court-Special Agrarian Court is vested with the original and exclusive jurisdiction to receive the parties' evidence on the valuation of the affected property pursuant to the Comprehensive Agrarian Reform Law. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012; *Bersamin, J.,concurring and dissenting opinion*) p. 377

STATUTES

Constitutionality of — All presumptions are indulged in favor of constitutionality and the one who attacks a statute, alleging unconstitutionality, must prove its invalidity beyond reasonable doubt. (Lawyers Against Monopoly and Poverty [LAMP] *vs*. Sec. of Budget and Management, G.R. No. 164987, April 24, 2012) p. 357

— The presumption of constitutionality accorded to statutory acts of Congress can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down. *(Id.)*

Operative fact doctrine — Does not apply to the exercise of quasi-adjudicatory power; when the agreements are nullified, the parties should be restored to their original state prior to the execution of the nullified agreement. (Hacienda Luisita, Inc. *vs*. Presidential Agrarian Reform Council, G.R. No. 171101, April 24, 2012; *Brion, J., separate opinion (concurring and dissenting opinion*) p. 377

SURETYSHIP

Contract of suretyship — An agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee; although the contract of a surety is secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. (Phil. Charter Ins. Corp. *vs.* Petroleum Distributors & Service Corp., G.R. No. 180898, April 18, 2012) p. 154

TAX EXEMPTION

Nature — Tax exemptions must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law on the basis of language too plain to be mistaken. (Commissioner of Internal Revenue *vs*. Pilipinas Shell Petroleum Corp. G.R. No. 188497, April 25, 2012) p. 944

Payment of excise tax — Both the earlier amendment (P.D. No. 1359) in the 1977 Tax Code and the present Section 135 of the 1997 NIRC did not exempt the oil companies from the payment of excise tax on petroleum products manufactured and sold by them to international carriers. (Commissioner of Internal Revenue *vs*. Pilipinas Shell Petroleum Corp. G.R. No. 188497, April 25, 2012) p. 944

Petroleum products sold to international carriers and exempt entities or agencies —The excise tax imposed on petroleum products under Sec. 148 of the NIRC is the direct liability

of the manufacturer who cannot invoke the excise tax exemption granted to its buyers who are international carriers. (Commissioner of Internal Revenue *vs*. Pilipinas Shell Petroleum Corp., G.R. No. 188497, April 25, 2012) p. 944

— The tax exemption is conferred on specified buyers or consumers of the excisable articles or goods which are petroleum products. *(Id.)*

TAX LAWS

National Internal Revenue Code (NIRC) — Section 229 of the NIRC only allows the recovery of taxes erroneously or illegally collected and not on claims premised on tax exemptions. (Commissioner of Internal Revenue *vs*. Pilipinas Shell Petroleum Corp. G.R. No. 188497, April 25, 2012) p. 944

TAXES

Excise tax — An excise tax is a tax on the manufacturer and not on the purchaser. (Commissioner of Internal Revenue *vs*. Pilipinas Shell Petroleum Corp. G.R. No. 188497, April 25, 2012) p. 944

— An excise tax is basically an indirect tax or those that are demanded, in the first instance, from, or are paid by, one person in the expectation and intention that he can shift the burden to someone else. *(Id.)*

THEFT

Commission of — Elements. (PNB *vs*. Tria, G.R. No. 193250, April 25, 2012) p. 1139

(People of the Phils. *vs*. Tanchanco *y* Pineda, G.R. No. 177761, April 18, 2012) p. 119

— Intent to gain was established with the padding of expenses and submitting fake receipts to gain money. *(Id.)*

— Lack of consent was established when the owner made verifications after discovering the missing sums of money. *(Id.)*

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. (Zafra *y* Dechosa *vs.* People of the Phils., G.R. No. 190749, April 25, 2012) p. 1095

(People of the Phils. *vs.* Escleto, G.R. No. 183706, April 25, 2012) p. 853

— The presumption is that witnesses are not actuated by any improper motive absent any proof to the contrary and that their testimonies must accordingly be met with considerable, if not conclusive, favor under the rules of evidence; reason. (Jallorina *vs.* Taneo-Regner, A.M. No. P-11-2948 [Formerly OCA I.P.I. No. 09-3049-P], April 23, 2012) p. 285

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