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REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 18, 2012 TO JUNE 20, 2012

SUPREME COURT
MANILA
2014

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by

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. P-09-2646. June 18, 2012]
(Formerly OCA I.P.I. No. 08-2911-P)

JUDGE AMADO S. CAGUIOA (Ret.), *complainant, vs.* **ELIZABETH G. AUCENA, Court Legal Researcher II, Regional Trial Court, Branch 4, Baguio City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; PERSONS INVOLVED IN THE DISPENSATION OF JUSTICE, FROM THE HIGHEST OFFICIAL TO THE LOWEST CLERK, MUST LIVE UP TO THE STRICTEST STANDARDS OF INTEGRITY, PROBITY, UPRIGHTNESS AND DILIGENCE IN THE PUBLIC SERVICE.— The Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the judiciary. Persons involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness and diligence

in the public service. As the assumption of public office is impressed with paramount public interest, which requires the highest standards of ethics, persons aspiring for public office must observe honesty, candor and faithful compliance with the law.

2. ID.; ID.; ID.; DISHONESTY, DEFINED; UNAUTHORIZED INSERTION OF AN ADDITIONAL SENTENCE IN THE TRIAL COURT'S ORDER CONSTITUTES DISHONESTY.— Respondent committed dishonesty by causing the unauthorized insertion of an additional sentence in the trial court's order. Dishonesty has been defined as a disposition to lie, cheat, deceive or defraud. It implies untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle on the part of the individual who failed to exercise fairness and straightforwardness in his or her dealings. By her act, she has compromised and undermined the public's faith in the records of the court below and, ultimately, the integrity of the Judiciary. To tolerate such act would open the floodgates to fraud by court personnel.

3. ID.; ID.; ID.; LEGAL RESEARCHER; CANNOT AMEND COURT ORDERS; POWER TO AMEND AND CONTROL COURT PROCESSES AND ORDERS TO MAKE THEM CONFORMABLE TO LAW AND JUSTICE RESTS UPON THE JUDGE.— Respondent's contention that she just inserted the sentence in order to complete a rather incomplete order, and to depict the real situation, *i.e.*, that the case was already dismissed because of the agreement reached by the parties, is not acceptable. The insertion of an additional sentence in an order of the trial court, regardless of the reason is not among her duties. A legal researcher's duty focuses mainly on verifying legal authorities, drafting memoranda on evidence, outlining facts and issues in cases set for pre-trial, and keeping track of the status of cases. In *Salvador v. Serrano*, the Court held that courts have the inherent power to amend and control their process and orders to make them conformable to law and justice. But such power rests upon the judge and not to clerks of court who only perform adjudicative support functions and non-adjudicative functions. In the same vein, the power to amend court orders cannot be performed by a legal researcher. It is well to remind that court personnel are obliged to accord the

integrity of court records of paramount importance, as these are vital instruments in the dispensation of justice.

4. ID.; ID.; ID.; DISHONESTY IS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM THE SERVICE FOR THE FIRST OFFENSE; MITIGATING CIRCUMSTANCES CONSIDERED BY THE COURT IN THE IMPOSITION OF THE PENALTY OF SUSPENSION INSTEAD OF DISMISSAL FROM THE SERVICE FOR COMMISSION OF DISHONESTY.— Under Section 52 (A) (1), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by Memorandum Circular No. 19, series of 1999, dishonesty is a grave offense punishable by dismissal from the service for the first offense. However, the Court, in certain instances, has not imposed the penalty of dismissal due to the presence of mitigating factors such as the length of service, being a first-time offender, acknowledgment of the infractions, and remorse by the respondent. The Court has also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners. The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Considering that this is respondent's first offense in her twenty-two (22) years of service in the Judiciary, the admission of her act and her sincere apology for her mistake, her firm resolve not to commit the same mistake in the future, and taking into account that she is a widow and the only one supporting her five children, the recommended penalty of suspension for a period of six (6) months is in order.

D E C I S I O N

PERALTA, *J.*[*]:

The instant administrative case arose from a letter-complaint dated February 8, 2008 of complainant Judge Amado S. Caguioa, former Presiding Judge of the Regional Trial Court, Branch 4 of Baguio City, charging respondent Elizabeth G. Aucena, Court Legal Researcher II of the same court, with Dishonesty and Falsification of Official Document relative to Civil Case No. 775-FC entitled, *In the Matter of the Custody of Minors, AAA, BBB and CCC, DDD, Petitioner, v. EEE, Respondent.*[1]

As borne by the records, on June 28, 2007, complainant judge issued the following Order:

> In chambers the respondent mother, EEE,[2] agreed to give custody of her three (3) minor children to the custody of (sic) the petitioner-auntie of the husband. While she was allowed visitorial rights, it will always be under the watchful eyes of the petitioner-auntie as she admitted that one time she lost her temper and inflicted injuries to (sic) two of the children. She was admonished not to ever do it again.
>
> SO ORDERED.[3]

Meanwhile, on November 10, 2007, Judge Caguioa retired from service. In his letter-complaint addressed to Executive Judge Edilberto T. Claravall,[4] Judge Caguioa alleged that the subject order was altered in January 2008, or almost two months after

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[*] Per Special Order No. 1228 dated June 6, 2012.

[1] The minors are referred to as AAA, BBB and CCC; the minors' biological father's aunt as DDD; and the children's mother EEE, per Republic Act No. 9262 and A.M. No. 04-10-11-SC. *See People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[2] *Id.*

[3] Order of the trial court, dated June 28, 2007, without the additional sentence.

[4] RTC, First Judicial Region, Baguio City.

his retirement. Judge Caguioa said that Court Stenographer Leonila Fernandez admitted to him that she was instructed by respondent to type the following as the last sentence of the order:

> In view of the agreement of the parties, this case is hereby DISMISSED.[5]

Afterwards, respondent had a copy of the Order received by the Records Section of the City Prosecutor's Office (CPO) of Baguio City. Thereafter, when the Acting Branch Clerk of Court refused to issue any certification based on the altered order, the alteration became known to the staff. Complainant stated that respondent even attempted to have the receipt of the copy of the altered order by the CPO ante-dated to make it appear that the altered order was received on June 28, 2007. With the refusal of the Acting Clerk of Court to issue the certification and the prosecutor's office to ante-date the receipt of the order, respondent had to retrieve the distributed orders and cover the alteration with correction fluid. Complainant judge concluded that although no serious damage had resulted, the act is still grave and must not be left unpunished. Thus, he asked for a proper administrative investigation regarding the incident.

After being furnished with the copy of the complaint, Executive Judge Claravall directed the respondent to explain why no administrative charge and/or criminal complaint for falsification of document should be instituted against her. In compliance with the order of the executive judge, respondent submitted her explanation.

The case was referred by Executive Judge Claravall to the Office of the Court Administrator (OCA), which docketed the complaint as OCA-I.P.I. No. 08-2911-P. The OCA forthwith required respondent to submit her Comment.

In her Comment dated October 2, 2008, respondent admitted having ordered the insertion of the sentence in the order as alleged

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[5] Order of the trial court, dated June 28, 2007, with the additional sentence.

by the complainant, but contended that it was done in good faith to complete a rather incomplete order which failed to depict the real situation, that is, that the case was already dismissed because of the agreement reached by the parties. Respondent denied that she attempted to have the date of the receipt of the order by the CPO ante-dated. She admitted, however, that her act of inserting the last sentence in the order was unjustified and apologized for this error. She begged for understanding and leniency, since the act was done purely in good faith with no malice or ill motives, and promised not to commit the same mistake in the future. She informed the Court that this is the first time that an administrative case has been filed against her and pleaded the court that her sincere apology be accepted and that she be accorded with leniency.

In his Reply, complainant declared that the reasons offered by respondent are untenable. He explained that it was incorrect for the respondent to assume that his order was incomplete, since what transpired during the hearing was that the mother gave up the custody of her children to their biological father's aunt. On the contrary, the dismissal of the case, as respondent would have wanted, would return the custody of the children to the mother.

In her Rejoinder dated December 21, 2008, respondent explained that when a certificate of finality of the case was requested, she was under the impression that no such certificate can be issued without an order expressly stating that the case was finally disposed and terminated. Thus, out of compassion for the three (3) minors involved, who had to process their papers to leave for the United States, she caused the insertion of the above-mentioned sentence but she immediately erased the sentence, upon realizing her honest mistake.

After evaluating the case, the OCA recommended that the case be re-docketed as a regular administrative matter, and respondent be found guilty of dishonesty and be suspended from the service for six (6) months, with a stern warning that a repetition

of the same or similar act in the future shall be dealt with more severely.[6]

The Court, in its Resolution dated June 29, 2009, resolved to adopt and approve the recommendation of the OCA, thus:

(1) RE-DOCKET this case as a regular administrative matter; and

(2) HOLD respondent Elizabeth G. Aucena GUILTY of dishonesty and suspend her for six (6) months without pay, with a STERN WARNING that a repetition of the same or similar acts in the future shall be dealt with more severely.

A motion for reconsideration, dated August 25, 2009, was filed by the respondent praying that the Court reduce the penalty imposed upon her, because a six (6)-month suspension is too harsh considering that she is a widow and the only one supporting her five (5) children.

On September 9, 2009, in response to the motion for reconsideration, the Court issued a Resolution amending[7] its June 29, 2009 resolution to read as follows:

1) RE-DOCKET this case as a regular administrative matter; and,

2) REQUIRE the parties to MANIFEST to the Court if they are willing to submit the case for resolution based on the pleadings filed, within ten (10) days from receipt of herein resolution.[8]

In response to the latest resolution of the Court, the respondent, on October 1, 2009, filed her Manifestation and Motion informing the Court that she was willing to submit the case for resolution based on the pleadings and motions filed, and likewise, manifested that she had already commenced serving her suspension from

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[6] Evaluation and recommendation submitted by Court Administrator Jose P. Perez (now a member of this Court) and Deputy Court Administrator Reuben P. De La Cruz.

[7] The Court ruled to amend the June 29, 2009 Resolution because in said resolution, it adopted the recommendation of the OCA to impose disciplinary sanction when the parties have not yet submitted their respective pleadings.

[8] Resolution of the Court dated September 9, 2009.

September 2, 2009 to September 30, 2009, in view of the earlier resolution of the Court, dated June 29, 2009.

In a Resolution dated December 9, 2009, the Court referred back the case to the OCA for evaluation, report and recommendation. The OCA, in its Report dated March 30, 2010, recommended that respondent should be liable for dishonesty and suspended for six months, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely, and that the period respondent did not work, pursuant to the June 29, 2009 resolution, should be deducted from the 6-month suspension, and considered as partial service of her penalty.

The Court's Ruling

The Court finds the recommendation of the OCA to be well taken and, thus, holds respondent administratively liable for dishonesty.

The Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the judiciary. Persons involved in the dispensation of justice, from the highest official to the lowest clerk, must live up to the strictest standards of integrity, probity, uprightness and diligence in the public service. As the assumption of public office is impressed with paramount public interest, which requires the highest standards of ethics, persons aspiring for public office must observe honesty, candor and faithful compliance with the law.[9]

Respondent committed dishonesty by causing the unauthorized insertion of an additional sentence in the trial court's order. Dishonesty has been defined as a disposition to lie, cheat, deceive

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[9] *Office of the Court Administrator v. Flores*, A.M. No. P-07-2366 (Formerly OCA I.P.I. No. 07-2519-P), April 16, 2009, 585 SCRA 82, 91-92.

or defraud. It implies untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle on the part of the individual who failed to exercise fairness and straightforwardness in his or her dealings.[10] By her act, she has compromised and undermined the public's faith in the records of the court below and, ultimately, the integrity of the Judiciary.[11] To tolerate such act would open the floodgates to fraud by court personnel.

Respondent's contention that she just inserted the sentence in order to complete a rather incomplete order, and to depict the real situation, *i.e.*, that the case was already dismissed because of the agreement reached by the parties, is not acceptable. The insertion of an additional sentence in an order of the trial court, regardless of the reason is not among her duties.[12] A legal researcher's duty focuses mainly on verifying legal authorities, drafting memoranda on evidence, outlining

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[10] *Re: Deceitful Conduct of Ignacio S. Del Rosario*, Cash Clerk III, Records and Miscellaneous Matter Section, Checks Disbursement Division, FMO-OCA, A.M. No. 2011-05-SC, September 06, 2011.

[11] *Judge Almario v. Atty. Resus*, 376 Phil. 857, 869 (1999).

[12] The duties of a Legal Researcher in the RTC are described under 2.2.1 of Chapter 6, of the 2002 Revised Manual for Clerks of Court, to wit:

2.2.1.1. verifies authorities on questions of law raised by parties-litigants in cases brought before the Court as may be assigned by the Presiding Judge;

2.2.1.2. prepares memoranda on evidence adduced by the parties after the hearing;

2.2.1.3. prepares outlines of the facts and issues involved in cases set for pre-trial for the guidance of the Presiding Judge;

2.2.1.4. prepares indexes to be attached to the records showing the important pleadings filed, the pages where they may be found, and in general, the status of the case;

2.2.1.5. prepares and submits to the Branch Clerk of Court a monthly list of cases or motions submitted for decision or resolution, indicating therein the deadlines for acting on the same; and

2.2.1.6. performs such other duties as may be assigned by the Presiding Judge or the Branch Clerk of Court.

facts and issues in cases set for pre-trial, and keeping track of the status of cases.[13]

In *Salvador v. Serrano*,[14] the Court held that courts have the inherent power to amend and control their process and orders to make them conformable to law and justice. But such power rests upon the judge and not to clerks of court who only perform adjudicative support functions and non-adjudicative functions. In the same vein, the power to amend court orders cannot be performed by a legal researcher. It is well to remind that court personnel are obliged to accord the integrity of court records of paramount importance, as these are vital instruments in the dispensation of justice.

Under Section 52 (A) (1),[15] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service,[16] promulgated by the Civil Service Commission through Resolution No. 99-1936 dated August 31, 1999 and implemented by Memorandum Circular No. 19, series of 1999, dishonesty is a grave offense punishable by dismissal from the service for the first offense. However, the Court, in certain instances, has not imposed the penalty of dismissal due to the presence of mitigating factors such as the length of service, being a first-time offender, acknowledgment of the infractions, and remorse by the respondent.[17] The Court has also ruled that where a penalty

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[13] *Apita v. Estanislao,* A.M. No. P-06-2206, March 16, 2011, 645 SCRA 367, 372.

[14] A.M. No. P-06-2104 (Formerly OCA I.P.I. No. 02-1484-P), January 31, 2006, 481 SCRA 55, 69-70.

[15] SEC. 52. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light, depending on the gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty

1st offense - Dismissal

[16] Amending Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

[17] *Re: Unauthorized Disposal of Unnecessary and Scrap Materials in the Supreme Court Baguio Compound, and the Irregularity on the Bundy Cards of Some Personnel,* A.M. No. 2007-17-SC, July 7, 2009, 592 SCRA

less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only for the law's concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners.[18]

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

Considering that this is respondent's first offense in her twenty-two (22) years of service in the Judiciary, the admission of her act and her sincere apology for her mistake, her firm resolve not to commit the same mistake in the future, and taking into account that she is a widow and the only one supporting her five children, the recommended penalty of suspension for a period of six (6) months is in order.

WHEREFORE, respondent **ELIZABETH G. AUCENA,** Court Legal Researcher II, Regional Trial Court, Branch 4 of Baguio City, is found **GUILTY** of dishonesty. She is hereby **SUSPENDED** for a period of six (6) months without pay, effective immediately upon her receipt of this Decision. She is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely. The period of suspension that respondent had previously served shall be

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12; *Arganosa-Maniego, v. Salinas, Utility Worker I, Municipal Circuit Trial Court, Macabebe-Masantol, Macabebe, Pampanga*, A.M. No. P-07-2400 (Formerly OCA I.P.I. No. 07-2589-P), June 23, 2009, 590 SCRA 531; *Office of the Court Administrator v. Flores, supra*; *De Vera v. Rimas*, A.M. No. P-06-2118 (Formerly OCA I.P.I. No. 05-2189-P), June 12, 2008, 554 SCRA 253; *De Guzman, Jr. v. Mendoza*, A.M. No. P-03-1693, March 17, 2005, 453 SCRA 565; *Office of the Court Administrator v. Ibay*, A.M. No. P-02-1649, November 29, 2002, 393 SCRA 212.

[18] *Arganosa-Maniego v. Salinas, Utility Worker I, Municipal Circuit Trial Court, Macabebe-Masantol, Macabebe, Pampanga, supra*, at 547.

DEDUCTED from the six-month suspension and shall be considered as partial service of the penalty imposed.

SO ORDERED.

Bersamin,[**] *Abad, Villarama, Jr.,*[***] and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[A.M. No. P-12-3064. June 18, 2012]
(Formerly A.M. OCA IPI No. 09-3180-P)

RICARDO O. DELA CRUZ, EDGARDO CRISOSTOMO, ZOILO COPO, VILMA COPO, RONALDO L. SANTOS, ROBERTO G. OMALIN, CRISANTA H. MADRIAGA, RUTH SANTOS ROWENA CUBIN, RUSTICO AMAYA, EUFEMIA O. ENDRINAL, ROSITA L. IROIZ (sic), CORAZON L. MALIMUTIN, RICARDO V. BALDONAZI, ROMMEL REAL, SUSANA B. CASIDSID, RAMON G. SILVANO, GREGORIA T. CATALAN, MARILITA A. MATABUENA, RUSANA M. MACHADO, LEONILA RISVEROS, JOSE TEMPLAO, CESAR RAMOS, LOIDA R. REYES, BONIFACIO C. BISMAR, MARISSA L. GRINDULO, WILFREDO ABANILLA, MERLY MARIE BERGAMOS, ZENAIDA B. PALAGANAS, AURORA S. CUEVAS, REYNALDO ICONIA, ANECITO V. LANIC (sic), BASILIA P. DELA CRUZ, DANILO M. BAOT, LORENZA C. TUNGOL, CRESENCIA G. RAVAL (sic), ERLINDA

[**] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, Jr., per Special Order No. 1241 dated June 14, 2012.

[***] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.

C. ROXAS, RAMIR C. FILIPINA, ADRIANA BADILLA, LENIE TACIANA P. BALNEG, DANILO MAGSINO, ERNIE MURILLO, ADLAI U. BULLALAYAO, TESSIE Z. BERROGA, MILA T. PAULIN, NESTOR CO, MARIA N. OMALIN, GENOVEVA G. SERENIO, LUZVIMINDA G. MAQUIMOT, LUZVIMINDA A. SAMANIEGO, ISABELITA A. MARIÑAS, JAIME O. HERNANDEZ, SANTIAGO C. CAVERO, ISIDORA R. MAGBOJOS, SALVADOR A. MACEDA, MARILOU M. ESTRADA, ARTURO G. BENITEZ, JR., BENEDICTA B. CASTASUS, MYRNA B. PARTOZ, ANECITA M. PEREZ, JOSELITO C. MUSA, LEONILA T. MUSA, LERMA J. OLAVE, ROSARIO G. DAGSAN, MARILYN CASTILLO, ANABELLE LARASI, JOSELITO DOLOSA, ELISA J. DOOSA, BARTOLOME NIÑEZ, FELIX T. BALDAD, JR., ROMAN P. DE JESUS, JR., LERMA C. RAYMUNDO, EDUARDO TENEBRO, VENANCIO CUDA (sic), MA. CRISPINA C. MUNCADA, DOMINADOR O. MARCO, ELIZA LAGASCA, MARLON D. CATAQUIL, DOMNINA B. VIDEÑA, BENEDICTA JUBIDA, ANGELA ASAAYA, EDWIN TAMAYO, TORIBIO V. GUERRERO, CALIDA C. GONZALES, ELSIE FUFUGAL, FABIANA B. FAJARDO, ANGELINA PLATA, MYRNA ETORNE, JOSEPHINE C. SAN JOSE, VALENTIN P. BRONCATE, K. NOCHE, CONCESO P. CAVERO, FLOR C. MEQUIZ, LEONARDO MEQUIZ, *complainants, vs.* **MA. CONSUELO JOIE A. FAJARDO, Sheriff IV, Regional Trial Court, Branch 93, San Pedro, Laguna,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; DUTY THEREOF IN THE EXECUTION OF A WRIT IS PURELY MINISTERIAL AND THEY HAVE NO DISCRETION OVER WHETHER OR NOT TO EXECUTE THE JUDGMENT.— We affirm the OCA's

dismissal of the administrative Complaint against respondent, because it involves matters that are judicial in nature. The issue as to the correct application of the proceeds from the auction sale of the properties of Viva involves the application of the Civil Code provisions on the preference of credits. The sheriff, and even the OCA, has no jurisdiction to resolve such matters, which are actually ripe for a case before the regular courts. Complainants should have filed a third-party suit in the case between Viva and PNB. Well-settled is the rule that a sheriff's duty in the execution of a writ is purely ministerial – to execute the order of the court strictly or to the letter. Court sheriffs have no discretion over whether or not to execute the judgment. When a writ is placed in their hands, it is their duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. For it is only by doing so that they can ensure that the order is executed without undue delay. Thus, as the Court has found no grave abuse of authority in the implementation of the Writ of Execution, the Complaint against herein respondent is dismissed.

2. ID.; ID.; ID.; THE EMPLOYEE'S PROLONGED AND REPEATED REFUSAL TO COMPLY WITH THE DIRECTIVES OF THE SUPREME COURT CONSTITUTE WILLFUL DISRESPECT OF ITS LAWFUL ORDERS.— [W]ith regard to respondent having committed gross insubordination as an employee of the judiciary, we find her guilty. Respondent's "prolonged and repeated refusal to comply" with the directives of this Court constituted willful disrespect of its lawful orders, as well as those of the OCA. Respondent committed the infraction twice, yet failed to fully explain the circumstances that led to the repeated omissions. Hence, we have no reason to overturn or mitigate the penalty recommended by the OCA.

3. ID.; ID.; ID.; GROSS INSUBORDINATION; AN INDIFFERENCE TO AN ADMINISTRATIVE COMPLAINT AND TO RESOLUTIONS REQUIRING A COMMENT THEREON; EMPLOYEES IN THE JUDICIARY ARE BOUND TO MANIFEST UTMOST RESPECT AND OBEDIENCE TO THEIR SUPERIORS' ORDERS AND INSTRUCTIONS.— While complainants have dutifully complied with every directive of the Court in this case, respondent, on the other hand, has

> exhibited a penchant for ignoring its directives. Gross insubordination is the indifference of a respondent to an administrative complaint and to resolutions requiring a comment thereon. The offense is deemed punishable, because every employee in the judiciary should not only be an example of integrity, uprightness, and honesty; more than anyone else, they are bound to manifest utmost respect and obedience to their superiors' orders and instructions.

R E S O L U T I O N

SERENO, *J.*:

Complainants Ricardo O. dela Cruz, *et al.* were employees of Viva Footwear Corporation (Viva), located at Barrio San Vicente, San Pedro, Laguna.[1] Respondent Ma. Consuelo Joie A. Fajardo (respondent Fajardo) is Sheriff IV of the Regional Trial Court (RTC), Branch 93 of San Pedro, Laguna.

The Facts of the Case

The present case had its genesis when the Philippine National Bank (PNB) foreclosed on the real estate mortgage of Viva. Thereafter, RTC Branch 93 of San Pedro, Laguna in LRC No. SPL-0462 issued in favor of PNB a Writ of Possession,[2] which was implemented by respondent Fajardo.

Complainants alleged that respondent Fajardo forcefully evicted all the officers and employees of Viva after a mere three-day notice.[3] They accused her of levying on Viva's properties, which were exempt from execution, and of wrongfully applying the proceeds of the sale to PNB. They were thus deprived of their claims in a labor dispute with Viva over their unpaid wages and other benefits.

On 17 June 2009, complainants filed an Affidavit with the Office of the Court Administrator (OCA), charging

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[1] *Rollo*, p. 1.

[2] *Id.* at 6.

[3] *Id.* at 8.

respondent with grave misconduct, grave abuse of authority, and conduct prejudicial to the best interest of the service.[4]

On 29 June 2009, the OCA required respondent Fajardo to file her comment on the Complaint within 10 days from notice,[5] but she did not comply despite her receipt of the Notice. On 14 September 2009, the Court Administrator issued to respondent a 1st Tracer reiterating the Court's directive; otherwise, the matter would be resolved without her comment.[6] She still failed to comply.

On 17 December 2009, the OCA[7] formally recommended to the Court (through its First Division) the issuance of a show cause order against respondent, requiring her to explain why she should not be administratively dealt with for her refusal to submit a Comment despite being sent two directives by the OCA.[8] Further, the latter required her to submit her Comment within five days from receipt of the Order. On 27 January 2010, the First Division of this Court issued a Resolution adopting the recommendations of the OCA.[9]

On 05 March 2010, respondent submitted to this Court her Comment dated 02 March 2010 and apologized for her delayed response. She also prayed that the charges against her be dismissed for lack of merit. [10] On 05 April 2010, this Court noted her letter-explanation.[11]

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[4] *Id.* at 5.

[5] *Id.* at 18.

[6] *Id.* at 19.

[7] The 17 December 2009 Recommendation was signed by then Court Administrator (now Supreme Court Justice) Jose P. Perez and then Deputy Court Administrator Nimfa C. Vilches.

[8] *Rollo,* pp. 20-21.

[9] *Id.* at 22.

[10] *Id.* at 24.

[11] *Id.* at 33.

The Findings of the OCA

On 13 September 2010, the OCA issued its evaluation, report and recommendation on the Complaint against respondent.[12] It found that she had not committed grave abuse of authority in implementing the Writ of Execution against Viva. The OCA recognized that once the sheriff was given the writ, it was purely ministerial on the latter's part to implement it. Moreover, the Court Administrator found that issues proffered by complainants pertained to preference of credits under the Civil Code – issues that were judicial in nature and could not be resolved by the sheriff.

The OCA noted, however, the glaring noncompliance of respondent with the Court's twin directives for her to submit a comment on the charges against her. The OCA deemed her noncompliance as gross insubordination. When she finally responded to the Order of the Court, she apologized in her letter, but did not explain why she failed to comply with its directives. For this reason, the OCA recommended that a fine of 10,000 be meted out to her, and that the case against her be re-docketed as a regular administrative matter.[13]

On 01 December 2010, the Third Division of this Court required the parties to manifest, within 30 days from receipt of the Notice, whether they were willing to submit the case for decision on the basis of the pleadings and records already filed.[14] On 01 March 2011, complainants filed their *Ex-Parte* Manifestation dated 22 February 2011 expressing their willingness to submit the case for decision on the basis of the pleadings already submitted to this Court.[15]

On 28 March 2011, the Third Division of this Court issued a Resolution noting complainants' Manifestation and resolved

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[12] The 13 September 2010 Recommendation was signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Nimfa Cuesta-Vilches.

[13] *Rollo,* pp. 38-41.

[14] *Id.* at 47.

[15] *Id.* at 48.

to await that of respondent.[16] However, even after a considerable lapse of time, she still failed to file it. Thus, on 13 February 2012, the Court resolved to dispense with her manifestation and considered the matter submitted for decision.[17]

Our Ruling

After a thorough review of the records, this Court **ADOPTS** the recommendations of the OCA to **DISMISS** the administrative case against respondent Fajardo for lack of merit, but finds her **GUILTY** of gross insubordination.

We affirm the OCA's dismissal of the administrative Complaint against respondent, because it involves matters that are judicial in nature. The issue as to the correct application of the proceeds from the auction sale of the properties of Viva involves the application of the Civil Code provisions on the preference of credits. The sheriff, and even the OCA, has no jurisdiction to resolve such matters, which are actually ripe for a case before the regular courts. Complainants should have filed a third-party suit in the case between Viva and PNB.

Well-settled is the rule that a sheriff's duty in the execution of a writ is purely ministerial – to execute the order of the court strictly or to the letter. Court sheriffs have no discretion over whether or not to execute the judgment. When a writ is placed in their hands, it is their duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. For it is only by doing so that they can ensure that the order is executed without undue delay.[18] Thus, as the Court has found no grave abuse of authority in the implementation of the Writ of Execution, the Complaint against herein respondent is dismissed.

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[16] *Id.* at 51.

[17] *Id.* at 54.

[18] *Cebu International Finance Corporation v. Cabigon*, A.M. No. P-06-2107, 14 February 2007, 515 SCRA 616.

However, with regard to respondent having committed gross insubordination as an employee of the judiciary, we find her guilty.

The OCA correctly pointed out that in her letter-explanation, respondent failed to explain why, despite her receipt of the Notices, she did not comply with the directives of this Court to submit her comment. The records show that the OCA had sent notices to her at RTC–Branch 93 of San Pedro, Laguna, where she is the branch sheriff. While she apologized to this Court for her failure to submit her comment, she did not explain the reasons for her non-submission thereof and only averred that it was the first time she learned of the Complaint against her. The OCA did not find her explanation satisfactory, because she did submit her Comment, but only after a Show-Cause Order had been issued to her– and almost a year after the first directive requiring her to file the Comment.

Respondent's "prolonged and repeated refusal to comply"[19] with the directives of this Court constituted willful disrespect of its lawful orders, as well as those of the OCA. Respondent committed the infraction twice, yet failed to fully explain the circumstances that led to the repeated omissions. Hence, we have no reason to overturn or mitigate the penalty recommended by the OCA.

While complainants have dutifully complied with every directive of the Court in this case, respondent, on the other hand, has exhibited a penchant for ignoring its directives.

Gross insubordination is the indifference of a respondent to an administrative complaint and to resolutions requiring a comment thereon.[20] The offense is deemed punishable, because every employee in the judiciary should not only be an example of integrity, uprightness, and honesty; more than anyone else,

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[19] *Rollo,* p. 40.

[20] *Gonzales v. Rimando,* A.M. No. P-07-2385, 26 October 2009, 604 SCRA 403.

they are bound to manifest utmost respect and obedience to their superiors' orders and instructions.[21]

WHEREFORE, we **AFFIRM** in all respects the report of the OCA finding respondent Fajardo guilty of gross insubordination and **ADOPT** its recommendations as follows:

1) To **DISMISS** the administrative case filed against respondent for lack of merit and for being judicial in nature;

2) To find respondent Fajardo **GUILTY** of gross insubordination for her failure to immediately comply with the Office of the Court Administrator's directives and to **FINE** her in the amount of ten thousand pesos (₱10,000), with a warning that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty;

3) To have the instant case **RE-DOCKETED** as a regular administrative matter.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Bersamin,[*] and *Reyes, JJ.,* concur.

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[21] *Mallare v. Ferry*, 414 Phil. 286 (2001).

[*] Designated as additional member in lieu of Associate Justice Jose Portugal Perez, who took no part due to prior action as Court Administrator per Raffle dated 18 July 2011.

FIRST DIVISION

[G.R. No. 158597. June 18, 2012]

MARCOS V. PRIETO, *petitioner, vs.* **THE HON. COURT OF APPEALS (Former Ninth Division), HON. ROSE MARY R. MOLINA-ALIM, In Her Capacity as Pairing Judge of Branch 67 of the RTC, First Judicial Region, Bauang, La Union, FAR EAST BANK & TRUST COMPANY, now the BANK OF THE PHILIPPINE ISLANDS, through ATTY. EDILBERTO B. TENEFRANCIA, and SPOUSES ANTONIO and MONETTE PRIETO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PERFECTION OF; FAILURE TO PERFECT THE APPEAL WITHIN THE TIME PRESCRIBED BY THE RULES UNAVOIDABLY RENDERS THE JUDGMENT FINAL AS TO PRECLUDE THE APPELLATE COURT FROM ACQUIRING THE JURISDICTION TO REVIEW THE JUDGMENT.— The general rule is that a *timely* appeal is the remedy to obtain reversal or modification of the judgment on the merits. This is true even if one of the errors to be assigned on appeal is the lack of jurisdiction on the part of the court rendering the judgment over the subject matter, or the exercise of power by said court is in excess of its jurisdiction, or the making of its findings of fact or of law set out in the decision is attended by grave abuse of discretion. In other words, the perfection of an appeal within the reglementary period is mandatory because the failure to perfect the appeal within the time prescribed by the *Rules of Court* unavoidably renders the judgment final as to preclude the appellate court from acquiring the jurisdiction to review the judgment. We stress, too, that the statutory nature of the right to appeal requires the appealing party to strictly comply with the statutes or rules governing the perfection of the appeal because such statutes or rules are considered indispensable interdictions against needless delays and are instituted in favor of an orderly discharge of judicial business. In the absence of highly exceptional circumstances warranting

their relaxation, therefore, the statutes or rules should remain inviolable.

2. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; RATIFICATION; THE SUBSTANCE OF RATIFICATION IS THE CONFIRMATION AFTER THE ACT, AMOUNTING TO A SUBSTITUTE FOR A PRIOR AUTHORITY.— [E]ven if it was assumed that Antonio's obtaining the loans in his own name, and executing the mortgage contracts also in his own name had exceeded his express authority under the SPA, Marcos was still liable to FEBTC by virtue of his express ratification of Antonio's act. Under Article 1898 of the *Civil Code*, the acts of an agent done beyond the scope of his authority do not bind the principal unless the latter expressly or impliedly ratifies the same. In agency, ratification is the adoption or confirmation by one person of an act performed on his behalf by another without authority. The substance of ratification is the confirmation after the act, amounting to a substitute for a prior authority. Here, there was such a ratification by Marcos, as borne out by his execution of the letter of acknowledgement on September 12, 1996.

3. ID.; ID.; ID.; CONTRACT OF ADHESION; EFFECTIVE AND BINDING BUT MIGHT BE OCCASIONALLY STRUCK DOWN ONLY IF THERE WAS A SHOWING THAT THE DOMINANT BARGAINING PARTY LEFT THE WEAKER PARTY WITHOUT ANY CHOICE AS TO BE COMPLETELY DEPRIVED OF AN OPPORTUNITY TO BARGAIN EFFECTIVELY; EXCEPTION NOT APPLICABLE; A MAN'S ACT, CONDUCT AND DECLARATION, WHENEVER MADE, IF VOLUNTARY, ARE ADMISSIBLE AGAINST HIM.— The Court is confounded by Marcos' dismissal of his own express written ratification of Antonio's act. Being himself a lawyer, Marcos was aware of the import and consequences of the letter of acknowledgment. The Court cannot agree with his insistence that the letter was worthless due to its being a contract of adhesion. The letter was not a contract, to begin with, because it was only a unilateral act of his. Secondly, his insistence was fallacious and insincere because he knew as a lawyer that even assuming that the letter could be treated as a contract of adhesion it was nonetheless effective and binding like any other contract. The Court has consistently held that a contract

of adhesion was not prohibited for that reason. In *Pilipino Telephone Corporation v. Tecson*, for instance, the Court said that contracts of adhesion were valid but might be occasionally struck down only if there was a showing that the dominant bargaining party left the weaker party without any choice as to be "completely deprived of an opportunity to bargain effectively." That exception did not apply here, for, verily, Marcos, being a lawyer, could not have been the weaker party. As the tenor of the acknowledgment indicated, he was fully aware of the meaning and sense of every written word or phrase, as well as of the legal effect of his confirmation thereby of his agent's act. It is axiomatic that a man's act, conduct and declaration, wherever made, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not.

APPEARANCES OF COUNSEL

Edilberto B. Tenefrancia for Far East Bank & Trust Co.

D E C I S I O N

BERSAMIN, *J.*:

Ratification or confirmation may validate an act done in behalf of another without authority from the latter. The effect is as if the latter did the act himself.

Antecedents

On October 27, 1997, the Spouses Marcos V. Prieto (Marcos) and Susan M. Prieto filed in the Regional Trial Court (RTC) in Bauang, La Union a complaint against Far East Bank and Trust Company (FEBTC) and the Spouses Antonio Prieto (Antonio) and Monette Prieto to declare the nullity of several real estate mortgage contracts.[1] The plaintiffs narrated that in January 1996, they had executed a special power of attorney (SPA) to authorize Antonio to borrow money from FEBTC, using as collateral their real property consisting of a parcel

[1] Records, pp. 1-5.

of land located in Calumbaya, Bauang, La Union (the property) and covered by Transfer Certificate of Title (TCT) No. T-40223 of the Registry of Deeds of La Union; that defendant spouses, using the property as collateral, had thereafter obtained from FEBTC a series of loans totaling ₱5,000,000.00, evidenced by promissory notes, and secured by separate real estate mortgage contracts; that defendant spouses had failed to pay the loans, leading FEBTC to initiate the extra-judicial foreclosure of the mortgages; that the foreclosure sale had been scheduled on October 31, 1997; and that the promissory notes and the real estate mortgage contracts were in the name of defendant spouses for themselves alone, who had incurred the obligations, rendering the promissory notes and the mortgage contracts null and void *ab initio*.

The RTC issued a temporary restraining order (TRO), and set a preliminary hearing on the application for the issuance of a writ of preliminary injunction.[2] The RTC eventually denied the application for the writ of preliminary injunction on March 24, 1998;[3] it later denied as well the plaintiffs' motion for reconsideration of the denial of the application.[4]

On July 31, 2001 the RTC rendered its decision dismissing the complaint,[5] ruling that although the name of plaintiff Marcos (as registered owner) did not appear in the real estate mortgage contracts, Marcos could not be absolved of liability because he had no right of action against the person with whom his agent had contracted; that the mortgage contracts, even if entered into in the name of the agent, should be deemed made in his behalf as the principal because the things involved belonged to the principal; and that even assuming that Antonio had exceeded his authority as agent, Marcos had ratified Antonio's action by executing the letter of acknowledgement dated September 12, 1996, making himself liable under the premises.

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[2] *Id.*, p. 31.

[3] *Id.*, pp. 93-94.

[4] *Id.*, pp. 129-133.

[5] *Id.*, pp. 236-246.

Marcos received the decision on August 28, 2001, and filed a motion for reconsideration on September 12, 2001, the last day for him to do so under the *Rules of Court*.[6] On November 19, 2001, the RTC denied the motion for reconsideration.[7] Marcos received the denial of the motion on November 21, 2001, but he filed his notice of appeal only on November 26, 2001.[8]

On December 11, 2001, the RTC denied due course to the notice of appeal for having been filed four days beyond the reglementary period for perfecting the appeal.[9]

Marcos sought the reconsideration of the denial of due course to the notice of appeal, but the RTC still denied his motion, reiterating that the failure to perfect an appeal rendered the decision final and executory.[10]

On April 16, 2002, Marcos filed a petition for *certiorari* in the Court of Appeals (CA), imputing grave abuse of discretion to the RTC in disallowing his notice of appeal.[11] He argued that his notice of appeal had been filed only two days late, and that the delay should be treated only as excusable negligence because at that time, he had been deprived of clear thinking due to the pain and disappointment he and his wife had suffered over the failure of the recent medical procedures they had undergone.[12]

On April 24, 2002, the CA Ninth Division, then composed of Associate Justice Conrado M. Vasquez, Jr. as Chairman, and Associate Justice Andres B. Reyes, Jr. and Associate Justice Mario L. Guariña III as Members, dismissed the petition for

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[6] *Id.*, pp. 247-261.

[7] *Id.*, p. 313.

[8] *Id.*, p. 314.

[9] *Id.*, p. 316.

[10] *Id.*, pp. 327-328.

[11] *Rollo*, pp. 197-216.

[12] *Id.*, pp. 211-214 (the petitioner's wife underwent *in vitro* fertilization and embryo transfer).

certiorari, holding that Marcos had failed to perfect his appeal on time, and that, consequently, the RTC did not commit any error or grave abuse of discretion in issuing the challenged orders.[13]

Marcos sought reconsideration, but the CA denied the motion for reconsideration on April 9, 2003.[14]

Hence, this appeal on *certiorari*.

The petition for review lacks merit.

First of all, Marcos submits that the CA's assailed resolution promulgated on April 9, 2003 was signed only by Associate Justices Vasquez and Reyes, Jr.; that Associate Justice Guariña III as the third Member did not sign the resolution; that the absence of Associate Justice Guariña III's signature revealed the lack of unanimity in the voting, rendering the resolution null and void pursuant to Section 4 of the 1999 Internal Rules of the Court of Appeals;[15] and that the CA should then have constituted a new Division of five Members by selecting two additional Associate Justices by raffle.[16]

We find the submission of Marcos to be without basis. Contrary to his submission, Associate Justice Guariña III expressly concurred in the resolution in question, as borne out by the

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[13] *Id.*, pp. 243-246.

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

[15] Section 4. *Quorum and Voting in Sessions*. —

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b. The presence of all members of a Division shall constitute a quorum and their unanimous vote shall be necessary for the pronouncement of a decision or resolution. In case failure to have a unanimous vote, a Special Division of five members shall be constituted in the manner provided in Section 6 hereof.

[16] Section 6. *Division of Five*. — Whenever the members of a Division fail to reach a unanimous vote, its chairman shall direct the Raffle Committee to designate by raffle two (2) additional members of the Court to constitute a Special Division of five (5). The selection of the two (2) additional members shall be on a rotation basis. The concurrence of a majority shall be necessary for the pronouncement of a decision or resolution. (n)

copy itself of the assailed resolution promulgated on April 9, 2003 attached to the petition for review as "Enclosure A."[17] Marcos could not have missed the signature of Associate Justice Guariña III because it prominently appeared on the copy of the assailed resolution beneath that of Associate Justice Vasquez and beside that of Associate Justice Reyes, Jr.

Secondly, Marcos contends that the CA erred in rejecting his petition for *certiorari* because his notice of appeal in the RTC had been tardy by only two days, but his tardiness could be excused.

We cannot sustain the contention of petitioner. He himself conceded that his filing of the notice of appeal had been tardy by two days. Thereby, he was aware that he had lost his right to appeal the RTC's decision. As such, the petition for *certiorari* he thereafter filed in the CA was designed to substitute his loss of the right to appeal.

The CA justified its rejection of the petition for *certiorari* in the following manner:

> Admittedly, petitioner received the Decision in Civil Case No. 1114-BG dated July 31, 2001 on August 28, 2001 and filed his motion for reconsideration on the 15th day, or on September 12, 2001. Petitioner received the denial of his motion for reconsideration on November 21, 2001, thereby leaving him with only one (1) day to perfect an appeal. Unfortunately, the notice of appeal was submitted only on November 26, 2001, or four (4) days beyond the reglementary period.
>
> To justify the late filing of his appeal, petitioner ratiocinated that on November 22, 2001, the last day of appeal, he brought his wife to Manila for an embryo transfer and returned to San Fernando, Pampanga, on November 25, 2001. Other than the bare allegations of the petitioner, however, the pretended excusable neglect remained unsupported and uncorroborated. Worthy of note still is that the notice of appeal submitted mentioned nothing about the embryo transplant. Worse, the notice of appeal misleadingly averred that petitioner is giving notice of his intention to appeal to this Court

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[17] *Supra*, note 11, p. 27.

"from the judgment entered therein by this Court on 19th November 2001, which was received by plaintiffs on 21st day of November 2001," thereby making it appear that the notice of appeal was indeed filed on time, stating that what he received on November 21, 2001 was the Decision dated July 31, 2001, not the denial of the reconsideration.

Apropos, when the trial court denied the notice of appeal, it did not commit any error nor grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the challenged orders. No capricious or whimsical exercise of judgment nor arbitrary or despotic manner exists in the issuance of the assailed orders.

Not only that, petition for *certiorari* presupposes that petitioner is left with no other plain, speedy and adequate remedy in the ordinary course of law like an appeal or a petition from relief of judgment. Notably, petitioner failed to avail of the petition for relief of judgment under Rule 38 of the Rules of Court, and just like in an appeal, *certiorari* cannot be made a substitute for such remedy.

On the plea for application for the liberality rule, it must be stressed that there are certain procedural rules that must remain inviolable, like those setting the period for perfecting an appeal. Doctrinally entrenched is that the right of appeal is a statutory right and the one who seeks to avail that right must comply with the statute or rules. The Rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed as they are considered indispensable interdictions against needless delays and appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional and the failure to perfect an appeal renders the judgment of the court final and executory. Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his or her case. *(Videogram Regulatory Board vs. Court of Appeals 265 SCRA 373 [1996]; Cabellan vs. Court of Appeals 304, SCRA 119 [1999]; Demata vs. Court of Appeals, 303 SCRA 690 [1999)].*

Consequently, failing to perfect an appeal within the time and manner specified by law, deprives the appellate court of jurisdiction to alter the final judgment much less entertain the appeal *(Pedrosa*

vs. Hill, 257 SCRA 373 [1996]). Timeliness of an appeal is a jurisdictional caveat that not even the Supreme Court can trifle with. *(Bank of America, NT & SA vs. Gerochi, Jr., 230 SCRA 9 [1994]*).[18]

We can only sustain the CA's dismissal of the petition for *certiorari*. The general rule is that a *timely* appeal is the remedy to obtain reversal or modification of the judgment on the merits. This is true even if one of the errors to be assigned on appeal is the lack of jurisdiction on the part of the court rendering the judgment over the subject matter, or the exercise of power by said court is in excess of its jurisdiction, or the making of its findings of fact or of law set out in the decision is attended by grave abuse of discretion.[19] In other words, the perfection of an appeal within the reglementary period is mandatory because the failure to perfect the appeal within the time prescribed by the *Rules of Court* unavoidably renders the judgment final as to preclude the appellate court from acquiring the jurisdiction to review the judgment.[20] We stress, too, that the statutory nature of the right to appeal requires the appealing party to strictly comply with the statutes or rules governing the perfection of the appeal because such statutes or rules are considered indispensable interdictions against needless delays and are instituted in favor of an orderly discharge of judicial business. In the absence of highly exceptional circumstances warranting

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[18] *Id.*, pp. 244-245.

[19] *Metropolitan Manila Development Authority v. JANCO Environmental Corp.*, G.R. No. 147465, January 30, 2002, 375 SCRA 320, 329.

[20] *Ko v. Philippine National Bank*, G.R. Nos. 169131-32, January 20, 2006, 479 SCRA 298; *Air France Philippines v. Leachon*, G.R. No. 134113, October 12, 2005, 472 SCRA 439; *Remulla v. Manlongat*, G.R. No. 148189, November 11, 2004, 442 SCRA 226, 233; *Philippine Commercial International Bank v. Court of Appeals*, G.R. No. 127275, June 20, 2003, 404 SCRA 442, 448*; Yao v. Court of Appeals*, G.R. No. 132428, October 24, 2000, 344 SCRA 202; *Dayrit v. Philippine Bank of Communications*, G.R. No. 140316, August 1, 2002, 386 SCRA 117, 125; *Roman Catholic Bishop of Tuguegarao v. Director of Lands*, 34 Phil. 623; *Estate of Cordoba v. Alabado*, 34 Phil. 920; *Bermudez v. Director of Lands*, 36 Phil. 774.

their relaxation, therefore, the statutes or rules should remain inviolable.[21]

And, thirdly, petitioner's appeal would still not succeed even if the Court now extends to him the retroactive application of the *fresh period rule* enunciated in *Neypes v. Court of Appeals*,[22] and reckon the perfection of his appeal from the date of his receipt of the denial of his motion for reconsideration, thus rendering his notice of appeal timely.

The complaint was anchored on the supposed failure of FEBTC to duly investigate the authority of Antonio in contracting the "exceptionally and relatively immense"[23] loans amounting to ₱5,000,000.00. Marcos alleged therein that his property had thereby become "unlawfully burdened by unauthorized real estate mortgage contracts,"[24] because the loans and the mortgage contracts had been incurred by Antonio and his wife only for themselves, to the exclusion of petitioner.[25] Yet, Marcos could not deny that under the express terms of the SPA,[26] he had precisely granted to Antonio as his agent the authority to borrow money, and to transfer and convey the property by way of mortgage to FEBTC; to sign, execute and deliver promissory notes; and to receive the proceeds of the loans on the former's behalf. In other words, the mortgage contracts were valid and enforceable against petitioner, who was consequently fully bound by their terms.

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[21] See, for instance, *Almeda v. Court of Appeals*, July 16, 1998, 292 SCRA 587, 593-595, where the Court emphasized that: "The timeliness of an appeal is a jurisdictional caveat that not even this Court can trifle with."

[22] G.R. No. 141524, September 14, 2005, 469 SCRA 633. In this case, we ruled that aggrieved party wishing to appeal an adverse judgment or final order is allowed a fresh period of 15 days within which to file the notice of appeal in the RTC reckoned from the receipt of the order denying a motion for new trial or motion for reconsideration.

[23] *Supra*, note 11, p. 51.

[24] *Supra*, note 1, p. 3.

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

[26] *Id.*, pp. 8-10.

Moreover, even if it was assumed that Antonio's obtaining the loans in his own name, and executing the mortgage contracts also in his own name had exceeded his express authority under the SPA, Marcos was still liable to FEBTC by virtue of his express ratification of Antonio's act. Under Article 1898 of the *Civil Code*, the acts of an agent done beyond the scope of his authority do not bind the principal unless the latter expressly or impliedly ratifies the same.[27]

In agency, ratification is the adoption or confirmation by one person of an act performed on his behalf by another without authority. The substance of ratification is the confirmation after the act, amounting to a substitute for a prior authority.[28] Here, there was such a ratification by Marcos, as borne out by his execution of the letter of acknowledgement on September 12, 1996,[29] whose text is quoted in full, *viz*:

12 Sept. 1996
(handwritten)

FAR EAST BANK & TRUST COMPANY
San Fernando
La Union

Gentlemen:

It is my/our understanding that your Bank has granted a DISCOUNTING Line/Loan in favor of SPS. ANTONIO & MONETTE PRIETO over my/our real property located in Calumbayan, Bauang, La Union and covered by Transfer Certificate of Title No./s. 40223 of the Registry of Deeds for La Union. This confirms that the said property/ies was/were offered as collateral (illegible) SPS. ANTONIO

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[27] Article 1898. If the agent contracts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification. (n)

[28] *Manila Memorial Park Cemetery v. Linsangan*, G.R. No. 151319, November 22, 2004, 443 SCRA 377, 394.

[29] *Supra*, note 1, p. 48.

& MONETTE PRIETO'S line/loan with my/our consent, and that I/we agree with all the terms and conditions of the mortgage executed on the same. I/we further confirm that the proceeds of the aforesaid Discounting Line line/loan was released to SPS. MONETTE & ANTONIO PRIETO for his/her its own benefit.

We thank you for your support to SPS. MONETTE & ANTONIO.

Very truly yours,

(signed)
ATTY. MARCOS PRIETO[30]

But Marcos insists that the letter of acknowledgment was only a mere "letter (written) on a mimeographic paper … a mere scrap of paper, a document by adhesion."[31]

The Court is confounded by Marcos' dismissal of his own express written ratification of Antonio's act. Being himself a lawyer, Marcos was aware of the import and consequences of the letter of acknowledgment. The Court cannot agree with his insistence that the letter was worthless due to its being a contract of adhesion. The letter was not a contract, to begin with, because it was only a unilateral act of his. Secondly, his insistence was fallacious and insincere because he knew as a lawyer that even assuming that the letter could be treated as a contract of adhesion it was nonetheless effective and binding like any other contract. The Court has consistently held that a contract of adhesion was not prohibited for that reason. In *Pilipino Telephone Corporation v. Tecson*,[32] for instance, the Court said that contracts of adhesion were valid but might be occasionally struck down only if there was a showing that the dominant bargaining party left the weaker party without any choice as to be "completely deprived of an opportunity to bargain effectively." That exception did not apply here, for, verily, Marcos, being a lawyer, could not have been the weaker party. As the tenor of the of acknowledgment indicated, he was fully aware of the meaning and sense of every written

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[30] *Id.*, p. 48.

[31] *Supra*, note 11, p. 214.

[32] G.R. No. 156966, May 7, 2004, 428 SCRA 378, 381.

word or phrase, as well as of the legal effect of his confirmation thereby of his agent's act. It is axiomatic that a man's act, conduct and declaration, wherever made, if voluntary, are admissible against him,[33] for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not.[34]

WHEREFORE, the Court **AFFIRMS** the resolution promulgated by the Court of Appeals on April 24, 2002; and **ORDERS** petitioner to pay the costs of suit.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), del Castillo, Villarama, Jr., and *Perlas-Bernabe, JJ.*, concur.

FIRST DIVISION

[G.R. No. 158755. June 18, 2012]

SPOUSES FRANCISCO and MERCED RABAT, *petitioners, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; INADEQUACY OF THE BID PRICE AT A FORCED SALE IS IMMATERIAL AND DOES NOT NULLIFY THE SALE SINCE A LOW PRICE IS CONSIDERED MORE BENEFICIAL TO THE MORTGAGE DEBTOR BECAUSE IT MAKES REDEMPTION OF THE PROPERTY EASIER.— We have consistently held that the inadequacy of the bid price

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[33] Rule 130, *Rules of Court*, provides:

Section 26. *Admissions of a party*. - The act, declaration or omission of a party as to a relevant fact may be given in evidence against him. (22)

[34] *United States v. Ching Po*, 23 Phil. 578.

at a forced sale, unlike that in an ordinary sale, is immaterial and does not nullify the sale; in fact, in a forced sale, a low price is considered more beneficial to the mortgage debtor because it makes redemption of the property easier. In *Bank of the Philippine Islands, etc. v. Reyes,* the Court discoursed on the effect of the inadequacy of the price in a forced sale, stating: Throughout a long line of jurisprudence, we have declared that unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify a sale since, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier. In the early case of *The National Loan and Investment Board v. Meneses*, we also had the occasion to state that: As to the **inadequacy of the price of the sale**, this court has repeatedly held that the fact that a property is sold at public auction for a price lower than its alleged value, **is not of itself sufficient to annul said sale, where there has been strict compliance with all the requisites marked out by law to obtain the highest possible price, and where there is no showing that a better price is obtainable**. x x x. [W]e consider it notable enough that PNB's bid price of ₱3,874,800.00 might not even be said to be outrageously low as to be shocking to the conscience. As the CA cogently noted in the second amended decision, *that* bid price was almost equal to both the ₱4,000,000.00 applied for by the Spouses Rabat as loan, and to the total sum of ₱3,517,380.00 of their actual availment from PNB.

2. ID.; ID.; ID.; WHERE THE PROCEEDS OF THE SALE ARE INSUFFICIENT TO COVER THE DEBT IN EXTRAJUDICIAL FORECLOSURE OF MORTGAGE, THE MORTGAGEE IS ENTITLED TO CLAIM THE DEFICIENCY FROM THE DEBTOR.— [W]e rule that PNB had the legal right to recover the deficiency amount. In *Philippine National Bank v. Court of Appeals,* we held that: xxx it is settled that if the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of the mortgage, the mortgagee is entitled to claim the deficiency from the debtor. For when the legislature intends to deny the right of a creditor to sue for any deficiency resulting from foreclosure of security given to guarantee an obligation it expressly provides as in the case of pledges [Civil Code, Art. 2115] and in chattel mortgages of a thing sold on installment basis [Civil Code,

Art. 1484(3)]. Act No. 3135, which governs the extrajudicial foreclosure of mortgages, while silent as to the mortgagee's right to recover, does not, on the other hand, prohibit recovery of deficiency. Accordingly, it has been held that a deficiency claim arising from the extrajudicial foreclosure is allowed. Indeed, as we indicated in *Prudential Bank v. Martinez*, the fact that the mortgaged property was sold at an amount less than its actual market value should not militate against the right to such recovery.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; THE CONTRACTING PARTIES MAY MAKE ANY STIPULATIONS IN THEIR COVENANTS PROVIDED THAT THEY ARE NOT CONTRARY TO LAW, MORAL, GOOD CUSTOMS, PUBLIC ORDER OR PUBLIC POLICY; RECOVERY OF THE PENALTY CHARGE AND ATTORNEY'S FEES, AFFIRMED.— There should be no question that PNB was legally entitled to recover the penalty charge of 3% *per annum* and attorney's fees equivalent to 10% of the total amount due. The documents relating to the loan and the real estate mortgage showed that the Spouses Rabat had expressly conformed to such additional liabilities; hence, they could not now insist otherwise. To be sure, the law authorizes the contracting parties to make any stipulations in their covenants provided the stipulations are not contrary to law, morals, good customs, public order or public policy. Equally axiomatic are that a contract is the law between the contracting parties, and that they have the autonomy to include therein such stipulations, clauses, terms and conditions as they may want to include. Inasmuch as the Spouses Rabat did not challenge the legitimacy and efficacy of the additional liabilities being charged by PNB, they could not now bar PNB from recovering the deficiency representing the additional pecuniary liabilities that the proceeds of the forced sales did not cover.

4. REMEDIAL LAW; JUDGMENTS; ALL COURTS OF LAW HAVE THE UNQUESTIONED POWER TO ALTER, MODIFY, OR SET ASIDE THEIR DECISIONS BEFORE THEY BECOME FINAL AND UNALTERABLE; APPLIED; DOCTRINE OF IMMUTABILITY AND INALTERABILITY OF A FINAL JUDGMENT; EXPLAINED; TWO FOLD-PURPOSE.— [W]e uphold the CA's promulgation of the second amended decision. Verily,

all courts of law have the unquestioned power to alter, modify, or set aside their decisions before they become final and unalterable. A judgment that has attained finality becomes immutable and unalterable, and may thereafter no longer be modified *in any respect* even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. The reason for the rule of immutability is that if, on the application of one party, the court could change its judgment to the prejudice of the other, the court could thereafter, on application of the latter, again change the judgment and continue this practice indefinitely. · The equity of a particular case must yield to the overmastering need of certainty and unalterability of judicial pronouncements. The doctrine of immutability and inalterability of a final judgment has a *two-fold* purpose, namely: (*a*) to avoid delay in the administration of justice and, thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, *at the risk of occasional errors*, which is precisely why courts exist. Indeed, controversies cannot drag on indefinitely; the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As such, the doctrine of immutability is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law. It is no different herein. The amended decision that favored the Spouses Rabat would have attained finality only after the lapse of 15 days from notice thereof to the parties without a motion for reconsideration being timely filed or an appeal being seasonably taken. Had that happened, the amended decision might have become final and immutable. However, considering that PNB timely filed its motion for reconsideration *vis-à-vis* the amended decision, the CA's reversal of the amended decision and its promulgation of the second amended decision were valid and proper.

APPEARANCES OF COUNSEL

Francisco C. Geronilla for petitioners.
PNB Office of the Chief Legal Counsel for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The inadequacy of the bid price in an extrajudicial foreclosure sale of mortgaged properties will not *per se* invalidate the sale. Additionally, the foreclosing mortgagee is not precluded from recovering the deficiency should the proceeds of the sale be insufficient to cover the entire debt.

Antecedents

The parties are before the Court a second time to thresh out an issue relating to the foreclosure sale of the petitioners' mortgaged properties. The first time was in G.R. No. 134406 entitled *Philippine National Bank v. Spouses Francisco and Merced Rabat,* decided on November 15, 2000.[1] In G.R. No. 134406, the Court observed that –

> The RABATs did not appeal from the decision of the trial court. As a matter of fact, in their Appellee's Brief filed with the Court of Appeals they prayed that said decision be affirmed *in toto*. As against the RABATs the trial court's findings of fact and conclusion are already settled and final. More specifically, they are deemed to have unqualifiedly agreed with the trial court that the foreclosure proceedings were valid in all respects, except as to the bid price.[2]

Accordingly, we extract the antecedent facts from the narrative of the decision in G.R. No. 134406, as follows:

> On 25 August 1979, respondent spouses Francisco and Merced Rabat (hereafter RABATs) applied for a loan with PNB. Subsequently, the RABATs were granted on 14 January 1980 a medium-term loan of ₱4.0 Million to mature three years from the date of implementation.
>
> On 28 January 1980, the RABATs signed a Credit Agreement and executed a Real Estate Mortgage over twelve (12) parcels of land which stipulated that the loan would be subject to interest at the rate of 17% per annum, plus the appropriate service charge and

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[1] 344 SCRA 706.

[2] *Id.,* at p. 716.

penalty charge of 3% per annum on any amount remaining unpaid or not renewed when due.

On 25 September 1980, the RABATs executed another document denominated as "Amendment to the Credit Agreement" purposely to increase the interest rate from 17% to 21% per annum, inclusive of service charge and a penalty charge of 3% per annum to be imposed on any amount remaining unpaid or not renewed when due. They also executed another Real Estate Mortgage over nine (9) parcels of land as additional security for their medium-term loan of Four Million (₱4.0 M). These parcels of land are agricultural, commercial and residential lots situated in Mati, Davao Oriental.

The several availments of the loan accommodation on various dates by the RABATs reached the aggregate amount of THREE MILLION FIVE HUNDRED SEVENTEEN THOUSAND THREE HUNDRED EIGHTY (₱3,517,380), as evidenced by the several promissory notes, all of which were due on 14 March 1983.

The RABATs failed to pay their outstanding balance on due date.

In its letter of 24 July 1986, in response to the letter of the RABATs of 16 June 1986 requesting for more time within which to arrive at a viable proposal for the settlement of their account, PNB informed the RABATs that their request has been denied and gave the RABATs until 30 August 1986 to settle their account. The PNB sent the letter to 197 Wilson Street, San Juan, Metro Manila.

For failure of the RABATs to pay their obligation, the PNB filed a petition for the extrajudicial foreclosure of the real estate mortgage executed by the RABATs. After due notice and publication, the mortgaged parcels of land were sold at a public auction held on 20 February 1987 and 14 April 1987. The PNB was the lone and highest bidder with a bid of ₱3,874,800.00.

As the proceeds of the public auction were not enough to satisfy the entire obligation of the RABATs, the PNB sent anew demand letters. The letter dated 15 November 1990 was sent to the RABATs at 197 Wilson Street, San Juan, Metro Manila; while another dated 30 August 1991 was sent to the RABATs at 197 Wilson Street, Greenhills, San Juan, Metro Manila, and also in Mati, Davao Oriental.

Upon failure of the RABATs to comply with the demand to settle their remaining outstanding obligation which then stood at ₱14,745,398.25, including interest, penalties and other charges, PNB

eventually filed on 5 May 1992 a complaint for a sum of money before the Regional Trial Court of Manila. The case was docketed as Civil Case No. 92-61122, which was assigned to Branch 14 thereof.

The RABATs filed their answer with counterclaim on 28 July 1992 to which PNB filed its Reply and Answer to Counterclaim. On 2 January 1993, the RABATs filed an amended answer. The RABATs admitted their loan availments from PNB and their default in the payment thereof. However, they assailed the validity of the auction sales for want of notice to them before and after the foreclosure sales.

They further added that as residents of Mati, Davao Oriental since 1970 up to the present, they never received any notice nor heard about the foreclosure proceeding in spite of the claim of PNB that the foreclosure proceeding had been duly published in the San Pedro Times, which is not a newspaper of general circulation.

The RABATs likewise averred that the bid price was grossly inadequate and unconscionable.

Lastly, the RABATs attacked the validity of the accumulated interest and penalty charges because since their properties were sold in 1987, and yet PNB waited until 1992 before filing the case. Consequently, the RABATs contended that they should not be made to suffer for the interest and penalty charges from May 1987 up to the present. Otherwise, PNB would be allowed to profit from its questionable scheme.

The PNB filed on 5 February 1993 its Reply to the Amended Answer and Answer to Counterclaim.[3]

On June 14, 1994, the Regional Trial Court, Branch 14, in Manila (RTC) rendered its decision in Civil Case No. 92-61122,[4] disposing thus:

WHEREFORE, and in view of the foregoing considerations, judgment is hereby rendered dismissing the complaint.

On the counterclaim, the two (2) auction sales of the mortgaged properties are hereby set aside and ordering the plaintiff to reconvey

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[3] *Id.,* pp. 707-710.

[4] Records, pp. 420-427; penned by Judge Inocencio D. Maliaman.

to the defendants the remaining properties after the sale [of] sufficient properties for the satisfaction of the obligation of the defendants.

The parties will bear their respective cost.

So ordered.

Only PNB appealed to the CA (CA-G.R. CV No. 49800), assigning the following two errors to the RTC,[5] to wit:

I

WHETHER OR NOT THE TRIAL COURT ERRED IN NULLIFYING THE SHERIFF'S AUCTION SALE ON THE GROUND THAT THE PNB'S WINNING BID IS VERY LOW.

II

WHETHER OR NOT THE TRIAL COURT ERRED IN RULING THAT THE DEFENDANTS-APPELLEES ARE NOT LIABLE TO PAY INTEREST AND PENALTY CHARGES AFTER THE AUCTION SALES UP TO THE FILING OF THIS CASE.

On their part, the Spouses Rabat simply urged in their *appellee's brief* that the decision of the RTC be entirely affirmed.[6]

On June 29, 1998, the CA upheld the RTC's decision to nullify the foreclosure sales but rested its ruling upon a different ground,[7] in that the Spouses Rabat could not have known of the foreclosure sales because they had not actually received personal notices about the foreclosure proceedings. The CA concluded:

An examination of the exhibits show that the defendant-appellees given address is Mati, Davao Oriental and not 197 Wilson Street, Greenhills, San Juan, Metro Manila as alleged by the plaintiff-appellant (Exhibits C to J, pp. 208, 217, 220, 229, 236-239, Records).

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[5] *Supra*, note 1, at p. 712.

[6] *Id*.

[7] CA *rollo*, pp. 115-120; penned by Associate Justice Candido V. Rivera (retired/deceased), with Associate Justice Bernardo Ll. Salas (retired) and Associate Justice Martin S. Villarama, Jr. (now a Member of this Court) concurring.

Records further show that all subsequent communications by plaintiff-appellant was sent to defendant-appellees address at Wilson Street, Greenhills, San Juan. This was the very reason why defendant-appellees were not aware of the foreclosure proceedings.

As correctly found out by the trial court, there is a need for the setting aside of the two (2) auction sales hence, there is yet no deficiency judgment to speak of.

WHEREFORE, the decision of the trial court dated 14 June 1994, is hereby affirmed *in toto*.

SO ORDERED.

PNB appealed in due course (G.R. No. 134406),[8] positing:

WHETHER OR NOT THE COURT OF APPEALS MAY REVIEW AND PASS UPON THE TRIAL COURT'S FINDING AND CONCLUSION ON AN ISSUE WHICH WAS NEVER RAISED ON APPEAL, AND, THEREFORE, HAD ATTAINED FINALITY.

1. THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT DECIDED AND RESOLVED A QUESTION OR ISSUE NOT RAISED IN PETITIONER PNB'S APPEAL;

2. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT REVERSED THE FINDING AND CONCLUSION OF THE TRIAL COURT ON AN ISSUE WHICH HAD ALREADY ATTAINED FINALITY.

PNB argued that it had not raised the issue of lack of notice about the foreclosure sales because the fact that the Spouses Rabat had not appealed the RTC's ruling as regards the lack of notice but had in fact prayed for the affirmance of the RTC's judgment had rendered final the RTC's rejection of their allegation of lack of personal notice; and that, consequently, the CA had committed grave abuse of discretion in still resolving the issue of lack of notice despite its not having been raised during the appeal.[9]

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[8] *Supra*, note 1, pp. 712-714.

[9] CA *rollo*, p. 103.

On November 15, 2000, the Court promulgated its decision in G.R. No. 134406, decreeing:

> WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals of 29 July 1998 in CA-G.R. CV No. 49800 is hereby SET ASIDE. The Court of Appeals is directed to DECIDE, with reasonable dispatch, CA-G.R. CV No. 49800 on the basis of the errors raised by petitioner Philippine National Bank in its Appellant's Brief.
>
> No pronouncement as to costs.
>
> SO ORDERED.[10]

To conform to the decision in G.R. No. 134406, the CA amended its decision on January 24, 2003 by resolving the errors specifically assigned by PNB in its *appellant's brief*.[11] The CA nonetheless affirmed the RTC's decision, declaring that the bid price had been very low and observing that the mortgaged properties might have been sold for a higher value had PNB first conducted a reappraisal of the properties.

Upon PNB's motion for reconsideration, however, the CA promulgated its questioned second amended decision on March 26, 2003,[12] holding and ruling as follows:

> After a thorough and conscientious review of the records and relevant laws and jurisprudence, We find the motion for reconsideration to be meritorious.
>
> While indeed no evidence was presented by appellant as to whether a reappraisal of the mortgaged properties was conducted by it before submitting the bid price of ₱3,874,800.00 at the auction sale, said amount approximates the loan value under its original appraisal in 1980, which was ₱4 million.

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[10] *Id.*, p. 156.

[11] *Id.*, pp. 121-135.

[12] *Rollo*, pp. 44-51; penned by Associate Justice Villarama, Jr., with Associate Justice Mercedes Gozo-Dadole (retired) and Associate Justice Edgardo F. Sundiam (deceased) concurring.

There is no dispute that mere inadequacy of price *per se* will not set aside a *judicial sale of real property*. Nevertheless, where the inadequacy of the price is purely shocking to the conscience such that the mind revolts at it and such that a reasonable man would neither directly nor indirectly be likely to consent to it, the sale shall be declared null and void. Said rule, however, does not strictly apply in the case of *extrajudicial foreclosure sales* so that when a supposed "unconscionably low price" paid by the bank-mortgagee for the mortgaged properties at the public auction sale is assailed, the sale is not thereby readily set aside on account of such low purchase price. It is well-settled that alleged gross inadequacy of price is not material "when the law gives the owner the right to redeem as when a sale is made at a public auction, upon the theory that the lesser the price the easier it is for the owner to effect the redemption." In fact, the property may be sold for *less than its fair market value*.

Here, it may be that after the lapse of seven (7) years, the mortgaged properties may have indeed appreciated in value but under the general rule cited above which had been consistently applied to extrajudicial foreclosure sales. We are not inclined to invalidate the auction sale of appellees' mortgaged properties *solely* on the alleged gross inadequacy of purchase price of ₱3,874,800.00 which is actually almost the equivalent of the loan value of appellees' twenty-one (21) parcels of land under the "Real Estate Mortgage" executed in favor of appellant PNB in 1980. It has been held that no such disadvantage is suffered by the mortgagor as he stands to gain with a reduced price because he possesses the right of redemption. Thus, the re-appraisal of the mortgaged properties resulting in the appellant PNB's bid price of approximately the original loan value of their mortgaged properties is beneficial rather than harmful considering the right of redemption granted to appellees under the law. The claim of financial hardship or losses in their business is not an excuse for appellees-mortgagors to evade their clear obligation to the bank-mortgagee.

Further, the fact that the mortgaged property is sold at *an amount less than its actual market value* should not militate against the right of appellant PNB to the recovery of the deficiency in the loan obligation of appellees. Our Supreme Court had ruled in several cases that in extrajudicial foreclosure of mortgage, where the proceeds of the sale are insufficient to pay the debt, the mortgagee has the right to recover the deficiency from the debtor. A claim of deficiency arising from the extrajudicial foreclosure sale is allowed. As to

appellees' claim of allegedly excessive penalty interest charges, the same is without merit. We note that the promissory notes expressly provide for a penalty charge of 3% per annum to be imposed on any unpaid amount on due date.

WHEREFORE, premises considered, the present motion for reconsideration is hereby GRANTED. Consequently, Our Amended Decision of January 24, 2003 is hereby SET ASIDE and a new one is hereby entered GRANTING the appeal of plaintiff PNB. The decision appealed from in Civil Case No. 92-61122 is hereby REVERSED and SET ASIDE. Judgment is hereby rendered ordering the appellees to pay, jointly and severally, to appellant PNB: (1) the amount of ₱14,745,398.25 plus accrued interest, service charge and penalty charge of 3% *per annum* from February 29, 1992 until the same shall have been fully paid; (2) Ten Percent (10%) of the total amount due as attorney's fees; and (3) the costs of suit.

No pronouncement as to costs.

SO ORDERED.[13]

The Spouses Rabat thereafter moved for the reconsideration of the second amended decision, but the CA denied their motion.[14]

Hence, this appeal by the Spouses Rabat.

Issues

The Spouses Rabat frame the following issues for this appeal, thuswise:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN UPHOLDING THE VALIDITY OF THE SUBJECT AUCTION SALES AND ADJUDGING PAYMENT OF DEFICIENCY SUM, INTERESTS, PENALTY AND SERVICE CHARGES AND ATTORNEY'S FEES, IN COMPLETE AND ABSOLUTE DISREGARD OF ITS EARLIER PRONOUNCEMENTS, THE ARGUMENTS OF HEREIN PETITIONERS AND EVIDENCE BORNE IN THE RECORDS OF THE INSTANT CASE.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DEPARTING FROM ITS FINDING OF FACTS AND

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[13] *Id.*, pp. 49-51.

[14] *Id.*, pp. 39-42.

CONCLUSIONS OF LAW AS STATED IN THE EARLIER RENDERED FIRST AMENDED DECISION DATED 24 JANUARY 2003.[15]

The Spouses Rabat insist that the CA's reversal of the amended decision was unjustified. They pray that the amended decision of the CA (which affirmed the RTC's judgment) be reinstated. They contend that PNB was not entitled to recover any deficiency due to the invalidity of the forced sales.[16]

In its comment,[17] PNB counters that the petition for review does not raise a valid question of law; and that the CA's second amended decision was regularly promulgated because the CA thereby acted well within its right to correct itself considering that the amended decision did not yet attain finality under the pertinent rules and jurisprudence.

Accordingly, the Court must pass upon and resolve three distinct issues. The first is whether the inadequacy of the bid price of PNB invalidated the forced sale of the properties. The second is whether PNB was entitled to recover any deficiency from the Spouses Rabat. The third is whether the CA validly rendered its second amended decision.

Ruling

The appeal has no merit.

Anent the first issue, we rule against the Spouses Rabat. We have consistently held that the inadequacy of the bid price at a forced sale, unlike that in an ordinary sale, is immaterial and does not nullify the sale; in fact, in a forced sale, a low price is considered more beneficial to the mortgage debtor because it makes redemption of the property easier.[18]

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

[16] *Id.*, pp. 24-25.

[17] *Id.*, pp. 63-68.

[18] *BPI Family Savings Bank, Inc. v. Avenido*, G.R. No. 175816, December 7, 2011; *Suico Rattan & Buri Interiors Inc. v. Court of Appeals*, G.R. No. 138145, June 15, 2006, 490 SCRA 560; *Sulit v. Court of Appeals*, G.R. No. 119247, February 17, 1997, 268 SCRA 441, 453.

In *Bank of the Philippine Islands, etc. v. Reyes,*[19] the Court discoursed on the effect of the inadequacy of the price in a forced sale, stating:

Throughout a long line of jurisprudence, we have declared that unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify a sale since, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier.

In the early case of *The National Loan and Investment Board v. Meneses*, we also had the occasion to state that:

> As to the **inadequacy of the price of the sale**, this court has repeatedly held that the fact that a property is sold at public auction for a price lower than its alleged value, **is not of itself sufficient to annul said sale, where there has been strict compliance with all the requisites marked out by law to obtain the highest possible price, and where there is no showing that a better price is obtainable**. (*Government of the Philippines vs. De Asis*, G.R. No. L-45483, April 12, 1939; *Guerrero vs. Guerrero*, 57 Phil. 442; *La Urbana vs. Belando*, 54 Phil. 930; *Bank of the Philippine Islands vs. Green*, 52 Phil. 491.) (Emphases supplied.)

In *Hulst v. PR Builders, Inc.*, we further elaborated on this principle:

> [G]ross inadequacy of price does not nullify an execution sale. In an ordinary sale, for reason of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere; such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction, upon the theory that the lesser the price, the easier it is for the owner to effect redemption. **When there is a right to redeem, inadequacy of price should not be material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Thus, respondent stood to gain rather than be harmed by the low sale value of the**

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[19] G.R. No. 182769, February 1, 2012.

auctioned properties because it possesses the right of redemption. x x x (Emphasis supplied.)

It bears also to stress that the mode of forced sale utilized by petitioner was an extrajudicial foreclosure of real estate mortgage which is governed by Act No. 3135, as amended. An examination of the said law reveals nothing to the effect that there should be a minimum bid price or that the winning bid should be equal to the appraised value of the foreclosed property or to the amount owed by the mortgage debtor. What is clearly provided, however, is that a mortgage debtor is given the opportunity to redeem the foreclosed property "within the term of one year from and after the date of sale." In the case at bar, other than the mere inadequacy of the bid price at the foreclosure sale, respondent did not allege any irregularity in the foreclosure proceedings nor did she prove that a better price could be had for her property under the circumstances.

At any rate, we consider it notable enough that PNB's bid price of ₱3,874,800.00 might not even be said to be outrageously low as to be shocking to the conscience. As the CA cogently noted in the second amended decision,[20] *that* bid price was almost equal to both the ₱4,000,000.00 applied for by the Spouses Rabat as loan, and to the total sum of ₱3,517,380.00 of their actual availment from PNB.

Resolving the second issue, we rule that PNB had the legal right to recover the deficiency amount. In *Philippine National Bank v. Court of Appeals*,[21] we held that:

xxx it is settled that if the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of the mortgage, the mortgagee is entitled to claim the deficiency from the debtor. For when the legislature intends to deny the right of a creditor to sue for any deficiency resulting from foreclosure of security given to guarantee an obligation it expressly provides as in the case of pledges [Civil Code, Art. 2115] and in chattel mortgages of a thing sold on installment basis [Civil Code, Art. 1484(3)]. Act No. 3135, which governs the extrajudicial foreclosure of mortgages, while silent as to the mortgagee's right to recover, does not, on the other hand,

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[20] *Supra*, note 12.

[21] G.R. No. 121739, June 14, 1999, 308 SCRA 229.

prohibit recovery of deficiency. Accordingly, it has been held that a deficiency claim arising from the extrajudicial foreclosure is allowed.[22]

Indeed, as we indicated in *Prudential Bank v. Martinez*,[23] the fact that the mortgaged property was sold at an amount less than its actual market value should not militate against the right to such recovery.[24]

There should be no question that PNB was legally entitled to recover the penalty charge of 3% *per annum* and attorney's fees equivalent to 10% of the total amount due. The documents relating to the loan and the real estate mortgage showed that the Spouses Rabat had expressly conformed to such additional liabilities; hence, they could not now insist otherwise. To be sure, the law authorizes the contracting parties to make any stipulations in their covenants provided the stipulations are not contrary to law, morals, good customs, public order or public policy.[25] Equally axiomatic are that a contract is the law between the contracting parties, and that they have the autonomy to include therein such stipulations, clauses, terms and conditions as they may want to include.[26] Inasmuch as the Spouses Rabat did not challenge the legitimacy and efficacy of the additional liabilities being charged by PNB, they could not now bar PNB from recovering the deficiency representing the additional pecuniary liabilities that the proceeds of the forced sales did not cover.

Lastly, we uphold the CA's promulgation of the second amended decision. Verily, all courts of law have the unquestioned power to alter, modify, or set aside their decisions before they become final and unalterable.[27] A judgment that has attained

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[22] *Id.*, p. 235.

[23] G.R. No. 51768, September 14, 1990, 189 SCRA 612.

[24] *Id.*, p. 617.

[25] Article 1306, *Civil Code*.

[26] *Ridjo Tape and Chemical Corp. v. Court of Appeals*, G.R. No. 126074, February 24, 1998, 286 SCRA 544, 551.

[27] *Marcopper Mining Corporation v. Briones*, G.R. No. 77210, September 19, 1988, 165 SCRA 464, 470.

finality becomes immutable and unalterable, and may thereafter no longer be modified *in any respect* even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[28] The reason for the rule of immutability is that if, on the application of one party, the court could change its judgment to the prejudice of the other, the court could thereafter, on application of the latter, again change the judgment and continue this practice indefinitely.[29] The equity of a particular case must yield to the overmastering need of certainty and unalterability of judicial pronouncements.[30] The doctrine of immutability and inalterability of a final judgment has a *two-fold* purpose, namely: (*a*) to avoid delay in the administration of justice and, thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, *at the risk of occasional errors*, which is precisely why courts exist. Indeed, controversies cannot drag on indefinitely; the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.[31] As such, the doctrine of immutability is not a mere technicality to be easily brushed aside, but a matter of public policy as well as a time-honored principle of procedural law.

It is no different herein. The amended decision that favored the Spouses Rabat would have attained finality only after the lapse of 15 days from notice thereof to the parties without a motion for reconsideration being timely filed or an appeal being seasonably taken.[32] Had that happened, the amended decision might have become final and immutable. However, considering

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[28] *Siy v. National Labor Relations Commission*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161-162.

[29] *Kline v. Murray*, 257 P. 465, 79 Mont. 530.

[30] *Flores v. Court of Appeals*, 328 Phil. 995 (1996).

[31] *Land Bank of the Philippines v. Arceo*, G.R. No. 158270, July 21, 2008, 559 SCRA 85.

[32] *Heirs of Patriaca v. Court of Appeals*, G.R. No. 59701, August 31, 1983, 124 SCRA 410, 413.

that PNB timely filed its motion for reconsideration *vis-à-vis* the amended decision, the CA's reversal of the amended decision and its promulgation of the second amended decision were valid and proper.

WHEREFORE, we **AFFIRM** the **SECOND AMENDED DECISION** promulgated on March 26, 2003 in CA-G.R. CV No. 49800 entitled *Philippine National Bank v. Spouses Francisco and Merced Rabat.*

The petitioners shall pay the costs of suit.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), Peralta,[*] *del Castillo,* and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 159108. June 18, 2012]

GOLD LINE TOURS, INC., *petitioner, vs.* **HEIRS OF MARIA CONCEPCION LACSA,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; DOCTRINE OF SEPARATE CORPORATE IDENTITY; COULD NOT BE EMPLOYED TO DEFEAT THE ENDS OF JUSTICE.— [T]he RTC had sufficient factual basis to find that petitioner and Travel and Tours Advisers, Inc. were one and the same entity, specifically:– (*a*) documents submitted by petitioner in the RTC showing that William Cheng, who claimed to be the operator of Travel and Tours Advisers, Inc., was also the

[*] Vice Associate Justice M. S. Villarama, Jr., who penned the assailed decision of the Court of Appeals, per the raffle of May 7, 2012.

President/Manager and an incorporator of the petitioner; and (*b*) Travel and Tours Advisers, Inc. had been known in Sorsogon as Goldline. x x x. The RTC thus rightly ruled that petitioner might not be shielded from liability under the final judgment through the use of the doctrine of separate corporate identity. Truly, this fiction of law could not be employed to defeat the ends of justice.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; PETITIONER BEARS THE BURDEN OF DEMONSTRATING NOT MERELY REVERSIBLE ERROR, BUT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE RESPONDENT TRIAL COURT IN ISSUING THE IMPUGNED ORDER; GRAVE ABUSE OF DISCRETION, DEFINED AND EXPLAINED.— [T]here was sufficient evidence that petitioner and Travel and Tours Advisers, Inc. were one and the same entity. [W]e remind that a petition for the writ of *certiorari* neither deals with errors of judgment nor extends to a mistake in the appreciation of the contending parties' evidence or in the evaluation of their relative weight. It is timely to remind that the petitioner in a special civil action for *certiorari* commenced against a trial court that has jurisdiction over the proceedings bears the burden to demonstrate not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the respondent trial court in issuing the impugned order. The term *grave abuse of discretion* is defined as a capricious and whimsical exercise of judgment 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, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility. Mere abuse of discretion is not enough; it must be grave. Yet, here, petitioner did not discharge its burden because it failed to demonstrate that the CA erred in holding that the RTC had not committed grave abuse of discretion. A review of the records shows, indeed, that the RTC correctly rejected petitioner's third-party claim. Hence, the rejection did not come within the domain of the writ of *certiorari's* limiting requirement of excess or lack of jurisdiction.

APPEARANCES OF COUNSEL

Atienza Madrid & Rodriguez and *Jimeno Jalandoni and Cope Law Offices* for petitioner.

Bernardo R. Jimenez, Jr. for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The veil of corporate existence of a corporation is a fiction of law that should not defeat the ends of justice.

Petitioner seeks to reverse the decision promulgated on October 30, 2002[1] and the resolution promulgated on June 25, 2003,[2] whereby the Court of Appeals (CA) upheld the orders issued on August 2, 2001[3] and October 22, 2001[4] by the Regional Trial Court (RTC), Branch 51, in Sorsogon in Civil Case No. 93-5917 entitled *Heirs of Concepcion Lacsa, represented by Teodoro Lacsa v. Travel & Tours Advisers, Inc., et al.* authorizing the implementation of the writ of execution against petitioner despite its protestation of being a separate and different corporate personality from Travel & Tours Advisers, Inc. (defendant in Civil Case No. 93-5917).

In the orders assailed in the CA, the RTC declared petitioner and Travel & Tours Advisers, Inc. to be one and the same entity, and ruled that the levy of petitioner's property to satisfy the final and executory decision rendered on June 30, 1997 against Travel & Tours Advisers, Inc. in Civil Case No. 93-5917[5] was valid even if petitioner had not been impleaded as a party.

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[1] *Rollo*, pp. 23-26; penned by Associate Justice Portia Aliño-Hormachuelos (retired) and concurred in by Associate Justice Eliezer R. Delos Santos (deceased) and Associate Justice Amelita G. Tolentino.

[2] *Id.*, pp. 27-28.

[3] *Id.*, pp. 53-54.

[4] *Id.*, p. 55.

[5] *Id.*, pp. 38-43.

Antecedents

On August 2, 1993, Ma. Concepcion Lacsa (Concepcion) and her sister, Miriam Lacsa (Miriam), boarded a Goldline passenger bus with Plate No. NXM-105 owned and operated by Travel &Tours Advisers, Inc. They were enroute from Sorsogon to Cubao, Quezon City.[6] At the time, Concepcion, having just obtained her degree of Bachelor of Science in Nursing at the Ago Medical and Educational Center, was proceeding to Manila to take the nursing licensure board examination.[7] Upon reaching the highway at Barangay San Agustin in Pili, Camarines Sur, the Goldline bus, driven by Rene Abania (Abania), collided with a passenger jeepney with Plate No. EAV-313 coming from the opposite direction and driven by Alejandro Belbis.[8] As a result, a metal part of the jeepney was detached and struck Concepcion in the chest, causing her instant death.[9]

On August 23, 1993, Concepcion's heirs, represented by Teodoro Lacsa, instituted in the RTC a suit against Travel & Tours Advisers Inc. and Abania to recover damages arising from breach of contract of carriage.[10] The complaint, docketed as Civil Case No. 93-5917 and entitled *Heirs of Concepcion Lacsa, represented by Teodoro Lacsa v. Travel & Tours Advisers, Inc. (Goldline) and Rene Abania*, alleged that the collision was due to the reckless and imprudent manner by which Abania had driven the Goldline bus.[11]

In support of the complaint, Miriam testified that Abania had been occasionally looking up at the video monitor installed in the front portion of the Goldline bus despite driving his bus at a fast speed;[12] that in Barangay San Agustin, the Goldline

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[6] Records, pp. 1-2.

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

[8] *Id.*

[9] *Id.*

[10] *Id.*, pp. 1-4.

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

[12] *Id.*, p. 168.

bus had collided with a service jeepney coming from the opposite direction while in the process of overtaking another bus;[13] that the impact had caused the angle bar of the jeepney to detach and to go through the windshield of the bus directly into the chest of Concepcion who had then been seated behind the driver's seat;[14] that concerned bystanders had hailed another bus to rush Concepcion to the Ago Foundation Hospital in Naga City because the Goldline bus employees and her co-passengers had ignored Miriam's cries for help;[15] and that Concepcion was pronounced dead upon arrival at the hospital.[16]

To refute the plaintiffs' allegations, the defendants presented SPO1 Pedro Corporal of the Philippine National Police Station in Pili, Camarines Sur, and William Cheng, the operator of the Goldline bus.[17] SPO1 Corporal opined that based on his investigation report, the driver of the jeepney had been at fault for failing to observe precautionary measures to avoid the collision;[18] and suggested that criminal and civil charges should be brought against the operator and driver of the jeepney.[19] On his part, Cheng attested that he had exercised the required diligence in the selection and supervision of his employees; and that he had been engaged in the transportation business since 1980 with the use of a total of 60 units of Goldline buses, employing about 100 employees (including drivers, conductors, maintenance personnel, and mechanics);[20] that as a condition for regular employment, applicant drivers had undergone a one-month training period and a six-month probationary period during which they had gotten acquainted with Goldline's driving practices

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[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*, pp. 168-169.

[18] *Id.*, p. 169.

[19] *Id.*

[20] *Id.*

and demeanor;[21] that the employees had come under constant supervision, rendering improbable the claim that Abania, who was a regular employee, had been glancing at the video monitor while driving the bus;[22] that the incident causing Concepcion's death was the first serious incident his (Cheng) transportation business had encountered, because the rest had been only minor traffic accidents;[23] and that immediately upon being informed of the accident, he had instructed his personnel to contact the family of Concepcion.[24]

The defendants blamed the death of Concepcion to the recklessness of Bilbes as the driver of the jeepney, and of its operator, Salvador Romano;[25] and that they had consequently brought a third-party complaint against the latter.[26]

After trial, the RTC rendered its decision dated June 30, 1997, disposing:

ACCORDINGLY, judgment is hereby rendered:

(1) Finding the plaintiffs entitled to damages for the death of Ma. Concepcion Lacsa in violation of the contract of carriage;

(2) Ordering defendant Travel & Tours Advisers, Inc. (Goldline) to pay plaintiffs:

a. ₱30,000.00 – expenses for the wake;

b. ₱ 6,000.00 – funeral expenses;

c. ₱50,000.00 – for the death of Ma. Concepcion Lacsa;

d. ₱150,000.00 – for moral damages;

e. ₱20,000.00 – for exemplary damages;

f. ₱8,000.00 – for attorney's fees;

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[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*, p. 170.

[25] *Id.*, pp. 21-22.

[26] *Id.*, pp. 31-34.

g. ₱2,000.00 – for litigation expenses;

h. Costs of suit.

(3) Ordering the dismissal of the case against Rene Abania;

(4) Ordering the dismissal of the third-party complaint.

SO ORDERED.[27]

The RTC found that a contract of carriage had been forged between Travel & Tours Advisers, Inc. and Concepcion as soon as she had boarded the Goldline bus as a paying passenger; that Travel & Tours Advisers, Inc. had then become duty-bound to safely transport her as its passenger to her destination; that due to Travel & Tours Advisers, Inc.'s inability to perform its duty, Article 1786 of the *Civil Code* created against it the disputable presumption that it had been at fault or had been negligent in the performance of its obligations towards the passenger; that Travel & Tours Advisers, Inc. failed to disprove the presumption of negligence; and that a rigid selection of employees was not sufficient to exempt Travel & Tours Advisers, Inc. from the obligation of exercising extraordinary diligence to ensure that its passenger was carried safely to her destination.

Aggrieved, the defendants appealed to the CA.

On June 11, 1998,[28] the CA dismissed the appeal for failure of the defendants to pay the docket and other lawful fees within the required period as provided in Rule 41, Section 4 of the *Rules of Court* (1997). The dismissal became final, and entry of judgment was made on July 17, 1998.[29]

Thereafter, the plaintiffs moved for the issuance of a writ of execution to implement the decision dated June 30, 1997.[30] The

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[27] *Rollo,* pp. 42-43.

[28] Records, p. 177.

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

[30] *Id.,* p. 182.

RTC granted their motion on January 31, 2000,[31] and issued the writ of execution on February 24, 2000.[32]

On May 10, 2000, the sheriff implementing the writ of execution rendered a Sheriff's Partial Return,[33] certifying that the writ of execution had been personally served and a copy of it had been duly tendered to Travel & Tours Advisers, Inc. or William Cheng, through his secretary, Grace Miranda, and that Cheng had failed to settle the judgment amount despite promising to do so. Accordingly, a tourist bus bearing Plate No. NWW-883 was levied pursuant to the writ of execution.

The plaintiffs moved to cite Cheng in contempt of court for failure to obey a lawful writ of the RTC.[34] Cheng filed his opposition.[35] Acting on the motion to cite Cheng in contempt of court, the RTC directed the plaintiffs to file a verified petition for indirect contempt on February 19, 2001.[36]

On April 20, 2001, petitioner submitted a so-called verified third party claim,[37] claiming that the tourist bus bearing Plate No. NWW-883 be returned to petitioner because it was the owner; that petitioner had not been made a party to Civil Case No. 93-5917; and that petitioner was a corporation entirely different from Travel & Tours Advisers, Inc., the defendant in Civil Case No. 93-5917.

It is notable that petitioner's Articles of Incorporation was amended on November 8, 1993,[38] shortly after the filing of Civil Case No. 93-5917 against Travel & Tours Advisers, Inc.

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[31] *Id.*, p. 184.

[32] *Id.*, pp. 185-186.

[33] *Id.*, p. 189.

[34] *Id.*, pp. 190-191.

[35] *Id.*, pp. 192-194.

[36] *Id.*, p. 204.

[37] *Id.*, pp. 205-207.

[38] *Id.*, pp. 214-217.

Respondents opposed petitioner's verified third-party claim on the following grounds, namely: (*a*) the third-party claim did not comply with the required notice of hearing as required by Rule 15, Sections 4 and 5 of the *Rules of Court*; (*b*) Travel & Tours Advisers, Inc. and petitioner were identical entities and were both operated and managed by the same person, William Cheng; and (*c*) petitioner was attempting to defraud its creditors –respondents herein – hence, the doctrine of piercing the veil of corporate entity was squarely applicable.[39]

On August 2, 2001, the RTC dismissed petitioner's verified third-party claim, observing that the identity of Travel & Tours Advisers, Inc. could not be divorced from that of petitioner considering that Cheng had claimed to be the operator as well as the President/Manager/incorporator of both entities; and that Travel & Tours Advisers, Inc. had been known in Sorsogon as Goldline.[40]

Petitioner moved for reconsideration,[41] but the RTC denied the motion on October 22, 2001.[42]

Thence, petitioner initiated a special civil action for *certiorari* in the CA,[43] asserting:

THE RESPONDENT HONORABLE RTC JUDGE HAD ACTED WITHOUT JURISDICTION OR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE: (A) ORDER DATED 2 AUGUST 2001, COPY OF WHICH IS HERETO ATTACHED AS ANNEX A, DISMISSING HEREIN PETITIONER'S THIRD PARTY CLAIM; AND (B) ORDER DATED 22 OCTOBER 2001, COPY OF WHICH IS HERETO ATTACHED AS ANNEX B DENYING SAID PETITIONER'S MOTION FOR RECONSIDERATION; AND THAT THERE IS NO APPEAL, OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY AVAILABLE TO SAID PETITIONER.

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[39] *Id.*, pp. 218-220.

[40] *Id.*, pp. 254-255.

[41] *Id.*, pp. 256-258.

[42] *Id.*, p. 261.

[43] *Rollo*, p. 14.

On October 30, 2002, the CA promulgated its decision dismissing the petition for *certiorari*,[44] holding as follows:

> The petition lacks merit.
>
> As stated in the decision *supra*, William Ching disclosed during the trial of the case that defendant Travel & Tours Advisers, Inc. (Goldline), of which he is an officer, is operating sixty (60) units of Goldline buses. That the Goldline buses are used in the operations of defendant company is obvious from Mr. Cheng's admission. The Amended Articles of Incorporation of Gold Line Tours, Inc. disclose that the following persons are the original incorporators thereof: Antonio O. Ching, Maribel Lim Ching, witness William Ching, Anita Dy Ching and Zosimo Ching. (*Rollo*, pp. 105-106) We see no reason why defendant company would be using Goldline buses in its operations unless the two companies are actually one and the same.
>
> Moreover, the name Goldline was added to defendant's name in the Complaint. There was no objection from William Ching who could have raised the defense that Gold Line Tours, Inc. was in no way liable or involved. Indeed, it appears to this Court that rather than Travel & Tours Advisers, Inc., it is Gold Line Tours, Inc., which should have been named party defendant.
>
> Be that as it may, We concur in the trial court's finding that the two companies are actually one and the same, hence the levy of the bus in question was proper.
>
> WHEREFORE, for lack of merit, the petition is *DISMISSED* and the assailed Orders are *AFFIRMED*.
>
> SO ORDERED.

Petitioner filed a motion for reconsideration,[45] which the CA denied on June 25, 2003.[46]

Hence, this appeal, in which petitioner faults the CA for holding that the RTC did not act without jurisdiction or grave abuse of discretion in finding that petitioner and Travel & Tours Advisers,

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[44] *Id.*, pp. 23-26.

[45] *Id.*, pp. 56-61.

[46] *Id.*, pp. 27-28.

Inc., the defendant in Civil Case No. 5917, were one and same entity, and for sustaining the propriety of the levy of the tourist bus with Plate No. NWW-883 in satisfaction of the writ of execution. [47]

In the meantime, respondents filed in the RTC a motion to direct the sheriff to implement the writ of execution in view of the non-issuance of any restraining order either by this Court or the CA.[48] On February 23, 2007, the RTC granted the motion and directed the sheriff to sell the Goldline tourist bus with Plate No. NWW-883 through a public auction.[49]

Issue

Did the CA rightly find and conclude that the RTC did not gravely abuse its discretion in denying petitioner's verified third-party claim?

Ruling

We find no reason to reverse the assailed CA decision.

In the order dated August 2, 2001, the RTC rendered its justification for rejecting the third-party claim of petitioner in the following manner:

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The main contention of Third Party Claimant is that it is the owner of the Bus and therefore, it should not be seized by the sheriff because the same does not belong to the defendant Travel & Tours Advises, Inc. (GOLDLINE) as the third party claimant and defendant are two separate corporation with separate juridical personalities. Upon the other hand, this Court had scrutinized the documents submitted by the Third party Claimant and found out that William Ching who claimed to be the operator of the Travel & Tours Advisers, Inc. (GOLDLINE) is also the President/Manager and incorporator of the Third Party Claimant Goldline Tours Inc. and he is joined by his co-incorporators who are "Ching" and "Dy" thereby this Court

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

[48] Records, pp. 266-268.

[49] *Id.*, p. 271.

could only say that these two corporations are one and the same corporations. This is of judicial knowledge that since Travel & Tours Advisers, Inc. came to Sorsogon it has been known as GOLDLINE.

This Court is not persuaded by the proposition of the third party claimant that a corporation has an existence separate and/or distinct from its members insofar as this case at bar is concerned, for the reason that whenever necessary for the interest of the public or for the protection of enforcement of their rights, the notion of legal entity should not and is not to be used to defeat public convenience, justify wrong, protect fraud or defend crime.

Apposite to the case at bar is the case of *Palacio vs. Fely Transportation Co.*, L-15121, May 31, 1962, 5 SCRA 1011 where the Supreme Court held:

> "Where the main purpose in forming the corporation was to evade one's subsidiary liability for damages in a criminal case, the corporation may not be heard to say that it has a personality separate and distinct from its members, because to allow it to do so would be to sanction the use of fiction of corporate entity as a shield to further an end subversive of justice (*La Campana Coffee Factory, et al. v. Kaisahan ng mga Manggagawa, etc., et al., L-5677, May 25, 1953).* The Supreme Court can even substitute the real party in interest in place of the defendant corporation in order to avoid multiplicity of suits and thereby save the parties unnecessary expenses and delay. (*Alfonso vs. Villamor, 16 Phil. 315).*"

This is what the third party claimant wants to do including the defendant in this case, to use the separate and distinct personality of the two corporation as a shield to further an end subversive of justice by avoiding the execution of a final judgment of the court.[50]

As we see it, the RTC had sufficient factual basis to find that petitioner and Travel and Tours Advisers, Inc. were one and the same entity, specifically:– (*a*) documents submitted by petitioner in the RTC showing that William Cheng, who claimed to be the operator of Travel and Tours Advisers, Inc., was also the President/Manager and an incorporator of the petitioner;

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[50] *Id.*, pp. 53-54.

and (*b*) Travel and Tours Advisers, Inc. had been known in Sorsogon as Goldline. On its part, the CA cogently observed:

> As stated in the (RTC) decision *supra*, William Ching disclosed during the trial of the case that defendant Travel & Tours Advisers, Inc. (Goldline), of which he is an officer, is operating sixty (60) units of Goldline buses. That the Goldline buses are used in the operations of defendant company is obvious from Mr. Cheng's admission. The Amended Articles of Incorporation of Gold Line Tours, Inc. disclose that the following persons are the original incorporators thereof: Antonio O. Ching, Maribel Lim Ching, witness William Ching, Anita Dy Ching and Zosimo Ching. (*Rollo*, pp. 105-108) We see no reason why defendant company would be using Goldline buses in its operations unless the two companies are actually one and the same.
>
> Moreover, the name Goldline was added to defendant's name in the Complaint. There was no objection from William Ching who could have raised the defense that Gold Line Tours, Inc. was in no way liable or involved. Indeed it appears to this Court that rather than Travel & Tours Advisers, Inc. it is Gold Line Tours, Inc., which should have been named party defendant.
>
> Be that as it may, We concur in the trial court's finding that the two companies are actually one and the same, hence the levy of the bus in question was proper.[51]

The RTC thus rightly ruled that petitioner might not be shielded from liability under the final judgment through the use of the doctrine of separate corporate identity. Truly, this fiction of law could not be employed to defeat the ends of justice.

But petitioner continues to challenge the RTC orders by insisting that the evidence to establish its identity with Travel and Tours Advisers, Inc. was insufficient.

We cannot agree with petitioner. As already stated, there was sufficient evidence that petitioner and Travel and Tours Advisers, Inc. were one and the same entity. Moreover, we remind that a petition for the writ of *certiorari* neither deals with errors of judgment nor extends to a mistake in the appreciation of the

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[51] *Rollo,* pp. 25-26.

contending parties' evidence or in the evaluation of their relative weight.[52] It is timely to remind that the petitioner in a special civil action for *certiorari* commenced against a trial court that has jurisdiction over the proceedings bears the burden to demonstrate not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the respondent trial court in issuing the impugned order.[53] The term *grave abuse of discretion* is defined as a capricious and whimsical exercise of judgment 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, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[54] Mere abuse of discretion is not enough; it must be grave.[55] Yet, here, petitioner did not discharge its burden because it failed to demonstrate that the CA erred in holding that the RTC had not committed grave abuse of discretion. A review of the records shows, indeed, that the RTC correctly rejected petitioner's third-party claim. Hence, the rejection did not come within the domain of the writ of *certiorari's* limiting requirement of excess or lack of jurisdiction.[56]

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[52] *Romy's Freight Service v. Castro,* G.R. No. 141637, June 8, 2006, 490 SCRA 160, 166; *Cruz v. People*, G.R. No. 134090, July 2, 1999, 309 SCRA 714.

[53] *Tan v. Antazo,* G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

[54] *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 287 citing *Microsoft Corporation v. Best Deal Computer Center Corporation*, G.R. No. 148029, September 24, 2002, 389 SCRA 615, 619-620; *Suliguin v. Commission on Elections*, G.R. No. 166046, March 23, 2006, 485 SCRA 219, 233; *Natalia Realty, Inc. v. Court of Appeals*, G.R. No. 126462, November 12, 2002, 370 SCRA 371, 384; *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*, G.R. No. 135507, November 29, 2005, 476 SCRA 361, 366 citing *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 786 (2003); *Duero v. Court of Appeals*, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 17 citing *Cuison v. Court of Appeals*, G.R. No. 128540, 15 April 1998, 289 SCRA 159, 171.

[55] *Tan v. Antazo. supra,* note 53.

[56] *De Vera v. De Vera*, G.R. No. 172832, April 7, 2009, 584 SCRA 506, 515.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*, and **AFFIRMS** the decision promulgated by the Court of Appeals on October 30, 2002. Costs of suit to be paid by petitioner.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), del Castillo, Villarama, Jr., and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 165285. June 18, 2012]

LOMISES ALUDOS, deceased, substituted by FLORA ALUDOS, *petitioner, vs.* **JOHNNY M. SUERTE,**[*] *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT OF SALE WHEN PRESUMED AN EQUITABLE MORTGAGE; THE AGREEMENT BETWEEN THE PARTIES IN THE CASE AT BAR WAS A SALE OF IMPROVEMENT AND ASSIGNMENT OF LEASEHOLD RIGHTS, NOT A CONTRACT OF LOAN.— Article 1602 of the Civil Code lists down the circumstances that may indicate that a contract is an equitable mortgage: Art. 1602. **The contract shall be presumed to be an equitable mortgage, in any of the following cases**: (1) When the price of a sale with right to repurchase is unusually inadequate; (2) When the vendor remains in possession as lessee or otherwise; (3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a

[*] Deceased, substituted by Domes Suerte.

new period is executed; (4) When the purchaser retains for himself a part of the purchase price; (5) When the vendor binds himself to pay the taxes on the thing sold; **(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.** In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. Based on Lomises' allegations in his pleadings, we consider three circumstances to determine whether his claim is well-supported. *First*, Johnny was a mere college student dependent on his parents for support when the agreement was executed, and it was Johnny's mother, Domes, who was the party actually interested in acquiring the market stalls. *Second*, Lomises received only ₱48,000.00 of the ₱68,000.00 that Johnny claimed he gave as down payment; Lomises said that the ₱20,000.00 represented interests on the loan. *Third*, Lomises retained possession of the market stalls even after the execution of the agreement. Whether separately or taken together, **these circumstances do not support a conclusion that the parties only intended to enter into a contract of loan.** x x x. Hence, the CA was correct in characterizing the agreement between Johnny and Lomises as a sale of improvements and assignment of leasehold rights.

2. REMEDIAL LAW; EVIDENCE; OFFER OF EVIDENCE; UNLESS AND UNTIL ADMITTED BY THE COURT IN EVIDENCE FOR THE PURPOSE FOR WHICH THE DOCUMENT IS OFFERED, THE SAME IS MERELY A SCRAP OF PAPER BARREN OF PROBATIVE WEIGHT.— The CA has already rejected the evidentiary value of the May 1, 1985 lease contract between the Baguio City Government and Lomises, as it was not formally offered in evidence before the RTC; in fact, the CA admonished Lomises' lawyer, Atty. Lockey, for making it appear that it was part of the records of the case. Under Section 34, Rule 132 of the Rules of Court, the court shall consider no evidence which has not been formally offered. "The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered,

the same is merely a scrap of paper barren of probative weight." Although the contract was referred to in Lomises' answer to Johnny's complaint and marked as Exhibit "2" in his pre-trial brief, a copy of it was never attached. In fact, a copy of the May 1, 1985 lease contract "surfaced" only after Lomises filed a motion for reconsideration of the CA decision. What was formally offered was the 1969 permit, which only stated that Lomises was permitted to occupy a stall in the Baguio City market and nothing else. In other words, no evidence was presented and formally offered showing that any and all improvements in the market stalls shall be owned by the Baguio City Government.

3. ID.; JUDGMENTS; REMAND OF THE CASE TO THE REGIONAL TRIAL COURT, PROPER.— Likewise unsupported by evidence is Lomises' claim that the stalls themselves were the only improvements. Hence, the CA found it proper to order the remand of the case for the RTC to determine the value of the improvements on the market stalls existing as of September 8, 1984. We agree with the CA's order of remand. We note, however, that Lomises had already returned the ₱68,000.00 and receipt of the amount has been duly acknowledged by Johnny's mother, Domes. Johnny testified on October 6, 1986 that the money was still with his mother. Thus, upon determination by the RTC of the actual value of the improvements on the market stalls, the heirs of Johnny Suerte should pay the ascertained value of these improvements to Lomises, who shall thereafter be required to execute the deed of sale over the improvements in favor of the heirs of Johnny.

APPEARANCES OF COUNSEL

Rudolfo A. Lockey for petitioner.

Gacayan Paredes Agmata & Associates Law Offices for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari* filed under Rule 45 of the Rules of Court by Lomises Aludos, through

his wife Flora Aludos (*Lomises*).[1] Lomises seeks the reversal of the decision[2] dated August 29, 2002 of the Court of Appeals (*CA*) in CA-G.R. CV No. 63113, as well as the resolution[3] dated August 17, 2004.

THE FACTS

Sometime in January 1969, Lomises acquired from the Baguio City Government the right to occupy two stalls in the Hangar Market in Baguio City, as evidenced by a permit issued by the City Treasurer.[4]

On September 8, 1984, Lomises entered into an agreement with respondent Johnny M. Suerte for the **transfer of all improvements and rights over the two market stalls** (Stall Nos. 9 and 10) for the amount of ₱260,000.00. Johnny gave a down payment of ₱45,000.00 to Lomises, who acknowledged receipt of the amount in a document[5] executed on the same date as the agreement:

RECEIPT

₱45,000.00 September 8, 1984

Received the Sum of Forty Five Thousand Pesos (₱45,000.00) from JOHNNY M. SUERTE, with postal address at Kamog, Sablan, Benguet Province, Philippine Currency as an advance or partial downpayment of Improvements and Rights over Stall Nos. 9 and 10, situated at Refreshment Section, Hangar Market Compound, Baguio City, and the said amount will be deducted from the agreed proceeds of the transaction in the amount of Two Hundred Sixty Thousand Pesos (₱260,000.00), Philippine Currency and payable

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[1] Lomises died in February 1991 during the pendency of the case before the Regional Trial Court, Branch 7, Baguio City, and was substituted by his wife Flora; *rollo*, p. 48.

[2] Penned by Associate Justice Hilarion L. Aquino, and concurred in by Associate Justices Edgardo P. Cruz and Regalado E. Maambong; *id.* at 46-52.

[3] *Id.* at 66-67.

[4] *Id.* at 46.

[5] *Id.* at 31.

starting from September 1984 up to December 1985, and/or (16) months.

This receipt will be formalise (sic) later, and the Deed of Absolute Transfer of Improvements and Rights over the said Stall be executed immediately upon full payment of the balance stated in the above.

Right hand thumbmark:

[Thumbmark affixed]
LOMISES F. ALUDOS
(Registered Stall Holder)

With the Consent of the Wife:

[Signature affixed]
FLORA MENES
(Wife)

Witness to Thumbmark and/or
Paid in the presence of:

[Signature affixed] Domes M. Suerte (witness)

[Signature affixed] Agnes M. Boras (witness)

[Signature affixed] Ana Comnad (witness)

[Signature affixed] Dolores Aludos (with her consent/witness)

Johnny made a subsequent payment of ₱23,000.00; hence, a total of ₱68,000.00 of the ₱260,000.00 purchase price had been made as of 1984. Before full payment could be made, however, Lomises backed out of the agreement and returned the ₱68,000.00 to Domes and Jaime Suerte, the mother and the father of Johnny, respectively. The return of the ₱68,000.00 down payment was embodied in a handwritten receipt[6] dated October 9, 1985:

RECEIPT

₱68,000.00

Received from Mr. Lomises Aludos the sum of Sixty-eight thousand (₱68,000.00) Pesos as reimbursement of my money.

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[6] *Id.* at 33.

Baguio City, October 9, 1985.

[Signature affixed]	[Signature affixed]
JAIME SUERTE	DOMES SUERTE

Witnesses

[Illegible signature]	[Illegible signature]

Through a letter dated October 15, 1985, Johnny protested the return of his money, and insisted on the continuation and enforcement of his agreement with Lomises. When Lomises refused Johnny's protest, Johnny filed a complaint against Lomises before the Regional Trial Court (*RTC*), Branch 7, Baguio City, for **specific performance with damages**, docketed as Civil Case No. 720-R. Johnny prayed that, after due proceedings, judgment be rendered ordering Lomises to (1) accept the payment of the balance of ₱192,000.00; and (2) execute a final deed of sale and/or transfer the improvements and rights over the two market stalls in his favor.

In a decision dated November 24, 1998,[7] the RTC nullified the agreement between Johnny and Lomises for failure to secure the consent of the Baguio City Government to the agreement. The RTC found that Lomises was a mere lessee of the market stalls, and the Baguio City Government was the owner-lessor of the stalls. Under Article 1649 of the Civil Code, "[t]he lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary." As the permit issued to Lomises did not contain any provision that the lease of the market stalls could further be assigned, and in the absence of the consent of the Baguio City Government to the agreement, the RTC declared the agreement between Lomises and Johnny null and void. The nullification of the agreement required the parties to return what had been received under the agreement; thus, the RTC ordered Lomises to return the down payment made by Johnny, with interest of 12% per annum, computed from the time the complaint was filed until the amount is fully paid. It dismissed the parties' claims for damages.

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[7] Penned by Judge Clarence J. Villanueva; *id.* at 40-44.

Lomises appealed the RTC decision to the CA, arguing that the real agreement between the parties was merely one of loan, and not of sale; he further claimed that the loan had been extinguished upon the return of the ₱68,000.00 to Johnny's mother, Domes.

In a decision dated August 29, 2002,[8] the CA rejected Lomises' claim that the true agreement was one of loan. The CA found that there were two agreements entered into between Johnny and Lomises: one was for the assignment of leasehold rights and the other was for the sale of the improvements on the market stalls. The CA agreed with the RTC that the assignment of the leasehold rights was void for lack of consent of the lessor, the Baguio City Government. The sale of the improvements, however, was valid because these were Lomises' private properties. For this reason, the CA remanded the case to the RTC to determine the value of the improvements on the two market stalls, existing at the time of the execution of the agreement.

Lomises moved for the reconsideration of the CA ruling, contending that no valid sale of the improvements could be made because the lease contract, dated May 1, 1985, between Lomises and the Baguio City Government, supposedly marked as Exh. "A," provided that "[a]ll improvements [introduced shall] *ipso facto* become properties of the City of Baguio."[9]

In a resolution dated August 17, 2004,[10] the CA denied the motion after finding that Lomises' lawyer, Atty. Rodolfo Lockey, misrepresented Exh. "A" as the governing lease contract between Lomises and the Baguio City Government; the records reveal that Exh. "A" was merely a permit issued by the City Treasurer in favor of Lomises. The contract of lease dated May 1, 1985 was never formally offered in evidence before the RTC and could thus not be considered pursuant to the rules of evidence.

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[8] *Supra* note 2.

[9] *Rollo,* p. 60.

[10] *Supra* note 3.

Lomises now appeals the CA rulings through the present petition for review on *certiorari*.

THE PARTIES' ARGUMENTS

Lomises insists that the agreement was merely one of loan, not of sale of improvements and leasehold rights. Johnny could not afford to purchase from Lomises the two market stalls for ₱260,000.00 because the former was a mere college student when the agreement was entered into in 1984 and was dependent on his parents for support. The actual lender of the amount was Johnny's mother, Domes; Johnny's name was placed on the receipt dated September 8, 1984 so that in case the loan was not paid, the rights over the market stalls would be transferred to Johnny's name, not to Domes who already had a market stall and was thus disqualified from acquiring another. The receipt dated September 8, 1984, Lomises pointed out, bears the signature of Domes, not of Johnny.

Even assuming that Johnny was the real creditor, Lomises alleges that the loan had been fully paid when he turned over the amount of ₱68,000.00 to Johnny's parents, as evidenced by the receipt dated October 9, 1985. Domes' claim – that she was pressured to accept the amount – is an implied admission that payment had nonetheless been received. When Johnny died during the pendency of the case before the RTC, his parents became his successors and inherited all his rights. For having received the full amount of the loan, Johnny's parents can no longer enforce payment of the loan.

Lomises contends that there were no improvements made on the market stalls other than the stalls themselves, and these belong to the Baguio City Government as the lessor. A transfer of the stalls cannot be made without a transfer of the leasehold rights, in which case, there would be an indirect violation of the lease contract with the Baguio City Government. Lomises further alleges that, at present, the market stalls are leased by Flora and her daughter who both obtained the lease in their own right and not as Lomises' successors.

Johnny, through his remaining successor Domes (Johnny's mother), opposed Lomises' claim. The receipt dated September 8, 1984 clearly referred to a contract of sale of the market stalls and not a contract of loan that Lomises alleges. Although Johnny conceded that the sale of leasehold rights to the market stalls were void for lack of consent of the Baguio City Government, he alleged that the sale of the improvements should be upheld as valid, as the CA did.

THE COURT'S RULING

The Court does not find the petition meritorious.

The Nature of the Agreement between the Parties

Lomises questions the nature of the agreement between him and Johnny, insisting that it was a contract of loan, not an assignment of leasehold rights and sale of improvements. In other words, what existed was an equitable mortgage, as contemplated in Article 1602, in relation with Article 1604, of the Civil Code. "An equitable mortgage has been defined 'as one which although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals **the intention of the parties to charge real property as security for a debt**, there being no impossibility nor anything contrary to law in this intent.'"[11] Article 1602 of the Civil Code lists down the circumstances that may indicate that a contract is an equitable mortgage:

Art. 1602. **The contract shall be presumed to be an equitable mortgage, in any of the following cases**:

(1) When the price of a sale with right to repurchase is unusually inadequate;

(2) When the vendor remains in possession as lessee or otherwise;

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[11] *Rockville Excel International Exim Corporation v. Culla*, G.R. No. 155716, October 2, 2009, 602 SCRA 128, 136, citing *Go v. Bacaron*, G.R. No. 159048, October 11, 2005, 472 SCRA 339.

(3) When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;

(4) When the purchaser retains for himself a part of the purchase price;

(5) When the vendor binds himself to pay the taxes on the thing sold;

(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

In any of the foregoing cases, any money, fruits, or other benefit to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to the usury laws. [Emphases ours.]

Based on Lomises' allegations in his pleadings, we consider three circumstances to determine whether his claim is well-supported. *First*, Johnny was a mere college student dependent on his parents for support when the agreement was executed, and it was Johnny's mother, Domes, who was the party actually interested in acquiring the market stalls. *Second*, Lomises received only ₱48,000.00 of the ₱68,000.00 that Johnny claimed he gave as down payment; Lomises said that the ₱20,000.00 represented interests on the loan. *Third*, Lomises retained possession of the market stalls even after the execution of the agreement.

Whether separately or taken together, **these circumstances do not support a conclusion that the parties only intended to enter into a contract of loan.**

That Johnny was a mere student when the agreement was executed does not indicate that he had no financial capacity to pay the purchase price of ₱260,000.00. At that time, Johnny was a 26-year old third year engineering student who operated as a businessman as a sideline activity and who helped his family sell goods in the Hangar Market.[12] During trial, Johnny was

[12] TSN, October 6, 1986, p. 17.

asked where he was to get the funds to pay the ₱260,000.00 purchase price, and he said he would get a loan from his grandfather.[13] That he did not have the full amount at the time the agreement was executed does not necessarily negate his capacity to pay the purchase price, since he had 16 months to complete the payment. Apart from Lomises' bare claim that it was Johnny's mother, Domes, who was interested in acquiring his market stalls, we find no other evidence supporting the claim that Johnny was merely acting as a dummy for his mother.

Lomises contends that of the ₱68,000.00 given by Johnny, he only received ₱48,000.00, with the remaining ₱20,000.00 retained by Johnny as interest on the loan. However, the testimonies of the witnesses presented during trial, including Lomises himself, negate this claim. Judge Rodolfo Rodrigo (RTC of Baguio City, Branch VII) asked Lomises' lawyer, Atty. Lockey, if they deny receipt of the ₱68,000.00; Atty. Lockey said that they were not denying receipt, and added that they had in fact returned the same amount.[14] Judge Rodrigo accurately summarized their point by stating that "there is no need to dispute whether the ₱68,000.00 was given, because if [Lomises] tried to return that x x x he had received that."[15] Witness Atty. Albert Umaming said he counted the money before he drafted the October 9, 1985 receipt evidencing the return; he said that Lomises returned ₱68,000.00 in total.[16] Thus, if the transaction was indeed a loan and the ₱20,000.00 interest was already prepaid by Lomises, the return of the full amount of ₱68,000.00 by Lomises to Johnny (through his mother, Domes) would not make sense.

That Lomises retained possession of the market stalls even after the execution of his agreement with Johnny is also not an indication that the true transaction between them was one of loan. Johnny had yet to complete his payment and, until Lomises

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[13] *Id.* at 25.

[14] *Id.* at 31-32.

[15] *Ibid.*

[16] TSN, April 12, 1988, p. 6.

decided to forego with their agreement, had four more months to pay; until then, Lomises retained ownership and possession of the market stalls.[17]

Lomises cannot feign ignorance of the import of the terms of the receipt of September 8, 1984 by claiming that he was an illiterate old man. A witness (Ana Comnad) testified not only of the fact of the sale, but also that Lomises' daughter, Dolores, translated the terms of the agreement from English to Ilocano for Lomises' benefit;[18] Lomises himself admitted this fact.[19] If Lomises believed that the receipt of September 8, 1984 did not express the parties' true intent, he could have refused to sign it or subsequently requested for a reformation of its terms. Lomises rejected the agreement only after Johnny sought to enforce it.

Hence, the CA was correct in characterizing the agreement between Johnny and Lomises as a sale of improvements and assignment of leasehold rights.

The Validity of the Agreement

Both the RTC and the CA correctly declared that the assignment of the leasehold rights over the two market stalls was void since it was made without the consent of the lessor, the Baguio City Government, as required under Article 1649 of the Civil Code.[20] Neither party appears to have contested this ruling.

Lomises, however, objects to the CA ruling upholding the validity of the agreement insofar as it involved the sale of improvements on the stalls. Lomises alleges that the sale of the improvements should similarly be voided because it was made without the consent of the Baguio City Government, the owner of the improvements, pursuant to the May 1, 1985 lease

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[17] TSN, October 6, 1986, p. 39.

[18] TSN, January 13, 1987, p. 6.

[19] TSN, November 23, 1987, pp. 15-16.

[20] Art. 1649. The lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary.

contract.[21] Lomises further claims that the stalls themselves are the only improvements on the property and a transfer of the stalls cannot be made without transferring the leasehold rights. Hence, both the assignment of leasehold rights and the sale of improvements should be voided.

The CA has already rejected the evidentiary value of the May 1, 1985 lease contract between the Baguio City Government and Lomises, as it was not formally offered in evidence before the RTC; in fact, the CA admonished Lomises' lawyer, Atty. Lockey, for making it appear that it was part of the records of the case. Under Section 34, Rule 132 of the Rules of Court, the court shall consider no evidence which has not been formally offered. "The offer of evidence is necessary because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Unless and until admitted by the court in evidence for the purpose or purposes for which such document is offered, the same is merely a scrap of paper barren of probative weight."[22] Although the contract was referred to in Lomises' answer to Johnny's complaint[23] and marked as Exhibit "2" in his pre-trial brief,[24] a copy of it was never attached. In fact, a copy of the May 1, 1985 lease contract "surfaced" only after Lomises filed a motion for reconsideration of the CA decision. What was formally offered was the 1969 permit, which only stated that Lomises was permitted to occupy a stall in the Baguio City market and nothing else.[25] In other words, no evidence was presented and formally offered showing that any and all improvements in the market stalls shall be owned by the Baguio City Government.

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[21] *Rollo,* p. 60.

[22] *Heirs of the Deceased Carmen Cruz-Zamora v. Multiwood International, Inc.*, G.R. No. 146428, January 19, 2009, 576 SCRA 137, 145. See also *Land Bank of the Philippines v. Gallego, Jr.*, G.R. No. 173226, January 20, 2009, 576 SCRA 680.

[23] See RTC Records, p. 18.

[24] *Id.* at 32.

[25] *Id.* at 78.

Likewise unsupported by evidence is Lomises' claim that the stalls themselves were the only improvements. Hence, the CA found it proper to order the remand of the case for the RTC to determine the value of the improvements on the market stalls existing as of September 8, 1984.[26] We agree with the CA's order of remand. We note, however, that Lomises had already returned the ₱68,000.00 and receipt of the amount has been duly acknowledged by Johnny's mother, Domes. Johnny testified on October 6, 1986 that the money was still with his mother.[27] Thus, upon determination by the RTC of the actual value of the improvements on the market stalls, the heirs of Johnny Suerte should pay the ascertained value of these improvements to Lomises, who shall thereafter be required to execute the deed of sale over the improvements in favor of the heirs of Johnny.

WHEREFORE, under these premises, the Court hereby **AFFIRMS** the ruling of the Court of Appeals for the remand of the case to the Regional Trial Court of Baguio City, Branch 7, for the determination of the value of the improvements on Stall Nos. 9 and 10 at the Refreshment Section of the Hangar Market Compound, Baguio City as of September 8, 1984. After this determination, the Court **ORDERS** the heirs of Johnny M. Suerte to pay the amount determined to the heirs of Lomises Aludos, who shall thereafter execute the deed of sale covering

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[26] The dispositive portion of the CA decision dated August 29, 2002 reads in full:

WHEREFORE, premises considered, the Court VACATES the appealed Decision and REMANDS the case to the trial court to determine the value of the improvements on Stall Nos. 9 and 10 at the Refreshment Section of the Hangar Market Compound, Baguio City as of September 8, 1984 and render a judgment requiring the heirs of x x x Lomises Aludos to execute the necessary deed of sale covering said improvements in favor of plaintiff-appellee Johnny M. Suerte x x x. If the value of the improvements is less than ₱68,000.00, then said court [RTC] should order the heirs of Lomises Aludos to return the excess to plaintiff-appellee Johnny M. Suerte, but if said value is more than ₱68,000.00, then the Court should order Johnny M. Suerte to pay the excess amount to the heirs of Lomises Aludos. (*Rollo*, pp. 51-52.)

[27] RTC Records, p. 42.

the improvements in favor of the heirs of Johnny M. Suerte and deliver the deed to them. Costs against the petitioner.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concur.

Perez, Sereno, and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 166044. June 18, 2012]

COUNTRY BANKERS INSURANCE CORPORATION, *petitioner, vs.* **KEPPEL CEBU SHIPYARD, UNIMARINE SHIPPING LINES, INC., PAUL RODRIGUEZ, PETER RODRIGUEZ, ALBERT HONTANOSAS, and BETHOVEN QUINAIN,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; CONTRACT OF AGENCY, EXPLAINED.— In a contract of agency, a person, the agent, binds himself to represent another, the principal, with the latter's consent or authority. Thus, agency is based on representation, where the agent acts for and in behalf of the principal on matters within the scope of the authority conferred upon him. Such "acts have the same legal effect as if they were personally done by the principal. By this legal fiction of representation, the actual or legal absence of the principal is converted into his legal or juridical presence."

2. ID.; ID.; ID.; THE PRINCIPAL COULD BE HELD LIABLE EVEN IF THE AGENT EXCEEDED THE SCOPE OF HIS AUTHORITY AND THE AGENT'S ACT IS DEEMED TO HAVE BEEN PERFORMED WITHIN THE WRITTEN TERMS OF THE POWER OF ATTORNEY HE WAS GRANTED; CASE AT BAR NOT A CASE OF.— Our law

mandates an agent to act within the scope of his authority. The scope of an agent's authority is what appears in the written terms of the power of attorney granted upon him. Under Article 1878(11) of the Civil Code, **a special power of attorney** is necessary to obligate the principal as a guarantor or surety. In the case at bar, CBIC could be held liable even if Quinain exceeded the scope of his authority only if Quinain's act of issuing Surety Bond No. G (16) 29419 is **deemed** to have been performed within the written terms of the power of attorney he was granted. However, contrary to what the RTC held, the Special Power of Attorney accorded to Quinain clearly states the limits of his authority and particularly provides that in case of surety bonds, it can only be issued in favor of the Department of Public Works and Highways, the National Power Corporation, and other government agencies; furthermore, the amount of the surety bond is limited to ₱500,000.00 x x x. CBIC does not anchor its defense on a secret agreement, mutual understanding, or any verbal instruction to Quinain. CBIC's stance is grounded on its contract with Quinain, and the clear, written terms therein. This Court finds that the terms of the x x x contract specifically provided for the extent and scope of Quinain's authority, and Quinain has indeed exceeded them.

3. ID.; ID.; ID.; ID.; ONLY THE PRINCIPAL, AND NOT THE AGENT, CAN RATIFY THE UNAUTHORIZED ACTS, WHICH THE PRINCIPAL MUST HAVE KNOWLEDGE OF; CONCEPT AND DOCTRINE OF RATIFICATION, EXPOUNDED.— Under Articles 1898 and 1910, an agent's act, even if done beyond the scope of his authority, may bind the principal if he ratifies them, whether expressly or tacitly. It must be stressed though that only the principal, and not the agent, can ratify the unauthorized acts, which the principal must have knowledge of. Expounding on the concept and doctrine of ratification in agency, this Court said: Ratification in agency is the adoption or confirmation by one person of an act performed on his behalf by another without authority. The substance of the doctrine is confirmation after conduct, amounting to a substitute for a prior authority. Ordinarily, the principal must have full knowledge at the time of ratification of all the material facts and circumstances relating to the unauthorized act of the person who assumed to act as agent. **Thus, if material facts were suppressed or unknown, there**

can be no valid ratification and this regardless of the purpose or lack thereof in concealing such facts and regardless of the parties between whom the question of ratification may arise. Nevertheless, this principle does not apply if the principal's ignorance of the material facts and circumstances was willful, or that the principal chooses to act in ignorance of the facts. However, **in the absence of circumstances putting a reasonably prudent man on inquiry, ratification cannot be implied as against the principal who is ignorant of the facts**. Neither Unimarine nor Cebu Shipyard was able to repudiate CBIC's testimony that it was unaware of the existence of Surety Bond No. G (16) 29419 and Endorsement No. 33152. There were no allegations either that CBIC should have been put on alert with regard to Quinain's business transactions done on its behalf. It is clear, and undisputed therefore, that there can be no ratification in this case, whether express or implied.

4. ID.; ID.; ID.; AGENCY BY ESTOPPEL; REQUISITES.— Article 1911, x x x is based on the principle of estoppel, which is necessary for the protection of third persons. It states that the principal is solidarily liable with the agent even when the latter has exceeded his authority, if the principal allowed him to act as though he had full powers. However, for an agency by estoppel to exist, the following must be established: 1. The principal manifested a representation of the agent's authority or knowingly allowed the agent to assume such authority; 2. The third person, in good faith, relied upon such representation; and 3. Relying upon such representation, such third person has changed his position to his detriment. In *Litonjua, Jr. v. Eternit Corp.,* this Court said that "[a]n agency by estoppel, which is similar to the doctrine of apparent authority, requires proof of reliance upon the representations, and that, in turn, needs proof that the representations predated the action taken in reliance."

5. ID.; ID.; ID.; ID.; FOR ONE TO SUCCESSFULLY CLAIM THE BENEFIT OF ESTOPPEL, ON THE GROUND THAT HE HAS BEEN MISLED BY THE REPRESENTATIONS OF ANOTHER, HE MUST SHOW THAT HE WAS NOT MISLED THROUGH HIS OWN WANT OF REASONABLE CARE AND CIRCUMSPECTION.— [N]owhere in the decisions of the lower courts was it stated that CBIC let the

public, or specifically Unimarine, believe that Quinain had the authority to issue a surety bond in favor of companies other than the Department of Public Works and Highways, the National Power Corporation, and other government agencies. Neither was it shown that CBIC knew of the existence of the surety bond before the endorsement extending the life of the bond, was issued to Unimarine. For one to successfully claim the benefit of estoppel on the ground that he has been misled by the representations of another, he must show that he was not misled through his own want of reasonable care and circumspection. It is apparent that Unimarine had been negligent or less than prudent in its dealings with Quinain. In *Manila Memorial Park Cemetery, Inc. v. Linsangan*, this Court held: It is a settled rule that persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it. The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. If he does not make such an inquiry, he is chargeable with knowledge of the agent's authority and his ignorance of that authority will not be any excuse.

6. ID.; ID.; ID.; ID.; PERSON DEALING WITH A KNOWN AGENT IS NOT AUTHORIZED, UNDER ANY CIRCUMSTANCES, TO BLINDLY TRUST THE AGENT'S STATEMENTS AS TO THE EXTENT OF HIS AUTHORITY AND MUST NOT ACT NEGLIGENTLY, BUT MUST USE REASONABLE DILIGENCE AND PRUDENCE TO ASCERTAIN WHETHER THE AGENT ACTS WITHIN THE SCOPE OF HIS AUTHORITY.— Unimarine undoubtedly failed to establish that it even bothered to inquire if Quinain was authorized to agree to terms beyond the limits indicated in his special power of attorney. While Paul Rodriguez stated that he has done business with Quinain more than once, he was not able to show that he was misled by CBIC as to the extent of authority it granted Quinain. Paul Rodriguez did not even allege that he asked for documents to prove Quinain's authority to contract business for CBIC, such as their contract of agency and power of attorney. It is also worthy to note that even with the Indemnity Agreement, Paul

Rodriguez signed it on Quinain's mere assurance and without truly understanding the consequences of the terms of the said agreement. Moreover, both Unimarine and Paul Rodriguez could have inquired directly from CBIC to verify the validity and effectivity of the surety bond and endorsement; but, instead, they blindly relied on the representations of Quinain. As this Court held in *Litonjua, Jr. v. Eternit Corp.:* A person dealing with a known agent is not authorized, under any circumstances, blindly to trust the agents; statements as to the extent of his powers; such person must not act negligently but must use reasonable diligence and prudence to ascertain whether the agent acts within the scope of his authority. The settled rule is that, persons dealing with an assumed agent are bound at their peril, and if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to prove it. In this case, the petitioners failed to discharge their burden; hence, petitioners are not entitled to damages from respondent EC.

APPEARANCES OF COUNSEL

Velasquez and Associates for petitioner.

Angara Abello Concepcion Regala and Cruz for Keppel Cebu Shipyard, Inc.

Albert L. Hontanosas for himself and for Unimarine Shipping Lines, Inc., Paul Rodriguez & Peter Rodriguez.

Lorenzo S. Paylado for B. Quinain.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

This is a petition for review on *certiorari*[1] to reverse and set aside the January 29, 2004 Decision[2] and October 28, 2004

[*] Per Special Order No. 1226 dated May 30, 2012.

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

[2] *Rollo*, pp. 31-55; penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Romeo A. Brawner and Rebecca De Guia-Salvador, concurring.

Resolution[3] of the Court of Appeals in **CA-G.R. CV No. 58001**, wherein the Court of Appeals affirmed with modification the February 10, 1997 Decision[4] of the Regional Trial Court (RTC) of Cebu City, Branch 7, in Civil Case No. CBB-13447.

Hereunder are the undisputed facts as culled from the records of the case.

On January 27, 1992, Unimarine Shipping Lines, Inc. (Unimarine), a corporation engaged in the shipping industry, contracted the services of Keppel Cebu Shipyard, formerly known as Cebu Shipyard and Engineering Works, Inc. (Cebu Shipyard), for dry docking and ship repair works on its vessel, the M/V Pacific Fortune.[5]

On February 14, 1992, Cebu Shipyard issued Bill No. 26035 to Unimarine in consideration for its services, which amounted to ₱4,486,052.00.[6] Negotiations between Cebu Shipyard and Unimarine led to the reduction of this amount to ₱3,850,000.00. The terms of this agreement were embodied in Cebu Shipyard's February 18, 1992 letter to the President/General Manager of Unimarine, Paul Rodriguez, who signed his conformity to said letter, quoted in full below:

18 February 1992
Ref No.: LL92/0383

UNIMARINE SHIPPING LINES, INC.
C/O Autographics, Inc.
Gorordo Avenue, Lahug, Cebu City

Attention: Mr. Paul Rodriguez
President/General Manager

This is to confirm our agreement on the shiprepair bills charged for the repair of MV Pacific Fortune, our invoice no. 26035.

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[3] *Id.* at 57-58.

[4] CA *rollo*, pp. 25-33.

[5] *Rollo*, pp. 81-82.

[6] *Id.* at 94-114.

The shiprepair bill (Bill No. 26035) is agreed at a negotiated amount of ₱3,850,000.00 excluding VAT.

Unimarine Shipping Lines, Inc. ("Unimarine") will pay the above amount of [₱3,850,000.00] in US Dollars to be fixed at the prevailing USDollar to Philippine Peso exchange rate at the time of payment. The payment terms to be extended to Unimarine is as follows:

Installments	Amount	Due Date
1st Installment	₱2,350,000.00	30 May 1992
2nd Installment	₱1,500,000.00	30 Jun 1992

Unimarine will deposit post-dated checks equivalent to the above amounts in Philippine Peso and an additional check amount of ₱385,000.00, representing 10% [Value Added Tax] VAT on the above bill of ₱3,850,000.00. In the event that Unimarine fails to make full payment on the above due dates in US Dollars, the post-dated checks will be deposited by CSEW in payment of the amounts owned by Unimarine and Unimarine agree that the 10% VAT (₱385,000.00) shall also become payable to CSEW.

Unimarine in consideration of the credit terms extended by CSEW and the release of the vessel before full payment of the above debt, agree to present CSEW surety bonds equal to 120% of the value of the credit extended. The total bond amount shall be ₱4,620,000.00.

Yours faithfully,

CEBU SHIPYARD & ENG'G WORKS, INC Conforme:

(SGD) (SGD)
SEET KENG TAT PAUL RODRIGUEZ
Treasurer/VP-Admin. Unimarine Shipping Lines, Inc.[7]

In compliance with the agreement, Unimarine, through Paul Rodriguez, secured from Country Bankers Insurance Corp. (CBIC), through the latter's agent, Bethoven Quinain (Quinain), CBIC Surety Bond No. G (16) 29419[8] (the surety bond) on January 15, 1992 in the amount of ₱3,000,000.00. The expiration

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[7] *Id.* at 115.

[8] *Id.* at 116-117.

of this surety bond was extended to January 15, 1993, through Endorsement No. 33152[9] (the endorsement), which was later on attached to and formed part of the surety bond. In addition to this, Unimarine, on February 19, 1992, obtained another bond from Plaridel Surety and Insurance Co. (Plaridel), PSIC Bond No. G (16)-00365[10] in the amount of ₱1,620,000.00.

On February 17, 1992, Unimarine executed a Contract of Undertaking in favor of Cebu Shipyard. The pertinent portions of the contract read as follows:

> Messrs, **Uni-Marine Shipping Lines, Inc.** ("the Debtor") of Gorordo Avenue, Cebu City hereby acknowledges that in consideration of **Cebu Shipyard & Engineering Works, Inc.** ("Cebu Shipyard") at our request agreeing to release the vessel specified in part A of the Schedule ("name of vessel") prior to the receipt of the sum specified in part B of the Schedule ("Moneys Payable") payable in respect of certain works performed or to be performed by Cebu Shipyard and/or its subcontractors and/or material and equipment supplied or to be supplied by Cebu Shipyard and/or its subcontractors in connection with the vessel for the party specified in part C of the Schedule ("the Debtor"), we hereby unconditionally, irrevocably undertake to make punctual payment to Cebu Shipyard of the Moneys Payable on the terms and conditions as set out in part B of the Schedule. We likewise hereby expressly waive whatever right of excussion we may have under the law and equity.
>
> This contract shall be binding upon Uni-Marine Shipping Lines, Inc., its heirs, executors, administrators, successors, and assigns and shall not be discharged until all obligation of this contract shall have been faithfully and fully performed by the Debtor.[11]

Because Unimarine failed to remit the first installment when it became due on May 30, 1992, Cebu Shipyard was constrained to deposit the peso check corresponding to the initial installment of ₱2,350,000.00. The check, however, was dishonored by the bank due to insufficient funds.[12] Cebu Shipyard faxed a message

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[9] *Id.* at 118.

[10] *Id.* at 119-120.

[11] *Id.* at 121.

[12] *Id.* at 85.

to Unimarine, informing it of the situation, and reminding it to settle its account immediately.[13]

On June 24, 1992, Cebu Shipyard again faxed a message[14] to Unimarine, to confirm Paul Rodriguez's promise that Unimarine will pay in full the ₱3,850,000.00, in US Dollars on July 1, 1992.

Since Unimarine failed to deliver on the above promise, Cebu Shipyard, on July 2, 1992, through a faxed letter, asked Unimarine if the payment could be picked up the next day. This was followed by another faxed message on July 6, 1992, wherein Cebu Shipyard reminded Unimarine of its promise to pay in full on July 28, 1992. On August 24, 1992, Cebu Shipyard again faxed[15] Unimarine, to inform it that interest charges will have to be imposed on their outstanding debt, and if it still fails to pay before August 28, 1992, Cebu Shipyard will have to enforce payment against the sureties and take legal action.

On November 18, 1992, Cebu Shipyard, through its counsel, sent Unimarine a letter,[16] demanding payment, within seven days from receipt of the letter, the amount of ₱4,859,458.00, broken down as follows:

B#26035 MV PACIFIC FORTUNE	4,486,052.00
LESS: ADJUSTMENT:	
CN#00515-03/19/92	(636,052.00)
	3,850,000.00
Add: VAT on repair bill no. 26035	385,000.00
	4,235,000.00
Add: Interest/penalty charges:	
Debit Note No. 02381	189,888.00
Debit Note No. 02382	434,570.00
	4,859,458.00[17]

[13] *Id.* at 123.

[14] *Id.* at 124.

[15] *Id.* at 125-127.

[16] *Id.* at 128-129.

[17] *Id.* at 130.

Due to Unimarine's failure to heed Cebu Shipyard's repeated demands, Cebu Shipyard, through counsel, wrote the sureties CBIC[18] on November 18, 1992, and Plaridel,[19] on November 19, 1992, to inform them of Unimarine's nonpayment, and to ask them to fulfill their obligations as sureties, and to respond within seven days from receipt of the demand.

However, even the sureties failed to discharge their obligations, and so Cebu Shipyard filed a Complaint dated January 8, 1993, before the RTC, Branch 18 of Cebu City, against Unimarine, CBIC, and Plaridel. This was docketed as Civil Case No. CBB-13447.

CBIC, in its Answer,[20] said that Cebu Shipyard's complaint states no cause of action. CBIC alleged that the surety bond was issued by its agent, Quinain, in excess of his authority. CBIC claimed that Cebu Shipyard should have doubted the authority of Quinain to issue the surety bond based on the following:

1. The nature of the bond undertaking (guarantee payment), and the amount involved.
2. The surety bond could only be issued in favor of the Department of Public Works and Highways, as stamped on the upper right portion of the face of the bond.[21] This stamp was covered by documentary stamps.
3. The issuance of the surety bond was not reported, and the corresponding premiums were not remitted to CBIC.[22]

CBIC added that its liability was extinguished when, without its knowledge and consent, Cebu Shipyard and Unimarine novated their agreement several times. Furthermore, CBIC stated that

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

[19] *Id.* at 133.

[20] *Id.* at 136-143.

[21] *Id.* at 236.

[22] *Id.* at 137.

Cebu Shipyard's claim had already been paid or extinguished when Unimarine executed an Assignment of Claims[23] of the proceeds of the sale of its vessel M/V Headline in favor of Cebu Shipyard. CBIC also averred that Cebu Shipyard's claim had already prescribed as the endorsement that extended the surety bond's expiry date, was not reported to CBIC. Finally, CBIC asseverated that if it were held to be liable, its liability should be limited to the face value of the bond and not for exemplary damages, attorney's fees, and costs of litigation.[24]

Subsequently, CBIC filed a Motion to Admit Cross and Third Party Complaint[25] against Unimarine, as cross defendant; Paul Rodriguez, Albert Hontanosas, and Peter Rodriguez, as signatories to the Indemnity Agreement they executed in favor of CBIC; and Bethoven Quinain, as the agent who issued the surety bond and endorsement in excess of his authority, as third party defendants.[26]

CBIC claimed that Paul Rodriguez, Albert Hontanosas, and Peter Rodriguez executed an Indemnity Agreement, wherein they bound themselves, jointly and severally, to indemnify CBIC for any amount it may sustain or incur in connection with the issuance of the surety bond and the endorsement.[27] As for Quinain, CBIC alleged that he exceeded his authority as stated in the Special Power of Attorney, wherein he was authorized to solicit business and issue surety bonds not exceeding ₱500,000.00 but only in favor of the Department of Public Works and Highways, National Power Corporation, and other government agencies.[28]

On August 23, 1993, third party defendant Hontanosas filed his Answer with Counterclaim, to the Cross and Third Party Complaint. Hontanosas claimed that he had no financial interest

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[23] CA *rollo*, p. 27.

[24] *Rollo*, pp. 138-141.

[25] *Id.* at 144-145.

[26] CA *rollo*, pp. 42-43.

[27] *Rollo*, p. 150.

[28] *Id.* at 233-234.

in Unimarine and was neither a stockholder, director nor an officer of Unimarine. He asseverated that his relationship to Unimarine was limited to his capacity as a lawyer, being its retained counsel. He further denied having any participation in the Indemnity Agreement executed in favor of CBIC, and alleged that his signature therein was forged, as he neither signed it nor appeared before the Notary Public who acknowledged such undertaking.[29]

Various witnesses were presented by the parties during the course of the trial of the case. Myrna Obrinaga testified for Cebu Shipyard. She was the Chief Accountant in charge of the custody of the documents of the company. She corroborated Cebu Shipyard's allegations and produced in court the documents to support Cebu Shipyard's claim. She also testified that while it was true that the proceeds of the sale of Unimarine's vessel, M/V Headline, were assigned to Cebu Shipyard, nothing was turned over to them.[30]

Paul Rodriguez admitted that Unimarine failed to pay Cebu Shipyard for the repairs it did on M/V Pacific Fortune, despite the extensions granted to Unimarine. He claimed that he signed the Indemnity Agreement because he trusted Quinain that it was a mere pre-requisite for the issuance of the surety bond. He added that he did not bother to read the documents and he was not aware of the consequences of signing an Indemnity Agreement. Paul Rodriguez also alleged to not having noticed the limitation "Valid only in favor of DPWH" stamped on the surety bond.[31] However, Paul Rodriguez did not contradict the fact that Unimarine failed to pay Cebu Shipyard its obligation.[32]

CBIC presented Dakila Rianzares, the Senior Manager of its Bonding Department. Her duties included the evaluation and approval of all applications for and reviews of bonds issued

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[29] *Id.* at 153-155.

[30] CA *rollo*, p. 27.

[31] *Id.* at 28.

[32] *Id.* at 30.

by their agents, as authorized under the Special Power of Attorney and General Agency Contract of CBIC. Rianzares testified that she only learned of the existence of CBIC Surety Bond No. G (16) 29419 when she received the summons for this case. Upon investigation, she found out that the surety bond was not reported to CBIC by Quinain, the issuing agent, in violation of their General Agency Contract, which provides that all bonds issued by the agent be reported to CBIC's office within one week from the date of issuance. She further stated that the surety bond issued in favor of Unimarine was issued beyond Quinain's authority. Rianzares added that she was not aware that an endorsement pertaining to the surety bond was also issued by Quinain.[33]

After the trial, the RTC was faced with the lone issue of whether or not CBIC was liable to Cebu Shipyard based on Surety Bond No. G (16) 29419.[34]

On February 10, 1997, the RTC rendered its Decision, the *fallo* of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff Cebu Shipyard & Engineering Works, Incorporated and against the defendants:
>
> 1. Ordering the defendants Unimarine Shipping Lines, Incorporated, Country Bankers Insurance Corporation and Plaridel Surety and Insurance Corporation to pay plaintiff jointly and severally the amount of ₱4,620,000.00 equivalent to the value of the surety bonds;
>
> 2. Ordering further defendant Unimarine to pay plaintiff the amount of ₱259,458.00 to complete its entire obligation of ₱4,859,458.00;
>
> 3. To pay plaintiff jointly and severally the amount of ₱100,000.00 in attorney's fees and litigation expenses;
>
> 4. For Cross defendant Unimarine Shipping Lines, Incorporated and Third party defendants Paul Rodriguez, Peter Rodriguez and

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[33] *Id.* at 28-29.

[34] *Id.* at 31.

Alber[t] Hontanosas: To indemnify jointly and severally, cross plaintiff and third party plaintiff Country Bankers Insurance Corporation whatever amount the latter is made to pay to plaintiff.[35]

The RTC held that CBIC, "in its capacity as surety is bound with its principal jointly and severally to the extent of the surety bond it issued in favor of [Cebu Shipyard]" because "although the contract of surety is in essence secondary only to a valid principal obligation, his liability to [the] creditor is said to be direct, primary[,] and absolute, in other words, he is bound by the principal."[36] The RTC added:

Solidary obligations on the part of Unimarine and CBIC having been established and expressly stated in the Surety Bond No. 29419 (Exh. "C"), [Cebu Shipyard], therefore, is entitled to collect and enforce said obligation against any and or both of them, and if and when CBIC pays, it can compel its co-defendant Unimarine to reimburse to it the amount it has paid.[37]

The RTC found CBIC's contention that Quinain acted in excess of his authority in issuing the surety bond untenable. The RTC held that CBIC is bound by the surety bond issued by its agent who acted within the apparent scope of his authority. The RTC said:

[A]s far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the powers of attorney as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent.[38]

All the defendants appealed this Decision to the Court of Appeals.

Unimarine, Paul Rodriguez, Peter Rodriguez, and Albert Hontanosas argued that Unimarine's obligation under Bill No.

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[35] *Id.* at 33.

[36] *Id.* at 31.

[37] *Id.*

[38] *Id.* at 33.

26035 had been extinguished by novation, as Cebu Shipyard had agreed to accept the proceeds of the sale of the M/V Headline as payment for the ship repair works it did on M/V Pacific Fortune. Paul Rodriguez and Peter Rodriguez added that such novation also freed them from their liability under the Indemnity Agreement they signed in favor of CBIC. Albert Hontanosas in turn reiterated that he did not sign the Indemnity Agreement.[39]

CBIC, in its Appellant's Brief,[40] claimed that the RTC erred in enforcing its liability on the surety bond as it was issued in excess of Quinain's authority. Moreover, CBIC averred, its liability under such surety had been extinguished by reasons of novation, payment, and prescription. CBIC also questioned the RTC's order, holding it jointly and severally liable with Unimarine and Plaridel for the amount of ₱4,620,000.00, a sum larger than the face value of CBIC Surety Bond No. G (16) 29419, and why the RTC did not hold Quinain liable to indemnify CBIC for whatever amount it was ordered to pay Cebu Shipyard.

On January 29, 2004, the Court of Appeals promulgated its decision, with the following dispositive portion:

WHEREFORE, in view of the foregoing, the respective appeal[s] filed by Defendants-Appellants Unimarine Shipping Lines, Inc. and Country Bankers Insurance Corporation; Cross-Defendant-Appellant Unimarine Shipping Lines, Inc. and; Third-Party Defendants-Appellants Paul Rodriguez, Peter Rodriguez and Albert Hontanosas are hereby **DENIED.** The decision of the RTC in Civil Case No. CEB-13447 dated February 10, 1997 is **AFFIRMED** with modification that Mr. Bethoven Quinain, CBIC's agent is hereby held jointly and severally liable with CBIC by virtue of Surety Bond No. 29419 executed in favor of plaintiff-appellee CSEW.[41]

In its decision, the Court of Appeals resolved the following issues, as it had summarized from the parties' pleadings:

I. Whether or not UNIMARINE is liable to [Cebu Shipyard] for a sum of money arising from the ship-repair contract;

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[39] *Id.* at 21-22.

[40] *Id.* at 39-63.

[41] *Rollo*, pp. 54-55.

II. Whether or not the obligation of UNIMARINE to [Cebu Shipyard] has been extinguished by novation;

III. Whether or not Defendant-Appellant CBIC, allegedly being the Surety of UNIMARINE is liable under Surety Bond No. 29419[;]

IV. Whether or not Cross Defendant-Appellant UNIMARINE and Third-Party Defendants-Appellants Paul Rodriguez, Peter Rodriguez, Albert Hontanosas and Third-Party Defendant Bethoven Quinain are liable by virtue of the Indemnity Agreement executed between them and Cross and Third Party Plaintiff CBIC;

V. Whether or not Plaintiff-Appellee [Cebu Shipyard] is entitled to the award of ₱100,000.00 in attorney's fees and litigation expenses.[42]

The Court of Appeals held that it was duly proven that Unimarine was liable to Cebu Shipyard for the ship repair works it did on the former's M/V Pacific Fortune. The Court of Appeals dismissed CBIC's contention of novation for lack of merit.[43] CBIC was held liable under the surety bond as there was no novation on the agreement between Unimarine and Cebu Shipyard that would discharge CBIC from its obligation. The Court of Appeals also did not allow CBIC to disclaim liability on the ground that Quinain exceeded his authority because third persons had relied upon Quinain's representation, as CBIC's agent.[44] Quinain was, however, held solidarily liable with CBIC under Article 1911 of the Civil Code.[45]

Anent the liability of the signatories to the Indemnity Agreement, the Court of Appeals held Paul Rodriguez, Peter Rodriguez, and Albert Hontanosas jointly and severally liable thereunder. The Court of Appeals rejected Hontanosas's claim that his signature in the Indemnity Agreement was forged, as he was not able to prove it.[46]

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[42] *Id.* at 38.

[43] *Id.* at 39-40.

[44] *Id.* at 44-46.

[45] *Id.* at 53.

[46] *Id.* at 49-51.

The Court of Appeals affirmed the award of attorney's fees and litigation expenses to Cebu Shipyard since it was able to clearly establish the defendants' liability, which they tried to dodge by setting up defenses to release themselves from their obligation.[47]

CBIC[48] and Unimarine, together with third party defendants-appellants[49] filed their respective Motions for Reconsideration. This was, however, denied by the Court of Appeals in its October 28, 2004 Resolution for lack of merit.

Unimarine elevated its case to this Court via a petition for review on *certiorari*, docketed as G.R. No. 166023, which was denied in a Resolution dated January 19, 2005.[50]

The lone petitioner in this case, CBIC, is now before this Court, seeking the reversal of the Court of Appeals' decision and resolution on the following grounds:

A.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN APPLYING THE PROVISIONS OF ARTICLE 1911 OF THE CIVIL CODE TO HOLD PETITIONER LIABLE FOR THE ACTS DONE BY ITS AGENT IN EXCESS OF AUTHORITY.

B.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT AN EXTENSION OF THE PERIOD FOR THE PERFORMANCE OF AN OBLIGATION GRANTED BY THE CREDITOR TO THE PRINCIPAL DEBTOR IS NOT SUFFICIENT TO RELEASE THE SURETY.

C.

ASSUMING THAT PETITIONER IS LIABLE UNDER THE BOND, THE HONORABLE COURT OF APPEALS

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[47] *Id.* at 54.

[48] CA *rollo*, pp. 240-252.

[49] *Id.* at 253-256.

[50] *Rollo*, p. 389.

NONETHELESS SERIOUSLY ERRED IN AFFIRMING THE SOLIDARY LIABILITY OF PETITIONER BEYOND THE VALUE OF THE BOND.

D.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING PETITIONER JOINTLY AND SEVERALLY LIABLE FOR ATTORNEY'S FEES IN THE AMOUNT OF ₱100,000.00.[51]

Issue

The crux of the controversy lies in CBIC's liability on the surety bond Quinain issued to Unimarine, in favor of Cebu Shipyard.

CBIC avers that the Court of Appeals erred in interpreting and applying the rules governing the contract of agency. It argued that the Special Power of Attorney granted to Quinain clearly set forth the extent and limits of his authority with regard to businesses he can transact for and in behalf of CBIC. CBIC added that it was incumbent upon Cebu Shipyard to inquire and look into the power of authority conferred to Quinain. CBIC said:

> The authority to bind a principal as a guarantor or surety is one of those powers which requires a Special Power of Attorney pursuant to Article 1878 of the Civil Code. **Such power could not be simply assumed or inferred from the mere existence of an agency**. A person who enters into a contract of suretyship with an agent without confirming the extent of the latter's authority does so at his peril. x x x.[52]

CBIC claims that the foregoing is true even if Quinain was granted the authority to transact in the business of insurance in general, as "**the authority to bind the principal in a contract of suretyship could nonetheless never be presumed**."[53] Thus, CBIC claims, that:

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

[52] *Id.* at 15.

[53] *Id.* at 16.

[T]hird persons seeking to hold the principal liable for transactions entered into by an agent should establish the following, in case the same is controverted:

6.6.1. The fact or existence of the agency.

6.6.2. The nature and extent of authority.[54]

To go a little further, CBIC said that the correct Civil Code provision to apply in this case is Article 1898. CBIC asserts that "Cebu Shipyard was charged with knowledge of the extent of the authority conferred on Mr. Quinain by its failure to perform due diligence investigations."[55]

Cebu Shipyard, in its Comment[56] first assailed the propriety of the petition for raising factual issues. In support, Cebu Shipyard claimed that the Court of Appeals' application of Article 1911 of the Civil Code was founded on findings of facts that CBIC now disputes. Thus, the question is not purely of law.

Discussion

The fact that Quinain was an agent of CBIC was never put in issue. What has always been debated by the parties is the extent of authority or, at the very least, apparent authority, extended to Quinain by CBIC to transact insurance business for and in its behalf.

In a contract of agency, a person, the agent, binds himself to represent another, the principal, with the latter's consent or authority.[57] Thus, agency is based on representation, where the agent acts for and in behalf of the principal on matters within the scope of the authority conferred upon him.[58] Such "acts have the same legal effect as if they were personally done by the principal. By this legal fiction of representation, the actual

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[54] *Id.* at 18.

[55] *Id.* at 19.

[56] *Id.* at 248-287.

[57] CIVIL CODE, Art. 1868.

[58] *Id.*, Art. 1881.

or legal absence of the principal is converted into his legal or juridical presence."[59]

The RTC applied Articles 1900 and 1911 of the Civil Code in holding CBIC liable for the surety bond. It held that CBIC could not be allowed to disclaim liability because Quinain's actions were within the terms of the special power of attorney given to him.[60] The Court of Appeals agreed that CBIC could not be permitted to abandon its obligation especially since third persons had relied on Quinain's representations. It based its decision on Article 1911 of the Civil Code and found CBIC to have been negligent and less than prudent in conducting its insurance business for its failure to supervise and monitor the acts of its agents, to regulate the distribution of its insurance forms, and to devise schemes to prevent fraudulent misrepresentations of its agents.[61]

This Court does not agree. Pertinent to this case are the following provisions of the Civil Code:

Art. 1898. If the agent contracts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification.

Art. 1900. So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent's authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent.

Art. 1902. A third person with whom the agent wishes to contract on behalf of the principal may require the presentation of the power of attorney, or the instructions as regards the agency. Private or secret orders and instructions of the principal do not prejudice third

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[59] *Siredy Enterprises, Inc. v. Court of Appeals*, 437 Phil. 580, 591 (2002).

[60] CA *rollo*, pp. 31-32.

[61] *Rollo*, pp. 46-47.

persons who have relied upon the power of attorney or instructions shown to them.

Art. 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly.

Art. 1911. Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though he had full powers.

Our law mandates an agent to act within the scope of his authority.[62] The scope of an agent's authority is what appears in the written terms of the power of attorney granted upon him.[63] Under Article 1878(11) of the Civil Code, **a special power of attorney** is necessary to obligate the principal as a guarantor or surety.

In the case at bar, CBIC could be held liable even if Quinain exceeded the scope of his authority only if Quinain's act of issuing Surety Bond No. G (16) 29419 is **deemed** to have been performed within the written terms of the power of attorney he was granted.[64]

However, contrary to what the RTC held, the Special Power of Attorney accorded to Quinain clearly states the limits of his authority and particularly provides that in case of surety bonds, it can only be issued in favor of the Department of Public Works and Highways, the National Power Corporation, and other government agencies; furthermore, the amount of the surety bond is limited to ₱500,000.00, to wit:

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That, COUNTRY BANKERS INSURANCE CORPORATION, a corporation duly organized and existing under and by virtue of the

[62] CIVIL CODE, Art. 1881.

[63] *Id.,* Art. 1900.

[64] *Id*.

laws of the Philippines, with head offices at 8th Floor, G.F. Antonino Building, T.M. Kalaw Street, Ermita, Manila, now and hereinafter referred to as "the Company" hereby appoints BETHOVEN B. QUINAIN with address at x x x to be its General Agent and Attorney-in-Fact, for and in its place, name and stead, and for its own use and benefit, to do and perform the following acts and things:

1. To conduct, manage, carry on and transact insurance business as usually pertains to a General Agency of Fire, Personal Accident, Bond, Marine, Motor Car (Except Lancer).

2. To accept, underwrite and subscribe policies of insurance for and in behalf of the Company under the terms and conditions specified in the General Agency Contract executed and entered into by and between it and its said Attorney-in-Fact subject to the following Schedule of Limits:

- SCHEDULE OF LIMITS -

a. FIRE:

x x x x x x x x x

b. PERSONAL ACCIDENT:

x x x x x x x x x

c. MOTOR CAR:

x x x x x x x x x

d. MARINE:

x x x x x x x x x

e. BONDS:

x x x x x x x x x

Surety Bond (in favor of Dept. of Pub. Works and Highways, Nat'l. Power Corp. & other.... ₱500,000.00 Government agencies)[65]

CBIC does not anchor its defense on a secret agreement, mutual understanding, or any verbal instruction to Quinain. CBIC's stance is grounded on its contract with Quinain, and the clear,

[65] *Rollo,* pp. 233-234.

written terms therein. This Court finds that the terms of the foregoing contract specifically provided for the extent and scope of Quinain's authority, and Quinain has indeed exceeded them.

Under Articles 1898 and 1910, an agent's act, even if done beyond the scope of his authority, may bind the principal if he ratifies them, whether expressly or tacitly. It must be stressed though that only the principal, and not the agent, can ratify the unauthorized acts, which the principal must have knowledge of.[66] Expounding on the concept and doctrine of ratification in agency, this Court said:

> Ratification in agency is the adoption or confirmation by one person of an act performed on his behalf by another without authority. The substance of the doctrine is confirmation after conduct, amounting to a substitute for a prior authority. Ordinarily, the principal must have full knowledge at the time of ratification of all the material facts and circumstances relating to the unauthorized act of the person who assumed to act as agent. **Thus, if material facts were suppressed or unknown, there can be no valid ratification and this regardless of the purpose or lack thereof in concealing such facts and regardless of the parties between whom the question of ratification may arise**. Nevertheless, this principle does not apply if the principal's ignorance of the material facts and circumstances was willful, or that the principal chooses to act in ignorance of the facts. However, **in the absence of circumstances putting a reasonably prudent man on inquiry, ratification cannot be implied as against the principal who is ignorant of the facts**.[67] (Emphases supplied.)

Neither Unimarine nor Cebu Shipyard was able to repudiate CBIC's testimony that it was unaware of the existence of Surety Bond No. G (16) 29419 and Endorsement No. 33152. There were no allegations either that CBIC should have been put on alert with regard to Quinain's business transactions done on its

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[66] *Manila Memorial Park Cemetery, Inc. v. Linsangan*, G.R. No. 151319, November 22, 2004, 443 SCRA 377, 394.

[67] *Id.* at 394-395.

behalf. It is clear, and undisputed therefore, that there can be no ratification in this case, whether express or implied.

Article 1911, on the other hand, is based on the principle of estoppel, which is necessary for the protection of third persons. It states that the principal is solidarily liable with the agent even when the latter has exceeded his authority, if the principal allowed him to act as though he had full powers. However, for an agency by estoppel to exist, the following must be established:

1. The principal manifested a representation of the agent's authority or knowingly allowed the agent to assume such authority;
2. The third person, in good faith, relied upon such representation; and
3. Relying upon such representation, such third person has changed his position to his detriment.[68]

In *Litonjua, Jr. v. Eternit Corp.*,[69] this Court said that "[a]n agency by estoppel, which is similar to the doctrine of apparent authority, requires proof of reliance upon the representations, and that, in turn, needs proof that the representations predated the action taken in reliance."[70]

This Court cannot agree with the Court of Appeals' pronouncement of negligence on CBIC's part. CBIC not only clearly stated the limits of its agents' powers in their contracts, it even stamped its surety bonds with the restrictions, in order to alert the concerned parties. Moreover, its company procedures, such as reporting requirements, show that it has designed a system to monitor the insurance contracts issued by its agents. CBIC cannot be faulted for Quinain's deliberate failure to notify it of his transactions with Unimarine. In fact, CBIC did not even receive the premiums paid by Unimarine to Quinain.

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[68] *Litonjua, Jr. v. Eternit Corp.*, G.R. No. 144805, June 8, 2006, 490 SCRA 204, 224-225.

[69] *Id.*

[70] *Id.* at 225.

Furthermore, nowhere in the decisions of the lower courts was it stated that CBIC let the public, or specifically Unimarine, believe that Quinain had the authority to issue a surety bond in favor of companies other than the Department of Public Works and Highways, the National Power Corporation, and other government agencies. Neither was it shown that CBIC knew of the existence of the surety bond before the endorsement extending the life of the bond, was issued to Unimarine. For one to successfully claim the benefit of estoppel on the ground that he has been misled by the representations of another, he must show that he was not misled through his own want of reasonable care and circumspection.[71]

It is apparent that Unimarine had been negligent or less than prudent in its dealings with Quinain. In *Manila Memorial Park Cemetery, Inc. v. Linsangan*,[72] this Court held:

> It is a settled rule that persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it. The basis for agency is representation and a person dealing with an agent is put upon inquiry and must discover upon his peril the authority of the agent. If he does not make such an inquiry, he is chargeable with knowledge of the agent's authority and his ignorance of that authority will not be any excuse.

In the same case, this Court added:

> [T]he ignorance of a person dealing with an agent as to the scope of the latter's authority is no excuse to such person and the fault cannot be thrown upon the principal. A person dealing with an agent assumes the risk of lack of authority in the agent. He cannot charge the principal by relying upon the agent's assumption of authority that proves to be unfounded. The principal, on the other hand, may act on the presumption that third persons dealing with

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[71] *Manila Memorial Park Cemetery, Inc. v. Linsangan, supra* note 66 at 397.

[72] *Id.* at 391-392.

his agent will not be negligent in failing to ascertain the extent of his authority as well as the existence of his agency.[73]

Unimarine undoubtedly failed to establish that it even bothered to inquire if Quinain was authorized to agree to terms beyond the limits indicated in his special power of attorney. While Paul Rodriguez stated that he has done business with Quinain more than once, he was not able to show that he was misled by CBIC as to the extent of authority it granted Quinain. Paul Rodriguez did not even allege that he asked for documents to prove Quinain's authority to contract business for CBIC, such as their contract of agency and power of attorney. It is also worthy to note that even with the Indemnity Agreement, Paul Rodriguez signed it on Quinain's mere assurance and without truly understanding the consequences of the terms of the said agreement. Moreover, both Unimarine and Paul Rodriguez could have inquired directly from CBIC to verify the validity and effectivity of the surety bond and endorsement; but, instead, they blindly relied on the representations of Quinain. As this Court held in *Litonjua, Jr. v. Eternit Corp.*:[74]

> A person dealing with a known agent is not authorized, under any circumstances, blindly to trust the agents; statements as to the extent of his powers; such person must not act negligently but must use reasonable diligence and prudence to ascertain whether the agent acts within the scope of his authority. The settled rule is that, persons dealing with an assumed agent are bound at their peril, and if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to prove it. In this case, the petitioners failed to discharge their burden; hence, petitioners are not entitled to damages from respondent EC.[75]

In light of the foregoing, this Court is constrained to release CBIC from its liability on Surety Bond No. G (16) 29419 and Endorsement No. 33152. This Court sees no need to dwell on the other grounds propounded by CBIC in support of its prayer.

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[73] *Id.* at 392.

[74] *Supra* note 68.

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

WHEREFORE, this petition is hereby **GRANTED** and the complaint against CBIC is **DISMISSED** for lack of merit. The January 29, 2004 Decision and October 28, 2004 Resolution of the Court of Appeals in **CA-G.R. CV No. 58001** is **MODIFIED** insofar as it affirmed CBIC's liability on Surety Bond No. G (16) 29419 and Endorsement No. 33152.

SO ORDERED.

Bersamin, del Castillo, Villarama, Jr., and *Perlas-Bernabe,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 170783. June 18, 2012]

LEGASPI TOWERS 300, INC., LILIA MARQUINEZ PALANCA, ROSANNA D. IMAI, GLORIA DOMINGO and RAY VINCENT, *petitioners, vs.* **AMELIA P. MUER, SAMUEL M. TANCHOCO, ROMEO TANKIANG, RUDEL PANGANIBAN, DOLORES AGBAYANI, ARLENEDAL A. YASUMA, GODOFREDO M. CAGUIOA and EDGARDO M. SALANDANAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; A JUDGE HAS AN INHERENT RIGHT, WHILE HIS JUDGMENT IS STILL UNDER HIS CONTROL, TO CORRECT ERRORS, MISTAKES, OR INJUSTICES.— It is clear that in the Orders dated July 21, 2004, the trial court did not admit the Second Amended Complaint wherein petitioners made the condominium

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[**] Per Special Order No. 1227 dated May 30, 2012.

corporation, Legaspi Towers 300, Inc., the party-plaintiff. In the Order dated September 24, 2004, denying petitioners' motion for reconsideration of the Orders dated July 21, 2004, the RTC explained its action x x x. The courts have the inherent power to amend and control their processes and orders so as to make them conformable to law and justice. A judge has an inherent right, while his judgment is still under his control, to correct errors, mistakes, or injustices.

2. COMMERCIAL LAW; CORPORATIONS; DEPRIVATIVE SUIT; DISTINGUISHED FROM AN INDIVIDUAL/CLASS SUIT.— The Court agrees with the Court of Appeals that the Second Amended Complaint is meant to be a derivative suit filed by petitioners in behalf of the corporation. The Court of Appeals stated in its Decision that petitioners justified the inclusion of Legaspi Towers 300, Inc. as plaintiff in Civil Case No. 0410655 by invoking the doctrine of derivative suit x x x. ***Cua, Jr. v. Tan*** differentiates a derivative suit and an individual/class suit as follows: A derivative suit must be differentiated from individual and representative or class suits, thus: Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be **individual because the wrong is done to him personally and not to the other stockholders or the corporation**. Where the **wrong is done to a group of stockholders**, as where preferred stockholders' rights are violated, a **class or representative suit will be proper for the protection of all stockholders belonging to the same group**. But where the **acts complained of constitute a wrong to the corporation itself**, **the cause of action belongs to the corporation** and not to the individual stockholder or member. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of

determining the amount of damages that should be paid to each individual stockholder. However, in cases of **mismanagement where the wrongful acts are committed by the directors or trustees themselves,** a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy**. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a "derivative suit."** It has been proven to be an effective remedy of the minority against the abuses of management. **Thus, an individual stockholder is permitted to institute a derivative suit *on behalf of the corporation* wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the *nominal party*, with the corporation as the *party-in- interest***.

3. ID.; ID.; ID.; REQUISITES.— Since it is the corporation that is the real party-in-interest in a derivative suit, then the reliefs prayed for must be for the benefit or interest of the corporation. When the reliefs prayed for do not pertain to the corporation, then it is an improper 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 corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.

4. ID.; ID.; ID.; DERIVATIVE SUIT FILED IN CASE AT BAR IS IMPROPER; THE STOCKHOLDER'S RIGHT TO FILE A DERIVATIVE SUIT IS NOT BASED ON ANY EXPRESS PROVISION OF THE CORPORATION CODE, BUT IS IMPLIEDLY RECOGNIZED WHEN THE LAW MAKES

CORPORATE DIRECTORS OR OFFICERS LIABLE FOR DAMAGES SUFFERED BY THE CORPORATION AND ITS STOCKHOLDERS FOR VIOLATION OF THEIR FIDUCIARY DUTIES; NOT APPLICABLE.— In this case, petitioners, as members of the Board of Directors of the condominium corporation *before* the election in question, filed a complaint against the newly-elected members of the Board of Directors for the years 2004-2005, questioning the validity of the election held on April 2, 2004, as it was allegedly marred by lack of quorum, and praying for the nullification of the said election. As stated by the Court of Appeals, petitioners' complaint seek to nullify the said election, and to protect and enforce their individual right to vote. Petitioners seek the nullification of the election of the Board of Directors for the years 2004-2005, composed of herein respondents, who pushed through with the election even if petitioners had adjourned the meeting allegedly due to lack of quorum. Petitioners are the injured party, whose rights to vote and to be voted upon were directly affected by the election of the new set of board of directors. The party-in-interest are the petitioners as stockholders, who wield such right to vote. The cause of action devolves on petitioners, not the condominium corporation, which did not have the right to vote. Hence, the complaint for nullification of the election is a **direct action** by petitioners, who were the members of the Board of Directors of the corporation *before* the election, against respondents, who are the newly-elected Board of Directors. Under the circumstances, the derivative suit filed by petitioners in behalf of the condominium corporation in the Second Amended Complaint is improper. The stockholder's right to file a derivative suit is not based on any express provision of *The Corporation Code*, but is impliedly recognized when the law makes corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties, which is not the issue in this case.

5. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; THE VALID ELECTION OF NEW SET OF DIRECTORS RENDERED THE PETITION MOOT AND ACADEMIC.— Petitioners question the validity of the election of the Board of Directors for the **years 2004-2005**, which election they seek to nullify in Civil Case No. 04-109655. However, the valid

election of a new set of Board of Directors for the **years 2005-2006** would, indeed, render this petition moot and academic.

APPEARANCES OF COUNSEL

Pelaez Gregorio Gregorio & Lim for petitioners.
Marlito I. Villanueva Law Office for respondents.
Rudel H. Panganiban & Associates for Rudel Panganiban.

D E C I S I O N

PERALTA,[*] *J.*:

This is a petition for review on *certiorari* of the Court of Appeals' Decision[1] dated July 22, 2005 in CA-G.R. CV No. 87684, and its Resolution[2] dated November 24, 2005, denying petitioners' motion for reconsideration.

The Court of Appeals held that Judge Antonio I. De Castro of the Regional Trial Court (RTC) of Manila, Branch 3, did not commit grave abuse of discretion in issuing the Orders dated July 21, 2004 and September 24, 2004 in Civil Case No. 04-109655, denying petitioners' *Motion to Admit Second Amended Complaint*.

The facts, as stated by the Court of Appeals, are as follows:

Pursuant to the by-laws of Legaspi Towers 300, Inc., petitioners Lilia Marquinez Palanca, Rosanna D. Imai, Gloria Domingo and Ray Vincent, the incumbent Board of Directors, set the annual meeting of the members of the condominium corporation and the election of the new Board of Directors for the years 2004-2005 on April 2, 2004 at 5:00 p.m. at the lobby of Legaspi Towers 300, Inc.

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[*] Per Special Order No. 1228 dated June 6, 2012.

[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Conrado M. Vasquez, Jr. and Aurora Santiago-Lagman, concurring, *rollo*, pp. 36-49.

[2] *Id.* at 52-54.

Out of a total number of 5,723 members who were entitled to vote, 1,358 were supposed to vote through their respective proxies and their votes were critical in determining the existence of a quorum, which was at least 2,863 (50% plus 1). The Committee on Elections of Legaspi Towers 300, Inc., however, found most of the proxy votes, at its face value, irregular, thus, questionable; and for lack of time to authenticate the same, petitioners adjourned the meeting for lack of quorum.

However, the group of respondents challenged the adjournment of the meeting. Despite petitioners' insistence that no quorum was obtained during the annual meeting held on April 2, 2004, respondents pushed through with the scheduled election and were elected as the new Board of Directors and officers of Legaspi Towers 300, Inc. Subsequently, they submitted a General Information Sheet to the Securities and Exchange Commission (SEC) with the following new set of officers: Amelia P. Muer, President; Samuel M. Tanchoco, Internal Vice President; Romeo V. Tankiang, External Vice-President; Rudel H. Panganiban, Secretary; Dolores B. Agbayani, Assistant Secretary; Arlenedal A. Yasuma, Treasurer; Godofredo M. Caguioa, Assistant Treasurer; and Edgardo M. Salandanan, Internal Auditor.

On April 13, 2004, petitioners filed a *Complaint for the Declaration of Nullity of Elections with Prayers for the lssuance of Temporary Restraining Orders and Writ of Preliminary Injunction and Damages* against respondents with the RTC of Manila. Before respondents could file an Answer to the original Complaint, petitioners filed an *Amended Complaint*, which was admitted by the RTC in an Order dated April 14, 2004.

On April 20, 2004, before respondents could submit an Answer to the Amended Complaint, petitioners again filed an *Urgent Ex-Parte Motion to Admit Second Amended Complaint and for the lssuance of Ex-Parte Temporary Restraining Order Effective only for Seventy-Two (72) Hours.* It was stated in the said pleading that the case was raffled to Branch 24, but Presiding Judge Antonio Eugenio, Jr. inhibited himself from handling the case; and when the case was assigned to Branch

46, Presiding Judge Artemio S. Tipon also inhibited himself from the case.

On April 21, 2004, Executive Judge Enrico A. Lanzanas of the RTC of Manila acted on the Motion for the Issuance of an *Ex Parte* Temporary Restraining Order, and issued an Order disposing, thus:

> WHEREFORE, pursuant to administrative Circular No. 20-95 of the Supreme Court, a seventy-two (72) hour Temporary Restraining Order is hereby issued, enjoining defendants from taking over management, or to maintain a *status quo*, in order to prevent further irreparable damages and prejudice to the corporation, as day-to-day activities will be disrupted and will be paralyzed due to the legal controversy.[3]

On the same date, April 21, 2004, respondents filed their Answer[4] to the *Amended Complaint*, alleging that the election on April 2, 2004 was lawfully conducted. Respondents cited the Report[5] of SEC Counsel Nicanor P. Patricio, who was ordered by the SEC to attend the annual meeting of Legaspi Towers 300, Inc. on April 2, 2004. Atty. Patricio stated in his Report that at 5:40 p.m. of April 2, 2004, a representative of the Board of the condominium corporation stated that the scheduled elections could not proceed because the Election Committee was not able to validate the authenticity of the proxies prior to the election due to limited time available as the submission was made only the day before. Atty. Patricio noted that the Board itself fixed the deadline for submission of proxies at 5:00 p.m. of April 1, 2004. One holder of proxy stood up and questioned the motives of the Board in postponing the elections. The Board objected to this and moved for a declaration of adjournment. There was an objection to the adjournment, which was ignored by the Board. When the Board adjourned the meeting despite the objections of the unit owners, the unit owners who objected to the adjournment gathered themselves at the same place of the meeting

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[3] Records, p. 85.

[4] *Id.* at 96.

[5] *Id.* at 133.

and proceeded with the meeting. The attendance was checked from among the members who stayed at the meeting. Proxies were counted and recorded, and there was a declaration of a quorum – out of a total of 5,721 votes, 2,938 were present either in person or proxy. Thereafter, ballots were prepared, proxies were counterchecked with the number of votes entitled to each unit owner, and then votes were cast. At about 9:30 p.m., canvassing started, and by 11:30 p.m., the newly-elected members of the Board of Directors for the years 2004-2005 were named.

Respondents contended that from the proceedings of the election reported by SEC representative, Atty. Patricio, it was clear that the election held on April 2, 2004 was legitimate and lawful; thus, they prayed for the dismissal of the complaint for lack cause of action against them.

This case was scheduled to be re-raffled to regular courts on April 22, 2004, and was assigned to Judge Antonio I. De Castro of the RTC of Manila, Branch 3 (trial court).

On April 26, 2004, the trial court conducted a hearing on the injunction sought by petitioners, and issued an Order clarifying that the TRO issued by Executive Judge Enrico A. Lanzanas, enjoining respondents from taking over management, was not applicable as the current Board of Directors (respondents) had actually assumed management of the corporation. The trial court stated that the *status quo* mentioned in the said TRO shall mean that the current board of directors shall continue to manage the affairs of the condominium corporation, but the court shall monitor all income earned and expenses incurred by the corporation. The trial court stated:

> Precisely this complaint seeks to annul the election of the Board due to alleged questionable proxy votes which could not have produced a quorum. As such, there is nothing to enjoin and so injunction shall fail. As an answer has been filed, the case is ripe for pre-trial and the parties are directed to file their pre-trial briefs by May 3, 2004.
>
> **As plaintiffs' second amended complaint is admitted by the Court, defendants are given up to May 3, 2004 to file a comment**

thereto. In the meantime, the banks and other persons & entities are advised to recognize the Board headed by its president, Amelia Muer. All transactions made by the Board and its officers for the corporation are considered legal for all intents and purposes.[6]

On May 3, 2004, respondents filed a Comment on the Motion to Amend Complaint, praying that the name of Legaspi Towers 300, Inc., as party-plaintiff in the Second Amended Complaint, be deleted as the said inclusion by petitioners was made without the authority of the current Board of Directors, which had been recognized by the trial court in its Order dated April 26, 2004.

During the pre-trial conference held on July 21, 2004, the trial court resolved various incidents in the case and other issues raised by the contending parties. One of the incidents acted upon by the trial court was petitioners' motion to amend complaint to implead Legaspi Towers 300, Inc. as plaintiff, which motion was denied with the issuance of two Orders both dated July 21, 2004. The first Order[7] held that the said motion could not be admitted for being improper, thus:

x x x x x x x x x

On plaintiffs' motion to admit amended complaint (to include Legaspi Towers 300, Inc. as plaintiff), the Court rules to deny the motion for being improper. (A separate Order of even date is issued.) As prayed for, movants are given 10 days from today to file a motion for reconsideration thereof, while defendants are given 10 days from receipt thereof to reply.[8]

The second separate Order,[9] also dated July 21, 2004, reads:

This resolves plaintiffs' motion to amend complaint to include Legaspi Towers 300, Inc. as party-plaintiff and defendants' comment thereto. Finding no merit therein and for the reasons stated in the comment, the motion is hereby DENIED.

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[6] RTC Order dated April 26, 2004, *rollo*, p. 162. (Emphasis and underscoring supplied.)

[7] CA *rollo*, p. 36.

[8] *Rollo*, p. 91.

[9] *Id.* at 89.

Petitioners filed a Motion for Reconsideration of the Orders dated July 21, 2004. In the Order[10] dated September 24, 2004, the trial court denied the motion for reconsideration for lack of merit.

Petitioners filed a petition for *certiorari* with the Court of Appeals alleging that the trial court gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the Orders dated July 21, 2004 and September 24, 2004, and praying that judgment be rendered annulling the said Orders and directing RTC Judge De Castro to admit their Second Amended Complaint.

In a Decision dated July 22, 2005, the Court of Appeals dismissed the petition for lack of merit. It held that RTC Judge De Castro did not commit grave abuse of discretion in denying petitioners' *Motion To Admit Second Amended Complaint.*

The Court of Appeals stated that petitioners' complaint sought to nullify the election of the Board of Directors held on April 2, 2004, and to protect and enforce their individual right to vote. The appellate court held that as the right to vote is a personal right of a stockholder of a corporation, such right can only be enforced through a direct action; hence, Legaspi Towers 300, Inc. cannot be impleaded as plaintiff in this case.

Petitioners' motion for reconsideration was denied by the Court of Appeals in a Resolution dated November 24, 2005.

Petitioners filed this petition raising the following issues:

I

THE HONORABLE COURT OF APPEALS ERRED IN RESOLVING THAT PUBLIC RESPONDENT-APPELLEE DID NOT COMMIT ANY WHIMSICAL, ARBITRARY AND OPPRESSIVE EXERCISE OF JUDICIAL AUTHORITY WHEN THE LATTER REVERSED HIS EARLIER RULING ALREADY ADMITTING THE SECOND AMENDED COMPLAINT OF PETITIONERS-APPELLANTS.

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[10] Records, p. 375.

II

THERE IS NO LEGAL BASIS FOR THE HONORABLE COURT OF APPEALS TO RESOLVE THAT PETITIONERS-APPELLANTS HAVE NO RIGHT AS BOARD OF DIRECTORS TO BRING AN ACTION IN BEHALF OF LEGASPI TOWERS 300, INC.

III

THERE IS NO LEGAL BASIS FOR THE HONORABLE COURT OF APPEALS TO RESOLVE THAT THE ELECTIONS CONDUCTED IN LEGASPI TOWERS 300, INC. FOR THE PERIOD OF 2005 TO 2006 HAVE RENDERED THE ISSUE IN CIVIL CASE NO. 04-10655 MOOT AND ACADEMIC.[11]

Petitioners contend that the Court of Appeals erred in not finding that RTC Judge Antonio I. De Castro committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the admission of the Second Amended Complaint in the Orders dated July 21, 2004 and September 24, 2004, despite the fact that he had already ordered its admission in a previous Order dated April 26, 2004.

Petitioners' contention is unmeritorious.

It is clear that in the Orders dated July 21, 2004, the trial court did not admit the Second Amended Complaint wherein petitioners made the condominium corporation, Legaspi Towers 300, Inc., the party-plaintiff. In the Order dated September 24, 2004, denying petitioners' motion for reconsideration of the Orders dated July 21, 2004, the RTC explained its action, thus:

> x x x The word "admitted" in the 3rd paragraph of the Order dated April 26, 2004 should read "received" for which defendants were told to comment thereon as an answer has been filed. It was an oversight of the clerical error in said Order.
>
> The Order of July 21, 2004 states "amended complaint" in the 3rd paragraph thereof and so it does not refer to the second amended complaint. The amended complaint was admitted by the court of origin – Br. 24 in its Order of April 14, 2004 as there was no responsive pleading yet.

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[11] *Rollo*, p. 19.

Nonetheless, admission of the second amended complaint is improper. Why should Legaspi Towers 300, Inc. x x x be included as party-plaintiff when defendants are members thereof too like plaintiffs. Both parties are deemed to be acting in their personal capacities as they both claim to be the lawful board of directors. The motion for reconsideration for the admission of the second amended complaint is hereby DENIED.[12]

The courts have the inherent power to amend and control their processes and orders so as to make them conformable to law and justice.[13] A judge has an inherent right, while his judgment is still under his control, to correct errors, mistakes, or injustices.[14]

Next, petitioners state that the Court of Appeals seems to be under the impression that the action instituted by them is one brought forth solely by way of a derivative suit. They clarified that the inclusion of Legaspi Towers 300, Inc. as a party-plaintiff in the Second Amended Complaint was, first and foremost, intended as a direct action by the corporation acting through them (petitioners) as the reconstituted Board of Directors of Legaspi Towers 300, Inc. Petitioners allege that their act of including the corporation as party-plaintiff is consistent with their position that the election conducted by respondents was invalid; hence, petitioners, under their by-laws, could reconstitute themselves as the Board of Directors of Legaspi Towers 300, Inc. in a hold-over capacity for the succeeding term. By so doing, petitioners had the right as the rightful Board of Directors to bring the action in representation of Legaspi Towers 300, Inc. Thus, the Second Amended Complaint was intended by the petitioners as a direct suit by the corporation joined in by the petitioners to protect and enforce their common rights.

Petitioners contend that Legaspi Towers 300, Inc. is a real party-in- interest as it stands to be affected the most by the controversy, because it involves the determination of whether

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[12] *Id.* at 93.

[13] *Sta. Maria v. Ubay*, A.M. No. 595-CFI, December 11, 1978, 87 SCRA 179, 187.

[14] *Id.*

or not the corporation's by-laws was properly carried out in the meeting held on April 2, 2004, when despite the adjournment of the meeting for lack of quorum, the elections were still conducted. Although petitioners admit that the action involves their right to vote, they argue that it also involves the right of the condominium corporation to be managed and run by the duly-elected Board of Directors, and to seek redress against those who wrongfully occupy positions of the corporation and who may mismanage the corporation.

Petitioners' argument is unmeritorious.

The Court notes that in the Amended Complaint, petitioners as plaintiffs stated that they are the incumbent reconstituted Board of Directors of Legaspi Towers 300, Inc., and that defendants, herein respondents, are the newly-elected members of the Board of Directors; while in the Second Amended Complaint, the plaintiff is Legaspi Towers 300, Inc., represented by petitioners as the allegedly incumbent reconstituted Board of Directors of Legaspi Towers 300, Inc.

The Second Amended Complaint states who the plaintiffs are, thus:

> **1. That the plaintiffs are: LEGASPI TOWERS 300, INC**., non-stock corporation xxx **duly represented by the incumbent reconstituted Board of Directors of Legaspi Towers 300, Inc.**, namely: ELIADORA FE BOTE VERA xxx, as President; BRUNO C. HAMAN xxx, as Director; LILY MARQUINEZ PALANCA xxx, as Secretary; ROSANNA DAVID IMAI xxx, as Treasurer; and members of the Board of Directors, namely: ELIZABETH GUERRERO xxx, GLORIA DOMINGO xxx, and RAY VINCENT.[15]

The Court agrees with the Court of Appeals that the Second Amended Complaint is meant to be a derivative suit filed by petitioners in behalf of the corporation. The Court of Appeals stated in its Decision that petitioners justified the inclusion of Legaspi Towers 300, Inc. as plaintiff in Civil Case No. 0410655

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[15] Records, p. 65. (Emphasis supplied.)

by invoking the doctrine of derivative suit, as petitioners specifically argued, thus:

x x x x x x x x x

x x x [T]he sudden takeover by private respondents of the management of Legaspi Towers 300, Inc. has only proven the rightfulness of petitioners' move to include Legaspi Towers 300, Inc. as party-plaintiff. This is because every resolution passed by private respondents sitting as a board result[s] in violation of Legaspi Towers 300, Inc.'s right to be managed and represented by herein petitioners.

In short, the amendment of the complaint [to include] Legaspi Towers 300, Inc. was done in order to protect the interest and enforce the right of the Legaspi [Towers 300,] Inc. to be administered and managed [by petitioners] as the duly constituted Board of Directors. **This is no different from and may in fact be considered as a DERIVATIVE SUIT instituted by an individual stockholder against those controlling the corporation but is being instituted in the name of and for the benefit of the corporation whose right/s are being violated**.[16]

Is a derivative suit proper in this case?

Cua, Jr. v. Tan[17] differentiates a derivative suit and an individual/class suit as follows:

A derivative suit must be differentiated from individual and representative or class suits, thus:

> Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be **individual because the wrong is done to him personally and not to the other stockholders or the corporation**. Where the **wrong is done to a group of stockholders**, as where preferred stockholders' rights are violated, a **class or representative suit will be proper for the protection of all stockholders belonging to the same**

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[16] CA Decision, *rollo*, pp. 42-43. (Emphases supplied by the CA.)

[17] G.R. Nos. 181455-56 & 182008, December 4, 2009, 607 SCRA 645.

> **group**. But where the **acts complained of constitute a wrong to the corporation itself**, **the cause of action belongs to the corporation** and not to the individual stockholder or member. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder.
>
> However, in cases of **mismanagement where the wrongful acts are committed by the directors or trustees themselves,** a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy**. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a "derivative suit."** It has been proven to be an effective remedy of the minority against the abuses of management. **Thus, an individual stockholder is permitted to institute a derivative suit *on behalf of the corporation* wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the *nominal party*, with the corporation as the *party-in- interest***.[18]

Since it is the corporation that is the real party-in-interest in a derivative suit, then the reliefs prayed for must be for the benefit or interest of the corporation.[19] When the reliefs prayed

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[18] *Id.* at 690-691. (Emphases and underscoring supplied.)

[19] Cesar L. Villanueva, *Philippine Corporate Law*, ©1998, p. 375.

for do not pertain to the corporation, then it is an improper derivative suit.[20]

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 corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.[21]

In this case, petitioners, as members of the Board of Directors of the condominium corporation *before* the election in question, filed a complaint against the newly-elected members of the Board of Directors for the years 2004-2005, questioning the validity of the election held on April 2, 2004, as it was allegedly marred by lack of quorum, and praying for the nullification of the said election.

As stated by the Court of Appeals, petitioners' complaint seek to nullify the said election, and to protect and enforce their individual right to vote. Petitioners seek the nullification of the election of the Board of Directors for the years 2004-2005, composed of herein respondents, who pushed through with the election even if petitioners had adjourned the meeting allegedly due to lack of quorum. Petitioners are the injured party, whose rights to vote and to be voted upon were directly affected by the election of the new set of board of directors. The party-in-interest are the petitioners as stockholders, who wield such right to vote. The cause of action devolves on petitioners, not the condominium corporation, which did not have the right to vote.

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[20] *Id.*

[21] *San Miguel Corporation v. Kahn*, G.R. No. 85339, August 11, 1989, 176 SCRA 447, 462-463. (Underscoring supplied.)

Hence, the complaint for nullification of the election is a **direct action** by petitioners, who were the members of the Board of Directors of the corporation *before* the election, against respondents, who are the newly-elected Board of Directors. Under the circumstances, the derivative suit filed by petitioners in behalf of the condominium corporation in the Second Amended Complaint is improper.

The stockholder's right to file a derivative suit is not based on any express provision of *The Corporation Code*, but is impliedly recognized when the law makes corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties,[22] which is not the issue in this case.

Further, petitioners' change of argument before this Court, asserting that the Second Amended Complaint is a direct action filed by the corporation, represented by the petitioners as the incumbent Board of Directors, is an afterthought, and lacks merit, considering that the newly-elected Board of Directors had assumed their function to manage corporate affairs.[23]

In fine, the Court of Appeals correctly upheld the Orders of the trial court dated July 21, 2004 and September 24, 2004 denying petitioners' *Motion to Admit Second Amended Complaint*.

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[22] *Bitong v. Court of Appeals*, G.R. No. 123553, July 13, 1998, 292 SCRA 503, 532.

[23] Corporation Code: Sec. 36. *Corporate powers and capacity*. — Every corporation incorporated under this Code has the power and capacity:

To sue and be sued in its corporate name;

x x x x x x x x x

Sec. 23. *The board of directors or trustees*. – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

Lastly, petitioners contend that the Court of Appeals erred in resolving that the recent elections conducted by Legaspi Towers, 300, Inc. have rendered the issue raised *via* the special civil action for *certiorari* before the appellate court moot and academic.

The Court of Appeals, in its Resolution dated November 24, 2005, stated:

> x x x [T]he election of the corporation's new set of directors for the years 2005-2006 has, finally, rendered the petition at bench moot and academic. As correctly argued by private respondents, the nullification of the orders assailed by petitioners would, therefore, be of little or no practical and legal purpose.[24]

The statement of the Court of Appeals is correct.

Petitioners question the validity of the election of the Board of Directors for the **years 2004-2005**, which election they seek to nullify in Civil Case No. 04-109655. However, the valid election of a new set of Board of Directors for the **years 2005-2006** would, indeed, render this petition moot and academic.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CV No. 87684, dated July 22, 2005, and its Resolution dated November 24, 2005 are **AFFIRMED.**

Costs against petitioners.

SO ORDERED.

Bersamin,[**] *Abad, Villarama, Jr.,*[***] and *Perlas-Bernabe, JJ.,* concur.

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[24] *Rollo,* p. 54.

[**] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1241 dated June 14, 2012.

[***] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.

THIRD DIVISION

[G.R. No. 171671. June 18, 2012]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **ARISTEO E. ATIENZA, RODRIGO D. MANONGSONG, CRISPIN M. EGARQUE, and THE HON. SANDIGANBAYAN (THIRD DIVISION),** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019), SECTION 3 (E) THEREOF; ESSENTIAL ELEMENTS.— Respondents are charged with violation of Section 3 (e) of RA 3019 x x x. This crime has the following essential elements: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.

2. ID.; ID.; ID.; ELEMENT OF "MANIFEST PARTIALITY," "EVIDENT BAD FAITH," OR "GROSS INEXCUSABLE NEGLIGENCE," NOT ESTABLISHED; TERMS "MANIFEST PARTIALITY," "EVIDENT BAD FAITH," "GROSS INEXCUSABLE NEGLIGENCE," DEFINED.— In the case at bar, the Sandiganbayan granted the Demurrer to Evidence on the ground that the prosecution failed to establish the second element of violation of Section 3 (e) of RA 3019. The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." In *Uriarte v. People*, this Court explained that Section 3 (e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad

faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. As aptly concluded by the Sandiganbayan in the assailed resolution, the second element of the crime as charged was not sufficiently established by the prosecution.

3. POLITICAL LAW; DUE PROCESS; WHERE THE OPPORTUNITY TO BE HEARD, EITHER THROUGH VERBAL ARGUMENTS OR PLEADINGS, IS ACCORDED, AND THE PARTY CAN PRESENT ITS SIDE OR DEFEND ITS INTERESTS IN DUE COURSE, THERE IS NO DENIAL OF PROCEDURAL DUE PROCESS.— [[C]ontrary to petitioner's contention, the prosecution was not denied due process. It is to be noted that the prosecution participated in all the proceedings before the court *a quo* and has filed numerous pleadings and oppositions to the motions filed by respondent. In fact, the prosecution has already rested its case and submitted its evidence when the demurrer was filed. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can present its side or defend its interests in due course, there is no denial of procedural due process. What is repugnant to due process is the denial of the opportunity to be heard, which is not present here.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; ELEMENTS; PRESENT.— [D]ouble jeopardy has set in. The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent. The above elements are all attendant in the present case.

5. ID.; CRIMINAL PROCEDURE; TRIAL; DEMURRER TO EVIDENCE; IN CRIMINAL CASES, THE GRANT OF DEMURRER IS TANTAMOUNT TO AN ACQUITTAL AND THE DISMISSAL ORDER MAY NOT BE APPEALED BECAUSE THIS WOULD PLACE THE ACCUSED IN DOUBLE JEOPARDY; DISMISSAL ORDER REVIEWABLE ONLY THROUGH PETITION FOR *CERTIORARI*.— In *People v. Sandiganbayan,* this Court elucidated the general rule that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable, to wit: The demurrer to evidence in criminal cases, such as the one at bar, is "*filed after the prosecution had rested its case*," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a *dismissal of the case on the merits, tantamount to an acquittal of the accused*." Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there. Verily, in criminal cases, the grant of demurrer is tantamount to an acquittal and the dismissal order may not be appealed because this would place the accused in double jeopardy. Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65 of the Rules of Court. For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham, thus, rendering the assailed judgment void. The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice. In the present case, no such circumstances exist to warrant a departure from the general rule and reverse the findings of the Sandiganbayan.

APPEARANCES OF COUNSEL

Joselito M. Dimayacyac for Aristeo Atienza and Rodrigo Manongsong.

Public Attorney's Office for Crispin Egarque.

D E C I S I O N

PERALTA,* ***J.*:**

This is a petition for review on *certiorari* assailing the Resolution[1] dated February 28, 2006 of the Sandiganbayan (Third Division) granting the Demurrer to Evidence filed by respondents Aristeo E. Atienza and Rodrigo D. Manongsong, which effectively dismissed Criminal Case No. 26678 for violation of Section 3 (e) of Republic Act No. 3019.

The factual and procedural antecedents are as follows:

In an Information[2] filed on June 19, 2001, respondents Aristeo E. Atienza (Mayor Atienza), then Municipal Mayor of Puerto Galera, Oriental Mindoro, Engr. Rodrigo D. Manongsong (Engr. Manongsong), then Municipal Engineer of Puerto Galera and Crispin M. Egarque (Egarque), a police officer stationed in Puerto Galera, were charged before the Sandiganbayan violation of Section 3 (e) of Republic Act No. 3019 (RA 3019), or the *Anti-Graft and Corrupt Practices Act* in Criminal Case No. 26678. The Information alleged:

That on or about 04 July 2000, or sometime prior or subsequent thereto, in the Municipality of Puerto Galera, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ARISTEO E. ATIENZA, Municipal Mayor of Puerto Galera, Oriental Mindoro, conspiring and confederating with co-accused RODRIGO MANONGSONG, Municipal Engineer, and CRISPIN EGARQUE, PNP Officer, while in the performance of their official functions, committing the offense in relation to their offices, and taking advantage of their official positions, acting with manifest partiality, evident bad faith, did then and there wilfully, unlawfully and criminally destroy, demolish, and dismantle the riprap/fence of the new HONDURA BEACH

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* Per Special Order No. 1228 dated June 6, 2012.

[1] Penned by Associate Justice Norberto Y. Geraldez, with Associate Justices Godofredo L. Legaspi and Efren N. De la Cruz, concurring; *rollo*, pp. 56-62.

[2] Records, Vol. I, pp. 1-2.

RESORT owned by complainant EDMUNDO A. EVORA located at Hondura, Puerto Galera, Oriental Mindoro, causing undue injury to complainant in the amount of ₱8,000.00

CONTRARY TO LAW.[3]

Duly arraigned, respondents entered their respective pleas of *not guilty* to the crime charged against them.[4] After pre-trial,[5] trial on the merits ensued.

To establish its case, the prosecution presented the testimonies of Mercedita Atienza (Mercedita), Alexander Singson (Alexander), Edmundo Evora (Edmundo), and Acting Barangay Chairman Concepcion Escanillas (Escanillas).

Mercedita testified that she was the caretaker of Hondura Beach Resort, a resort owned by Edmundo in Puerto Galera, Oriental Mindoro. She narrated that on July 3, 2000, Edmundo caused the construction of a fence made of coco lumber and G.I. sheets worth ₱5,000.00 on his resort. On July 4, 2000, she found out that the fence that was just recently built was destroyed. Upon the instruction of Edmundo, she reported the incident to the *barangay* authorities. On July 5, 2000, Edmundo again caused the construction of a second fence on the same property worth ₱3,000.00. However, on the day following, the fence was again destroyed. Mercedita stated that she was informed by some people who were there that a policeman and Engr. Manongsong were the ones who destroyed the fence.[6]

Mercedita further testified that Edmundo instructed her to report the matter to the police. When she inquired at the police station, Egarque admitted that he destroyed the fence upon the order of Mayor Atienza. When she asked Mayor Atienza about the incident, the latter informed her that the fence was not good for Puerto Galera since the place was a tourist destination and

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[3] *Id.*

[4] *Id.* at 290-292.

[5] *Id.* at 385-390.

[6] *Rollo,* p. 57.

that the land was intended for the fishermen association. Mercedita added that Engr. Manongsong admitted that he destroyed the fence upon the order of the mayor for lack of municipal permit and that the land was intended for the fishermen. Mercedita also stated that she reported to acting Barangay Chairman Escanillas that it was Engr. Manongsong and Egarque who destroyed the fence upon the order of the mayor.[7]

Alexander testified that he and a certain Reynaldo Gumba constructed the fence twice on the subject property. On the morning of July 6, 2000, he saw the fence being destroyed by Engr. Manongsong and Egarque. He said that he informed Mercedita about the incident and he accompanied the latter to the police station and the offices of Mayor Atienza and Engr. Manongsong. They eventually reported the incident to acting Barangay Chairman Escanillas.[8]

Private complainant Edmundo corroborated the testimony of Mercedita and further stated that due to the incident, he requested the barangay chairman for a meeting. On July 24, 2000, acting Barangay Chairman Escanillas, the *barangay* secretary, Engr. Manongsong, Mercedita, Alexander, and a certain Aguado attended the meeting at the *barangay* hall. Edmundo stated that when Engr. Manongsong was asked why Edmundo was not notified of the destruction of the fence, Engr. Manongsong replied, "*Sino ka para padalhan ng Abiso?*" Edmundo said that they eventually failed to settle the case amicably.[9]

Acting Barangay Chairman Escanillas testified that Mercedita and Alexander went to her on July 4, 2000 and July 6, 2000 to report that the fence constructed on the property of Edmundo was destroyed by Engr. Manongsong and Egarque upon the order of Mayor Atienza. She added that upon the request of Mercedita, she wrote Engr. Manongsong for a meeting with Edmundo, but the parties failed to settle the dispute on the scheduled meeting.

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[7] *Id.* at 58.

[8] *Id.*

[9] *Id.*

All the exhibits offered by the prosecution were marked in evidence and were admitted on September 21, 2005, which consisted of, among others, machine copies of transfer certificates of title, affidavits, and *barangay* blotters.[10]

Meanwhile, on September 22, 2004, petitioner filed a Motion to Suspend Accused *Pendente Lite*,[11] which was opposed by Mayor Atienza and Engr. Manongsong. On August 4, 2005, the Sandiganbayan granted the motion. Mayor Atienza then filed a Motion for Reconsideration,[12] which petitioner opposed.

Thereafter, on October 11, 2005, Mayor Atienza and Engr. Manongsong filed a Motion for Leave of Court to File Motion to Acquit by Way of Demurrer to Evidence,[13] which petitioner opposed. On December 6, 2005, the court *a quo* issued a Resolution[14] which granted the motion. In the same resolution, the court *a quo* also held in abeyance the resolution of Mayor Atienza's motion for reconsideration of the resolution granting his suspension from office.

On January 9, 2006, Mayor Atienza and Engr. Manongsong filed a Demurrer to Evidence (Motion to Acquit),[15] which was anchored on the credibility of the witnesses for the prosecution. Respondents maintain that the evidence presented were not sufficient to hold them guilty of the offense charged. On January 19, 2006, petitioner filed its Comment/Opposition.[16]

On January 23, 2006, albeit belatedly, Egarque filed a Manifestation[17] that he was adopting the Demurrer to Evidence filed by his co-accused.

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[10] Records, Vol. II, p. 218.

[11] Records, Vol. I, pp. 424-429.

[12] Records, Vol. II, pp. 201-213.

[13] *Id.* at 231-247.

[14] *Id.* at 268.

[15] *Id.* at 272-285.

[16] *Id.* at 292-310.

[17] *Id.* at 311-312.

On February 28, 2006, the Sandiganbayan (Third Division) issued the assailed Resolution which, among other things, granted the Demurrer to Evidence and dismissed the case. The decretal potion of which reads:

> WHEREFORE, for lack of sufficient evidence to prove the guilt of all the accused beyond reasonable doubt, the Demurrer to Evidence is hereby GRANTED. This case is hereby ordered DISMISSED.
>
> The bail bonds posted by all accused is hereby ordered CANCELLED and RETURNED to them, subject to the usual accounting rules and regulations.
>
> The Hold Departure Order issued by this Court against all of the accused in this case are hereby LIFTED and SET ASIDE. Let the Commissioner of the Bureau of Immigration and Deportation be notified accordingly.
>
> Consequently, the Motion for Reconsideration, dated August 31, 2005, filed by accused Atienza regarding his suspension from office *pendente lite*, is hereby rendered moot and academic.
>
> SO ORDERED.[18]

In granting the Demurrer to Evidence, the Sandiganbayan ratiocinated that not all the elements of the crime charged were established by the prosecution, particularly the element of manifest partiality on the part of respondents. The Sandiganbayan held that the evidence adduced did not show that the respondents favored other persons who were similarly situated with the private complainant.

Hence, the petition assigning the following errors:

I.

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED IN DENYING THE PEOPLE DUE PROCESS WHEN IT RESOLVED ISSUES NOT RAISED BY RESPONDENTS IN THEIR DEMURRER TO EVIDENCE, WITHOUT AFFORDING THE PROSECUTION AN OPPORTUNITY TO BE HEARD THEREON.

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[18] *Rollo,* p. 62.

II.

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED IN DECIDING A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW OR EXISTING JURISPRUDENCE WHEN IT CONSIDERED MATTERS OF DEFENSE.[19]

Petitioner contends that the prosecution was not afforded due process when the Sandiganbayan granted the Demurrer to Evidence based on the ground that the prosecution failed to establish bad faith on the part of the respondents. Petitioner argues that the Sandiganbayan should have resolved the Demurrer to Evidence based on the argument of the respondent questioning the credibility of petitioner's witnesses and the admissibility of their testimonies in evidence, not upon an issue which petitioner was not given an opportunity to be heard, thus, effectively denying the prosecution due process of law.

Petitioner maintains that contrary to the conclusion of the court *a quo* there was evident bad faith on the part of the respondents. Petitioner insists that the act itself of demolishing a fence erected upon private property without giving notice of the intended demolition, and without giving the owner of the same the opportunity to be heard or to rectify matters, is evident bad faith.

Petitioner also contends that the element of manifest partiality was sufficiently established when the fence was destroyed on the rationale that they do not have a permit to erect the fence; the place was intended for the benefit of fishermen; and it was a tourist spot. Moreover, the demolition was allegedly done in the guise of official business when the fence was demolished on the basis of the above-stated purpose.

Finally, petitioner argues that the constitutional proscription on double jeopardy does not apply in the present case.

On their part, respondents argue that the Sandiganbayan was correct in granting the Demurrer to Evidence and dismissing the case. Respondents allege that the prosecution was not denied

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[19] *Id.* at 37-38.

due process of law. Respondents maintain that the prosecution was given every opportunity to be heard. In fact, the assailed resolution was issued after the prosecution has rested its case. Moreover, respondents insist their right against double jeopardy must be upheld.

The petition is bereft of merit.

Respondents are charged with violation of Section 3 (e) of RA 3019, which provides:

> SEC. 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

This crime has the following essential elements:

1. The accused must be a public officer discharging administrative, judicial or official functions;

2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and

3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[20]

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[20] *Uriarte v. People*, G.R. No. 169251, December 20, 2006, 511 SCRA 471, 486, citing *Santos v. People*, G.R. No. 161877, March 23, 2006, 485 SCRA 185, 194, *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377, 386, and *Jacinto v. Sandiganbayan*, G.R. No. 84571, October 2, 1989, 178 SCRA 254, 259.

In the case at bar, the Sandiganbayan granted the Demurrer to Evidence on the ground that the prosecution failed to establish the second element of violation of Section 3 (e) of RA 3019.

The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence."[21] In *Uriarte v. People*,[22] this Court explained that Section 3 (e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[23]

As aptly concluded by the Sandiganbayan in the assailed resolution, the second element of the crime as charged was not sufficiently established by the prosecution, to wit:

I.

The presence of the **first element** of this offense was not disputed. The prosecution established that accused-movants were public officers, being then the Mayor, Municipal Engineer, and member of the PNP, at the time alleged in the information.

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[21] *Gallego v. Sandiganbayan*, 201 Phil. 379, 383 (1982).

[22] *Supra* note 20.

[23] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 290.

II.

Anent the **second element**, did the act of destroying the subject fences on July 4, 2000 and on July 6, 2000 allegedly by accused Manongsong and Egarque, without giving any notice to the private complainant, amount to *manifest partiality* and/or *evident bad faith* as indicated in the information?

Manifest partiality and evident bad faith are modes that are separate and distinct from each other so that the existence of any of these two modes would be sufficient to satisfy the second element. x x x

x x x x x x x x x

Manifest partiality was not present in this case. The evidence adduced did not show that accused-movants favored other persons who were similarly situated with the private complainant.

Eyewitness Alexander Singson categorically pointed accused Manongsong and Egarque as the persons who destroyed/removed the second fence. Private complainant lamented that he was not even given notice of their intent to destroy the fence. However, the same could not be considered evident bad faith as the prosecution evidence failed to show that the destruction was for a dishonest purpose, ill will or self interest. In fact, the following testimonial evidence presented by the prosecution itself showed that:

1. Mercedita Atienza revealed that when she confronted Manongsong why he destroyed the subject fences, the latter replied that ***"You don't have permit and the land is for the fishermen"***;
2. Alexander Singson corroborated that Manongsong told them that ***"they destroyed the fence because it is a tourist spot and it is also a port for the fishermen"***; and
3. Mercedita Atienza also testified that when she asked accused Atienza about the incident, the latter told her ***"Masama and pinabakod mo. Alam mo namang tourist spot ang Puerto Galera at para sa fishermen's association yan."***

III.

Considering that the second element was not present, the Court deemed it proper not to discuss the **third element**.[24]

Moreover, contrary to petitioner's contention, the prosecution was not denied due process. It is to be noted that the prosecution participated in all the proceedings before the court *a quo* and has filed numerous pleadings and oppositions to the motions filed by respondent. In fact, the prosecution has already rested its case and submitted its evidence when the demurrer was filed. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can present its side or defend its interests in due course, there is no denial of procedural due process.[25] What is repugnant to due process is the denial of the opportunity to be heard,[26] which is not present here.

Clearly, double jeopardy has set in. The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent.[27]

The above elements are all attendant in the present case: (1) the Information filed before the Sandiganbayan in Criminal Case No. 26678 against respondents were sufficient in form and substance to sustain a conviction; (2) the Sandiganbayan had jurisdiction over Criminal Case No. 26678; (3) respondents were arraigned and entered their respective pleas of not guilty; and (4) the Sandiganbayan dismissed Criminal Case No. 26678 on a Demurrer to Evidence on the ground that not all the elements

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[24] *Rollo*, pp. 60-61. (Emphasis theirs.)

[25] *Trans Middle East (Phils.) Equities, Inc. v. Sandiganbayan*, G.R. No. 129434, August 18, 2006, 499 SCRA 308, 317-318.

[26] *Gaoiran v. Alcala*, G.R. No. 150178, November 26, 2004, 444 SCRA 428, 444.

[27] *People v. Tan*, G.R. No. 167526, July 26, 2010, 625 SCRA 388, 395-396.

of the offense as charge exist in the case at bar, which amounts to an acquittal from which no appeal can be had.

In *People v. Sandiganbayan*,[28] this Court elucidated the general rule that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable, to wit:

> The demurrer to evidence in criminal cases, such as the one at bar, is "*filed after the prosecution had rested its case*," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a *dismissal of the case on the merits, tantamount to an acquittal of the accused*." Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there.[29]

Verily, in criminal cases, the grant of demurrer[30] is tantamount to an acquittal and the dismissal order may not be appealed because this would place the accused in double jeopardy. Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65 of the Rules of Court. For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham, thus, rendering the assailed judgment void. The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[31] In the present

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[28] G.R. Nos. 137707-11, December 17, 2004, 447 SCRA 291.

[29] *Id.* at 307-308. (Emphasis theirs.)

[30] Section 23, Rule 119 of the Rules of Court provides:

> Section 23. *Demurrer to evidence*. – After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court. x x x

[31] *People v. Sandiganbayan (Third Division)*, G.R. No. 174504, March 21, 2011, 645 SCRA 726, 731-732.

case, no such circumstances exist to warrant a departure from the general rule and reverse the findings of the Sandiganbayan.

WHEREFORE, premises considered, the petition is **DENIED.** The Resolution dated February 28, 2006 of the Sandiganbayan, in Criminal Case No. 26678, is **AFFIRMED.**

SO ORDERED.

Bersamin,[**] *Abad, Villarama, Jr.,*[***] and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 175430. June 18, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **KERRY LAO ONG,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CITIZENSHIP; NATURALIZATION; NATURALIZATION LAWS SHOULD BE RIGIDLY ENFORCED AND STRICTLY CONSTRUED IN FAVOR OF THE GOVERNMENT AND AGAINST THE APPLICANT; BURDEN OF PROVING FULL AND COMPLETE COMPLIANCE WITH THE REQUIREMENTS OF LAW RESTS WITH THE APPLICANT.— The courts must always be mindful that naturalization proceedings are imbued with the highest public interest. Naturalization laws should be rigidly enforced and strictly construed in favor of the

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[**] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, Jr. per Special Order No. 1241 dated June 14, 2012.

[***] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.

government and against the applicant. The burden of proof rests upon the applicant to show full and complete compliance with the requirements of law.

2. ID.; ID.; ID.; ID.; QUALIFICATIONS OF APPLICANT; PHRASE "SOME KNOWN LUCRATIVE TRADE, PROFESSION, OR LAWFUL OCCUPATION," CONSTRUED.— In the case at bar, the controversy revolves around respondent Ong's compliance with the qualification found in Section 2, fourth paragraph of the Revised Naturalization Law, which provides: SECTION 2. *Qualifications.* – Subject to section four of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization: x x x *Fourth.* He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or ***must have some known lucrative trade, profession, or lawful occupation***; x x x Based on jurisprudence, the qualification of "*some known lucrative trade, profession, or lawful occupation"* means "not only that the person having the employment gets enough for his ordinary necessities in life. It must be shown that the employment gives one an income such that *there is an appreciable margin of his income over his expenses* as to be able to provide for an adequate support in the event of unemployment, sickness, or disability to work and thus avoid one's becoming the object of charity or a public charge." His income should permit "him and the members of his family *to live with reasonable comfort,* in accordance with the prevailing standard of living, and consistently with the demands of human dignity, at this stage of our civilization."

3. ID.; ID.; ID.; ID.; ID.; ID.; INCOME OF THE APPLICANT'S SPOUSE NOT INCLUDED IN THE ASSESSMENT; APPLICANT'S QUALIFICATIONS MUST BE DETERMINED AS OF THE TIME OF THE FILING OF HIS PETITION.— [I]t has been held that in determining the existence of a lucrative income, the courts should consider only the applicant's income; his or her spouse's income should not be included in the assessment. The spouse's additional income is immaterial "for under the law the petitioner should be the one to possess 'some known lucrative trade, profession or lawful occupation' to qualify him to become a Filipino citizen." Lastly, the Court has consistently held that the

applicant's qualifications must be determined as of the time of the filing of his petition.

4. ID.; ID.; ID.; ID.; ID.; ID.; BARE, GENERAL ASSERTIONS CANNOT DISCHARGE THE BURDEN OF PROOF THAT IS REQUIRED OF AN APPLICANT FOR NATURALIZATION.— The dearth of documentary evidence compounds the inadequacy of the testimonial evidence. The applicant provided no documentary evidence, like business permits, registration, official receipts, or other business records to demonstrate his proprietorship or participation in a business. Instead, Ong relied on his general assertions to prove his possession of "some *known* lucrative trade, profession or lawful occupation." Bare, general assertions cannot discharge the burden of proof that is required of an applicant for naturalization.

5. ID.; ID.; ID.; ID.; A DECISION GRANTING CITIZENSHIP WILL NOT CONSTITUTE *RES JUDICATA* TO ANY MATTER OR REASON SUPPORTING A SUBSEQUENT JUDGMENT CANCELLING THE CERTIFICATION OF NATURALIZATION ALREADY GRANTED, ON THE GROUND THAT IT HAD BEEN ILLEGALLY OR FRAUDULENTLY PROCURED.— A review of the decisions involving petitions for naturalization shows that the Court is not precluded from reviewing the factual existence of the applicant's qualifications. In fact, jurisprudence holds that the entire records of the naturalization case are open for consideration in an appeal to this Court. Indeed, "[a] naturalization proceeding is so infused with public interest that it has been differently categorized and given special treatment. x x x [U]nlike in ordinary judicial contest, the granting of a petition for naturalization does not preclude the reopening of that case and giving the government another opportunity to present new evidence. A decision or order granting citizenship will not even constitute *res judicata* to any matter or reason supporting a subsequent judgment cancelling the certification of naturalization already granted, on the ground that it had been illegally or fraudulently procured. For the same reason, issues even if not raised in the lower court may be entertained on appeal. As the matters brought to the attention of this Court x x x involve facts contained in the disputed decision of the lower court and admitted by the parties in their pleadings, the present proceeding may be considered

adequate for the purpose of determining the correctness or incorrectness of said decision, in the light of the law and extant jurisprudence." In the case at bar, there is even no need to present new evidence. A careful review of the extant records suffices to hold that respondent Ong has not proven his possession of a "known lucrative trade, profession or lawful occupation" to qualify for naturalization

6. REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE ENTERTAINED THEREIN EXCEPT WHEN THE TRIAL COURT AND APPELLATE COURT'S DECISION CONTAINS CONCLUSIONS THAT ARE BEREFT OF EVIDENTIARY SUPPORT OR FACTUAL BASIS.— The Court finds no merit in respondent's submission that a Rule 45 petition precludes a review of the factual findings of the courts below. In the first place, the trial court and appellate court's decisions contain conclusions that are *bereft of evidentiary support or factual basis*, which is a known exception to the general rule that only questions of law may be entertained in a Rule 45 petition.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Malilong Hupp & Cabatingan for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Naturalization laws are strictly construed in the government's favor and against the applicant.[1] The applicant carries the burden of proving his full compliance with the requirements of law.[2]

Before the Court is the Republic's appeal of the appellate court's Decision[3] dated May 13, 2006 in CA-G.R. CV No. 74794,

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[1] *Republic v. Hong*, 520 Phil. 276, 285 (2006); *Ong Chia v. Republic*, 385 Phil. 487, 498 (2000).

[2] *Republic v. Hong*, 520 Phil. 276, 285 (2006); *Tiu v. Republic*, 158 Phil. 1137, 1138 (1974); *Que Tiac v. Republic*, 150 Phil. 68, 86 (1972).

[3] *Rollo*, pp. 28-34.

which affirmed the trial court's grant of citizenship to respondent Kerry Lao Ong (Ong). The Court of Appeals (CA) held:

> With all the foregoing, We find no cogent reason to reverse the decision of the court *a quo*.
>
> WHEREFORE, the decision of the Regional Trial Court of Cebu City, 7th Judicial Region, Branch 9 in its Decision dated November 23, 2001, is AFFIRMED *in toto* and the instant appeal is DISMISSED.
>
> SO ORDERED.[4]

Factual Antecedents

On November 26, 1996, respondent Ong, then 38 years old,[5] filed a Petition for Naturalization.[6] The case was docketed as Nat. Case No. 930 and assigned to Branch 9 of the Regional Trial Court of Cebu City. As decreed by Commonwealth Act No. 473, as amended by Republic Act No. 530, known as the Revised Naturalization Law,[7] the petition was published in the Official Gazette[8] and a newspaper of general circulation,[9] and posted in a public place for three consecutive weeks,[10] six months

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[4] CA Decision, p. 7; *id.* at 33; penned by Associate Justice Enrico A. Lanzanas and concurred in by Associate Justices Pampio A. Abarintos and Apolinario D. Bruselas, Jr.

[5] SECTION 2. *Qualifications.* – Subject to section four of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization:

First. He must be not less than twenty-one years of age on the day of the hearing of the petition;

x x x (COMMONWEALTH ACT NO. 473, as amended)

[6] Records, pp. 1-9.

[7] ENTITLED AN ACT TO PROVIDE FOR THE ACQUISITION OF PHILIPPINE CITIZENSHIP BY NATURALIZATION, AND TO REPEAL ACTS NUMBERED TWENTY-NINE HUNDRED AND TWENTY-SEVEN AND THIRTY-FOUR HUNDRED AND FORTY-EIGHT, as amended.

[8] Records, p. 18-A (Exhibit "H"), pp. 65-68, 262-264, 461-464.

[9] *Id.* at 19 (Exhibit "I"), pp. 20-22.

[10] *Id.* at 16 (Exhibit "F").

before the initial hearing.[11] The Office of the Solicitor General entered its appearance and authorized[12] the city prosecutor to appear on its behalf.[13] Accordingly, Fiscals Ester Veloso and Perla Centino participated in the proceedings below.

Respondent Ong was born at the Cebu General Hospital in Cebu City to Chinese citizens Siao Hwa Uy Ong and Flora Ong on March 4, 1958.[14] He is registered as a resident alien and possesses an alien certificate of registration[15] and a native-born certificate of residence[16] from the Bureau of Immigration. He has been continuously and permanently residing[17] in the

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[11] Section 9. *Notification and Appearance.* – Immediately upon the filing of a petition, it shall be the duty of the clerk of the court to publish the same at petitioner's expense, once a week for three consecutive weeks, in the Official Gazette, and in one of the newspapers of general circulation in the province where the petitioner resides, and to have copies of said petition and a general notice of the hearing posted in a public and conspicuous place in his office or in the building where said office is located, setting forth in such notice the name, birthplace and residence of the petitioner, the date and place of his arrival in the Philippines, the names of the witnesses whom the petitioner proposes to introduce in support of his petition, and the date of the hearing of the petition, which hearing shall not be held within ninety days from the date of the last publication of the notice. x x x (COMMONWEALTH ACT NO. 473, as amended)

[12] Records, pp. 25-26.

[13] Section 10. *Hearing of the Petition.* – x x x The hearing shall be public, and the Solicitor-General, either himself or through his delegate or the provincial fiscal concerned, shall appear on behalf of the Commonwealth of the Philippines at all the proceedings and at the hearing. x x x (COMMONWEALTH ACT NO. 473, as amended).

[14] Respondent's Certificate of Live Birth (Records, p. 530).

[15] Records, p. 531 (Exhibit "N").

[16] *Id.* at 532 (Exhibit "N-1").

[17] Section 2. *Qualifications.* – x x x

x x x x x x x x x

Second. He must have resided in the Philippines for a continuous period of not less than ten years;

x x x (COMMONWEALTH ACT NO. 473, as amended)

Philippines from birth up to the present.[18] Ong can speak[19] and write in Tagalog, English, Cebuano, and Amoy.[20] He took his elementary[21] and high school[22] studies at the Sacred Heart School for Boys in Cebu City, where social studies, Pilipino, religion, and the Philippine Constitution are taught. He then obtained a degree in Bachelor of Science in Management from the Ateneo De Manila University on March 18, 1978.[23]

On February 1, 1981, he married Griselda S. Yap, also a Chinese citizen.[24] They have four children,[25] namely, Kerri Gail (born on April 15, 1983),[26] Kimberley Grace (born on May 15, 1984),[27] Kyle Gervin (born on November 4, 1986),[28] and Kevin Griffith (born on August 21, 1993),[29] who were all born and

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[18] Kerry Lao Ong's direct examination, TSN dated November 26, 1998, pp. 5-6.

[19] Section 2. *Qualifications.* – x x x

x x x x x x x x x

Fifth. He must be able to speak and write English or Spanish and any of the principal Philippine languages;

x x x (COMMONWEALTH ACT NO. 473, as amended)

[20] Kerry Lao Ong's direct examination, TSN dated November 26, 1998, p. 12.

[21] Records, p. 526 (Exhibit "J").

[22] *Id.* at 527 (Exhibit "K").

[23] *Id.* at 528-529 (Exhibits "L" and "L-1").

[24] *Id.* at 534 (Exhibit "O").

[25] Section 7. *Petition for Citizenship.* – Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in triplicate, accompanied by two photographs of the petitioner, setting forth x x x whether single or married and if the father of children, the name, age, birthplace and residence of the wife and of each of the children; x x x (COMMONWEALTH ACT NO. 473, as amended)

[26] Records, p. 536-A (Exhibit "Q").

[27] *Id.* at 536 (Exhibit "R").

[28] *Id.* at 537 (Exhibit "S").

[29] *Id.* at 538 (Exhibit "T").

raised in the Philippines. The children of school age were enrolled[30] at the Sacred Heart School for Boys[31] and Sacred Heart School for Girls.[32] At the time of the filing of the petition, Ong, his wife, and children were living at No. 55 Eagle Street, Sto. Niño Village, Banilad, Cebu City.

Ong has lived at the following addresses:[33]

1. Manalili Street, Cebu City (when Ong was in Grade 2)[34]
2. Crystal Compound Guadalupe, Cebu City (until 1970)[35]
3. No. 671 A.S. Fortuna Street, Cebu City (until 1992)[36]
4. No. 55 Eagle Street, Sto. Niño Village, Banilad, Cebu City (until 1998);[37] and

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[30] Section 2. *Qualifications.* – x x x

x x x x x x x x x

Sixth. He must have enrolled his minor children of school age, in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen. (COMMONWEALTH ACT NO. 473, as amended)

[31] Records, p. 559 (Exhibit "FF").

[32] *Id.* at 560 (Exhibit "GG").

[33] Section 7. *Petition for Citizenship*. – Any person desiring to acquire Philippine citizenship shall file with the competent court, a petition in triplicate, accompanied by two photographs of the petitioner, setting forth x x x his present and former places of residence x x x (COMMONWEALTH ACT NO. 473, as amended)

[34] Kerry Lao Ong's direct examination, TSN dated November 26, 1998, p. 5.

[35] *Id*.

[36] *Id*.

[37] *Id.* at 6.

5. No. 50 Roselle Street, North Town Homes, Nasipit, Talamban, Cebu City (present).[38]

Ong alleged in his petition that he has been a "businessman/ business manager" since 1989, earning an average annual income of ₱150,000.00.[39] When he testified, however, he said that he has been a businessman since he graduated from college in *1978*.[40] Moreover, Ong did not specify or describe the nature of his business. [41]

As proof of his income, Ong presented four tax returns for the years 1994 to 1997.[42] Based on these returns, Ong's gross annual income was ₱60,000.00 for 1994; ₱118,000.00 for 1995; ₱118,000.00 for 1996; and ₱128,000.00 for 1997.

Respondent further testified that he socializes[43] with Filipinos; celebrates the Sinulog, fiestas, birthdays, and Christmas.[44] He is a member of the Alert/ React VII Communications Group and the Masonic organization.[45]

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[38] *Id.* at 2.

[39] Records, p. 3.

[40] *Id.* at 528-529 (Exhibits "L" and "L-1").

[41] Kerry Lao Ong's direct testimony, TSN dated November 26, 1998, p. 11.

[42] Records, pp. 539-545 (Exhibits "U-X").

[43] Section 4. *Who are disqualified.* The following can not be naturalized as Philippine citizens:

x x x x x x x x x

(f) Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;

x x x (COMMONWEALTH ACT NO. 473, as amended)

[44] Kerry Lao Ong's direct examination, TSN dated November 26, 1998, p. 15.

[45] *Id.* at 16.

Respondent Ong presented a health certificate to prove[46] that he is of sound physical and mental health.[47] As shown by the clearances from the National Bureau of Investigation,[48] the Philippine National Police,[49] the trial courts,[50] and the *barangay*,[51] he has no criminal record or pending criminal charges.[52]

Respondent presented Rudy Carvajal (Carvajal) and Bernard Sepulveda (Sepulveda) as his character witnesses. At that time, Sepulveda was the vice-mayor of Borbon, Cebu.[53] He has known Ong since 1970 because Ong is the close friend of Sepulveda's brother.[54] He testified that Ong is very helpful in the community and adopts the Filipino culture.[55] Meanwhile, Carvajal testified that he has known Ong since the 1970s because they were high school classmates.[56] He testified that Ong is morally

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[46] Records, p. 556 (Exhibit CC).

[47] Section 4. *Who are disqualified.* The following can not be naturalized as Philippine citizens:

x x x x x x x x x

(e) Persons suffering from mental alienation or incurable contagious diseases;

x x x (COMMONWEALTH ACT NO. 473, as amended)

[48] Records, p. 548 (Exhibit "Y").

[49] *Id.* at 549 (Exhibit "Z").

[50] *Id.* at 550-551 (Exhibits "AA" and "BB").

[51] *Id.* at 557 (Exhibit "DD").

[52] Section 4. *Who are disqualified.* The following can not be naturalized as Philippine citizens:

x x x x x x x x x

(d) Persons convicted of crimes involving moral turpitude;

x x x (COMMONWEALTH ACT NO. 473, as amended)

[53] Bernard Sepulveda's direct examination, TSN dated February 11, 1999, p. 7.

[54] *Id.*

[55] *Id.* at 9.

[56] Rudy Carvajal's direct examination, TSN dated February 11, 1999, p. 3.

irreproachable and possesses all the qualifications to be a good citizen of the Philippines.[57] Carvajal is a businessman engaged in leasing office spaces.[58]

On November 23, 2001, the trial court granted Ong's petition. Among other things, the trial court held that:

x x x x x x x x x

By the testimonial and documentary evidence adduced by the [respondent], the following facts had been established.[59]

x x x x x x x x x

x x x [Respondent] is a businessman/business manager engaged in lawful trade and business since 1989 from which he derives an average annual income of more than One Hundred Fifty Thousand Pesos (Exhibit U, V, W, and X with sub-markings); x x x[60]

The dispositive portion of the trial court's Decision reads:

From the evidence presented by [respondent], this Court believes and so holds that [respondent] possesses all the qualifications and none of the disqualifications provided for by law to become a citizen of the Philippines.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. Accordingly, [respondent] **KERRY LAO ONG** is hereby admitted as citizen of the Republic of the Philippines.

SO ORDERED.[61]

Republic's Appeal

On January 31, 2003, the Republic, through the Solicitor General, appealed to the CA. The Republic faulted the trial court for granting Ong's petition despite his failure to prove

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

[58] *Id.* at 4.

[59] RTC Decision, p. 2; *rollo*, p. 52; penned by Judge Benigno G. Gaviola.

[60] *Id.* at 3; *id.* at 53.

[61] *Id.* at 4-5; *id.* at 54-55.

that he possesses a known lucrative trade, profession or lawful occupation as required under Section 2, fourth paragraph of the Revised Naturalization Law.[62]

The Republic posited that, contrary to the trial court's finding, respondent Ong did not prove his allegation that he is a businessman/business manager earning an average income of ₱150,000.00 since 1989. His income tax returns belie the value of his income. Moreover, he failed to present evidence on the nature of his profession or trade, which is the source of his income. Considering that he has four minor children (all attending exclusive private schools), he has declared no other property and/or bank deposits, and he has not declared owning a family home, his alleged income cannot be considered lucrative. Under the circumstances, the Republic maintained that respondent Ong is not qualified as he does not possess a definite and existing business or trade.[63]

Respondent Ong conceded that the Supreme Court has adopted a higher standard of income for applicants for naturalization.[64] He likewise conceded that the legal definition of lucrative income is the existence of an appreciable margin of his income over his expenses.[65] It is his position that his income, together with that of his wife, created an appreciable margin over their expenses.[66] Moreover, the steady increase in his income, as

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[62] SECTION 2. *Qualifications.* – Subject to section four of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization:

x x x x x x x x x

Fourth. He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have ***some known lucrative trade, profession, or lawful occupation;***

x x x (COMMONWEALTH ACT NO. 473, as amended; emphasis supplied.)

[63] Appellant's Brief, pp. 11-13; CA *rollo*, pp. 24-26.

[64] Appellee's Brief, p. 5; *id.* at 52.

[65] *Id.* at 7; *id.* at 54.

[66] *Id.* at 6-7; *id.* at 53-54.

evidenced in his tax returns, proved that he is gainfully employed.[67]

The appellate court dismissed the Republic's appeal. It explained:

> In the case at bar, the [respondent] chose to present [pieces of evidence] which relates [sic] to his lucrative trade, profession or lawful occupation. Judging from the present standard of living and the personal circumstances of the [respondent] using the present time as the index for the income stated by the [respondent], it may appear that the [respondent] has no lucrative employment. However, We must be mindful that the petition for naturalization was filed in 1996, which is already ten years ago. It is of judicial notice that the value of the peso has taken a considerable plunge in value since that time up to the present. Nonetheless, if We consider the income earned at that time, the ages of the children of the [respondent], the employment of his wife, We can say that there is an appreciable margin of his income over his expenses as to be able to provide for an adequate support.[68]

The appellate court denied the Republic's motion for reconsideration[69] in its Resolution dated November 7, 2006.[70]

Issue

Whether respondent Ong has proved that he has some known lucrative trade, profession or lawful occupation in accordance with Section 2, fourth paragraph of the Revised Naturalization Law.

Petitioner's Arguments

Petitioner assigns as error the appellate court's ruling that "there is an appreciable margin of (respondent's) income over

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[67] *Id.* at 6; *id.* at 53.

[68] CA Decision, p. 7; *rollo*, p. 33.

[69] CA *rollo,* pp. 74-82.

[70] *Rollo*, p. 35; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Agustin S. Dizon and Priscilla Baltazar-Padilla.

his expenses as to be able to provide for an adequate support."[71] The Republic contends that the CA's conclusion is not supported by the evidence on record and by the prevailing law.[72]

The only pieces of evidence presented by Ong to prove that he qualifies under Section 2, fourth paragraph of the Revised Naturalization Law, are his tax returns for the years 1994 to 1997, which show that Ong earns from ₱60,000.00 to ₱128,000.00 annually. This declared income is far from the legal requirement of lucrative income. It is not sufficient to provide for the needs of a family of six, with four children of school age.[73]

Moreover, none of these tax returns describes the source of Ong's income, much less can they describe the lawful nature thereof.[74] The Republic also noted that Ong did not even attempt to describe what business he is engaged in. Thus, the trial and appellate courts' shared conclusion that Ong as a businessman is grounded entirely on speculation, surmises or conjectures.[75]

The Republic thus prays for the reversal of the appellate court's Decision and the denial of Ong's petition for naturalization.[76]

Respondent's Arguments

Respondent asks for the denial of the petition as it seeks a review of factual findings, which review is improper in a Rule 45 petition.[77] He further submits that his tax returns support the conclusion that he is engaged in lucrative trade.[78]

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[71] CA Decision, p. 7; *rollo*, p. 33.

[72] Petitioner's Memorandum, p. 11; *id.* at 146.

[73] *Id.* at 15-17; *id.* at 152-154.

[74] *Id.* at 12-13; *id.* at 149-150.

[75] *Id.* at 11-12; *id.* at 148-149.

[76] *Id.* at 18-19; *id.* at 155-156.

[77] Respondent's Memorandum, pp. 9-12; *id.* at 127-130.

[78] *Id.* at 13-16; *id.* at 131-134.

Our Ruling

The courts must always be mindful that naturalization proceedings are imbued with the highest public interest.[79] Naturalization laws should be rigidly enforced and strictly construed in favor of the government and against the applicant.[80] The burden of proof rests upon the applicant to show full and complete compliance with the requirements of law.[81]

In the case at bar, the controversy revolves around respondent Ong's compliance with the qualification found in Section 2, fourth paragraph of the Revised Naturalization Law, which provides:

SECTION 2. *Qualifications.* – Subject to section four of this Act, any person having the following qualifications may become a citizen of the Philippines by naturalization:

x x x x x x x x x

Fourth. He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or ***must have some known lucrative trade, profession, or lawful occupation***;

x x x x x x x x x[82]

Based on jurisprudence, the qualification of *"some known lucrative trade, profession, or lawful occupation"* means "not only that the person having the employment gets enough for his ordinary necessities in life. It must be shown that the employment gives one an income such that *there is an appreciable margin of his income over his expenses* as to be able to provide for an adequate support in the event of unemployment, sickness, or disability to work and thus avoid one's becoming the object of

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[79] *Republic v. Hong, supra* note 1.

[80] *Ong Chia v. Republic, supra* note 1; *Republic v. Hong, supra* note 1.

[81] *Republic v. Hong, supra* note 1; *Que Tiac v. Republic, supra* note 2; *Tiu v. Republic, supra* note 2.

[82] COMMONWEALTH ACT NO. 473, as amended.

charity or a public charge."[83] His income should permit "him and the members of his family *to live with reasonable comfort*, in accordance with the prevailing standard of living, and consistently with the demands of human dignity, at this stage of our civilization."[84]

Moreover, it has been held that in determining the existence of a lucrative income, the courts should consider only the applicant's income; his or her spouse's income should not be included in the assessment. The spouse's additional income is immaterial "for under the law the petitioner should be the one to possess 'some known lucrative trade, profession or lawful occupation' to qualify him to become a Filipino citizen."[85] Lastly, the Court has consistently held that the applicant's qualifications must be determined as of the time of the filing of his petition.[86]

Going over the decisions of the courts below, the Court finds that the foregoing guidelines have not been observed. To recall, respondent Ong and his witnesses testified that Ong is a businessman but none of them identified Ong's business or described its nature. The Court finds it suspect that Ong did not even testify as to the nature of his business, whereas his witness Carvajal did with respect to his own (leasing of office space). A comparison of their respective testimonies is reproduced below:

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[83] *In the Matter of the Petition of Ban Uan,* 154 Phil. 552, 554 (1974); *In the Matter of the Petition of Tiong v. Republic,* 157 Phil. 107, 108-109 (1974); *Tan v. Republic,* 121 Phil. 643, 647 (1965) (Emphasis supplied.).

[84] *Chua Kian Lai v. Republic*, 158 Phil. 44, 48 (1974); *In the Matter of the Petition of Tiong v. Republic, supra* at 109; *In the Matter of the Petition of Ban Uan, supra* at 555; *Chiao v. Republic,* 154 Phil. 8, 13 (1974); *Watt v. Republic*, 150-B Phil. 610, 632 (1972) (Emphasis supplied.)

[85] *Li Tong Pek v. Republic,* 122 Phil. 828, 832 (1965). See also *Uy v. Republic*, 120 Phil. 973, 976 (1964).

[86] *Chiu Bok v. Republic*, 245 Phil. 144, 146 (1988); *Teh San v. Republic*, 132 Phil. 221, 222 (1968); *Lim Uy v. Republic,* 121 Phil. 1181, 1190 (1965); *Ong Tai v. Republic,* 120 Phil. 1345, 1348-1349 (1964).

Carvajal's testimony

Q: You said earlier that you are a businessman?
A: Yes, Sir.

Q: How long have you been a businessman?
A: Since 1980.

Q: And what is the business you are engaged in?
A: I am into leasing of office spaces.[87]

Kerry Lao Ong's testimony

Q: What is your present occupation, Mr. Ong?
A: Businessman.

Q: Since when have you engaged in that occupation?
A: After graduation from college.[88]

The dearth of documentary evidence compounds the inadequacy of the testimonial evidence. The applicant provided no documentary evidence, like business permits, registration, official receipts, or other business records to demonstrate his proprietorship or participation in a business. Instead, Ong relied on his general assertions to prove his possession of "some *known* lucrative trade, profession or lawful occupation." Bare, general assertions cannot discharge the burden of proof that is required of an applicant for naturalization.

The paucity of evidence is unmistakable upon a reading of the trial court's decision. The trial court held that respondent Ong "is a businessman engaged in lawful trade and business since 1989"[89] but did not cite the evidence, which supports such finding. After poring over the records, the Court finds that the reason for the lack of citation is the absence of evidence to support such conclusion. The trial court's conclusion that Ong

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[87] Rudy Carvajal's direct testimony, TSN dated February 11, 1999, p. 4.

[88] Kerry Lao Ong's direct testimony, TSN dated November 26, 1998, p. 11.

[89] RTC Decision, p. 3; *rollo*, p. 53.

has been a businessman since 1989 is only an assertion found in Ong's petition for naturalization.[90] But, on the witness stand, Ong did *not* affirm this assertion. Instead, he testified that he had been a businessman since he graduated from college, which was in 1978.[91]

Further, the trial court, citing Exhibits U, V, W, and X (which are Ong's tax returns), mistakenly found that Ong "derives an average annual income of more than One Hundred Fifty Thousand Pesos."[92] This conclusion is not supported by the evidence. The cited tax returns show that Ong's gross annual income for the years 1994 to 1997 were ₱60,000.00, ₱118,000.00, ₱118,000.00, and ₱128,000.00, respectively. The average annual income from these tax returns is ₱106,000.00 only, not ₱150,000.00 as the trial court held. It appears that the trial court again derived its conclusion from an assertion in Ong's petition,[93] but not from the evidence.

As for the CA, it no longer ruled on the question whether Ong has a *known* business or trade. Instead, it ruled on the issue whether Ong's income, as evidenced by his tax returns, can be considered lucrative in 1996. In determining this issue, the CA considered the ages of Ong's children, the income that he earned in 1996, and the fact that Ong's wife was also employed at that time. It then concluded that there is an appreciable margin of Ong's income over his expenses.[94]

The Court finds the appellate court's decision erroneous. *First*, it should not have included the spouse's income in its assessment of Ong's lucrative income.[95] *Second*, it failed to consider the

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[90] Records, p. 3.

[91] Kerry Lao Ong's direct testimony, TSN dated November 26, 1998, p. 11.

[92] Records, p. 3; *rollo*, p. 53.

[93] *Id*.

[94] CA Decision, p. 7; *rollo*, p. 33.

[95] *Li Tong Pek v. Republic*, *supra* note 85. See also *Uy v. Republic*, *supra* note 85.

following circumstances which have a bearing on Ong's expenses *vis-à-vis* his income: (a) that Ong does not own real property; (b) that his proven average gross annual income around the time of his application, which was only ₱106,000.00, had to provide for the education of his four minor children; and (c) that Ong's children were all studying in exclusive private schools in Cebu City. *Third,* the CA did not explain how it arrived at the conclusion that Ong's income had an appreciable margin over his known expenses.

Ong's gross income might have been sufficient to meet his family's basic needs, but there is simply no sufficient proof that it was enough to create an appreciable margin of income over expenses. Without an appreciable margin of his income over his family's expenses, his income cannot be expected to provide him and his family "with adequate support in the event of unemployment, sickness, or disability to work."[96]

Clearly, therefore, respondent Ong failed to prove that he possesses the qualification of a known lucrative trade provided in Section 2, fourth paragraph, of the Revised Naturalization Law.[97]

The Court finds no merit in respondent's submission that a Rule 45 petition precludes a review of the factual findings of the courts below.[98] In the first place, the trial court and appellate court's decisions contain conclusions that are *bereft of evidentiary*

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[96] *In the Matter of the Petition of Tiong v. Republic, supra* note 83; *In the Matter of the Petition of Ban Uan, supra* note 83; *Tan v. Republic, supra* note 83 (Emphasis supplied.).

[97] *Chiu Bok v. Republic, supra* note 86 at 146-147 (1988); *Chua Kian Lai v. Republic, supra* note 84 at 48-49 (1974); *In the Matter of the Petition of Tiong v. Republic, supra* note 83 at 109; *Ong v. Republic,* 156 Phil. 690, 692 (1974); *In the Matter of the Petition of Ban Uan, supra* note 83 at 554-555; *Que Tiac v. Republic, supra* note 2 at 100; *Uy v. Republic,* 147 Phil. 230, 233-234 (1971); *Li Tong Pek v. Republic, supra* note 85 at 831-832; *Uy Ching Ho v. Republic,* 121 Phil. 402, 406-407 (1965); *Keng Giok v. Republic,* 112 Phil. 986, 991-992 (1961).

[98] Respondent's Memorandum, pp. 9-12; *rollo,* pp. 127-130.

support or factual basis, which is a known exception[99] to the general rule that only questions of law may be entertained in a Rule 45 petition.

Moreover, a review of the decisions involving petitions for naturalization shows that the Court is not precluded from reviewing the factual existence of the applicant's qualifications. In fact, jurisprudence holds that the entire records of the naturalization case are open for consideration in an appeal to this Court.[100] Indeed, "[a] naturalization proceeding is so infused with public interest that it has been differently categorized and given special treatment. x x x [U]nlike in ordinary judicial contest, the granting of a petition for naturalization does not preclude the reopening of that case and giving the government another opportunity to present new evidence. A decision or order granting citizenship will not even constitute *res judicata* to any matter or reason supporting a subsequent judgment cancelling the certification of naturalization already granted, on the ground that it had been illegally or fraudulently procured. For the same reason, issues even if not raised in the lower court may be

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[99] As a rule, findings of fact of the CA are binding and conclusive upon this Court, and will not be reviewed or disturbed on appeal unless the case falls under any of the following recognized exceptions: "(1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) ***when the finding is grounded entirely on speculations, surmises or conjectures****;* (4) when the judgment of the CA is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case, and those findings are contrary to the admissions of both appellant and appellee; (7) when the findings of the CA are contrary to those of the trial court; (8) ***when the findings of fact are conclusions without citation of specific evidence on which they are based***; (9) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (10) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record." (*Bank of the Philippine Islands v. Reyes*, G.R. No. 157177, February 11, 2008, 544 SCRA 206, 215). Emphasis supplied.

[100] *Go Im Ty v. Republic*, 124 Phil. 187, 196 (1966); *Tio Tek Chai v. Republic*, 120 Phil. 1010, 1013 (1964).

entertained on appeal. As the matters brought to the attention of this Court x x x involve facts contained in the disputed decision of the lower court and admitted by the parties in their pleadings, the present proceeding may be considered adequate for the purpose of determining the correctness or incorrectness of said decision, in the light of the law and extant jurisprudence."[101] In the case at bar, there is even no need to present new evidence. A careful review of the extant records suffices to hold that respondent Ong has not proven his possession of a "known lucrative trade, profession or lawful occupation" to qualify for naturalization.

WHEREFORE, premises considered, the petition of the Republic of the Philippines is **GRANTED.** The Decision dated May 13, 2006 of the Court of Appeals in CA-G.R. CV No. 74794 is **REVERSED** and **SET ASIDE.** The Petition for Naturalization of Kerry Lao Ong is **DENIED** for failure to comply with Section 2, fourth paragraph, of Commonwealth Act No. 473, as amended.

SO ORDERED.

Leonardo-de Castro,[*] *(Acting Chaiperson), Bersamin, Villarama, Jr.,* and *Perlas-Bernabe,*[**] *JJ.,* concur.

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[101] *Republic v. Reyes*, 122 Phil. 931, 934 (1965).

[*] Per Special Order No. 1226 dated May 30, 2012.

[**] Per Special Order No. 1227 dated May 30, 2012.

SECOND DIVISION

[G.R. No. 179018. June 18, 2012]

PAGLAUM MANAGEMENT & DEVELOPMENT CORP. and HEALTH MARKETING TECHNOLOGIES, INC., *petitioners, vs.* **UNION BANK OF THE PHILIPPINES, NOTARY PUBLIC JOHN DOE, and REGISTER OF DEEDS of Cebu City and Cebu Province,** *respondents.*

J. KING & SONS CO., INC., *intervenor.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; ANNULMENT OF REAL ESTATE MORTGAGE FORECLOSURE SALE IS A REAL ACTION.— Civil Case No. 01-1567, being an action for Annulment of Sale and Titles resulting from the extrajudicial foreclosure by Union Bank of the mortgaged real properties, is classified as a real action. In *Fortune Motors v. Court of Appeals*, this Court held that a case seeking to annul a foreclosure of a real estate mortgage is a real action, *viz*: An action to annul a real estate mortgage foreclosure sale is no different from an action to annul a private sale of real property. (*Muñoz v. Llamas*, 87 Phil. 737, 1950). While it is true that petitioner does not directly seek the recovery of title or possession of the property in question, his action for annulment of sale and his claim for damages are closely intertwined with the issue of ownership of the building which, under the law, is considered immovable property, the recovery of which is petitioner's primary objective. The prevalent doctrine is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property. It is a real action.

2. ID.; ID.; VENUE OF REAL ACTIONS; GENERAL RULE; EXCEPTION; EXPLAINED.— Being a real action, the filing and trial of the Civil Case No. 01-1567 should be governed by the following relevant provisions of the Rules of Court (the

Rules): Section 1. Venue of real actions. – Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried **in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated**. x x x. Sec. 3. When Rule not applicable. – This Rule shall not apply – x x x (b) **Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof**. x x x. In *Sps. Lantin v. Lantion*, this Court explained that a venue stipulation must contain words that show exclusivity or restrictiveness, as follows: At the outset, we must make clear that under Section 4 (b) of Rule 4 of the 1997 Rules of Civil Procedure, the general rules on venue of actions shall not apply where the parties, before the filing of the action, have validly agreed in writing on an exclusive venue. The mere stipulation on the venue of an action, however, is not enough to preclude parties from bringing a case in other venues. **The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place. x x x Clearly, the words "exclusively" and "waiving for this purpose any other venue" are restrictive and used advisedly to meet the requirements.**

3. ID.; ID.; ID.; ID.; APPLIED TO CASE AT BAR; VENUE STIPULATION IN THE RESTRUCTURING AGREEMENT DECLARED CONTROLLING.— According to the Rules, real actions shall be commenced and tried in the court that has jurisdiction over the area where the property is situated. In this case, all the mortgaged properties are located in the Province of Cebu. Thus, following the general rule, PAGLAUM and HealthTech should have filed their case in Cebu, and not in Makati. However, the Rules provide an exception, in that real actions can be commenced and tried in a court other than where the property is situated in instances **where the parties have previously and validly agreed in writing on the exclusive venue thereof**. In the case at bar, the parties claim that such an agreement exists. The only dispute is whether the venue that should be followed is that contained in the Real Estate Mortgages, as contended by Union Bank, or that in the Restructuring Agreement, as posited by PAGLAUM

and HealthTech. This Court rules that **the venue stipulation in the Restructuring Agreement should be controlling**.

4. ID.; ID.; ID.; RESTRICTIVE VENUE STIPULATION APPLIES NOT ONLY TO THE PRINCIPAL OBLIGATION BUT ALSO TO MORTGAGES IN CASE AT BAR; PHRASE "WAIVING ANY OTHER VENUE" SHOWS EXCLUSIVITY.— The Real Estate Mortgages were executed by PAGLAUM in favor of Union Bank to secure the credit line extended by the latter to HealthTech. All three mortgage contracts contain a dragnet clause, which secures succeeding obligations, including renewals, extensions, amendments or novations thereof, incurred by HealthTech from Union Bank x x x. On the other hand, the Restructuring Agreement was entered into by HealthTech and Union Bank to modify the entire loan obligation. x x x. Meanwhile, Section 20 of the Restructuring Agreement as regards the venue of actions state: 20. Venue – Venue of any action or proceeding arising out of or connected with this **Restructuring Agreement, the Note, the Collateral and any and all related documents** shall be in **Makati City**, [HealthTech] and [Union Bank] hereby **waiving any other venue**. [T]he provisions of the Real Estate Mortgages and the later Restructuring Agreement clearly reveal the intention of the parties to implement a restrictive venue stipulation, which applies not only to the principal obligation, but also to the mortgages. The phrase "**waiving any other venue**" plainly shows that the choice of Makati City as the venue for actions arising out of or in connection with the Restructuring Agreement and the Collateral, with the Real Estate Mortgages being explicitly defined as such, is exclusive.

5. ID.; ID.; ID.; ABSENT QUALIFYING OR RESTRICTIVE WORDS, THE VENUE STIPULATION SHOULD ONLY BE DEEMED AS AN AGREEMENT ON AN ADDITIONAL FORUM, AND NOT AS A RESTRICTION ON A SPECIFIED PLACE.— Even if this Court were to consider the venue stipulations under the Real Estate Mortgages, it must be underscored that those provisions did not contain words showing exclusivity or restrictiveness. In fact, in the Real Estate Mortgages dated 11 February 1994, the phrase "parties hereto waiving" — from the entire phrase "the parties hereto waiving any other venue" — was stricken from the final executed contract. Following the ruling in *Sps. Lantin* x x x in the

absence of qualifying or restrictive words, the venue stipulation should only be deemed as an agreement on an additional forum, and not as a restriction on a specified place. Considering that Makati City was agreed upon by the parties to be the venue for all actions arising out of or in connection with the loan obligation incurred by HealthTech, as well as the Real Estate Mortgages executed by PAGLAUM, the CA committed reversible error in affirming the dismissal of Civil Case No. 01-1567 by RTC Br. 134 on the ground of improper venue.

APPEARANCES OF COUNSEL

Franklin Delano M. Sacmar for petitioners.
Macalino and Associates for Union Bank.
Romeo C. Dela Cruz & Associates and *Macam Raro Ulep & Partners* for intervenor.

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 Rules of Court, assailing the Decision dated 31 May 2007[1] and Resolution dated 24 July 2007[2] issued by the Court of Appeals (CA).

Petitioner Paglaum Management and Development Corporation (PAGLAUM) is the registered owner of three parcels of land located in the Province of Cebu[3] and covered by Transfer Certificate of Title (TCT) Nos. 112488,[4] 112489,[5] and T-68516.[6]

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[1] *Rollo*, pp. 45-53. Penned by CA Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Edgardo P. Cruz and Normandie B. Pizarro.

[2] *Rollo*, p. 55.

[3] Petition, p. 5; *rollo*, p. 19.

[4] *Rollo*, pp. 75-76.

[5] *Rollo*, pp. 73-74.

[6] *Rollo*, pp. 77-78.

These lots are co-owned by Benjamin B. Dy, the president of petitioner Health Marketing Technologies, Inc. (HealthTech), and his mother and siblings.[7]

On 3 February 1994, respondent Union Bank of the Philippines (Union Bank) extended HealthTech a credit line in the amount of ₱10,000,000.[8] To secure this obligation, PAGLAUM executed three Real Estate Mortgages on behalf of HealthTech and in favor of Union Bank.[9] It must be noted that the Real Estate Mortgage, on the provision regarding the venue of all suits and actions arising out of or in connection therewith, **originally** stipulates:

> Section 9. Venue. – The venue of all suits and actions arising out of or in connection with this Mortgage shall be in **Makati**, Metro Manila or in the place where any of the Mortgaged Properties is located, at the absolute option of the Mortgagee, **the parties hereto waiving any other venue**.[10] (Emphasis supplied.)

However, under the two **Real Estate Mortgages dated 11 February 1994**, the following **version** appears:

> Section 9. Venue. – The venue of all suits and actions arising out of or in connection with this Mortgage shall be in **Cebu City** Metro Manila or in the place where any of the Mortgaged Properties is located, at the absolute option of the Mortgagee, the **xxx** any other venue.[11] (Emphasis supplied.)

Meanwhile, the same provision in the **Real Estate Mortgage dated 22 April 1998** contains the following:

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[7] Petition, p. 6; *rollo*, p. 20. *See also* Stockholders Resolution of PAGLAUM dated 11 December 1998, *rollo*, pp. 116-117.

[8] Credit Line Agreement dated 3 February 1994, *rollo*, pp. 80-81; CA Decision, p. 2, *rollo*, p. 46.

[9] Real Estate Mortgage dated 11 February 1994, *rollo*, pp. 173-176; Real Estate Mortgage dated 11 February 1994, *rollo*, pp. 177-180; Real Estate Mortgage dated 22 April 1998, *rollo*, pp. 181-184.

[10] *Rollo*, pp. 176, 180 and 184.

[11] *Rollo*, pp. 176 and 180.

Section 9. Venue. – The venue of all suits and actions arising out of or in connection with this Mortgage shall be in _____ or in the place where any of the Mortgaged Properties is located, at the absolute option of the Mortgagee, the parties hereto waiving any other venue.[12]

HealthTech and Union Bank agreed to subsequent renewals and increases in the credit line,[13] with the total amount of debt reaching ₱36,500,000.[14] Unfortunately, according to HealthTech, the 1997 Asian financial crisis adversely affected its business and caused it difficulty in meeting its obligations with Union Bank.[15] Thus, on 11 December 1998, both parties entered into a Restructuring Agreement,[16] which states that any action or proceeding arising out of or in connection therewith shall be commenced in **Makati City**, with both parties **waiving any other venue**.[17]

Despite the Restructuring Agreement, HealthTech failed to pay its obligation, prompting Union Bank to send a demand letter dated 9 October 2000, stating that the latter would be constrained to institute foreclosure proceedings, unless HealthTech settled its account in full.[18]

Since HealthTech defaulted on its payment, Union Bank extra-judicially foreclosed the mortgaged properties.[19] The bank, as the sole bidder in the auction sale, was then issued a Certificate

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[12] *Rollo*, p. 184.

[13] Letter dated 14 March 1995 of Union Bank to HealthTech, *rollo*, pp. 82-83; letter dated 11 February 1997 of Union Bank to HealthTech, *rollo*, pp. 84-85; Petition, p. 5, *rollo*, p. 19; CA Decision, p. 2, *rollo*, p. 46; Restructuring Agreement dated 11 December 1998, *rollo*, pp. 99-108.

[14] Restructuring Agreement dated 11 December 1998, *rollo*, pp. 99-108.

[15] Petition, p. 6; *rollo*, p. 20.

[16] *Rollo*, pp. 99-108.

[17] *Id.* at 106.

[18] Letter dated 9 October 2000, *rollo*, p. 122.

[19] Petition, p. 8; *rollo*, p. 22.

of Sale dated 24 May 2001.[20] Thereafter, it filed a Petition for Consolidation of Title.[21]

Consequently, HealthTech filed a Complaint for Annulment of Sale and Titles with Damages and Application for Temporary Restraining Order and Writ of Injunction dated 23 October 2001, praying for: (a) the issuance of a temporary restraining order, and later a writ of preliminary injunction, directing Union Bank to refrain from exercising acts of ownership over the foreclosed properties; (b) the annulment of the extra-judicial foreclosure of real properties; (c) the cancellation of the registration of the Certificates of Sale and the resulting titles issued; (d) the reinstatement of PAGLAUM's ownership over the subject properties; and (e) the payment of damages.[22] The case was docketed as Civil Case No. 01-1567 and raffled to the Regional Trial Court, National Capital Judicial Region, Makati City, Branch 134 (RTC Br. 134), which issued in favor of PAGLAUM and HealthTech a Writ of Preliminary Injunction restraining Union Bank from proceeding with the auction sale of the three mortgaged properties.[23]

On 23 November 2001, Union Bank filed a Motion to Dismiss on the following grounds: (a) lack of jurisdiction over the issuance of the injunctive relief; (b) improper venue; and (c) lack of authority of the person who signed the Complaint.[24] RTC Br. 134 granted this Motion in its Order dated 11 March 2003, resulting in the dismissal of the case, as well as the dissolution of the Writ of Preliminary Injunction.[25] It likewise denied the subsequent Motion for Reconsideration filed by PAGLAUM and HealthTech.[26]

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[20] Petition, p. 8; *rollo*, p. 22; CA Decision, p. 2, *rollo*, p. 46.

[21] Petition, p. 8; *rollo*, p. 22.

[22] *Rollo*, pp. 59-72.

[23] Resolution dated 13 December 2001, *rollo*, pp. 125-129.

[24] *Rollo*, pp. 130-135.

[25] Order dated 11 March 2003, *rollo*, pp. 166-170.

[26] Order dated 19 September 2003, *rollo*, p. 171-172.

PAGLAUM and HealthTech elevated the case to the CA, which affirmed the Order dated 11 March 2003[27] and denied the Motion for Reconsideration.[28]

In the instant Petition, PAGLAUM and HealthTech argue that: (a) the Restructuring Agreement governs the choice of venue between the parties, and (b) the agreement on the choice of venue must be interpreted with the convenience of the parties in mind and the view that any obscurity therein was caused by Union Bank.[29]

On the other hand, Union Bank contends that: (a) the Restructuring Agreement is applicable only to the contract of loan, and not to the Real Estate Mortgage, and (b) the mortgage contracts explicitly state that the choice of venue exclusively belongs to it.[30]

Meanwhile, intervenor J. King & Sons Company, Inc. adopts the position of Union Bank and reiterates the position that Cebu City is the proper venue.[31]

The sole issue to be resolved is whether Makati City is the proper venue to assail the foreclosure of the subject real estate mortgage. This Court rules in the affirmative.

Civil Case No. 01-1567, being an action for Annulment of Sale and Titles resulting from the extrajudicial foreclosure by Union Bank of the mortgaged real properties, is classified as a real action. In *Fortune Motors v. Court of Appeals*,[32] this Court held that a case seeking to annul a foreclosure of a real estate mortgage is a real action, *viz*:

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[27] CA Decision, *rollo*, pp. 44-53.

[28] Resolution dated 24 July 2007, *rollo*, pp. 54-55.

[29] Petition, p. 12; *rollo*, p. 26.

[30] Comment [on] Petition for Review on *Certiorari*; *rollo*, pp. 260-268.

[31] Comment (On the Petition for Review on *Certiorari*) dated 26 December 2007; *rollo*, pp. 270-277.

[32] 258-A Phil. 336 (1989).

An action to annul a real estate mortgage foreclosure sale is no different from an action to annul a private sale of real property. *(Muñoz v. Llamas*, 87 Phil. 737, 1950).

While it is true that petitioner does not directly seek the recovery of title or possession of the property in question, his action for annulment of sale and his claim for damages are closely intertwined with the issue of ownership of the building which, under the law, is considered immovable property, the recovery of which is petitioner's primary objective. The prevalent doctrine is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property. It is a real action.[33]

Being a real action, the filing and trial of the Civil Case No. 01-1567 should be governed by the following relevant provisions of the Rules of Court (the Rules):

Rule 4

VENUE OF ACTIONS

Section 1. Venue of real actions. – Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried **in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated**.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

Sec. 3. When Rule not applicable. – This Rule shall not apply –

(a) In those cases where a specific rule or law provides otherwise; or

(b) **Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof**. (Emphasis supplied.)

In *Sps. Lantin v. Lantion*,[34] this Court explained that a venue stipulation must contain words that show exclusivity or restrictiveness, as follows:

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[33] *Id.* at 340-341.

[34] 531 Phil. 318 (2006).

At the outset, we must make clear that under Section 4 (b) of Rule 4 of the 1997 Rules of Civil Procedure, the general rules on venue of actions shall not apply where the parties, before the filing of the action, have validly agreed in writing on an exclusive venue. The mere stipulation on the venue of an action, however, is not enough to preclude parties from bringing a case in other venues. **The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place.**

x x x x x x x x x

Clearly, **the words "exclusively" and "waiving for this purpose any other venue" are restrictive and used advisedly to meet the requirements**.[35] (Emphasis supplied.)

According to the Rules, real actions shall be commenced and tried in the court that has jurisdiction over the area where the property is situated. In this case, all the mortgaged properties are located in the Province of Cebu. Thus, following the general rule, PAGLAUM and HealthTech should have filed their case in Cebu, and not in Makati.

However, the Rules provide an exception, in that real actions can be commenced and tried in a court other than where the property is situated in instances **where the parties have previously and validly agreed in writing on the exclusive venue thereof**. In the case at bar, the parties claim that such an agreement exists. The only dispute is whether the venue that should be followed is that contained in the Real Estate Mortgages, as contended by Union Bank, or that in the Restructuring Agreement, as posited by PAGLAUM and HealthTech. This Court rules that **the venue stipulation in the Restructuring Agreement should be controlling**.

The Real Estate Mortgages were executed by PAGLAUM in favor of Union Bank to secure the credit line extended by the latter to HealthTech. All three mortgage contracts contain a dragnet clause, which secures succeeding obligations, including

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[35] *Id.* at 322-323.

renewals, extensions, amendments or novations thereof, incurred by HealthTech from Union Bank, to wit:

Section 1. Secured Obligations. – The obligations secured by this Mortgage (the "Secured Obligations") are the following:

a) All the obligations of the Borrower and/or the Mortgagor under: (i) the Notes, the Agreement, and this Mortgage; (ii) any and all instruments or documents issued upon the renewal, extension, amendment or novation of the Notes, the Agreement and this Mortgage, irrespective of whether such obligations as renewed, extended, amended or novated are in the nature of new, separate or additional obligations; and (iii) any and all instruments or documents issued pursuant to the Notes, the Agreement and this Mortgage;

b) All other obligations of the Borrower and/or the Mortgagor in favor of the Mortgagee, whether presently owing or hereinafter incurred and whether or not arising from or connected with the Agreement, the Notes and/or this Mortgage; and

c) Any and all expenses which may be incurred in collecting any and all of the above and in enforcing any and all rights, powers and remedies of the Mortgagee under this Mortgage.[36]

On the other hand, the Restructuring Agreement was entered into by HealthTech and Union Bank to modify the entire loan obligation. Section 7 thereof provides:

Security. – The principal, interests, penalties and other charges for which the BORROWER may be bound to the BANK under the terms of this Restructuring Agreement, including the renewal, extension, amendment or novation of this Restructuring Agreement, irrespective of whether the obligations arising out of or in connection with this Restructuring Agreement, as renewed, extended, amended or novated, are in the nature of new, separate or additional obligations, and all other instruments or documents covering the Indebtedness or otherwise made pursuant to this Restructuring Agreement (the "Secured Obligations"), shall continue to be secured by the following security arrangements (**the "Collaterals"**):

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[36] Real Estate Mortgage dated 11 February 1994, *rollo*, p. 173; Real Estate Mortgage dated 11 February 1994, *rollo*, p. 177; Real Estate Mortgage dated 22 April 1998, *rollo*, p. 181.

a. **Real Estate Mortgage dated February 11, 1994** executed by Paglaum Management and Development Corporation over a 474 square meter property covered by **TCT No. 112489**;

b. **Real Estate Mortgage dated February 11, 1994** executed by Paglaum Management and Development Corporation over a 2,796 square meter property covered by **TCT No. T-68516**;

c. **Real Estate Mortgage dated April 22, 1998** executed by Paglaum Management and Development Corporation over a 3,711 square meter property covered by **TCT No. 112488**;

d. Continuing Surety Agreement of Benjamin B. Dy;

Without need of any further act and deed, the existing Collaterals, shall remain in full force and effect and continue to secure the payment and performance of the obligations of the BORROWER arising from the Notes and this Restructuring Agreement.[37] (Emphasis supplied.)

Meanwhile, Section 20 of the Restructuring Agreement as regards the venue of actions state:

20. Venue – Venue of any action or proceeding arising out of or connected with this **Restructuring Agreement, the Note, the Collateral and any and all related documents** shall be in **Makati City**, [HealthTech] and [Union Bank] hereby **waiving any other venue**.[38] (Emphasis supplied.)

These quoted provisions of the Real Estate Mortgages and the later Restructuring Agreement clearly reveal the intention of the parties to implement a restrictive venue stipulation, which applies not only to the principal obligation, but also to the mortgages. The phrase "**waiving any other venue**" plainly shows that the choice of Makati City as the venue for actions arising out of or in connection with the Restructuring Agreement and the Collateral, with the Real Estate Mortgages being explicitly defined as such, is exclusive.

Even if this Court were to consider the venue stipulations under the Real Estate Mortgages, it must be underscored that

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[37] Restructuring Agreement, pp. 3-4; *rollo*, pp. 101-102.

[38] Restructuring Agreement, p. 8; *rollo*, p. 106.

those provisions did not contain words showing exclusivity or restrictiveness. In fact, in the Real Estate Mortgages dated 11 February 1994, the phrase "parties hereto waiving" – from the entire phrase "the parties hereto waiving any other venue" – was stricken from the final executed contract. Following the ruling in *Sps. Lantin* as earlier quoted, in the absence of qualifying or restrictive words, the venue stipulation should only be deemed as an agreement on an additional forum, and not as a restriction on a specified place.

Considering that Makati City was agreed upon by the parties to be the venue for all actions arising out of or in connection with the loan obligation incurred by HealthTech, as well as the Real Estate Mortgages executed by PAGLAUM, the CA committed reversible error in affirming the dismissal of Civil Case No. 01-1567 by RTC Br. 134 on the ground of improper venue.

WHEREFORE, the Petition for Review is **GRANTED.** The Decision dated 31 May 2007 and Resolution dated 24 July 2007 in CA-G.R. CV No. 82053 of the Court of Appeals, as well as the Orders dated 11 March 2003 and 19 September 2003 issued by the Regional Trial Court, Makati City, Branch 134, are **REVERSED** and **SET ASIDE.** The Complaint in Civil Case No. 01-1567 is hereby **REINSTATED.**

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180572. June 18, 2012]

SPOUSES ATTY. ERLANDO A. ABRENICA and JOENA B. ABRENICA, *petitioners, vs.* **LAW FIRM OF ABRENICA, TUNGOL and TIBAYAN, ATTYS. ABELARDO M. TIBAYAN and DANILO N. TUNGOL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF PROCEDURE; FORMULATED TO ACHIEVE THE ENDS OF JUSTICE, NOT TO THWART THEM; HE WHO SEEKS TO AVAIL OF THE RIGHT TO APPEAL MUST PLAY BY THE RULES.—** The rules of procedure were formulated to achieve the ends of justice, not to thwart them. Petitioners may not defy the pronouncement of this Court in G.R. No. 169420 by pursuing remedies that are no longer available to them. Twice, the CA correctly ruled that the remedy of annulment of judgment was no longer available to them, because they had already filed an appeal under Rule 41. Due to their own actions, that appeal was dismissed. It must be emphasized that the RTC Decision became final and executory through the fault of petitioners themselves when petitioner Erlando (1) filed an appeal under Rule 41 instead of Rule 43; and (2) filed a Petition for Review directly with the CA, without waiting for the resolution by the RTC of the issues still pending before the trial court. In *Enriquez v. Court of Appeals*, we said: It is true that the Rules should be interpreted so as to give litigants ample opportunity to prove their respective claims and that a possible denial of substantial justice due to legal technicalities should be avoided. **But it is equally true that an appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court. In other words, he who seeks to avail of the right to appeal must play by the rules.**

2. **POLITICAL LAW; CONSTITUTIONAL LAW; RIGHT TO DUE PROCESS; NO VIOLATION THEREOF IN CASE AT BAR.—**

With regard to the allegation of petitioner Joena that her right to due process was violated, it must be recalled that after she filed her Affidavit of Third Party Claim on 13 September 2007 and petitioner Erlando filed his Urgent Omnibus Motion raising the same issues contained in that third-party claim, he subsequently filed two Motions withdrawing his Urgent Omnibus Motion. Petitioner Joena, meanwhile, no longer pursued her third-party claim or any other remedy available to her. Her failure to act gives this Court the impression that she was no longer interested in her case. Thus, it was through her own fault that she was not able to ventilate her claim.

3. CIVIL LAW; FAMILY CODE; PARENTAL AUTHORITY; PARENTAL AUTHORITY OVER THE MINOR BELONGS TO THE PARENTS THEREOF; ABSENT A SPECIAL POWER OF ATTORNEY AUTHORIZING HER, A STEPMOTHER CANNOT REPRESENT HER STEPCHILDREN.— It appears from the records that petitioner Erlando was first married to a certain Ma. Aline Lovejoy Padua on 13 October 1983. They had three children: Patrik Erlando (born on 14 April 1985), Maria Monica Erline (born on 9 September 1986), and Patrik Randel (born on 12 April 1990). After the dissolution of the first marriage of Erlando, he and Joena got married on 28 May 1998. In her Affidavit, Joena alleged that she represented her stepchildren; that the levied personal properties – in particular, a piano with a chair, computer equipment and a computer table – were owned by the latter. We note that two of these stepchildren were already of legal age when Joena filed her Affidavit. As to Patrik Randel, parental authority over him belongs to his parents. Absent any special power of attorney authorizing Joena to represent Erlando's children, her claim cannot be sustained.

4. ID.; ID.; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; PROPERTY ACQUIRED BEFORE THE MARRIAGE OF A SPOUSE WHO HAS LEGITIMATE DESCENDANTS BY A FORMER MARRIAGE, AND THE FRUITS AND THE INCOME OF THAT PROPERTY, ARE EXCLUDED FROM THE COMMUNITY PROPERTY.— Petitioner Joena also asserted that the two (2) motor vehicles purchased in 1992 and 1997, as well as the house and lot covered by TCT No. 216818 formed part of the absolute community

regime. However, Art. 92, par. (3) of the Family Code excludes from the community property the property acquired before the marriage of a spouse who has legitimate descendants by a former marriage; and the fruits and the income, if any, of that property. Neither these two vehicles nor the house and lot belong to the second marriage.

5. REMEDIAL LAW; ACTIONS; FORUM SHOPPING; WHEN PRESENT; NO FORUM-SHOPPING ABSENT IDENTITY OF CAUSES OF ACTION.— Respondents claim that petitioners and their present counsel, Atty. Antonio R. Bautista, were guilty of forum shopping when the latter filed Civil Case No. 09-1323-MK with the RTC of Marikina City while the case was still pending before us. In *Executive Secretary v. Gordon*, we explained forum shopping in this wise: Forum-shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. Thus, it has been held that there is forum-shopping — (1) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or *certiorari*) in another, or (2) if, after he has filed a petition before the Supreme Court, a party files another before the Court of Appeals since in such case he deliberately splits appeals "in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open," or (3) where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court. Civil Case No. 09-1323-MK was filed to question the proceedings undertaken by the sheriff in executing the judgment in Civil Case Nos. Q01-42948 and Q01-42959. On the other hand, the present case questions the merits of the Decision itself in Civil Case Nos. Q01-42948 and Q01-42959. These cases have different causes of action. Thus, it cannot be said that petitioners were clearly guilty of forum shopping when they filed the Complaint before the RTC of Marikina City.

APPEARANCES OF COUNSEL

Antonio R. Bautista & Partners and *F. Meynardo T. Carreon* for petitioners.

Law Firm of Tungol & Tibayan for respondents.

D E C I S I O N

SERENO, *J.*:

The present case is a continuation of G.R. No. 169420[1] decided by this Court on 22 September 2006. For brevity, we quote the relevant facts narrated in that case:

> Petitioner Atty. Erlando A. Abrenica was a partner of individual respondents, Attys. Danilo N. Tungol and Abelardo M. Tibayan, in the Law Firm of Abrenica, Tungol and Tibayan ("the firm").
>
> In 1998, respondents filed with the Securities and Exchange Commission (SEC) two cases against petitioner. The first was SEC Case No. 05-98-5959, for Accounting and Return and Transfer of Partnership Funds With Damages and Application for Issuance of Preliminary Attachment, where they alleged that petitioner refused to return partnership funds representing profits from the sale of a parcel of land in Lemery, Batangas. The second was SEC Case No. 10-98-6123, also for Accounting and Return and Transfer of Partnership Funds where respondents sought to recover from petitioner retainer fees that he received from two clients of the firm and the balance of the cash advance that he obtained in 1997.
>
> The SEC initially heard the cases but they were later transferred to the Regional Trial Court of Quezon City pursuant to Republic Act No. 8799, which transferred jurisdiction over intra-corporate controversies from the SEC to the courts. In a Consolidated Decision dated November 23, 2004, the Regional Trial Court of Quezon City, Branch 226, held that:
>
> > WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:
> >
> > CIVIL CASE NO. Q01-42948
> >
> > 1. Ordering the respondent Atty. Erlando Abrenica to render full accounting of the amounts he received as profits from the sale and resale of the Lemery property in the amount of ₱4,524,000.00;

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[1] *Abrenica v. Law Firm of Abrenica, Tungol & Tibayan*, 534 Phil. 34, 37-41 (2006).

2. Ordering the respondent Atty. Erlando Abrenica to remit to the law firm the said amount of ₱4,524,000.00 plus interest of 12% per annum from the time he received the same and converted the same to his own personal use or from September 1997 until fully paid; and

3. To pay the costs of suit.

CIVIL CASE NO. Q01-42959

1. Ordering Atty. Erlando Abrenica to render a full accounting of the amounts he received under the retainer agreement between the law firm and Atlanta Industries Inc. and Atlanta Land Corporation in the amount of ₱320,000.00.

2. Ordering Atty. Erlando Abrenica to remit to the law firm the amount received by him under the Retainer Agreement with Atlanta Industries, Inc. and Atlanta Land Corporation in the amount of ₱320,000.00 plus interests of 12% per annum from June 1998 until fully paid;

3. Ordering Atty. Erlando Abrenica to pay the law firm his balance on his cash advance in the amount of ₱25,000.00 with interest of 12% per annum from the date this decision becomes final; and

4. To pay the costs of suit.

SO ORDERED.

Petitioner received a copy of the decision on December 17, 2004. On December 21, 2004, he filed a notice of appeal under Rule 41 and paid the required appeal fees.

Two days later, respondents filed a Motion for Issuance of Writ of Execution pursuant to A.M. 01-2-04-SC, which provides that decisions in intra-corporate disputes are immediately executory and not subject to appeal unless stayed by an appellate court.

On January 7, 2005, respondents filed an Opposition (To Defendant's Notice of Appeal) on the ground that it violated A.M. No. 04-9-07-SC[2] prescribing appeal by *certiorari* under Rule 43 as

[2] Entitled "RE: MODE OF APPEAL IN CASES FORMERLY COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION," which was issued on September 14, 2004 and became effective on October 15, 2004. Pertinent portions thereof read:

the correct mode of appeal from the trial court's decisions on intra-corporate disputes.

Petitioner thereafter filed a Reply with Manifestation (To the Opposition to Defendant's Notice of Appeal) and an Opposition to respondents' motion for execution.

On May 11, 2005, the trial court issued an Order requiring petitioner to show cause why it should take cognizance of the notice of appeal in view of A.M. No. 04-9-07-SC. Petitioner did not comply with the said Order. Instead, on June 10, 2005, he filed with the Court of Appeals a Motion for Leave of Court to Admit Attached Petition for Review under Rule 43 of the Revised Rules of Court. Respondents opposed the motion.

The Court of Appeals denied petitioner's motion in its assailed Resolution dated June 29, 2005 x x x.

x x x x x x x x x

The Court of Appeals also denied petitioner's motion for reconsideration in its August 23, 2005 Resolution.

Given the foregoing facts, we dismissed the Petition in G.R. No. 169420 on the ground that the appeal filed by petitioner was the wrong remedy. For that reason, we held as follows:[3]

Time and again, this Court has upheld dismissals of incorrect appeals, even if these were timely filed. In *Lanzaderas v. Amethyst*

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x x x x x x x x x

1. All decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.

2. The petition for review shall be taken within fifteen (15) days from notice of the decision or final order of the Regional Trial Court. Upon proper motion and the payment of the full amount of the legal fee prescribed in Rule 141 as amended before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days within which to file the petition for review. No further extension shall be granted except for the most compelling reasons and in no case to exceed fifteen (15) days.

[3] *Supra* note 1, at 44-47.

Security and General Services, Inc., this Court affirmed the dismissal by the Court of Appeals of a petition for review under Rule 43 to question a decision because the proper mode of appeal should have been a petition for *certiorari* under Rule 65. x x x.

x x x x x x x x x

Indeed, litigations should, and do, come to an end. "Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice." In the instant case, the trial court's decision became final and executory on January 3, 2005. Respondents had already acquired a vested right in the effects of the finality of the decision, which should not be disturbed any longer.

WHEREFORE, the petition is *DENIED*. The Court of Appeals Resolutions dated June 29, 2005 and August 23, 2005 in CA-G.R. SP No. 90076 denying admission of petitioner's Petition for Review are *AFFIRMED*.

Thus, respondents sought the execution of the judgment. On 11 April 2007, G.R. No. 169420 became final and executory.[4]

Apparently not wanting to be bound by this Court's Decision in G.R. No. 169420, petitioners Erlando and Joena subsequently filed with the Court of Appeals (CA) a Petition for Annulment of Judgment with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order, docketed as CA-G.R. SP No. 98679. The Petition for Annulment of Judgment assailed the merits of the RTC's Decision in Civil Case Nos. Q-01-42948 and Q-01-42959, subject of G.R. No. 169420. In that Petition for Annulment, Petitioners raised the following grounds:

I. The lower court erred in concluding that both petitioners and respondents did not present direct documentary evidence to substantiate [their] respective claims.

II. The lower court erred in concluding that both petitioners and respondents relied mainly on testimonial evidence to prove their respective position[s].

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[4] *Rollo*, p. 614.

III. The lower court erred in not ruling that the real estate transaction entered into by said petitioners and spouses Roman and Amalia Aguzar was a personal transaction and not a law partnership transaction.

IV. The lower court erred in ruling that the testimonies of the respondents are credible.

V. The lower court erred in ruling that the purchase price for the lot involved was ₱3 million and not ₱8 million.

VI. The lower court erred in ruling that petitioner's retainer agreement with Atlanta Industries, Inc. was a law partnership transaction.

VII. The lower court erred when it failed to rule on said petitioners' permissive counterclaim relative to the various personal loans secured by respondents.

VIII. The lower court not only erred in the exercise of its jurisdiction but more importantly it acted without jurisdiction or with lack of jurisdiction.[5]

We note that petitioners were married on 28 May 1998. The cases filed with the Securities and Exchange Commission (SEC) on 6 May 1998 and 15 October 1998 were filed against petitioner Erlando only. It was with the filing of CA-G.R. SP No. 98679 on 24 April 2007 that Joena joined Erlando as a co-petitioner.

On 26 April 2007, the CA issued a Resolution[6] dismissing the Petition. First, it reasoned that the remedy of annulment of judgment under Rule 47 of the Rules of Court is available only when the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioners.[7] Considering that the dismissal of the appeal was directly attributable to them, the remedy under Rule 47 was no longer available.

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[5] *Id.* at 618-620.

[6] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), with Associate Justices Marina L. Buzon and Estela M. Perlas-Bernabe (now a member of this Court) concurring; *rollo*, pp. 460-463.

[7] Rule 47, Sec. 1.

Second, the CA stated that the grounds alleged in the Petition delved on the merits of the case and the appreciation by the trial court of the evidence presented to the latter. Under Rule 47, the grounds for annulment are limited only to extrinsic fraud and lack of jurisdiction.

Lastly, the CA held that the fact that the trial court was not designated as a special commercial court did not mean that the latter had no jurisdiction over the case. The appellate court stated that, in any event, petitioners could have raised this matter on appeal or through a petition for *certiorari* under Rule 65, but they did not do so.

Petitioners filed an Amended Petition for Annulment of Judgment dated 2 May 2007, but the CA had by then already issued the 26 April 2007 Resolution dismissing the Petition.

On 24 May 2007, the 26 April 2007 Resolution in CA-G.R. SP No. 98679 became final and executory.[8]

Petitioners did not give up. They once again filed a 105-page Petition for Annulment of Judgment with the CA dated 25 May 2007[9] docketed as CA-G.R. SP No. 99719. This time, they injected the ground of extrinsic fraud into what appeared to be substantially the same issues raised in CA-G.R. SP No. 98679. The following were the grounds raised in CA-G.R. SP No. 99719:

A. Extrinsic fraud and/or collusion attended the rendition of the Consolidated Decision x x x based on the following badges of fraud and/or glaring errors deliberately committed, to wit:

   I. The lower court deliberately erred in concluding that both petitioners and respondents did not present direct documentary evidence to substantiate their respective claims, as it relied purely on the gist of what its personnel did as regards the transcript of stenographic notes the latter [sic] in collusion with the respondents.

   II. The lower court deliberately erred in concluding that both petitioners and respondents relied mainly on testimonial

[8] *Rollo*, p. 601.

[9] *Id.* at 82-186.

evidence to prove their respective positions by relying totally on what was presented to it by its personnel who drafted the Consolidated Decision in collusion with the respondents.

III. The lower court deliberately erred in not ruling that the real estate transaction entered into by said petitioners and spouses Roman and Amalia Aguzar was a personal transaction and not a law partnership transaction for the same reasons as stated in Nos. 1 and II above.

IV. The lower court deliberately erred in ruling that the testimonies of the respondents are credible as against the petitioner Erlando Abrenica and his witnesses for the same reasons as stated in Nos. I and II above.

V. The lower court deliberately erred in ruling that the purchase price for the lot involved was ₱3 million and not ₱8 million for the same reasons as stated in Nos. 1 and II above.

VI. The lower court deliberately erred in ruling that petitioner's retainer agreement with Atlanta Industries, Inc. was a law partnership transaction for the same reasons as stated in Nos. 1 and II above.

VII. The lower court deliberately erred when it failed to rule on said petitioners' permissive counterclaim relative to the various personal loans secured by respondents also for the same reasons as the above.

B. As an incident of the extrinsic fraud[,] the lower court[,] despite full knowledge of its incapacity[,] rendered/promulgated the assailed Consolidated Decision x x x without jurisdiction or with lack of jurisdiction.[10] (Underscoring in the original.)

On 2 August 2007, the CA issued the first assailed Resolution[11] dismissing the Petition in CA-G.R. SP No. 99719, which held the Petition to be insufficient in form and substance. It noted the following:

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[10] *Id.* at 118-122.

[11] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa concurring; *rollo*, pp. 74-78.

x x x. Readily noticeable is **that CA-G.R. SP No. 90076 practically contained the prayer for the annulment of the subject consolidated Decision premised on the very same allegations, grounds or issues as the present annulment of judgment case**.

x x x x x x x x x

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy (*Espinosa vs. Court of Appeals, 430 SCRA 96*[*2004*]). Under Section 2 of Rule 47 of the Revised Rules of Court, the only grounds for an annulment of judgment are extrinsic fraud and lack of jurisdiction (*Cerezo vs. Tuazon, 426 SCRA 167* [*2004*]). Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

x x x x x x x x x

x x x. In the case at bar, not only has the court *a quo* jurisdiction over the subject matter and over the persons of the parties, what petitioner is truly complaining [of] here is only a possible error in the exercise of jurisdiction, not on the issue of jurisdiction itself. Where there is jurisdiction over the person and the subject matter (as in this case), the decision on all other questions arising in the case is but an exercise of the jurisdiction. And the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal (*Republic vs. "G" Holdings, supra, citing Tolentino vs. Leviste, supra*). (Emphasis supplied.)

Subsequently, petitioners filed a Humble Motion for Reconsideration[12] on 28 August 2007.

While the 28 August 2007 motion was pending, on 13 September 2007, petitioner Erlando filed an Urgent Omnibus Motion[13] with Branch 226, alleging that the sheriff had levied on properties belonging to his children and petitioner Joena. In addition, Erlando alleged that the trial court still had to determine the manner of distribution of the firm's assets and the value of

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[12] *Rollo,* pp. 379-398.

[13] Records, Vol. 15, pp. 248-253.

the levied properties. Lastly, he insisted that the RTC still had to determine the issue of whether the Rule 41 appeal was the correct remedy.

On the same day, Joena filed an Affidavit of Third Party Claim[14] also with Branch 226 of the RTC of Quezon City, alleging that she[15] and her stepchildren[16] owned a number of the personal properties sought to be levied. She also insisted that she owned half of the two (2) motor vehicles as well as the house and lot covered by Transfer Certificate of Title (TCT) No. 216818, which formed part of the absolute community of property. She likewise alleged that the real property, being a family home, and the furniture and the utensils necessary for housekeeping having a depreciated combined value of one hundred thousand pesos (₱100,000) were exempt from execution pursuant to Rule 39, Section 13 of the Rules of Court. Thus, she sought their discharge and release and likewise the immediate remittance to her of half of the proceeds, if any.

Accordingly, the RTC scheduled[17] a hearing on the motion. On 17 October 2007, however, petitioner Erlando moved to withdraw his motion on account of ongoing negotiations with respondents.[18]

Thereafter, petitioner Erlando and respondent Abelardo Tibayan, witnessed by Sheriff Nardo de Guzman, Jr. of Branch 226 of the RTC of Quezon City, executed an agreement to

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[14] *Id.* at 257-259.

[15] One (1) king size wooden bed with two (2) night tables and two (2) sets of lamp shades; one (1) wooden chest; and one (1) wooden kitchen cabinet with glass.

[16] One (1) Trebel piano with chair; one (1) set of computer equipment consisting of one (1) Samsung monitor, Sync master 793S; one (1) Viper keyboard with mouse; one (1) HP printer PSC-1315; one (1) Asus hard disk and DVD Rom; one (1) set of speakers; and one (1) computer table.

[17] Records, Vol. 15, p. 287.

[18] Petitioner filed two motions on the same day: an Urgent Motion to Withdraw (Records, Vol. 15, pp. 289-290) and an Extremely Urgent but Humble Manifestation and Motion (Records, Vol. 15, pp. 291-292).

postpone the auction sale of the property covered by TCT No. 216818 in anticipation of an amicable settlement of the money judgment.[19]

Finally, on 30 October 2007, the CA in CA-G.R. SP No. 99719 issued the second assailed Resolution[20] denying petitioners' Motion for Reconsideration for having been filed out of time, as the last day for filing was on 27 August 2007. Moreover, the CA found that the grounds stated in the motion were merely recycled and rehashed propositions, which had already been dispensed with.

Petitioners are now assailing the CA Resolutions dated 2 August 2007 and 30 October 2007, respectively, in CA-G.R. SP No. 99719. They insist that there is still a pending issue that has not been resolved by the RTC. That issue arose from the Order[21] given by the trial court to petitioner Erlando to explain why it should take cognizance of the Notice of Appeal when the proper remedy was a petition for review under Rule 43 of the Rules of Court.

Further, petitioners blame the trial and the appellate courts for the dismissal of their appeal despite this Court's explanation in G.R. No. 169420 that the appeal was the wrong remedy and was thus correctly dismissed by the CA. Instead of complying with the show-cause Order issued by the RTC, petitioners went directly to the CA and insisted that the remedy they had undertaken was correct.

Petitioners also contend that there was extrinsic fraud in the appreciation of the merits of the case. They raise in the present Petition the grounds they cited in the three (3) Petitions for Annulment of Judgment (including the Amended Petition) quoted above.

Next, they assert that petitioner Joena's right to due process was also violated when she was not made a party-in-interest to

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[19] *Rollo*, p. 781.

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

[21] *Id.* at 332.

the proceedings in the lower courts, even if her half of the absolute community of property was included in the execution of the judgment rendered by Branch 226 of the RTC of Quezon City.

Finally, they insist that their Humble Motion for Reconsideration was filed on time, since 27 August 2007 was a holiday. Therefore, they had until 28 August 2007 to file their motion.

Since then, it appears that a Sheriff's Certificate of Sale was issued on 3 January 2008 in favor of the law firm for the sum of ₱5 million for the property covered by TCT No. 216818.

On 18 March 2009, while the case was pending with this Court, petitioners filed a Complaint[22] with a prayer for the issuance of a writ of preliminary injunction before the RTC of Marikina City against herein respondents and Sheriff Nardo I. de Guzman, Jr. of Branch 226 of the RTC of Quezon City. The case was docketed as Civil Case No. 09-1323-MK and was raffled to Branch 273 of the RTC of Marikina City.[23] Petitioners sought the nullification of the sheriff's sale on execution of the Decision in the consolidated cases rendered by Branch 226, as well as the payment of damages. They alleged that the process of the execution sale was conducted irregularly, unlawfully, and in violation of their right to due process.

On 2 July 2009, Branch 273 of the RTC of Marikina City issued a Writ of Preliminary Injunction enjoining respondents and/or their agents, and the Register of Deeds of Marikina City from consolidating TCT No. 216818.[24]

The filing of the Complaint with the RTC of Marikina City prompted respondents to file a Motion[25] before us to cite for contempt petitioner spouses and their counsel, Atty. Antonio

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[22] *Id.* at 678-686.

[23] The real property subject of the sale on execution was located at No. 17 President Roxas St., Industrial Valley, Marikina City.

[24] Records, Vol. 19, pp. 71-73.

[25] *Rollo*, pp. 656-677.

R. Bautista. This Motion was on the ground that petitioners committed forum shopping when they filed the Complaint pending with Branch 273 of the RTC of Marikina City, while the present case was also still pending.

Meanwhile, on 22 September 2009, respondents filed before Branch 226 an *Ex Parte* Motion for Issuance of Writ of Possession.[26] That Motion was granted by Branch 226 through a Resolution[27] issued on 10 November 2011. This Resolution then became the subject of a Petition for *Certiorari*[28] under Rule 65 filed by petitioners before the CA docketed as CA-G.R. SP No. 123164.

Soon after, on 6 March 2012, petitioners filed with the CA an Urgent Motion for Issuance of Temporary Restraining Order (T.R.O.)[29] after Sheriff De Guzman, Jr. served on them a Notice to Vacate within five days from receipt or until 11 March 2012. As of the writing of this Decision, the CA has not resolved the issue raised in the Petition in CA-G.R. SP No. 123164.

Our Ruling

Petitioners elevated this case to this Court, because they were allegedly denied due process when the CA rejected their second attempt at the annulment of the Decision of the RTC and their Humble Motion for Reconsideration.

We **DENY** petitioners' claims.

The rules of procedure were formulated to achieve the ends of justice, not to thwart them. Petitioners may not defy the pronouncement of this Court in G.R. No. 169420 by pursuing remedies that are no longer available to them. Twice, the CA correctly ruled that the remedy of annulment of judgment was no longer available to them, because they had already filed an

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[26] Records, Vol. 19, pp. 74-83.

[27] *Id.* at 39-44.

[28] *Id.* at 22-38.

[29] *Id.* at 121-124.

appeal under Rule 41. Due to their own actions, that appeal was dismissed.

It must be emphasized that the RTC Decision became final and executory through the fault of petitioners themselves when petitioner Erlando (1) filed an appeal under Rule 41 instead of Rule 43; and (2) filed a Petition for Review directly with the CA, without waiting for the resolution by the RTC of the issues still pending before the trial court.

In *Enriquez v. Court of Appeals*,[30] we said:

> It is true that the Rules should be interpreted so as to give litigants ample opportunity to prove their respective claims and that a possible denial of substantial justice due to legal technicalities should be avoided. **But it is equally true that an appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court. In other words, he who seeks to avail of the right to appeal must play by the rules**. x x x. (Emphasis supplied.)

With regard to the allegation of petitioner Joena that her right to due process was violated, it must be recalled that after she filed her Affidavit of Third Party Claim on 13 September 2007 and petitioner Erlando filed his Urgent Omnibus Motion raising the same issues contained in that third-party claim, he subsequently filed two Motions withdrawing his Urgent Omnibus Motion. Petitioner Joena, meanwhile, no longer pursued her third-party claim or any other remedy available to her. Her failure to act gives this Court the impression that she was no longer interested in her case. Thus, it was through her own fault that she was not able to ventilate her claim.

Furthermore, it appears from the records that petitioner Erlando was first married to a certain Ma. Aline Lovejoy Padua on 13 October 1983. They had three children: Patrik Erlando (born on 14 April 1985), Maria Monica Erline (born on 9 September 1986), and Patrik Randel (born on 12 April 1990).

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[30] 444 Phil. 419, 429 (2003).

[31] Records, Vol. 15, p.274.

After the dissolution of the first marriage of Erlando, he and Joena got married on 28 May 1998.[31] In her Affidavit, Joena alleged that she represented her stepchildren; that the levied personal properties – in particular, a piano with a chair, computer equipment and a computer table – were owned by the latter. We note that two of these stepchildren were already of legal age when Joena filed her Affidavit. As to Patrik Randel, parental authority over him belongs to his parents. Absent any special power of attorney authorizing Joena to represent Erlando's children, her claim cannot be sustained.

Petitioner Joena also asserted that the two (2) motor vehicles purchased in 1992 and 1997, as well as the house and lot covered by TCT No. 216818 formed part of the absolute community regime. However, Art. 92, par. (3) of the Family Code excludes from the community property the property acquired before the marriage of a spouse who has legitimate descendants by a former marriage; and the fruits and the income, if any, of that property. Neither these two vehicles nor the house and lot belong to the second marriage.

We now proceed to discuss the Motion for contempt filed by respondents.

Respondents claim that petitioners and their present counsel, Atty. Antonio R. Bautista, were guilty of forum shopping when the latter filed Civil Case No. 09-1323-MK with the RTC of Marikina City while the case was still pending before us. In *Executive Secretary v. Gordon*,[32] we explained forum shopping in this wise:

> Forum-shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. Thus, it has been held that there is forum-shopping —
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> (1) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or *certiorari*) in another, or

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[32] 359 Phil. 266, 271-272 (1998).

(2) if, after he has filed a petition before the Supreme Court, a party files another before the Court of Appeals since in such case he deliberately splits appeals "in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open," or

(3) where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court.

Civil Case No. 09-1323-MK was filed to question the proceedings undertaken by the sheriff in executing the judgment in Civil Case Nos. Q01-42948 and Q01-42959. On the other hand, the present case questions the merits of the Decision itself in Civil Case Nos. Q01-42948 and Q01-42959. These cases have different causes of action. Thus, it cannot be said that petitioners were clearly guilty of forum shopping when they filed the Complaint before the RTC of Marikina City.

WHEREFORE, in view of the foregoing, the Petition is hereby **DENIED.** The Resolutions dated 2 August 2007 and 30 October 2007 issued by the Court of Appeals in CA-G.R. SP No. 99719 are **AFFIRMED.**

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 182572. June 18, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HON. ERNESTO P. PAGAYATAN, in his capacity as Presiding Judge of the Regional Trial Court, Branch 46, San Jose, Occidental Mindoro, JOSEFINA S. LUBRICA, in her capacity as Assignee of Federico Suntay, NENITA SUNTAY TAÑEDO and EMILIO A.M. SUNTAY III,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED; NOT PRESENT.— We have repeatedly said that grave abuse of discretion "implies 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 at all in contemplation of law." The CA has correctly held that petitioner failed to show any basis for the latter's allegations. It cannot be said that respondent judge acted in an arbitrary or despotic manner, as he clearly based the assailed Orders on this Court's Decision in *Camara v. Pagayatan*, G.R. No. 176563. In that case, we recognized the trial court's jurisdiction in ordering the deposits to be put under *custodia legis*; that is, by turning over the deposits to the Clerk of Court.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; JUST COMPENSATION; FOR PROPERTY TO BE IN *CUSTODIA LEGIS*, IT MUST HAVE BEEN LAWFULLY SEIZED AND TAKEN BY LEGAL PROCESS AND AUTHORITY, AND PLACED IN THE POSSESSION OF A PUBLIC OFFICER SUCH AS A SHERIFF, OR OF AN OFFICER OF THE COURT EMPOWERED TO HOLD IT SUCH AS A RECEIVER.— [W]e cannot subscribe to petitioner's assertions when it does not even question the Order of respondent judge

for it to place the deposits under *custodia legis*, but only on the condition that these deposits could not be physically turned over to the clerk of court. For property to be in *custodia legis*, it must have been lawfully seized and taken by legal process and authority, and placed in the possession of a public officer such as a sheriff, or of an officer of the court empowered to hold it such as a receiver. Therefore, it was only a natural consequence for respondent judge to order the physical turnover of the deposits, which had already been placed under the name of the Clerk of Court in partial compliance with the 26 April 2007 Order. Petitioner's fear that the deposits would be released to the litigants is premature and unfounded. No order of release was ever made by respondent judge; thus, no violation of the outstanding writ of preliminary injunction has been committed.

3. ID.; ID.; ID.; THE ORDER FOR THE PHYSICAL TURNOVER OF THE DEPOSITS REPRESENTING THE PROVISIONALLY DETERMINED JUST COMPENSATION IS NOT VIOLATIVE OF THE COURT'S RULING IN LUBRICA CASE (G.R. NO. 170220).— Neither can we subscribe to petitioner's theory that the Order for the physical turnover was violative of our Decision in *Lubrica v. Land Bank of the Philippines* (G.R. No. 170220), as that case did not even touch on the ownership dispute, which was not raised by the parties. Indeed, in *Lubrica*, we ordered petitioner to deposit the provisionally determined land compensation to its office in Manila. In that case, however, the issue was simply whether the computation for just compensation was correct. The order to deposit the compensation to petitioner's Manila office was intended to facilitate the immediate release of the funds to the landowner. Considering the circumstances that arose after our ruling in *Lubrica*, respondent Judge Pagayatan issued the Order placing the deposit in *custodia legis* to prevent any wrongful release thereof.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel and *LBP Legal Services Group* for petitioner.

Hector Reuben D. Feliciano and *Honorato Y. Aquino* for respondents.

D E C I S I O N

SERENO, *J.*:

In the present case, petitioner does not question the jurisdiction of Branch 46, Regional Trial Court (RTC) of San Jose, Fourth Judicial Region, Occidental Mindoro to order the transfer of custody to the clerk of court of the deposit representing the just compensation provisionally determined by the Provincial Agrarian Reform Adjudicator (PARAD). Rather, petitioner merely questions the RTC's Order to physically turn over the deposit.

The present case is a sequel to G.R. No. 170220 promulgated on 20 November 2006.[1] We adopt the findings of facts as follows:[2]

> Petitioner Josefina S. Lubrica is the assignee of Federico C. Suntay over certain parcels of agricultural land located at Sta. Lucia, Sablayan, Occidental Mindoro, with an area of 3,682.0285 hectares covered by Transfer Certificate of Title (TCT) No. T-31 (T-1326) of the Registry of Deeds of Occidental Mindoro. In 1972, a portion of the said property with an area of 311.7682 hectares, was placed under the land reform program pursuant to Presidential Decree No. 27 (1972) and Executive Order No. 228 (1987). The land was thereafter subdivided and distributed to farmer beneficiaries. The Department of Agrarian Reform (DAR) and the LBP fixed the value of the land at ₱5,056,833.54 which amount was deposited in cash and bonds in favor of Lubrica.
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> On the other hand, petitioners Nenita Suntay-Tañedo and Emilio A.M. Suntay III inherited from Federico Suntay a parcel of agricultural land located at Balansay, Mamburao, Occidental Mindoro covered by TCT No. T-128 of the Register of Deeds of Occidental Mindoro, consisting of two lots, namely, Lot 1 with an area of 45.0760 hectares and Lot 2 containing an area of 165.1571 hectares or a total of 210.2331 hectares. Lot 2 was placed under the coverage of P.D. No. 27 but only 128.7161 hectares was considered by LBP and valued the same at ₱1,512,575.05.

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[1] *Lubrica v. Land Bank of the Philippines*, 20 November 2006, 507 SCRA 415.

[2] *Id.* at 416-420.

Petitioners rejected the valuation of their properties, hence the Office of the Provincial Agrarian Reform Adjudicator (PARAD) conducted summary administrative proceedings for determination of just compensation. On January 29, 2003, the PARAD fixed the preliminary just compensation at ₱51,800,286.43 for the 311.7682 hectares (TCT No. T-31) and ₱21,608,215.28 for the 128.7161 hectares (TCT No. T-128).

Not satisfied with the valuation, LBP filed on February 17, 2003, two separate petitions for judicial determination of just compensation before the Regional Trial Court of San Jose, Occidental Mindoro, acting as a Special Agrarian Court, docketed as Agrarian Case No. R-1339 for TCT No. T-31 and Agrarian Case No. R-1340 for TCT No. T-128, and raffled to Branch 46 thereof.

Petitioners filed separate Motions to Deposit the Preliminary Valuation Under Section 16(e) of Republic Act (R.A.) No. 6657 (1988) and *Ad Cautelam* Answer praying among others that LBP deposit the preliminary compensation determined by the PARAD.

On March 31, 2003, the trial court issued an Order granting petitioners' motion x x x.

x x x x x x x x x.

On May 26, 2004, the Court of Appeals rendered a Decision in favor of the petitioners xxx.

x x x x x x x x x

The Court of Appeals held that the trial court correctly ordered LBP to deposit the amounts provisionally determined by the PARAD as there is no law which prohibits LBP to make a deposit pending the fixing of the final amount of just compensation. It also noted that there is no reason for LBP to further delay the deposit considering that the DAR already took possession of the properties and distributed the same to farmer-beneficiaries as early as 1972.

We granted the Petition stating as follows:[3]

WHEREFORE, premises considered, the petition is GRANTED. The assailed Amended Decision dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 77530 is REVERSED and SET ASIDE. The Decision dated May 26, 2004 of the Court of Appeals affirming

[3] *Id.* at 425.

(a) the March 31, 2003 Order of the Special Agrarian Court ordering the respondent Land Bank of the Philippines to deposit the just compensation provisionally determined by the PARAD; (b) the May 26, 2003 Resolution denying respondent's Motion for Reconsideration; and (c) the May 27, 2003 Order directing Teresita V. Tengco, respondent's Land Compensation Department Manager to comply with the March 31, 2003 Order, is REINSTATED. The Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, acting as Special Agrarian Court is ORDERED to proceed with dispatch in the trial of Agrarian Case Nos. R-1339 and R-1340, and to compute the final valuation of the subject properties based on the aforementioned formula.

Thereafter, petitioner deposited the balance of the amount of ₱73.4 million representing the PARAD valuation and subject of the 31 March 2003 Order to Deposit.

Apparently, another case, docketed as Sp. Proc. N-705, was pending with Branch 17 of the RTC of Cavite City. In this case, TCT No. T-31 was alleged to be part of the estate of Emilio Aguinaldo and Maria Agoncillo. Thus, on 29 April 2005, Branch 17 issued an Order:[4]

Finally, considering that counsel for the administrator has joined counsel for Delfin Aguinaldo and Heirs of Angel Aguinaldo in the latter's motion, as prayed for, the president of the Landbank of the Philippines is hereby directed to hold in abeyance any further releases of the proceeds of the compulsory acquisition by the DAR of that parcel of land located in Sablayan, Occidental Mindoro covered by T-31 (T-1326) until such time that the issue is resolved.

In CA-G.R. SP No. 97052, a Petition for annulment of judgment was also filed with the Court of Appeals (CA) by the surviving heirs of Cristina Aguinaldo Suntay, the deceased spouse of Federico Suntay. Therein petitioners, Isabel Cojuangco Suntay and Emilio Cojuangco Suntay, Jr., alleged that the parcels of land covered by Transfer Certificate of Title (TCT) Nos. T-31 and T-128 registered in the name of Cristina were among her paraphernal properties that had been illegally included as part

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[4] *Rollo*, pp. 193-194.

of the estate of Federico C. Suntay and had been subject of agrarian reform land distribution.

On 5 March 2007, the CA in CA-G.R. SP No. 97052, through a Resolution,[5] issued a temporary restraining order (TRO) enjoining private respondents Emilio A.M. Suntay III and Nenita Tañedo from collecting or receiving the land compensation proceeds of the subject property. It stated as follows:

> WHEREFORE, a ***temporary restraining order*** is hereby issued, effective upon service and for a period of sixty (60) days, unless sooner lifted, **ENJOINING** private respondents and their representatives from collecting or receiving the land compensation proceeds of the property covered by Transfer Certificate of Title Nos. T-31 (1326) and T-128 registered in the name of Cristina Aguinaldo Suntay. A bond for the temporary restraining order in the amount of ₱250,000.00 is hereby set pursuant to Section 4(b) of Rule 58 of the Rules of Court. In lieu of a hearing, both parties are required to file simultaneous memoranda within ten (10) days from receipt hereof with respect to the issuance of a writ of preliminary injunction.
>
> SO ORDERED.

Petitioner subsequently filed a Manifestation[6] dated 16 April 2007 informing Branch 46 of the Decision of this Court in G.R. No. 170220; of the issuance by the CA of a TRO in CA-G.R. SP No. 97052, as well as by Branch 17 of the 29 April Order; and of petitioner's deposit totalling ₱73.4 million in cash and bonds representing the PARAD valuation and subject of the 31 March 2003 Order to Deposit.

Acting on the Manifestation, Branch 46 issued this Order on 26 April 2007:[7]

> In the interest of the expeditious resolution of the above-entitled cases, the Clerk of Court is hereby directed to take possession of the cash deposits and original Agrarian Reform bonds as stated in

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[5] *Id.* at 190-192.

[6] *Id.* at 177-182.

[7] *Id.* at 285.

paragraph 2, page 3 of the Manifestation of the Petitioner; and the petitioner Land Bank of the Philippines is hereby ordered to turn over the said cash deposits and bonds to the Clerk of Court within five (5) days from receipt hereof.

SO ORDERED.

Thereafter, on 21 May 2007, the CA in CA-G.R. SP No. 97052 issued a Writ of Preliminary Injunction, effective upon service until sooner lifted.[8] Subsequently, on 14 August 2007, the CA clarified its 21 May 2007 Resolution to include the land compensation proceeds of the property covered by TCT No. T-31 in the coverage of the preliminary injunction, to wit:[9]

> Conditioned on petitioners' filing of a bond in the sum of ₱2,000,000.00, a writ of preliminary injunction is hereby issued, effective upon service and until sooner lifted, **ENJOINING** private respondents and their representatives from collecting or receiving the land compensation proceeds of the property covered by Tran[s]fer Certificate of Title No. T-128 registered in the name of Crist[i]na Aguinaldo Suntay.

Consequently, petitioner filed a Motion for Reconsideration,[10] alleging that the 26 April 2007 Order would be a violation of the TRO issued by the appellate court in CA-G.R. SP No. 97052 and the 29 April 2005 Order issued by Branch 17; that the Order was inconsistent with this Court's Decision in G.R. No. 170220; that there was still a pending ownership issue in the intestate proceedings; and that Branch 46 had no jurisdiction to award the proceeds of the subject properties pending resolution of this issue; and, finally, that there was no need to physically turn over the deposit to the clerk of court, since it was made in the name of the Clerk of Court anyway.

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[8] *Id.* at 247-255. Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Magdangal M. de Leon and Ricardo R. Rosario concurring.

[9] *Rollo*, p. 255.

[10] *Id.* at 148-162.

On 26 September 2007, Branch 46 denied the Motion, stating as follows:[11]

The deposit is in the name of the Clerk of Court, and is therefore meant to be in *custodia legis*. The Court sees no point in placing the deposit in the name of the Clerk of Court if it is actually beyond his power and control since it is kept in the vault of the LBP in the National Capital Region, outside the territorial jurisdiction and judicial region of this Court.

The LBP is not an officer of the Court, nor is it a disinterested person. On the contrary, it is very much an interested party, being a party litigant. It is the very party ordered to make the deposit. By making the deposit with itself[,] it has merged in its person the adverse personalities of the depositor and the depositary, a situation that should not be allowed to continue.

The LBP argues that custody by the Clerk of Court is a violation of the Temporary Restraining Order issued by the Court of Appeals in CA-G.R. SP No. 97052, and the Order dated April 29, 2005 issued by the Regional Trial Court, Branch 17, Cavite City. **This Court cannot see the logic in LBP's argument. The mere transfer of the deposit from the Clerk of Court to an interested party may be a violation, but mere transfer from the LBP to the Clerk of Court for purposes of *custodia legis* is perfectly legal, logical and proper.**

The LBP does not claim to be a party in the cases that it is citing. The parties therein have their own counsel and have no need of the LBP to defend them. More importantly, this Court is not directing the payment to any interested party. It is merely directing that the deposit, which is nominally with the Clerk of Court, be placed in his actual, physical custody, or *custodia legis*.

The Supreme Court held in *Camara v. Pagayatan*, G.R. No. 176563, April 2, 2007:

> "x x x. That the cash deposit was made under its account in trust for, and the bond made payable to respondents judge's Clerk of Court is not a contumacious disregard of the 4 March 2005 Order not only because that Order is silent in whose name the deposit should be made but also because the Branch

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[11] *Rollo*, pp. 145-147.

> Clerk of Court is under respondent Judge's control. If LBP's supposed transgression is in not placing the cash deposit under the account of, and the bond may payable to, Lubrica, respondent judge could have readily remedied the problem by directing LBP to turn over the manager's check and LBP bond to the Branch Clerk of Court x x x" (Resolution dated April 2, 2007, *Camara v. Pagayatan*, G.R. No. 176563).
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> x x x x x x x x x
>
> **The reason this Court did not order the release of Camara from detention was the perceived refusal of LBP to relinquish possession of the deposit to the Clerk of Court. The Supreme Court corrected this Court. It said that the Clerk of Court in whose name the deposit has been made is under the control of the Court, and the Court can always order the LBP to turn over the deposit to the Clerk of Court**. That is precisely what this Court did in its order dated April 26, 2007. **It ordered the LBP to turn over the deposit to the Clerk of Court. In doing so, the Court took its cue from *Camara v. Pagayatan,* G.R. No. 176563, April 2, 2007**. (Emphasis supplied.)

Petitioner thereafter filed a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 101506. It alleged that Presiding Judge Ernesto P. Pagayatan of Branch 46 committed grave abuse of discretion when he issued the 26 April 2007 and 26 September 2007 Orders directing the physical turnover of the deposits and reiterating the grounds it had earlier cited in its Motion for Reconsideration.

On 31 January 2008, the CA dismissed the Petition.[12] It held that the assailed Orders were issued after the finality of the Decision in G. R. No. 170220. It also ruled that respondent judge had fully explained the basis of his reliance on this Court's ruling in G.R. No. 176563, as quoted above, where we said that the trial court may direct petitioner to turn over the Manager's Check and bond to the branch clerk of court. Moreover, petitioner's perceived violation of the injunctive Writ issued by

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[12] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Noel G. Tijam and Sesinando E. Villon concurring; *rollo*, pp. 10-24.

the CA or the Order issued by Branch 17 was supposedly without factual basis. The CA opined that "the pendency of a suit involving ownership of the expropriated lands provides even greater justification for the court to take possession of the disputed funds representing partial payment of the just compensation due the landowners pursuant to agrarian reform laws." Finally, it held that it is only when property is lawfully taken by virtue of legal process that it becomes in *custodia legis.* The CA likewise denied petitioner's Motion for Reconsideration through the assailed Resolution dated 17 April 2008.[13]

Hence, this Petition.

We have repeatedly said that grave abuse of discretion "implies 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 at all in contemplation of law."[14]

The CA has correctly held that petitioner failed to show any basis for the latter's allegations. It cannot be said that respondent judge acted in an arbitrary or despotic manner, as he clearly based the assailed Orders on this Court's Decision in *Camara v. Pagayatan*, G.R. No. 176563. In that case, we recognized the trial court's jurisdiction in ordering the deposits to be put under *custodia legis*; that is, by turning over the deposits to the Clerk of Court.

Moreover, we cannot subscribe to petitioner's assertions when it does not even question the Order of respondent judge for it to place the deposits under *custodia legis*, but only on the condition that these deposits could not be physically turned over to the clerk of court. For property to be in *custodia legis*, it must have been lawfully seized and taken by legal process

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[13] *Rollo*, p. 80.

[14] *Cuison v. Court of Appeals*, 351 Phil. 1089, 1102 (1998).

and authority, and placed in the possession of a public officer such as a sheriff, or of an officer of the court empowered to hold it such as a receiver.[15] Therefore, it was only a natural consequence for respondent judge to order the physical turnover of the deposits, which had already been placed under the name of the Clerk of Court in partial compliance with the 26 April 2007 Order.

Petitioner's fear that the deposits would be released to the litigants is premature and unfounded. No order of release was ever made by respondent judge; thus, no violation of the outstanding writ of preliminary injunction has been committed.

Neither can we subscribe to petitioner's theory that the Order for the physical turnover was violative of our Decision in *Lubrica v. Land Bank of the Philippines* (G.R. No. 170220), as that case did not even touch on the ownership dispute, which was not raised by the parties. Indeed, in *Lubrica*, we ordered petitioner to deposit the provisionally determined land compensation to its office in Manila. In that case, however, the issue was simply whether the computation for just compensation was correct. The order to deposit the compensation to petitioner's Manila office was intended to facilitate the immediate release of the funds to the landowner. Considering the circumstances that arose after our ruling in *Lubrica*, respondent Judge Pagayatan issued the Order placing the deposit in *custodia legis* to prevent any wrongful release thereof.

WHEREFORE, in view of the foregoing, the Petition is hereby **DENIED.** The Court of Appeals Decision dated 31 January 2008 and Resolution dated 17 April 2008 in CA-G.R. SP No. 101506 are hereby **AFFIRMED.**

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Reyes, JJ.,* concur.

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[15] *Castillo v. Buencillo*, 407 Phil. 143 (2001).

FIRST DIVISION

[G.R. No. 182920. June 18, 2012]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **MICHAEL BIGLETE *y* CAMACHO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN DEEMED SUFFICIENT FOR CONVICTION.— "[T]he lack of direct evidence does not *ipso facto* bar the finding of guilt against the appellant. As long as the prosecution establishes the appellant's participation in the crime through credible and sufficient circumstantial evidence that leads to the inescapable conclusion that the appellant committed the imputed crime, the latter should be convicted." Section 4, Rule 133 of the Rules of Court instructs us when circumstantial evidence is deemed sufficient for conviction, *viz*: 1) when there is more than one circumstance; 2) when the facts from which the inferences are derived are proven; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. x x x.

2. ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT, ITS ASSESSMENT OF THE CREDIBILITY OF WITNESSES AND THE PROBATIVE WEIGHT OF THEIR TESTIMONIES AND THE CONCLUSIONS BASED ON THESE FACTUAL FINDINGS, ARE TO BE GIVEN THE HIGHEST RESPECT; EXCEPTIONS NOT PRESENT.— We agree with the findings of the RTC and the CA that indeed, the x x x events when woven together lead to no other conclusion than that it was appellant, to the exclusion of any other person, who is the perpetrator of the crime. The combination of the circumstances leaves no doubt in our mind that it was the appellant who killed Arnel. At this juncture, we reiterate the well-established doctrine that "factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings are to be given the highest respect. As a rule, the Court will not weigh anew the evidence already passed on by the trial court and affirmed by the CA. Though the rule is subject to exceptions, no such exceptional grounds obtain

in this case." In fine, we see no cogent reason to disturb the findings of the trial court as affirmed by the CA.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT WHERE THE ATTACK WAS SO SWIFT AND UNEXPECTED, AFFORDING THE HAPLESS, UNARMED AND UNSUSPECTING VICTIM NO OPPORTUNITY TO RESIST OR DEFEND HIMSELF.— We agree with the trial court as affirmed by the appellate court that treachery was employed by the appellant. The attack was "so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself." Indeed, the victim had no inkling of any harm that would befall him that fateful night of August 27, 2001. He was merely plying his regular route. He was unarmed. The attack was swift and unexpected. The victim's arms were on the steering wheel; his focus and attention on the traffic before him. All these showed that the victim was not forewarned of any danger; he also had no opportunity to offer any resistance or to defend himself from any attack.

4. ID.; AGGRAVATING CIRCUMSTANCES; USE OF A MOTOR VEHICLE; APPRECIATED WHERE A MOTOR VEHICLE WAS USED BY THE ACCUSED TO FACILITATE THE COMMISSION OF THE CRIME AS WELL AS HIS ESCAPE AFTER THE DEED HAS BEEN ACCOMPLISHED.— We agree with the trial court and the CA that the aggravating circumstance of use of a motor vehicle likewise attended the commission of the crime. Appellant was on board his motorcycle when he tried to overtake the jeepney being driven by the victim. When he was already near the left side of the victim, appellant shot him at close range. Immediately thereafter, he fled from the crime scene using his motorcycle. There is therefore no doubt that the motorcycle was used to facilitate the commission of the crime as well as his escape after the deed has been accomplished.

5. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; INHERENTLY WEAK AND CONSIDERED SELF-SERVING WHEN UNSUBSTANTIATED.— Appellant's defense constitutes merely of his denial and alibi. Both were correctly disregarded by the trial court and the CA. Aside from being inherently weak, the same were unsubstantiated and thus self-serving. Placed side by side with the evidence presented by the prosecution, appellant's denial

and alibi must fail. Appellant would like this Court to believe that after the alleged mauling incident, he sought his cousin, Rodelo Biglete, and together they went to their uncle who is a police officer. However, he did not present his cousin or his uncle to corroborate his testimony. Moreover, appellant miserably failed to show that it was physically impossible for him to be at the crime scene at the time it was committed. Appellant admitted that at the time of the shooting incident, he was at Balagtas Blvd. which is located perpendicular to Schetelig Avenue. Besides, appellant also failed to impute ill-motive on the part of the prosecution witnesses to testify against him.

6. **ID.; ID.; FLIGHT INDICATES A GUILTY CONSCIENCE AND AN ATTEMPT TO EVADE THE ARMS OF THE LAW.—** We find appellant's reaction not in accord with or within the bounds of expected human behavior. On August 28, 2001, he initially reported the alleged mauling incident to SPO2 Calabia. However, he did not return to have his statement subscribed despite having been earlier directed to. He also tried to mislead the investigating officer by giving him his wrong address. Hence, when SPO2 Calabia went to the address as indicated in his unsworn statement, SPO2 Calabia was informed that appellant was not a resident thereat or even known in the said address. Also, despite having known that his motorcycle was impounded at the police station, appellant did not take steps to recover possession thereof, if indeed his claim that the same was stolen from him was true. On the contrary, upon having discovered that the motorcycle was tagged as having been used in the shooting incident, appellant immediately took flight. In fact, he was apprehended only after three years from the time of the commission of the crime. To us, all these indicate a guilty conscience and an attempt to evade the arms of the law.

7. **CRIMINAL LAW; MURDER; PROPER PENALTY.—** In view of the attending qualifying circumstance of treachery, and the aggravating circumstance of use of motor vehicle, the crime committed was murder, the penalty for which is *reclusion perpetua*. Moreover, appellant is not eligible for parole pursuant to Section 3 of Republic Act No. 9346.

8. **ID.; ID.; CIVIL LIABILITIES OF ACCUSED-APPELLANT.—** We affirm the award of civil indemnity in the amount of ₱75,000.00. As regards the award of moral damages, we reduce the amount to ₱50,000.00 in line with prevailing jurisprudence. "These awards

are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide." We note that both the RTC and the CA did not award actual damages. Perusal of the records shows that Susan incurred expenses for the hospitalization, burial and wake of the victim. She however failed to present the receipts for said expenses. However, it being established that certain expenses were indeed incurred, temperate damages "in the amount of ₱25,000.00 should be awarded in lieu of actual damages to the heirs of the victim pursuant to Article 2224 of the Civil Code which provides that temperate damages 'may be recovered when the court finds that pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.'" The heirs of the victim are likewise entitled to an award of exemplary damages in the amount of ₱30,000.00 "in view of the proven qualifying circumstance of treachery" as well as the aggravating circumstance of use of motor vehicle.

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.*:

Direct evidence is not the only means by which the guilt of an accused may be established. Circumstantial evidence may similarly be resorted to. In this case, we find the totality of the circumstantial evidence as presented by the prosecution sufficient to prove beyond reasonable doubt the guilt of the appellant.

On appeal is the December 17, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02458 which affirmed with modification the July 11, 2006 Judgment[2] of the Regional

[1] CA *rollo*, pp. 101-116; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Edgardo P. Cruz and Normandie B. Pizarro.

[2] Records, pp. 308-325; penned by Judge Zorayda Herradura-Salcedo.

Trial Court (RTC) of San Pablo City, Branch 32 finding appellant Michael Biglete *y* Camacho guilty beyond reasonable doubt of the crime of murder.

Factual Antecedents

On November 16, 2001, an Information[3] was filed charging appellant with the crime of murder committed as follows:

> That on or about August 27, 2001, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously shoot one ARNEL ALCOS with an unlicensed firearm, with which accused was then conveniently provided, thereby inflicting mortal wounds upon the person of said Arnel Alcos which caused his immediate death.
>
> That the aggravating circumstance of use of motor vehicle attended the commission of the offense.
>
> CONTRARY TO LAW.

A warrant of arrest was thereafter issued against appellant[4] but was returned unserved because he could not be located.[5] It was only on April 21, 2004,[6] or after almost three years, that the appellant was apprehended. On May 6, 2004, appellant was arraigned during which he entered a plea of "not guilty."[7] Trial ensued thereafter.

The facts of the case showed that on August 27, 2001 at around 8:00 p.m., Arnel Alcos (Arnel) was driving his passenger jeepney plying the San Pablo City - Sto. Angel route. Seated beside him was his wife, Susan Alcos (Susan). While they were already cruising along Schetelig Avenue in San Pablo City, Susan heard a gunshot. Seconds after, a red motorcycle overtook their

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[3] *Id.* at 1.

[4] *Id.* at 20.

[5] *Id.* at 28.

[6] *Id.* at 60.

[7] *Id.* at 66.

jeepney. The driver of the motorcycle was holding a gun. After a short while, Susan noticed her husband slumped on his seat with his head resting on the steering wheel. The passenger jeepney they were riding then turned turtle. Later she discovered that Arnel was hit on his head which caused his death.

At the time of the shooting incident, Victor Andaya[8] (Victor) was in a waiting shed approximately 20 meters away from where the incident happened. Victor saw a motorcycle trying to overtake the jeepney being driven by Arnel. When the motorcycle was about to overtake the jeepney, its driver suddenly fired a single shot towards the jeepney driver causing the jeepney to turn turtle. Victor later learned that the jeepney driver died of a gunshot wound.

Some 500 meters away from Schetelig Avenue, Julius Panganiban (Julius) was at his house preparing dinner when he heard a loud noise. When he went out to investigate, he saw that a motorcycle crashed into his gate. Lying near the motorcycle was a revolver. However, the motorcycle driver was nowhere to be found. Julius reported the matter to the police authorities and at the same time surrendered possession of the motorcycle and revolver.

At about 2:00 p.m. of August 28, 2001 or a day after the shooting incident, appellant went to the police station and reported to SPO2 Joselito Mendoza Calabia (SPO2 Calabia) that on August 27, 2001, he was mauled by three persons while he was cruising along Balagtas Blvd. in San Pablo City. Said three persons also allegedly stole his motorcycle. Appellant further narrated to SPO2 Calabia that after he was mauled, he climbed the high concrete fence of a nearby building then ran towards Tirones Compound located at *Barangay* III-C. SPO2 Calabia and appellant went to the place where the alleged mauling incident happened. However, nobody could tell if such incident indeed transpired. As it was already late in the afternoon, SPO2 Calabia requested appellant to return the following day to subscribe his statement. When appellant failed to appear as scheduled, SPO2 Calabia

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[8] Sometimes referred to as Victor Endaya in some parts of the records.

went to the address as indicated by appellant in his statement. However, according to the people he interviewed, there is no Michael Biglete *y* Camacho who resides thereat.

Meanwhile, in the course of his investigation on the shooting incident at Schetelig Avenue, SPO2 Calabia learned from the *Barangay* Captain of San Jose, San Pablo City, that in the evening of August 27, 2001, appellant was brought to the *Barangay* Captain's residence and there admitted that he was the driver and owner of the subject motorcycle.

Susan later identified the motorcycle as the same motor vehicle used by the assailant while shooting her husband.

Appellant admitted that he owned the subject motorcycle. However, he claimed that on August 27, 2001 at around 7:00 p.m., while he was traversing Balagtas Blvd. somebody hit him at the back with a piece of wood. When he fell down from the motorcycle, somebody got hold of the same. Appellant then ran towards a vacant lot. Thereafter, he sought his cousin Rodelo Biglete, Jr. and together they went to the house of their uncle who is a police officer. Not finding him there, they proceeded to the police station and reported the incident. The following day, appellant returned to the police station and was investigated by SPO2 Calabia.

Ruling of the Regional Trial Court

On July 11, 2006, the RTC rendered its Judgment finding appellant guilty as charged. The dispositive portion of the Judgment reads:

> WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, this Court finds that the prosecution has established and proven the guilt of accused MICHAEL BIGLETE *Y* CAMACHO beyond reasonable doubt of the crime of MURDER and with the presence of use of motor vehicle as aggravating circumstance in the commission of the deed, he is hereby sentenced to suffer the penalty of imprisonment of *RECLUSION PERPETUA*; to indemnify the heirs of the deceased the sum of ₱50,000; the sum of ₱100,000.00 as moral damages; and the costs of the suit.

SO ORDERED.[9]

In arriving at its verdict, the trial court held that direct evidence is not the only matrix by which the guilt of the accused may be determined. Resort to circumstantial evidence may be made in the absence of direct evidence. In this case, the trial court ruled that the totality of circumstantial evidence as presented by the prosecution is sufficient to prove beyond reasonable doubt the guilt of the appellant for the crime of murder. It appreciated the qualifying circumstances of evident premeditation and treachery as having attended the commission of the crime. It likewise appreciated the aggravating circumstance of use of a motor vehicle.

The trial court did not lend credence to the version of the appellant that his motorcycle was stolen. Aside from the fact that nobody corroborated appellant's testimony, no ill-motive was likewise imputed on the prosecution witnesses as to testify falsely against him.

Ruling of the Court of Appeals

The appellate court affirmed the factual findings of the trial court. It likewise found the circumstantial evidence presented by the prosecution as sufficient basis for appellant's conviction. However, according to the appellate court, only the qualifying circumstance of treachery attended the commission of the crime and that the same was facilitated by the use of a motor vehicle. It did not appreciate the qualifying circumstance of evident premeditation because there was no showing as to when and how the felony was planned. As regards the award of damages, the appellate court increased the award of civil indemnity to ₱75,000.00 and reduced the award of moral damages to ₱75,000.00. The dispositive portion of the appellate court's Decision reads:

WHEREFORE, the assailed Judgment dated July 11, 2006 is affirmed, subject to the modification that only the qualifying circumstance of treachery is considered, the award of civil indemnity

[9] Records, pp. 324-325.

is increased to ₱75,000.00 and the award of moral damages is reduced to ₱75,000.00. The Judgment is affirmed in all other respects.

SO ORDERED.[10]

Hence, this appeal.

This Court notified the parties that they may file their supplemental briefs within 30 days from notice. However, both parties manifested that they have opted to adopt the briefs they earlier filed with the CA as their supplemental briefs.

Our Ruling

The appeal lacks merit.

Circumstantial Evidence

"[T]he lack of direct evidence does not *ipso facto* bar the finding of guilt against the appellant. As long as the prosecution establishes the appellant's participation in the crime through credible and sufficient circumstantial evidence that leads to the inescapable conclusion that the appellant committed the imputed crime, the latter should be convicted."[11]

Section 4, Rule 133 of the Rules of Court instructs us when circumstantial evidence is deemed sufficient for conviction, *viz*: 1) when there is more than one circumstance; 2) when the facts from which the inferences are derived are proven; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

The trial court relied on the following circumstantial evidence on which to anchor the conviction of the appellant, thus:

1. Susan Alcos testified that when her husband, being the driver of a passenger jeep, and she was seated by his side, sustained a wound on his head inflicted by a person riding a motorcycle, she was able to see immediately after the shooting, Michael Biglete who was then driving that motorcycle, passed by their jeepney and he was holding a gun. She did not see any person

[10] CA *rollo*, p. 115.

[11] *People v. Villamor*, G.R. No. 187497, October 12, 2011.

holding a gun save this motorcycle driver who passed them by. The motorcycle is a YAMAHA motorcycle colored red and without a plate number. She saw that motorcycle at the Police Station which according to the police officers was involved in an accident on the night of August 27, 2001. It is owned by Michael Biglete, the driver of that vehicle during that fateful night, and this driver was wearing a red T-shirt that night.

2. Victor Andaya, on that fateful night of August 27, 2001 while waiting for a passenger jeepney [in] a waiting shed at Villongco Subd., saw a motorcycle following a jeepney. The driver of that motorcycle was wearing a red T-shirt. He saw the driver of the motorcycle fire at the driver of the jeepney as it overtook the jeepney. The jeepney turned turtle. The shooting incident happened at Schetelig Avenue at EFARCA Village twenty (20) meters away from where he was waiting for a passenger jeepney.

3. Julius Panganiban testified that on August 27, 2001 at about 8:00 o'clock in the evening, he heard a bump on the gate of his house. He went down and saw a red motorcycle slump on its side. He did not see the driver. He also saw the firearm appearing to be a .357 revolver. He presented said motorcycle and firearm to the police officers. The motorcycle was released to Victor Sumaya, a representative of R-Cycle Motorcycle because it was purchased by a certain Michael Biglete of Lopez Jaena Street, San Pablo and still under installment. It is the very motorcycle he found near his gate.

4. Police Officer Joselito Calabia testified that it was on August 28, 2001 at about 2:00 o'clock in the afternoon when accused Michael Biglete reported to him that his motorcycle was carnapped by three (3) persons who also mauled him. Michael allegedly climbed a high concrete fence with barb wire near the SSS building and ran to Tirones Compound going to the City Plaza where the 711 store is. He took Michael's statement and even his address, however when he went to the place indicated, the people there told him that there was no Michael Biglete residing there. He saw the motorcycle at the Police Headquarters which as reported was brought by the Brgy. Officials of Brgy. San Jose which according to the widow of the victim, x x x is the motorcycle used by the assailant in shooting her husband. The Barangay Chairman told him that

> the driver of that motorcycle is that person who introduced himself as Michael Biglete.[12]

The CA likewise found the foregoing circumstantial evidence sufficient to prove the guilt of the appellant beyond reasonable doubt. The appellate court stressed that "right after the shooting, Susan Alcos, then seated beside Arnel Alcos inside the jeepney, was able to see accused-appellant holding a gun while riding a motorcycle. Hence, although she did not witness the sudden shooting of Arnel Alcos, it was only accused-appellant whom she saw right after the shooting, riding on the motorcycle and holding a gun."[13] It also noted that Susan's testimony was corroborated by Victor, a traffic enforcer, who was situated approximately 20 meters away from the crime scene.[14] The CA thus reached the same conclusion as the RTC that the combination of the following events leads to no other conclusion than that appellant was the author of the crime, thus: "(1) Arnel Alcos was shot while he was driving a jeepney; (2) [r]ight after the shooting, accused-appellant was seen by Susan Alcos and Victor Andaya as the only one holding a gun on board the motorcycle which overtook the jeepney driven by Arnel Alcos; and, (3) [a]ccused-appellant was the owner of the motorcycle."[15]

We agree with the findings of the RTC and the CA that indeed, the foregoing events when woven together lead to no other conclusion than that it was appellant, to the exclusion of any other person, who is the perpetrator of the crime. The combination of the circumstances leaves no doubt in our mind that it was the appellant who killed Arnel.

At this juncture, we reiterate the well-established doctrine that "factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies and the conclusions based on these factual findings

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[12] Records, pp. 320-321.

[13] CA *rollo*, p. 106.

[14] *Id.* at 109.

[15] *Id.* at 111.

are to be given the highest respect. As a rule, the Court will not weigh anew the evidence already passed on by the trial court and affirmed by the CA. Though the rule is subject to exceptions, no such exceptional grounds obtain in this case."[16] In fine, we see no cogent reason to disturb the findings of the trial court as affirmed by the CA.

Treachery

We agree with the trial court as affirmed by the appellate court that treachery was employed by the appellant. The attack was "so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself."[17] Indeed, the victim had no inkling of any harm that would befall him that fateful night of August 27, 2001. He was merely plying his regular route. He was unarmed. The attack was swift and unexpected. The victim's arms were on the steering wheel; his focus and attention on the traffic before him. All these showed that the victim was not forewarned of any danger; he also had no opportunity to offer any resistance or to defend himself from any attack.

Use of Motor Vehicle

We agree with the trial court and the CA that the aggravating circumstance of use of a motor vehicle likewise attended the commission of the crime. Appellant was on board his motorcycle when he tried to overtake the jeepney being driven by the victim. When he was already near the left side of the victim, appellant shot him at close range. Immediately thereafter, he fled from the crime scene using his motorcycle. There is therefore no doubt that the motorcycle was used to facilitate the commission of the crime as well as his escape after the deed has been accomplished. In *People v. Herbias*,[18] we held that -

The use of motor vehicle may likewise be considered as an aggravating circumstance that attended the commission of the crime.

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[16] *People v. Mamaruncas*, G.R. No. 179497, January 25, 2012.

[17] *Id.*

[18] 333 Phil. 422, 432-433 (1996).

The records show that assailants used a motorcycle in trailing and overtaking the jeepney driven by Saladio after which appellant's back rider mercilessly riddled with his bullets the body of Jeremias. There is no doubt that the motorcycle was used as a means to commit crime and to facilitate their escape after they accomplished their mission.

Use of unlicensed firearms

Both the trial court and the CA properly disregarded the circumstance of use of unlicensed firearms. Records show that no evidence was presented to show that the same was unlicensed. Consequently, such circumstance cannot be appreciated.[19]

Denial and Alibi

Appellant's defense constitutes merely of his denial and alibi. Both were correctly disregarded by the trial court and the CA. Aside from being inherently weak, the same were unsubstantiated and thus self-serving. Placed side by side with the evidence presented by the prosecution, appellant's denial and alibi must fail. Appellant would like this Court to believe that after the alleged mauling incident, he sought his cousin, Rodelo Biglete, and together they went to their uncle who is a police officer. However, he did not present his cousin or his uncle to corroborate his testimony. Moreover, appellant miserably failed to show that it was physically impossible for him to be at the crime scene at the time it was committed. Appellant admitted that at the time of the shooting incident, he was at Balagtas Blvd. which is located perpendicular to Schetelig Avenue. Besides, appellant also failed to impute ill-motive on the part of the prosecution witnesses to testify against him.

Flight

We find appellant's reaction not in accord with or within the bounds of expected human behavior. On August 28, 2001, he initially reported the alleged mauling incident to SPO2 Calabia. However, he did not return to have his statement subscribed despite having been earlier directed to. He also tried to mislead

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[19] *People v. Oco*, 458 Phil. 815, 850 (2003).

the investigating officer by giving him his wrong address. Hence, when SPO2 Calabia went to the address as indicated in his unsworn statement, SPO2 Calabia was informed that appellant was not a resident thereat or even known in the said address. Also, despite having known that his motorcycle was impounded at the police station, appellant did not take steps to recover possession thereof, if indeed his claim that the same was stolen from him was true. On the contrary, upon having discovered that the motorcycle was tagged as having been used in the shooting incident, appellant immediately took flight. In fact, he was apprehended only after three years from the time of the commission of the crime. To us, all these indicate a guilty conscience and an attempt to evade the arms of the law.

The Penalty

In view of the attending qualifying circumstance of treachery, and the aggravating circumstance of use of motor vehicle, the crime committed was murder, the penalty for which is *reclusion perpetua*. Moreover, appellant is not eligible for parole[20] pursuant to Section 3 of Republic Act No. 9346 which provides:

> Section 3. Persons convicted of offenses punishable with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4103 otherwise known as the Indeterminate Sentence Law, as amended.

Award of Damages

We affirm the award of civil indemnity in the amount of ₱75,000.00.[21] As regards the award of moral damages, we reduce the amount to ₱50,000.00 in line with prevailing jurisprudence.[22] "These awards are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide."[23]

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[20] *People v. Mamaruncas*, *supra* note 16.

[21] *Id.*

[22] *Id.*

[23] *Id.*

We note that both the RTC and the CA did not award actual damages. Perusal of the records shows that Susan incurred expenses for the hospitalization, burial and wake of the victim. She however failed to present the receipts for said expenses. However, it being established that certain expenses were indeed incurred, temperate damages "in the amount of ₱25,000.00 should be awarded in lieu of actual damages to the heirs of the victim pursuant to Article 2224 of the Civil Code which provides that temperate damages 'may be recovered when the court finds that pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.'"[24]

The heirs of the victim are likewise entitled to an award of exemplary damages in the amount of ₱30,000.00 "in view of the proven qualifying circumstance of treachery"[25] as well as the aggravating circumstance of use of motor vehicle.

WHEREFORE, premises considered, the December 17, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02458 which found appellant Michael Biglete *y* Camacho **guilty** beyond reasonable doubt of murder is **AFFIRMED with further MODIFICATIONS** as follows:

1. Appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole;

2. The award of moral damages is reduced to ₱50,000.00;

3. Temperate damages of ₱25,000.00 in lieu of actual damages is awarded;

4. Exemplary damages of ₱30,000.00 is awarded; and

5. Appellant is further ordered to pay the heirs of the victim interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment.

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[24] *Id.*

[25] *Id.*

SO ORDERED.

Leonardo-de Castro,[*] *Abad,*[**] *Villarama, Jr.,* and *Perlas-Bernabe,*[***] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 186722. June 18, 2012]

THE UNITED ABANGAN CLAN, INC., represented by CRISTITUTO F. ABANGAN, *petitioner, vs.* **YOLANDA C. SABELLANO-SUMAGANG, ERNESTO TIRO, BASILISA CABELLON-MORENO, MARTIN C. TABURA, JR., ROMUALDO C. TABURA, ROLANDO CABELLON, represented by ROLANDO CABELLON, and THE HONORABLE CITY CIVIL REGISTRAR OF CEBU CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; DISMISSAL ON GROUND OF *LITIS PENDENTIA*; REQUISITES.— *Litis pendentia*, as a ground for the dismissal of an action, refers to a situation in which another action is pending between the same parties for the same cause of action, and the second action becomes unnecessary and vexatious. In order to successfully invoke the rule, the movant must prove the existence of the following requisites: (a) the identity of parties, or at least like those representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two (2) cases,

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[*] Per Special Order No. 1226 dated May 30, 2012.

[**] Per Special Order No. 1230 dated June 6, 2012.

[***] Per Special Order No. 1227 dated May 30, 2012.

such that the judgment that may be rendered in the pending case would, regardless of which party is successful, amount to *res judicata* in the other.

2. ID.; ID.; ID.; ID.; IDENTITY AND SIMILARITY OF THE ISSUES UNDER LITIGATION; TEST; ACTION FOR DECLARATION OF HEIRSHIP DISTINGUISHED FROM ACTION FOR CANCELLATION OF ENTRY IN THE CIVIL REGISTER.— The crucial consideration in *litis pendentia* is the identity and similarity of the issues under litigation. As early as in *J. Northcott & Co., Inc. v. Villa-Abrille*, we ruled: "One of the recognized tests of such identity is to discover whether a judgment in the prior action would be conclusive as to the liability sought to be enforced in the second and would operate as a bar to the latter. In other words, if a final judgment in the prior action, be it of whatsoever character it may, would support the plea of *res judicata* in the second, the two suits may be considered identical; otherwise not." There is no identity and similarity between the first and the second petitions with respect to the issues under litigation. The action in the prior Petition (SP. PROC. No. 16171-CEB) involves a judicial declaration of heirship, while the main issue in the present one (SP. PROC. No. 16180-CEB) pertains to a cancellation of entry in the civil register. An action for declaration of heirship (*declaracion de herederos*) refers to a special proceeding in which a person claiming the status of heir seeks prior judicial declaration of his or her right to inherit from a decedent. On the other hand, an action for cancellation of entry in the civil register refers to a special proceeding whereby a substantial change affecting the civil status of a party is sought through the amendment of the entry in the civil register. In the former, what is established is a party's right of succession to the decedent; in the latter, among those settled are the issues of nationality, paternity, filiation, legitimacy of the marital status, and registrability of an event affecting the status or nationality of an individual. Because the respective subject matters in the two actions differ, any decision that may be rendered in one of them cannot constitute *res judicata* in the other. A judicial declaration of heirship is inconclusive on the fact of occurrence of an event registered or to be registered in the civil register, while changes in the entries in the civil register do not in themselves settle the issue of succession.

APPEARANCES OF COUNSEL

Ybalez & Ybalez law Office for petitioner.
Jose P. Burgos for respondents.

R E S O L U T I O N

SERENO, *J.*:

Before the Court is a Petition for Review on *Certiorari* filed under Rule 45 in relation to Rule 41, Section 2(c) of the Rules of Court pertaining to appeals involving pure questions of law. The petition assails the 6 February 2009 Resolution of the Regional Trial Court (RTC),[1] which dismissed the action of United Abangan Clan, Inc. (United Abangan Clan) for the cancellation of the entry in the Register of Marriages of the City Civil Registrar of Cebu City (Civil Registrar), involving the alleged marriage of Anastacia Abangan (Anastacia) to Raymundo Cabellon (Raymundo). Petitioner United Abangan Clan is an association comprised of members who are supposedly the collateral relatives and nearest intestate heirs of Anastacia. Respondents Yolanda C. Sabellano-Sumagang, Ernesto Tiro, Basilisa Cabellon-Moreno, Martin C. Tabura, Jr., Romualdo C. Tabura, and Rolando Cabellon (Cabellon Descendants) are the purported grandchildren and great-grandchildren of Anastacia and Raymundo.

The present case stemmed from the registration of the purported marital union between the late Anastacia and Raymundo. They were allegedly married on 18 February 1873 at the Santo Tomas de Villanueva Parish in El Pardo, Cebu City. A delayed registration of the marriage was entered in the records of the Civil Registrar, and a Certificate of Marriage issued sometime in September 2007 or 134 years after their purported matrimonial bond. The petition for late registration was filed by Rolando Cabellon, Edith T. Casas, and Imelda

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[1] The Resolution in SP. PROC. No. 16180-CEB was penned by RTC Judge Silvestre A. Maamo, Jr.

T. Casugay, who were allegedly the true legal heirs and descendants of Anastacia and Raymundo.

On 19 May 2008, the United Abangan Clan filed a Petition seeking the cancellation of the entry in the Register of Marriages. It averred[2] that Anastacia died single and without issue. It then posited that the claimed marriage could not be registered under Act No. 3753, because it had ostensibly taken place before 27 February 1931, which was the date of effectivity of the law. Furthermore, petitioner contended that it was not Anastacia and Raymundo who had filed the application for the late registration of their marriage, and that there was failure to show cause for the delay in registration.

On the other hand, respondents argued[3] that petitioner was engaged in forum shopping, since the fact of marriage between Anastacia and Raymundo was an important issue to be resolved in another case. Docketed as SP. PROC. No. 16171-CEB, the case involved a petition for the judicial declaration of the heirs of decedent Anastacia (first petition). They next asserted that the United Abangan Clan was estopped from questioning the late registration of the marriage, which petitioner had failed to contest after the publication of the Notice of Delayed Registration. They then averred that it failed to exhaust administrative remedies, as it did not appeal the decision of the Civil Registrar to a higher office. Finally, they claimed that the marriage of Anastacia and Raymundo had been established by means of an ancient document found in the church records of the Santo Tomas de Villanueva Parish.

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[2] Petition at 2-4 (*In re: Cancellation of the Entry in Register of Marriages in the Office of the City Civil Registrar Cebu City on the Alleged Marriage of Anastacia Abangan to Raymundo Cabellon*, SP. PROC. No. 16180-CEB dated 19 May 2008), *rollo*, pp. 23-25. *See also* Petition for Review on *Certiorari* at 3-8 (filed on 11 March 2009), *rollo*, pp. 8-13.

[3] Position Paper for the Oppositors (*In re: Cancellation of the Entry in Register of Marriages in the Office of the City Civil Registrar Cebu City on the Alleged Marriage of Anastacia Abangan to Raymundo Cabellon*, SP. PROC. No. 16180-CEB dated 26 September 2008), *rollo*, pp. 27-30. *See also* Private Respondent's Comment (filed on 10 June 2009), *rollo*, pp. 36-38.

On 6 February 2009, the RTC issued a Resolution[4] dismissing the Petition for cancellation of the entry in the Register of Marriages (second petition) on the ground of *litis pendentia*. According to the trial court, the first petition (SP. PROC. No. 16171-CEB) and the second petition (SP. PROC. No. 16180-CEB), which were both initiated by petitioner, involved the same parties and concerned the same issues and reliefs prayed for. The trial court explained that any decision on the first petition would necessarily constitute *res judicata* in the present case, since the ultimate purpose of the second petition was to assert heirship and the right of succession over the inheritance left by Anastacia. Finally, the RTC declared that the present petition was still premature, because petitioner should have first brought the issue to the attention of the Civil Registrar pursuant to the doctrine of primary administrative jurisdiction.

Issue

The sole issue before this Court is whether or not the instant petition was properly dismissed on the ground of *litis pendentia*.

Discussion

Litis pendentia, as a ground for the dismissal of an action, refers to a situation in which another action is pending between the same parties for the same cause of action, and the second action becomes unnecessary and vexatious.[5] In order to successfully invoke the rule, the movant must prove the existence of the following requisites: (a) the identity of parties, or at least like those representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two (2) cases, such that the judgment that may be rendered in the pending

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[4] RTC Resolution (*In re: Cancellation of the Entry in Register of Marriages in the Office of the City Civil Registrar Cebu City on the Alleged Marriage of Anastacia Abangan to Raymundo Cabellon*, SP. PROC. No. 16180-CEB, decided on 6 February 2009), *rollo*, pp. 16-18.

[5] *Bangko Silangan Development Bank v. Court of Appeals*, 412 Phil. 755 (2001).

case would, regardless of which party is successful, amount to *res judicata* in the other.[6]

The crucial consideration in *litis pendentia* is the identity and similarity of the issues under litigation.[7] As early as in *J. Northcott & Co., Inc. v. Villa-Abrille*, we ruled: "One of the recognized tests of such identity is to discover whether a judgment in the prior action would be conclusive as to the liability sought to be enforced in the second and would operate as a bar to the latter. In other words, if a final judgment in the prior action, be it of whatsoever character it may, would support the plea of *res judicata* in the second, the two suits may be considered identical; otherwise not."[8]

There is no identity and similarity between the first and the second petitions with respect to the issues under litigation. The action in the prior Petition (SP. PROC. No. 16171-CEB) involves a judicial declaration of heirship, while the main issue in the present one (SP. PROC. No. 16180-CEB) pertains to a cancellation of entry in the civil register. An action for declaration of heirship (*declaracion de herederos*) refers to a special proceeding in which a person claiming the status of heir seeks prior judicial declaration of his or her right to inherit from a decedent.[9] On the other hand, an action for cancellation of entry in the civil register refers to a special proceeding whereby a substantial change affecting the civil status of a party is sought through the amendment of the entry in the civil register.[10] In the former, what is established is a party's right of succession to the decedent; in the latter, among those settled are the issues of nationality, paternity, filiation, legitimacy of the marital status, and registrability of an event affecting the status or nationality

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[6] *Mariscal v. Court of Appeals*, 370 Phil. 52 (1999).

[7] *Id*.

[8] *J. Northcott & Co., Inc. v. Villa-Abrille*, 41 Phil. 462, 465 (1921).

[9] *See Suiliong & Co. v. Chio-Taysan*, 12 Phil. 13 (1908); *Cabuyao v. Caagbay*, 95 Phil. 614 (1954); *Marabiles v. Quito*, 100 Phil. 64 (1956).

[10] *Republic v. Medina*, 204 Phil. 615 (1982)

of an individual. Because the respective subject matters in the two actions differ, any decision that may be rendered in one of them cannot constitute *res judicata* in the other. A judicial declaration of heirship is inconclusive on the fact of occurrence of an event registered or to be registered in the civil register, while changes in the entries in the civil register do not in themselves settle the issue of succession.

WHEREFORE, the Petition is **GRANTED.** The 6 February 2009 Resolution of the Cebu City RTC in SP. PROC. No. 16180-CEB is **REVERSED** and **SET ASIDE.** We hereby order the **REMAND** of the case (SP. PROC. No. 16180-CEB) to the RTC for a trial on the merits.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 194106. June 18, 2012]

MANILA ELECTRIC COMPANY (MERALCO), *petitioner, vs.* **HERMINIGILDO H. DEJAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL OF RESPONDENT-EMPLOYEE FOR SERIOUS MISCONDUCT AND LOSS OF TRUST AND CONFIDENCE, DECLARED VALID; THE LAW, IN PROTECTING THE RIGHTS OF THE LABORER, AUTHORIZES NEITHER OPPRESSION NOR SELF-DESTRUCTION OF THE EMPLOYER.— We cannot blame Meralco for losing its trust and confidence in Dejan. He is no ordinary employee. As branch representative, "he was principally

charged with the function and responsibility to accept payment of fees required for the installation of electric service and facilitate issuance of meter sockets." The duties of his position require him to always act with the highest degree of honesty, integrity and sincerity, as the company puts it. In light of his fraudulent act, Meralco, an enterprise imbued with public interest, cannot be compelled to continue Dejan's employment, as it would be inimical to its interest. Needless to say, "[t]he law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer." **For sure, Dejan was validly dismissed for serious misconduct, and loss of trust and confidence.**

2. REMEDIAL LAW; APPEALS; FINDINGS OF THE COURT OF APPEALS ARE CONCLUSIVE EXCEPT WHEN IT GROSSLY MISAPPREHENDED THE FACTS AND EVIDENCE ON THE RECORD.— Dejan posits that the petition is improper because it raises only questions of facts. We do not see this as a legal problem. As we stressed earlier, the CA grossly misapprehended the facts and the evidence on record. The case falls within the exceptions to the rule on the conclusiveness of the CA findings, thereby opening the CA rulings to the Court's discretionary review authority.

APPEARANCES OF COUNSEL

Angel L. Miranda, Jr. for petitioner.
Jaime L. Miralles for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is the present petition for review on *certiorari*[1] which seeks the reversal of the decision[2] dated February 3, 2010 and the resolution[3] dated October 12, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 105428.

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[1] *Rollo*, pp. 18-46; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 219-231; penned by Associate Justice Rebecca de Guia-Salvador, and concurred in by Associate Justices Estela M. Perlas-Bernabe (now a member of this Court) and Jane Aurora C. Lantion.

[3] *Id.* at 48-49.

The Facts

The facts are well set out in the assailed CA decision and are summarized below.

Respondent Herminigildo Dejan commenced employment with the Manila Electric Company (*Meralco*) on July 7, 1992. He was then Meralco's branch representative in its San Pedro, Laguna branch, with a monthly salary of ₱30,500.00. His work consisted of accepting payments of the required fees from applicants for electric service installation and issuing the corresponding meter sockets/bases after payment of a deposit, preceded by an inspection of the premises to be energized by a Meralco field personnel.

In the mid-afternoon of March 18, 2005, the security guard on duty at the branch, Warlito Silverio, noticed a certain Estanislao Gozarin a.k.a. Mang Islao, a private electrician, take out from the branch premises 20 pieces of meter sockets which were then loaded into a parked Meralco contracted jeep belonging to one Cesar Reyes. Reyes brought the meter sockets to his house. The meter sockets were thereafter allegedly picked up by Gil Duenas, a Meralco field representative. Dejan was asked to explain the incident.

In his letter-explanation, dated March 23, 2005, to a certain Emilia SJ Reaso,[4] Dejan admitted that he released the meter sockets in question because the deposit fees had already been paid. The payor, a certain Antonio A. Depante *a.k.a.* Bruce, also an electrician, asked for the release of the items. Allegedly, he had several contracts for service installation with the branch. Dejan indicated the list of contracts covering the released meter sockets. Sometime in September, October and November 2005, Meralco asked Gozarin,[5] Dejan,[6] and Reyes[7] to give their sworn statements on the incident.

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[4] *Id.* at 128.

[5] *Id.* at 298-300.

[6] *Id.* at 307-309.

[7] *Id.* at 301-304.

On February 10, 2006, Dejan received a letter from Marcelino Rosario, head of Meralco's Investigation-Paralegal Services, charging him with the unauthorized taking of 20 meter sockets, in violation of Section 7, paragraphs 4 and 11 of the Company Code of Employee Discipline, in relation to Article 282 of the Labor Code. On February 17, 2006, Meralco conducted a formal investigation where Dejan admitted issuing the meter sockets without the authorization of the applicants for electric connection. He alleged that he released the items even without authorization as it had been the accepted practice in the office, provided the deposit fee had been paid. He claimed that he talked with Depante, through the cell phone of Duenas, about it, after Duenas himself requested him (Dejan) to release the meter sockets to Gozarin. When Dejan released the meter sockets, Duenas instructed Gozarin to take them out of the Meralco premises and load them in Reyes' jeep.

Also testifying at the investigation, Depante corroborated Dejan's account of the incident. He alleged that he made the request for the release of the meter sockets due to his inability to pick up the items himself as he was busy with another project at the time. He and Duenas retrieved the meter sockets from Reyes' house the next day.[8]

Unconvinced with Dejan's explanation, Meralco served Dejan a letter on April 6, 2006,[9] terminating his employment effective the following day, with forfeiture of all rights and privileges. On April 20, 2006, Dejan filed his complaint with the National Labor Relations Commission (*NLRC*).

The Compulsory Arbitration Rulings

In his decision[10] dated January 15, 2007, Labor Arbiter Antonio R. Macam dismissed the complaint for lack of merit, holding that Dejan "undoubtedly transgressed the company rules on unauthorized taking of the company property[.]"[11] Labor Arbiter

[8] *Id.* at 92.

[9] *Id.* at 94.

[10] *Id.* at 327-338.

[11] *Id.* at 337.

Macam declared Dejan's dismissal as a valid exercise of Meralco's management prerogative.

Dejan appealed the labor arbiter's decision to the NLRC. On April 24, 2008, the NLRC rendered a decision reversing the labor arbiter.[12] It found that Dejan's release of the meter sockets did not constitute an unauthorized taking or stealing of company property. It believed that the release of the meter sockets was done in good faith as it was in accordance with an accepted company practice. It held Dejan liable only for simple negligence. Giving recognition to Dejan's unblemished and dedicated service to the company, the NLRC ordered his reinstatement without loss of seniority rights, but without backwages. It penalized Dejan, however, with a one-month suspension for his negligence.

Both Meralco and Dejan moved for reconsideration, but the NLRC denied the motions in its July 31, 2008 resolution.

Both parties sought relief from the CA through their respective petitions for *certiorari* under Rule 65 of the Rules of Court; Meralco charging the NLRC with grave abuse of discretion for setting aside the labor arbiter's decision; and Dejan, for the NLRC's failure to award him backwages despite its illegal dismissal finding.

The CA Decision

On February 3, 2010, the CA affirmed, with modification, the NLRC dispositions. It found no grave abuse of discretion in the NLRC ruling that Dejan is not guilty of unauthorized taking or of stealing of company property. Like the NLRC, the CA believed that Dejan acted in good faith as the release of the meter sockets was upon the request, although verbally, of Depante, the owner of the meter sockets whom he knew and who had already paid the deposit fees for the items. It pointed out that Dejan, in so acting, relied upon Meralco's long-standing practice on the release of company property without authorization.

The CA, however, found irregular the NLRC's failure to award Dejan backwages considering that it declared him to have

[12] *Id.* at 141-150.

been illegally dismissed. It pointed out that under Article 279 of the Labor Code, a dismissed employee is entitled to backwages, in addition to reinstatement. Accordingly, it awarded Dejan backwages from the time he was separated from the service until his actual reinstatement, less the amount corresponding to his one-month suspension for simple negligence. Its motion for reconsideration denied by the CA, Meralco is now before the Court through its petition for review on *certiorari*.

The Petition

Meralco contends that the appellate court committed patent and serious error in holding that Dejan is liable only for simple negligence. It maintains that he should have been made liable for the stealing or unauthorized taking (constituting dishonesty) of company property under Section 7(4) of the Company Code of Employee Discipline, which warrants his dismissal from the service. It posits that the CA misapprehended the facts. It argues as follows:

First. Dejan himself admitted or was aware that as a matter of branch procedure, field representatives are prohibited from personally taking meter sockets from the branch and delivering them directly to customers who applied for electrical connection or to their authorized agents or representatives. Meter sockets are issued only after payment of the required meter deposit fee and submission of the required documents. In case a meter socket is to be issued to the customer's authorized representative, a letter of authority or special power of attorney (*SPA*) from the owner/customer is required, together with the customer's valid ID. After the meter socket is issued, a field inspection is conducted to determine whether the meter socket and service entrance have been installed. Once the service entrance is ready, the branch then issues a "field order" for the installation of the meter and to energize the account.

The procedure is mandatory for all branch employees, to prevent the commission of fraud like the unauthorized taking of meter sockets, to be sold at a lower price or to be used by an employee's private electrical service contracting activities. The fraud could easily be done because a meter socket does

not have a control number to identify the particular account where it is assigned.

Second. There is substantial evidence showing that Dejan issued the meter sockets in concert with another Meralco employee, Duenas, who was found to be engaged in private contracting (for electric connection) with Meralco customers.

During the administrative investigation, Dejan admitted that he issued the meter sockets to Gozarin, without written authorization, upon the request of Depante, a private electrician. Dejan confirmed the request for the release of the meter sockets from Depante himself, through Duenas' cell phone. Reyes, the driver of the Meralco contracted jeep on which Duenas loaded the meter sockets, belied Dejan's and Duenas' claims that Depante made the request. Reyes stressed that it was Duenas who requested him to bring home the meter sockets and it was Duenas himself who retrieved the meter sockets.

While Dejan claimed that the 20 meter sockets were all accounted for and were issued for Depante's service applications, there is evidence showing that the service identification numbers (*SINs*) or accounts for which the meter sockets were to be allegedly installed had already been inspected, approved and installed with meters even before the meter sockets were released.

In fine, Meralco posits that the CA committed serious error and/or grave abuse of discretion in holding Dejan liable only for simple negligence and ordering his reinstatement with backwages, given the gravity of his misconduct and its negative effect on Meralco's reputation as a public utility firm.

The Case for Dejan

Through his comment[13] (to the petition) filed on March 31, 2011, Dejan prays that the petition be dismissed for "utter lack of merit." He argues that the petition has no basis in fact and in law as the CA did not commit serious error and/or grave abuse of discretion in modifying the NLRC ruling and awarding him full backwages.

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[13] *Id.* at 457-465.

Procedurally, Dejan questions the propriety of the petition, on account of its failure to point to any provision of law that has been erroneously applied. The petition, he argues, contravenes Rule 45 of the Rules of Court which provides that only a question of law is appealable to this Court.

The Court's Ruling

We find merit in the petition.

Dejan is liable as charged. More specifically, he is liable for violation of Section 7, paragraphs 4 and 11 of the Company Code of Employee Discipline, constituting serious misconduct, fraud and willful breach of trust of the employer, just causes for termination of employment under the law.[14] The facts and the evidence on record clearly bear this out and we wonder how the CA could have missed the seriousness or gravity of Dejan's transgressions.

There is no dispute about the release of the meter sockets.[15] Also, the persons involved were clearly identified – Dejan; Gozarin or Mang Islao, a private electrician who received the meter sockets; Reyes, the owner of the jeep where the meter sockets were loaded by Gozarin; Duenas, a Meralco field representative; and Depante, another private electrician who purportedly owned the meter sockets.

There is also no question that Dejan released the meter sockets to Gozarin without the written authority or SPA from the customer or customers who applied for electric connection[16] (as a matter of company policy). Dejan released the meter sockets to Gozarin on the mere say-so of Depante, as he claimed, through a call to Duenas' cell phone,[17] and justified his act to be in accord with accepted company practice.[18]

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[14] LABOR CODE, Article 282.

[15] *Rollo*, p. 89.

[16] *Ibid.*

[17] *Ibid.*

[18] *Id.* at 350.

Dejan tried to minimize the gravity of his offense by denying that the meter sockets were lost and that he issued them without authority since they were all contracted, as shown by the SINs he submitted in evidence.[19]

Dejan's tale fails to convince us. While the meter sockets might not have been lost, their issuance or release was highly irregular, perpetrated to defraud the company. As we see it, the release of the meter sockets served as a key element in a private contracting activity for electric service connection of Dejan and Duenas.

On the day of the release of the meter sockets, March 18, 2005, a Friday, Duenas was in the branch office, interceding for private electrician Depante. Gozarin, Depante's emissary, was there also, waiting for the release. Dejan had then already put the 20 meter sockets in boxes when he received a call from Depante on Duenas' cell phone requesting for the release of the meter sockets to Gozarin, saying that he could not pick them up as he was attending to another project.

After Depante's call, Dejan released the meter sockets to Gozarin who had them loaded in Reyes' jeep; Reyes, in turn, brought them to his house. On the Sunday of that week, March 20, 2005, the meter sockets were picked up.[20] Reyes testified that Duenas picked them up;[21] Duenas, on the other hand, stated that it was Depante who retrieved the meter sockets.[22]

While there was no unanimity as to who picked up the meter sockets, it appears that it was Duenas who was the most active or the most interested in having the meter sockets released. Gozarin, who had known Duenas for quite some time,[23] testified that it was Duenas who told him to get the meter sockets from Dejan and load them in Reyes' jeep.

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[19] *Id.* at 93.

[20] *Id.* at 84.

[21] *Id.* at 92.

[22] *Id.* at 96.

[23] *Id.* at 79.

Questioned as to whether Dejan asked him for a written authorization, Gozarin answered no.[24] Reyes, like Gozarin, had also known Duenas for some time; in fact, since 1993. Also, it was Duenas who asked him to load the meter sockets in his jeep.[25]

Given Duenas' involvement in the release of the meter sockets on March 18, 2005, there is reason to believe that it was more through his intervention than Depante's representation that the meter sockets were released. There is reason to believe, too, that it was Duenas who picked the meter sockets from Reyes' house and that Depante made a call to Dejan to accommodate the latter and Duenas, whom he likewise knew very well, in taking the meter sockets out of the branch premises for reason or reasons only known to them. Depante is a private contractor for electric services and it would work to his favor if he cooperated with the two Meralco employees.

It was bad enough that Dejan failed to ask for a written authorization for the release of the meter sockets as required by company policy. His apparent motive behind the move – to mislead the company, in concert with Duenas, as to the real recipient of the meter sockets – made it worse. It could only result in a loss to Meralco as it was not the customer, who applied for electric service, or his authorized representative who received the meter sockets. As the circumstances strongly indicate, it was Duenas who retrieved the meter sockets. It was obviously an act intended to defraud the company. It lends credence to Meralco's submission that Duenas was engaged in private contracting for electric connection, together with Dejan.

The above impression is bolstered by Dejan's false claim that the meter sockets were all accounted for because they were issued for Depante's service applications. As the company discovered, however, the SINs Dejan submitted in evidence[26] covered applications which had already been inspected, approved

[24] *Id.* at 80.

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

[26] *Id.* at 347.

and provided (installed) with meters even before March 18, 2005, the date when the 20 meter sockets were released. Meralco argued before the NLRC[27] that if Depante's service applications had already been installed with meters, it could only be that the meter sockets Dejan issued were intended for purposes which the company had not approved or authorized. It added that there was clear indication of Dejan's intent to gain from and to defraud the company. Meralco reiterated the same argument before the CA.[28]

The CA brushed aside the argument, relying on Dejan's explanation that Depante's "practice of leaving the deposit with him whenever customers abounded often resulted in the accumulation of contracts for the meter base."[29]

We disagree with this finding. Dejan stated in his *Sinumpaang Salaysay* given on October 21, 2005:

T: *Bakit ikaw ang kinausap ni Bruce na mag-issue ng 20 meter sockets?*

S: *Kasi po ako po ang gumawa ng mga kontrata niya.*

T: *Kung gayon ay kaya mo ito ibinigay ay bayad na lahat ng mga deposito nito?*

S: *Opo.*[30]

Further, in the *Malayang Salaysay* given by Dejan and Depante on February 17, 2006, Dejan said:

T: *Anong masasabi mo Ginoong Dejan hinggil sa paratang sa iyo?*

S: *Hindi po totoo na sinasabi nila na nawala po ang meter base at hindi rin po totoo na ito ay aking inisyu ng walang pahintulot dahil ang lahat nito ay kontrata. Akin po[ng] isinusumite ang ilan sa mga kontratang ukol sa mga SIN na siyang dahilan kaya ko ini-issue ang mga ito.*[31]

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[27] *Id.* at 159.

[28] *Id.* at 480.

[29] *Supra* note 2, at 227.

[30] *Rollo*, p. 89.

[31] *Id.* at 93.

Based on the above depositions, we cannot accept the CA's insinuation that Dejan mixed up the SINs he submitted in evidence (to cover for the released 20 meter sockets) with the SINs pertaining to other service applications which Depante contracted. There could not have been room for confusion as far as Dejan is concerned. He was the one preparing Depante's contracts, as he himself admitted. He knew or should have known the contracts' status (whether they had already been acted upon or not). It would be gross negligence on his part if it were otherwise.

Under the circumstances, we believe that Dejan submitted the SINs in question to make it appear that the released meter sockets pertained to outstanding service applications contracted by Depante; in other words, to give a semblance of regularity in the transaction and to avoid liability for their unauthorized release. He released the meter sockets with intent to defraud the company.

We cannot blame Meralco for losing its trust and confidence in Dejan. He is no ordinary employee. As branch representative, "he was principally charged with the function and responsibility to accept payment of fees required for the installation of electric service and facilitate issuance of meter sockets."[32] The duties of his position require him to always act with the highest degree of honesty, integrity and sincerity, as the company puts it. In light of his fraudulent act, Meralco, an enterprise imbued with public interest, cannot be compelled to continue Dejan's employment, as it would be inimical to its interest.[33] Needless to say, "[t]he law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer."[34] **For sure, Dejan was validly dismissed for serious misconduct, and loss of trust and confidence.**

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[32] *Supra* note 1, at 41.

[33] *Rentokil (Initial) Philippines, Inc. v. Sanchez*, G.R. No. 176219, December 23, 2008, 575 SCRA 324, 334.

[34] *Colgate Palmolive Phils., Inc. v. Ople*, 246 Phil. 331, 338 (1988).

The procedural question

Dejan posits that the petition is improper because it raises only questions of facts. We do not see this as a legal problem. As we stressed earlier, the CA grossly misapprehended the facts and the evidence on record. The case falls within the exceptions to the rule on the conclusiveness of the CA findings, thereby opening the CA rulings to the Court's discretionary review authority.[35]

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

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Perez, Sereno, and *Reyes, JJ.,* concur.

EN BANC

[A.M. No. P-08-2573. June 19, 2012]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JAIME P. KASILAG, Sheriff IV, Regional Trial Court, Branch 27, Manila,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; ADMINISTRATIVE CHARGE; FALSIFICATION OF THE DAILY TIME RECORD (DTR) BY A COURT PERSONNEL CONSIDERED A GRAVE OFFENSE.— Falsification of a DTR by a court personnel is a grave offense. The nature of this infraction is precisely what the OCA states:

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[35] *Remalante v. Tibe*, 241 Phil. 930, 936 (1988).

the act of falsifying an official document is in itself grave because of its possible deleterious effects on government service. At the same time, it is also an act of dishonesty, which violates fundamental principles of public accountability and integrity. Under Civil Service regulations, falsification of an official document and dishonesty are distinct offenses, but both may be committed in one act, as in this case.

2. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; PUBLIC OFFICE IS A PUBLIC TRUST WHICH EMBODIES A SET OF STANDARDS SUCH AS RESPONSIBILITY, INTEGRITY AND EFFICIENCY; APPLIES TO COURT PERSONNEL.— The constitutionalization of public accountability shows the kind of standards of public officers that are woven into the fabric of our legal system. Public office is a public trust, which embodies a set of standards such as responsibility, integrity and efficiency. Reality may depart from these standards, but our society has consciously embedded them in our laws, so that they may be demanded and enforced as legal principles. This Court, in the exercise of its administrative jurisdiction, should articulate and apply these principles to its own personnel, as a way of bridging actual reality to the norms we envision for our public service.

3. ID.; ID.; COURT PERSONNEL; THE RESIGNATION OF A PUBLIC SERVANT DOES NOT PRECLUDE THE FINDING OF ANY ADMINISTRATIVE LIABILITY TO WHICH HE SHALL STILL BE ANSWERABLE.— We exercise our administrative jurisdiction despite respondent Kasilag's resignation on 1 February 2007, more than two years after he was directed to file his Comment. "The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable." "Even if the most severe of administrative sanctions— that of separation from service — may no longer be imposed x x x there are other penalties which may be imposed x x x namely, the disqualification to hold any government office and the forfeiture of benefits." Despite the notice of respondent's resignation, we still directed him to comment knowing full well the extent of this Court's administrative jurisdiction. On 6 June 2011, this Court resolved, among others, to hold in abeyance any application for financial/ retirement benefits of respondent during the pendency of this case.

4. ID.; ID.; ID.; FALSIFICATION OF OFFICIAL DOCUMENT AND DISHONESTY; EMPLOYEE'S FALSIFICATION OF HIS DAILY TIME RECORD ESTABLISHED BY SUBSTANTIAL EVIDENCE.— There is substantial evidence that respondent Kasilag falsified his DTR for February 2004. The superimpositions on respondent's time entries are apparent on the certified copy of the DTR submitted by Victor Y. Serapio, the Officer-in-Charge of the RTC of Manila, Branch 27. There is, in other words, "relevant evidence which a reasonable mind might accept as adequate to justify [the] conclusion" that respondent indeed falsified his DTR.

5. ID.; ID.; ID.; ID.; REPEATED FAILURE OF THE RESPONDENT-EMPLOYEE TO FILE HIS COMMENT AS REQUIRED BY THE COURT AMOUNTS TO A WAIVER OF THE RIGHT TO BE HEARD; DISHONESTY AND THE ACT OF FALSIFYING DETRACT FROM THE NOTION OF PUBLIC ACCOUNTABILITY.— There can be no dispute that respondent's right to be heard had been respected. His repeated failure to file his Comment has transgressed the bounds of ordinary diligence, as to be contumacious. As a court personnel, he did not take seriously the orders of this Court. The judicial process cannot be held hostage to respondent's neglect or apathy. Such conduct amounts to a waiver of the right to be heard. Thus, due process has been observed. As a result, the evidence tilts in favor of those gathered by the OCA. There are no mitigating circumstances for respondent Kasilag. Dishonesty and the act of falsifying detract from the notion of public accountability, as implemented by our laws. We apply the law as it is written.

D E C I S I O N

PER CURIAM:

This is an administrative case[1] against Jaime P. Kasilag, Sheriff IV of the Regional Trial Court of Manila, Branch 27 (RTC),

[1] This was formerly docketed as A.M. OCA IPI No. 07-2490-P under the Office of the Court Administrator and was re-docketed as a regular administrative case in a Resolution dated 10 November 2008 by the First Division of this Court. On 2 December 2009, the case was subsequently transferred to the Second Division.

for allegedly tampering his Daily Time Record (DTR) for February 2004. We resolve this case based on the records and pleadings already filed, after repeated failure of respondent Kasilag to file his Comment as required by this Court.[2]

On 26 March 2004, then Deputy Court Administrator Christopher O. Lock directed Victor Y. Serapio, Officer-in-Charge of the RTC, to comment on what appeared to be "superimpositions" in the DTR of Sheriff Jaime P. Kasilag for February 2004.[3] Serapio replied in a letter dated 28 April 2004 that there were indeed discrepancies between Kasilag's DTR and the RTC's Daily Time Registry Book (he attached certified copies of both documents). Serapio explained in his letter that Kasilag previously took a leave of absence for six days but his DTR showed "slight markings indicating that the original entries were erased and had been replaced with time entries purportedly showing that he reported for work on those [days] even though the contrary is true."[4] Serapio recommended that "proper/ appropriate disciplinary action be meted against Mr. Jaime Kasilag."[5]

On 30 July 2004, the Office of the Court Administrator (OCA) directed respondent Kasilag to file his Comment to Serapio's letter.[6] However, Kasilag did not file his Comment despite several opportunities for him to do so.[7] Almost three years from the

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[2] *See* Resolution dated 23 November 2011, dispensing with respondent's Comment and considering the case submitted for decision.

[3] *See* First Indorsement dated 26 March 2004.

[4] *Rollo*, p. 6.

[5] *Id.*

[6] Fourth Indorsement signed by Court Administrator Presbitero J. Velasco, Jr.

[7] *See* Letter by Court Administrator Presbitero J. Velasco, Jr. dated 8 March 2005 (extension of 10 days from the expiration of the original period); First Tracer dated 20 November 2006 (extension of five days from receipt); Supreme Court First Division Resolution dated 10 November 2008 directing respondent Kasilag to file his Comment within 10 days from receipt; and First Division Resolution dated 10 August 2009 directing respondent to file his Comment within 10 days from notice.

OCA referral, this Court required Kasilag to submit his Comment and "show cause why he should not be administratively dealt with for his refusal x x x" to file his Comment.[8]

The RTC Branch Clerk of Court thereafter informed this Court about Kasilag's resignation which became effective on 1 February 2007.[9] Nonetheless, the Court issued another Resolution on 10 August 2009 reiterating the Show Cause Order to Kasilag directing him to submit his Comment. On 15 November 2010, this Court declared Kasilag in contempt, imposed a fine of ₱1,000.00 or a five-day imprisonment,[10] and repeated the same directive to submit his Comment.

Instead of complying, Kasilag filed a Motion for Reconsideration[11] asking this Court to declare him "as not in contempt" and to set aside the fine or penalty of imprisonment. Moreover, he prayed that the OCA be directed to furnish him again a copy of Serapio's letter and the DTR and to give him another 30 days from receipt of said documents to file his Comment.

In his Motion for Reconsideration, Kasilag stated that he did not intentionally refuse to comply with the order of the Court. His long delay was due to his inability to "recall the events leading to this case"; his "frantic" state and "desperation" when he learned of the Show Cause Order; and his inability to make a "satisfactory and/or responsive [C]omment" because (according to him) he was not given a copy of Serapio's letter and the DTR. Thus, "[t]o his (Kasilag's) mind, [these] are enough reasons to justify that [he] did not commit any act of contempt x x x and neither does be [sic] deserve the imposition of any fine nor

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[8] Second Division Resolution dated 16 April 2007.

[9] Letter dated 28 May 2007 by RTC Branch Clerk of Court Chelly P. Balasbas addressed to Atty. Ludichi Yasay-Nunag, then Clerk of Court of the Supreme Court. This was noted by this Court in a Resolution dated 8 August 2007.

[10] If the fine is not paid within five days from notice.

[11] Dated 13 January 2011.

[sic] imprisonment." The OCA, however, found that the records indicate otherwise.[12]

On 6 June 2011, this Court denied the Motion to set aside the penalty for lack of merit. However, the Court directed the OCA to furnish respondent copies of Serapio's letter and the DTR for February 2004. The Court required respondent to submit for the last time his Comment; otherwise, the case would be resolved without his Comment. The Court also directed the Office of Administrative Services of the OCA to hold in abeyance Kasilag's application, if any, for financial/ retirement benefits.[13]

Kasilag paid the ₱1,000.00 fine but again failed to file his Comment. Thus, on 23 November 2011, this Court resolved to dispense with his Comment and consider the case submitted for decision.

The OCA cites Section 52(A)(1) and (6) of the Uniform Rules on Administrative Cases in the Civil Service[14] and *Office of the Court Administrator v. Breta*[15] in stating that:

> Falsification of an official document such as the DTR is considered a grave offense. It amounts to dishonesty. Both falsification and dishonesty are grave offenses punishable by dismissal from the service, even for the first offense with forfeiture of retirement

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[12] As the OCA stated in its Memorandum dated 4 April 2011:

> The alibi of the former Sheriff is flimsy and inexcusable. It was not shown that he even attempted to try to obtain copies of the subject letter and the February 2004 DTR from Branch 27 or from the Office of Administrative Services, OCA. He did not even mention it in his letter dated 28 February 2005 when he asked for extension of time to file his comment. If he failed, then that could have been the proper time to ask the Court to compel the OCA to furnish him with the said copies. His action was a dilatory tactic that would buy him more time to file his long-awaited comment.

[13] Based on the recommendations in OCA Memorandum dated 4 April 2011.

[14] Civil Service Commission (CSC) Resolution No. 99-1936.

[15] 519 Phil. 106 (2006).

benefits, except accrued leave benefits, and perpetual disqualification from reemployment in government service.[16]

Moreover, the OCA notes that the records of Mr. Kasilag "do not speak well of his attitude and performance x x x."[17] Since 2002, Kasilag "has been the subject of several memoranda and letters requiring him to explain his habitual tardiness, absences and failure to file his DTR and application form."[18] It appears that in some of those instances, he also did not comply with the directive for him to explain.[19]

Jurisprudence on this matter is clear.[20] Falsification of a DTR by a court personnel is a grave offense. The nature of this infraction is precisely what the OCA states: the act of falsifying an official document is in itself grave because of its possible deleterious effects on government service.[21] At the same time, it is also an act of dishonesty, which violates fundamental principles of public accountability and integrity. Under Civil Service regulations, falsification of an official document and dishonesty are distinct offenses,[22] but both may be committed in one act, as in this case.

The constitutionalization of public accountability[23] shows the kind of standards of public officers that are woven into the

[16] OCA Memorandum dated 7 October 2008.

[17] OCA Memorandum dated 4 April 2011. *Supra* note 13, at 4.

[18] *Id*.

[19] *See* OCA Memorandum dated 4 April 2011 in note 13.

[20] *Re: Administrative Case for Falsification of Official Documents and Dishonesty Against Randy S. Villanueva*, A.M. No. 2005-24-SC, 10 August 2007, 529 SCRA 679; *Office of the Court Administrator v. Breta*, *supra* note 15; *Dipolog v. Montealto*, 486 Phil. 66 (2004); *Office of the Court Administrator v. Sirios*, 457 Phil. 42 (2003).

[21] CSC Resolution No. 99-1936, Sec. 52. **Classification of Offenses.** - Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service. *See* note 16.

[22] *See* note 16.

[23] CONSTITUTION, Art. XI on Accountability of Public Officers. Section 1 of this Article provides: Public office is a public trust. Public officers and

fabric of our legal system. Public office is a public trust, which embodies a set of standards such as responsibility, integrity and efficiency.[24] Reality may depart from these standards, but our society has consciously embedded them in our laws, so that they may be demanded and enforced as legal principles. This Court, in the exercise of its administrative jurisdiction,[25] should articulate and applythese principles to its own personnel, as a way of bridging actual reality to the norms we envision for our public service.[26]

We exercise our administrative jurisdiction despite respondent Kasilag's resignation on 1 February 2007, more than two years after he was directed to file his Comment. "The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable."[27] "Even if the most severe of administrative sanctions— that of separation from service — may no longer be imposed x x x there are other penalties which may be imposed x x x namely, the disqualification to hold any government office and the forfeiture of benefits."[28]

Despite the notice of respondent's resignation, we still directed him to comment knowing full well the extent of this Court's

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employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

[24] *Id.*

[25] CONSTITUTION, Art. VIII, Sec. 6.

[26] *See* R. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4 (1983): "Law may be viewed as a system of tension or a bridge linking a concept of a reality to an imagined alternative x x x A *nomos*, as a world of law, entails the application of human will to an extant state of affairs as well as towards our visions of alternative futures. A *nomos* is a present world constituted by a system of tension between reality and vision" (at 9).

[27] *Pagano v. Nazarro*, G.R. No. 149072, 21 September 2007, 533 SCRA 622, 628 citing *Baquerfo v. Sanchez*, 495 Phil. 10 (2005); *Office of the Court Administrator v. Fernandez*, 480 Phil. 495 (2004); *Lilia v. Fanuñal*, 423 Phil. 443 (2001).

[28] *Pagano v. Nazarro*, *supra*, at 628.

administrative jurisdiction. On 6 June 2011, this Court resolved, among others, to hold in abeyance any application for financial/ retirement benefits of respondent during the pendency of this case.

There is substantial evidence that respondent Kasilag falsified his DTR for February 2004. The superimpositions on respondent's time entries are apparent on the certified copy of the DTR submitted by Victor Y. Serapio, the Officer-in-Charge of the RTC of Manila, Branch 27. There is, in other words, "relevant evidence which a reasonable mind might accept as adequate to justify [the] conclusion"[29] that respondent indeed falsified his DTR.

There can be no dispute that respondent's right to be heard had been respected. His repeated failure to file his Comment has transgressed the bounds of ordinary diligence, as to be contumacious. As a court personnel, he did not take seriously the orders of this Court. The judicial process cannot be held hostage to respondent's neglect or apathy. Such conduct amounts to a waiver of the right to be heard. Thus, due process has been observed.

As a result, the evidence tilts in favor of those gathered by the OCA. There are no mitigating circumstances for respondent Kasilag. Dishonesty and the act of falsifying detract from the notion of public accountability, as implemented by our laws. We apply the law as it is written.

WHEREFORE, this Court finds respondent Jaime P. Kasilag, Sheriff IV, Regional Trial Court, Branch 27, Manila, **GUILTY** of **FALSIFICATION OF OFFICIAL DOCUMENT** and **DISHONESTY.** Accordingly, the Court **FORFEITS** respondent Kasilag's entire retirement benefits, except accrued leave credits, with prejudice to reemployment in any branch or instrumentality of government, including government-owned and controlled corporations.

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[29] RULES OF COURT, Rule 134, Sec. 5.

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Sereno, Reyes, and *Perlas-Bernabe, JJ.*, concur.

Perez, J., no part. Acted as Court Adm.

Velasco, Jr. and *Mendoza, JJ.*, on official leave.

EN BANC

[A.M. No. P-10-2867. June 19, 2012]
(Formerly A.M. OCA IPI No. 09-3255-P)

EXECUTIVE JUDGE MELANIO C. ROJAS, JR., Regional Trial Court, Branch 25, Tagudin, Ilocos Sur, *complainant, vs.* **ANA MARIVIC L. MINA, Clerk III, Regional Trial Court, Branch 25, Tagudin, Ilocos Sur,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; FAILURE OF JUDICIAL EMPLOYEES TO LIVE UP TO THEIR AVOWED DUTY CONSTITUTES A TRANSGRESSION OF THE TRUST REPOSED IN THEM AS COURT OFFICERS AND INEVITABLY LEADS TO THE EXERCISE OF DISCIPLINARY AUTHORITY.— The Code of Conduct for Court Personnel stresses that employees of the judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary. Thus, the failure of judicial employees to live up to

their avowed duty constitutes a transgression of the trust reposed in them as court officers and inevitably leads to the exercise of disciplinary authority.

2. ID.; ID.; ID.; ADMINISTRATIVE CHARGES; FULL PAYMENT OF THE OBLIGATION DOES NOT DISCHARGE THE ADMINISTRATIVE LIABILITY.— The only defense respondent has set forth is that she has been trying to settle her obligation to Judge Rojas. However, this defense cannot exculpate her from liability. The fact that she is willing to pay does not free her from the consequences of her wrongdoing. This Court in *Chan v. Olegario* found a court employee administratively liable for "willful failure to pay just debt" despite the court employee's settlement of the unpaid obligation during the pendency of the case. In the same vein, this Court in *Office of the Court Administrator v. Elumbaring* has emphatically ruled that not even the full payment of the collection shortages will exempt the accountable officer from administrative liability. Following these precedents, it is clear that whether or not respondent has fully settled her obligation to Judge Rojas, and to the other trial court judges for that matter, will not exonerate her from any administrative wrongdoing. This Court in *Villaseñor v. De Leon* has emphasized that full payment of an obligation does not discharge the administrative liability, because disciplinary actions involve not purely private matters, but acts unbecoming of a public employee. As we have observed in *Perez v. Hilario*, the discharge of a court employee's debt does not render the administrative case moot. **For, the proceedings are not directed at respondent's private life but at her actuations unbecoming a public employee. Disciplinary actions of this nature do not involve purely private or personal matters.** They cannot be made to depend upon the will of the parties nor are we bound by their unilateral act in a matter that involves the Court's constitutional power to discipline its personnel. Otherwise, this power may be put to naught or otherwise undermine the trust character of a public office and the dignity of this Court as a disciplining authority.

3. ID.; ID.; ID.; ID.; STEALING AND ENCASHING CHECKS COVERING THE SPECIAL ALLOWANCE FOR JUDGES AND JUSTICES (SAJJ) WITHOUT THEIR KNOWLEDGE AND AUTHORITY CONSTITUTE GRAVE MISCONDUCT AND

DISHONESTY; GRAVE MISCONDUCT AND DISHONESTY, DEFINED.— [W]e rule that respondent's admitted acts of pocketing checks and later encashing them for her benefit constitute grave misconduct. We have defined grave misconduct as follows: Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer; and the misconduct is grave if it involves any of the additional elements of corruption, such as willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. [S]tealing the checks and encashing them are considered acts of gross dishonesty. Dishonesty is defined as a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

4. **ID.; ID.; ID.; COURT EMPLOYEES ARE ENJOINED TO ADHERE TO THE EXACTING STANDARDS OF MORALITY AND DECENCY IN THEIR PROFESSIONAL AND PRIVATE CONDUCT.—** We have often ruled that the image of a court of justice is mirrored in the conduct, official or otherwise, of the personnel who work therein. Court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the court of justice.

5. **ID.; ID.; ID.; GROSS MISCONDUCT AND DISHONESTY; GRAVE OFFENSES PUNISHABLE BY DISMISSAL EVEN FOR THE FIRST OFFENSE.—** Both gross misconduct and dishonesty are grave offenses that are punishable by dismissal even for the first offense. Penalties include forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in government service.

6. **ID.; ID.; ID.; ID.; THE MERE EXPEDIENT OF RESIGNING FROM THE SERVICE WILL NOT EXTRICATE A COURT EMPLOYEE FROM THE CONSEQUENCES OF HIS ACTS; FOR COMMISSION OF GROSS MISCONDUCT AND DISHONESTY, THE PENALTY OF FINE WAS IMPOSED INSTEAD OF DISMISSAL BECAUSE OF THE EMPLOYEE'S RESIGNATION.—** [T]he penalty of dismissal may no longer be imposed. Records show that respondent has already

effectively resigned from her position, and allegations that she did so to avoid administrative liability have been uncontroverted. The mere expedient of resigning from the service, however, will not extricate a court employee from the consequences of his or her acts. We have often ruled that resignation should not be used either as an escape or as an easy way out to evade an administrative liability or an administrative sanction. Thus, we hold respondent administratively liable for gross misconduct and dishonesty. Her resignation, however, would affect the penalties that this Court may impose. The penalty of dismissal arising from the offense was rendered moot by virtue of her resignation. Thus, we find the recommendation of the OCA to be appropriate under the circumstances and impose upon respondent the penalty of a fine in the amount of ₱40,000 with forfeiture of all benefits due her, except accrued leave credits, if any. The ₱40,000 fine shall be deducted from any such accrued leave credits, with respondent to be personally held liable for any deficiency that is directly payable to this Court. She is further declared disqualified from any future government service.

7. ID.; ID.; ID.; SHOULD AVOID ANY ACT OR CONDUCT THAT WOULD DIMINISH PUBLIC TRUST AND CONFIDENCE IN THE COURTS.— We emphasize that all court employees, being public servants in an office dispensing justice, must always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. To maintain the people's respect and faith in the judiciary, court employees should be models of uprightness, fairness and honesty. They should avoid any act or conduct that would diminish public trust and confidence in the courts.

D E C I S I O N

***PER CURIAM*:**

At bench is an administrative case that involves respondent Ana Marivic Mina (respondent), previously employed as Clerk III of the Regional Trial Court (RTC), Branch 25, Tagudin, Ilocos Sur. The Office of the Court Administrator (OCA) found her administratively liable for Gross Misconduct and Dishonesty.

Specifically, she was found to have stolen checks covering the Special Allowance for Judges and Justices (SAJJ) payable to complainant Executive Judge Melanio C. Rojas, Jr. (Judge Rojas), and encashed them without his knowledge and authority. We affirm the findings of the OCA.

Judge Rojas brought respondent's unlawful acts to the attention of the OCA in a letter dated 27 July 2009. He requested the withholding of benefits due respondent, because she had reportedly been stealing SAJJ checks belonging to him and other trial court judges and encashing them without their knowledge and authority.[1]

Judge Rojas claimed that the SAJJ checks payable to RTC Judges Policarpio Martinez (presiding judge of RTC Branch 71, Candon City) and Gabino Balbin, Jr. (presiding judge of RTC Branch 23, Candon City) were mistakenly placed in a single envelope, which was erroneously sent to the RTC Tagudin, Ilocos Sur. Respondent received the said envelope and encashed the checks without receiving any authority to do so from any of the trial court judges. Before any action could be filed against her, she settled the matter by paying off both trial court judges.

Upon further investigation, it was discovered that respondent had been getting mail matters at the Post Office of Tagudin, Ilocos Sur, more particularly SAJJ checks payable to Judge Rojas. As testified to by Marivic Dauz (Dauz) and Cornelia Corpuz (Corpuz), two employees of the Tagudin Women's Cooperative, respondent had encashed a ₱30,000 check payable to Judge Rojas without the latter's consent and authority. Thereafter, on 22 June 2009, respondent tendered her resignation, which, according to Judge Rojas, was made with the intent to preempt the filing of an appropriate action against her.[2]

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[1] OCA I.P.I No. 09-3255-P. *Re: Executive Judge Melanio C. Rojas, Jr., Regional Trial Court, Branch 25, Tagudin, Ilocos Sur v. Ana Marivic L. Mina, Clerk III, Regional Trial Court, Branch 25, Tagudin, Ilocos Sur*.

[2] Respondent's resignation was later accepted under the Notice of Acceptance of Resignation dated 08 January 2010 signed by then Officer-in-Charge, Deputy Court Administrator Nimfa C. Vilches.

Acting on the matter, the OCA directed respondent to file her comment. She countered that, previously, as a settlement of all her obligations to Judge Rojas, she executed in his favor a "Deed of Quitclaim and Waiver of Rights" authorizing him to claim all the benefits due her from this Court upon her resignation. She clarified, however, that subsequently, they verbally agreed in a meeting that she would settle her obligations within ninety (90) days; and, in return, Judge Rojas would issue the corresponding clearance for her to claim her benefits instead. She further claimed that she was doing her best to settle her obligations to him.

As earlier stated, the OCA found respondent liable for gross misconduct and dishonesty. It ruled that she virtually admitted liability when she claimed that she was in the process of settling her obligations to Judge Rojas. It further ruled that her resignation, as well as the efforts of the parties to settle the matter amicably, did not absolve her of any administrative liability. Thus, it recommended the following:

> It is therefore respectfully recommended for the consideration of the Honorable Court that:
>
> (1) the instant administrative matter be **RE-DOCKETED** as a regular administrative complaint against Ana Marivic L. Mina, Clerk III, Regional Trial Court, Branch 25, Ilocos Sur;
>
> (2) respondent Mina be **FOUND GUILTY OF GROSS MISCONDUCT AND DISHONESTY**; and
>
> (3) considering respondent Mina had already resigned from the service, that she instead be **FINED** in the amount of Forty Thousand Pesos (₱40,000.00), with forfeiture of all the benefits she is entitled to, except accrued leave credits, and **DISQUALIFIED** from reinstatement or appointment to any public office including government-owned or controlled corporations.

The Court's Ruling

The Court agrees with the OCA's findings, which were entirely substantiated by the record. We find respondent guilty of gross misconduct and dishonesty for stealing and encashing

SAJJ checks payable to trial court judges without their knowledge and authority.

I. Respondent is guilty of gross misconduct and dishonesty for stealing and encashing checks without authority.

The Code of Conduct for Court Personnel stresses that employees of the judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary.[3] Thus, the failure of judicial employees to live up to their avowed duty constitutes a transgression of the trust reposed in them as court officers and inevitably leads to the exercise of disciplinary authority.[4]

By these standards, respondent was found wanting, as she never denied the allegations that she had stolen and encashed the ₱30,000 check payable to Judge Rojas. She did not even refute the allegations of Dauz and Corpuz that she misrepresented to both of them that she had authority to encash the check. Worse, neither did she ever deny the allegations pertaining to her previous acts of stealing from and paying off her obligations to other trial court judges. Thus, we conclude that she has virtually admitted her wrongdoing.

The only defense respondent has set forth is that she has been trying to settle her obligation to Judge Rojas. However, this defense cannot exculpate her from liability. The fact that she is willing to pay does not free her from the consequences of her wrongdoing.[5] This Court in *Chan v. Olegario*[6] found a

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[3] *Lauria-Liberato v. Lelina*, A.M. No. P-09-2703, 05 September 2011.

[4] *Office of the Court Administrator v. Pacheco*, A.M. No. P-02-1625, 04 August 2010, 626 SCRA 686.

[5] *Id.*

[6] A.M. No. P-09-2714, 06 December 2010, 636 SCRA 361.

court employee administratively liable for "willful failure to pay just debt" despite the court employee's settlement of the unpaid obligation during the pendency of the case. In the same vein, this Court in *Office of the Court Administrator v. Elumbaring*[7] has emphatically ruled that not even the full payment of the collection shortages will exempt the accountable officer from administrative liability.

Following these precedents, it is clear that whether or not respondent has fully settled her obligation to Judge Rojas, and to the other trial court judges for that matter, will not exonerate her from any administrative wrongdoing. This Court in *Villaseñor v. De Leon*[8] has emphasized that full payment of an obligation does not discharge the administrative liability, because disciplinary actions involve not purely private matters, but acts unbecoming of a public employee:

> As we have observed in *Perez v. Hilario*, the discharge of a court employee's debt does not render the administrative case moot. **For, the proceedings are not directed at respondent's private life but at her actuations unbecoming a public employee. Disciplinary actions of this nature do not involve purely private or personal matters.** They cannot be made to depend upon the will of the parties nor are we bound by their unilateral act in a matter that involves the Court's constitutional power to discipline its personnel. Otherwise, this power may be put to naught or otherwise undermine the trust character of a public office and the dignity of this Court as a disciplining authority. (Emphasis supplied.)

In view of the foregoing, we rule that respondent's admitted acts of pocketing checks and later encashing them for her benefit constitute grave misconduct.[9] We have defined grave misconduct as follows:

> Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence

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[7] A.M. No. P-10-2765, 13 September 2011.

[8] 447 Phil. 457 (2003).

[9] *Velasco v. Pascual*, 315 Phil. 446 (1995).

by a public officer; and the misconduct is grave if it involves any of the additional elements of corruption, such as willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[10]

Furthermore, stealing the checks and encashing them are considered acts of gross dishonesty.[11] Dishonesty is defined as a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[12]

We have often ruled that the image of a court of justice is mirrored in the conduct, official or otherwise, of the personnel who work therein. Court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the court of justice.[13]

II. Respondent's resignation does not affect her administrative liability for gross misconduct and dishonesty.

Both gross misconduct and dishonesty are grave offenses that are punishable by dismissal even for the first offense.[14] Penalties include forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment

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[10] *Re: Complaint of Mrs. Corazon S. Salvador against Spouses Noel and Amelia Serafico*, A.M. No. 2008-20-SC, 15 March 2010, 615 SCRA 186, 203-204.

[11] *Filoteo v. Calago*, A.M. No. P-04-1815, 18 October 2007, 536 SCRA 507.

[12] *Japson v. Civil Service Commission*, G.R. No. 189479, 12 April 2011, 648 SCRA 532.

[13] *Supra* note 3.

[14] Uniform Rules on Administrative Cases in the Civil Service, Sec. 52(A) 1 & 3; *Aguilar v. Valino*, A.M. No. P-07-2392, 25 February 2009, 580 SCRA 242.

in government service.[15] However, as will be further discussed below, the penalty of dismissal may no longer be imposed.

Records show that respondent has already effectively resigned from her position,[16] and allegations that she did so to avoid administrative liability have been uncontroverted. The mere expedient of resigning from the service, however, will not extricate a court employee from the consequences of his or her acts.[17] We have often ruled that resignation should not be used either as an escape or as an easy way out to evade an administrative liability or an administrative sanction.[18] Thus, we hold respondent administratively liable for gross misconduct and dishonesty.

Her resignation, however, would affect the penalties that this Court may impose. The penalty of dismissal arising from the offense was rendered moot by virtue of her resignation.[19] Thus, we find the recommendation of the OCA to be appropriate under the circumstances and impose upon respondent the penalty of a fine in the amount of 40,000 with forfeiture of all benefits due her, except accrued leave credits, if any. The 40,000 fine shall be deducted from any such accrued leave credits, with respondent to be personally held liable for any deficiency that is directly payable to this Court. She is further declared disqualified from any future government service.

We emphasize that all court employees, being public servants in an office dispensing justice, must always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must

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[15] *Retired Employee v. Manubag*, A.M. No. P-10-2833, 14 December 2010, 638 SCRA 86.

[16] *Supra* note 2.

[17] *Igoy v. Soriano*, A.M. No. 2001-9-SC, 11 October 2011; *Office of the Court Administrator v. Juan*, 478 Phil. 823 (2004).

[18] *Banaag v. Espeleta*, A.M. No. P-11-3011, 29 November 2011.

[19] *See Babante-Caples v. Caples*, A.M. No. HOJ-10-03, 15 November 2010, 634 SCRA 498; *Noel-Bertulfo v. Nuñez*, A.M. No. P-10-2758, 02 February 2010, 611 SCRA 270.

also be in accordance with the law and court regulations. To maintain the people's respect and faith in the judiciary, court employees should be models of uprightness, fairness and honesty. They should avoid any act or conduct that would diminish public trust and confidence in the courts.[20]

WHEREFORE, respondent Ana Marivic L. Mina is hereby found **GUILTY** of **GRAVE MISCONDUCT AND DISHONESTY.** In lieu of **DISMISSAL,** the penalty which her offenses carry, but which can no longer be effectively imposed because of her resignation, respondent Mina is hereby ordered to pay a **FINE** in the amount of **₱40,000,** with **FORFEITURE** of whatever benefits still due her from the government, except accrued leave credits if she has earned any; and is likewise declared **DISQUALIFIED** from employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Perez, J., no part.

Velasco, Jr., J., on official leave.

*Mendoza, J.,*on leave.

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[20] *Tan v. Quitorio,* A.M. No. P-11-2919, 30 May 2011, 649 SCRA 12.

EN BANC

[A.M. No. 14061-Ret. June 19, 2012]

Re: Application for Retirement of Judge Moslemen T. Macarambon under Republic Act No. 910, as amended by Republic Act No. 9946

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 910, AS AMENDED BY REPUBLIC ACT NO. 9946; RESIGNATION DISTINGUISHED FROM RETIREMENT.— Resignation and retirement are two distinct concepts carrying different meanings and legal consequences in our jurisdiction. While an employee can resign at any time, retirement entails the compliance with certain age and service requirements specified by law and jurisprudence. Resignation stems from the employee's own intent and volition to resign and relinquish his/her post. Retirement takes effect by operation of law. In terms of severance to one's employment, resignation absolutely cuts-off the employment relationship in general; in retirement, the employment relationship endures for the purpose of the grant of retirement benefits.

2. ID.; ID.; RETIREMENT; AGE AND SERVICE REQUIREMENTS MUST BE STRICTLY COMPLIED WITH; RESIGNATION UNDER THE LAW MUST BE BY REASON OF INCAPACITY TO DISCHARGE THE DUTIES OF THE OFFICE AND MUST NOT BE VOLUNTARY.— RA No. 910, as amended allows the grant of retirement benefits to a justice or judge who has either retired from judicial service or resigned from judicial office. In case of retirement, a justice or judge must show compliance with the age and service requirements as provided in RA No. 910, as amended. The second sentence of Section 1 imposes the following minimum requirements for optional retirement: (a) must have attained the age of sixty (60) years old; and (b) must have rendered at least fifteen (15) years service in the Government, the last three (3) of which shall have been continuously rendered in the Judiciary. Strict compliance with the age and service requirements under the law is the rule

and the grant of exception remains to be on a case to case basis. We have ruled that the Court allows seeming exceptions to these fixed rules for certain judges and justices only and whenever there are ample reasons to grant such exception. On the other hand, resignation under RA No. 910, as amended must be "by reason of incapacity to discharge the duties of the office." In *Britanico*, we held that the resignation contemplated under RA No. 910, as amended must have the element of involuntariness on the part of the justice or judge. More than physical or mental disability to discharge the judicial office, the involuntariness must spring from the intent of the justice or judge who would not have parted with his/her judicial employment were it not for the presence of circumstances and/or factors beyond his/her control. In either of the two instances above-mentioned, Judge Macarambon's case does not render him eligible to retire under RA No. 910, as amended.

3. ID.; ID.; RESPONDENT IS NOT QUALIFIED TO RETIRE UNDER RA NO. 910, AS AMENDED, BUT HE MAY RETIRE UNDER RA NO. 1616.— [W]e are not unmindful of Judge Macarambon's long and dedicated service in the government for which he is undeniably entitled to be rewarded. We agree with the Court Administrator that although Judge Macarambon is not qualified to retire under RA No. 910, as amended, he may retire under RA No. 1616 based on the documents he had presented before the Court which meets the age and service requirements under the said law.

R E S O L U T I O N

BRION, *J.*:

For consideration are: (1) the letter dated September 15, 2011 of Judge Moslemen T. Macarambon (*Judge Macarambon*); and (2) the Memorandum of Court Administrator Jose Midas P. Marquez (*Court Administrator*), both addressed to former Chief Justice Renato C. Corona regarding the request of Judge Macarambon to retire under Republic Act (*RA*) No. 910, as amended by RA No. 9946.

Judge Macarambon was a judge of the Regional Trial Court (*RTC*) for a period of 18 years, 1 month and 16 days. Before

reaching the optional retirement age of 60, Judge Macarambon transferred to the Commission on Elections (*COMELEC*) having been appointed as Commissioner by then President Gloria Macapagal Arroyo (*President Arroyo*). He served as COMELEC Commissioner for less than a year and was no longer re-appointed after having been bypassed thrice by the Commission on Appointments. Judge Macarambon was subsequently appointed by President Arroyo as President/CEO of the National Transmission Corporation but he resigned from the position less than a year after when he failed to receive a reappointment from President Benigno C. Aquino III.

In his letter, Judge Macarambon requests that he be allowed to retire under Section 1 of RA No. 910, as amended, the pertinent portions of which read:

SECTION 1. When a Justice of the Supreme Court, the Court of Appeals, the Sandiganbayan, or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established **who has rendered at least fifteen (15) years service in the Judiciary or in any other branch of the Government, or in both**, (a) retires for having attained the age of seventy years, or (b) **resigns by reason of his/her incapacity to discharge the duties of his/her office as certified by the Supreme Court**, he/she shall receive during the residue of his/her natural life, in the manner hereinafter provided, the salary which plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance which he/she was receiving at the time of his/her retirement, or resignation, and non-wage benefit in the form of education scholarship to one (1) child of all Justices and Judges to free tuition fee in a state university or college: *Provided*, That such grant will cover only one (1) bachelor's degree. When a Justice of the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established **has attained the age of sixty (60) years and has rendered at least fifteen (15) years service in the Government, the last three (3) of which shall have been continuously rendered**

in the Judiciary, he/she shall likewise be entitled to retire and receive during the residue of his/her natural life also in the manner hereinafter provided, the salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance which he/she was then receiving and the non-wage benefit in the form of education scholarship to one (1) child of all Justices and Judges to free tuition fee in a state university or college: x x x.

Judge Macarambon asserts that Section 1 allows the payment of retirement benefits to a judge of the RTC who resigns by reason of incapacity to discharge the duties of his office. Citing the case of *Re: Application for Retirement under R.A. No. 910 of Associate Justice Ramon B. Britanico of the Intermediate Appellate Court,* he posits that his appointment as COMELEC Commissioner incapacitated him to discharge his duties as an RTC judge on account of his "submission to the will of the political authority and appointing power."

As an alternative, he appeals that he be allowed to retire under the second sentence of Section 1 considering that he has rendered a total of 18 years, 1 month and 16 days of judicial service and a total of 35 years of government service. Judge Macarabon claims that while he was short of the minimum age requirement of 60, he believes that the Court's ruling in *Re: Gregorio G. Pineda*[1] is applicable to his case where the Court brushed aside such requirement and considered the retiree's career which was marked with competence, integrity, and dedication to public service.

In his Memorandum, the Court Administrator disagreed with Judge Macarambon's position. The Court Administrator averred:

We humbly submit that Judge Macarambon's case is different from that of Justice Britanico's. Justice Britanico, together with the other Members of the Judiciary at that time, was ordered by then President Corazon C. Aquino, through Proclamation No. 1, to tender their courtesy resignations. The decision as to whether or

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[1] A.M. No. 6789, July 13, 1990, 187 SCRA 469,475.

not they would stay in their office was the prerogative of then President Aquino. On the contrary, the prerogative to accept the appointment as a COMELEC Commissioner depended entirely on Judge Macarambon. He had the choice of whether or not to accept the appointment of being a Commissioner or to stay as a RTC Judge. Therefore, his appointment as a COMELEC Commissioner did not render him incapacitated to discharge the duties of his office as a RTC Judge.

Nonetheless, based on the documents submitted, Judge Macarambon may retire under R.A. No. 1616, as he meets all the requirements for retirement under the said law, i.e., has been in the government service as of 01 June 1977 and has rendered at least twenty (20) years government service, the last three (3) years of which have been continuous.

The sole issue is whether we can allow a judge who voluntarily resigned from his judicial office before reaching the optional retirement age to receive retirement benefits under RA No. 910, as amended.

Resignation and retirement are two distinct concepts carrying different meanings and legal consequences in our jurisdiction. While an employee can resign at any time, retirement entails the compliance with certain age and service requirements specified by law and jurisprudence. Resignation stems from the employee's own intent and volition to resign and relinquish his/her post.[2] Retirement takes effect by operation of law. In terms of severance to one's employment, resignation absolutely cuts-off the employment relationship in general; in retirement, the employment relationship endures for the purpose of the grant of retirement benefits.

RA No. 910, as amended allows the grant of retirement benefits to a justice or judge who has either retired from judicial service or resigned from judicial office.

In case of retirement, a justice or judge must show compliance with the age and service requirements as provided in RA No.

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[2] *Joseph E. Estrada v. Aniano Desierto*, G.R. Nos. 146710-15, March 2, 2001, 353 SCRA 452, 496.

910, as amended. The second sentence of Section 1 imposes the following minimum requirements for optional retirement:

(a) must have attained the age of sixty (60) years old; and

(b) must have rendered at least fifteen (15) years service in the Government, the last three (3) of which shall have been continuously rendered in the Judiciary.

Strict compliance with the age and service requirements under the law is the rule and the grant of exception remains to be on a case to case basis.[3] We have ruled that the Court allows seeming exceptions to these fixed rules for certain judges and justices only and whenever there are ample reasons to grant such exception.[4]

On the other hand, resignation under RA No. 910, as amended must be "by reason of incapacity to discharge the duties of the office." In *Britanico,* we held that the resignation contemplated under RA No. 910, as amended must have the element of involuntariness on the part of the justice or judge. More than physical or mental disability to discharge the judicial office, the involuntariness must spring from the intent of the justice or judge who would not have parted with his/her judicial employment were it not for the presence of circumstances and/or factors beyond his/her control.

In either of the two instances above-mentioned, Judge Macarambon's case does not render him eligible to retire under RA No. 910, as amended.

First, Judge Macarambon failed to satisfy the age requirement as shown by the records and by his own admission that he was less than 60 years of age when he resigned from his judicial office before transferring to the COMELEC. Likewise, he failed to satisfy the service requirement not having been in continuous

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[3] *Cena v. Civil Service Commission,* G.R. No. 97419, July 3, 1992, 211 SCRA 179, 187, citing *Re: Application for Retirement Benefits of Former Judge Gregorio G. Pineda, supra* note 1.

[4] *Ibid*.

service with the Judiciary for three (3) years prior to his retirement.

Second, Judge Macarambon's resignation was not by reason of incapacity to discharge the duties of the office. His separation from judicial employment was of his own accord and volition. Thus, our ruling in *Britanico* cannot be properly applied to his case since his resignation was voluntary.

Third, we find no exceptional reasons to justify Judge Macarambon's request. In *Re: Gregorio Pineda*, the case cited by Judge Macarambon, the Court fully explained how a liberal approach in the application of retirement laws should be construed, thus:

> The rule is that retirement laws are construed liberally in favor of the retiring employee. However, when in the interest of liberal construction the Court allows seeming exceptions to fixed rules for certain retired Judges or Justices, there are ample reasons behind each grant of an exception. The crediting of accumulated leaves to make up for lack of required age or length of service is not done indiscriminately. It is always on a case to case basis.
>
> In some instances, the lacking element-such as the time to reach an age limit or comply with length of service is de minimis. It could be that the amount of accumulated leave credits is tremendous in comparison to the lacking period of time.
>
> More important, there must be present an essential factor before an application under the Plana or Britanico rulings may be granted. The Court allows a making up or compensating for lack of required age or service only if satisfied that the career of the retiree was marked by competence, integrity, and dedication to the public service; it was only a bowing to policy considerations and an acceptance of the realities of political will which brought him or her to premature retirement.[5]

In this case, Judge Macarambon failed to present similar circumstances, *i.e.*, the presence of available and sufficient accumulated leave credits which we may tack in to comply with the age requirement. A verification from the Leave Division, OCA shows that at the time he left the Court on November 5,

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[5] *Ibid.*

2007, Judge Macarambon only had 514 vacation leaves and 79 sick leaves which are insufficient to cover the gap in the age of retirement. Moreover, these accumulated leave credits were all forwarded to the COMELEC upon his transfer. Further, we already stated that unlike in *Britanico*, the nature of his separation from his judicial office was voluntary.

All told, we are not unmindful of Judge Macarambon's long and dedicated service in the government for which he is undeniably entitled to be rewarded. We agree with the Court Administrator that although Judge Macarambon is not qualified to retire under RA No. 910, as amended, he may retire under RA No. 1616 based on the documents he had presented before the Court which meets the age and service requirements under the said law.

WHEREFORE, premises considered, we resolve to:

(1) **NOTE** the Memorandum dated April 3, 2012 of Court Administrator Jose Midas P. Marquez; and

(2) **DENY** the letter-request dated September 15, 2011 of Judge Moslemen T. Macarambon to retire under Republic Act No. 910, as amended by Republic Act No. 9946 for lack of legal basis.

Judge Macarambon is hereby **ADVISED** to file an application for optional retirement under Republic Act No. 1616 with the Government Service Insurance System, subject to the submission of the requirements for retirement, and to the deduction of the retirement gratuity he received from his previous retirement, if there be any, and subject finally to the availability of funds and the usual clearance requirements.

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr. and *Mendoza, JJ.,* on official leave.

EN BANC

[G.R. No. 180308. June 19, 2012]

PHILCOMSAT HOLDINGS CORPORATION, ENRIQUE L. LOCSIN and MANUEL D. ANDAL, *petitioners, vs.* **SENATE OF THE REPUBLIC OF THE PHILIPPINES, SENATE COMMITTEE ON GOVERNMENT CORPORATIONS AND PUBLIC ENTERPRISES, SENATE COMMITTEE ON PUBLIC SERVICES, HON. SEN. RICHARD GORDON and HON. SEN. JUAN PONCE ENRILE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; LEGISLATIVE INQUIRIES; THE SENATE COMMITTEES' LEGISLATIVE POWER OF INQUIRY CARRIES WITH IT ALL POWERS NECESSARY AND PROPER FOR ITS EFFECTIVE DISCHARGE.— The respondents Senate Committees' power of inquiry relative to PSR No. 455 has been passed upon and upheld in the consolidated cases of *In the Matter of the Petition for Habeas Corpus of Camilo L. Sabio*, which cited Article VI, Section 21 of the Constitution, as follows: "The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected." The Court explained that such conferral of the legislative power of inquiry upon any committee of Congress, in this case the respondents Senate Committees, must carry with it all powers necessary and proper for its effective discharge. On this score, the respondents Senate Committees cannot be said to have acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it submitted Committee Resolution No. 312, given its constitutional mandate to conduct legislative inquiries. Nor can the respondent Senate be faulted for doing so on the very same day that the assailed resolution was submitted. The wide latitude given to Congress with respect to these legislative

inquiries has long been settled, otherwise, Article VI, Section 21 would be rendered pointless.

2. ID.; ID.; BILL OF RIGHTS; RIGHT TO COUNSEL; CANNOT BE INVOKED BY PARTIES WHO WERE INVITED TO THE PUBLIC HEARINGS AS RESOURCE PERSONS.— [P]etitioners Locsin and Andal's allegation that their constitutionally-guaranteed right to counsel was violated during the hearings held in furtherance of PSR No. 455 is specious. The right to be assisted by counsel can only be invoked by a person under custodial investigation suspected for the commission of a crime, and therefore attaches only during such custodial investigation. Since petitioners Locsin and Andal were invited to the public hearings as resource persons, they cannot therefore validly invoke their right to counsel.

APPEARANCES OF COUNSEL

R.A.V. Saguisag for petitioners.
Senate Legal Counsel for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This original Petition for *Certiorari* and Prohibition assails and seeks to enjoin the implementation of and nullify Committee Report No. 312[1] submitted by respondents Senate Committees on Government Corporations and Public Enterprises and on Public Services (respondents Senate Committees) on June 7, 2007 for allegedly having been approved by respondent Senate of the Republic of the Philippines (respondent Senate) with grave abuse of discretion amounting to lack or in excess of jurisdiction.

The Factual Antecedents

The Philippine Communications Satellite Corporation (PHILCOMSAT) is a wholly-owned subsidiary of the Philippine

[1] *Rollo*, pp. 68-87.

Overseas Telecommunications Corporation (POTC), a government-sequestered organization in which the Republic of the Philippines holds a 35% interest in shares of stocks.[2] Petitioner PHILCOMSAT Holdings Corporation (PHC), meanwhile, is a private corporation duly organized and existing under Philippine laws and a holding company whose main operation is collecting the money market interest income of PHILCOMSAT.

Petitioners Enrique L. Locsin and Manuel D. Andal are both directors and corporate officers of PHC, as well as nominees of the government to the board of directors of both POTC and PHILCOMSAT.[3] By virtue of its interests in both PHILCOMSAT and POTC, the government has, likewise, substantial interest in PHC.

For the period from 1986 to 1996, the government, through the Presidential Commission on Good Government (PCGG), regularly received cash dividends from POTC. In 1998, however, POTC suffered its first loss. Similarly, in 2004, PHC sustained a ₱7-million loss attributable to its huge operating expenses. By 2005, PHC's operating expenses had ballooned tremendously. Likewise, several PHC board members established Telecommunications Center, Inc. (TCI), a wholly-owned PHC subsidiary to which PHC funds had been allegedly advanced without the appropriate accountability reports given to PHC and PHILCOMSAT.[4]

On February 20, 2006, in view of the losses that the government continued to incur and in order to protect its interests in POTC, PHILCOMSAT and PHC, Senator Miriam Defensor Santiago, during the Second Regular Session of the Thirteenth Congress of the Philippines, introduced Proposed Senate Resolution (PSR) No. 455[5] directing the conduct of an inquiry, in aid of legislation,

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[2] *Id.* at p. 88.

[3] *Id.* at p. 14.

[4] *Id.* at pp. 88-89.

[5] Entitled "DIRECTING AN INQUIRY, IN AID OF LEGISLATION, ON THE ANOMALOUS LOSSES INCURRED BY THE PHILIPPINE OVERSEAS TELECOMMUNICATIONS CORPORATION (POTC),

on the anomalous losses incurred by POTC, PHILCOMSAT and PHC and the mismanagement committed by their respective board of directors. PSR No. 455 was referred to respondent Committee on Government Corporations and Public Enterprises, which conducted eleven (11) public hearings[6] on various dates. Petitioners Locsin and Andal were invited to attend these hearings as "resource persons."

On June 7, 2007, respondents Senate Committees submitted the assailed Committee Report No. 312, where it noted the need to examine the role of the PCGG in the management of POTC, PHILCOMSAT and PHC. After due proceedings, the respondents Senate Committees found overwhelming mismanagement by the PCGG and its nominees over POTC, PHILCOMSAT and PHC, and that PCGG was negligent in performing its mandate to preserve the government's interests in the said corporations. In sum, Committee Report No. 312 recommended, *inter alia*, the privatization and transfer of the jurisdiction over the shares of the government in POTC and PHILCOMSAT to the Privatization Management Office (PMO) under the Department of Finance (DOF) and the replacement of government nominees as directors of POTC and PHILCOMSAT.

On November 15, 2007, petitioners filed the instant petition before the Court, questioning, in particular, the haste with which the respondent Senate approved the challenged Committee Report No. 312.[7] They also claim that respondent Senator Richard Gordon acted with partiality and bias and denied them their basic right to counsel,[8] and that respondent Senator Juan Ponce Enrile, despite having voluntarily recused himself from the

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PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION (PHILCOMSAT) AND PHILCOMSAT HOLDINGS CORPORATION (PHC) DUE TO THE ALLEGED IMPROPRIETIES IN THE OPERATIONS BY THEIR RESPECTIVE BOARD OF DIRECTORS"; *Id.* at pp. 88-89.

[6] *Id.* at p. 71.

[7] *Id.* at p. 6.

[8] *Id.* at p. 22.

proceedings in view of his personal interests in POTC, nonetheless continued to participate actively in the hearings.[9]

Issues Before The Court

The basic issues advanced before the Court are: (1) whether the respondent Senate committed grave abuse of discretion amounting to lack or in excess of jurisdiction in approving Committee Resolution No. 312; and (2) whether it should be nullified, having proposed no piece of legislation and having been hastily approved by the respondent Senate.

The Court's Ruling

The respondents Senate Committees' power of inquiry relative to PSR No. 455 has been passed upon and upheld in the consolidated cases of *In the Matter of the Petition for Habeas Corpus of Camilo L. Sabio*,[10] which cited Article VI, Section 21 of the Constitution, as follows:

> "The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected."

The Court explained that such conferral of the legislative power of inquiry upon any committee of Congress, in this case the respondents Senate Committees, must carry with it all powers necessary and proper for its effective discharge.[11]

On this score, the respondents Senate Committees cannot be said to have acted with grave abuse of discretion amounting to lack or in excess of jurisdiction when it submitted Committee Resolution No. 312, given its constitutional mandate to conduct legislative inquiries. Nor can the respondent Senate be faulted for doing so on the very same day that the assailed resolution was submitted. The wide latitude given to Congress with respect

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[9] *Id.* at p. 16.

[10] G.R. Nos. 174340, 174318 and 174177, October 17, 2006, 504 SCRA 704, 723.

[11] *Id.*

to these legislative inquiries has long been settled, otherwise, Article VI, Section 21 would be rendered pointless.[12]

Hence, on the basis of the pronouncements in the *Sabio* case, and as suggested[13] by the parties in their respective pleadings, the issues put forth in the petition[14] have become academic.

Corollarily, petitioners Locsin and Andal's allegation[15] that their constitutionally-guaranteed right to counsel was violated during the hearings held in furtherance of PSR No. 455 is specious. The right to be assisted by counsel can only be invoked by a person under custodial investigation suspected for the commission of a crime, and therefore attaches only during such custodial investigation.[16] Since petitioners Locsin and Andal were invited to the public hearings as resource persons, they cannot therefore validly invoke their right to counsel.

WHEREFORE, the instant petition is **DISMISSED.**

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Brion, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Sereno, and *Reyes, JJ.,* concur.

Leonardo-de Castro, J., no part due to prior participation in a related case in Sandiganbayan.

Peralta, J., no part.

Velasco, Jr., J., on official leave.

Mendoza, J., on wellness leave.

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[12] *Supra* at note 10.

[13] *Rollo,* p. 795; *Id.,* p. 818.

[14] *Id.,* pp. 3-59.

[15] *Id.*, pp. 35-37.

[16] *People v. Amestuzo, et al.,* G.R. No. 104383, July 12, 2001, 361 SCRA 184-200.

EN BANC

[G.R. No. 184467. June 19, 2012]

EDGARDO NAVIA,[1] **RUBEN DIO,**[2] **and ANDREW BUISING,** *petitioners, vs.* **VIRGINIA PARDICO, for and in behalf and in representation of BENHUR V. PARDICO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; THE RULE ON THE WRIT OF *AMPARO* (A.M. NO. 07-9-12-SC); THE PURPOSE FOR THE PROMULGATION THEREOF, EXPLAINED. — A.M. No. 07-9-12-SC or The Rule on the Writ of *Amparo* was promulgated to arrest the rampant extralegal killings and enforced disappearances in the country. Its purpose is to provide an expeditious and effective relief "to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity."

2. ID.; ID.; ENFORCED DISAPPEARANCE; ELEMENTS. — A.M. No. 07-9-12-SC's reference to enforced disappearances should be construed to mean the enforced or involuntary disappearance of persons contemplated in Section 3(g) of RA No. 9851. Meaning, in probing enforced disappearance cases, courts should read A.M. No. 07-9-12-SC in relation to RA No. 9851. From the statutory definition of enforced disappearance, thus, we can derive the following elements that constitute it: (a) that there be an arrest, detention, abduction or any form of deprivation of liberty; (b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization; (c) that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the *amparo* petition; and, (d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time. As thus dissected, it is now clear that for the protective writ of *amparo* to

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[1] Also known and signs his name as Edgardo Nabia.

[2] Also known and signs his name as Ruben Dio II.

issue, allegation and proof that the persons subject thereof are missing are not enough. It must also be shown and proved by substantial evidence that the disappearance was carried out by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge the same or give information on the fate or whereabouts of said missing persons, with the intention of removing them from the protection of the law for a prolonged period of time. Simply put, the petitioner in an *amparo* case has the burden of proving by substantial evidence the indispensable element of government participation.

3. ID.; ID.; IN AN *AMPARO* PETITION, IT IS ESSENTIAL TO ESTABLISH THE GOVERNMENT INVOLVEMENT IN THE DISAPPEARANCE AS AN INDISPENSABLE ELEMENT; NOT PRESENT IN CASE AT BAR. — In an *amparo* petition, proof of disappearance alone is not enough. It is likewise essential to establish that such disappearance was carried out with the direct or indirect authorization, support or acquiescence of the government. This indispensable element of State participation is not present in this case. The petition does not contain any allegation of State complicity, and none of the evidence presented tend to show that the government or any of its agents orchestrated Ben's disappearance. In fact, none of its agents, officials, or employees were impleaded or implicated in Virginia's *amparo* petition whether as responsible or accountable persons. Thus, in the absence of an allegation or proof that the government or its agents had a hand in Ben's disappearance or that they failed to exercise extraordinary diligence in investigating his case, the Court will definitely not hold the government or its agents either as responsible or accountable persons. We are aware that under Section 1 of A.M. No. 07-9-12-SC a writ of *amparo* may lie against a private individual or entity. But even if the person sought to be held accountable or responsible in an *amparo* petition is a private individual or entity, still, government involvement in the disappearance remains an indispensable element.

APPEARANCES OF COUNSEL

Sugay Law for petitioners.
J.C. Cruz Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

For the protective writ of *amparo* to issue in enforced disappearance cases, allegation and proof that the persons subject thereof are missing are not enough. It must also be shown by the required quantum of proof that their disappearance was carried out by, "or with the authorization, support or acquiescence of, [the government] or a political organization, followed by a refusal to acknowledge [the same or] give information on the fate or whereabouts of [said missing] persons."[3]

This petition for review on *certiorari*[4] filed in relation to Section 19 of A.M. No. 07-9-12-SC[5] challenges the July 24, 2008 Decision[6] of the Regional Trial Court (RTC), Branch 20, Malolos City which granted the Petition for Writ of *Amparo*[7] filed by herein respondent against the petitioners.

Factual Antecedents

On March 31, 2008, at around 8:30 p.m., a vehicle of Asian Land Strategies Corporation[8] (Asian Land) arrived at the house of Lolita M. Lapore (Lolita) located at 7A Lot 9, Block 54, Grand Royale Subdivision, *Barangay* Lugam, Malolos City. The arrival of the vehicle awakened Lolita's son, Enrique Lapore (Bong), and Benhur Pardico (Ben), who were then both staying in her house. When Lolita went out to investigate, she saw two uniformed guards disembarking from the vehicle. One of them

[3] Section 3(g), REPUBLIC ACT NO. 9851, otherwise known as the Philippine Act On Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity.

[4] *Rollo*, pp. 3-38.

[5] The Rule on the Writ of *Amparo*, which took effect on October 24, 2007.

[6] Records, Vol. I, pp. 78-98; penned by Judge Oscar C. Herrera, Jr.

[7] Records, Vol. I, pp. 2-6.

[8] Also referred to as Asian Land Security Agency or Grand Royale Security Agency in some parts of the records.

immediately asked Lolita where they could find her son Bong. Before Lolita could answer, the guard saw Bong and told him that he and Ben should go with them to the security office of Asian Land because a complaint was lodged against them for theft of electric wires and lamps in the subdivision.[9]

Shortly thereafter, Bong, Lolita and Ben were in the office of the security department of Asian Land also located in Grand Royale Subdivision.[10] The supervisor of the security guards, petitioner Edgardo Navia (Navia), also arrived thereat.

As to what transpired next, the parties' respective versions diverge.

Version of the Petitioners

Petitioners alleged that they invited Bong and Ben to their office because they received a report from a certain Mrs. Emphasis, a resident of Grand Royale Subdivision, that she saw Bong and Ben removing a lamp from a post in said subdivision.[11] The reported unauthorized taking of the lamp was relayed thru radio to petitioners Ruben Dio (Dio) and Andrew Buising (Buising), who both work as security guards at the Asian Land security department. Following their department's standard operating procedure, Dio and Buising entered the report in their logbook and proceeded to the house of Mrs. Emphasis. It was there where Dio and Buising were able to confirm who the suspects were. They thus repaired to the house of Lolita where Bong and Ben were staying to invite the two suspects to their office. Bong and Ben voluntarily went with them.

At the security office, Dio and Buising interviewed Bong and Ben. The suspects admitted that they took the lamp but clarified that they were only transferring it to a post nearer to the house of Lolita.[12] Soon, Navia arrived and Buising informed

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[9] See *Sinumpaang Salaysay* of Lolita Lapore and the *Malaya at Kusangloob na Pahayag ni* Enrique Lapore, records, vol. I, pp. 7-10.

[10] See *Sinumpaang Salaysay* of Lolita Lapore, *id.* at 7-8.

[11] See 2115H Logbook Entry, *id.* at 48.

[12] See testimony of Andrew Buising, July 3, 2008 TSN, p. 15.

him that the complainant was not keen in participating in the investigation. Since there was no complainant, Navia ordered the release of Bong and Ben. Bong then signed a statement to the effect that the guards released him without inflicting any harm or injury to him.[13] His mother Lolita also signed the logbook below an entry which states that she will never again harbor or entertain Ben in her house. Thereafter, Lolita and Bong left the security office.

Ben was left behind as Navia was still talking to him about those who might be involved in the reported loss of electric wires and lamps within the subdivision. After a brief discussion though, Navia allowed Ben to leave. Ben also affixed his signature on the logbook to affirm the statements entered by the guards that he was released unharmed and without any injury.[14]

Upon Navia's instructions, Dio and Buising went back to the house of Lolita to make her sign the logbook as witness that they indeed released Ben from their custody. Lolita asked Buising to read aloud that entry in the logbook where she was being asked to sign, to which Buising obliged. Not contented, Lolita put on her reading glasses and read the entry in the logbook herself before affixing her signature therein. After which, the guards left.

Subsequently, petitioners received an invitation[15] from the Malolos City Police Station requesting them to appear thereat on April 17, 2008 relative to the complaint of Virginia Pardico (Virginia) about her missing husband Ben. In compliance with the invitation, all three petitioners appeared at the Malolos City Police Station. However, since Virginia was not present despite having received the same invitation, the meeting was reset to April 22, 2008.[16]

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[13] See 2200H Logbook Entry, records, vol. I, p. 48.

[14] See 2230H Logbook Entry, *id.* at 49.

[15] See letter of PO1 Gerryme Paulino, *id.* at 50.

[16] See letter of SPO1 Gilberto Punzalan, *id.* at 51.

On April 22, 2008, Virginia attended the investigation. Petitioners informed her that they released Ben and that they have no information as to his present whereabouts.[17] They assured Virginia though that they will cooperate and help in the investigation of her missing husband.[18]

Version of the Respondent

According to respondent, Bong and Ben were not merely invited. They were unlawfully arrested, shoved into the Asian Land vehicle and brought to the security office for investigation. Upon seeing Ben at the security office, Navia lividly grumbled "*Ikaw na naman*?"[19] and slapped him while he was still seated. Ben begged for mercy, but his pleas were met with a flurry of punches coming from Navia hitting him on different parts of his body.[20] Navia then took hold of his gun, looked at Bong, and said, "*Wala kang nakita at wala kang narinig, papatayin ko na si Ben.*"[21]

Bong admitted that he and Ben attempted to take the lamp. He explained that the area where their house is located is very dark and his father had long been asking the administrator of Grand Royale Subdivision to install a lamp to illumine their area. But since nothing happened, he took it upon himself to take a lamp from one of the posts in the subdivision and transfer it to a post near their house. However, the lamp Bong got was no longer working. Thus, he reinstalled it on the post from which he took it and no longer pursued his plan. [22]

Later on, Lolita was instructed to sign an entry in the guard's logbook where she undertook not to allow Ben to stay in her

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[17] See testimony of Andrew Buising, July 3, 2008 TSN, p. 25.

[18] See Police Blotter Entry No. 08-1230, records, vol. I, p. 52.

[19] See testimony of Enrique Lapore, July 2, 2008 TSN, p. 8.

[20] See the *Malaya at Kusangloob na Pahayag ni* Enrique Lapore, records, vol. I, pp. 9-10.

[21] *Id.* at 10.

[22] *Supra* note 9.

house anymore.[23] Thereafter, Navia again asked Lolita to sign the logbook. Upon Lolita's inquiry as to why she had to sign again, Navia explained that they needed proof that they released her son Bong unharmed but that Ben had to stay as the latter's case will be forwarded to the *barangay*. Since she has poor eyesight, Lolita obligingly signed the logbook without reading it and then left with Bong.[24] At that juncture, Ben grabbed Bong and pleaded not to be left alone. However, since they were afraid of Navia, Lolita and Bong left the security office at once leaving Ben behind.[25]

Moments after Lolita and Bong reached their house, Buising arrived and asked Lolita to sign the logbook again. Lolita asked Buising why she had to sign again when she already twice signed the logbook at the headquarters. Buising assured her that what she was about to sign only pertains to Bong's release. Since it was dark and she has poor eyesight, Lolita took Buising's word and signed the logbook without, again, reading what was written in it.[26]

The following morning, Virginia went to the Asian Land security office to visit her husband Ben, but only to be told that petitioners had already released him together with Bong the night before. She then looked for Ben, asked around, and went to the *barangay*. Since she could not still find her husband, Virginia reported the matter to the police.

In the course of the investigation on Ben's disappearance, it dawned upon Lolita that petitioners took advantage of her poor eyesight and naivete. They made her sign the logbook as a witness that they already released Ben when in truth and in fact she never witnessed his actual release. The last time she saw Ben was when she left him in petitioners' custody at the security office.[27]

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[23] See testimony of Lolita Lapore, July 1, 2008, TSN, p. 7; See also Exhibit "2", records, Vol. I, pp. 30-31.

[24] *Supra* note 10.

[25] *Supra* note 20.

[26] *Supra* note 9.

[27] *Supra* note 10.

Exasperated with the mysterious disappearance of her husband, Virginia filed a Petition for Writ of *Amparo*[28] before the RTC of Malolos City. Finding the petition sufficient in form and substance, the *amparo* court issued an Order[29] dated June 26, 2008 directing, among others, the issuance of a writ of *amparo* and the production of the body of Ben before it on June 30, 2008. Thus:

> WHEREFORE, conformably with Section 6 of the Supreme Court Resolution [in] A.M. No. 07-[9]-12-SC, also known as "The Rule On The Writ Of *Amparo*", let a writ of *amparo* be issued, as follows:
>
> (1) ORDERING [petitioners] Edgardo Navia, Ruben Dio and Andrew Buising of the Asian Land Security Agency to produce before the Court the body of aggrieved party Benhur Pardico, on Monday, June 30, 2008, at 10:30 a.m.;
>
> (2) ORDERING the holding of a summary hearing of the petition on the aforementioned date and time, and DIRECTING the [petitioners] to personally appear thereat;
>
> (3) COMMANDING [petitioners] Edgardo Navia, Ruben Dio and Andrew Buising to file, within a non-extendible period of seventy-two (72) hours from service of the writ, a verified written return with supporting affidavits which shall, among other things, contain the following:
>
> a) The lawful defenses to show that the [petitioners] did not violate or threaten with violation the right to life, liberty and security of the aggrieved party, through any act or omission;
>
> b) The steps or actions taken by the [petitioners] to determine the fate or whereabouts of the aggrieved party and the person or persons responsible for the threat, act or omission; and
>
> c) All relevant information in the possession of the [petitioners] pertaining to the threat, act or omission against the aggrieved party.

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[28] *Supra* note 7.

[29] Records, Vol. 1, pp. 11-15.

(4) GRANTING, *motu proprio*, a Temporary Protection Order prohibiting the [petitioners], or any persons acting for and in their behalf, under pain of contempt, from threatening, harassing or inflicting any harm to [respondent], his immediate family and any [member] of his household.

The Branch Sheriff is directed to immediately serve personally on the [petitioners], at their address indicated in the petition, copies of the writ as well as this order, together with copies of the petition and its annexes.[30]

A Writ of *Amparo*[31] was accordingly issued and served on the petitioners on June 27, 2008.[32] On June 30, 2008, petitioners filed their Compliance[33] praying for the denial of the petition for lack of merit.

A summary hearing was thereafter conducted. Petitioners presented the testimony of Buising, while Virginia submitted the sworn statements[34] of Lolita and Enrique which the two affirmed on the witness stand.

Ruling of the Regional Trial Court

On July 24, 2008, the trial court issued the challenged Decision[35] granting the petition. It disposed as follows:

WHEREFORE, the Court hereby grants the privilege of the writ of *amparo*, and deems it proper and appropriate, as follows:

(a) To hereby direct the National Bureau of Investigation (NBI) to immediately conduct a deep and thorough investigation of the [petitioners] Edgardo Navia, Ruben Dio and Andrew Buising in connection with the circumstances surrounding the disappearance of [Benhur] Pardico, utilizing in the process, as part of the

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

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

[32] See Sheriff's Return, *id.* at 18.

[33] *Id.* at 36-47.

[34] *Supra* note 9.

[35] *Supra* note 6.

investigation, the documents forming part of the records of this case;

(b) To hereby direct the NBI to extend to the family of [Benhur] Pardico and the witnesses who testified in this case protection as it may deem necessary to secure their safety and security; and

(c) To hereby direct the Office of the Provincial Prosecutor of Bulacan to investigate the circumstances concerning the legality of the arrest of [Benhur] Pardico by the [petitioners] in this case, utilizing in the process, as part of said investigation, the pertinent documents and admissions forming part of the record of this case, and take whatever course/s of action as may be warranted.

Furnish immediately copies of this decision to the NBI, through the Office of Director Nestor Mantaring, and to the Provincial Prosecutor of Bulacan.

SO ORDERED.[36]

Petitioners filed a Motion for Reconsideration[37] which was denied by the trial court in an Order[38] dated August 29, 2008.

Hence, this petition raising the following issues for our consideration:

4.1. WHETHER X X X THE HONORABLE TRIAL COURT GRAVELY ERRED IN RULING THAT RESPONDENT IS ENTITLED TO THE PRIVILEGE OF THE WRIT OF *AMPARO*.

4.1.1. WHETHER X X X RESPONDENT WAS ABLE TO ESTABLISH THAT PETITIONERS HAVE COMMITTED OR ARE COMMITTING ACTS IN VIOLATION OF HER HUSBAND'S RIGHT TO LIFE, LIBERTY, OR SECURITY.

4.1.2. WHETHER X X X RESPONDENT SUFFICIENTLY ESTABLISHED THE FACT OF THE DISAPPEARANCE OF BENHUR PARDICO.

4.1.3. WHETHER X X X RESPONDENT WAS ABLE TO ESTABLISH THAT THE ALLEGED DISAPPEARANCE OF

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[36] Records, Vol. I, pp. 97-98.

[37] *Id.* at 134-148.

[38] *Id.* at 184.

BENHUR PARDICO WAS AT THE INSTANCE OF HEREIN PETITIONERS.[39]

Petitioners' Arguments

Petitioners essentially assail the sufficiency of the *amparo* petition. They contend that the writ of *amparo* is available only in cases where the factual and legal bases of the violation or threatened violation of the aggrieved party's right to life, liberty and security are clear. Petitioners assert that in the case at bench, Virginia miserably failed to establish all these. First, the petition is wanting on its face as it failed to state with some degree of specificity the alleged unlawful act or omission of the petitioners constituting a violation of or a threat to Ben's right to life, liberty and security. And second, it cannot be deduced from the evidence Virginia adduced that Ben is missing; or that petitioners had a hand in his alleged disappearance. On the other hand, the entries in the logbook which bear the signatures of Ben and Lolita are eloquent proof that petitioners released Ben on March 31, 2008 at around 10:30 p.m. Petitioners thus posit that the trial court erred in issuing the writ and in holding them responsible for Ben's disappearance.

Our Ruling

Virginia's Petition for Writ of *Amparo* is fatally defective and must perforce be dismissed, but not for the reasons adverted to by the petitioners.

A.M. No. 07-9-12-SC or The Rule on the Writ of *Amparo* was promulgated to arrest the rampant extralegal killings and enforced disappearances in the country. Its purpose is to provide an expeditious and effective relief "to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.[40]

Here, Ben's right to life, liberty and security is firmly settled as the parties do not dispute his identity as the same person

[39] See petitioners' Memorandum, *rollo*, pp. 180-181.

[40] Section 1, A.M. No. 07-9-12-SC.

summoned and questioned at petitioners' security office on the night of March 31, 2008. Such uncontroverted fact *ipso facto* established Ben's inherent and constitutionally enshrined right to life, liberty and security. Article 6[41] of the International Covenant on Civil and Political Rights[42] recognizes every human being's inherent right to life, while Article 9[43] thereof ordains that everyone has the right to liberty and security. The right to life must be protected by law while the right to liberty and security cannot be impaired except on grounds provided by and in accordance with law. This overarching command against deprivation of life, liberty and security without due process of law is also embodied in our fundamental law.[44]

The pivotal question now that confronts us is whether Ben's disappearance as alleged in Virginia's petition and proved during the summary proceedings conducted before the court *a quo*, falls within the ambit of A.M. No. 07-9-12-SC and relevant laws.

It does not. Section 1 of A.M. No. 07-9-12-SC provides:

SECTION 1. *Petition.* – The petition for a writ of *amparo* is a remedy available to any person whose right to life, liberty and security

[41] Article 6(1), Part III of the International Covenant on Civil and Political Rights provides:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

x x x x x x x x x

[42] Ratified by the Philippines on October 23, 1986.

[43] Article 9, Part III of the International Covenant on Civil and Political Rights provides:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

x x x x x x x x x

[44] See Section 1, Article III of the 1987 Constitution which reads:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances or threats thereof. (Emphasis ours.)

While Section 1 provides A.M. No. 07-9-12-SC's coverage, said Rules does not, however, define extralegal killings and enforced disappearances. This omission was intentional as the Committee on Revision of the Rules of Court which drafted A.M. No. 07-9-12-SC chose to allow it to evolve through time and jurisprudence and through substantive laws as may be promulgated by Congress.[45] Then, the budding jurisprudence on *amparo* blossomed in *Razon, Jr. v. Tagitis*[46] when this Court defined enforced disappearances. The Court in that case applied the generally accepted principles of international law and adopted the International Convention for the Protection of All Persons from Enforced Disappearance's definition of enforced disappearances, as "the arrest, detention, abduction or any other form of deprivation of liberty *by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State*, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."[47]

Not long thereafter, another significant development affecting A.M. No. 07-9-12-SC came about after Congress enacted Republic Act (RA) No. 9851[48] on December 11, 2009. Section 3(g) thereof defines enforced or involuntary disappearances as follows:

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[45] Annotations on the Rule on the Writ of *Amparo*, published by the Supreme Court, p. 47.

[46] G.R. No. 182498, December 3, 2009, 606 SCRA 598.

[47] *Id.* at 670.

[48] PHILIPPINE ACT ON CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE, AND OTHER CRIMES AGAINST HUMANITY.

(g) "Enforced or involuntary disappearance of persons" means the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing from the protection of the law for a prolonged period of time.

Then came *Rubrico v. Macapagal-Arroyo*[49] where Justice Arturo D. Brion wrote in his Separate Opinion that with the enactment of RA No. 9851, "the Rule on the Writ of *Amparo* is now a procedural law anchored, not only on the constitutional rights to the rights to life, liberty and security, but on a concrete statutory definition as well of what an 'enforced or involuntary disappearance' is."[50] Therefore, A.M. No. 07-9-12-SC's reference to enforced disappearances should be construed to mean the enforced or involuntary disappearance of persons contemplated in Section 3(g) of RA No. 9851. Meaning, in probing enforced disappearance cases, courts should read A.M. No. 07-9-12-SC in relation to RA No. 9851.

From the statutory definition of enforced disappearance, thus, we can derive the following elements that constitute it:

(a) that there be an arrest, detention, abduction or any form of deprivation of liberty;

(b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;

(c) that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the *amparo* petition; and,

(d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.

As thus dissected, it is now clear that for the protective writ of *amparo* to issue, allegation and proof that the persons subject thereof are missing are not enough. It must also be shown and

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[49] G.R. No. 183871, February 18, 2010, 613 SCRA 233.

[50] *Id.* at 276.

proved by substantial evidence that the disappearance was carried out by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge the same or give information on the fate or whereabouts of said missing persons, with the intention of removing them from the protection of the law for a prolonged period of time. Simply put, the petitioner in an *amparo* case has the burden of proving by substantial evidence the indispensable element of government participation.

In the present case, we do not doubt Bong's testimony that Navia had a menacing attitude towards Ben and that he slapped and inflicted fistic blows upon him. Given the circumstances and the pugnacious character of Navia at that time, his threatening statement, "*Wala kang nakita at wala kang narinig, papatayin ko na si Ben,*" cannot be taken lightly. It unambiguously showed his predisposition at that time. In addition, there is nothing on record which would support petitioners' assertion that they released Ben on the night of March 31, 2008 unscathed from their wrath. Lolita sufficiently explained how she was prodded into affixing her signatures in the logbook without reading the entries therein. And so far, the information petitioners volunteered are sketchy at best, like the alleged complaint of Mrs. Emphasis who was never identified or presented in court and whose complaint was never reduced in writing.

But lest it be overlooked, in an *amparo* petition, proof of disappearance alone is not enough. It is likewise essential to establish that such disappearance was carried out with the direct or indirect authorization, support or acquiescence of the government. This indispensable element of State participation is not present in this case. The petition does not contain any allegation of State complicity, and none of the evidence presented tend to show that the government or any of its agents orchestrated Ben's disappearance. In fact, none of its agents, officials, or employees were impleaded or implicated in Virginia's *amparo* petition whether as responsible or accountable persons.[51] Thus,

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[51] In *Razon, Jr. v. Tagitis* (*Supra* note 45 at 620-621), the Court explained that "**Responsibility** refers to the extent the actors have been established

in the absence of an allegation or proof that the government or its agents had a hand in Ben's disappearance or that they failed to exercise extraordinary diligence in investigating his case, the Court will definitely not hold the government or its agents either as responsible or accountable persons.

We are aware that under Section 1 of A.M. No. 07-9-12-SC a writ of *amparo* may lie against a private individual or entity. But even if the person sought to be held accountable or responsible in an *amparo* petition is a private individual or entity, still, government involvement in the disappearance remains an indispensable element. Here, petitioners are mere security guards at Grand Royale Subdivision in *Brgy*. Lugam, Malolos City and their principal, the Asian Land, is a private entity. They do not work for the government and nothing has been presented that would link or connect them to some covert police, military or governmental operation. As discussed above, to fall within the ambit of A.M. No. 07-9-12-SC in relation to RA No. 9851, the disappearance must be attended by some governmental involvement. This hallmark of State participation differentiates an enforced disappearance case from an ordinary case of a missing person.

WHEREFORE, the July 24, 2008 Decision of the Regional Trial Court, Branch 20, Malolos City, is **REVERSED** and **SET ASIDE.** The Petition for Writ of *Amparo* filed by Virginia Pardico is hereby **DISMISSED.**

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by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance. In all these cases, the issuance of the Writ of *Amparo* is justified by our primary goal of addressing the disappearance, so that the life of the victim is preserved and his liberty and security are restored."

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., J., on official leave.

Mendoza, J., on leave.

EN BANC

[G.R. No. 190422. June 19, 2012]

RUSSEL ULYSSES I. NIEVES, *petitioner, vs.* **JOCELYN LB. BLANCO, in her capacity as the Regional Director, Regional Office No. V, Department of Trade and Industry,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; CIVIL SERVICE COMMISSION; POWER TO INTERPRET ITS OWN RULES; ACCORDED GREAT WEIGHT AND ORDINARILY CONTROLS THE CONSTRUCTION MADE BY THE COURTS; EXCEPTION. — The CSC, being the central agency mandated to "prescribe, amend, and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws," has the power to interpret its own rules and any phrase contained in them, with its interpretation being accorded great weight and ordinarily controls the construction of the courts. However, courts will not hesitate to set aside such executive interpretation when it is clearly erroneous, or when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily understandable to any ordinary reader. This case falls within the exceptions.

2. ID.; ID.; ID.; REVISED RULES ON REASSIGNMENT; REASSIGNMENT OF AN EMPLOYEE; REQUIREMENTS. — The language of the Revised Rules on Reassignment is plain and unambiguous. The reassignment of an employee with a station-specific place of work indicated in their respective appointments is allowed provided that it would not exceed a maximum period of one year. On the other hand, the reassignment of an employee whose appointment is not station-specific has no definite period unless otherwise revoked or recalled by the Head of the Agency, the CSC or a competent court. Nevertheless, if the employee without a station-specific place of work is reassigned outside the geographical location of his/her present place of work, then the following rules apply: *first*, if the reassignment is with the consent of the employee concerned, then the period of the same shall have no limit; *second*, if the reassignment is without the consent of the employee concerned, then the same should not exceed the maximum period of one year. x x x To stress, the Revised Rules on Reassignment has defined, albeit ostensively, what constitutes a "reassignment outside geographical location". It states that "*[r]eassignment outside geographical location may be from one [r]egional [o]ffice x x x to another [regional office] or from the [regional office] to the [c]entral [o]ffice x x x and vice-versa*. A perusal of the foregoing would show that the Revised Rules on Reassignment has clearly confined the coverage of the phrase "reassignment outside geographical location" to the following: (1) reassignment from one provincial office to another; (2) reassignment from the regional office to the central office; and (3) reassignment from the central office to the regional office.

APPEARANCES OF COUNSEL

Alwin C. Talde for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to annul and

set aside the Decision[1] dated September 10, 2009 issued by the Court of Appeals (CA) and the Resolution[2] dated November 24, 2009 denying the Motion for Reconsideration thereof in CA-G.R. SP No. 102174 which reversed and set aside Resolution Nos. 071693 and 072374 dated August 24, 2007 and December 17, 2007, respectively, of the Civil Service Commission (CSC).

Petitioner Russel Ulysses I. Nieves (Nieves) is a regular employee of the Department of Trade and Industry (DTI) with the position of Trade and Industry Development Specialist. He was formerly assigned to the DTI's office in Sorsogon (DTI-Sorsogon). On the other hand, respondent Jocelyn LB. Blanco (Blanco) is the Regional Director of DTI Regional Office in Region V.

On February 10, 2005, Blanco issued Regional Office Order No. 09 which directed Nieves' reassignment from DTI-Sorsogon to DTI's provincial office in Albay (DTI-Albay). Nieves appealed his reassignment to the CSC's Regional Office in Legazpi City (CSC Regional Office No. V) which, however, dismissed his appeal on March 18, 2005 for his failure to comply with the requirements of an appeal. Nieves forthwith complied with the reassignment order and reported for work at DTI-Albay.

A year after his reassignment to DTI-Albay, Nieves requested Blanco for his reassignment back to DTI-Sorsogon. He asserted that, under Section 6(a) of the Omnibus Rules on Appointments and other Personnel Actions, as amended by CSC Memorandum Circular No. 02-05 (Revised Rules on Reassignment), reassignment of employees with station-specific place of work is allowed only for a maximum period of one year. Considering that more than a year had passed since he was reassigned to DTI-Albay, Nieves claimed that Blanco was duty-bound to reassign him back to DTI-Sorsogon.

In a letter dated May 12, 2006, Blanco denied Nieves' request, stating that the latter's appointment as Trade and Industry

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Hakim S. Abdulwahid and Sixto C. Marella, Jr., concurring; *rollo*, pp. 33-42.

[2] *Id.* at 44.

Development Specialist in the DTI is not station specific and, hence, the one-year period limitation with regard to reassignment of employees does not apply to his case.

On June 21, 2006, Nieves filed a complaint with the CSC Regional Office No. V against Blanco, alleging that the latter committed grave abuse of authority, grave misconduct and oppression when she denied his request for reassignment back to DTI-Sorsogon. Nieves claimed that Blanco's refusal to reassign him back to DTI-Sorsogon was but an offshoot of the antipathy between him and DTI-Sorsogon Provincial Director Leah Pagao (Pagao). Allegedly, Nieves had previously filed a complaint with the Presidential Anti-Graft Commission against Pagao and, in reprisal, Blanco reassigned him to DTI-Albay.

On July 12, 2006, Nieves' complaint against Blanco was referred to the Office of Legal Affairs of the CSC for appropriate action. On August 24, 2007, the CSC issued Resolution No. 071693,[3] the decretal portion of which reads:

> WHEREFORE, the complaint against Jocelyn LB. Blanco, Regional Director, Department of Trade and Industry Regional Office (DTI-RO) No. V, Legazpi City is hereby **DISMISSED** for lack of jurisdiction. The letter dated May 12, 2006 of Regional Director Jocelyn LB. Blanco, DTI-RO No. V, is **REVERSED AND SET ASIDE**. Accordingly, Russel Ulysses I. Nieves, Trade and Industry Development Specialist, DTI-RO No. V, Legazpi City, shall be reinstated to his original station in DTI-Sorsogon.
>
> The Civil Service Commission Regional Office No. V, Rawis, Legazpi City is directed to monitor the implementation of this Resolution and to submit a report to the Commission within fifteen (15) days from receipt of the Resolution.[4]

The CSC, invoking the provisions of Rule I, Section 5, A(4) of the Uniform Rules on Administrative Cases, held that it does not have jurisdiction to adjudicate the charge against Blanco for grave abuse of authority, grave misconduct and oppression,

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[3] *Id.* at 56-61.

[4] *Id.* at 61.

since the latter is a third level official who is a presidential appointee.

Nevertheless, the CSC proceeded to determine the propriety of the reassignment order issued by Blanco. The CSC pointed out that Nieves' appointment as Trade and Industry Development Specialist is not station-specific. Nevertheless, the CSC averred that this does not mean that Nieves could be reassigned to DTI-Albay indefinitely. It ruled that under the Revised Rules on Reassignment, a reassignment outside the geographical location, if without the consent of the employee concerned, should not exceed the maximum period of one year. The CSC explained that:

Rule III, Section 6(a) of the Omnibus Rules on Appointments and Other Personnel Actions (Amended by CSC Memorandum Circular No. 2, series of 2005), states as follows:

x x x x x x x x x

"6. Reassignment outside geographical location if with consent shall have no limit. However, if it is without consent, reassignment shall be for one (1) year only. Reassignment outside geographical location may be from one regional office (RO) to another RO or from the RO to the Central Office (CO) and vice-versa.["]

x x x x x x x x x

From the foregoing it is clear that after the lapse of one year from Nieves' reassignment, he must be reinstated to his original assignment in DTI-Sorsogon. A perusal of his submitted appointment would show that his appointment is not station-specific. However, this shall not prevent the reinstatement of Nieves to his original station in DTI-Sorsogon. Due to the fact that Nieves was reassigned to DTI-Albay which is outside the geographical location of DTI-Sorsogon, said reassignment may only be allowed for a period of one (1) year as it was made without the consent of Nieves. Verily, after the lapse of the period of one (1) year from his reassignment, Nieves must be reinstated to his original station.[5]

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[5] *Id.* at 59-61.

Blanco filed a Motion for Partial Reconsideration of the Resolution No. 071693 but the same was denied by the CSC in its Resolution No. 072374[6] dated December 17, 2007.

Blanco then filed a petition for review with the CA, asserting that the CSC acted without factual and legal basis in directing the reassignment of Nieves in DTI-Sorsogon. On September 10, 2009, the CA rendered the herein assailed Decision the dispositive portion of which reads:

> WHEREFORE, the petition is **GRANTED.** The assailed Resolutions No. 071693 and 072374, dated August 24, 2007 and December 17, 2007, respectively, of the Civil Service Commission, with respect to the reinstatement of private respondent Russel Ulysses I. Nieves, Trade and Industry Development Specialist, to his original station in DTI-Sorsogon, are hereby **REVERSED** and **SET ASIDE.**
>
> Petitioner's Application for the Issuance of Temporary Restraining order and/or Writ of Preliminary Injunction is now **MOOT** and **ACADEMIC**.
>
> SO ORDERED.[7]

In reversing the CSC's disposition with regard to the propriety of Nieves' reassignment back to his original station in DTI-Sorsogon, the CA asserted that the phrase "reassignment outside geographical location" should be confined to reassignments from one regional office to another or from the central office to a regional office and *vice-versa*. Accordingly, the CA held that Nieves' reassignment to DTI-Albay is not affected by the one-year limitation set forth under the Revised Rules on Reassignment since the same is within the same regional office, *i.e.* from DTI-Sorsogon to DTI-Albay. Thus:

> From the foregoing, it is crystal clear that a reassignment outside geographical location is a reassignment from one regional office to another regional office or from regional office to the central office or vice versa. Since the reassignment of respondent from DTI-Sorsogon to DTI-Albay is within same regional office which is Region

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[6] *Id.* at 63-67.

[7] *Id.* at 41.

V, the same shall have no limit even if without his consent, as long as there is no reduction in rank status and salary.[8]

Nieves sought reconsideration[9] of the Decision dated September 10, 2009 but the same was denied by the CA in its Resolution[10] dated November 24, 2009.

Unperturbed, Nieves instituted the instant petition for review on *certiorari* asserting that a "reassignment outside geographical location" should not be restricted to a reassignment from one regional office to another or from the regional office to the central office and *vice-versa*. He insists that it should include movement from one provincial office to another because one such office is necessarily outside the geographical location of the other. Further, he avers that the CA should have accorded respect and finality to the CSC's interpretation of the provisions of the Revised Rules on Reassignment.

On the other hand, Blanco, in her Comment,[11] contends that the CA did not err when it delimited the phrase "reassignment outside geographical location" as referring only to reassignments from one regional office to another or from the regional office to the central office and *vice-versa*. Thus, she asserts that Nieves could be reassigned anywhere within the geographical location of Region V without his consent even for more than one year, provided that there is no diminution in his rank, salary or status.

The petition lacks merit.

The CSC, being the central agency mandated to "prescribe, amend, and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws," has the power to interpret its own rules and any phrase contained in them, with its interpretation being

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[8] *Id.* at 40.

[9] *Id.* at 46-54.

[10] *Id.* at 44.

[11] *Id.* at 92-104.

accorded great weight and ordinarily controls the construction of the courts.[12]

However, courts will not hesitate to set aside such executive interpretation when it is clearly erroneous, or when there is no ambiguity in the rule, or when the language or words used are clear and plain or readily understandable to any ordinary reader.[13] This case falls within the exceptions.

At the crux of the instant controversy is the proper construction of the provisions of Section 6 of the Revised Rules on Reassignment which, in part, reads:

> Sec. 6. x x x
>
> x x x x x x x x x
>
> Reassignment shall be governed by the following rules:
>
> 1. These rules shall apply only to employees appointed to first and second level positions in the career and non-career services. Reassignment of third level appointees is governed by the provisions of Presidential Decree No. 1.
>
> 2. Personnel movements involving transfer or detail should not be confused with reassignment since they are governed by separate rules.
>
> **3. Reassignment of employees with station-specific place of work indicated in their respective appointments shall be allowed only for a maximum period of one (1) year.** An appointment is considered station-specific when the particular office or station where the position is located is specifically indicated on the face of the appointment paper. Station-specific appointment does not refer to a specified plantilla item number since it is used for purposes of identifying the particular position to be filled or occupied by the employee.
>
> **4. If appointment is not station-specific, the one-year maximum period shall not apply. Thus, reassignment of**

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[12] See *City Government of Makati v. Civil Service Commission*, 426 Phil. 631, 644 (2002); *Commission on Appointments v. Paler*, G.R. No. 172623, March 3, 2010, 614 SCRA 127.

[13] *Melendres, Jr. v. Commission on Elections*, 377 Phil. 275, 291 (1999).

employees whose appointments do not specifically indicate the particular office or place of work has no definite period unless otherwise revoked or recalled by the Head of Agency, the Civil Service Commission or a competent court.

5. If an appointment is not station-specific, reassignment to an organizational unit within the same building or from one building to another or contiguous to each other in one work area or compound is allowed. Organizational unit refers to sections, divisions, and departments within an organization.

6. Reassignment outside geographical location if with consent shall have no limit. However, if it is without consent, reassignment shall be for one (1) year only. Reassignment outside geographical location may be from one Regional Office (RO) to another RO or from the RO to the Central Office (CO) and *vice-versa*.

7. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or if it constitutes constructive dismissal. x x x (Emphasis supplied)

The language of the Revised Rules on Reassignment is plain and unambiguous. The reassignment of an employee with a station-specific place of work indicated in their respective appointments is allowed provided that it would not exceed a maximum period of one year. On the other hand, the reassignment of an employee whose appointment is not station-specific has no definite period unless otherwise revoked or recalled by the Head of the Agency, the CSC or a competent court.

Nevertheless, if the employee without a station-specific place of work is reassigned outside the geographical location of his/her present place of work, then the following rules apply: *first*, if the reassignment is with the consent of the employee concerned, then the period of the same shall have no limit; *second*, if the reassignment is without the consent of the employee concerned, then the same should not exceed the maximum period of one year.

Here, it is undisputed that Nieves' appointment as a Trade and Industry Development Specialist is not station-specific. Thus, the period of his reassignment to DTI-Albay is indefinite, unless otherwise revoked or recalled by the Head of the Agency, the

CSC or a competent court. Further, since the reassignment of Nieves was within the same regional office, *i.e.* from DTI-Sorsogon to DTI-Albay, the one-year period limitation does not apply.

Nieves' insistence that a "reassignment outside geographical location" should likewise include a reassignment from one provincial office to another provincial office is untenable.

To stress, the Revised Rules on Reassignment has defined, albeit ostensively, what constitutes a "reassignment outside geographical location". It states that "*[r]eassignment outside geographical location may be from one [r]egional [o]ffice x x x to another [regional office] or from the [regional office] to the [c]entral [o]ffice x x x and vice-versa*.[14] A perusal of the foregoing would show that the Revised Rules on Reassignment has clearly confined the coverage of the phrase "reassignment outside geographical location" to the following: (1) reassignment from one provincial office to another; (2) reassignment from the regional office to the central office; and (3) reassignment from the central office to the regional office.

Nieves asserts that the use of the word "may" operates to confer discretion on the part of the CSC to consider any other reassignments as one which is outside the geographical location and that the circumstances cited in the said provision are mere examples of reassignments outside geographical location. We do not agree.

It is true that the use of the word "may" ordinarily operates to confer discretion. However, this term may be construed, as it is in this case clearly intended to be, in a mandatory and restrictive sense.[15] The said provision used the word "may" to emphasize that a "reassignment outside geographical location" is restricted only to either reassignment from one regional office to another regional office or a reassignment from the central office to a regional office and *vice-versa*.

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[14] Section 6(a)(6), Omnibus Rules on Appointments and other Personnel Actions, as amended by CSC Memorandum Circular No. 02-05.

[15] See *Benito v. Public Service Commission*, 86 Phil. 624, 626 (1950).

Moreover, if we are to follow Nieves' assertion that the instances stated in the said provision are merely examples, then every reassignment effected by the various offices could be considered as a "reassignment outside geographical location" depending on the discretion of the CSC. Surely, this is not what the Revised Rules on Reassignment intended.

Thus, Nieves' insistence that a reassignment from one provincial office to another provincial office within the same region should likewise be considered as a "reassignment outside geographical location" is clearly but a foray in the dark.

Further, Nieves' assertion that his reassignment to DTI-Albay constitutes constructive dismissal as it caused him significant financial dislocation is also devoid of merit. This is a mere allegation that Nieves utterly failed to substantiate. It bears stressing that a reassignment is presumed to be regular and made in the interest of public service.[16]

Anent Nieves' prayer for an award of moral damages, we deny the same for lack of legal and factual bases.

All told, we find that the CA did not commit any error in ruling that the one-year period limitation set forth in the Revised Rules on Reassignment finds no application in the instant case.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED.** The assailed Decision dated September 10, 2009 and the Resolution dated November 24, 2009 issued by the Court of Appeals in CA-G.R. SP No. 102174 are **AFFIRMED.**

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Sereno, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr. and *Mendoza, JJ.,* on leave.

[16] Section 6(a)(7), Omnibus Rules on Appointments and other Personnel Actions, as amended by CSC Memorandum Circular No. 02-05.

EN BANC

[G.R. No. 190793. June 19, 2012]

MAGDALO PARA SA PAGBABAGO, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; MOOT AND ACADEMIC RULE; WHEN NOT APPLICABLE; CASE AT BAR. — Although the subject Petition for Registration filed by MAGDALO was intended for the elections on 10 May 2010, it specifically asked for accreditation as a regional political party for purposes of **subsequent elections**. Moreover, even assuming that the registration was only for the 10 May 2010 National and Local Elections, this case nevertheless comes under the exceptions to the rules on mootness, as explained in *David v. Macapagal-Arroyo*: x x x 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 [the] 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**. The second and fourth exceptions are clearly present in the case at bar. The instant action brings to the fore matters of public concern, as it challenges the very notion of the use of violence or unlawful means as a ground for disqualification from party registration. Moreover, considering the expressed intention of MAGDALO to join subsequent elections, as well as the occurrence of supervening events pertinent to the case at bar, it remains prudent to examine the issues raised and resolve the arising legal questions once and for all.

2. POLITICAL LAW; COMMISSION ON ELECTIONS (COMELEC); ADMINISTRATIVE POWER; THE COMELEC HAS THE CONSTITUTIONAL AND STATUTORY MANDATE TO ASCERTAIN THE ELIGIBILITY OF PARTIES AND ORGANIZATIONS TO PARTICIPATE IN ELECTORAL CONTESTS; SUSTAINED. —

The COMELEC has a constitutional and statutory mandate to ascertain the eligibility of parties and organizations to participate in electoral contests. The relevant portions of the 1987 Constitution read: x x x Thus, to join electoral contests, a party or organization must undergo the two-step process of registration and accreditation, as this Court explained in *Liberal Party v. COMELEC*: x x x The power vested by Article IX-C, Section 2(5) of the Constitution and Section 61 of B.P. 881 in the COMELEC to register political parties and ascertain the eligibility of groups to participate in the elections is purely administrative in character. In exercising this authority, the COMELEC only has to assess whether the party or organization seeking registration or accreditation pursues its goals by employing acts considered as violent or unlawful, and **not** necessarily criminal in nature. Although this process does not entail any determination of administrative liability, as it is only limited to the evaluation of qualifications for registration, the ruling of this Court in *Quarto v. Marcelo* is nonetheless analogously applicable: **An administrative case is altogether different from a criminal case, such that the disposition in the former does not necessarily result in the same disposition for the latter, although both may arise from the same set of facts.** x x x **They are standards entirely different from those applicable in administrative proceedings.**

3. ID.; ID.; ID.; PARTIES ORGANIZATIONS AND COALITIONS THAT SEEK TO ACHIEVE THEIR GOALS THROUGH VIOLENCE OR UNLAWFUL MEANS SHALL BE DENIED REGISTRATION; APPLICATION IN CASE AT BAR. — Under Article IX-C, Section 2(5) of the 1987 Constitution, parties, organizations and coalitions that "seek to achieve their goals through violence or unlawful means" shall be denied registration. This disqualification is reiterated in Section 61 of B.P. 881, which provides that "no political party which seeks to achieve its goal through violence shall be entitled to accreditation." Violence is the unjust or unwarranted exercise of force, usually with the accompaniment of vehemence, outrage or fury. It also denotes physical force unlawfully exercised; abuse of force; that force which is employed against common right, against the laws, and against public liberty. On the other hand, an unlawful act is one that is contrary to law and need not be a crime, considering that the latter must still unite with

evil intent for it to exist. In the present case, the Oakwood incident was one that was attended with violence. As publicly announced by the leaders of MAGDALO during the siege, their objectives were to express their dissatisfaction with the administration of former President Arroyo, and to divulge the alleged corruption in the military and the supposed sale of arms to enemies of the state. Ultimately, they wanted the President, her cabinet members, and the top officials of the AFP and the PNP to resign. To achieve these goals, MAGDALO opted to seize a hotel occupied by civilians, march in the premises in full battle gear with ammunitions, and plant explosives in the building. These brash methods by which MAGDALO opted to ventilate the grievances of its members and withdraw its support from the government constituted clear acts of violence.

4. REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; THE COMELEC DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN IT TREATED THE OAKWOOD INCIDENT AS PUBLIC KNOWLEDGE; RATIONALE. — Under the Rules of Court, judicial notice may be taken of matters that are of "public knowledge, or are capable of unquestionable demonstration." Further, Executive Order No. 292, otherwise known as the Revised Administrative Code, specifically empowers administrative agencies to admit and give probative value to evidence commonly acceptable by reasonably prudent men, and to take notice of judicially cognizable facts. x x x This Court has, in a string of cases, already taken judicial notice of the factual circumstances surrounding the Oakwood standoff. x x x That the Oakwood incident was widely known and extensively covered by the media made it a proper subject of judicial notice. Thus, the COMELEC did not commit grave abuse of discretion when it treated these facts as public knowledge, and took cognizance thereof without requiring the introduction and reception of evidence thereon.

5. ID.; ID.; ID.; THE COURT TAKES JUDICIAL NOTICE OF THE GRANT OF AMNESTY IN FAVOR OF SOLDIERS WHO FIGURED IN THE OAKWOOD STANDOFF; EFFECT THEREOF. — This Court takes cognizance of the facts surrounding the Oakwood incident, it also takes judicial notice of the grant of amnesty in favor of the soldiers who

figured in this standoff. This Court, in *People v. Patriarca*, explained the concept of amnesty, to wit: x x x **Amnesty looks backward, and abolishes and puts into oblivion, the offense itself; it so overlooks and obliterates the offense with which he is charged, that the person released by amnesty stands before the law precisely as though he had committed no offense**. x x x In light of the foregoing, to still sustain the finding, based on the participation of its members in the Oakwood incident, that MAGDALO employs violence or other harmful means would be inconsistent with the legal effects of amnesty. Likewise, it would not be in accord with the express intention of both the Executive and the Legislative branches, in granting the said amnesty, to promote an atmosphere conducive to attaining peace in line with the government's peace and reconciliation initiatives. Nevertheless, this Court is not unmindful of the apprehensions of the COMELEC as regards the use of violence. Thus, should MAGDALO decide to file another Petition for Registration, its officers must **individually** execute affidavits renouncing the use of violence or other harmful means to achieve the objectives of their organization. Further, it must also be underscored that **the membership of MAGDALO cannot include military officers and/or enlisted personnel in active service**, as this act would run counter to the express provisions of the Constitution: x x x This Court finds that the COMELEC did not commit grave abuse of discretion in denying the Petition for Registration filed by MAGDALO. However, in view of the subsequent amnesty granted in favor of the members of MAGDALO, the events that transpired during the Oakwood incident can no longer be interpreted as acts of violence in the context of the disqualifications from party registration.

6. ID.; ID.; SUBSTANTIAL EVIDENCE; THE QUANTUM OF PROOF REQUIRED FOR ADMINISTRATIVE PROCEEDINGS; CASE AT BAR. — There is a well-established distinction between the quantum of proof required for administrative proceedings and that for criminal actions. In the case at bar, the challenged COMELEC Resolutions were issued pursuant to its administrative power to evaluate the eligibility of groups to join the elections as political parties, for which the evidentiary threshold of substantial evidence is applicable. In finding that MAGDALO resorts to violence or unlawful acts to fulfil its organizational objectives, the COMELEC did not render an

assessment as to whether the members of petitioner committed crimes, as respondent was not required to make that determination in the first place. Its evaluation was limited only to examining whether MAGDALO possessed all the necessary qualifications and none of disqualifications for registration as a political party. In arriving at its assailed ruling, the COMELEC only had to assess whether there was substantial evidence adequate to support this conclusion.

APPEARANCES OF COUNSEL

Law Firm of Chan Robles and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *J.*:

Before this Court is a Petition for *Certiorari* pursuant to Rule 37, Section 1 of the Commission on Elections (COMELEC) Rules of Procedure,[1] in relation to Rules 64 and 65 of the Rules of Court, assailing the Resolutions dated 26 October 2009 and 4 January 2010 issued by the COMELEC in SPP Case No. 09-073 (PP).[2]

On 2 July 2009, Petitioner Magdalo sa Pagbabago (MAGDALO) filed its Petition for Registration with the COMELEC, seeking its registration and/or accreditation as a regional political party based in the National Capital Region (NCR) for participation in the 10 May 2010 National and Local Elections.[3] In the Petition, MAGDALO was represented by its

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[1] Section 1. *Petition for Certiorari; and Time to File.* – Unless otherwise provided by law, or by any specific provisions in these Rules, any decision, order or ruling of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from its promulgation.

[2] *Rollo*, pp. 31-44.

[3] Petition for *Certiorari* ("Petition"), *rollo*, p. 5; Petition for Registration, *rollo*, pp. 45-51.

Chairperson, Senator Antonio F. Trillanes IV, and its Secretary General, Francisco Ashley L. Acedillo (Acedillo).[4] The Petition was docketed as SPP No. 09-073 (PP) and raffled to the Second Division of the COMELEC (COMELEC–Second Division).[5]

In its Order dated 24 August 2009, the COMELEC–Second Division directed MAGDALO to cause the publication of the Petition for Registration and the said Order in three daily newspapers of general circulation, and set the hearing thereof on 3 September 2009.[6] In compliance therewith, MAGDALO caused the publication of both documents in *HATAW! No. 1 sa Balita*, *Saksi sa Balita* and *BOMBA BALITA (Saksi sa Katotohanan)*.[7]

On 3 September 2009, a hearing was conducted in which MAGDALO (a) established its compliance with the jurisdictional requirements; (b) presented Acedillo as its witness; and (c) marked its documentary evidence in support of its Petition for Registration. The following day, MAGDALO filed its Formal Offer of Evidence.[8]

On 26 October 2009, the COMELEC–Second Division issued its Resolution denying the Petition for Registration filed by MAGDALO.[9] The relevant portions of the assailed Resolution read:

> Magdalo Para sa Pagbabago should be refused registration in accordance with Art. IX-C, Section 2(5) of the Constitution. It is common knowledge that the party's organizer and Chairman, Senator Antonio F. Trillanes IV, and some members participated in the take-over of the Oakwood Premier Apartments in Ayala Center, Makati City on July 27, 2003, wherein several innocent civilian personnel were held hostage. **This and the fact that they**

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[4] Petition for Registration, p.1; *rollo*, p. 45.

[5] Petition, *rollo*, p. 5.

[6] *Id*.

[7] *Id.* at 6.

[8] *Id*.

[9] *Id*.

were in full battle gear at the time of the mutiny clearly show their purpose in employing violence and using unlawful means to achieve their goals in the process defying the laws of organized societies. x x x.

x x x x x x x x x

WHEREFORE, premises considered, this Petition is hereby DENIED.

SO ORDERED.[10] (Emphasis supplied.)

On 3 November 2009, MAGDALO filed a Motion for Reconsideration, which was elevated to the COMELEC *En Banc* for resolution.[11]

Meanwhile, on 27 November 2009, MAGDALO filed a Manifestation of Intent to Participate in the Party-List System of Representation in the 10 May 2010 Elections (Manifestation of Intent), in which it stated that its membership includes "[f]ormer members of the Armed Forces of the Philippines (AFP), Anti-Corruption Advocates, Reform-minded citizens."[12] Thereafter, on 30 November 2009, it filed its Amended Manifestation, which bore the following footnote: [13]

With all due respect to the Honorable Commission, the **MAGDALO PARA SA PAGBABAGO (*"MAGDALO"*)** manifests that the instant **MANIFESTATION** is being filed *ex abutanti* (sic) *cautelam* (out of the abundance of caution) only and subject to the outcome of the resolution of the Motion for Reconsideration filed by Magdalo in SPP No. 09-073 (PP) from the Resolution dated 26 October 2009 of the Second Division of the Honorable Commission denying its Petition for Registration/Accreditation as a Political Party based in the National Capital Region [NCR], which motion is still pending the (sic) Honorable Commission *En Banc*. It is not in any way intended to preempt the ruling of the Honorable Commission

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[10] Resolution dated 26 October 2009 ("*First Resolution*"), *rollo*, pp. 33-36.

[11] Petition, *rollo*, p. 6.

[12] Annex "H" of the Petition, *rollo*, pp. 183-184.

[13] Annexes "H-1" and "H-2" of the Petition, *rollo*, pp. 185-187.

but merely to preserve the possibility of pursuing the Party's participation in the Party-List System of Representation in the eventuality that their Petition is approved.

Thereafter, MAGDALO filed a Manifestation and Motion for Early Resolution dated 23 December 2009, in which it clarified its intention to participate in the 10 May 2010 National and Local Elections as a party-list group.[14]

In its assailed Resolution dated 4 January 2010, the COMELEC *En Banc* denied the Motion for Reconsideration filed by MAGDALO.[15]

In the instant Petition, MAGDALO argues that (a) the COMELEC Resolutions were not based on the record or evidence presented; (b) the Resolutions preempted the decision of the trial court in Criminal Case No. 03-2784, in which several members of the military are being tried for their involvement in the siege of the Oakwood Premier Apartments (Oakwood); and (c) it has expressly renounced the use of force, violence and other forms of unlawful means to achieve its goals. Thus, MAGDALO prays for this Court to: (a) reverse and set aside the 26 October 2009 and 4 January 2010 COMELEC Resolutions; (b) grant its Petition for Registration; and (c) direct the COMELEC to issue a Certificate of Registration.[16] The Petition likewise includes a prayer for the issuance of a Temporary Restraining Order (TRO), Writ of Preliminary Mandatory Injunction and/or Injunctive Relief to direct the COMELEC to allow MAGDALO to participate in the 10 May 2010 National and Local Elections.[17] However, this Court denied the issuance of a TRO in its Resolution dated 2 February 2010.[18]

To support the grant of reliefs prayed for, MAGDALO puts forward the following arguments:

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[14] Annex "I" of the Petition, *rollo*, pp. 188-189.

[15] *Rollo*, pp. 37-44.

[16] Petition, *rollo*, pp. 3-30.

[17] *Id.* at 23-27.

[18] *Rollo*, p. 190.

The findings of the assailed resolutions on the basis of which the Petition was denied are based on pure speculation. The Resolutions speculated as to the alleged motives and/or intentions of the founders of petitioner Magdalo, which claims are not based one vidence but on mere conjecture and pure baseless presuppositions;

The assailed Resolutions effectively preempted the court trying the case. The subject Resolutions unfairly jumped to the conclusion that the founders of the Magdalo "*committed mutiny*", "*held innocent civilian personnel as hostage*", "*employed violence*" and "*use[d] unlawful means*" and "*in the process defied the laws of organized society*" purportedly during the Oakwood incident when even the court trying their case, [Regional Trial Court, National Capital Judicial Region, Makati City], Branch 148, has not yet decided the case against them;

– and –

The Resolution violates the constitutional presumption of innocence in favor of founders of the Magdalo and their basic right of to [sic] due process of law.[19]

On the other hand, the COMELEC asserts that it had the power to ascertain the eligibility of MAGDALO for registration and accreditation as a political party.[20] It contends that this determination, as well as that of assessing whether MAGDALO advocates the use of force, would entail the evaluation of evidence, which cannot be reviewed by this Court in a petition for *certiorari*.[21]

However, MAGDALO maintains that although it concedes that the COMELEC has the authority to assess whether parties applying for registration possess all the qualifications and none of the disqualifications under the applicable law, the latter nevertheless committed grave abuse of discretion in basing its determination on pure conjectures instead of on the evidence on record.[22]

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[19] Petition, *rollo*, p. 9.

[20] Comment dated 24 February 2010, *rollo*, pp. 199-211.

[21] *Id.*

[22] Reply to Comment dated 14 March 2010, *rollo*, pp. 213-234.

Preliminary to the examination of the substantive issues, it must be discussed whether this case has been rendered moot and academic by the conduct of the 10 May 2010 National and Local Elections. Although the subject Petition for Registration filed by MAGDALO was intended for the elections on even date, it specifically asked for accreditation as a regional political party for purposes of **subsequent elections**.[23]

Moreover, even assuming that the registration was only for the 10 May 2010 National and Local Elections, this case nevertheless comes under the exceptions to the rules on mootness, as explained in *David v. Macapagal-Arroyo*:[24]

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.
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> x x x x x x x x x
>
> 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 [the] 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**.[25] (Emphasis supplied.)

The second and fourth exceptions are clearly present in the case at bar. The instant action brings to the fore matters of public concern, as it challenges the very notion of the use of violence or unlawful means as a ground for disqualification from party registration. Moreover, considering the expressed intention of MAGDALO to join subsequent elections, as well as the occurrence of supervening events pertinent to the case at bar,

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[23] Petition for Registration, *rollo*, p. 49.

[24] 522 Phil 705 (2006).

[25] *Id.* at 753-754.

it remains prudent to examine the issues raised and resolve the arising legal questions once and for all.

Having established that this Court can exercise its power of judicial review, the issue for resolution is whether the COMELEC gravely abused its discretion when it denied the Petition for Registration filed by MAGDALO on the ground that the latter seeks to achieve its goals through violent or unlawful means. This Court rules in the negative, **but without prejudice to MAGDALO's filing anew of a Petition for Registration**.

The COMELEC has a constitutional and statutory mandate to ascertain the eligibility of parties and organizations to participate in electoral contests. The relevant portions of the 1987 Constitution read:

ARTICLE VI – LEGISLATIVE DEPARTMENT

x x x x x x x x x

Section 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

ARTICLE IX – CONSTITUTIONAL COMMISSIONS
C. The Commission on Elections

x x x x x x x x x

Section 2. The Commission on Elections shall exercise the following powers and functions:

x x x x x x x x x

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious

denominations and sects shall not be registered. **Those which seek to achieve their goals through violence or unlawful means**, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government **shall likewise be refused registration**. x x x. (Emphasis supplied.)

Echoing these constitutional provisions, *Batas Pambansa Bilang* 881 (BP 881), otherwise known as the Omnibus Election Code, states:

Sec. 60. *Political party*. – "Political party" or "party," when used in this Act, means an organized group of persons pursuing the same ideology, political ideals or platforms of government and includes its branches and divisions. **To acquire juridical personality, qualify it for subsequent accreditation, and to entitle it to the rights and privileges herein granted to political parties, a political party shall first be duly registered with the Commission.** Any registered political party that, singly or in coalition with others, fails to obtain at least ten percent of the votes cast in the constituency in which it nominated and supported a candidate or candidates in the election next following its registration shall, after notice and hearing, be deemed to have forfeited such status as a registered political party in such constituency.

Sec. 61. *Registration.* – Any organized group of persons seeking registration as a national or regional political party may file with the Commission a verified petition attaching thereto its constitution and by-laws, platforms or program of government and such other relevant information as may be required by the Commission. The Commission shall after due notice and hearing, resolve the petition within ten days from the date it is submitted for decision. No religious sect shall be registered as a political party and **no political party which seeks to achieve its goal through violence shall be entitled to accreditation.** (Emphasis supplied.)

On the other hand, Republic Act No. 7941, otherwise known as the Party-List System Act, reads in part:

Section 2. *Declaration of policy*. The State shall promote proportional representation in the election of representatives to the House of Representatives through a **party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof**, which will enable Filipino citizens belonging to marginalized

and under-represented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadcast possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible.

Section 3. *Definition of Terms.* (a) The party-list system is a mechanism of proportional representation in the election of representatives to the House of Representatives **from national, regional and sectoral parties or organizations or coalitions thereof registered with the Commission on Elections (COMELEC)**. Component parties or organizations of a coalition may participate independently provided the coalition of which they form part does not participate in the party-list system. (Emphasis supplied.)

Thus, to join electoral contests, a party or organization must undergo the two-step process of registration and accreditation, as this Court explained in *Liberal Party v. COMELEC*:[26]

x x x **Registration** is the act that bestows juridical personality for purposes of our election laws; **accreditation**, on the other hand, relates to the privileged participation that our election laws grant to qualified registered parties.

x x x x x x x x x

x x x Accreditation can only be granted to a registered political party, organization or coalition; stated otherwise, **a registration must first take place before a request for accreditation can be made**. Once registration has been carried out, accreditation is the next natural step to follow.[27] (Emphasis supplied.)

Considering the constitutional and statutory authority of the COMELEC to ascertain the eligibility of parties or organizations

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[26] G.R. No. 191771, 6 May 2010, 620 SCRA 393.

[27] *Id.* at 424-425.

seeking registration and accreditation, the pertinent question now is whether its exercise of this discretion was so capricious or whimsical as to amount to lack of jurisdiction. In view of the facts available to the COMELEC **at the time it issued its assailed Resolutions**, this Court rules that respondent did not commit grave abuse of discretion.

A. The COMELEC did not commit grave abuse of discretion taking judicial notice of the Oakwood incident.

MAGDALO contends that it was grave abuse of discretion for the COMELEC to have denied the Petition for Registration not on the basis of facts or evidence on record, but on mere speculation and conjectures.[28] This argument cannot be given any merit.

Under the Rules of Court, judicial notice may be taken of matters that are of "public knowledge, or are capable of unquestionable demonstration."[29] Further, Executive Order No. 292, otherwise known as the Revised Administrative Code, specifically empowers administrative agencies to admit and give probative value to evidence commonly acceptable by reasonably prudent men, and to take notice of judicially cognizable facts.[30]

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[28] Petition, *rollo*, pp. 11-13.

[29] Rule 129, Sec. 2.

[30] Section 12. Rules of Evidence. – In a contested case:

(1) The agency may admit and give probative value to evidence commonly accepted by reasonably prudent men in the conduct of their affairs.

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the parties shall be given opportunity to compare the copy with the original. If the original is in the official custody of a public officer, a certified copy thereof may be accepted.

(3) Every party shall have the right to cross-examine witnesses presented against him and to submit rebuttal evidence.

(4) The agency may take notice of judicially cognizable facts and of generally cognizable technical or scientific facts within its specialized knowledge. The parties shall be notified and afforded an opportunity to contest the facts so noticed.

Thus, in *Saludo v. American Express*,[31] this Court explained as follows:

> The concept of "facts of common knowledge" in the context of judicial notice has been explained as those facts that are "so commonly known in the community as to make it unprofitable to require proof, and so certainly known x x x as to make it indisputable among reasonable men."[32]

This Court has, in a string of cases, already taken judicial notice of the factual circumstances surrounding the Oakwood standoff.[33] The incident involved over 300 heavily armed military officers and enlisted men – led by the founding members of MAGDALO – who surreptitiously took over Oakwood in the wee hours of 27 July 2003. They disarmed the security guards and planted explosive devices around the building and within its vicinity. They aired their grievances against the administration of former President Gloria Macapagal-Arroyo (former President Arroyo), withdrew their support from the government, and called for her resignation, as well as that of her cabinet members and of the top officials of the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP). After the ensuing negotiations for these military agents to lay down their weapons, defuse the explosives and return to the barracks, the debacle came to a close at 11:00 p.m. on the same day.[34] That the Oakwood incident was widely known and extensively covered by the media made it a proper subject of judicial notice. Thus, the COMELEC did not commit grave abuse of discretion when it treated these facts as public knowledge,[35] and took cognizance thereof without requiring the introduction an d reception of evidence thereon.

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[31] 521 Phil. 585 (2006).

[32] *Id.* at 604.

[33] *See Pimentel v. Romulo*, 466 Phil. 482 (2004); *Navales v. Abaya*, 484 Phil. 367 (2004); *Gonzales v. Abaya*, 530 Phil. 189 (2006).

[34] *Id.*

[35] Resolution dated 4 January 2010, p. 5; *rollo*, p. 41.

B. The COMELEC did not commit grave abuse of discretion in finding that MAGDALO uses violence or unlawful means to achieve its goals.

In the instant Petition, MAGDALO claims that it did not resort to violence when it took over Oakwood because (a) no one, either civilian or military, was held hostage; (b) its members immediately evacuated the guests and staff of the hotel; and (c) not a single shot was fired during the incident.[36] These arguments present a very narrow interpretation of the concepts of violence and unlawful means, and downplays the threat of violence displayed by the soldiers during the takeover.

Under Article IX-C, Section 2(5) of the 1987 Constitution, parties, organizations and coalitions that "seek to achieve their goals through violence or unlawful means" shall be denied registration. This disqualification is reiterated in Section 61 of B.P. 881, which provides that "no political party which seeks to achieve its goal through violence shall be entitled to accreditation."

Violence is the unjust or unwarranted exercise of force, usually with the accompaniment of vehemence, outrage or fury.[37] It also denotes physical force unlawfully exercised; abuse of force; that force which is employed against common right, against the laws, and against public liberty.[38] On the other hand, an unlawful act is one that is contrary to law and need not be a crime, considering that the latter must still unite with evil intent for it to exist.[39]

In the present case, the Oakwood incident was one that was attended with violence. As publicly announced by the leaders

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[36] Petition, *rollo*, p 19.

[37] *Black's Law Dictionary*, Sixth Ed., p. 1570.

[38] *Id.*

[39] *Id.* at 1536; *Bahilidad v. People*, G.R. No. 185195, 17 March 2010, 615 SCRA 597.

of MAGDALO during the siege, their objectives were to express their dissatisfaction with the administration of former President Arroyo, and to divulge the alleged corruption in the military and the supposed sale of arms to enemies of the state.[40] Ultimately, they wanted the President, her cabinet members, and the top officials of the AFP and the PNP to resign.[41] To achieve these goals, MAGDALO opted to seize a hotel occupied by civilians, march in the premises in full battle gear with ammunitions, and plant explosives in the building. These brash methods by which MAGDALO opted to ventilate the grievances of its members and withdraw its support from the government constituted clear acts of violence.

The assertions of MAGDALO that no one was held hostage or that no shot was fired[42] do not mask its use of impelling force to take over and sustain the occupation of Oakwood. Neither does its express renunciation of the use of force, violence and other unlawful means in its Petition for Registration and Program of Government[43] obscure the actual circumstances surrounding the encounter. The deliberate brandishing of military power, which included the show of force, use of full battle gear, display of ammunitions, and use of explosive devices, engendered an alarming security risk to the public. At the very least, the totality of these brazen acts fomented a threat of violence that preyed on the vulnerability of civilians. The COMELEC did not, therefore, commit grave abuse of discretion when it treated the Oakwood standoff as a manifestation of the predilection of MAGDALO for resorting to violence or threats thereof in order to achieve its objectives.

C. The finding that MAGDALO seeks to achieve its goals through violence or unlawful means did not operate as a prejudgment of Criminal Case No. 03-2784.

[40] *Supra* note at 33.

[41] *Id.*

[42] Petition, *rollo*, pp. 19-20.

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

MAGDALO contends that the finding of the COMELEC that the former pursues its goals through violence or unlawful means was tantamount to an unwarranted verdict of guilt for several crimes, which in effect, preempted the proceedings in Criminal Case No. 03-2784 and violated the right to presumption of innocence.[44] This argument cannot be sustained.

The power vested by Article IX-C, Section 2(5) of the Constitution and Section 61 of BP 881 in the COMELEC to register political parties and ascertain the eligibility of groups to participate in the elections is purely administrative in character.[45] In exercising this authority, the COMELEC only has to assess whether the party or organization seeking registration or accreditation pursues its goals by employing acts considered as violent or unlawful, and **not** necessarily criminal in nature. Although this process does not entail any determination of administrative liability, as it is only limited to the evaluation of qualifications for registration, the ruling of this Court in *Quarto v. Marcelo*[46] is nonetheless analogously applicable:

> **An administrative case is altogether different from a criminal case, such that the disposition in the former does not necessarily result in the same disposition for the latter, although both may arise from the same set of facts.** The most that we can read from the finding of liability is that the respondents have been found to be administratively guilty by substantial evidence – the quantum of proof required in an administrative proceeding. The requirement of the Revised Rules of Criminal Procedure…that the proposed witness should not appear to be the "most guilty" is obviously in line with the character and purpose of a criminal proceeding, and the much stricter standards observed in these cases. **They are standards entirely different from those applicable in administrative proceedings.**[47] (Emphasis supplied.)

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[44] *Id.* at 12-15.

[45] *Cipriano v. COMELEC*, 479 Phil. 677 (2004).

[46] G.R. No. 169042, 5 October 2011, 658 SCRA 580.

[47] *Id.* at 611-612.

Further, there is a well-established distinction between the quantum of proof required for administrative proceedings and that for criminal actions, to wit:

> As an administrative proceeding, the evidentiary bar against which the evidence at hand is measured is not the highest quantum of proof beyond reasonable doubt, requiring moral certainty to support affirmative findings. Instead, the lowest standard of substantial evidence, that is, such relevant evidence as a reasonable mind will accept as adequate to support a conclusion, applies.[48] (Emphasis omitted.)

In the case at bar, the challenged COMELEC Resolutions were issued pursuant to its administrative power to evaluate the eligibility of groups to join the elections as political parties, for which the evidentiary threshold of substantial evidence is applicable. In finding that MAGDALO resorts to violence or unlawful acts to fulfil its organizational objectives, the COMELEC did not render an assessment as to whether the members of petitioner committed crimes, as respondent was not required to make that determination in the first place. Its evaluation was limited only to examining whether MAGDALO possessed all the necessary qualifications and none of disqualifications for registration as a political party. In arriving at its assailed ruling, the COMELEC only had to assess whether there was substantial evidence adequate to support this conclusion.

On the other hand, Criminal Case No. 03-2784 is a criminal action charging members of MAGDALO with *coup d'état* following the events that took place during the Oakwood siege. As it is a criminal case, proof beyond reasonable doubt is necessary. Therefore, although the registration case before the COMELEC and the criminal case before the trial court may find bases in the same factual circumstances, they nevertheless involve entirely separate and distinct issues requiring different evidentiary thresholds. The COMELEC correctly ruled thus:

> It is at once apparent that that [sic] the proceedings in and the consequent findings of the Commission (Second Division) in the

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[48] *Miro v. Dosono,* G.R. No. 170697, 30 April 2010, 619 SCRA 653, 660.

subject resolution did not pre-empt the trial and decision of the court hearing the cases of the Magdalo members. These are two different processes. The proceedings in the Commission is [sic] a petition for registration of Magdalo as a political party and the Commission is empowered to ascertain facts and circumstances relative to this case. It is not criminal in nature unlike the court case of the Magdalo founders. Thus, the Second Division did not violate the right of the Magdalo founders to be presumed innocent until proven guilty when it promulgated the questioned resolution. There is likewise no violation of due process. Accreditation as a political party is not a right but only a privilege given to groups who have qualified and met the requirements provided by law.[49]

It is unmistakable from the above reasons that the ruling of the COMELEC denying the Petition for Registration filed by MAGDALO has not, as respondent could not have, preempted Criminal Case No. 03-2784 or violated the right of petitioner's members to a presumption of innocence.

Subsequent Grant of Amnesty to the Military Personnel involved in the Oakwood standoff

It must be clarified that the foregoing discussion finding the absence of grave abuse of discretion on the part of the COMELEC is based on the facts available to it at the time it issued the assailed 26 October 2009 and 4 January 2010 Resolutions. It is crucial to make this qualification, as this Court recognizes the occurrence of supervening events that could have altered the COMELEC's evaluation of the Petition for Registration filed by MAGDALO. The assessment of the COMELEC could have changed, had these incidents taken place before the opportunity to deny the Petition arose. In the same manner that this Court takes cognizance of the facts surrounding the Oakwood incident, it also takes judicial notice of the grant of amnesty in favor of the soldiers who figured in this standoff.

This Court, in *People v. Patriarca*,[50] explained the concept of amnesty, to wit:

[49] Resolution dated 4 January 2010, pp. 4-5; *rollo*, pp. 40-41.

[50] 395 Phil.690 (2000), citing *People v. Casido*, 336 Phil. 344 (1997).

Amnesty commonly denotes a general pardon to rebels for their treason or other high political offenses, or the forgiveness which one sovereign grants to the subjects of another, who have offended, by some breach, the law of nations. **Amnesty looks backward, and abolishes and puts into (sic) oblivion, the offense itself; it so overlooks and obliterates the offense with which he is charged, that the person released by amnesty stands before the law precisely as though he had committed no offense**.

x x x x x x x x x

In the case of *People vs. Casido*, the difference between pardon and amnesty is given:

> "Pardon is granted by the Chief Executive and as such it is a private act which must be pleaded and proved by the person pardoned, because the courts take no notice thereof; while **amnesty by Proclamation of the Chief Executive with the concurrence of Congress, is a public act of which the courts should take judicial notice**. x x x"[51] (Emphasis supplied.)

Pursuant to Article VII, Section 19 of the Constitution,[52] President Benigno S. Aquino III issued on 24 November 2010 Proclamation No. 75,[53] which reads in part:

> GRANTING AMNESTY TO ACTIVE AND FORMER PERSONNEL OF THE ARMED FORCES OF THE PHILIPPINES, PHILIPPINE NATIONAL POLICE AND THEIR SUPPORTERS WHO MAY HAVE COMMITTED CRIMES PUNISHABLE UNDER THE REVISED PENAL CODE, THE ARTICLES OF WAR AND OTHER LAWS IN CONNECTION WITH THE OAKWOOD MUTINY, THE MARINES STAND-OFF AND THE PENINSULA MANILA HOTEL INCIDENT
>
> WHEREAS, it is recognized that certain active and former personnel of the Armed Forces of the Philippines (AFP), the Philippine

[51] *Id.* at 699.

[52] Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

[53] 106 O.G. 7016 (Dec., 2010).

National Police (PNP) and their supporters have or may have committed crimes punishable under the Revised Penal Code, the Articles of War and other laws in connection with, in relation or incident to the July 27, 2003 Oakwood Mutiny, the February 2006 Marines Stand-Off and the November 29, 2007 Manila Pen Incident;

WHEREAS, there is a clamor from certain sectors of society urging the President to extend amnesty to said AFP personnel and their supporters;

WHEREAS, Section 19, Article VII of the Constitution expressly vests the President the power to grant amnesty;

WHEREAS, the grant of amnesty in favor of the said active and former personnel of the AFP and PNP and their supporters will **promote an atmosphere conducive to the attainment of a just, comprehensive and enduring peace and is in line with the Government's peace and reconciliation initiatives;**

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by Section 19, Article VII of the Philippine Constitution, do hereby *DECLARE* and *PROCLAIM:*

SECTION 1. Grant of Amnesty. – **Amnesty is hereby granted to all active and former personnel of the AFP and PNP as well as their supporters who have or may have committed crimes punishable under the Revised Penal Code, the Articles of War or other laws in connection with, in relation or incident to the July 27, 2003 Oakwood Mutiny**, the February 2006 Marines Stand-Off and the November 29, 2007 Manila Peninsula Incident who shall apply therefor; Provided that amnesty shall not cover rape, acts of torture, crimes against chastity and other crimes committed for personal ends.

x x x x x x x x x

SECTION 4. Effects. – (a) **Amnesty pursuant to this proclamation shall extinguish any criminal liability for acts committed in connection, incident or related to the July 27, 2003 Oakwood Mutiny**, the February 2006 Marines Stand-Off and the November 29, 2007 Peninsula Manila Hotel Incident without prejudice to the grantee's civil liability for injuries or damages caused to private persons.

(b) Except as provided below, **the grant of amnesty shall effect the restoration of civil and political rights or entitlement of grantees that may have been suspended, lost or adversely affected by virtue of any executive, administrative or criminal action or proceedings against the grantee in connection with the subject incidents, including criminal conviction or (sic) any form, if any.**

(c) All enlisted personnel of the Armed Forces of the Philippines with the rank of up to Technical Sergeant and personnel of the PNP with the rank of up to Senior Police Officer 3, whose applications for amnesty would be approved shall be entitled to reintegration or reinstatement, subject to existing laws and regulations. However, they shall not be entitled to back pay during the time they have been discharged or suspended from service or unable to perform their military or police duties.

(d) Commissioned and Non-commissioned officers of the AFP with the rank of Master Sergeant and personnel of the PNP with the rank of at least Senior Police Officer 4 whose application for amnesty will be approved shall not be entitled to remain in the service, reintegration or reinstatement into the service nor back pay.

(e) All AFP and PNP personnel granted amnesty who are not reintegrated or reinstated shall be entitled to retirement and separation benefits, if qualified under existing laws and regulation, as of the time [of] separation, unless they have forfeited such retirement benefits for reasons other than the acts covered by this Proclamation. Those reintegrated or reinstated shall be entitled to their retirement and separation benefit[s] upon their actual retirement. (Emphasis supplied.)

Thereafter, the House of Representatives and the Senate adopted Concurrent Resolution No. 4 on 13 and 14 December 2010, respectively.[54] Relevant portions of the Resolution partly read:

CONCURRENT RESOLUTION CONCURRING WITH PROCLAMATION NO. 75 OF THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES DATED 24 NOVEMBER 2010 ENTITLED "GRANTING AMNESTY TO ACTIVE AND FORMER PERSONNEL OF THE ARMED FORCES OF THE PHILIPPINES, PHILIPPINE NATIONAL POLICE AND THEIR SUPPORTERS WHO MAY HAVE

[54] 107 O.G. 95 (Jan., 2011).

COMMITTED CRIMES PUNISHABLE UNDER THE REVISED PENAL CODE, THE ARTICLES OF WAR AND OTHER LAWS IN CONNECTION WITH THE OAKWOOD MUTINY, THE MARINES STAND-OFF AND THE PENINSULA MANILA HOTEL INCIDENT

WHEREAS, Section 19, Article VII of the Constitution provides that the President shall have the power to grant amnesty with the concurrence of a majority of all the Members of Congress;

x x x x x x x x x

WHEREAS, **both Houses of Congress share the view of the President that in order to promote an atmosphere conducive to the attainment of a just, comprehensive and enduing peace and in line with the Government's peace and reconciliation initiatives, there is a need to declare amnesty** in favor of the said active and former personnel of the AFP and PNP and their supporters;

WHEREAS, it is the sense of both House of Congress that it is imperative that an amnesty partaking the nature proclaimed by His Excellency, the President of the Philippines, is **necessary for the general interest of the Philippines**; xxx (Emphasis supplied.)

In light of the foregoing, to still sustain the finding, based on the participation of its members in the Oakwood incident, that MAGDALO employs violence or other harmful means would be inconsistent with the legal effects of amnesty. Likewise, it would not be in accord with the express intention of both the Executive and the Legislative branches, in granting the said amnesty, to promote an atmosphere conducive to attaining peace in line with the government's peace and reconciliation initiatives.

Nevertheless, this Court is not unmindful of the apprehensions of the COMELEC as regards the use of violence. Thus, should MAGDALO decide to file another Petition for Registration, its officers must **individually** execute affidavits renouncing the use of violence or other harmful means to achieve the objectives of their organization. Further, it must also be underscored that **the membership of MAGDALO cannot include military officers and/or enlisted personnel in active service**, as this act would run counter to the express provisions of the Constitution:

ARTICLE XVI – GENERAL PROVISIONS

Section 5. (1) All members of the armed forces shall take an oath or affirmation to uphold and defend this Constitution.

x x x x x x x x x

(3) Professionalism in the armed forces and adequate remuneration and benefits of its members shall be a prime concern of the State. **The armed forces shall be insulated from partisan politics.**

No member of the military shall engage directly or indirectly in any partisan political activity, except to vote.

(4) No member of the armed forces in the active service shall, at any time, be appointed or designated in any capacity to a civilian position in the Government including government-owned or controlled corporations or any of their subsidiaries. (Emphasis supplied.)

This Court finds that the COMELEC did not commit grave abuse of discretion in denying the Petition for Registration filed by MAGDALO. However, in view of the subsequent amnesty granted in favor of the members of MAGDALO, the events that transpired during the Oakwood incident can no longer be interpreted as acts of violence in the context of the disqualifications from party registration.

WHEREFORE, the instant Petition is **DISMISSED.** The 26 October 2009 and 4 January 2010 Resolutions of the Commission on Elections are hereby **AFFIRMED,** without prejudice to the filing anew of a Petition for Registration by MAGDALO.

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., J., on official leave.

Mendoza, J., on leave.

EN BANC

[G.R. No. 196201. June 19, 2012]

FRANCISCO T. DUQUE III, in his capacity as Chairman of the CIVIL SERVICE COMMISSION, *petitioner, vs.* **FLORENTINO VELOSO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DISHONESTY OF EMPLOYEE; PENALTY; APPLICATION OF MITIGATING, AGGRAVATING OR ALTERNATIVE CIRCUMSTANCES, ALLOWED. — Dismissal from the service is the prescribed penalty imposed by Section 52(A)(1), Rule IV of the Uniform Rules for the commission of dishonesty even as a first offense. The aforesaid rule underscores the constitutional principle that public office is a public trust and only those who can live up to such exacting standard deserve the honor of continuing in public service. It is true that Section 53, Rule IV of the Uniform Rules provides the application of mitigating, aggravating or alternative circumstances in the imposition of administrative penalties. Section 53, Rule IV applies only when clear proof is shown, using the specific standards set by law and jurisprudence, that the facts in a given case justify the mitigation of the prescribed penalty. In appreciating the presence of mitigating, aggravating or alternative circumstances to a given case, two constitutional principles come into play which the Court is tasked to balance. The first is public accountability which requires the Court to consider the improvement of public service, and the preservation of the public's faith and confidence in the government by ensuring that only individuals who possess good moral character, integrity and competence are employed in the government service. The second relates to social justice which gives the Court the discretionary leeway to lessen the harsh effects of the wrongdoing committed by an offender for equitable and humanitarian considerations.

2. ID.; ID.; ID.; ID.; WHEN LENGTH OF SERVICE IS CONSIDERED AGAINST THE OFFENDER; RATIONALE. — While in most cases, length of service is considered in

favor of the respondent, it is not considered where the offense committed is found to be serious or grave; or when the length of service helped the offender commit the infraction. The factors against mitigation are present in this case. Under the circumstances, the administrative offense of dishonesty committed by the respondent was serious on account of the supervisory position he held at Quedancor and the nature of Quedancor's business. Quedancor deals with the administration, management and disposition of public funds which the respondent was entrusted to handle. x x x In addition, the respondent's length of service allowed him to take advantage of his familiarity with Quedancor operations and employees – a factor that made the misappropriation possible.

3. **ID.; ID.; ID.; ID.; THE GENERAL PROVISION RELATING TO THE APPRECIATION OF MITIGATING, AGGRAVATING OR ALTERNATIVE CIRCUMSTANCES MUST YIELD TO THE EXPRESS PROVISION FOR THE PENALTY OF DISMISSAL; JUSTIFIED. —** The clear language of Section 52, Rule IV does not consider a first-time offender as a mitigating circumstance. Likewise, under statutory construction principles, a special provision prevails over a general provision. Section 53, Rule IV of the Uniform Rules, a general provision relating to the appreciation of mitigating, aggravating or alternative circumstances, must thus yield to the provision of Section 52, Rule IV of the Uniform Rules which expressly provides for the penalty of dismissal *even for the first commission of the offense*. While we are not unmindful of the existing jurisprudence cited by the respondent where the penalty of dismissal from the service was not imposed despite the clear language of Section 52, Rule IV of the Uniform Rules, the respondent failed to clearly show exceptional and compelling reasons to justify a deviation from the general rule.

4. **ID.; ID.; ID.; ID.; PRINCIPLE OF SOCIAL JUSTICE CANNOT BE PROPERLY SUSTAINED TO SHIELD THE RESPONDENT FROM THE FULL CONSEQUENCES OF HIS DISHONESTY; CASE AT BAR.—** All told, in reversing the CA's decision, we emphasize that the principle of social justice cannot be properly applied in the respondent's case to shield him from the full consequences of his dishonesty. x x x Prejudice to the service is not only through wrongful disbursement of public funds or loss of public property. Greater

> damage comes with the public's perception of corruption and incompetence in the government. Thus, the Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. These constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
John Aldrich D. Bonete for respondent.

D E C I S I O N

BRION, *J.*:

We review the petition filed under Rule 45 of the Rules of Court by petitioner Francisco T. Duque III, in his capacity as Chairman of the Civil Service Commission (*CSC*), assailing the decision[1] and the resolution[2] issued by the Court of Appeals (*CA*)[3] in CA-G.R. SP No. 01682-MIN. The CA modified CSC Resolution No. 061714,[4] finding Florentino Veloso (*respondent*) guilty of dishonesty, by reducing the penalty imposed by the CSC from dismissal from the service to suspension from office for one year without pay.

The Facts

The records show that the respondent, then District Supervisor of Quedan and Rural Credit Guarantee Corporation (*Quedancor*),

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[1] Dated August 20, 2010; *rollo*, pp. 28-33.

[2] Dated March 8, 2011; *id.* at 34-35.

[3] Twenty-First Division. The assailed rulings were penned by Associate Justice Edgardo T. Lloren, and concurred in by Associate Justice Romulo V. Borja and Associate Justice Ramon Paul L. Hernando.

[4] Dated September 25, 2006; *rollo*, pp. 41-52.

Cagayan de Oro City, was administratively charged with three (3) counts of dishonesty in connection with his unauthorized withdrawals of money deposited by Juanito Quino (*complainant*), a client of Quedancor. The complainant applied for a restructuring of his loan with Quedancor and deposited the amount of ₱50,000.00 to Quedancor's cashier for his Manila account. In three (3) separate occasions, the respondent, without notice and authority from the complainant and with the assistance of Quedancor's cashier, managed to withdraw the ₱50,000.00 deposit. Upon the discovery of the withdrawals, the complainant demanded the return of the money and called the attention of the manager of Quedancor in Cagayan de Oro City, who issued to the respondent a memorandum requiring him to explain the withdrawals and to return the money.

In compliance with the memorandum, the respondent returned the money. The respondent admitted having received the ₱50,000.00 from Quedancor's cashier knowing that it was intended for the complainant's loan repayment.

From the established facts, the respondent was charged by Quedancor with dishonesty, and was subsequently found guilty of the charges and dismissed from the service. The CSC affirmed the findings and conclusions of Quedancor on appeal.

Dissatisfied with the adverse rulings of Quedancor and the CSC, the respondent elevated his case to the CA which adjudged him guilty of dishonesty, but modified the penalty of dismissal to one (1) year suspension from office without pay. The CA cited the case of *Miel v. Malindog*[5] as supporting basis and relied on Section 53, Rule IV of the Uniform Rules on Administrative Cases (*Uniform Rules*) which allows the appreciation of mitigating circumstances in the determination of the proper imposable penalty. The CA took into account the following mitigating circumstances: (1) the respondent's length of service of 18 years; (2) the prompt admission of culpability;

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[5] G.R. No. 143538, February 13, 2009, 579 SCRA 119, 135, citing *Apuyan, Jr. v. Sta. Isabel*, Adm. Matter No. P-01-1497, 430 SCRA 1; and *Civil Service Commission v. Belagan*, G.R. No. 132164, October 19, 2004, 440 SCRA 578.

(3) the return of the money; and (4) the respondent's status as a first time offender.

The Present Petition

The CSC argues that the CA disregarded the applicable law and jurisprudence which penalize the offense of dishonesty with dismissal from the service. The CSC also argues that there are no mitigating circumstances to warrant a reduction of the penalty, for the following reasons:

(1) The respondent's length of service aggravated his dishonesty since the respondent took advantage of his authority over a subordinate and disregarded his oath that a public office is a public trust. The respondent's length of service cannot also be considered mitigating given the number of times the dishonest acts were committed and the supervisory position held by the respondent.

(2) The admission of guilt and the restitution by the respondent were made in 2003, while the misappropriation took place in 2001. The respondent admitted his culpability and effected payment not because of his desire to right a wrong but because he feared possible administrative liabilities.

(3) The respondent was charged with, and admitted having committed, dishonesty in three separate occasions.

(4) Section 52(A)(1), Rule IV of the Uniform Rules imposes dismissal from the service for dishonesty, even for the first offense.

In compliance with our Minute Resolution dated May 31, 2011, the respondent filed his comment to the petition. The respondent begs the Court to apply jurisprudence where the Court, for humanitarian reasons, refrained from meting out the actual penalties imposed by law, in the presence of mitigating circumstances. In this case, the respondent calls attention to the following circumstances: (1) that he is the sole breadwinner of his family; (2) his length of service with Quedancor; and (3)

other than this case, no other administrative case had been filed against him for his past 21 years of government service.[6]

The Issue

The issue in this case is the determination of the proper administrative penalty to be imposed on the respondent.

The Court's Ruling

We grant the petition.

Dismissal from the service is the prescribed penalty imposed by Section 52(A)(1), Rule IV of the Uniform Rules for the commission of dishonesty even as a first offense. The aforesaid rule underscores the constitutional principle that public office is a public trust and only those who can live up to such exacting standard deserve the honor of continuing in public service.[7] It is true that Section 53, Rule IV of the Uniform Rules provides the application of mitigating, aggravating or alternative circumstances in the imposition of administrative penalties. Section 53, Rule IV applies only when clear proof is shown, using the specific standards set by law and jurisprudence, that the facts in a given case justify the mitigation of the prescribed penalty.

In appreciating the presence of mitigating, aggravating or alternative circumstances to a given case, two constitutional principles come into play which the Court is tasked to balance. The first is public accountability which requires the Court to consider the improvement of public service, and the preservation of the public's faith and confidence in the government by ensuring that only individuals who possess good moral character, integrity and competence are employed in the government service.[8] The second relates to social justice which gives the Court the discretionary leeway to lessen the harsh effects of the wrongdoing

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[6] *Rollo*, pp. 60-65.

[7] *Cesar S. Dumduma v. Civil Service Commission*, G.R. No. 182606, December 4, 2011.

[8] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 608.

committed by an offender for equitable and humanitarian considerations.

A significant aspect which the CA failed to consider under the circumstances is the inapplicability to the present case of the Court's ruling in *Vicente A. Miel v. Jesus A. Malindog*,[9] which in turn cited *Apuyan, Jr. v. Sta. Isabel*[10] and *Civil Service Commission v. Belagan*.[11] The rulings in these three (3) cases were rendered under different factual circumstances involving dishonest acts, *i.e.,* submission of false entries in the Personal Data Sheet, the solicitation of money, or the non-compliance with the prescribed court procedure, among others. In terms of seriousness and gravity, these dishonest acts differ from the dishonest acts committed by the respondent **who used public funds under his responsibility for his own personal benefit**. Unlike the cases cited by the CA, we also take into account the **nature** of Quedancor's business – it is a credit and guarantee institution where the public perception of the official's credibility and reputation is material.

In the clearest of terms, the CA upheld that factual findings of the CSC. Thus, it is on the basis of these findings that we must now make our own independent appreciation of the circumstances cited by the respondent and appreciated by the CA as mitigating circumstances. After a careful review of the records and jurisprudence, we disagree with the CA's conclusion that mitigating circumstances warrant the mitigation of the prescribed penalty imposed against the respondent.

First, we have repeatedly held that length of service can either be a mitigating or an aggravating circumstance depending on the facts of each case.[12] While in most cases, length of service is considered in favor of the respondent, it is not considered where the offense committed is found to be serious

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[9] *Supra* note 5.

[10] *Supra* note 5.

[11] *Supra* note 5.

[12] *Civil Service Commission v. Cortez*, *supra* note 8, at 604.

or grave;[13] or when the length of service helped the offender commit the infraction.[14] The factors against mitigation are present in this case.

Under the circumstances, the administrative offense of dishonesty committed by the respondent was serious on account of the supervisory position he held at Quedancor and the nature of Quedancor's business. Quedancor deals with the administration, management and disposition of public funds which the respondent was entrusted to handle.

The respondent's dishonest acts carried grave consequences because Quedancor is a credit and guarantee institution, and the public's perception of its credibility is critical. In this case, the sanction of dismissal imposed on the respondent as a dishonest employee assures the public that: first, public funds belonging to Quedancor are used for their intended purpose; second, public funds are released to their proper recipients only after strict compliance with the standard operating procedure of Quedancor is followed; and lastly, only employees who are competent, honest and trustworthy may manage, administer and handle public funds in Quedancor.

Like a bank, Quedancor as a credit and guarantee institution is expected to observe the highest degree of competence and diligence as it is a business imbued with public interest.[15] To promote trust and confidence, employees in Quedancor are expected to possess the highest standards of integrity and moral uprightness. The respondent's dismissal from the service is a measure of self-protection and self-preservation by Quedancor of its reputation before its clients and the public.

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[13] *Id.* at 605, citing *University of the Philippines v. Civil Service Commission, et al.*, G.R. No. 89454, April 20, 1992, 208 SCRA 174; *Yuson v. Noel*, A.M. No. RTJ-91-762, October 23, 1993, 227 SCRA 1; and *Concerned Employee v. Nuestro*, A.M. No. P-02-1629, September 11, 2002, 388 SCRA 568.

[14] *Id.* at 605-606.

[15] *Philippine Savings Bank v. Chowking Food Corporation*, G.R. No. 177526, July 4, 2008, 557 SCRA 318, 330.

We additionally note that length of service should also be taken against the respondent; the infraction he committed and the number of times he committed the violations demonstrate the highest degree of ingratitude and ungratefulness to an institution that has been the source of his livelihood for 18 years. His actions constitute no less than disloyalty and betrayal of the trust and confidence the institution reposed in him. They constitute ingratitude for the opportunities given to him over the years for career advancement. Had it not been for the respondent's length of service, he could not have taken the subject funds for his own use as he could not have held a supervisory position. In addition, the respondent's length of service allowed him to take advantage of his familiarity with Quedancor operations and employees – a factor that made the misappropriation possible.

Second, the circumstance that this is the respondent's first administrative offense should not benefit him. By the express terms of Section 52, Rule IV of the Uniform Rules, the commission of an administrative offense classified as a serious offense (like dishonesty) is punishable by dismissal from the service even for the first time. In other words, the clear language of Section 52, Rule IV does not consider a first-time offender as a mitigating circumstance. Likewise, under statutory construction principles, a special provision prevails over a general provision.[16] Section 53, Rule IV of the Uniform Rules, a general provision relating to the appreciation of mitigating, aggravating or alternative circumstances, must thus yield to the provision of Section 52, Rule IV of the Uniform Rules which expressly provides for the penalty of dismissal *even for the first commission of the offense*.

While we are not unmindful of the existing jurisprudence[17] cited by the respondent where the penalty of dismissal from the service was not imposed despite the clear language of Section 52, Rule IV of the Uniform Rules, the respondent failed to clearly show exceptional and compelling reasons to justify a deviation from the general rule.

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[16] *Vinzons-Chato v. Fortune Tobacco Corporation*, G.R. No. 141309, June 19, 2007, 525 SCRA 11, 23.

[17] *Supra* note 5.

Finally, we reject as mitigating circumstances the respondent's admission of his culpability and the restitution of the amount. As pointed out by the CSC, the respondent made use of the complainant's money in 2001 while the restitution was made only in 2003, during the pendency of the administrative case against him.[18] Under the circumstances, the restitution was half-hearted and was certainly neither purely voluntary nor made because of the exercise of good conscience; it was triggered, more than anything else, by his fear of possible administrative penalties.[19] The admission of guilt and the restitution effected were clearly mere afterthoughts made two (2) years after the commission of the offense and after the administrative complaint against him was filed. With these circumstances in mind, we do not find it justified to relieve the respondent of the full consequences of his dishonest actions.

All told, in reversing the CA's decision, we emphasize that the principle of social justice cannot be properly applied in the respondent's case to shield him from the full consequences of his dishonesty. The Court, in *Philippine Long Distance Telephone Co. v. NLRC*,[20] clearly recognized the limitations in invoking social justice:

> **The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged**. At best it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. **Social justice cannot be permitted to be [the] refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor**. This great policy of our Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[21] [Emphases supplied.]

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[18] *Rollo*, p. 20.

[19] *Ibid.*

[20] 247 Phil. 641 (1988).

[21] *Id.* at 650.

Prejudice to the service is not only through wrongful disbursement of public funds or loss of public property.[22] Greater damage comes with the public's perception of corruption and incompetence in the government.[23]

Thus, the Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[24] These constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service.[25]

WHEREFORE, premises considered, we **GRANT** the petition, and **REVERSE and SET ASIDE** the decision dated August 20, 2010 and the resolution dated March 8, 2011 issued by the Court of Appeals in CA-G.R. SP No. 01682-MIN. The resolutions of the Civil Service Commission, affirming the decision dated August 11, 2004 of the Quedan and Rural Credit Guarantee Corporation, imposing upon respondent Florentino Veloso the penalty of dismissal from the service, with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, for dishonesty, are hereby **REINSTATED.**

SO ORDERED.

Carpio, Senior Associate Justice, concurs.

Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr., and *Mendoza, JJ.,* on leave.

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[22] *Jerome Japson v. Civil Service Commission,* G.R. No. 189479, April 12, 2011.

[23] *Ibid.*

[24] *Ibid.*

[25] *Ibid.*

SECOND DIVISION

[A.C. No. 9387. June 20, 2012]
(Formerly CBD Case No. 05-1562)

EMILIA R. HERNANDEZ, *complainant, vs.* **ATTY. VENANCIO B. PADILLA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHALL NOT HANDLE ANY LEGAL MATTER WITHOUT ADEQUATE PREPARATION; THE SUPPOSED LACK OF TIME TO ACQUAINT HIMSELF WITH THE FACTS OF THE CASE DOES NOT EXCUSE A LAWYER OF HIS NEGLIGENCE; CASE AT BAR. — The supposed lack of time given to respondent to acquaint himself with the facts of the case does not excuse his negligence. Rule 18.02 of the Code provides that a lawyer shall not handle any legal matter without adequate preparation. While it is true that respondent was not complainant's lawyer from the trial to the appellate court stage, this fact did not excuse him from his duty to diligently study a case he had agreed to handle. If he felt he did not have enough time to study the pertinent matters involved, as he was approached by complainant's husband only two days before the expiration of the period for filing the Appellant's Brief, respondent should have filed a motion for extension of time to file the proper pleading instead of whatever pleading he could come up with, just to "beat the deadline set by the Court of Appeals."

2. ID.; ID.; A COUNSEL HAS THE DUTY TO INFORM HIS CLIENTS OF THE STATUS OF THEIR CASE; VIOLATION IN CASE AT BAR.— [R]espondent, as counsel, had the duty to inform his clients of the status of their case. His failure to do so amounted to a violation of Rule 18.04 of the Code. x x x If it were true that all attempts to contact his client proved futile, the least respondent could have done was to inform the CA by filing a Notice of Withdrawal of Appearance as counsel. He could have thus explained why he was no longer the counsel of complainant and her husband in the case and informed the

court that he could no longer contact them. His failure to take this measure proves his negligence.

3. ID.; ID.; A LAWYER IS LIABLE FOR NEGLIGENCE IN HANDLING THE CLIENT'S CASE; IMPOSABLE PENALTY. — Under 18.03 of the Code, a lawyer is liable for negligence in handling the client's case. x x x Lawyers should not neglect legal matters entrusted to them, otherwise their negligence in fulfilling their duty would render them liable for disciplinary action. Respondent has failed to live up to his duties as a lawyer. When a lawyer violates his duties to his client, he engages in unethical and unprofessional conduct for which he should be held accountable. **WHEREFORE,** respondent Atty. Venancio Padilla is found guilty of violating Rules 18.02, 18.03, 18.04, as well as Canon 5 of the Code of Professional Responsibility. Hence, he is **SUSPENDED** from the practice of law for **SIX (6) MONTHS** and **STERNLY WARNED** that a repetition of the same or a similar offense will be dealt with more severely.

APPEARANCES OF COUNSEL

Antonio Salanura for complainant.

R E S O L U T I O N

SERENO, *J.*:

This is a disbarment case filed by Emilia Hernandez (complainant) against her lawyer, Atty. Venancio B. Padilla (respondent) of Padilla Padilla Bautista Law Offices, for his alleged negligence in the handling of her case.

The records disclose that complainant and her husband were the respondents in an ejectment case filed against them with the Regional Trial Court of Manila (RTC).

In a Decision[1] dated 28 June 2002, penned by Judge Rosmari D. Carandang (Judge Carandang), the RTC ordered that the Deed of Sale executed in favor of complainant be cancelled;

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[1] *Rollo*, Vol. I, pp. 14-24.

and that the latter pay the complainant therein, Elisa Duigan (Duigan), attorney's fees and moral damages.

Complainant and her husband filed their Notice of Appeal with the RTC. Thereafter, the Court of Appeals (CA) ordered them to file their Appellants' Brief. They chose respondent to represent them in the case. On their behalf, he filed a Memorandum on Appeal instead of an Appellants' Brief. Thus, Duigan filed a Motion to Dismiss the Appeal. The CA granted the Motion in a Resolution[2] dated 16 December 2003.

No Motion for Reconsideration (MR) of the Resolution dismissing the appeal was filed by the couple. Complainant claims that because respondent ignored the Resolution, he acted with "deceit, unfaithfulness amounting to malpractice of law."[3] Complainant and her husband failed to file an appeal, because respondent never informed them of the adverse decision. Complainant further claims that she asked respondent "several times" about the status of the appeal, but "despite inquiries he deliberately withheld response [*sic*]," to the damage and prejudice of the spouses.[4]

The Resolution became final and executory on 8 January 2004. Complainant was informed of the Resolution sometime in July 2005, when the Sheriff of the RTC came to her house and informed her of the Resolution.

On 9 September 2005, complainant filed an Affidavit of Complaint[5] with the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP), seeking the disbarment of respondent on the following grounds: deceit, malpractice, and grave misconduct. Complainant prays for moral damages in the amount of ₱350,000.

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[2] *Id.* at 43-44.

[3] *Id.* at 1.

[4] *Id.*

[5] *Id.* at 1-2.

Through an Order[6] dated 12 September 2005, Director of Bar Discipline Rogelio A. Vinluan ordered respondent to submit an answer to the Complaint. In his Counter-Affidavit/Answer,[7] respondent prayed for the outright dismissal of the Complaint.

Respondent explained that he was not the lawyer of complainant. He averred that prior to the mandatory conference set by the IBP on 13 December 2005, he had never met complainant, because it was her husband who had personally transacted with him. According to respondent, the husband "despondently pleaded to me to prepare a Memorandum on Appeal because according to him the period given by the CA was to lapse within two or three days."[8] Thus, respondent claims that he filed a Memorandum on Appeal because he honestly believed that "it is this pleading which was required."[9]

Before filing the Memorandum, respondent advised complainant's husband to settle the case. The latter allegedly "gestured approval of the advice."[10]

After the husband of complainant picked up the Memorandum for filing, respondent never saw or heard from him again and thus assumed that the husband heeded his advice and settled the case. When respondent received an Order from the CA requiring him to file a comment on the Motion to Dismiss filed by Duigan, he "instructed his office staff to contact Mr. Hernandez thru available means of communication, but to no avail."[11] Thus, when complainant's husband went to the office of respondent to tell the latter that the Sheriff of the RTC had informed complainant of the CA's Resolution dismissing the case, respondent was just as surprised. The lawyer exclaimed, "*KALA KO BA NAKIPAG AREGLO NA KAYO*."[12]

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[6] *Id.* at 45.

[7] *Id.* at 52-56.

[8] *Id* at 53.

[9] *Id* at 54.

[10] *Id*.

[11] *Id*.

[12] *Id*.

In his 5 January 2009 Report,[13] IBP Investigating Commissioner Leland R. Villadolid, Jr. found that respondent violated Canons 5, 17, and 18 of the Code of Professional Responsibility (the Code). He recommended that respondent be suspended from practicing law from 3 to 6 months.

The board of governors of the IBP issued Resolution No. XIX-2010-452 on 28 August 2010. Therein, they resolved to adopt and approve the Report and Recommendation of the Investigating Commissioner. Respondent was suspended from the practice of law for six months.

Respondent filed a Motion for Reconsideration.[14] He prayed for the relaxation of the application of the Canons of the Code. On 14 January 2012, the IBP board of governors passed Resolution No. XX-2012-17[15] partly granting his Motion and reducing the penalty imposed to one-month suspension from the practice of law.

Pursuant to Rule 139-B of the Rules of Court, acting Director for Bar Discipline Dennis A.B. Funa, through a letter[16] addressed to then Chief Justice Renato C. Corona, transmitted the documents pertaining to the disbarment Complaint against respondent.

We adopt the factual findings of the board of governors of the IBP. This Court, however, disagrees with its Decision to reduce the penalty to one-month suspension. We thus affirm the six-month suspension the Board originally imposed in its 28 August 2010 Resolution.

Respondent insists that he had never met complainant prior to the mandatory conference set for the disbarment Complaint she filed against him. However, a perusal of the Memorandum of Appeal filed in the appellate court revealed that he had signed as counsel for the defendant-appellants therein, including

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[13] *Rollo,* Vol. II, pp. 2-15.

[14] *Id.* at 16-20.

[15] *Rollo,* Vol. II (page not indicated).

[16] *Id.* at.

complainant and her husband.[17] The pleading starts with the following sentence: "DEFENDANT[S]-APPELLANTS, by counsel, unto this Honorable Court submit the Memorandum and further allege that: x x x."[18] Nowhere does the document say that it was filed only on behalf of complainant's husband.

It is further claimed by respondent that the relation created between him and complainant's husband cannot be treated as a "client-lawyer" relationship, *viz*:

> It is no more than a client needing a legal document and had it prepared by a lawyer for a fee. Under the factual milieu and circumstances, it could not be said that a client entrusted to a lawyer handling and prosecution of his case that calls for the strict application of the Code; x x x[19]

As proof that none of them ever intended to enter into a lawyer-client relationship, he also alleges that complainant's husband never contacted him after the filing of the Memorandum of Appeal. According to respondent, this behavior was "very unusual if he really believed that he engaged" the former's services.[20]

Complainant pointed out in her Reply[21] that respondent was her lawyer, because he accepted her case and an acceptance fee in the amount of ₱7,000.

According to respondent, however, "[C]ontrary to the complainant's claim that he charged ₱7,000 as acceptance fee," "the fee was only for the preparation of the pleading which is even low for a Memorandum of Appeal: x x x."[22]

Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the

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[17] See *rollo*, Vol. I, p. 39.

[18] *Id.* at 25.

[19] *Rollo*, Vol. II, p. 18.

[20] *Id* at 19.

[21] *Rollo*, Vol. I, pp. 76-77.

[22] *Rollo*, Vol. II, p. 18.

client's cause.[23] Once a lawyer agrees to handle a case, it is that lawyer's duty to serve the client with competence and diligence.[24] Respondent has failed to fulfill this duty.

According to respondent, he merely drafted the pleading that complainant's husband asked from him. Respondent also claims that he filed a Memorandum of Appeal, because he "honestly believed" that this was the pleading required, based on what complainant's husband said.

The IBP Investigating Commissioner's observation on this matter, in the 5 January 2009 Report, is correct. Regardless of the particular pleading his client may have believed to be necessary, it was respondent's duty to know the proper pleading to be filed in appeals from RTC decisions, *viz*:

> Having seen the Decision dated 18 June 2002 of the trial court, respondent should have known that the mode of appeal to the Court of Appeals for said Decision is by ordinary appeal under Section 2(a) Rule 41 of the1997 Revised Rules of Civil Procedure. In all such cases, Rule 44 of the said Rules applies.[25]

When the RTC ruled against complainant and her husband, they filed a Notice of Appeal. Consequently, what should apply is the rule on ordinary appealed cases or Rule 44 of the Rules on Civil Procedure. Rule 44 requires that the appellant's brief be filed after the records of the case have been elevated to the CA. Respondent, as a litigator, was expected to know this procedure. Canon 5 of the Code reads:

> CANON 5 — A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence.

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[23] *Fernandez v. Atty. Cabrera*, 463 Phil. 352 (2003).

[24] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18.

[25] *Rollo*, Vol. II, pp. 9-10.

The obligations of lawyers as a consequence of their Canon 5 duty have been expounded in *Dulalia, Jr. v. Cruz*,[26] to wit:

> It must be emphasized that the primary duty of lawyers is to obey the laws of the land and promote respect for the law and legal processes. They are expected to be in the forefront in the observance and maintenance of the rule of law. This duty carries with it the obligation to be well-informed of the existing laws and to keep abreast with legal developments, recent enactments and jurisprudence. It is imperative that they be conversant with basic legal principles. Unless they faithfully comply with such duty, they may not be able to discharge competently and diligently their obligations as members of the bar. Worse, they may become susceptible to committing mistakes.

In his MR, respondent begged for the consideration of the IBP, claiming that the reason for his failure to file the proper pleading was that he "did not have enough time to acquaint himself thoroughly with the factual milieu of the case." The IBP reconsidered and thereafter significantly reduced the penalty originally imposed.

Respondent's plea for leniency should not have been granted.

The supposed lack of time given to respondent to acquaint himself with the facts of the case does not excuse his negligence.

Rule 18.02 of the Code provides that a lawyer shall not handle any legal matter without adequate preparation. While it is true that respondent was not complainant's lawyer from the trial to the appellate court stage, this fact did not excuse him from his duty to diligently study a case he had agreed to handle. If he felt he did not have enough time to study the pertinent matters involved, as he was approached by complainant's husband only two days before the expiration of the period for filing the Appellant's Brief, respondent should have filed a motion for extension of time to file the proper pleading instead of whatever pleading he could come up with, just to "beat the deadline set by the Court of Appeals."[27]

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[26] A.C. No. 6854, 27 April 2007, 522 SCRA 244, 255 citing *Santiago v. Rafanan*, A.C. No. 6252, 483 Phil. 94, 105(2004).

[27] *Rollo*, Vol. II, p. 18.

Moreover, respondent does not deny that he was given notice of the fact that he filed the wrong pleading. However, instead of explaining his side by filing a comment, as ordered by the appellate court, he chose to ignore the CA's Order. He claims that he was under the presumption that complainant and her husband had already settled the case, because he had not heard from the husband since the filing of the latter's Memorandum of Appeal.

This explanation does not excuse respondent's actions.

First of all, there were several remedies that respondent could have availed himself of, from the moment he received the Notice from the CA to the moment he received the disbarment Complaint filed against him. But because of his negligence, he chose to sit on the case and do nothing.

Second, respondent, as counsel, had the duty to inform his clients of the status of their case. His failure to do so amounted to a violation of Rule 18.04 of the Code, which reads:

> 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

If it were true that all attempts to contact his client proved futile, the least respondent could have done was to inform the CA by filing a Notice of Withdrawal of Appearance as counsel. He could have thus explained why he was no longer the counsel of complainant and her husband in the case and informed the court that he could no longer contact them.[28] His failure to take this measure proves his negligence.

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[28] "Sec. 26. Change of attorneys. - An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party." (Rules of Court, Rule 138, Sec. 26)

Lastly, the failure of respondent to file the proper pleading and a comment on Duigan's Motion to Dismiss is negligence on his part. Under 18.03 of the Code, a lawyer is liable for negligence in handling the client's case, *viz*:

> Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Lawyers should not neglect legal matters entrusted to them, otherwise their negligence in fulfilling their duty would render them liable for disciplinary action.[29]

Respondent has failed to live up to his duties as a lawyer. When a lawyer violates his duties to his client, he engages in unethical and unprofessional conduct for which he should be held accountable.[30]

WHEREFORE, respondent Atty. Venancio Padilla is found guilty of violating Rules 18.02, 18.03, 18.04, as well as Canon 5 of the Code of Professional Responsibility. Hence, he is **SUSPENDED** from the practice of law for **SIX (6) MONTHS** and **STERNLY WARNED** that a repetition of the same or a similar offense will be dealt with more severely.

Let copies of this Resolution be entered into the personal records of respondent as a member of the bar and furnished to the Bar Confidant, the Integrated Bar of the Philippines, and the Court Administrator for circulation to all courts of the country for their information and guidance.

No costs.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Reyes, JJ.,* concur.

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[29] *Perea v. Atty. Almadro*, 447 Phil. 434 (2003).

[30] *Fernandez*, *supra* note 23.

SECOND DIVISION

[A.M. OCA IPI No. 09-3210-RTJ. June 20, 2012]

JUVY P. CIOCON-REER, ANGELINA P. CIOCON, MARIVIT P. CIOCON-HERNANDEZ, and REMBERTO C. KARAAN, SR., *complainants, vs.* **JUDGE ANTONIO C. LUBAO, Regional Trial Court, Branch 22, General Santos City,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; DISCIPLINE OF JUDGES; IN THE ABSENCE OF FRAUD, DISHONESTY OR CORRUPTION, THE ACTS OF A JUDGE IN HIS JUDICIAL CAPACITY ARE NOT SUBJECT TO DISCIPLINARY ACTION; CASE AT BAR. –** Not all administrative complaints against judges merit a corresponding penalty. In the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action. We agree with the OCA that the remedy of the complainants in this case is judicial in nature. Hence, the denial of their motion for reconsideration of this Court's 24 November 2010 Resolution dismissing the administrative case against Judge Lubao is in order. x x x There was no evidence that Judge Lubao acted arbitrarily or in bad faith. Further, Judge Lubao could not be faulted for trying to give all the parties an opportunity to be heard considering that the records of the case would show that the court *a quo* summarily dismissed the case without issuing summons to the defendants.

2. **ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; A PERSON ASSUMING TO BE AN ATTORNEY OR AN OFFICER OF A COURT AND ACTING AS SUCH WITHOUT AUTHORITY IS LIABLE FOR INDIRECT CONTEMPT OF COURT; PENALTY. –** Under Section 3(e), Rule 71 of the 1997 Rules of Civil Procedure, a person "[a]ssuming to be an attorney or an officer of a court, and acting as such without authority," is liable for indirect contempt of court. Under Section 7 of the same rules, a respondent adjudged guilty of indirect contempt committed against a Regional Trial Court

or a court of equivalent or higher rank "may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both." If a respondent is adjudged guilty of contempt committed against a lower court, he "may be punished by a fine not exceeding five thousand pesos or imprisonment not exceeding one (1) month, or both."

R E S O L U T I O N

CARPIO, *J.*:

The Case

Juvy P. Ciocon-Reer, Angelina P. Ciocon, Marivit P. Ciocon-Hernandez, and Remberto C. Karaan, Sr. (complainants) filed an administrative complaint against Judge Antonio C. Lubao (Judge Lubao) of the Regional Trial Court of General Santos City, Branch 22, for gross ignorance of the law, rules or procedures; gross incompetence and inefficiency; violation of Section 3(e) of Republic Act No. 3019; violations of Articles 171 and 172 of the Revised Penal Code; violations of pertinent provisions of the Code of Judicial Conduct, The New Code of Judicial Conduct per A.M. No. 03-05-01-SC, and Canons of Judicial Ethics; and dishonesty and grave misconduct.

The Antecedent Facts

Complainants are the plaintiffs in Civil Case No. 7819 (*Juvy P. Ciocon-Reer, et al. v. Gaspar Mayo, et al.*) for Unlawful Detainer, Damages, Injunction, *etc.*, an appealed case from the Municipal Trial Court of General Santos City, Branch 3. Complainants alleged that on 12 September 2008, Judge Lubao issued an Order directing the parties to submit their respective memoranda within 30 days from receipt of the order. Complainants further alleged that on 30 September 2008, a copy of the order was sent by registered mail to the defendants, which they should have received within one week or on 7 October 2008. Complainants alleged that the 30-day period within which to submit memoranda expired on 6 November 2008. Since the defendants failed to submit their memorandum on 6 November 2008, complainants alleged that they should be deemed to have

waived their right to adduce evidence and Judge Lubao should have decided the case. Yet, four months passed from 6 November 2008 and Judge Lubao still failed to make his decision.

In his Comment, Judge Lubao explained that the parties were required to submit their respective memoranda on 12 September 2008. The Order was sent to the parties through registered mail on 30 September 2008. Judge Lubao alleged that the plaintiffs submitted their memorandum on 10 November 2008 but the court did not receive the registry return card on the notice to the defendants. On 10 December 2008, the branch clerk of court sent a letter-request to the Post Office of General Santos City asking for certification as to when the Order of 12 September 2008, sent under Registry Receipt No. 690, was received by the defendants. However, the court did not receive any reply from the Post Office.

Judge Lubao further explained that on 20 May 2009, for the greater interest of substantial justice, the defendants were given their last chance to submit their memorandum within 30 days from receipt of the order. In the same order, he directed the plaintiffs to coordinate with the branch sheriff for personal delivery of the order to the defendants. However, the plaintiffs failed to coordinate with the branch sheriff and the order was sent to the defendants, again by registered mail, only on 17 June 2009.

Judge Lubao informed the Court that complainant Remberto C. Karaan, Sr. (Karaan) is engaging in the practice of law even though he is not a lawyer. Judge Lubao asked this Court to require Karaan to show cause why he should not be cited in contempt for unauthorized practice of law.

Karaan filed a supplemental complaint alleging that Judge Lubao's failure to submit his comment on time to complainants' administrative complaint is a violation of the existing rules and procedure and amounts to gross ignorance of the law. As regards his alleged unauthorized practice of law, Karaan alleged that Judge Lubao was merely trying to evade the issues at hand.

The Findings of the OCA

In its Memorandum dated 13 April 2010, the Office of the Court Administrator (OCA) reported that a verification from the Docket and Clearance Division of its Office revealed that Karaan also filed numerous administrative complaints[1] against judges from different courts, all of which were dismissed by this Court.

In its evaluation of the case, the OCA found that there was no evidence to show that the orders issued by Judge Lubao were tainted with fraud, dishonesty or bad faith. The OCA stated that the matters raised by complainants could only be questioned through judicial remedies under the Rules of Court and not by way of an administrative complaint. The OCA stated that Karaan could not simply assume that the order of 12 September 2008 had been received by the defendants without the registry return card which was not returned to the trial court.

The OCA found that based on the pleadings attached to the records, it would appear that Karaan was engaged in the practice of law. The OCA also noted the numerous frivolous and administrative complaints filed by Karaan against several judges which tend to mock the judicial system.

The OCA recommended the dismissal of the complaint against Judge Lubao for lack of merit. The OCA further recommended that Karaan be required to show cause why he should not be cited for contempt of court for violation of Section 3(e), Rule 71 of the Revised Rules of Court.

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[1] OCA IPI No. 08-2053-MTJ, *Re: Sps. Hospicio D. Santos, et al., represented by Remberto C. Karaan, Sr. v. Judge Manodon*; OCA IPI No. 08-2025-MTJ, *Re: Remberto C. Karaan, Sr., et al. v. Judge Buenaventura, et al.*; OCA IPI No. 08-2041, *Re: Remberto C. Karaan, Sr., et al. v. Judge Bravo*; A.M. No. 07-1674 (formerly OCA IPI No. 04-1550-MTJ), *Re: Remberto C. Karaan, Sr. v. Judge Lindo, et al.*; OCA IPI No. 05-1796-MTJ, *Re: Remberto C. Karaan, Sr. v. Judge Ortiz*; OCA IPI No. 08-1974-MTJ, *Re: Remberto C. Karaan, Sr. v. Judge Ocampo*; and 02-1203-MTJ, *Re: Remberto C. Karaan, Sr. v. Judge Lindo, et al.*

In its Resolution dated 24 November 2010, this Court dismissed the complaint against Judge Lubao for being judicial in nature and for lack of merit. This Court likewise directed Karaan to show cause why he should not be cited for contempt for violating Section 3(e), Rule 71 of the Revised Rules of Court.

Karaan filed a motion for reconsideration of the dismissal of the complaint against Judge Lubao. Karaan denied that he had been assuming to be an attorney or an officer of the court and acting as such without authority. He alleged that he did not indicate any PTR, Attorney's Roll, or MCLE Compliance Number in his documents. He further stated that A.M. No. 07-1674 filed against Judge Lindo was not actually dismissed as reported by the OCA.

Karaan thereafter filed Supplemental Arguments to the motion for reconsideration and compliance to the show cause order. Karaan reiterated that he never represented himself to anyone as a lawyer or officer of the court and that his paralegal services, rendered free of charge, were all for the public good. He stated that he assists organizations which represent the interests of senior citizens, the indigents, and members of the community with limited means.

In a Memorandum dated 8 November 2011, the OCA found no merit in the motion for reconsideration. The OCA noted Judge Lubao's explanation that the case was summarily dismissed by the municipal trial court without service of summons on the defendants. Thus, Judge Lubao deemed it proper to issue the order requiring all parties to submit their memorandum to give all concerned the opportunity to be heard. The OCA stated that the remedy against Judge Lubao's action was judicial in nature. The OCA found that the claim of Karaan that he could prove the receipt of the order by one Mr. Mayo is immaterial because it was not in the records of the case where Judge Karaan based his order.

The OCA noted that Karaan, through the use of intemperate and slanderous language, continually attributed all sorts of malicious motives and nefarious schemes to Judge Lubao regarding

the conduct of his official function but failed to substantiate his allegations. The OCA further noted that this case is just one of the many cases Karaan filed against various judges in other courts where the same pattern of accusations could be observed.

The OCA found Karaan's explanation on the show cause order unsatisfactory. The OCA noted Karaan's *modus operandi* of offering free paralegal advice and then making the parties execute a special power of attorney that would make him an agent of the litigants and would allow him to file suits, pleadings and motions with himself as one of the plaintiffs acting on behalf of his "clients." The OCA noted that Karaan's services, on behalf of the underprivileged he claimed to be helping, fall within the practice of law. The OCA recommended that Karaan be declared liable for indirect contempt and be sentenced to serve a term of imprisonment for 10 days at the Manila City Jail and to pay a fine of ₱1,000 with a warning that a repetition of any of the offenses, or any similar or other offense, against the courts, judges or court employees will merit more serious sanctions.

The Ruling of this Court

We agree with the OCA's recommendation that the motion for reconsideration of the Court's 24 November 2010 Resolution dismissing the complaint against Judge Lubao has no merit.

Not all administrative complaints against judges merit a corresponding penalty. In the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action.[2] We agree with the OCA that the remedy of the complainants in this case is judicial in nature. Hence, the denial of their motion for reconsideration of this Court's 24 November 2010 Resolution dismissing the administrative case against Judge Lubao is in order. As the OCA stated, Karaan could not make assumptions as to when the defendants received the copy of Judge Lubao's order without the registry return receipt. While Karaan claimed that he knew when one of the parties received a copy of the order, this claim

[2] *Fortune Life Insurance Company, Inc. v. Luczon, Jr.*, A.M. No. RTJ-05-1901, 30 November 2006, 509 SCRA 65.

was unsupported by evidence and was not in the records of the case when Judge Lubao issued his 20 May 2009 Order giving the defendants their last chance to submit their memorandum. The records would also show that Judge Lubao had been very careful in his actions on the case, as his branch clerk of court even wrote the Post Office of General Santos City asking for certification as to when the Order of 12 September 2008, sent under Registry Receipt No. 690, was received by the defendants. There was no evidence that Judge Lubao acted arbitrarily or in bad faith. Further, Judge Lubao could not be faulted for trying to give all the parties an opportunity to be heard considering that the records of the case would show that the court *a quo* summarily dismissed the case without issuing summons to the defendants.

We likewise agree with the OCA that Karaan was engaged in unauthorized practice of law.

In *Cayetano v. Monsod*,[3] the Court ruled that "practice of law" means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. To engage in the practice of law is to perform acts which are usually performed by members of the legal profession.[4] Generally, to practice law is to render any kind of service which requires the use of legal knowledge or skill.[5] Here, the OCA was able to establish the pattern in Karaan's unauthorized practice of law. He would require the parties to execute a special power of attorney in his favor to allow him to join them as one of the plaintiffs as their attorney-in-fact. Then, he would file the necessary complaint and other pleadings "acting for and in his own behalf and as attorney-in-fact, agent or representative" of the parties. The fact that Karaan did not indicate in the pleadings that he was a member of the Bar, or any PTR, Attorney's Roll, or MCLE Compliance Number does not detract from the fact that, by his actions, he was actually engaged in the practice of law.

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[3] G.R. No. 100113, 3 September 1991, 201 SCRA 210.

[4] *Aguirre v. Rana*, 451 Phil. 428 (2003).

[5] *Id*.

Under Section 3(e), Rule 71 of the 1997 Rules of Civil Procedure, a person "[a]ssuming to be an attorney or an officer of a court, and acting as such without authority," is liable for indirect contempt of court. Under Section 7 of the same rules, a respondent adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank "may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both." If a respondent is adjudged guilty of contempt committed against a lower court, he "may be punished by a fine not exceeding five thousand pesos or imprisonment not exceeding one (1) month, or both."

Following the ruling of this Court in *In re: Joaquin T. Borromeo*,[6] the OCA recommended that Karaan be cited for indirect contempt and be sentenced to serve an imprisonment of ten days at the Manila City Jail, and to pay a fine of ₱1,000 with a warning that a repetition of any of the offenses, or any similar or other offense against the courts, judges or court employees will merit further and more serious sanctions. The OCA further recommended that a memorandum be issued to all courts of the land to notify the judges and court employees of Karaan's unauthorized practice of law and to report to the OCA any further appearance to be made by Karaan. However, the records would show that Karaan is already 71 years old. In consideration of his old age and his state of health, we deem it proper to remove the penalty of imprisonment as recommended by the OCA and instead increase the recommended fine to ₱10,000.

WHEREFORE, we **DENY** the motion for reconsideration of the Court's Resolution dated 24 November 2010 dismissing the complaint against Judge Antonio C. Lubao for being judicial in nature. We find REMBERTO C. KARAAN, SR. **GUILTY** of indirect contempt under Section 3(e), Rule 71 of the 1997 Rules of Civil Procedure and impose on him a Fine of Ten Thousand Pesos (₱10,000).

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[6] 311 Phil. 441 (1995).

Let a copy of this Resolution be furnished all courts of the land for their guidance and information. The courts and court employees are further directed to report to the Office of the Court Administrator any further appearance by Remberto C. Karaan, Sr. before their *sala.*

SO ORDERED.

Brion, Peralta,[*] *Sereno,* and *Reyes, JJ.,* concur.

FIRST DIVISION

[A.M. No. P-12-3036. June 20, 2012]
(Formerly OCA I.P.I. No. 10-3384-P)

CLERK OF COURT ARLYN A. HERMANO, *complainant, vs.* **EDWIN D. CARDEÑO, Utility Worker I, Municipal Trial Court, Cabuyao, Laguna,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; MISCONDUCT, DEFINED; GRAVE MISCONDUCT AS DISTINGUISHED FROM SIMPLE MISCONDUCT; PRESENT IN CASE AT BAR; IMPOSABLE PENALTY. — In *Arcenio v. Pagorogon,* the Court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. As differentiated from simple misconduct, in grave misconduct "the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard

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[*] Designated additional member per Raffle dated 18 June 2012.

established rules, which must be established by substantial evidence. In this case, respondent was a mere Utility Worker who had no authority to take custody of the office attendance logbook, the DTRs of his office mates, let alone case records. Yet, respondent, taking advantage of his position as a Utility Worker and the access to the court records and documents which such position afforded him, repeatedly wrought havoc on the proper administration of justice by taking case records outside of the court's premises and preoccupying his office mates with the time-consuming task of locating documents. Without doubt his actions constitute grave misconduct which merits the penalty of dismissal. However, in view of his resignation, the Court finds as proper the recommendation of the OCA to instead impose on respondent the penalty of fine in the amount of ₱10,000 with forfeiture of benefits except accrued leave credits, if any, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. This of course is without prejudice to any criminal liability he may have already incurred.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is an administrative complaint[1] filed by Arlyn A. Hermano, Clerk of Court of the Municipal Trial Court (MTC) of Cabuyao, Province of Laguna, charging respondent Edwin D. Cardeño with three counts of grave misconduct.

Complainant summarized the charges and concomitant antecedent facts as follows:

A. <u>First Count</u>

On December 7, 2009, complainant reported for work and discovered that her Daily Time Record (DTR), the office attendance logbook, and the DTR of another office mate, Elvira B. Manlegro, were missing. Later that day, she was also told that the records of criminal cases scheduled for hearing on

[1] *Rollo*, pp. 1-4.

February 1, 2010 and the stenographic notes for a criminal case for slander were also missing. The incident was reported to the then Presiding Judge, Judge Conrado L. Zumaraga, and the Cabuyao Laguna Police Station. Then, complainant issued an Office Memorandum[2] on December 8, 2009, requiring all court personnel to locate the missing records. The memorandum was received by all court personnel on the same day except by respondent who refused to receive it because according to him, he was on leave. Later in the afternoon, however, respondent returned all 20 missing court records.

On December 10, 2009, complainant issued a Memorandum[3] to respondent requiring him to explain the reason for his possession of such court records, but respondent refused to receive the memorandum.

B. Second Count

On December 15, 2009, complainant discovered that the DTRs of seven court personnel were missing. She reported the incident to the presiding judge and the police and also ordered that the lock of the courtroom's main door be changed. An inventory of all case records was then conducted and it was found that the records of 36 criminal and civil cases, including some affidavits and documentary evidence, were missing. Six personnel documented the loss of their individual DTRs in a Joint Affidavit dated December 16, 2009 while Presiding Judge Zumaraga reported the loss of the court records on December 17, 2009 to the Court Administrator and their return by respondent on December 8, 2009.

Complainant further averred that on January 4, 2010, respondent returned all but one of the missing case records, as well as all the DTRs of the entire court staff for the period December 1-14, 2009. Only the case records of Criminal Case No. 9833, entitled *People v. Roberto Mendoza, et al.* for serious physical injuries, was not returned by respondent. She issued a

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[2] *Id.* at 9.

[3] *Id.* at 12.

memorandum[4] to respondent on January 5, 2010 requiring respondent to explain why he was in possession of the missing court records without proper authorization from the complainant or the presiding judge. She likewise ordered respondent in Memorandum[5] dated January 6, 2010, to explain why he failed to file the appropriate applications for leave for December 7, 8, 18, 21 to 23 and 28 to 29, 2009, when the DTRs for the said dates, which he earlier took and later returned, showed that he was absent on said dates and the attendance logbook showed that he reported for work in the morning of December 14 and 16, 2009 but did not punch out in the afternoon. She also pointed out to respondent that the office attendance logbook showed that he failed to log in and log out on December 1-4, 2009, but he did not file any leave application. Additionally, he tore his DTR for December 4, 2009.

Then, on January 11, 2010, she issued a third memorandum[6] directing respondent to explain why he erased his attendance in the morning of December 14 and 16, 2009 from his DTR and his attendance on December 14, 2009 in the office logbook.

On January 14, 2010, respondent complied with complainant's directives and sent a letter[7] explaining that he did not get the case records but only fixed them. He added that any conflict his actions may have caused has already been clarified with Judge Zumaraga and everything has been patched up. He likewise claimed that the records he returned on January 4, 2010 were just part of the records he returned on December 8, 2009 and that as far as he is concerned, all the records he returned on January 4, 2010 never left the court's premises. In fact, he claims that the court personnel even saw them before December 15, 2009 while they were doing the inventory that complainant had ordered.

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[4] *Id.* at 18.

[5] *Id.* at 19.

[6] *Id.* at 20.

[7] *Id.* at 21.

C. Third Count

For the period July to December 2009, complainant gave respondent a rating of "Unsatisfactory" in view of the incidents mentioned above and his failure to perform his tasks and duties as Utility Worker II. Upon learning about such rating, respondent no longer cooperated in the office and began to misbehave. On March 19, 2010, complainant again discovered that the DTRs of all the court personnel and the records of 68 cases were missing. Complainant reported the incident to Acting Presiding Judge Josefina Siscar and requested for an investigation. Complainant also sought the assistance of the National Bureau of Investigation.

In addition to the above charges, complainant also mentioned in her Complaint-Affidavit that respondent sent to her the following two text messages:

"Ano oras ako pu2nta liv nko ng mtgal pasencya n d k nman gnusto to mgulo lng isip ko pasencya n uli."

Cel No. 09299593089
Date: 4/6/2010
Time: 10:21 pm

"Gud am. Ano b mngya2ri kng ibalik ko record"

Cel No. 09299593089
Date: 4/7/2010
Time: 5:22 am[8]

Complainant added that respondent also approached her in the afternoon of April 7, 2010 and requested that his performance rating be changed. She then required respondent to return all the missing records but respondent paid no heed to her order and left the office.

On April 29, 2010, the Office of the Court Administrator (OCA) ordered respondent to file his comment. Respondent ignored the directive and resigned on August 9, 2010.

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[8] *Id.* at 3.

Subsequently, however, he filed a comment dated November 15, 2010 upon receipt of a directive from the OCA reiterating its order for him to file his comment.

In his comment, respondent expressed surprise over having received the directive considering his resignation. Nonetheless, in response to the allegations in the complaint, he explained that his application for leave for the month of December 2009 was misplaced so it was filed out of time while his failure to file applications for leave for his absences from March to June 2010 was due to complainant's refusal to sign the same.

On December 2, 2011, the OCA found respondent liable for grave misconduct but recommended, among others, that respondent be penalized with a fine instead of dismissal in view of his resignation. The OCA recommended that

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2. a FINE of ₱10,000.00 be imposed against Mr. Edwin Cardeño, with forfeiture of his benefits except accrued leave, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations;

3. Mr. Cardeño be DIRECTED to return the remaining court records still in his possession at the soonest time possible;

4. Ms. Arlyn A. Hermano, Clerk of Court of the same court, be ordered to SHOW CAUSE, within ten (10) days from notice of the Court Resolution, why no disciplinary action should be taken against her for failure to exercise due diligence as custodian of court records and to duly supervise the employees in her branch; and,

5. a judicial audit of cases be CONDUCTED to determine that all cases are properly accounted for.[9]

We find the recommendations of the OCA to be well-taken.

In *Arcenio v. Pagorogon*,[10] the Court defined misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence

[9] *Id.* at 96-97.

[10] A.M. No. MTJ-89-270, July 5, 1993, 224 SCRA 246, 254.

by the public officer. As differentiated from simple misconduct, in grave misconduct "the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest."[11] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.[12] In this case, respondent was a mere Utility Worker who had no authority to take custody of the office attendance logbook, the DTRs of his office mates, let alone case records. Yet, respondent, taking advantage of his position as a Utility Worker and the access to the court records and documents which such position afforded him, repeatedly wrought havoc on the proper administration of justice by taking case records outside of the court's premises and preoccupying his office mates with the time-consuming task of locating documents. Without doubt his actions constitute grave misconduct which merits the penalty of dismissal. However, in view of his resignation, the Court finds as proper the recommendation of the OCA to instead impose on respondent the penalty of fine in the amount of ₱10,000 with forfeiture of benefits except accrued leave credits, if any, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. This of course is without prejudice to any criminal liability he may have already incurred.

As regards the 68 missing court records to date have not yet been found, the Court deems it proper to order complainant to explain why she should not be disciplinarily dealt with in view of the apparent failure on her part to exercise due care in the custody of the said case records. Our courts of justice, regarded

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[11] *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9, 16, citing *Landrito v. Civil Service Commission*, G.R. Nos. 104304-05, June 22, 1993, 223 SCRA 564, 567.

[12] *Office of the Court Administrator v. Lopez*, A.M. No. P-10-2788, January 18, 2011, 639 SCRA 633, 638, citing *Roque v. Court of Appeals*, G.R. No. 179245, July 23, 2008, 559 SCRA 660, 674 and *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603; S*upreme Court v. Delgado*, A.M. No. 2011-07-SC, October 4, 2011, p. 14.

by the public as their haven for truth and justice, cannot afford and does not have the luxury of offering excuses to litigants for negligence in its role of safekeeping and preserving the records of cases pending before it. The consequences of such failure or negligence, if there be any, are simply too damaging not just for the parties involved but worse, for our court system as a whole.

WHEREFORE, respondent Edwin D. Cardeño is found **LIABLE** for grave misconduct and ordered to pay a fine of ten thousand pesos (₱10,000) with forfeiture of all benefits except accrued leave credits, if any, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. He is likewise **ORDERED** to return to the Municipal Trial Court of Cabuyao, Province of Laguna, immediately upon receipt of this decision, any case records still remaining with him. Judge Josefina E. Siscar and Clerk of Court Arlyn A. Hermano are **DIRECTED** to report to this Court respondent's compliance with the said directive within ten (10) days from receipt thereof. Clerk of Court Hermano is likewise ordered to **SHOW CAUSE**, within ten (10) days from notice of this decision, why no disciplinary action should be taken against her for failure to exercise due diligence as custodian of court records.

Further, the Office of the Court Administrator is **ORDERED** (1) to file against respondent the appropriate criminal charges for taking out case records from the court's premises and keeping the same in his possession without proper authority; and (2) to conduct a judicial audit of cases in the said court to ensure that all cases are properly accounted for.

SO ORDERED.

Leonardo-de Castro,[*] *Bersamin, del Castillo,* and *Perlas-Bernabe,*[**] *JJ.,* concur.

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[*] Designated Acting Chairperson of the First Division per Special Order No. 1226 dated May 30, 2012.

[**] Designated Acting Member of the First Division per Special Order No. 1227 dated May 30, 2012.

SECOND DIVISION

[A.M. No. MTJ-12-1812. June 20, 2012]
(Formerly A.M. OCA IPI No. 10-2250-MTJ)

PILAR S. TAÑOCO, *complainant, vs.* **JUDGE INOCENCIO B. SAGUN, JR., Presiding Judge, Municipal Trial Court in Cities, Branch 3, Cabanatuan City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; UNDUE DELAY IN DISPOSITION OF CASES; WHEN PRESENT; CASE AT BAR. — Delay in case disposition is a major culprit in the erosion of public faith and confidence in the judiciary and the lowering of its standards. Failure to decide cases within the reglementary period, without strong and justifiable reasons, constitutes gross inefficiency warranting the imposition of administrative sanction on the defaulting judge. In this case, the decision was purportedly issued on 7 April 2011, or more than four months since the last submission of the parties' position paper. Even if one were to consider respondent judge's argument, there would still be undue delay in the resolution of the ejectment case. The pretrial Order was purportedly issued on 26 January 2010, or more than three months since the pretrial. Section 8 of the Rules on Summary Procedure provides that within five days after the termination of the preliminary conference, the court shall issue an order stating the matters taken up therein. Further, paragraph 8, Title I(A) of A.M. No. 03-1-09-SC, entitled "Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures," mandates that a judge must issue a pretrial order within 10 days after the termination of the pretrial. Since the ejectment case fell under the Rules on Summary Procedure, respondent judge should have handled it with promptness and haste. The reason for the adoption of those Rules is precisely to prevent undue delays in the disposition of cases, an offense for which respondent judge may be held administratively liable.

2. ID.; ID.; UNDUE DELAY IN RENDERING A DECISION OR ORDER; CLASSIFIED AS A LESS SERIOUS CHARGE; IMPOSABLE PENALTY. — Section 9, Rule 140 of the Rules of Court classifies undue delay in rendering a decision or order as a less serious charge, which under Section 1(b) of the same Rule is punishable with suspension from office, without salary and other benefits, for not less than one (1) nor more than three (3) months; or a fine of more than ₱10,000, but not exceeding ₱20,000. Considering that the instant administrative charge is only the third against respondent judge (the first has been dismissed, while the second is still pending), and considering his relatively long tenure in the judiciary starting in 1997, he may be reasonably meted out a penalty of ₱5,000 for being administratively liable for undue delay in rendering a decision.

APPEARANCES OF COUNSEL

Arsenio P. Adriano for complainant.

R E S O L U T I O N

SERENO, *J.*:

On 4 March 2010, complainant filed a verified Complaint against respondent judge for undue delay in rendering judgment. Complainant alleged that on 6 May 2009, a case for ejectment was filed before the Municipal Trial Court in Cities (MTCC) and raffled to respondent's *sala*. On 13 October 2009, pretrial was concluded, and the parties were directed to file their position papers. On 23 November 2009, the plaintiff in the ejectment case filed her position paper. As of the date of the filing of the Complaint, no position paper had been filed by the defendant therein. Neither had any decision been rendered by respondent on the case, in violation of the Rule on Summary Procedure, which mandates that ejectment cases should be decided within thirty (30) days from the submission of the position papers of the parties or upon the lapse of the period to do so.

For his part, respondent submitted his Comment stating, among others, that (1) the pretrial Order directing the parties to file

their position papers was only issued on 26 January 2010; (2) delay did not cause any prejudice to the plaintiff in the ejectment case, as the defendant had already vacated the subject property; (3) there was no intention to delay on the part of respondent judge; and (4) a Decision had already been rendered on 7 April 2010.

By way of reply, complainant averred that the alleged pretrial Order dated 26 January 2010 was mailed only on 15 March 2010 and thus appeared to have been antedated.

On 14 July 2011, the Office of the Court Administrator (OCA) issued a recommendation that respondent be found guilty of Undue Delay in Rendering Judgment/Decision, and that he be fined ₱10,000 and warned that a repetition of the same or a similar offense would be dealt with more severely.

We find the OCA recommendation to be appropriate, with a modification.

Delay in case disposition is a major culprit in the erosion of public faith and confidence in the judiciary and the lowering of its standards. Failure to decide cases within the reglementary period, without strong and justifiable reasons, constitutes gross inefficiency warranting the imposition of administrative sanction on the defaulting judge.[1]

In this case, the decision was purportedly issued on 7 April 2011, or more than four months since the last submission of the parties' position paper.

Even if one were to consider respondent judge's argument, there would still be undue delay in the resolution of the ejectment case.

The pretrial Order was purportedly issued on 26 January 2010, or more than three months since the pretrial. Section 8 of the Rules on Summary Procedure provides that within five days after the termination of the preliminary conference, the court shall issue an order stating the matters taken up therein.

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[1] *Celino v. Judge Abrogar*, 315 Phil. 305 (1995).

Further, paragraph 8, Title I(A) of A.M. No. 03-1-09-SC, entitled "Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures," mandates that a judge must issue a pretrial order within 10 days after the termination of the pretrial. Since the ejectment case fell under the Rules on Summary Procedure, respondent judge should have handled it with promptness and haste. The reason for the adoption of those Rules is precisely to prevent undue delays in the disposition of cases, an offense for which respondent judge may be held administratively liable.

Section 9, Rule 140 of the Rules of Court classifies undue delay in rendering a decision or order as a less serious charge, which under Section 1(b) of the same Rule is punishable with suspension from office, without salary and other benefits, for not less than one (1) nor more than three (3) months; or a fine of more than ₱10,000, but not exceeding ₱20,000. Considering that the instant administrative charge is only the third against respondent judge (the first has been dismissed, while the second is still pending), and considering his relatively long tenure in the judiciary starting in 1997, he may be reasonably meted out a penalty of ₱5,000 for being administratively liable for undue delay in rendering a decision.

WHEREFORE, in view of the foregoing, Judge Inocencio B. Sagun, Jr., Presiding Judge, Municipal Trial Court in Cities, Branch 3, Cabanatuan City, is declared liable for delay in the disposition of case. Accordingly, he is **FINED** ₱5,000.

Respondent is likewise **WARNED** that a repetition of the same or a similar act in the future shall merit a more severe sanction from the Court.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Reyes, JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-11-2258. June 20, 2012]
(Formerly A.M. OCA IPI No. 10-3340-RTJ)

ELADIO D. PERFECTO, *complainant, vs.* **JUDGE ALMA CONSUELO DESALES-ESIDERA,** *respondent.*

SYLLABUS

REMEDIAL LAW; DISCIPLINE OF JUDGES; GROSS IGNORANCE OF THE LAW; WHEN A JUDGE FELL SHORT OF THE STANDARD OF COMPETENCE AND LEGAL PROFICIENCY EXPECTED OF A MAGISTRATE OF THE LAW IN HANDLING THE PETITION FOR CONTEMPT; CASE AT BAR; IMPOSABLE PENALTY. — Indeed, the respondent deserves to be sanctioned for gross ignorance of the law. With her inaction on the petition for contempt, she betrayed her unbecoming lack of familiarity with basic procedural rules such as what was involved in the contempt proceedings before her court. She should have known that while the petitioners have the responsibility to move *ex parte* to have the case scheduled for preliminary conference, the court (through the branch clerk of court) has the duty to schedule the case for pre-trial in the event that the petitioners fail to file the motion. The respondent cannot pass the blame for the lack of movement in the case to her staff who, she claims, were monitoring the case. As presiding judge, she should account for the anomaly that since the respondents filed their answer, the petition for contempt had been gathering dust or had not moved in the respondent's court. Clearly, the respondent fell short of the standards of competence and legal proficiency expected of magistrates of the law in her handling of the petition for contempt. As in *Magpali v. Pardo*, she should be fined ₱10,000.00 for gross ignorance of the law.

D E C I S I O N

BRION, *J.*:

For resolution is the present administrative complaint[1] filed by Eladio D. Perfecto (*complainant*) against Presiding Judge Alma Consuelo Desales-Esidera (*respondent*), Regional Trial Court, Branch 20, Catarman, Northern Samar, for violation of the Code of Judicial Conduct and ignorance of the law.

The Factual Antecedents

In support of the charges, the complainant alleges that on July 29, 2008, he filed a Petition to Cite for Contempt against one Dalmacio Grafil and a Ven S. Labro. The petition was docketed as Special Civil Action No. 194[2] and was raffled to the court presided over by the respondent. The complainant laments that the case has since been gathering dust in the court of the respondent. He maintains that the respondent should be made administratively liable for her failure to act on the case within a reasonable period of time.

On the second cause of action, the complainant claims that he is the publisher and Editor-in-Chief of the Catarman Weekly Tribune (*CWT*), the only accredited newspaper in Northern Samar. He claims that in Special Proceedings Nos. C-346 (for adoption and change of name)[3] and C-352 (for adoption),[4] the respondent directed the petitioners to have her orders published in a newspaper of national circulation. Through these directives, the complainant posits, the respondent betrayed her ignorance of the law, considering that all judicial notices and orders emanating from the courts of Catarman, Northern

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[1] *Rollo*, pp. 1-4; dated January 7, 2010.

[2] *Id.* at 34.

[3] *Id.* at 16.

[4] *Id.* at 17.

Samar should be published only in the CWT, pursuant to Presidential Decree No. 1079.[5]

The Office of the Court Administrator (*OCA*), through then Deputy Court Administrator Nimfa C. Vilches, referred the complaint to the respondent for comment.[6] Through her comment filed on March 1, 2010,[7] the respondent denies the complaint's allegations and prays for its dismissal. With respect to her alleged inaction on the petition for contempt (Special Civil Action No. 194), she maintains that the summons were served on the respondents.[8] Eventually, the respondents filed their Answer with Affirmative Defenses and Counterclaim,[9] but no other pleadings followed. The respondent denies the complainant's claim that he made several follow-ups with her regarding the case.

The respondent faults the complainant for the lack of movement in the case. She contends that the complainant could have just filed a motion to set the case for preliminary conference, instead of bringing an administrative complaint against her. Be this as it may, she claims that out of consideration to a fellow lawyer – the complainant's counsel, Atty. Elino C. Chin, allegedly had been seeking treatment in Manila for brain tumor – and because of information she received that the complainant was no longer interested in the case, she withheld action on the petition. However, after the Court's July-December 2009 docket inventory, she realized that the case (among others) was not moving, prompting her to set it for trial.

Relative to the issue on the publication of court orders/notices, the respondent submits that the CWT is not generally circulated in the province. According to her, "[t]he [CWT] caters only to

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[5] Revising and Consolidating All Laws and Decrees Regulating Publication of Judicial Notices, Advertisements for Public Biddings, Notices of Auction Sales and Other Similar Notices.

[6] *Rollo*, p. 18.

[7] *Id.* at 21-30.

[8] *Id.* at 34.

[9] *Id.* at 37-43.

those who buy commercial space from the publisher for announcements and legal notices. But even to these clients, the copies of the newspapers where the notices appear are delivered late; thus, defeating the purpose of the requirement of publication."[10] Attached to her comment is a list of cases where she was constrained to reset the hearings because of the delay in the publication of court orders and notices.[11] The respondent adds that CWT does not even have a business permit to operate in the province.

To prove her point, the respondent made a survey of CWT's track record in Northern Samar (24 towns) in terms of subscription and quality of service. The response of sixteen (16) towns, banks and other establishments confirmed the respondent's observations about CWT.[12] The replies ranged from no subscription, subscription terminated, no circulation in the municipality, to late or irregular delivery.

Apart from her reservations on CWT's capability to satisfy the requirement of publication for court orders and notices, the respondent posits that her directives to have her orders published in a newspaper of general circulation do not violate Presidential Decree No. 1079, as her directives even ensure that court orders and notices are published on time.

In a letter dated March 24, 2010[13] to the OCA, the respondent reiterates her observation that CWT is not generally circulated in Northern Samar. For this reason, she requests that her court be exempted from publishing judicial orders and notices in CWT. She also asks that an investigation be conducted on the matter and, if warranted, the accreditation of CWT be revoked.

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[10] *Supra* note 7 at 22.

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

[12] *Id.* at 25-26; *rollo*, pp. 66-90.

[13] *Rollo*, pp. 97-101.

Acting on the OCA's report dated October 11, 2010,[14] the Court issued a Resolution on January 10, 2011,[15] re-docketing the case as a formal administrative complaint against the respondent, and denying (1) the respondent's request for the revocation of CWT's accreditation, the OCA not being the proper office to address the issue, and (2) the respondent's request for exemption from publishing judicial orders/notices in a newspaper accredited by the Executive Judge, for lack of merit. Lastly, the Court required the parties to manifest whether they were willing to submit the case for decision on the basis of the pleadings/ records on file.

By way of a Manifestation (with Motion) dated March 23, 2011,[16] the respondent manifests that she is not willing to submit the case for decision based on the pleadings. She asks instead that the case be investigated. The complainant, on the other hand, submits the case for decision "as a hearing is no longer necessary because all the evidences for the complaint x x x are documentary, and respondent failed to refute or rebut the same in her answer, but rather admitted material allegations in the complaint."[17]

On June 8, 2011, the Court issued a Resolution[18] referring the case to the OCA for evaluation, report and recommendation. In its report dated August 16, 2011,[19] the OCA informed the Court that it found no cogent reason to submit the case for investigation (by a Court of Appeals Justice); neither did the respondent present any compelling justification for such an investigation. It, therefore, recommended that the case be considered submitted for decision. The Court adopted the OCA recommendation in its Resolution dated November 14, 2011.[20]

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[14] *Id.* at 149-153.

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

[16] *Id.* at 156-157.

[17] *Id.* at 160, paragraph 4.

[18] *Id.* at 177.

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

[20] *Id.* at 182-183.

Through another Manifestation dated February 14, 2012,[21] the respondent advises the Court that she is of the firm belief that the second cause of action for ignorance of the law (non-publication of court orders/notices in CWT) had already been passed upon by the Court (Third Division) in its Decision in A.M. No. RTJ-11-2270.[22] Thinking that the issue to be investigated would only be the first cause of action, she asks for clarification on the matter.

The Court's Ruling

We find the respondent's Manifestation of February 14, 2012 in order. Indeed, the complainant's second cause of action, emanating from the respondent's directive to have court orders/ notices published in a newspaper of national circulation, had already been passed upon by this Court in the decision above cited. Relevant portions of the decision stated:

> Anent the allegations of ignorance of the law and usurpation of authority against respondent Judge Esidera, for issuing a directive to the petitioner in a special proceedings case to cause the publication of her order in a newspaper of general publication, this Office finds the same devoid of merit.
>
> Complainant Perfecto had made a similar allegation in OCA I.P.I. No. 10-3340-RTJ, insisting that all orders from the courts of Northern Samar should only be published in the *Catarman Weekly Tribune*, the only accredited newspaper in the area.
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> x x x x x x x x x
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> [T]hat Catarman Weekly Tribune is the only accredited newspaper of general publication in Catarman does not bar the publication of judicial orders and notices in a newspaper of national circulation. A judicial notice/order may be published in a newspaper of national circulation and said newspaper does not even have to be accredited.[23] (underscorings supplied)

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[21] *Id.* at 184-185.

[22] *Id.* at 186-193; *Eladio D. Perfecto v. Judge Alma Consuelo Desales-Esidera*.

[23] *Id.* at 189-190.

We, therefore, hold that the second cause of action had already been resolved.

On the charge of ignorance of the law, the respondent's alleged inaction on Special Civil Action No. 194 which involves a petition for contempt, we find relevant the following evaluation of the OCA:

> Contrary to the claim of complainant Perfecto that respondent Judge Esidera did not act on Special Civil Action No. 194, records show that summons were served on the respondents in the case. However, other than the issuance of summons, there has been no other action from respondent Judge Esidera. The contention of respondent Judge Esidera that complainant Perfecto should have filed the appropriate motion to set the case for hearing is not entirely accurate.
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> In *Mely Hanson Magpali vs. Judge Moises M. Pardo, RTC, Branch 31, Cabarroquis, Quirino* (A.M. No. RTJ-08-2146; 14 November 2008), the Court held:
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> > Respondent Judge fell short of these standards when he failed in his duties to follow elementary law and to keep abreast with prevailing jurisprudence. **His claim that the party did not in any manner request that the case be scheduled for hearing as provided under Rule 18, par[.] 1 of the 1997 Rules of Civil Procedure, and that it should be the party who will ask an *ex-parte* setting/scheduling of the case for its pre-trial is not exactly correct**. A.M. No. 03-1-09-SC, 16 August 2004 (Rule on Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-trial and Use of Deposition-Discovery Measures) provides that within 5 days from date of filing of reply, the plaintiff must promptly move *ex-parte* that the case be set for pre-trial conference. **If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial. The respondent Judge should be conversant therewith**. The case has not been set for pre-trial or at least for a hearing after the filing of the Answer dated 23 July 2007. He must know the laws and apply them properly. Service in the judiciary involves continuous study and

research from beginning to end.[24] (*italics, emphases and underscorings supplied*)

In the aforementioned case, the Court found the respondent judge guilty of Gross Ignorance of the Law and fined him in the amount of ₱10,000.00.

Indeed, the respondent deserves to be sanctioned for gross ignorance of the law. With her inaction on the petition for contempt, she betrayed her unbecoming lack of familiarity with basic procedural rules such as what was involved in the contempt proceedings before her court. She should have known that while the petitioners have the responsibility to move *ex parte* to have the case scheduled for preliminary conference, the court (through the branch clerk of court) has the duty to schedule the case for pre-trial in the event that the petitioners fail to file the motion.

The respondent cannot pass the blame for the lack of movement in the case to her staff who, she claims, were monitoring the case. As presiding judge, she should account for the anomaly that since the respondents filed their answer, the petition for contempt had been gathering dust or had not moved in the respondent's court. Clearly, the respondent fell short of the standards of competence and legal proficiency expected of magistrates of the law in her handling of the petition for contempt. As in *Magpali v. Pardo*,[25] she should be fined ₱10,000.00 for gross ignorance of the law.

In closing, it bears stressing that "[w]hen the law is so elementary, not to know it or to act as if one does not know it constitutes gross ignorance of the law."[26]

WHEREFORE, premises considered, Judge Alma Consuelo Desales-Esidera, Regional Trial Court, Branch 20, Catarman, Northern Samar, is found **LIABLE** for gross ignorance of the

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[24] *Id.* at 150-151.

[25] A.M. No. RTJ-08-2146, November 14, 2008, 571 SCRA 1.

[26] *Quindoza v. Banzon*, 488 Phil. 35, 40 (2004).

law and is fined Ten Thousand Pesos (₱10,000.00), with a stern warning against the commission of a similar offense.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Perez, Sereno, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 129822. June 20, 2012]

ORTIGAS & COMPANY, LIMITED PARTNERSHIP, *petitioner, vs.* **COURT OF APPEALS, HON. JESUS G. BERSAMIRA as Judge-RTC of Pasig City, Branch 166 and the CITY OF PASIG,** *respondents.*

SYLLABUS

POLITICAL LAW; HOUSING AND LAND USE REGULATORY BOARD (HLURB); JURISDICTION; LIMITED TO THOSE CASES FILED BY THE BUYER OR OWNER OF A SUBDIVISION LOT OR CONDOMINIUM UNIT BASED ON ANY OF THE CAUSES OF ACTION ENUMERATED IN SECTION 1 OF P.D. 1344; NOT PRESENT IN CASE AT BAR. — The policy of the law is to curb unscrupulous practices in real estate trade and business that prejudice buyers. This position is supported by the Court's statement in *Delos Santos v. Sarmiento* that not every case involving buyers and sellers of subdivision lots or condominium units can be filed with the HLURB. Its jurisdiction is limited to those cases filed by the buyer or owner of a subdivision lot or condominium unit and based on any of the causes of action enumerated in Section 1 of P.D. 1344. Obviously, the City had not bought a lot in the subject area from Ortigas which would give it a right to seek HLURB intervention in enforcing a local ordinance that regulates the use of private land within its jurisdiction in

the interest of the general welfare. It has the right to bring such kind of action but only before a court of general jurisdiction such as the RTC.

APPEARANCES OF COUNSEL

Eulogio R. Rodriguez for petitioner.
City Legal Officer (Pasig) for the City of Pasig.

D E C I S I O N

ABAD, *J.*:

This case resolves the question of jurisdiction of the Regional Trial Court over a complaint filed against a subdivision owner.

The Facts and the Case

Petitioner Ortigas & Company, Limited Partnership (Ortigas), a realty company, developed the Ortigas Center that straddled the three cities of Mandaluyong, Quezon, and Pasig. This case concerns the Pasig City side of the commercial district known as the Ortigas Center, known in 1969 as Capitol VI Subdivision.

In 1994 respondent City of Pasig (the City) filed a complaint against Ortigas and Greenhills Properties, Inc. (GPI) for specific compliance before the Regional Trial Court (RTC) of Pasig in Civil Case 64427. The City alleged that Ortigas failed to comply with Municipal Ordinance 5, Series of 1966 (MO 5) which required it to designate appropriate recreational and playground facilities at its former Capitol VI Subdivision (regarded as a residential site), now the Pasig City side of the Ortigas Center. Further, the City alleged that despite the fact that the plan was only approved by the Municipal Council as to layout, petitioner proceeded to develop the property without securing a final approval.

The City impleaded GPI as the party to whom Ortigas sold a piece of property within the subdivision.

In answer, Ortigas alleged that its development plan for the subject land was for a commercial subdivision, outside the scope

of MO 5 that applied only to residential subdivisions; that the City cannot assail the validity of that development plan after its approval 25 years ago. Its development plan had been approved: (1) by the Department of Justice through the Land Registration Commission on June 16, 1969; (2) by the Municipal Council of Pasig under Resolution 128 dated May 27, 1969; and (3) by the Court of First Instance of Rizal, Branch 25 in its Order dated July 11, 1969.

Ortigas further alleged that only in 1984, 15 years after the approval of its plan, that the National Housing Regulatory Commission imposed the open space requirement for commercial subdivisions through its Rules and Regulations for Commercial Subdivision and Commercial Subdivision Development.

The case was heard on pre-trial but before it could be terminated, on January 23, 1996 Ortigas filed a motion to dismiss the case on the ground that the RTC had no jurisdiction over it, such jurisdiction being in the Housing and Land Use Regulatory Board (HLURB) for unsound real estate business practices.

On April 15, 1996 the RTC denied the motion to dismiss.[1] It held that HLURB's jurisdiction pertained to disputes arising from transactions between buyers, salesmen, and subdivision and condominium developers. In this case, the City is a local government unit seeking to enforce compliance with a municipal ordinance, an action that is not within the scope of the disputes cognizable by the HLURB. With the denial of its motion for reconsideration on August 7, 1996, Ortigas filed a petition for *certiorari* before the Court of Appeals (CA) to challenge the RTC's actions.

On February 18, 1997 the CA rendered judgment, affirming the RTC's denial of the motion to dismiss.[2] The appellate court ruled that the City sought compliance with a statutory obligation enacted "to promote the general welfare (Section 16, Local

[1] *Rollo*, pp. 75-77.

[2] Penned by Justice Antonio M. Martinez (who later on became a Member of the Court from 1997-1999), with the concurrence of Justices Eduardo G. Montenegro and Celia Lipana-Reyes, *id.* at 50-55.

Government Code) which invariably includes the preservation of open spaces for recreational purposes."[3] Since the City was not a buyer or one entitled to refund for the price paid for a lot, the dispute must fall under the jurisdiction of the RTC pursuant to Section 19 of The Judiciary Reorganization Act of 1980.[4]

The CA denied Ortigas' motion for reconsideration on June 27, 1997, prompting it to file the present petition for review.

The Issue Presented

The sole issue in this case is whether or not the CA erred in affirming the lower court's ruling that jurisdiction over the City's action lies with the RTC, not with the HLURB.

The Court's Ruling

Ortigas maintains that the HLURB has jurisdiction over the complaint since a land developer's failure to comply with its statutory obligation to provide open spaces constitutes unsound real estate business practice that Presidential Decree (P.D.) 1344 prohibits. Executive Order 648 empowers the HLURB to hear and decide claims of unsound real estate business practices against land developers.

Ultimately, whether or not the HLURB has the authority to hear and decide a case is determined by the nature of the cause of action, the subject matter or property involved, and the parties.[5] Section 1 of P.D. 1344[6] vests in the HLURB the exclusive jurisdiction to hear and decide the following cases:

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[3] *Id.* at 53.

[4] Sec. 19. Jurisdiction in Civil Cases. – Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

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

[5] *Peralta v. De Leon*, G.R. No. 187978, November 24, 2010, 636 SCRA 232, 243.

[6] "*Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of its Decision under Presidential Decree No. 957.*"

(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 lots or condominium units against the owner, developer, dealer, broker or salesman.

Unlike paragraphs (b) and (c) above, paragraph (a) does not state which party can file a claim against an unsound real estate business practice. But, in the context of the evident objective of Section 1, it is implicit that the "unsound real estate business practice" would, like the offended party in paragraphs (b) and (c), be the buyers of lands involved in development. The policy of the law is to curb unscrupulous practices in real estate trade and business that prejudice buyers.

This position is supported by the Court's statement in *Delos Santos v. Sarmiento*[7] that not every case involving buyers and sellers of subdivision lots or condominium units can be filed with the HLURB. Its jurisdiction is limited to those cases filed by the buyer or owner of a subdivision lot or condominium unit and based on any of the causes of action enumerated in Section 1 of P.D. 1344.

Obviously, the City had not bought a lot in the subject area from Ortigas which would give it a right to seek HLURB intervention in enforcing a local ordinance that regulates the use of private land within its jurisdiction in the interest of the general welfare. It has the right to bring such kind of action but only before a court of general jurisdiction such as the RTC.

WHEREFORE, the Court **DISMISSES** the petition, **AFFIRMS** the Court of Appeals Decision in CA-G.R. SP 42270 dated February 18, 1997, and **ORDERS** the Regional Trial Court of Pasig City, Branch 166, to hear and decide the case before it with deliberate dispatch.

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[7] G.R. No. 154877, March 27, 2007, 519 SCRA 62, 75.

SO ORDERED.

Peralta, (Chairperson),[*] *Bersamin,*[**] *Villarama, Jr.,*[***] and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 160641. June 20, 2012]

RAFAEL J. ROXAS and THE HEIRS OF EUGENIA V. ROXAS, INC., *petitioners, vs.* **HON. ARTEMIO S. TIPON, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 46, F. U. JUAN CORPORATION, and FERNANDO U. JUAN,** *respondents.*

[G.R. No. 160642. June 20, 2012]

RAFAEL J. ROXAS, GUILLERMO ROXAS and MA. EUGENIA VALLARTA, *petitioners, vs.* **HON. ARTEMIO S. TIPON, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 46, F. U. JUAN CORPORATION and FERNANDO U. JUAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; MOOT AND ACADEMIC CASE; CONSTRUED. — An issue or a case

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[*] Per Special Order 1228 dated June 6, 2012.

[**] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 1241 dated June 14, 2012.

[***] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order 1229 dated June 6, 2012.

becomes moot and academic when it ceases to present a justiciable controversy, so that a determination of the issue would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition.

2. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; CONTEMPT OF COURT, DEFINED. — Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties-litigant or their witnesses during litigation.

3. ID.; ID.; INDIRECT CONTEMPT; TWO ALTERNATIVE WAYS TO CHARGE A PERSON, NOTED. — It may be noted that a person may be charged with indirect contempt by either of two alternative ways, namely: (1) by a verified petition, if initiated by a party; or (2) by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt, if made by a court against which the contempt is committed. In short, a charge of indirect contempt must be initiated through a verified petition, unless the charge is directly made by the court against which the contemptuous act is committed.

4. ID.; ID.; ID.; NO VERIFIED PETITION IS REQUIRED IF PROCEEDINGS ARE INITIATED *MOTU PROPRIO* BY THE COURT. — The RTC initiated the contempt charge. x x x The RTC acted on the basis of the unjustified refusal of petitioners to abide by its lawful order. It is of no moment that private respondents may have filed several pleadings to urge the RTC to cite petitioners in contempt. Petitioners utterly violated an order issued by the trial court which act is considered contemptuous. Thus, in *Leonidas v. Judge Supnet*, the MTC's order to the bank to show cause why it should not be held in contempt, was adjudged as a legitimate exercise of

the MTC's judicial discretion to determine whether the bank should be sanctioned for disregarding its previous orders. Independently of the motions filed by the opposing party, it was the MTC which commenced the contempt proceedings *motu proprio*. No verified petition is required if proceedings for indirect contempt are initiated in this manner, and the absence of a verified petition does not affect the procedure adopted.

5. ID.; ID.; ID.; THE WARRANT AND THE CONTEMPT PROCEEDINGS THAT PRECEDED IT WERE MOOTED BY THE DISMISSAL OF THE MAIN PETITION; CASE AT BAR. — The RTC's issuance of a warrant of arrest was pursuant to Section 8, Rule 71 of the Rules of Court. x x x However, the foregoing notwithstanding, the warrant and the contempt proceedings that preceded it were all similarly mooted by the dismissal of the main petition for dissolution of HEVRI. Given the mootness of the issues of inspection and audit, the very orders refused to be obeyed by petitioners, the citation of contempt and its consequences necessarily became moot.

APPEARANCES OF COUNSEL

Medialdea Ata Bello Guevarra and Suarez for petitioners.
Feria Feria La O' Tantoco for private respondents.

R E S O L U T I O N

PEREZ, *J.*:

The subject of this petition for review on *certiorari* is the Decision[1] dated 14 August 2003 of the Court of Appeals in CA-G.R. SP No. 67384 and CA-G.R. SP No. 73187 which affirmed the orders of Judge Artemio S. Tipon of the Regional Trial Court (RTC) of Manila, Branch 46 in Civil Case No. 01-99671 relating to an audit of corporate books and declaration of contempt of court.

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[1] Penned by Associate Justice Danilo B. Pine with Associate Justices Buenaventura J. Guerrero and Renato C. Dacudao, concurring. *Rollo*, pp. 50-62.

Heirs of Eugenia V. Roxas, Inc. (HEVRI) is a registered corporation which operates Hidden Valley Springs Resort. F. U. Juan Corporation (FUJC) and Fernando U. Juan (Juan) are two of its stockholders who held 439,604 shares and one share, respectively.[2] On 10 November 1998, FUJC and Juan filed an Amended Petition[3] with prayer for temporary restraining order (TRO) and writ of preliminary injunction and appointment of a receiver, for HEVRI's dissolution before the Securities and Exchange Commission (SEC) on the following grounds:

1. That HEVRI, through its then President Rafael Roxas (Roxas) refused to furnish them copies of the minutes of the regular and special meetings of the Board of Directors and stockholders;
2. That they were not allowed to inspect the accounts of HEVRI despite demand;
3. That HEVRI failed to comply with the reportorial requirements of the Securities and Exchange Commission;
4. That despite huge profits derived from the operation of the Hidden Valley Springs Resort, HEVRI has not declared nor paid dividends;
5. That Roxas had grossly mismanaged HEVRI;
6. That Roxas and HEVRI had squandered the funds of the corporation, as well as its assets to the detriment of its stockholders.[4]

In their Answer, petitioners averred that they were under no legal obligation to furnish respondents copies of the corporation's financial statements and minutes of stockholders' and Board of Directors' meetings; that they had not been remiss in the filing of its General Information Sheets (GIS) and Audited Financial Statements with the government agencies concerned; that no

[2] *Rollo*, p. 485.

[3] Private respondent Fernando Juan was added as party-plaintiff.

[4] *Rollo*, pp. 234-236.

dividends were declared or paid because corporate funds have been, and continue to be, used for rehabilitation and upgrading works; that the Amended Petition did not state facts with sufficient particularity which tend to show that Roxas has been mismanaging HEVRI.[5] Petitioners counterclaimed for damages.

Pursuant to Supreme Court Administrative Circular AM No. 00-11-03 dated 21 November 2000 in implementation of the provisions of the law transferring jurisdiction from SEC to the RTC, the case was transferred to the RTC of Manila, Branch 46.

During the hearing on the application for issuance of a TRO and/or writ of preliminary injunction on 26 July 2001, the RTC ordered an audit of the books of HEVRI, thus:

> The Court orders that an audit of the books of the Corporation be conducted. However before the Court will enforce the same the respondents are given until August 1, 2001 to file their comments/ oppositions, after which this incident will be deemed submitted for resolution.[6]

Petitioners contested the order of audit through a motion for reconsideration. In an Order dated 10 September 2001, their Motion for Reconsideration was denied, *viz*:

> The [private respondents herein] allege that respondent Rafael J. Roxas is making unauthorized and fraudulent disbursements of corporate funds and the former wants the latter restrained from further managing the respondent corporation.
>
> The best way the court can determine whether there is a ground for the issuance of a temporary restraining order or preliminary injunction is to be informed of what is the real score in the financial status of the corporation. What could be a better way of knowing whether there are unauthorized and fraudulent disbursements than an audit of the books? The respondents should not fear an audit if they have nothing to hide.[7]

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[5] *Id.* at 242-246.

[6] *Id.* at 103.

[7] *Id.* at 104.

Thus, on 4 October 2001, the RTC designated Financial Catalyst, Inc. to audit the books of HEVRI, thus:

> WHEREFORE, the Financial Catalyst, Inc. of Unit 1107 Jollibee Plaza, Emerald Avenue, Ortigas Center, Pasig City 1605 Philippines is hereby designated to audit the books of Heirs of Eugenia V. Roxas, Inc.
>
> The Financial Catalyst, Inc. is requested to inform the court within seventy-two (72) hours from receipt of this order if it accepts the designation. Should it accept the designation, it should start the audit immediately.
>
> The president, vice president, corporate secretary, treasurer and other officers of the Heirs of Eugenia V. Roxas, Inc. are directed to cooperate with the auditing firm and to provide all the necessary support to accomplish its duty.
>
> The [private respondents herein] are hereby directed to make an initial deposit with the Clerk of Court the sum of FIFTY THOUSAND PESOS (₱50,000.00) to cover the expenses of audit. It is understood that the expenses of audit shall be taxed as cost against the losing party or parties.[8]

All the aforementioned orders of the RTC were assailed before the Court of Appeals in CA G.R. SP No. 67384. On 16 July 2002, the Court of Appeals issued a TRO enjoining RTC from implementing the questioned orders.

When petitioners refused to allow Financial Catalyst, Inc. to audit their books, the RTC declared Guillermo Roxas, Ma. Eugenia Vallarta and Roxas in contempt of court and issued a warrant for their arrest on 19 August 2002.[9] Said Order was also challenged before the Court of Appeals in CA-G.R. SP No. 73187.

Thereafter, the Court of Appeals resolved to consolidate the two (2) petitions.

Finding them without merit, the Court of Appeals dismissed the petitions and affirmed the questioned orders of the RTC.

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[8] *Id.* at 106.

[9] *Id.* at 115.

The Court of Appeals upheld the right of private respondents as stockholders to inspect corporate books and records pursuant to Section 75 of the Corporation Code. It also defended the audit of the books of HEVRI for the proper determination of the issue of dissolution of the corporation. Further, the Court of Appeals sustained the validity of the indirect contempt proceedings. The Court of Appeals observed that Petitioners Guillermo Roxas, Ma. Eugenia Vallarta and Rafael Roxas were in fact given a chance to be heard in open court through an Order dated 14 June 2002:

> In view of the seriousness of the charge that may result in the imposition of a fine upon the defendants in an amount not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both or indefinite imprisonment until they comply with the ORDERS of the court, the Court:
>
> RESOLVES to hold a formal trial to enable the said defendants to defend themselves at a hearing scheduled on Friday, the 28th day of June, 2002 at 8:30 A.M. at Room 460, City Hall, Manila, Philippines.[10]

Petitioners moved for the cancellation of the hearing, which motion was denied.

A motion for reconsideration was filed but it was denied on 29 October 2003,[11] hence the instant petition.

Petitioners assert that the RTC effectively ruled that a stockholder's right to inspection and to financial information include the absolute right to cause the conduct of an audit. Petitioners insist that the trial court should have examined the audited financial statements first before ordering another audit. By declaring that an audit be conducted, petitioners claim that the trial court effectively granted private respondents' prayer for inspection and examination of the books of accounts of HEVRI without hearing or trial. Also according to petitioners, the appointment of an independent auditor was not even specifically

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[10] *Id.* at 613.

[11] *Id.* at 64.

prayed for in the Amended Petition. Petitioners take exception to the ruling of the Court of Appeals that an audit will determine the financial status of the company. Petitioners aver that gross mismanagement, as alleged by private respondents, is a factor that must be proved by hard and convincing evidence. Finally, petitioners challenge the validity of the contempt order issued against them. Petitioners contend that the trial court did not *motu propio* initiate the contempt proceedings but it was prompted by private respondents through a motion for the issuance of a show cause order, thereby disregarding Section 4, Rule 71 of the Rules of Court.

Private respondents justified the order of audit by the RTC to determine the presence or absence of mismanagement and pursuant to Rule 32 of the Rules of Court. They also maintain that the directive to conduct an audit does not amount to a prejudgment of the case. Anent the citation for contempt, private respondents assert that petitioners' whimsical disregard of the authority of the trial court exemplified by the unreasonable and unjustified refusal to comply with the directed audit constitute indirect contempt of court.

On 1 August 2006, petitioners filed a Manifestation informing the Court that an Order[12] dated 14 February 2006 was issued by the RTC dismissing Civil Case No. 01-99671 for lack of jurisdiction, thus:

> WHEREFORE, premises considered, the Court orders the DISMISSAL of this case. The incident on the creation of a Management Committee is likewise denied for being moot and academic.[13]

As culled from the RTC Order and subsequent to the dismissal of the petition before the Court of Appeals, the RTC created a Management Committee on 15 March 2004. The trial court ordered the depositary banks of petitioners to freeze the latter's deposit. These Orders were also questioned before the Court

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[12] Presided by Judge Benjamin D. Turgano. *Id.* at 688-706.

[13] *Id.* at 706.

of Appeals which issued a TRO restraining the Management Committee from taking over the management and administration of HEVRI. On 8 April 2005, the RTC issued an Omnibus Order which: 1) constituted the Interim Caretaker Committee; 2) granted defendants request for ocular inspection; 3) held in abeyance implementation of the audit; 4) required the former Management Committee to render its report, and set the schedule for the reception of defendants' evidence on the creation of the Management Committee. Thus, an Interim Caretaker Committee was constituted.[14]

In dismissing the case for dissolution, the trial court ruled that it lacked jurisdiction to entertain an action for dissolution considering that said action lies within the exclusive jurisdiction of the SEC. The trial court explained that only cases enumerated under Section 5 of Presidential Decree No. 902-A[15] were transferred to the RTC. SEC's power to suspend, revoke or terminate the franchise or certificate of registration of corporations is found in Section 6. Assuming that the RTC has jurisdiction to try the case, it pointed out that only one of the grounds cited by private respondents constitute a possible ground for involuntary dissolution, *i.e.*, failure to comply with the SEC's reportorial requirements. This possible infraction was rectified by the belated filing of the 1991-1995 GIS after the filing of the Amended Petition.

The trial court also held that there is no factual basis to hold Roxas liable for misappropriation; that Roxas is not the proper party impleaded in the Amended Petition because he was no longer the President of HEVRI at the time of filing; and that HEVRI cannot be ordered to declare dividends because the prerogative lies with the Board of Directors.

Finally, the RTC declared moot and academic the issues of the inspection of books in view of the takeover of the books by

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[14] *Id.* at 693.

[15] Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the said Agency under the Administrative Supervision of the Office of the President.

the previous Management Committee; and creation of the Management Committee which has lost it legal basis to exist because the Court has no jurisdiction over the main action.[16]

Essentially, only two (2) issues must be resolved – the validity of the audit and the consequent indirect contempt citation.

The first issue has been rendered moot and academic with the dismissal of the principal action for dissolution. The directive for audit and the designation of Financial Catalyst, Inc. as the auditor, both incidents to the main action, have already lost their bearing. An issue or a case becomes moot and academic when it ceases to present a justiciable controversy, so that a determination of the issue would be without practical use and value. In such cases, there is no actual substantial relief to which the petitioner would be entitled and which would be negated by the dismissal of the petition.[17]

The issue of indirect contempt needs further discussion because while the Order of the RTC to allow audit of books of HEVRI has been rendered moot, it does not change the fact that at the time that the Order was a standing pronouncement, petitioners refused to heed it. Section 3, paragraph (b), Rule 71 of the Rules of Court provides:

> 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 x x x x x x
>
> (b) Disobedience of or resistance to a lawful writ, process, order or judgment of a court, x x x.

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[16] *Id.* at 705-706.

[17] *Romero II v. Estrada*, G.R. No. 174105, 2 April 2009, 583 SCRA 396, 404.

Contempt of court is defined as a disobedience to the Court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. Contempt of court is a defiance of the authority, justice or dignity of the court; such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties-litigant or their witnesses during litigation.[18] The asseverations made by petitioners to justify their refusal to allow inspection or audit were rejected by the trial court.

It may be noted that a person may be charged with indirect contempt by either of two alternative ways, namely: (1) by a verified petition, if initiated by a party; or (2) by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt, if made by a court against which the contempt is committed. In short, a charge of indirect contempt must be initiated through a verified petition, unless the charge is directly made by the court against which the contemptuous act is committed.[19]

The RTC initiated the contempt charge. In the Order[20] dated 9 January 2002, petitioners were directed to appear in court and to show cause why they should not be held in contempt of court for their refusal to allow Financial Catalyst, Inc. to audit the books of HEVRI. Petitioners filed an urgent motion for reconsideration claiming that said order was the subject of a pending petition before the Court of Appeals and that they can only be cited for contempt by the filing of a verified petition. The RTC denied the motion and reiterated

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[18] *Lu Ym v. Atty. Mahinay*, 524 Phil. 564, 572 (2006) citing *Heirs of Trinidad de Leon Vda. de Roxas v. Court of App*eals, 466 Phil. 697, 711-712 (2004).

[19] *Mallari v. Government Service Insurance System*, G.R. No. 157659, 25 January 2010, 611 SCRA 32, 51.

[20] *Rollo*, p. 381.

in its Order on 26 April 2002 explaining that it chose to initiate the contempt charge.

The RTC acted on the basis of the unjustified refusal of petitioners to abide by its lawful order. It is of no moment that private respondents may have filed several pleadings to urge the RTC to cite petitioners in contempt. Petitioners utterly violated an order issued by the trial court which act is considered contemptuous. Thus, in *Leonidas v. Judge Supnet*,[21] the MTC's order to the bank to show cause why it should not be held in contempt, was adjudged as a legitimate exercise of the MTC's judicial discretion to determine whether the bank should be sanctioned for disregarding its previous orders. Independently of the motions filed by the opposing party, it was the MTC which commenced the contempt proceedings *motu proprio*. No verified petition is required if proceedings for indirect contempt are initiated in this manner, and the absence of a verified petition does not affect the procedure adopted.[22]

The RTC's issuance of a warrant of arrest was pursuant to Section 8, Rule 71 of the Rules of Court, which reads:

> Sec. 8. *Imprisonment until order obeyed*. - When the contempt consists in the refusal or omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it.

However, the foregoing notwithstanding, the warrant and the contempt proceedings that preceded it were all similarly mooted by the dismissal of the main petition for dissolution of HEVRI. Given the mootness of the issues of inspection and audit, the very orders refused to be obeyed by petitioners, the citation of contempt and its consequences necessarily became moot.

WHEREFORE, this petition is hereby **DECLARED MOOT and ACADEMIC.** The warrant of arrest issued by the Regional Trial Court of Manila, Branch 46, against Guillermo B. Roxas, Ma. Eugenia Vallarta and Rafael B. Roxas is hereby **LIFTED.**

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[21] 446 Phil. 53 (2003).

[22] *Id.* at 69.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170026. June 20, 2012]

SHIMIZU PHILIPPINES CONTRACTORS, INC., *petitioner, vs.* **MRS. LETICIA B. MAGSALIN, doing business under the trade name "KAREN'S TRADING," FGU INSURANCE CORPORATION, GODOFREDO GARCIA, CONCORDIA GARCIA, and REYNALDO BAETIONG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; FAILURE OF PLAINTIFF TO PROSECUTE AS A GROUND; RULE WHEN THE DISMISSAL IS DEEMED ADJUDICATION ON THE MERITS; VIOLATION IN CASE AT BAR.— The nullity of the dismissal order is patent on its face. It simply states its conclusion that the case should be dismissed for *non prosequitur*, a legal conclusion, but does not state the facts on which this conclusion is based. Dismissals of actions for failure of the plaintiff to prosecute is authorized under Section 3, Rule 17 of the Rules of Court. A plain examination of the December 16, 2003 dismissal order shows that it is an unqualified order and, as such, is deemed to be a dismissal with prejudice. "Dismissals of actions (under Section 3) which do not expressly state whether they are with or without prejudice are held to be with prejudice[.]"As a prejudicial dismissal, the December 16, 2003 dismissal order is also deemed to be a judgment on the merits so that the petitioner's complaint in Civil Case No. 02-488 can no longer be refiled on the principle of *res judicata*.

Procedurally, when a complaint is dismissed for failure to prosecute and the dismissal is unqualified, the dismissal has the effect of an adjudication on the merits. As an adjudication on the merits, it is imperative that the dismissal order conform with Section 1, Rule 36 of the Rules of Court on the writing of valid judgments and final orders. x x x The December 16, 2003 dismissal order clearly violates this rule for its failure to disclose how and why the petitioner failed to prosecute its complaint. Thus, neither the petitioner nor the reviewing court is able to know the particular facts that had prompted the prejudicial dismissal. x x x A trial court should always specify the reasons for a complaint's dismissal so that on appeal, the reviewing court can readily determine the *prima facie* justification for the dismissal. 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 and is especially prejudicial to the losing party who is unable to point the assigned error in seeking a review by a higher tribunal.

2. ID.; ID.; ID.; A VOID DECISION IS OPEN TO COLLATERAL ATTACK; RATIONALE. — Elementary due process demands that the parties to a litigation be given information on how the case was decided, as well as an explanation of the factual and legal reasons that led to the conclusions of the court. Where the reasons are absent, a decision (such as the December 16, 2003 dismissal order) has absolutely nothing to support it and is thus a nullity. x x x A void decision, however, is open to collateral attack. While we note that the validity of the dismissal order with respect to Section 1, Rule 36 of the Rules of Court was never raised by the petitioner as an issue in the present petition, the Supreme Court is vested with ample authority to review an unassigned error if it finds that consideration and resolution are indispensable or necessary in arriving at a just decision in an appeal. In this case, the interests of substantial justice warrant the review of an obviously void dismissal order.

3. ID.; ID.; ID.; *MOTU PROPRIO* DISMISSAL; GROUNDS; NOT PRESENT IN CASE AT BAR. — A court could only issue a *motu proprio* dismissal pursuant to the grounds mentioned in this rule and for lack of jurisdiction over the subject matter. x x x None of these events square with the grounds specified by Section 3, Rule 17 of the Rules of Court for the *motu proprio* dismissal of a case for failure to prosecute. These grounds are

as follows: (a) Failure of the plaintiff, without justifiable reasons, to appear on the date of the presentation of his evidence in chief; (b) Failure of the plaintiff to prosecute his action for an unreasonable length of time; (c) Failure of the plaintiff to comply with the Rules of Court; or (d) Failure of the plaintiff to obey any order of the court. In our view, the developments in the present case do not satisfy the stringent standards set in law and jurisprudence for a *non prosequitur*. The fundamental test for *non prosequitur* is whether, under the circumstances, the plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude. There must be unwillingness on the part of the plaintiff to prosecute.

APPEARANCES OF COUNSEL

Jimenez Gonzales Liwanag Bello Valdez Caluya & Fernandez for petitioner.

Jacinto Jimenez for FGU Insurance Corp.

William F. delos Santos for Reynaldo Baetiong.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by Shimizu Philippines Contractors, Inc. (*petitioner*) to challenge the twin resolutions of the Court of Appeals (*CA*)[2] in CA-G.R. CV No. 83096 which dismissed the appeal of the petitioner on the ground of lack of jurisdiction[3] and denied the petitioner's subsequent motion for reconsideration.[4] The appeal in CA-G.R. CV No. 83096 had sought to nullify the December 16, 2003 order[5] of the Regional Trial Court (*RTC*) dismissing the

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 10-31.

[2] Penned by Associate Justice Marina L. Buzon, and concurred in by Associate Justices Mario L. Guariña III and Santiago Javier Ranada.

[3] *Rollo*, pp. 35-37.

[4] *Id.* at 39-40.

[5] *Id.* at 227.

petitioner's complaint for sum of money and damages on the ground of *non prosequitur*.

THE ANTECEDENTS

The antecedent facts of the petition before us are not disputed.

An alleged breach of contract was the initial event that led to the present petition. The petitioner claims that one Leticia Magsalin, doing business as "Karen's Trading," had breached their subcontract agreement for the supply, delivery, installation, and finishing of parquet tiles for certain floors in the petitioner's Makati City condominium project called "The Regency at Salcedo." The breach triggered the agreement's termination. When Magsalin also refused to return the petitioner's unliquidated advance payment and to account for other monetary liabilities despite demand, the petitioner sent a notice to respondent FGU Insurance Corporation (*FGU Insurance*) demanding damages pursuant to the surety and performance bonds the former had issued for the subcontract.

On April 30, 2002, the petitioner filed a complaint docketed as Civil Case No. 02-488 against both Magsalin and FGU Insurance. It was raffled to Branch 61 of the RTC of Makati City. The complaint sought Two Million Three Hundred Twenty-Nine Thousand One Hundred Twenty Four Pesos and Sixty Centavos (₱2,329,124.60) as actual damages for the breach of contract.

FGU Insurance was duly served with summons. With respect to Magsalin, however, the corresponding officer's return declared that both she and "Karen's Trading" could not be located at their given addresses, and that despite further efforts, their new addresses could not be determined.

In August 2002, FGU Insurance filed a motion to dismiss the complaint. The petitioner filed its opposition to the motion. The motion to dismiss was denied as well as the ensuing motion for reconsideration, and FGU Insurance was obliged to file an answer.

In October 2002, in an effort to assist the RTC in acquiring jurisdiction over Magsalin, the petitioner filed a motion for leave to serve summons on respondent Magsalin by way of publication. In January 2003, the petitioner filed its reply to FGU Insurance's answer.

In February 2003, FGU Insurance filed a motion for leave of court to file a third-party complaint. Attached to the motion was the subject complaint,[6] with Reynaldo Baetiong, Godofredo Garcia and Concordia Garcia named as third-party defendants. FGU Insurance claims that the three had executed counter-guaranties over the surety and performance bonds it executed for the subcontract with Magsalin and, hence, should be held jointly and severally liable in the event it is held liable in Civil Case No. 02-488.

The RTC admitted the third-party complaint and denied the motion to serve summons by publication on the ground that the action against respondent Magsalin was *in personam*.

In May 2003, the RTC issued a notice setting the case for hearing on June 20, 2003. FGU Insurance filed a motion to cancel the hearing on the ground that the third-party defendants had not yet filed their answer. The motion was granted.

In June 2003, Baetiong filed his answer to the third-party complaint. He denied any personal knowledge about the surety and performance bonds for the subcontract with Magsalin.[7] Of the three (3) persons named as third-party defendants, only Baetiong filed an answer to the third-party complaint; the officer's returns on the summons to the Garcias state that both could not be located at their given addresses. Incidentally, the petitioner claims, and Baetiong does not dispute, that it was not served with a copy of Baetiong's answer. The petitioner now argues before us that FGU Insurance, which is the plaintiff in the third-party complaint, had failed to exert efforts to serve summons on the Garcias. It suggests that a motion to serve summons by

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[6] *Rollo*, pp. 213-220.

[7] *Id.* at 221-225.

publication should have been filed for this purpose. The petitioner also asserts that the RTC should have scheduled a hearing to determine the status of the summons to the third-party defendants.[8]

THE ORDER OF DISMISSAL

With the above procedural events presented by both parties as the only backdrop, on December 16, 2003 the RTC issued a tersely worded order[9] dismissing Civil Case No. 02-488. For clarity, we quote the dismissal order in full:

O R D E R

For failure of [petitioner] to prosecute, the case is hereby DISMISSED.

SO ORDERED.

The RTC denied the petitioner's motion for reconsideration,[10] prompting the latter to elevate its case to the CA *via* a Rule 41 petition for review.[11]

The Ruling of the Appellate Court

FGU Insurance moved for the dismissal of the appeal on the ground of lack of jurisdiction. It argued that the appeal raised a pure question of law as it did not dispute the proceedings before the issuance of the December 16, 2003 dismissal order.

The petitioner, on the other hand, insisted that it had raised questions of fact in the appeal.[12] Thus -

While, the instant appeal does not involve the merits of the case, the same involves **questions of fact based on the records of the case.** It must be emphasized that the lower court's dismissal of the

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[8] *Id.* at 17.

[9] *Id.* at 227.

[10] *Id.* at 239.

[11] Dated December 3, 2004; *id.* at 244-248. On December 16, 2004, the petitioner filed a *COMMENT/OPPOSITION (To Motion to Dismiss Appeal); id. at* 58-64.

[12] *Id.* at 58-64.

case based on alleged failure to prosecute on the part of plaintiff-appellant was too sudden and precipitate. This being the case, the facts [sic] to be determined is whether based on the records of the case, was there a definite inaction on the part of plaintiff-appellant? A careful examination of all pleadings filed as well as the orders of the lower court *vis-à-vis* the rules should now be made in order to determine whether there was indeed a "failure to prosecute" on the part of plaintiff-appellant[.][13] (emphases supplied)

The CA agreed with FGU Insurance and dismissed the appeal, and denied as well the subsequent motion for reconsideration.[14] The petitioner thus filed the present petition for review on *certiorari*.

The Present Petition

The petitioner pleads five (5) grounds to reverse the CA's resolutions and to reinstate Civil Case No. 02-488. In an effort perhaps to make sense of the dismissal of the case (considering that the trial court had not stated the facts that justify it), the petitioner draws this Court's attention to certain facts and issues that we find to be of little materiality to the disposition of this petition:

GROUNDS/STATEMENT OF MATTERS INVOLVED

I. THE APPELLATE COURT HAS JURISDICTION TO DETERMINE THE MERITS OF THE APPEAL AS THE MATTERS THEREIN INVOLVE BOTH QUESTIONS OF LAW AND FACT.

II. THE LOWER COURT ERRED IN DECLARING THAT PETITIONER FAILED TO PROSECUTE THE CASE DESPITE THE FACT THAT PETITIONER NEVER RECEIVED A COPY OF THE ANSWER OF THIRD-PARTY DEFENDANT-RESPONDENT REYNALDO BAETIONG.

III. THE LOWER COURT ERRED IN DECLARING THAT PETITIONER FAILED TO PROSECUTE THE CASE DESPITE THE FACT THAT THERE IS NO JOINDER OF

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[13] *Id.* at 59.

[14] *Supra* note 4.

INDISPENSABLE PARTIES AND ISSUES YET BECAUSE DEFENDANT-RESPONDENT LETICIA B. MAGSALIN AS WELL AS THIRD-PARTY DEFENDANT-RESPONDENTS GODOFREDO AND CONCORDIA GARCIA'S WHEREABOUTS WERE UNKNOWN, HENCE NO SERVICE YET ON THEM OF THE COPY OF THE SUMMONS AND COMPLAINT WITH ANNEXES[.]

IV. THE LOWER COURT ERRED IN DECLARING THAT PETITIONER FAILED TO PROSECUTE THE CASE DESPITE THE FACT THAT IT WAS PARTY RESPONDENT FGU WHICH CAUSED THE CANCELLATION OF THE HEARING.

V. IT IS EVIDENT THAT THE LOWER COURT'S DISMISSAL OF THE CASE IS A CLEAR DENIAL OF DUE PROCESS.[15]

In our Resolution dated February 13, 2006,[16] we required the respondents to comment. FGU Insurance's comment[17] alleges that the present petition is "fatally defective" for being unaccompanied by material portions of the record. It reiterates that the appeal in CA-G.R. CV No. 83096 was improperly filed under Rule 41 and should have been filed directly with this Court under Rule 45 of the Rules of Court. Baetiong, in his comment,[18] asserts that the dismissal of the appeal was in accord with existing laws and applicable jurisprudence.

THE RULING OF THE COURT

Preliminarily, we resolve the claim that the petition violates Rule 45 of the Rules of Court on the attachment of material portions of the record. We note that FGU Insurance fails to discharge its burden of proving this claim by not specifying the material portions of the record the petitioner should have attached to the petition. At any rate, after a careful perusal of the petition and its attachments, the Court finds the petition to be sufficient.

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[15] *Rollo,* p. 19.

[16] *Id.* at 42.

[17] Dated March 13, 2006; *id.* at 47-57.

[18] Filed on April 5, 2006; *id.* at 70-76.

In other words, we can judiciously assess and resolve the present petition on the basis of its allegations and attachments.

After due consideration, we resolve to grant the petition on the ground that the December 16, 2003 dismissal order is null and void for violation of due process. We are also convinced that the appeal to challenge the dismissal order was properly filed under Rule 41 of the Rules of Court. We further find that the dismissal of Civil Case No. 02-488 for failure to prosecute is not supported by facts, as shown by the records of the case.

The Dismissal Order is Void

The nullity of the dismissal order is patent on its face. It simply states its conclusion that the case should be dismissed for *non prosequitur*, a legal conclusion, but does not state the facts on which this conclusion is based.

Dismissals of actions for failure of the plaintiff to prosecute is authorized under Section 3, Rule 17 of the Rules of Court. A plain examination of the December 16, 2003 dismissal order shows that it is an unqualified order and, as such, is deemed to be a dismissal with prejudice. "Dismissals of actions (under Section 3) which do not expressly state whether they are with or without prejudice are held to be with prejudice[.]"[19] As a prejudicial dismissal, the December 16, 2003 dismissal order is also deemed to be a judgment on the merits so that the petitioner's complaint in Civil Case No. 02-488 can no longer be refiled on the principle of *res judicata*. Procedurally, when a complaint is dismissed for failure to prosecute and the dismissal is unqualified, the dismissal has the effect of an adjudication on the merits.[20]

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[19] *Vallangca v. Court of Appeals,* G.R. No. 55336, May 4, 1989, 173 SCRA 42, 54.

[20] *Peninsula Construction, Inc. v. Eisma,* G.R. No. 84098, March 5, 1991, 194 SCRA 667, 671, citing *Olivares v. Judge Gonzales*, 242 Phil. 493 (1988); *Vda. de Denoso v. Court of Appeals*, 246 Phil. 674 (1988); and *Vallangca v. Court of Appeals, supra* note 19. *Gutierrez v. Court of Appeals*, G.R. No. 82475, January 28, 1991,193 SCRA 437; see also *Cruz v. Court of Appeals (Second Division)*, 517 Phil. 572 (2006).

As an adjudication on the merits, it is imperative that the dismissal order conform with Section 1, Rule 36 of the Rules of Court on the writing of valid judgments and final orders. The rule states:

RULE 36

Judgments, Final Orders and Entry Thereof

Section 1. *Rendition of judgments and final orders.* — A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of the court.

The December 16, 2003 dismissal order clearly violates this rule for its failure to disclose how and why the petitioner failed to prosecute its complaint. Thus, neither the petitioner nor the reviewing court is able to know the particular facts that had prompted the prejudicial dismissal. Had the petitioner perhaps failed to appear at a scheduled trial date? Had it failed to take appropriate actions for the active prosecution of its complaint for an unreasonable length of time? Had it failed to comply with the rules or any order of the trial court? The December 16, 2003 dismissal order does not say.

We have in the past admonished trial courts against issuing dismissal orders similar to that appealed in CA-G.R. CV No. 83096. A trial court should always specify the reasons for a complaint's dismissal so that on appeal, the reviewing court can readily determine the *prima facie* justification for the dismissal.[21] 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 and is especially prejudicial to the losing party who is

[21] Cf. *Continental Bank v. Tiangco,* No. 50480, December 14, 1979, 94 SCRA 715, 718. In this case, the trial court granted a motion to dismiss, filed on the grounds of prescription and failure to state a cause of action, in an order which reads: "Considering the allegations contained, the arguments advanced and the doctrine cited in defendants' motion to dismiss as well as those of the opposition filed thereto by the plaintiff, the Court resolves to grant the motion." Cf. *Barrera v. Militante*, G.R. No. 54681, May 31, 1982, 114 SCRA 323.

unable to point the assigned error in seeking a review by a higher tribunal.[22]

We thus agree with the petitioner that the dismissal of Civil Case No. 02-488 constituted a denial of due process. Elementary due process demands that the parties to a litigation be given information on how the case was decided, as well as an explanation of the factual and legal reasons that led to the conclusions of the court.[23] Where the reasons are absent, a decision (such as the December 16, 2003 dismissal order) has absolutely nothing to support it and is thus a nullity.[24]

For this same reason, we are not moved by respondent FGU Insurance's statement that the disposition of the present petition must be limited to the issue of whether the CA had correctly dismissed the appeal in CA-G.R. CV No. 83096.[25] This statement implies that we cannot properly look into the validity of the December 16, 2003 dismissal order in this Rule 45 petition. A void decision, however, is open to collateral attack. While we note that the validity of the dismissal order with respect to Section 1, Rule 36 of the Rules of Court was never raised by the petitioner as an issue in the present petition, the Supreme Court is vested with ample authority to review an unassigned error if it finds that consideration and resolution are indispensable or necessary in arriving at a just decision in an appeal.[26] In this case, the

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

[23] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 307, citing *Nicos Industrial Corp. v. Court of Appeals*, *supra* note 22; *People v. Judge Bellaflor*, June 15, 1994, 233 SCRA 196; and *Anino v. National Labor Relations Commission*, 352 Phil. 1098 (1998).

[24] *Air France v. Carrascoso*, No. L-21438, September 28, 1966, 18 SCRA 155, 157, citing *Edwards v. McCoy*, 22 Phil. 598, 601 (1912); and *Yangco v. Court of First Instance of Manila, et al.*, 29 Phil. 183, 191 (1915).

[25] *Ibid.*

[26] *Heirs of Teofilo Gabatan v. Court of Appeals*, G.R. No. 150206, March 13, 2009, 581 SCRA 70; *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244; and *Mendoza v. Bautista*, 493 Phil. 804 (2005).

interests of substantial justice warrant the review of an obviously void dismissal order.

The appeal was properly filed under Rule 41 of the Rules of Court

While the nullity of the December 16, 2003 dismissal order constitutes the *ratio decidendi* for this petition, we nevertheless rule on the contention that the appeal was erroneously filed.[27]

In dismissing the appeal, the CA relied on the premise that since the facts presented in the petitioner's appeal were admitted and not disputed, the appeal must thereby raise a pure question of law proscribed in an ordinary appeal. This premise was effectively the legal principle articulated in the case of *Joaquin v. Navarro*,[28] cited by the CA in its April 8, 2005 resolution. Respondent FGU Insurance thus contends that the proper remedy to assail the dismissal of Civil Case No. 02-488 was an appeal filed under Rule 45 of the Rules of Court.

The reliance on *Joaquin* is misplaced as it is based on the conclusion the appellate court made in its April 8, 2005 resolution — *i.e.*, that the pleading of undisputed facts is equivalent to a prohibited appeal. The reliance is inattentive to both the averments of the subject appeal and to the text of the cited case. The operative legal principle in *Joaquin* is this: "[W]here a case is submitted upon an agreement of facts, or *where all the facts are stated in the judgment* and the issue is the correctness of the conclusions drawn therefrom, the question is one of law which [is properly subject to the review of this Court.]"[29] In this case, as already pointed out above, the facts supposedly supporting the trial court's conclusion of *non prosequitur* were not stated in the judgment. This defeats the application of *Joaquin*.

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[27] In *Yao v. Court of Appeals*, 398 Phil. 86 (2000), we held to the effect that even if the mode of appeal to assail a void decision was wrong, a void decision was still a void decision. Cf. Oscar Herrera, *REMEDIAL LAW*, Vol. II (Rules 23 to 56), 2007 ed., p. 140.

[28] 93 Phil. 257 (1953).

[29] *Id.* at 270.

At any rate, we believe that the filing of the appeal in CA-G.R. CV No. 83096 under Rule 41 of the Rules of Court was proper as it necessarily involved questions of fact.

An authority material to this case is the case of *Olave v. Mistas*.[30] Directly addressed in *Olave* was the CA's jurisdiction over an ordinary appeal supported by *undisputed* facts and seeking the review of a prejudicial order of dismissal. In this case, a complaint was filed before the RTC in Lipa City to nullify an instrument titled "Affidavit of Adjudication By The Heirs of the Estate of Deceased Persons With Sale." The RTC dismissed the complaint, with prejudice, after the plaintiffs had moved to set the case for pre-trial only after more than three (3) months had lapsed from the service and filing of the last pleading in the case. The plaintiffs thereafter went to the CA on a Rule 41 petition, contending, among others, that the trial court had erred and abused its discretion. As in the present case, the defendants moved to dismiss the appeal on the ground that the issues therein were legal; they pointed out that the circumstances on record were admitted.[31] They argued that the proper remedy was a petition for review on *certiorari* under Rule 45 of the Rules of Court.

The CA denied the motion and entertained the appeal. It rendered a decision reinstating the complaint on the ground that there was no evidence on record that the plaintiffs had deliberately failed to prosecute their complaint.

When the case was elevated to this court on a Rule 45 petition, we squarely addressed the propriety of the plaintiffs' appeal. Though mindful that the circumstances pleaded in the appeal were all admitted, we categorically held in *Olave* that the appeal was correctly filed. We observed that despite undisputed records, the CA, in its review, still had to respond to factual questions such as the length of time between the plaintiffs' receipt of the last pleading filed up to the time they moved to set the case for pre-trial, whether there had been any manifest intention on the

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[30] 486 Phil. 708 (2004).

[31] *Id.* at 717.

plaintiffs' part not to comply with the Rules of Court, and whether the plaintiffs' counsel was negligent.

Significantly, in *Olave*, we agreed with the plaintiffs that among the critical factual questions was whether, *based on the records,* there had been factual basis for the dismissal of the subject complaint. This same question is particularly significant in the present case given that the order appealed from in CA-G.R. CV No. 83096 *does not even indicate the factual basis* for the dismissal of Civil Case No. 02-488. Due to the absence of any stated factual basis, and despite the admissions of the parties, the CA, in CA-G.R. CV No. 83096, still had to delve into the records to check whether facts to justify the prejudicial dismissal even exist. Since the dismissal of Civil Case No. 02-488 appears to have been rendered *motu proprio* (as the December 16, 2003 dismissal order does not state if it was issued upon the respondents' or the trial court's motion), the facts to be determined by the CA should include the grounds specified under Section 3, Rule 17 of the Rules of Court. A court could only issue a *motu proprio* dismissal pursuant to the grounds mentioned in this rule and for lack of jurisdiction over the subject matter.[32] These grounds are matters of facts. Thus, given that the dismissal order does not disclose its factual basis, we are thus persuaded that the petitioner had properly filed its appeal from the dismissal order under Rule 41 of the Rules of Court.

The Dismissal of Civil Case No. 02-488 is not Supported by the Facts of the Case

We also find that the dismissal of Civil Case No. 02-488 is not warranted. Based on available records and on the averments of the parties, the following events were chronologically proximate to the dismissal of Civil Case No. 02-488: (a) on March 24, 2003, the court admitted FGU Insurance's third-party complaint; (b) the trial court cancelled the June 20, 2003 hearing upon

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[32] Oscar M. Herrera, *REMEDIAL LAW*, Vol. 1 (Rules 1 to 22), 2007 ed., p. 1062, citing *Baja v. Macandog*, 158 SCRA 391 (1981 [*sic*]). There appears to be an error in Herrera's citation of *Baja v. Macandog* as a 1981 case. The correct citation for the *Baja v. Judge Macandog* containing the doctrine discussed above is 242 Phil. 123 (1988).

FGU Insurance's motion; and (c) on June 16, 2003, Baetiong filed his *Answer* to the third-party complaint but did not serve it upon the petitioner.

None of these events square with the grounds specified by Section 3, Rule 17 of the Rules of Court for the *motu proprio* dismissal of a case for failure to prosecute. These grounds are as follows:

(a) Failure of the plaintiff, without justifiable reasons, to appear on the date of the presentation of his evidence in chief;

(b) Failure of the plaintiff to prosecute his action for an unreasonable length of time;

(c) Failure of the plaintiff to comply with the Rules of Court; or

(d) Failure of the plaintiff to obey any order of the court.

In our view, the developments in the present case do not satisfy the stringent standards set in law and jurisprudence for a *non prosequitur*.[33] The fundamental test for *non prosequitur* is whether, under the circumstances, the plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude.[34] There must be unwillingness on the part of the plaintiff to prosecute.[35]

In this case, the parties' own narrations of facts demonstrate the petitioner's willingness to prosecute its complaint. Indeed, neither respondents FGU Insurance nor Baetiong was able to point to any specific act committed by the petitioner to justify the dismissal of their case.

While it is discretionary on the trial court to dismiss cases, dismissals of actions should be made with care. The repressive

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[33] CF. *Calalang v. Court of Appeals,* G.R. No. 103185, January 22, 1993, 217 SCRA 462.

[34] *Producers Bank of the Philippines v. Court of Appeals*, 396 Phil. 497 (2000).

[35] *Gapoy v. Adil*, No. L-46182, February 28, 1978, 81 SCRA 739.

or restraining effect of the rule amounting to adjudication upon the merits may cut short a case even before it is fully litigated; a ruling of dismissal may forever bar a litigant from pursuing judicial relief under the same cause of action. Hence, sound discretion demands vigilance in duly recognizing the circumstances surrounding the case to the end that technicality shall not prevail over substantial justice.[36]

This court is thus of the opinion that the dismissal of Civil Case No. 02-488 is not warranted. Neither facts, law or jurisprudence supports the RTC's finding of failure to prosecute on the part of the petitioner.

WHEREFORE, premises considered, the instant petition is **GRANTED.** The resolutions of the Court of Appeals dated April 8, 2005 and October 4, 2005 are **REVERSED** and **SET ASIDE.** The order dated December 16, 2003 of the Regional Trial Court, Branch 61, Makati City, in Civil Case No. 02-488 is declared **NULL and VOID,** and the petitioner's complaint therein is ordered **REINSTATED** for further proceedings. No costs.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Perez, Sereno, and *Reyes, JJ.*, concur.

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[36] Cf. *Ruiz v. Estenzo,* G.R. No. 50082, June 4, 1990, 186 SCRA 8; see also *Macasa, et al. v. Herrera,* 101 Phil. 44, 48 (1957); and *Dayo, et al. v. Dayo, et al.*, 95 Phil. 703 (1954).

SECOND DIVISION

[G.R. No. 171038. June 20, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF JUAN LOPEZ, namely: MONSERRAT LOPEZ-MARCHAN, LYDIA LOPEZ-DAMASCO, THELMA LOPEZ-GERONA, ELSA FELY LOPEZ-REBUSTILLO, JOSE LOPEZ, and HERMINIO LOPEZ,** *respondents.*

SYLLABUS

REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; THE PETITION SHALL RAISE ONLY QUESTIONS OF LAW WHICH MUST BE DISTINCTLY SET FORTH; NOT PRESENT IN CASE AT BAR. — We find the present issue to be a question of fact that is not reviewable by this Court under Rule 45 of the Rules of Court. Section 1 thereof provides that "[t]he petition x x x shall raise only questions of law, which must be distinctly set forth." To differentiate, a question of fact exists when the doubt centers on the *truth or falsity* of the alleged facts while a question of law exists if the doubt centers on what the law is on a certain set of facts; there is a question of fact if the issue requires a review of the evidence presented or requires the re-evaluation of the credibility of witnesses, and there is a question of law if the issue raised is capable of being resolved without the need of reviewing the probative value of the evidence. The issue of the correctness of the average selling price data used in this case is clearly a question of fact that can only be determined by a review of the evidence presented by the parties.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Ronando L. Gerona for respondents.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] filed by the petitioner, Land Bank of the Philippines (*LBP*), assailing the September 29, 2005 decision of the Court of Appeals (*CA*) in C.A. G.R. SP No. 80918.[2] The LBP also assails the December 23, 2005 resolution[3] of the CA denying its motion for reconsideration.[4] The CA dismissed the LBP's appeal for lack of merit.

THE FACTUAL ANTECEDENTS

The respondent heirs of the deceased Juan Lopez owned a parcel of coconut land situated in San Vicente, Castilla, Sorsogon, with an area of 23.1301 hectares and covered by Original Certificate of Title No. P-32. In July 2000, Monserrat L. Marchan, together and in behalf of her co-respondents,[5] voluntarily offered to sell the parcel of land to the Department of Agrarian Reform (*DAR*) under Republic Act (*R.A.*) No. 6657, otherwise known as the "Comprehensive Agrarian Reform Law of 1988."

After conducting a field investigation, only 21.6101 out of the 23.1301 hectares was found subject for acquisition.[6] The LBP valued the property at ₱14,101.51 per hectare or for a total amount of ₱304,735.09.[7] The LBP's offer was reduced to

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[1] Under Rule 45 of the Rules of Court; *rollo,* pp. 25-50.

[2] Penned by Associate Justice Amelita G. Tolentino, and concurred in by Associate Justices Danilo B. Pine and Vicente S. E. Veloso; *id.* at 10-20.

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

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

[5] Lydia Lopez-Damasco, Thelma Lopez-Gerona, Elsa Fely Lopez-Rebustillo, Jose Lopez, and Herminio Lopez.

[6] *Rollo,* pp. 102-105.

[7] *Id.* at 106-109.

₱298,101.21,[8] after the value of the 0.3643 hectare legal easement on the property was deducted.

The respondents rejected the LBP's offer and elevated the matter to the DAR Provincial Agrarian Reform Adjudicator (*PARAD*) of Sorsogon City who conducted a summary administrative proceeding for the determination of just compensation.

The PARAD's Ruling

On January 8, 2002, Provincial Adjudicator Manuel M. Capellan fixed[9] the just compensation for the respondents' 21.6101-hectare property at ₱928,330.17, which was ₱630,228.96 more than the amount offered by the LBP. The huge difference from the LBP's estimate arose from the PARAD's use of the average selling price of ₱16.00 per kg. of copra instead of the average selling price of ₱5.86 per kg. of copra used by the LBP. The average selling price data is required in computing for the capitalized net income (CNI),[10] which is a necessary factor in the equation for determining the amount of just compensation.[11]

The LBP moved to reconsider the PARAD's ruling, but its motion was denied in an order dated March 21, 2002.[12]

Hence, on April 1, 2002, the LBP filed before Branch 52 of the Regional Trial Court, acting as a Special Agrarian Court (*RTC-SAC*), of Sorsogon City a petition for the judicial determination of just compensation, docketed as Civil Case No. 2002-6986.[13]

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[8] *Id.* at 142-143.

[9] *Id.* at 154-156.

[10] CNI = (Average Gross Production x **Selling Price**) – Cost of Operations
.12

[11] LV = (**CNI** x 0.6) + (CS x 0.3) + (MV x 0.1))

[12] *Rollo,* p. 158.

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

In its petition, the LBP contended that the PARAD gravely abused his discretion in valuing the respondents' property at ₱928,330.17. It mainly argued that the average selling price of ₱16.00 per kg. of copra used by the PARAD is contrary to DAR regulations; that under DAR Administrative Order (*A.O.*) No. 5, series of 1998, the selling price is defined as "[t]he average of the latest available 12-months' selling prices prior to the date of receipt of the [claim folder] by LBP for processing, such prices to be secured from the Department of Agriculture x x x and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics." Thus, the selling price to be applied in this case should be the average price of copra for the 12-month period prior to the LBP's receipt of the respondents' claim folder in July 2001;[14] and that based on the pricing schedule supplied by the Philippine Coconut Authority (*PCA*), the average selling price within the months of July 2000 and June 2001 was ₱5.86 per kg.[15]

The RTC-SAC's Ruling

In a decision dated August 15, 2003,[16] the RTC-SAC affirmed the PARAD's decision. From the evidence presented, it considered the PARAD's valuation to be fair, just and realistic, based not only on the property's yield of copra, but also on its condition, its proximity to roads and the market place, the comparable sales in the area or the current value of like properties, the improvements thereto, its actual use, the social and economic benefits that the property contributed to the community, the landowner's sworn valuation thereof, and the tax declarations and assessments made by government assessors on the property.[17]

Thereafter, the RTC-SAC denied the LBP's motion for reconsideration in an order dated October 27, 2003.[18] The LBP appealed to the CA.

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[14] *Id.* at 106.

[15] *Id.* at 110.

[16] *Id.* at 134-139.

[17] *Id.* at 137.

[18] *Id.* at 140.

The CA's Ruling

In a decision dated September 29, 2005,[19] the CA affirmed the RTC-SAC's ruling. It was unconvinced with the LBP's unsubstantiated claims that the RTC-SAC erred in considering then prevailing circumstances in the valuation of the respondents' property and not those at the time the property was taken by the government, and in adopting the PARAD's valuation, because it was not arrived at strictly in accordance with the formula and guidelines provided by the DAR.

On the contrary, the CA observed that while the LBP and the PARAD arrived at different valuations of the respondents' property, both of them used the same formula provided under DAR A.O. No. 5, series of 1998.[20] The CA affirmed the valuation

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[19] *Supra* note 2.

[20] There shall be one basic formula for the valuation of lands covered by VOS or CA:

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

The above formula shall be used if all the three factors are present, relevant, and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder.

adopted by the RTC-SAC as there was nothing to show that the trial court, as well as the PARAD, failed to consider the factors enumerated in Section 17 of R.A. No. 6657 and the guidelines provided by DAR A.O. No. 5, series of 1998, in arriving at its valuation.

As for the LBP's valuation, the CA found it to be unrealistic and far from being the "just" compensation envisioned by the Constitution.[21]

The LBP moved to reconsider the CA's decision, but its motion was denied in a resolution dated December 23, 2005.[22]

The Petition

In the present petition for review on *certiorari*, the LBP insists that the PCA-supplied average selling price data of ₱5.86 per

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x x x x x x x x x

CNI = (AGP x SP) - CO
.12

x x x x x x x x x

AGP = Average Gross Production corresponding to the latest available 12 months' gross production immediately preceding the date of FI [field investigation].

SP [Selling Price] = The average of the latest available 12-months' selling prices prior to the date of receipt of the [claim folder] by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered for the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations

Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of FI shall continue to use the assumed NIR of 70%. DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP. 0.12 = Capitalization Rate[.]

[21] *Rollo*, p. 16.

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

kg. of copra should have been used in computing the just compensation for the respondents' property, as their data and computation were in accordance with the formula and guidelines provided under DAR A.O. No. 5, series of 1998.

OUR RULING

We DENY the present petition.

In the determination of just compensation, the RTC-SACs are guided by the factors enumerated in Section 17 of R.A. No. 6657, which provision states:

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.

The DAR, as the administrative agency tasked with the implementation of the agrarian reform program and pursuant to its rule-making power under R.A. No. 6657, translated the factors in Section 17 into a basic formula in DAR A.O. No. 6, series of 1992,[23] and those found in succeeding DAR administrative regulations. In various cases, we emphasized the mandatory application of these formulas and imposed upon the RTC-SACs the duty to apply, and not to disregard, them in determining just compensation.[24]

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[23] *Land Bank of the Philippines v. Sps. Banal*, 478 Phil. 701, 710 (2004).

[24] *Land Bank of the Philippines v. Barrido*, G.R. No. 183688, August 18, 2010, 628 SCRA 454; *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. Lim*, G.R. No. 171941, August 2, 2007, 529 SCRA 129; and *Landbank of the Philippines v. Celada*, 515 Phil. 467 (2006).

In the present case, no dispute exists with respect to the formulas used by the LBP and the PARAD in arriving at their valuations. Both correctly applied the formula provided by DAR A.O. No. 5, series of 1998,[25] the then governing regulation applicable to the respondents' land. However, the resulting valuations varied due to the different average selling price data used, which led to the question of which between the two average selling prices of ₱5.86 per kg. and ₱16.00 per kg. of *copra* should be adopted as the true and correct selling price in determining the amount of just compensation for the respondents' land.

Questions of fact not reviewable

We find the present issue to be a question of fact that is not reviewable by this Court under Rule 45 of the Rules of Court. Section 1 thereof provides that "[t]he petition x x x shall raise only questions of law, which must be distinctly set forth." To differentiate, a question of fact exists when the doubt centers on the *truth or falsity* of the alleged facts while a question of law exists if the doubt centers on what the law is on a certain set of facts;[26] there is a question of fact if the issue requires a review of the evidence presented or requires the re-evaluation of the credibility of witnesses, and there is a question of law if the issue raised is capable of being resolved without the need of reviewing the probative value of the evidence.[27] The issue of the correctness of the average selling price data used in this case is clearly a question of fact that can only be determined by a review of the evidence presented by the parties.

In the absence of proof to show that the RTC-SAC acted arbitrarily in the appreciation and weighing of the evidence, we respect the RTC-SAC's findings. Factual findings and determinations made by the RTC, or in this case the RTC-SAC,

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[25] *Rollo*, p. 17.

[26] *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550, 561 (2004).

[27] *Development Bank of the Philippines v. Traders Royal Bank*, G.R. No. 171982, August 18, 2010, 628 SCRA 404, 411.

are generally binding on the Court, particularly when affirmed by the CA.[28]

WHEREFORE, premises considered, the present petition for review on *certiorari* is hereby **DENIED.** We **AFFIRM** the September 29, 2005 decision and the December 23, 2005 resolution of the Court of Appeals in C.A. G.R. SP No. 80918.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Perez, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171905. June 20, 2012]

UNITED CHURCH OF CHRIST IN THE PHILIPPINES, INC., *petitioner, vs.* **BRADFORD UNITED CHURCH OF CHRIST, INC., PATRIZIO EZRA, GERONIMO V. NAZARETH, RUPERTO MAYUGA, SR., ROBERT SCHAARE, HENRY CARIAT, REYNALDO FERRENAL and JOHN DOES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; AFTER VOLUNTARILY SUBMITTING A CAUSE AND ENCOUNTERING AN ADVERSE DECISION ON THE MERITS, IT IS TOO LATE FOR THE LOSER TO QUESTION THE JURISDICTION OR POWER OF THE COURT. — Basic is the rule that a party cannot be allowed to invoke the jurisdiction of a court to secure affirmative relief and later on renounce or repudiate the same after it fails to

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[28] *National Power Corporation v. Court of Appeals,* 479 Phil. 850, 865 (2004).

obtain such relief. After voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court. The Court frowns upon the undesirable practice of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse.

2. ID.; APPEALS; NEW MATTERS CANNOT BE RAISED FOR THE FIRST TIME BEFORE AN APPELLATE TRIBUNAL. — The Court has likewise consistently rejected the pernicious practice of shifting to a new theory on appeal in the hope of a favorable result. Fair play, justice and due process require that as a rule new matters cannot be raised for the first time before an appellate tribunal. Failure to assert issues and arguments "within a reasonable time" warrants a presumption that the party entitled to assert it either has abandoned or declined to assert it.

3. COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION (SEC); EXERCISES JURISDICTION OVER CORPORATE ENTITIES AND GRANTEES OF PRIMARY FRANCHISES EVEN WITH THOSE OF RELIGIOUS NATURE, SUSTAINED. — UCCP and BUCCI, being corporate entities and grantees of primary franchises, are subject to the jurisdiction of the SEC. Section 3 of Presidential Decree No. 902-A provides that SEC shall have absolute jurisdiction, supervision and control over all corporations. Even with their religious nature, SEC may exercise jurisdiction over them in matters that are legal and corporate. BUCCI, as a juridical entity separate and distinct from UCCP, possesses the freedom to determine its steps. x x x The Court owes but recognition to BUCCI's decision as it concerns its legal right as a religious corporation to disaffiliate from another religious corporation *via* legitimate means—a secular matter well within the civil courts' purview.

4. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF A QUASI-JUDICIAL AGENCY; GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY; EXCEPTION; NOT PRESENT IN CASE AT BAR. — Well-settled is the judicial *dictum* that factual findings of quasi-judicial agencies, such as SEC, which have acquired expertise

because their jurisdiction is confined to specific matters, are generally accorded not only respect but even finality. They are binding upon this Court which is not a trier of facts. Only upon clear showing of grave abuse of discretion, or that such factual findings were arrived at arbitrarily or in disregard of the evidence on record will this Court step in and proceed to make its own independent evaluation of the facts. No cogent reason exists in the instant cases to deviate from this settled rule.

5. ID.; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; DOCTRINE OF *LOCUS STANDI*; REQUIREMENT. — The doctrine of *locus standi* or the right of appearance in a court of justice has been adequately discussed by this Court in a number of cases. The doctrine requires a litigant to have a material interest in the outcome of a case. In private suits, *locus standi* requires a litigant to be a "real party in interest," which is defined as "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit."

6. ID.; ID.; ID.; REAL PARTY IN INTEREST; DEFINED AND CONSTRUED; NOT PRESENT IN CASE AT BAR. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. And by real interest is meant a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest. A suit may be dismissed if the plaintiff or the defendant is not a real party in interest. After a review of the evidence on record, the SEC, which the Court of Appeals affirmed, correctly ruled that UCCP, not being a member of BUCCI, is not the proper party to question the validity of the amendments of the latter's Articles of Incorporation and By-laws. While UCCP stands to be affected by the disaffiliation, the same is admitted and accepted by UCCP's polity by the very establishment of its liberal structure.

APPEARANCES OF COUNSEL

Merari D. Dadula for petitioner.

Angara Abello Concepcion Regala & Cruz and *Paulino B. Labrado* for respondents.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 83159 which affirmed the Securities and Exchange Commission[2] (SEC) Decision[3] in SEC Case No. C-00194.

Petitioner United Church of Christ in the Philippines, Inc. (UCCP) is a religious corporation duly organized and existing under the laws of the Philippines. It is a national confederation of incorporated and unincorporated self-governing Evangelical churches of different denominations, devised for fellowship, mutual counsel and cooperation. It is the ecclesiastical successor of the Evangelical Church of the Philippines, the Philippine Methodist Church and the United Evangelical Church of the Philippines.[4]

Respondent Bradford United Church of Christ, Inc. (BUCCI), formerly known as Bradford Memorial Church, is likewise a religious corporation with a personality separate and distinct from UCCP. It was organized at the turn of the 20th century but it was incorporated only on 14 December 1979.

Respondents Patrizio Ezra, Geronimo Nazareth, Ruperto Mayuga, Sr., Robert Schaare, Henry Cariat, Reynaldo Ferrenal and other John Does are members of BUCCI.

The following historical background briefly summarizes the relationship between UCCP and BUCCI, *viz*:

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[1] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr., concurring. *Rollo*, pp. 39-48.

[2] Comprised of Chairperson Lilia R. Bautista and Commissioners Fe Eloisa C. Gloria and Joselia J. Poblador.

[3] Dated 27 January 2004. *Rollo*, pp. 60-74.

[4] *Id.* at 40.

On May 25, 1948, The United Church of Christ in the Philippines, Inc. was formally organized. The five ancestor churches were the Methodist Episcopal Church, the Presbyterian Church, the Church of Christ (Disciples) and the Congregational Churches. These churches traced their lineage back to the early Christian Church.

Early on, at the turn of the century, the proponents of these churches came as missionaries, spreading the faith as ardent offsprings of the Reformation. Aimed at converting Roman Catholics, Buddhists, Hindus and spirit worshippers to the Protestant faith, these missionaries had organized the Evangelical Union by 1901, until it was superseded by a forerunner of the National Council of Churches in the Philippines.

During th[o]se times, the precursor of Bradford Memorial Church, the Presbyterian mission came to the Philippines. It was organized by the early missionaries of the Presbyterian Church in the U.S.A. through its Board of Foreign Missions. In 1909, it was alleged to have acquired real properties in the Philippines funded by one Matilda R. L. Bradford from whom the congregation attributed its name, in recognition of her efforts for the church.

While not all churches in the Evangelical Union were equally strong in their desire for organic church union, such remained as a goal of the organization. In 1921, it seemed that the plans for the union of the five churches were not to materialize, so the movement widened its activities to include all the Presbyterian churches and the Congregational bodies in the Philippines.

After considerable negotiations, four churches- the Presbyterian, the Congregational, the United Brethren and the United Church of Manila were invited and an assembly was held in Manila. On March 15, 1929, the basis of Union was formally adopted and the United Evangelical Church came into being.

The new church grew in strength from year to year until the Second World War when a division was created in the newly formed Evangelical Church in the Philippines.

In 1946, immediately following the close of World War II, the Presbyterians and Congregationalist Churches in the Visayas and Mindanao region under the Rev. Leonardo Dia reconstituted the United Evangelical Church in the Philippines in those areas. In view of this development, the Bradford Memorial Church transferred its synodical connection to the newly reorganized United Evangelical

Church in the Philippines, and thereafter, carried the name BRADFORD Evangelical Church.

A few years after the war, it was thought wise not to push through with the church union. However, on May 25, 1948, a total of 167 delegates from three church bodies met at Ellinwood-Malate Church. They were the Evangelical Church, a federation of evangelical churches operating in the Luzon area; the Philippine Methodist Church (a split from the United Methodist-Episcopal Church) and the United Evangelical Church in the Philipines, a federation of Presbyterian and Congregationalist churches operating in the Visayas and Mindanao area.

Each body reported that its constituted divisions had voted to accept the basis of Union and to join the new church. So on May 23-25, 1945, these three major churches convened, organized and declared the new federation of evangelical churches.

Thus, the United Church of Christ in the Philippines, Inc. or UCCP was born from the union of these three major churches. Finally, on April 12, 1949, the UCCP was registered with the Commission.

Thus, by circumstance, the Bradford Evangelical Church transferred its synodical connection to and became a constituent Church of the UCCP.

Through the years the UCCP underwent major changes. Per its Constitution published in April of 1980, it was apportioned into several Conferences, delineated according to geographical areas as determined by the General Assembly. Most of its local congregations and conferences were also registered as separate entities for greater autonomy such as the Cebu Conference Inc. and Bradford United Church of Christ, Inc.

On December 14, 1979, Bradford United Church of Christ, Inc. (BUCCI) was incorporated as a personality separate and distinct from UCCP. Registered under SEC. Reg. No. 90225, its Articles of Incorporation declare Bradford United Church of Christ as a Protestant Congregation. Among its original incorporators are herein Respondents Patricio Ezra, Robert Schaare and Geronimo V. Nazareth. Furthermore, Article 3 of its original articles of incorporation provides:

> That its incorporation is not forbidden by competent authorities or by the Constitution, rules, regulations or discipline

of the United Church of Christ in the Philippines and that of the Bradford United Church of Christ.[5]

UCCP has three (3) governing bodies namely: the General Assembly, the Conference and the Local Church, each having distinct and separate duties and powers. As a UCCP local church located in Cebu, BUCCI belonged to the Cebu Conference Inc. (CCI) with whom it enjoyed peaceful co-existence until late 1989 when BUCCI started construction of a fence that encroached upon the right-of way allocated by UCCP for CCI and Visayas jurisdiction.[6]

UCCP General Assembly attempted to settle the dispute. On 7 April 1990, the Cebu Conference Judicial Commission rendered a decision in favor of CCI.[7] This unfavorable decision triggered a series of events[8] which further increased the enmity between the parties and led to the formal break-up of BUCCI from UCCP.[9]

In a Church Council Resolution dated 21 June 1992, BUCCI disaffiliated from UCCP. The effectivity of the disaffiliation was made to retroact to 16 September 1990 when BUCCI severed its ties from CCI. This disaffiliation was duly ratified by BUCCI's members in a referendum held on 19 July 1992.[10]

Consequently, BUCCI filed its Amended Articles of Incorporation and By-Laws which provided for and effected its disaffiliation from UCCP. SEC approved the same on 2 July 1993.[11]

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[5] *Id.* at 61-63.

[6] *Id.* at 359.

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

[8] First, Rev. Patricio Ezra, the Administrative Pastor and spiritual leader of Bradford was stripped of his authority to administer the sacraments. Second, An Unlawful Detainer Case was filed by UCCP and CCI against BUCCI and Ezra, *et al*. before the MTC-Cebu. On the other side of the conflict, a labor case was filed by Respondent Ezra against UCCP. *Id.* at 360.

[9] *Id*.

[10] *Id*.

[11] *Id*.

Thereafter, UCCP filed before SEC a complaint/protest for rejection/annulment of Amended Articles and Incorporation and Injunction, docketed as SEC Case No. C-00194. UCCP also prayed for the disallowance of the continued use of BUCCI as corporate name.[12]

UCCP later on filed an Amended Complaint/Protest dated 8 March 1994, abandoning the original Complaint/Protest. The Amended Complaint/Protest added BUCCI as one of the respondents; alleged that the separate incorporation and registration of BUCCI is not allowed under the UCCP Constitution and By-laws; and sought to enjoin BUCCI and the respondents from using the name BUCCI, both in its Amended Articles of Incorporation and its dealings with the public, and from using its properties.[13]

On 27 January 2004, the SEC *en banc* dismissed UCCP's petition to declare as null and void the amendments made to the Articles of Incorporation of BUCCI. SEC summarized UCCP's arguments into three main issues, as follow:

1. Whether or not the separation of [BUCCI] from [UCCP] is valid;

2. Whether or not the amendments to the Articles of Incorporation and By-Laws of BUCCI made after it separated from UCCP are valid; [and]

3. Whether or not private respondents are entitled to the use of the name "Bradford United Church of Christ, Inc."(BUCCI).[14]

SEC defended the right of BUCCI to disassociate itself from UCCP in recognition of its constitutional freedom to associate and disassociate. SEC also pointed out that since UCCP had used the fact of BUCCI's disaffiliation to consolidate its claim over the property subject of the unlawful detainer case against BUCCI before the RTC, UCCP cannot now deny the validity

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[12] *Id.* at 64.

[13] *Id.* at 363.

[14] *Id.* at 64-65.

of said disaffiliation. Moreover, SEC found that UCCP is not the real party in interest to question the amendments made by BUCCI to its Articles of Incorporation and By-Laws. Finally, SEC upheld the right of BUCCI to continue using its corporate name.

UCCP filed a petition for review with the Court of Appeals. On 17 June 2005, the Court of Appeals rendered a Decision affirming the SEC.

On 16 September 2005, UCCP filed a motion to drop BUCCI as respondent.[15]

Its motion for reconsideration having been denied on 21 February 2006,[16] UCCP filed the present appeal.

UCCP maintains that the issue on whether the disaffiliation of respondents is valid is purely an ecclesiastical affair. It asserts that it has the sole power and authority to declare and/or decide whether BUCCI or any of its local churches could disaffiliate from it.[17] UCCP likewise restates that individual respondents cannot validly effect amendments to BUCCI's Articles and By-Laws nor to continue the use of BUCCI's name after they have disaffiliated from UCCP. Moreover, UCCP asseverates that the stringent requirements of the Corporation Code to effect amendments have not been satisfied.[18] UCCP also refutes the holding that BUCCI no longer forms part of UCCP because the latter had filed several cases against the former. UCCP explains that the above-mentioned cases had been filed against individual respondents, and not against BUCCI; and the inclusion of BUCCI's name in said cases were merely circumstantial because at the time those cases were filed, individual respondents were still acting and sabotaging the operation of BUCCI.[19] Lastly, UCCP criticizes SEC for its

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

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

[17] *Id.* at 22 and 24.

[18] *Id.* at 27-33.

[19] *Id.* at 35.

finding that UCCP has no legal personality to prosecute the case before it. UCCP asserts that individual respondents were its former members and BUCCI, the entity involved, is its member-local church.[20]

Respondents,[21] on the other hand, counter that UCCP's new theory—that the determination of membership to UCCP is a purely ecclesiastical affair—is not and cannot be allowed at this late stage of the proceedings.[22] They maintain that the Court of Appeals and SEC are correct in ruling that BUCCI had validly disaffiliated from UCCP and is entitled to continue in the use of its name.[23] As their third point, respondents assert that the Court of Appeals and SEC's finding that UCCP had no legal personality to question the validity of the amendments to BUCCI's Articles and By-laws, is in accord with law and settled jurisprudence.[24] Finally, they point out that the petition should be dismissed outright for failure to comply with the mandatory requirements of Rule 45 of the 1997 Rules of Civil Procedure.[25]

The Court denies the Petition.

The issue is not a purely ecclesiastical affair

Notably, UCCP invoked the jurisdiction of SEC when it submitted for resolution the following issues:

1. Whether or not BUCCI is an organic component of UCCP subject to the latter's Constitution and By-laws;
2. Whether or not the referendum conducted by respondents on July and November 1992 were valid;
3. Whether or not the supposed separation of BUCCI from UCCP is valid;

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

[21] Memorandum dated 19 April 2007, *id.* at 347-410.

[22] *Id.* at 372-381.

[23] *Id.* at 381-391.

[24] *Id.* at 391-395.

[25] *Id.* at 395-409.

4. Whether or not the amendment of the Articles of Incorporation and By-laws of BUCCI is valid;

5. Whether or not private respondents are entitled to the use of the name "BUCCI"; and

6. Whether or not the use of the name "BUCCI" is confusingly similar with UCCP.[26]

Before the Court of Appeals, UCCP cited the following as grounds for review:

I. The SEC committed serious reversible error in upholding as valid the amendments to the constitution and by-laws of BUCCI when there was absolutely no evidence proving that the strict requirements for amendments provided *(sic)* for under the new Corporation Code were complied with;

II. The SEC committed serious reversible error in disregarding both testimonial and documentary evidence of the petitioner proving that respondent did not comply with the proper notice, deliberation of the issues and the 2/3 vote requirement for validity of the amendments of its articles of incorporation;

III. The SEC committed serious reversible error in holding that petitioner UCCP does not have the legal standing to question the amendments made to BUCCI's articles of incorporation and by-laws after the latter's separation from the petitioner. Petitioner's legal standing to file the case had never been the issue of the case from the time of its filing, during the pre-trial conference, during the trial on the merits, and in the respective memorandum filed by the parties in this case; and

IV. The SEC committed serious reversible error in upholding respondents' continued use of the name BUCCI when in fact individual respondents by their very own acts have expelled themselves from membership of the UCCP and its local church the BUCCI.[27]

Failing to obtain favorable judgment from the SEC and the Court of Appeals, UCCP now comes before the Court posing

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[26] *Id.* at 374.

[27] *Id.* at 375.

ostensibly a question of law, that the determination of membership in UCCP is a purely ecclesiastical affair, which theory strips SEC and the Court of Appeals of any authority to rule on the issues voluntarily submitted to them by UCCP itself for resolution.

Basic is the rule that a party cannot be allowed to invoke the jurisdiction of a court to secure affirmative relief and later on renounce or repudiate the same after it fails to obtain such relief.[28] After voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court. The Court frowns upon the undesirable practice of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse.[29]

The Court has likewise consistently rejected the pernicious practice of shifting to a new theory on appeal in the hope of a favorable result. Fair play, justice and due process require that as a rule new matters cannot be raised for the first time before an appellate tribunal.[30] Failure to assert issues and arguments "within a reasonable time" warrants a presumption that the party entitled to assert it either has abandoned or declined to assert it.[31]

In any event, the Court believes that the matter at hand is not purely an ecclesiastical affair.

An ecclesiastical affair is one that concerns doctrine, creed or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations

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[28] *Huertas v. Gonzalez*, 491 Phil. 441, 454 (2005); *Atlantic Erectors, Inc. v. Herbal Cove Realty Corporation*, 447 Phil. 531, 548 (2003).

[29] *Cloma v. Court of Appeals*, G.R. No. 100153, 2 August 1994, 234 SCRA 665, 673.

[30] *Tan Chun Suy v. Court of Appeals*, G.R. No. 93640, 7 January 1994, 229 SCRA 151, 165.

[31] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 346 (2005).

for the government of the membership, and the power of excluding from such associations those deemed unworthy of membership.[32] Based on this definition, an ecclesiastical affair involves the relationship between the church and its members and relate to matters of faith, religious doctrines, worship and governance of the congregation. To be concrete, examples of this so-called ecclesiastical affairs to which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other activities attached with religious significance.[33]

In the first place, relief from civil courts was sought when the incident of disaffiliation occurred, in the face of UCCP's assertions that it continues to recognize BUCCI as one of its local churches and that it has the sole authority to determine the validity of the disaffiliation.

Secondly, intertwined with the issue of the validity of the disaffiliation is the question of whether BUCCI had the power under the law to effect disaffiliation such that it should be given legal consequence and granted recognition.

UCCP and BUCCI, being corporate entities and grantees of primary franchises, are subject to the jurisdiction of the SEC. Section 3 of Presidential Decree No. 902-A provides that SEC shall have absolute jurisdiction, supervision and control over all corporations. Even with their religious nature, SEC may exercise jurisdiction over them in matters that are legal and corporate.[34]

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[32] *Pastor Austria v. National Labor Relations Commission*, 371 Phil. 340, 353 (1999).

[33] *Id.*

[34] See 76 CJS 738 (as cited in Respondents' Memorandum, *Rollo*, pp. 377-378) which states that religious corporations has two entities: legal corporation and the religious association; See *Gonzalez v. Roman Catholic Archbishop of Manila*, 51 Phil. 420 (1928) citing the rule formulated by the Court of Appeals of South Carolina in the case of *Harmon v. Dreher* (Speers Eq., 87), to the effect that: Where a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right and nothing more, taking the ecclesiastical decisions out of which

BUCCI, as a juridical entity separate and distinct from UCCP, possesses the freedom to determine its steps.

UCCP's statement in its memorandum- "[w]here else can petitioner seek protection and relief x x x?"[35] – is particularly telling. That UCCP sees the need to turn to a body for relief is an admission that its authority over BUCCI is not absolute and is actually more tenuous than alleged.

Thus, UCCP cannot rely on the Court's ruling as restated in *Long v. Basa*,[36] that "in matters purely ecclesiastical, the decisions of the proper church tribunals are conclusive upon the civil tribunals."[37] If in the case at bar, even with its highest executive official's pronouncement that BUCCI is still recognized as its member-church,[38] UCCP could not compel BUCCI to go back to its fold, then the alleged absolute ecclesiastical authority must not be there to begin with.

In fact, *Long* may be viewed as supportive of respondents' case. Said case involved a church's sole prerogative and power

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the civil right has arisen as it finds them, and accepting those decisions as matters adjudicated by another jurisdiction. The proposition thus stated in *Harmon v. Dreher* has subsequently been considered from different points of view by many able courts, and it has uniformly been looked upon as a sound and correct statement of the law in cases where it is of proper application. Among decisions in which said rule has been quoted with approval are *Watson v. Jones* (13 Wall 679; 20 Law. ed., 666); *Lamb v. Cain* (129 Ind., 486; 14 L. R. A., 518; 29 N. E., 13); and *White Lick Quarterly Meeting of Friends v. White Lick Quarterly Meeting of Friends* (89 Ind., 136). This case also states that courts have learned the lesson of conservatism in dealing with such matters, it having been found that, in a form of government where the complete separation of civil and ecclesiastical authority is insisted upon, the civil courts must not allow themselves to intrude unduly in matters of an ecclesiastical nature.

[35] *Rollo*, p. 331.

[36] 418 Phil. 375 (2001).

[37] *Id.* at 397 citing *United States v. Canete*, 38 Phil. 253 (1918).

[38] UCCP General Secretary Bishop Hilario Gomez stated that: The secession of BUCCI is not sanctioned by the national leadership of the UCCP and that the UCCP still recognizes BUCCI as its member but with a different set of officers led by Mr. Cedric Bao-as. *Rollo*, pp. 58-59.

to expel its individual members. Similarly, the case at bar concerns BUCCI's sole prerogative and power as a church to disconnect ties with another entity. Such are decisions, that may have religious color and are therefore ecclesiastical affairs, the Court must respect and cannot review. It is worth mentioning that in *Fonacier v. Court of Appeals*,[39] the Court held that the amendments of the constitution, restatement of articles of religion and abandonment of faith or abjuration, having to do with faith, practice, doctrine, form of worship, ecclesiastical law, custom and rule of a church and having reference to the power of excluding from the church those allegedly unworthy of membership, are unquestionably ecclesiastical matters which are outside the province of the civil courts.

Conversely, the Court owes but recognition to BUCCI's decision as it concerns its legal right as a religious corporation to disaffiliate from another religious corporation *via* legitimate means—a secular matter well within the civil courts' purview.

Respondents Validly Effected the Amendments

UCCP contends that respondents have severed their UCCP membership and consequently, have lost their BUCCI membership. As such, they have neither the power to bring about the amendments to BUCCI's Articles of Incorporation nor right to continue the usage of BUCCI's name.

The Church Council Resolution dated 21 June 1992, duly ratified by BUCCI's members in a referendum, carried out BUCCI's corporate act of disaffiliating from UCCP. By virtue of this disaffiliation, BUCCI members, including respondents, severed their ties from UCCP but maintained their membership with BUCCI. UCCP's contention that the severance of UCCP ties amounts to severance of ties to the local church does not hold water.

Local church autonomy takes precedence in the UCCP polity. Section 4 of the 1974 UCCP Constitution provides:

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[39] 96 Phil. 417 (1955) citing (45 Am. Jur. 748-752, 755); restated in *Taruc v. Bishop De la Cruz*, 493 Phil. 293 (2005).

SECTION 4. The autonomy of the local church or congregation in matters pertaining to its life in its own particular community shall be respected, consistent with its relation to the Conference, Jurisdiction, and General Assembly.

According to respondent, UCCP adopted a "congregationalist" system where a local church has the right to govern itself by its own laws, rules and regulations for the furtherance of its own general welfare and the freedom to practice its own faith and polity of denominational origin.[40] This "congregationalist" system was shown in the Basis of Union, the Declaration of Union and UCCP's Constitution and By-laws.

Article IV of the Basis of Union reads:

ARTICLE IV — *Church Practices and Worship*: Congregations may follow their customary practices and worship.[41]

Section 4, Article VI specifically outlines the duties and powers of the local church:

(a) Subject only to the general laws and regulations of the Church, every local church or congregation, shall, with its pastor, be responsible for watching over its members, keeping its life pure, ordering its worship, providing Christian education and

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[40] 66 Am. Jur. 2d Religious Societies § "[i]n a 'congregational' church polity, the local church is independent, autonomous, and the highest authority in all matters of doctrine and usage. Also, it is characterized by its freedom to act in any matter, in accordance with the will of a majority of its membership, conditioned only on rules and procedures prescribed by the internal law of its own constitution and by-laws." *See Viravonga v. Samakitham*, 372 Ark. 562, 279 S.W. 3d 44 (2008); *Central Coast Baptist Ass'n. v. First Baptist Church of Las Lomas*, 171 Cal. App. 4th 822, 65 Cal. Rptr. 3d 100 (6th Dist. 2007), review granted and opinion superseded on other grounds, 68 Cal. Rptr. 3d 274, 171 P. 3d 2 (Cal. 2007) and dismissed, remanded and ordered published, 90 Cal. Rptr. 3d 701, 202 P. 3d 1089 (Cal. 2009); *Rector, Wardens and Vestrymen of Christ Church in Savannah v. Bishop of Episcopal Diocese of Georgia, Inc.*, 305 Ga. App. 87, 699 S.E. 2d 45 (2010), cert. granted, (Jan. 13, 2011); *Bridgeforth v. Thornton*, 847 N.E. 2d 1015 (Ind. Ct. App. 2006); *Seldon v. Singletary*, 284 S.C. 148, 326 S.E. 2d 147 (1985).

[41] Records, Folder 3, p. 1260.

> proclaiming the Gospel[;] (b) Call a Pastor[;] (c) Recommend candidates for the ministry[;] (d) Elect delegates to the Annual Conference.[42]

Statement IV of Declaration of Union provides:

> That by adoption of the name "UNITED CHURCH OF CHRIST IN THE PHILIPPINES" for this Church Union, no right, interest, or title in and to their respective names by which the uniting Churches have been identified and known, has been nor is surrendered, but all such rights are specifically reserved against the claims of all persons, associations and organizations whatsoever.[43]

As a matter of fact, the present UCCP Constitution[44] and By-laws continue to uphold this tradition of respecting local church autonomy. The 2005 UCCP Amended Constitution provides in Article II, Section 14:

> Consistent with the heritage and commitment of the United Church of Christ in the Philippines, the autonomy of the Local Church shall be respected. The scope of such autonomy shall be defined in the By-Laws.

Section 28, Article III of the UCCP By-laws provides:

> Section 28. Scope of Local Autonomy: The primary locus of mission is the Local Church. Hence, the UCCP upholds the autonomy of the Local Church particularly as to its right and power to conduct its ministry free from outside control, provided the same is in line with the Constitution, By-Laws and statues of the Church, thereby enabling the Local Church to become effective instrument in the ministry and mission of the Church and ensuring its positive contribution to the unity and strengthening of the whole Church. Specifically, autonomy of the Local Church includes the authority to do the following:
>
> a. To call and support its Pastor and other Church workers, keeping in mind the basic policy of the Church to call to its ministry pastors and Church workers belonging to

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[42] *Id.* at 1259-1260.

[43] *Id.* at 1256.

[44] As amended in 2005.

the UCCP, subscribing to the UCCP Statement of Faith and paying allegiance to the Constitution, By-Laws and statutes of the Church. Pastors, ministers and workers of other churches affiliated with the National Council of Churches in the Philippines (NCCP) may be requested to serve in the Local Church with the prior written permission of the General Assembly or the National Council, through the General Secretary;

b. To administer, maintain, encumber or dispose of its personal or real properties pursuant to a resolution of its Board of Trustees and approved by its Church Council and, where real properties are involved, with the written consent of the General Assembly or the National Council, through the General Secretary;

c. To invite pastors, ministers, workers and lay leaders of other churches to speak, preach or otherwise enter into fellowship with the Local Church, from time to time, in consonance with Article II, Section 6, of the Constitution, provided that the authority and integrity of the UCCP, as well as the unity of the Local Church, shall never be impaired or compromised;

d. To nominate and elect its officers, in accordance with the Constitution and By-Laws, and hold annual and such special meetings as it may deem necessary and proper;

e. To admit qualified persons into the membership of the Local Church, help ensure their nurture and spiritual development, and promote and develop among them the idea of loving service, stewardship and missionary outreach;

f. To celebrate its worship services that are orderly and solemn, yet joyful and meaningful, reflective of the faith and life of the Church and responsive to the needs of the community in terms of witness, service and prophetic ministry;

g. To support the ministerial and lay formation program of the Church and recruit, recommend and support candidates for the ministry;

h. To adopt its own budget and financial program and fulfill its obligations to the wider bodies; and

i. To do all things as it may deem wise, necessary and proper, without encroaching on the prerogatives of, and interfering with, the wider Church bodies, ensuring at all times that its action contribute to the unity and strengthening of the whole UCCP.

From the foregoing it can be gleaned that: UCCP's control and authority over its local churches is not full and supreme; membership of the local churches in the UCCP is voluntary and not perpetual; local churches enjoy independence and autonomy and may maintain or continue church-life with or without UCCP.

Thus, under the law and UCCP polity, BUCCI may validly bring about its disaffiliation from UCCP through the amendment of its Articles of Incorporation and By-laws.

Significantly, SEC approved the amendments on 2 July 1993, which approval has in its favor the presumption of regularity.[45] Government officials are presumed to have regularly performed their functions and strong evidence is necessary to rebut this presumption.[46] In the absence of convincing proof to the contrary, the presumption must be upheld.[47]

More importantly, well-settled is the judicial *dictum* that factual findings of quasi-judicial agencies, such as SEC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but even finality.

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[45] Section 3(m), Rule 131 of the Rules on Evidence, provides:

SEC. 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(m) That official duty has been regularly performed;

[46] *Autencio v. City Administrator Mañara*, 489 Phil. 752, 758 (2005).

[47] *People v. Roldan*, G.R. No. 98398, 6 July 1993, 224 SCRA 536, 543.

They are binding upon this Court which is not a trier of facts. Only upon clear showing of grave abuse of discretion, or that such factual findings were arrived at arbitrarily or in disregard of the evidence on record will this Court step in and proceed to make its own independent evaluation of the facts. No cogent reason exists in the instant cases to deviate from this settled rule.[48]

Anent the continued use by respondents of BUCCI, the Court likewise sustains the rulings of SEC and Court of Appeals. Pertinently, the Court of Appeals ruled as follows:

> As held in *Philips Export B.V. vs. Court of Appeals* [206 SCRA 457, 463], to fall within the prohibition of the law, two requisites must be proven, to wit: (1) that the complainant corporation acquired a prior right over the use of such corporate name; and (2) the proposed name is either: (a) identical, or (b) deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law; or (c) patently deceptive, confusing or contrary to existing law.
>
> The respondent BUCCI's church history would show that it has a better right to use its corporate name on the ground of priority of adoption. As thoroughly discussed by the SEC in its assailed decision, the evolution of respondent BUCCI to what it is today undoubtedly establishes that it had acquired the right to make use of its corporate name.
>
> As to whether or not BUCCI is confusingly or deceptively similar to UCCP, We find in the negative. In determining the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person using ordinary care and discrimination.[49]

Furthermore, Section 2, Article I of the UCCP Constitution[50] states that, "All local churches and church-owned entities shall bear prominently the name: United Church of Christ in the

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[48] *Columbus Philippine Bus Corporation v. National Labor Relations Commission,* 417 Phil. 81, 99 (2001).

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

[50] UCCP 1996 Constitution.

Philippines." For this reason, BUCCI is evidently distinct from UCCP and from all other UCCP local churches and church-owned entities.

SEC and Court of Appeals correctly ruled that UCCP has no locus standi to question the amendments to BUCCI's Articles of Incorporation and By-laws.

The doctrine of *locus standi* or the right of appearance in a court of justice has been adequately discussed by this Court in a number of cases. The doctrine requires a litigant to have a material interest in the outcome of a case. In private suits, *locus standi* requires a litigant to be a "real party in interest," which is defined as "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit."[51]

A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. And by real interest is meant a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest.[52]

A suit may be dismissed if the plaintiff or the defendant is not a real party in interest.[53]

After a review of the evidence on record, the SEC, which the Court of Appeals affirmed, correctly ruled that UCCP, not being a member of BUCCI, is not the proper party to question the validity of the amendments of the latter's Articles of Incorporation and By-laws. While UCCP stands to be affected by the disaffiliation, the same is admitted and accepted by UCCP's polity by the very establishment of its liberal structure.

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[51] *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, 14 March 2008, 548 SCRA 485, 501-502.

[52] *Shipside, Inc. v. Court of Appeals*, 404 Phil. 981, 998 (2001) citing *Ibonilla v. Province of Cebu*, G.R. No. 97463, 26 June 1992, 210 SCRA 526, 529-530.

[53] *Tanpingco v. Intermediate Appellate Court*, G.R. No. 76225, 31 March 1992, 207 SCRA 652, 656-567.

Petition failed to comply with the mandatory requirements of Rule 45 of the 1997 Rules of Civil Procedure

We highlight the fact that when UCCP filed the original complaint before the SEC, only individual respondents were impleaded. UCCP then amended the complaint to include BUCCI, only to drop it as respondent after the Court of Appeals promulgated its Decision, purportedly to show that it was merely going after individual respondents. We agree with respondents that failure to implead BUCCI as respondent in the instant case constitutes a blatant disregard of Section 4(a), Rule 45 of the Rules of Court,[54] but also renders the assailed decision final and executory and all subsequent actions on the petition are void considering that BUCCI is an indispensable party.[55] We cannot countenance this disingenuous practice of shifting to a new theory on appeal in the hope of obtaining a favorable result.[56]

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[54] Sec. 4. Contents of petition. – The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) **state the full name of the appealing party as the petitioner and the adverse party as respondent**, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. (Emphasis supplied).

[55] *Rollo*, p. 395.

[56] *Rizal Commercial Banking Corporation v. Marcopper Mining Corporation*, G.R. No. 170738, 30 October 2009, 604 SCRA 719, 731 citing *Big AA Manufacturer v. Antonio*, 519 Phil. 30, 39 (2006).

Essentially, the three main issues raised by UCCP before the SEC and the Court of Appeals[57] are the very same issues presented for our resolution. Finding no serious errors to warrant a reversal of the assailed Decision, We affirm.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals dated 17 June 2005 is hereby **AFFIRMED.**

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 174156. June 20, 2012]

FILCAR TRANSPORT SERVICES, *petitioner, vs.* **JOSE A. ESPINAS,** *respondent.*

SYLLABUS

1. CIVIL LAW; QUASI-DELICT; ONE IS ONLY RESPONSIBLE FOR HIS OWN ACT OR OMISSION, AS A RULE; EXCEPTION, THE EMPLOYER WHO IS HELD LIABLE FOR THE NEGLIGENT ACT OR OMISSION COMMITTED BY HIS EMPLOYEE. — As a general rule, one is only responsible for his own act or omission. Thus, a person will generally be held liable only for the torts committed by himself and not by another. This general rule is laid down in Article 2176 of the Civil Code. x x x Based on the above-cited article, the obligation to indemnify another for damage

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[57] (1) Whether the disaffiliation by BUCCI from UCCP is valid; (2) Whether the amendments made on the Articles and By-Laws by individual respondents are valid; and (3) Whether BUCCI may continue to use its corporate name. *Rollo,* pp. 64-65.

caused by one's act or omission is imposed upon the tortfeasor himself, *i.e.*, the person who committed the negligent act or omission. The law, however, provides for exceptions when it makes certain persons liable for the act or omission of another. x x x Under Article 2176, in relation with Article 2180, of the Civil Code, an action predicated on an employee's act or omission may be instituted against the employer who is held liable for the negligent act or omission committed by his employee.

2. ID.; ID.; MOTOR VEHICLE MISHAPS; THE REGISTERED OWNER OF THE MOTOR VEHICLE IS CONSIDERED AS THE EMPLOYER OF THE TORTFEASOR-DRIVER; LIABILITY, EXPLAINED. — It is well settled that in case of motor vehicle mishaps, **the registered owner of the motor vehicle is considered as the employer of the tortfeasor-driver**, and is made primarily liable for the tort committed by the latter under Article 2176, in relation with Article 2180, of the Civil Code. In *Equitable Leasing Corporation v. Suyom*, we ruled that in so far as third persons are concerned, **the registered owner of the motor vehicle is the employer of the negligent driver, and the actual employer is considered merely as an agent of such owner.**

3. ID.; ID.; ID.; A REGISTERED OWNER IS VICARIOUSLY LIABLE FOR DAMAGES CAUSED BY THE OPERATION OF HIS MOTOR VEHICLE; RATIONALE. — The rationale for the rule that a registered owner is vicariously liable for damages caused by the operation of his motor vehicle is explained by the principle behind motor vehicle registration, which has been discussed by this Court in *Erezo*, and cited by the CA in its decision. x x x Thus, whether there is an employer-employee relationship between the registered owner and the driver is irrelevant in determining the liability of the registered owner who the law holds *primarily and directly responsible* for any accident, injury or death caused by the operation of the vehicle in the streets and highways. As explained by this Court in *Erezo*, the general public policy involved in motor vehicle registration is the protection of innocent third persons who may have no means of identifying public road malefactors and, therefore, would find it difficult – if not impossible – to seek redress for damages they may sustain in accidents resulting in deaths, injuries and other

damages; by fixing the person held primarily and directly liable for the damages sustained by victims of road mishaps, the law ensures that relief will always be available to them.

4. ID.; ID.; ID.; ID.; REMEDY OF THE REGISTERED OWNER AGAINST THE ACTUAL EMPLOYER OF THE DRIVER AND THE DRIVER HIMSELF, JUSTIFIED; CASE AT BAR.— While Republic Act No. 4136 or the Land Transportation and Traffic Code does not contain any provision on the liability of registered owners in case of motor vehicle mishaps, Article 2176, in relation with Article 2180, of the Civil Code imposes an obligation upon Filcar, as registered owner, to answer for the damages caused to Espinas' car. This interpretation is consistent with the strong public policy of maintaining road safety, thereby reinforcing the aim of the State to promote the responsible operation of motor vehicles by its citizens. This does not mean, however, that Filcar is left without any recourse against the actual employer of the driver and the driver himself. Under the civil law principle of *unjust enrichment*, the registered owner of the motor vehicle has a right to be indemnified by the actual employer of the driver of the amount that he may be required to pay as damages for the injury caused to another.

APPEARANCES OF COUNSEL

Ferdinand M. Jose for petitioner.
Law Firm of Espinas & Associates for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the present petition for review on *certiorari*[1] filed by petitioner Filcar Transport Services (*Filcar*), challenging the decision[2] and the resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 86603.

[1] Filed under Rule 45 of the Revised Rules of Court; *rollo*, pp. 10-19.

[2] Dated February 16, 2006; penned by Associate Justice Rosalinda Asuncion-Vicente, and concurred in by Associate Justices Edgardo P. Cruz and Sesinando E. Villon. *Id.* at 21-28.

[3] Dated July 6, 2006, *id.* at 30-31.

The facts of the case, gathered from the records, are briefly summarized below.

On November 22, 1998, at around 6:30 p.m., respondent Jose A. Espinas was driving his car along Leon Guinto Street in Manila. Upon reaching the intersection of Leon Guinto and President Quirino Streets, Espinas stopped his car. When the signal light turned green, he proceeded to cross the intersection. He was already in the middle of the intersection when another car, traversing President Quirino Street and going to Roxas Boulevard, suddenly hit and bumped his car. As a result of the impact, Espinas' car turned clockwise. The other car escaped from the scene of the incident, but Espinas was able to get its plate number.

After verifying with the Land Transportation Office, Espinas learned that the owner of the other car, with plate number UCF-545, is Filcar.

Espinas sent several letters to Filcar and to its President and General Manager Carmen Flor, demanding payment for the damages sustained by his car. On May 31, 2001, Espinas filed a complaint for damages against Filcar and Carmen Flor before the Metropolitan Trial Court (*MeTC*) of Manila, and the case was raffled to Branch 13. In the complaint, Espinas demanded that Filcar and Carmen Flor pay the amount of ₱97,910.00, representing actual damages sustained by his car.

Filcar argued that while it is the registered owner of the car that hit and bumped Espinas' car, the car was assigned to its Corporate Secretary Atty. Candido Flor, the husband of Carmen Flor. Filcar further stated that when the incident happened, the car was being driven by Atty. Flor's personal driver, Timoteo Floresca.

Atty. Flor, for his part, alleged that when the incident occurred, he was attending a birthday celebration at a nearby hotel, and it was only later that night when he noticed a small dent on and the cracked signal light of the car. On seeing the dent and the crack, Atty. Flor allegedly asked Floresca what happened, and the driver replied that it was a result of a "hit and run" while

the car was parked in front of Bogota on Pedro Gil Avenue, Manila.

Filcar denied any liability to Espinas and claimed that the incident was not due to its fault or negligence since Floresca was not its employee but that of Atty. Flor. Filcar and Carmen Flor both said that they always exercised the due diligence required of a good father of a family in leasing or assigning their vehicles to third parties.

The MeTC Decision

The MeTC, in its decision dated January 20, 2004,[4] ruled in favor of Espinas, and ordered Filcar and Carmen Flor, jointly and severally, to pay Espinas ₱97,910.00 as actual damages, representing the cost of repair, with interest at 6% per annum from the date the complaint was filed; ₱50,000.00 as moral damages; ₱20,000.00 as exemplary damages; and ₱20,000.00 as attorney's fees. The MeTC ruled that Filcar, as the registered owner of the vehicle, is primarily responsible for damages resulting from the vehicle's operation.

The RTC Decision

The Regional Trial Court (*RTC*) of Manila, Branch 20, in the exercise of its appellate jurisdiction, affirmed the MeTC decision.[5] The RTC ruled that Filcar failed to prove that Floresca was not its employee as no proof was adduced that Floresca was personally hired by Atty. Flor. The RTC agreed with the MeTC that the registered owner of a vehicle is directly and primarily liable for the damages sustained by third persons as a consequence of the negligent or careless operation of a vehicle registered in its name. The RTC added that the victim of recklessness on the public highways is without means to discover or identify the person actually causing the injury or damage. Thus, the only recourse is to determine the owner, through the vehicle's registration, and to hold him responsible for the damages.

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[4] *Id.* at 71-78.

[5] *Id.* at 52-57.

The CA Decision

On appeal, the CA partly granted the petition in CA-G.R. SP No. 86603; it modified the RTC decision by ruling that Carmen Flor, President and General Manager of Filcar, is not personally liable to Espinas. The appellate court pointed out that, subject to recognized exceptions, the liability of a corporation is not the liability of its corporate officers because a corporate entity – subject to well-recognized exceptions – has a separate and distinct personality from its officers and shareholders. Since the circumstances in the case at bar do not fall under the exceptions recognized by law, the CA concluded that the liability for damages cannot attach to Carmen Flor.

The CA, however, affirmed the liability of Filcar to pay Espinas damages. According to the CA, even assuming that there had been no employer-employee relationship between Filcar and the driver of the vehicle, Floresca, the former can be held liable under the registered owner rule.

The CA relied on the rule that the registered owner of a vehicle is directly and primarily responsible to the public and to third persons while the vehicle is being operated. Citing *Erezo, et al. v. Jepte*,[6] the CA said that the rationale behind the rule is to avoid circumstances where vehicles running on public highways cause accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. In *Erezo,* the Court said that the main aim of motor vehicle registration is to identify the owner, so that if a vehicle causes damage or injury to pedestrians or other vehicles, responsibility can be traced to a definite individual and that individual is the registered owner of the vehicle.[7]

The CA did not accept Filcar's argument that it cannot be held liable for damages because the driver of the vehicle was not its employee. In so ruling, the CA cited the case of *Villanueva v. Domingo*[8] where the Court said that the question of whether

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[6] 102 Phil. 103 (1957).

[7] *Id.* at 108.

[8] 481 Phil. 837, 851 (2004).

the driver was authorized by the actual owner is irrelevant in determining the primary and direct responsibility of the registered owner of a vehicle for accidents, injuries and deaths caused by the operation of his vehicle.

Filcar filed a motion for reconsideration which the CA denied in its Resolution dated July 6, 2006.

Hence, the present petition.

The Issue

Simply stated, the issue for the consideration of this Court is: whether Filcar, as registered owner of the motor vehicle which figured in an accident, may be held liable for the damages caused to Espinas.

Our Ruling

The petition is without merit.

Filcar, as registered owner, is deemed the employer of the driver, Floresca, and is thus vicariously liable under Article 2176 in relation with Article 2180 of the Civil Code

It is undisputed that Filcar is the registered owner of the motor vehicle which hit and caused damage to Espinas' car; and it is on the basis of this fact that we hold Filcar primarily and directly liable to Espinas for damages.

As a general rule, one is only responsible for his own act or omission.[9] Thus, a person will generally be held liable only for the torts committed by himself and not by another. This general rule is laid down in Article 2176 of the Civil Code, which provides to wit:

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

[9] Hector S. de Leon and Hector M. de Leon, Jr., *Comments and Cases on Torts and Damages* (2004), p. 329.

contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Based on the above-cited article, the obligation to indemnify another for damage caused by one's act or omission is imposed upon the tortfeasor himself, *i.e.*, the person who committed the negligent act or omission. The law, however, provides for exceptions when it makes certain persons liable for the act or omission of another.

One exception is an employer who is made vicariously liable for the tort committed by his employee. Article 2180 of the Civil Code states:

> Article 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> x x x x x x x x x
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> x x x x x x x x x
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Under Article 2176, in relation with Article 2180, of the Civil Code, an action predicated on an employee's act or omission may be instituted against the employer who is held liable for the negligent act or omission committed by his employee.

Although the employer is not the actual tortfeasor, the law makes him vicariously liable on the basis of the civil law principle of *pater familias* for failure to exercise due care and vigilance over the acts of one's subordinates to prevent damage to another.[10] In the last paragraph of Article 2180 of the Civil Code, the

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[10] *Id.* at 330.

employer may invoke the defense that he observed all the diligence of a good father of a family to prevent damage.

As its core defense, Filcar contends that Article 2176, in relation with Article 2180, of the Civil Code is inapplicable because it presupposes the existence of an employer-employee relationship. According to Filcar, it cannot be held liable under the subject provisions because the driver of its vehicle at the time of the accident, Floresca, is not its employee but that of its Corporate Secretary, Atty. Flor.

We cannot agree. It is well settled that in case of motor vehicle mishaps, **the registered owner of the motor vehicle is considered as the employer of the tortfeasor-driver**, and is made primarily liable for the tort committed by the latter under Article 2176, in relation with Article 2180, of the Civil Code.

In *Equitable Leasing Corporation v. Suyom*,[11] we ruled that in so far as third persons are concerned, **the registered owner of the motor vehicle is the employer of the negligent driver, and the actual employer is considered merely as an agent of such owner.**

In that case, a tractor registered in the name of Equitable Leasing Corporation (*Equitable*) figured in an accident, killing and seriously injuring several persons. As part of its defense, Equitable claimed that the tractor was initially leased to Mr. Edwin Lim under a Lease Agreement, which agreement has been overtaken by a Deed of Sale entered into by Equitable and Ecatine Corporation (*Ecatine*). Equitable argued that it cannot be held liable for damages because the tractor had already been sold to Ecatine at the time of the accident and the negligent driver was not its employee but of Ecatine.

In upholding the liability of Equitable, as registered owner of the tractor, this Court said that "regardless of sales made of a motor vehicle, the registered owner is the lawful operator insofar as the public and third persons are concerned; consequently, it is directly and primarily responsible for the

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[11] 437 Phil. 244, 252 (2002).

consequences of its operation."[12] The Court further stated that **"[i]n contemplation of law, the owner/operator of record is the employer of the driver, the actual operator and employer being considered as merely its *agent.*"**[13] Thus, Equitable, as the registered owner of the tractor, was considered under the law on *quasi delict* to be the employer of the driver, Raul Tutor; Ecatine, Tutor's actual employer, was deemed merely as an agent of Equitable.

Thus, it is clear that for the purpose of holding the registered owner of the motor vehicle primarily and directly liable for damages under Article 2176, in relation with Article 2180, of the Civil Code, the existence of an employer-employee relationship, as it is understood in labor relations law, is not required. It is sufficient to establish that Filcar is the registered owner of the motor vehicle causing damage in order that it may be held vicariously liable under Article 2180 of the Civil Code.

Rationale for holding the registered owner vicariously liable

The rationale for the rule that a registered owner is vicariously liable for damages caused by the operation of his motor vehicle is explained by the principle behind motor vehicle registration, which has been discussed by this Court in *Erezo*, and cited by the CA in its decision:

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

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[12] *Id.* at 255.

[13] *Ibid.*

for damages or injuries caused on public highways. [emphasis ours]

Thus, whether there is an employer-employee relationship between the registered owner and the driver is irrelevant in determining the liability of the registered owner who the law holds *primarily and directly responsible* for any accident, injury or death caused by the operation of the vehicle in the streets and highways.

As explained by this Court in *Erezo*, the general public policy involved in motor vehicle registration is the protection of innocent third persons who may have no means of identifying public road malefactors and, therefore, would find it difficult – if not impossible – to seek redress for damages they may sustain in accidents resulting in deaths, injuries and other damages; by fixing the person held primarily and directly liable for the damages sustained by victims of road mishaps, the law ensures that relief will always be available to them.

To identify the person primarily and directly responsible for the damages would also prevent a situation where a registered owner of a motor vehicle can easily escape liability by passing on the blame to another who may have no means to answer for the damages caused, thereby defeating the claims of victims of road accidents. We take note that some motor vehicles running on our roads are driven not by their registered owners, but by employed drivers who, in most instances, do not have the financial means to pay for the damages caused in case of accidents.

These same principles apply by analogy to the case at bar. Filcar should not be permitted to evade its liability for damages by conveniently passing on the blame to another party; in this case, its Corporate Secretary, Atty. Flor and his alleged driver, Floresca. Following our reasoning in *Equitable*, the agreement between Filcar and Atty. Flor to assign the motor vehicle to the latter does not bind Espinas who was not a party to and has no knowledge of the agreement, and whose only recourse is to the motor vehicle registration.

Neither can Filcar use the defenses available under Article 2180 of the Civil Code - that the employee acts beyond the scope of his assigned task or that it exercised the due diligence of a good father of a family to prevent damage - because the motor vehicle registration law, to a certain extent, modified Article 2180 of the Civil Code by making these defenses unavailable to the registered owner of the motor vehicle. Thus, for as long as Filcar is the registered owner of the car involved in the vehicular accident, it could not escape primary liability for the damages caused to Espinas.

The public interest involved in this case must not be underestimated. Road safety is one of the most common problems that must be addressed in this country. We are not unaware of news of road accidents involving reckless drivers victimizing our citizens. Just recently, such pervasive recklessness among most drivers took the life of a professor of our state university.[14] What is most disturbing is that our existing laws do not seem to deter these road malefactors from committing acts of recklessness.

We understand that the solution to the problem does not stop with legislation. An effective administration and enforcement of the laws must be ensured to reinforce discipline among drivers and to remind owners of motor vehicles to exercise due diligence and vigilance over the acts of their drivers to prevent damage to others.

Thus, whether the driver of the motor vehicle, Floresca, is an employee of Filcar is irrelevant in arriving at the conclusion that Filcar is primarily and directly liable for the damages sustained by Espinas. While Republic Act No. 4136 or the Land Transportation and Traffic Code does not contain any provision on the liability of registered owners in case of motor vehicle mishaps, Article 2176, in relation with Article 2180, of the

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[14] *Veteran journalist-professor dies in vehicular accident on "killer highway"* http://newsinfo.inquirer.net/breakingnews/metro/view/20110513-336347/Veteran-journalist-professor-dies-in-vehicular-accident-on-killer-highway.

Civil Code imposes an obligation upon Filcar, as registered owner, to answer for the damages caused to Espinas' car. This interpretation is consistent with the strong public policy of maintaining road safety, thereby reinforcing the aim of the State to promote the responsible operation of motor vehicles by its citizens.

This does not mean, however, that Filcar is left without any recourse against the actual employer of the driver and the driver himself. Under the civil law principle of *unjust enrichment*, the registered owner of the motor vehicle has a right to be indemnified by the actual employer of the driver of the amount that he may be required to pay as damages for the injury caused to another.

The set-up may be inconvenient for the registered owner of the motor vehicle, but the inconvenience cannot outweigh the more important public policy being advanced by the law in this case which is the protection of innocent persons who may be victims of reckless drivers and irresponsible motor vehicle owners.

WHEREFORE, the petition is **DENIED.** The decision dated February 16, 2006 and the resolution dated July 6, 2006 of the Court of Appeals are **AFFIRMED.** Costs against petitioner Filcar Transport Services.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Perez, Sereno, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174297. June 20, 2012]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **ROMEO A. LIGGAYU,** *respondent.*

SYLLABUS

REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE GOVERNMENT PARTY APPEALING MUST BE ONE THAT IS PROSECUTING THE ADMINISTRATIVE CASE; APPLICATION IN CASE AT BAR. — In *National Appellate Board of the National Police Commission (NAPOLCOM) v. Mamauag (Mamauag)*, citing *Mathay, Jr. v. Court of Appeals*, we ruled that the disciplining authority should not appeal the reversal of its decision. x x x In *Office of the Ombudsman v. Sison*, where the issue of whether the Ombudsman, which had rendered the decision pursuant to its administrative authority over public officers and employees, has the legal interest to intervene in the case where its decision was reversed on appeal, we ruled that it is not the proper party to intervene applying the above-quoted disquisition we made in *Mamauag*. x x x Clearly, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. In this case, it is the PCSO, through its then General Manager Golpeo, which filed the administrative case against respondent for the latter's alleged act of dishonesty in falsifying the OR and sales invoice he submitted in the liquidation of his cash advance. Thus, it is the PCSO which is deemed the prosecuting government party which can appeal the CA decision exonerating respondent of the administrative charge. It is the PCSO which would stand to suffer, since the CA decision also ordered respondent's reinstatement, thus, the former would be compelled to take back to its fold a perceived dishonest employee.

APPEARANCES OF COUNSEL

Dangazo Valmoria Lopez & Associates for respondent.

D E C I S I O N

PERALTA,* *J.*:

Before us is a petition for review on *certiorari* filed by petitioner Office of the Ombudsman which assails the Decision[1] dated May 17, 2005 and the Resolution[2] dated August 3, 2006 issued by the Court of Appeals (CA) in CA-G.R. SP No. 65572.

The antecedent facts are as follows:

The former Chairman and General Manager of the Philippine Charity Sweepstakes Office (PCSO), retired Justice Cecilia Muñoz-Palma, authorized the release from her discretionary funds a cash advance in the amount of ₱45,000.00 to cover the expenses of the PCSO Legal Department in attending to cases pending before the Ombudsman and the various courts in Metro Manila.[3] Respondent Atty. Romeo A. Liggayu was a manager in the legal department to whom the cash advance was issued under Check No. 165755 dated July 8, 1999.[4] The actual expenses incurred by the legal department for the purchase of food and drinks while attending to the court cases amounted to ₱45,717.39. To liquidate the cash advance and reimbursement, Disbursement Voucher No. 0499110507 dated December 3, 1999 was thereafter submitted wherein respondent attached thereto the various official receipts (ORs) as reflected in the summary of expenses for the food and drinks purchased on different dates[5] which included

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* Per Special Order No. 1228 dated June 6, 2012.

[1] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 34-54.

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

[3] *Id.* at 34.

[4] *Id.* at 35.

[5] *Id.*

among others: (1) receipt[6] dated July 8, 1999 issued by New Concepcion Cafe and Restaurant in the amount of ₱1,525.50; and (2) Sales Invoice No. 31203[7] dated October 2, 1999 issued by Nature's Cafe in the amount of ₱2,204.00.

On July 4, 2000, then PCSO Corporate Auditor, Atty. Milagros Romero (Romero), issued a Notice of Suspension[8] for the amount of ₱23,577.14 as she found some deficiencies with the documents submitted by respondent, to wit: (1) absence of accomplishment reports; and (2) excessive expenses for food and beverages. Later, Romero issued a Notice of Disallowance[9] in the total amount of ₱7,519.00 from the cash advance of respondent, which included among others the amounts of ₱2,204.00 under Nature's Cafe Sales Invoice no. 31203 and ₱1,525.50 under New Concepcion Cafe and Restaurant Cash Invoice No. 36166. The disallowance was due to the findings of the audit team that the amount of ₱2,204.00 covered by Invoice No. 31203 was merely written or caused to be written by respondent as the duplicate copy of the invoice in possession of the establishment was found to be blank per certification by the latter's cost comptroller; and that the OR corresponding to the said sales invoice which was for the same amount was actually issued to and paid by United Moonwalk Village Homeowners Association, Inc. (UMVHAI). On the other hand, the New Concepcion Cafe and Restaurant Cash Invoice No. 36166 in the amount of ₱1,525.00 was discovered to be falsified since the duplicate copy on file with the restaurant was only for the amount of ₱525.00; that the figure "1" which appeared before the numbers 525.50 was only added after the issuance of the said invoice to make it appear that the bill was for the amount of ₱1,525.50; and that the establishment's proprietor certified as to the correctness of the amount appearing in the duplicate copy of the sales invoice. Consequently, then PCSO General Manager

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[6] Ombudsman *rollo*, p. 42.

[7] *Id.* at 55.

[8] *Id.* at 28-29.

[9] *Id.* at 30.

Ricardo Golpeo (Golpeo) formally charged respondent of dishonesty, gross misconduct and conduct prejudicial to the best interest of the service.[10] On July 19, 2000, Golpeo placed respondent under preventive suspension for a period of 90 days pursuant to the July 18, 2000 meeting of the PCSO Board of Directors.[11] He also issued an Order[12] on even date for the creation of a Special Investigating Committee to conduct the formal investigation on the charge filed against respondent.

Respondent filed his Answer[13] denying the charges against him. He explained that as to the Nature Cafe's Sales Invoice No. 31203 in the amount of ₱2,204.00, he had no control in the preparation of the said sales invoice, particularly the duplicate copy thereof; that if the duplicate copy was left blank, then it should be the establishment which must be investigated before the BIR; that the sales invoice given to him bore the cashier's signature evidencing receipt of the amount indicated therein and presumed to be valid, since it was numbered and contained the tax identification number of the establishment; and that he is a member of UMVHAI but it was possible that his identity was not known to the cafe's staff, thus the official receipt was issued to UMVHAI.

As to the New Concepcion Cafe's Cash Invoice No. 36166 in the amount of ₱1,525.50, respondent argued that he merely received the cash invoice and had no participation in the preparation thereof; that business establishments usually reduced the amounts appearing in the duplicate of their receipts in order to enable them to pay lesser tax. Respondent also alleged in his answer the reasons why he could not get a fair and impartial trial from the special investigating committee, thus prayed for an independent committee to try his case.

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[10] *Id.* at 10-11.

[11] *Id.* at 118.

[12] *Id.* at 119.

[13] *Id.* at 12-26.

On August 1, 2000, respondent filed with the Regional Trial Court (RTC) of Quezon City, a Petition for *Certiorari* with Damages and a Writ of Preliminary Mandatory Injunction[14] to enjoin then PCSO Chairman Rosario Lopez and the Board of Directors from implementing the preventive suspension. The case was docketed as Q-00-41464 raffled off to Branch 225.

On September 1, 2000, the RTC issued an Order[15] granting the prayer for the issuance of an injunctive writ and ordered the aforementioned PCSO officials to: (a) reinstate respondent to his position as Manager of its Legal Department; (b) lift the preventive suspension imposed on him; (c) suspend the investigation on the formal charge against him and/or from doing or procuring to be done acts which tend to render any judgment in the case ineffectual until after the case shall have been decided on the merit or until further order from the court. A writ[16] was subsequently issued.

Earlier however, in a meeting held on July 28, 2000, the PCSO Board of Directors had already resolved to endorse the formal charge for dishonesty, gross misconduct and conduct prejudicial to the best interest of the service against respondent to the Resident Ombudsman for investigation and resolution. The Resident Ombudsman in turn forwarded the charge to petitioner for administrative adjudication in order to allay respondent's fear of not getting a fair treatment at the PCSO. He also recommended respondent's preventive suspension.

Before petitioner could issue an order requiring respondent to file his counter-affidavit on the charge, the latter filed a Manifestation[17] informing the former of a writ of preliminary injunction issued by the RTC.

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[14] *Id.* at 99-108.

[15] *Id.* at 122-123; per Judge Arsenio J. Magpale.

[16] *Id.* at 124-125.

[17] *Id.* at 95-98.

In an Order[18] dated October 18, 2000, petitioner resolved the manifestation regarding the RTC's issuance of an injunction. It found that the injunction had been directed not against petitioner but to the PCSO officials named therein; that it merely sought to enjoin the conduct of a formal investigation by the PCSO management, thus such injunction could not be interpreted as to bar petitioner from its administrative investigation. The same Order placed respondent under preventive suspension for six (6) months without pay and required him to file his counter-affidavit. The following day, petitioner issued an Order[19] directing PCSO to implement the preventive suspension order. Respondent filed a motion for reconsideration which petitioner denied in an Order[20] dated October 26, 2000. Respondent then filed with the CA a petition for review on *certiorari* under Rule 43 assailing these orders. The petition was docketed as CA-G.R. SP No. 62760. During its pendency, petitioner had rendered a Decision dated March 30, 2001 on the merits, thus the petition filed with the CA was subsequently dismissed on November 3, 2004.[21]

Petitioner's Decision[22] dated March 30, 2001 found respondent guilty of the charge of dishonesty, grave misconduct and conduct prejudicial to the best interest of the service and imposed upon him the penalty of dismissal from the service.

In an Order[23] dated April 18, 2001, petitioner's Decision was modified so as to include the accessory penalty of forfeiture of leave credits and retirement benefits and disqualification for re-employment in the government service.

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[18] *Id.* at 145-150.

[19] *Id.* at 169-170.

[20] *Id.* at 230-234.

[21] The dismissal was made because the incidents subject of the petition had become *functus officio* when petitioner rendered its decision in the main case which was also subsequently elevated to the CA.

[22] *Rollo,* pp. 75-83.

[23] *Id.* at 84.

Respondent's motion for reconsideration was denied by petitioner in its Order[24] dated May 15, 2001 and the PCSO General Manager was instructed to immediately implement the Order.

Respondent then filed with the CA a petition for review under Rule 43 with application for the issuance of a temporary restraining order and/or preliminary injunction entitled, *Atty. Romeo A. Liggayu v. Ricardo G. Golpeo*.[25]

On May 17, 2005, the CA rendered its assailed Decision reversing and setting aside petitioner's Orders.

The CA stated that petitioner's conclusion on the guilt of respondent was based on its findings that: *first*, the respondent had falsified Official Receipt No. 36166 by adding the digit "1" before the amount ₱525.50 to make it appear that the cost of the food and drinks he purchased was ₱1,525.50; *second*, respondent used the falsified official receipt to support his disbursement of public funds; *third*, Sales Invoice No. 31203 was actually issued to UMVHAI for food and drinks it purchased at the cost of ₱2,204.00; and *fourth*, the sales invoice of UMVHAI was used by respondent to support his disbursement of public funds.

The CA found, however, that the original copy of Official Receipt No. 36166 which was submitted for liquidation was never proven to be a falsified document; that mere discrepancies between the two copies of one document did not establish the falsity of one copy unless the veracity of the other copy was first established, since it was equally possible for the false entry to be found in the latter copy. As to petitioner's finding that Sales Invoice No. 31203 was actually issued to UMVHAI and not to respondent, the CA found the evidence presented to be at odds with each other. It found that Elenita So was not the

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[24] *Id.* at 85-91.

[25] CA *rollo*, pp. 424-425; In a Resolution dated July 31, 2002, the CA granted respondent's motion for substitution of then incumbent General Manager of the PCSO, Virgilio R. Angelo as the party respondent in the petition filed with the CA.

one who issued the official receipt to UMVHAI, since her signature therein differed from her signature in her certification and in her affidavit; thus, she was not the proper person to testify on the transaction embodied in the official receipt; that there was no basis for petitioner to conclude that the actual transaction involved in Sales Invoice No. 31203 was that stated in the official receipt.

The Office of the Government Corporate Counsel (OGCC) filed in behalf of the PCSO General Manager a motion for reconsideration. Petitioner filed an Omnibus Motion for Intervention and Reconsideration. The CA denied the motions for reconsideration in a Resolution dated August 3, 2006.

In denying reconsideration, the CA reiterated its findings contained in its May 17, 2005 decision. In addition, the CA held that the testimony given by Elenita So in Criminal Case No. Q-01-100794, which involved the matter of Sales Invoice No. 31203 which was claimed to be actually issued to UMVHAI and not to respondent, established that So categorically admitted that the signature appearing in Sales Invoice No. 31203 was her signature and that the entries therein were entirely written by her and that she had no personal knowledge that OR No. 3132 issued to UMVHAI corresponded to Sales Invoice No. 31203 issued to respondent as she was not the one who issued the OR; and that she was merely made to sign the certification stating she was the one who issued OR No. 3132 which was used as evidence against respondent.

Hence, this petition wherein petitioner raises the following grounds:

I

RESPONDENT LIGGAYU'S INTERCALATION OF THE DIGIT "1" BEFORE THE AMOUNT "[525.50]," TO MAKE IT APPEAR THAT HE PAID "₱1,525.00" TO NEW CONCEPCION CAFE AND RESTAURANT UNDER ITS OFFICIAL RECEIPT NO. 36166 THEREBY ALLOWING HIM TO CLAIM THE LATTER AMOUNT CONSTITUTES DISHONESTY, GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.

II

RESPONDENT LIGGAYU'S USAGE OF SALES INVOICE NO. 31203 FOR ₱2,204.00 FOR THE LIQUIDATION OF HIS CASH ADVANCE, WHICH WAS ISSUED BY NATURE'S CAFE TO AND PAID FOR BY THE UNITED MOONWALK VILLAGE HOMEOWNER'S ASSOCIATION, INC. (UMVHAI) FOR FOOD AND DRINKS SERVED TO ITS MEMBERS DURING ITS MEETING ON A SUNDAY, LIKEWISE CONSTITUTES DISHONESTY, GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.[26]

Petitioner assails the factual findings of the CA. It contends that as between the OR in the amount of ₱1,525.50 submitted by respondent to support his liquidation and the duplicate OR in the amount of ₱525.50 on file with the business establishment which issued the same, the duplicate OR is more credible, as the business establishment is a disinterested witness to respondent's purchase; and that it is pure speculation to conclude that the business establishment's duplicate ORs bore understated amounts to evade taxation, since respondent had not adduced evidence to show that New Concepcion Cafe is a tax evader.

Petitioner claims that as to Sales Invoice No. 31203 issued by Nature's Cafe, the CA erred in discarding the declarations of Elenita So that the amount of ₱2,204.00 under Sales Invoice No. 31203 was paid for by UMVHAI and not by respondent; and that respondent's utilization of the said invoice in liquidating his cash advance is a clear act of misrepresentation.

In his Comment/Opposition, respondent informed us that the PCSO, through its Board of Directors, adopted and approved Board Resolution No. 415 on August 30, 2006, which accepted the CA decision and decided not to appeal the same which reversed petitioner's order dismissing respondent from the service; that the OGCC, acting as PCSO's agent and counsel, did not anymore file any petition assailing the CA decision. Respondent also states that earlier in November 2002, PCSO had already cleared him of all his property and cash accountabilities with the office

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[26] *Rollo,* p. 22.

and that he had already received all the salaries and benefits due him; thus, rendering the instant petition moot and academic. He also contends that petitioner has no standing to file the case as it cannot be considered as an aggrieved party who can file the appeal, because it is neither respondent's employer nor has it any interest that was prejudiced by the CA decision. Finally, respondent argues that the PCSO failed to substantiate the charge against him.

In its Reply, petitioner contends that it has standing to file the petition, citing *Philippine National Bank v. Garcia, Jr.*;[27] that it is the party adversely affected by the ruling of the CA which seriously prejudiced the administration of disciplinary justice in the bureaucracy; thus, it has a duty to intervene and represent the interest of the State to preserve the principles of public accountability.

The threshold issue for resolution is whether or not petitioner has legal standing to file the instant petition for review on *certiorari* assailing the CA ruling which reversed petitioner's decision.

We find that petitioner has no legal standing to file this petition.

In *National Appellate Board of the National Police Commission (NAPOLCOM) v. Mamauag*[28] *(Mamauag)*, citing *Mathay, Jr, v. Court of Appeals*,[29] we ruled that the disciplining authority should not appeal the reversal of its decision and made the following ratiocination:

> RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize "either party" to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the

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[27] G.R. No. 141246, September 9, 2002, 388 SCRA 485.

[28] G.R. No. 149999, August 12, 2005, 466 SCRA 624.

[29] G.R. No. 124374, December 15, 1999, 320 SCRA 703.

government believes that dismissal from the service is the proper penalty.

However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be the one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. Thus, in *Mathay, Jr. v. Court of Appeals*, decided after *Dacoycoy*, the Court declared:

> To be sure when the resolutions of the Civil Service Commission were brought to the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be likened to a judge who should "detach himself from cases where his decision is appealed to a higher court for review."
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> In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to "hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies," not to litigate.[30] (Emphasis supplied.)

In *Office of the Ombudsman v. Sison*,[31] where the issue of whether the Ombudsman, which had rendered the decision pursuant to its administrative authority over public officers and employees, has the legal interest to intervene in the case where its decision was reversed on appeal, we ruled that it is not the proper party to intervene applying the above-quoted disquisition we made in *Mamauag*. We further stated that:

Clearly, the Office of the Ombudsman is not an appropriate party to intervene in the instant case. It must remain partial

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[30] *NAPOLCOM v. Mamauag, supra* note 28, at 641-642.

[31] G.R. No. 185954, February 16, 2010, 612 SCRA 702.

and detached. More importantly, it must be mindful of its role as an adjudicator, not an advocate.

It is an established doctrine that judges should detach themselves from cases where their decisions are appealed to a higher court for review. The *raison d'etre* for such a doctrine is the fact that judges are not active combatants in such proceeding and must leave the opposing parties to contend their individual positions and the appellate court to decide the issues without the judges' active participation. When judges actively participate in the appeal of their judgment, they, in a way, cease to be judicial and have become adversarial instead.

In *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, the Court applied this doctrine when it held that the CA erred in granting the Motion to Intervene filed by the Office of the Ombudsman, to wit:

> The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher court. The judge of a court or the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the controversies between parties in accordance with the evidence and applicable laws, regulations and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellant's assignment of errors, defend his judgment, and prevent it from being overturned on appeal.[32] (Emphasis supplied.)

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[32] *Id.* at 715-716. (Citation omitted.)

In *Office of the Ombudsman v. Magno*,[33] we ruled that:

> x x x Every decision rendered by the Ombudsman in an administrative case may be affirmed, but may also be modified or reversed on appeal - this is the very essence of appeal. In case of modification or reversal of the decision of the Ombudsman on appeal, it is the parties who bear the consequences thereof, and the Ombudsman itself would only have to face the error/s in fact or law that it may have committed which resulted in the modification or reversal of its decision.[34]

Clearly, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. In this case, it is the PCSO, through its then General Manager Golpeo, which filed the administrative case against respondent for the latter's alleged act of dishonesty in falsifying the OR and sales invoice he submitted in the liquidation of his cash advance. Thus, it is the PCSO which is deemed the prosecuting government party which can appeal the CA decision exonerating respondent of the administrative charge. It is the PCSO which would stand to suffer, since the CA decision also ordered respondent's reinstatement, thus, the former would be compelled to take back to its fold a perceived dishonest employee. Notwithstanding, the PCSO did not file any petition assailing the CA decision. In fact, the PCSO, through its Board of Directors, adopted and approved Board Resolution No. 415 on August 30, 2006, to wit:

> RESOLVED, that the Board of Directors of PCSO accept, as it hereby accepts, and to no longer appeal the Decisions of the Court of Appeals dated 17 May 2005 and 03 August 2006 reversing and setting aside the orders of the Ombudsman dismissing former PCSO Legal Department Manager Atty. Romeo A. Liggayu for Dishonesty and Grave Misconduct and Conduct Prejudicial to the Interest of the Service, and ordering the payment of all the salaries and benefits due Atty. Liggayu from his suspension to the time of his attainment

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[33] G.R. No. 178923, November 27, 2008, 572 SCRA 272.

[34] *Id.* at 288-289.

of his retirement age and to restore him all retirement benefits and privileges to which he is entitled, subject to the Civil Service Rules and Regulations, and the availability of funds and applicable accounting and auditing laws, rules and regulations.[35]

Petitioner cites *Philippine National Bank v. Garcia, Jr.* (*Garcia*)[36] to show that it has legal interest to file this petition. In that case, the PNB charged its employee, Ricardo V. Garcia, with gross neglect of duty in connection with the funds he had lost in the amount of ₱7 million. The PNB's Administration Adjudication Office found him guilty as charged and imposed upon him the penalty of forced resignation. On appeal, the Civil Service Commission (CSC) exonerated Garcia from the administrative charge against him. The PNB filed a petition with the CA which dismissed the same, ruling that the only party adversely affected by the decision, namely the government employee, may appeal an administrative case. It held that a decision exonerating a respondent in an administrative case is final and unappealable. Consequently, the PNB filed a petition with us. In accordance with our ruling in *Civil Service Commission v. Dacoycoy*,[37] we ruled that the PNB had the legal standing to appeal to the CA the CSC resolution exonerating Garcia. We said that after all, PNB was the aggrieved party which complained of Garcia's acts of dishonesty. Should Garcia be finally exonerated, it might then be incumbent upon the PNB to take him back into its fold. The PNB should, therefore, be allowed to appeal a decision that, in its view, hampered its right to select honest and trustworthy employees, so that it can protect and preserve its name as a premier banking institution in the country.

PNB v. Garcia, Jr.[38] is not on all fours with the present case. *First*, herein respondent was not exonerated of the administrative charge of dishonesty, gross misconduct and conduct prejudicial to the best interest of the service, but was found

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[35] *Rollo*, p. 122.

[36] *Supra* note 27.

[37] G.R. No. 135805, April 29, 1999, 306 SCRA 405.

[38] *Supra* note 27.

guilty thereof by petitioner and was meted the penalty of dismissal. Thus, it was the respondent who filed the petition with the CA as the party aggrieved by petitioner's decision. *Second*, the PCSO, which is supposedly the party aggrieved in the CA decision, did not file any petition, but it was the petitioner - the administrative agency - which rendered the decision reversed by the CA. *Third, PNB v. Garcia*[39] must be read together with *Mathay, Jr. v. CA*[40] and *National Appellate Board of the National Police Commission v. Mamauag*[41] wherein we qualified our declaration in *CSC v. Dacoycoy*[42] which was cited in *PNB v. Garcia*[43] that the government party that can appeal the decision in administrative cases must be the party prosecuting the case and not the disciplining authority or tribunal which heard the administrative case.

Considering that petitioner has no legal interest or standing to appeal and seek the nullification of the CA decision exonerating respondent from the administrative charge of dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service, we, therefore find no need to delve on the merits of this case.

WHEREFORE, the petition is **DENIED.** The Decision dated May 17, 2005 and the Resolution dated August 3, 2006 of the Court of Appeals in CA-G.R. SP No. 65572 are hereby **AFFIRMED.**

SO ORDERED.

Bersamin,[**] *Abad, Villarama, Jr.,*[***] and *Perlas-Bernabe, JJ.*, concur.

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[39] *Id*.

[40] *Supra* note 29.

[41] *Supra* note 28.

[42] *Supra* note 36.

[43] *Supra* note 27.

[**] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, Jr., per Special Order No. 1241 dated June 14, 2012.

[***] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.

FIRST DIVISION

[G.R. No. 174369. June 20, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZAFRA MARAORAO *y* MACABALANG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT IS ENTITLED TO GREAT RESPECT AND WILL NOT BE DISTURBED ON APPEAL; EXCEPTION.— We have repeatedly held that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. We have reviewed such factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.

2. ID.; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN A CRIMINAL CASE OPENS THE WHOLE CASE FOR REVIEW; RATIONALE.— It is well-settled that an appeal in a criminal case opens the whole case for review. This Court is clothed with ample authority to review matters, even those not raised on appeal, if we find them necessary in arriving at a just disposition of the case. Every circumstance in favor of the accused shall be considered. This is in keeping with the constitutional mandate that every accused shall be presumed innocent unless his guilt is proven beyond reasonable doubt.

3. CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425), AS AMENDED; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In order to convict appellant for illegal possession of a dangerous drug, or the *shabu* in this case, the prosecution evidence must prove beyond reasonable doubt the following elements: (1) the appellant was in possession of an item or object that is identified to be a prohibited or dangerous drug; (2) such possession was

not authorized by law; and (3) the appellant freely and consciously possessed the drug.

4. ID.; ID.; ID.; THE STATE MUST PROVE BEYOND REASONABLE DOUBT ALL THE ELEMENTS OF THE CRIME CHARGED AND THE COMPLICITY OR PARTICIPATION OF THE ACCUSED; NOT ESTABLISHED IN CASE AT BAR. — A careful perusal of the testimony of PO3 Vigilla reveals a glaring discrepancy which both the trial and the appellate courts overlooked. x x x Presumably, under his testimony, the bag was now held by the one who did not run away. Later, in another part of his testimony, he again changed this material fact. x x x Such material inconsistency leaves much to be desired about the credibility of the prosecution's principal witness and casts reasonable doubt as to appellant's guilt for it renders questionable whether he in fact held the bag with intention to possess it and its contents. In every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged and the complicity or participation of the accused. While a lone witness' testimony is sufficient to convict an accused in certain instances, the testimony must be clear, consistent, and credible—qualities we cannot ascribe to this case. Jurisprudence is consistent that for testimonial evidence to be believed, it must both come from a credible witness and be credible in itself – tested by human experience, observation, common knowledge and accepted conduct that has evolved through the years. Clearly from the foregoing, the prosecution failed to establish by proof beyond reasonable doubt that appellant was indeed in possession of *shabu*, and that he freely and consciously possessed the same.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; EXPLAINED. — The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense. In this case, the prosecution's evidence failed to overcome the presumption of innocence,

and thus, appellant is entitled to an acquittal. Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is an appeal from the March 1, 2006 Decision[1] of the Court of Appeals (CA), which affirmed the Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 35, convicting appellant Zafra Maraorao *y* Macabalang of violation of Section 16, Article III of Republic Act (R.A.) No. 6425, otherwise known as The Dangerous Drugs Act of 1972, as amended.

Appellant was charged under an Information[3] dated January 4, 2001 filed before the RTC of Manila as follows:

That on or about November 30, 2000, in the City of Manila, Philippines, the said accused, without being authorized by law to possess or use regulated drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and

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[1] *Rollo*, pp. 3-30. Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Renato C. Dacudao and Lucas P. Bersamin (now a member of this Court) concurring. The assailed decision was rendered in CA-G.R. CR-H.C. No. 01600.

[2] CA *rollo*, pp. 10-15. Penned by Judge Ramon P. Makasiar.

[3] Records, pp. 1-2.

control one (1) transparent plastic sachet containing ONE THOUSAND TWO HUNDRED EIGHTY POINT ZERO EIGHT ONE (1,280.081) grams of white crystalline substance known as "shabu" containing methylamphetamine hydrochloride, a regulated drug, without the corresponding license or prescription thereof.

Contrary to law.

On March 19, 2001, appellant, assisted by counsel, pleaded not guilty to the offense charged against him.[4] Trial on the merits ensued.

For the prosecution, PO3 Manuel Vigilla testified that on November 29, 2000, they received reliable information at Police Station No. 8 of the Western Police District (WPD) that an undetermined amount of *shabu* will be delivered inside the Islamic Center in Quiapo in the early morning of the following day. On November 30, 2000, at around 7:00 a.m., he and PO2 Mamelito Abella, PO1 Joseph dela Cruz, and SPO1 Norman Gamit went to the Islamic Center. While walking along Rawatun Street in Quiapo, they saw two men talking to each other. Upon noticing them, one ran away. PO2 Abella and PO1 Dela Cruz chased the man but failed to apprehend him.[5]

Meanwhile, the man who was left behind dropped a maroon bag on the pavement. He was about to run when PO3 Vigilla held him, while SPO1 Gamit picked up the maroon bag. The man was later identified as appellant Zafra Maraorao *y* Macabalang. The police examined the contents of the bag and saw a transparent plastic bag containing white crystalline substance, which they suspected to be *shabu*. At the police station, the investigator marked the plastic sachet "ZM-1" in the presence of the police officers.[6]

The specimen was then forwarded to the PNP Crime Laboratory for laboratory chemical analysis. When examined by Forensic Chemist P/Insp. Miladenia O. Tapan, the 1,280.081 grams of

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[4] *Id.* at 29.

[5] TSN, April 26, 2001, pp. 5-9.

[6] *Id.* at 9-18.

white crystalline substance gave a positive result to the test for methylamphetamine hydrochloride, a regulated drug. Her findings are contained in Chemistry Report No. D-1121-00.[7]

In his defense, appellant testified that on November 30, 2000, at around 7:00 a.m., he was going to the place of his uncle, Abdul Gani, at the Islamic Center to get a letter from his mother. He went there early because he had to report for work at the Port Area in Manila at 8:00 a.m. On his way, an unidentified man carrying a bag asked him about a house number which he did not know. He stopped walking to talk to the man, who placed his bag down and asked him again. When they turned around, they saw four men in civilian attire walking briskly. He only found out that they were police officers when they chased the man he was talking to. As the man ran away, the man dropped his bag. Appellant averred that he did not run because he was not aware of what was inside the bag.[8]

Appellant further narrated that the police arrested him and asked who the owner of the bag was. He replied that it did not belong to him but to the man who ran away. They made him board a bus-type vehicle and brought him to the police station in Sta. Mesa, Manila where he was referred to a desk sergeant. The desk sergeant asked him whether the bag was recovered from him, and he replied that he had no knowledge about that bag. He was not assisted by counsel during the investigation. He was also incarcerated in a small cell for about ten days before he was brought to Manila City Jail. At the Office of the City Prosecutor, he met his lawyer for the first time.[9]

On September 25, 2001, the trial court rendered a decision, the *fallo* of which reads:

WHEREFORE, judgment is rendered pronouncing accused ZAFRA MARAORAO *y* MACABALANG guilty beyond reasonable doubt of possession of 1,280.081 grams of methylamphetamine

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[7] Records, p. 11.

[8] TSN, July 25, 2001, pp. 3-8.

[9] *Id.* at 9-20.

hydrochloride without license or prescription, penalized under Section 16 in relation to Section 20 of Republic Act No. 6425, as amended, and sentencing said accused to *reclusion perpetua* and to pay a fine of ₱5,000,000.00, plus the costs.

In the service of his sentence, the full time during which the accused has been under preventive imprisonment should be credited in his favor provided that he had agreed voluntarily in writing to abide with the same disciplinary rules imposed on convicted prisoner. Otherwise, he should be credited with four-fifths (4/5) only of the time he had been under preventive imprisonment.

Exhibit B, which consists of 1,280.081 grams of methylamphetamine hydrochloride, is confiscated and forfeited in favor of the Government. Within ten (10) days following the promulgation of this judgment, the Branch Clerk of this Court, is ordered to turn over, under proper receipt, the regulated drug involved in this case to the Dangerous Drugs Custodian, National Bureau of Investigation, as appointed by the Dangerous Drugs Board, for appropriate disposition.

SO ORDERED.[10]

Aggrieved, appellant filed a Notice of Appeal.[11] The entire records of the case were elevated to this Court. Pursuant to our Decision in *People v. Mateo*,[12] however, the case was transferred to the CA for appropriate action and disposition.

At the CA, appellant raised the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE FABRICATED AND COACHED TESTIMONY OF THE STAR PROSECUTION WITNESS.

II

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE ACCUSED'S DEFENSE OF DENIAL.[13]

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[10] CA *rollo*, pp. 14-15.

[11] *Id.* at 16.

[12] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[13] CA *rollo*, p. 45.

On March 1, 2006, the CA rendered the assailed Decision, to wit:

WHEREFORE, premises considered, the appeal is **DENIED** for lack of merit. The Decision dated 25 September 2001 of the Regional Trial Court of Manila, Branch 35 in Crim. Case No. 01-188945 is hereby **AFFIRMED.** Costs against appellant.

SO ORDERED.[14]

In affirming the RTC Decision, the CA held that there was no showing that the trial court overlooked, misunderstood or misapplied a fact or circumstance of weight and substance which would have affected the case. It gave credence to the testimony of PO3 Vigilla and found appellant's defense of denial inherently weak. Furthermore, the CA held that appellant was lawfully searched as a consequence of his valid warrantless arrest.

Hence, this present recourse.

In his Supplemental Brief,[15] appellant stresses that PO3 Vigilla testified that when they first saw appellant, he was talking with a certain person. It was appellant's companion who scampered away upon seeing the police. PO3 Vigilla further testified that appellant tried to flee but they were able to arrest him before he could do so. Appellant argues that his alleged attempt to flee does not constitute a crime that should have prompted the police to arrest him. Since his arrest was illegal, he contends that the subsequent search made by the police was likewise illegal, and the *shabu* supposedly recovered from him is inadmissible in evidence.

The appeal is meritorious.

We have repeatedly held that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. We have reviewed such factual findings when there is a showing that the trial judge overlooked,

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[14] *Rollo*, p. 28.

[15] *Id.* at 45-49.

misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.[16]

It is well-settled that an appeal in a criminal case opens the whole case for review. This Court is clothed with ample authority to review matters, even those not raised on appeal, if we find them necessary in arriving at a just disposition of the case. Every circumstance in favor of the accused shall be considered. This is in keeping with the constitutional mandate that every accused shall be presumed innocent unless his guilt is proven beyond reasonable doubt.[17]

Now, in order to convict appellant for illegal possession of a dangerous drug, or the *shabu* in this case, the prosecution evidence must prove beyond reasonable doubt the following elements: (1) the appellant was in possession of an item or object that is identified to be a prohibited or dangerous drug; (2) such possession was not authorized by law; and (3) the appellant freely and consciously possessed the drug.[18] In this case, the fact of possession by appellant of the bag containing the *shabu* was not established in the first place.

A careful perusal of the testimony of PO3 Vigilla reveals a glaring discrepancy which both the trial and the appellate courts overlooked. In their Joint Affidavit,[19] arresting officers PO3 Vigilla, PO2 Abella, PO1 dela Cruz and SPO1 Gamit stated that they spotted two unidentified persons standing and seemingly conversing a few meters ahead of them. "However, when one of them noticed our presence, he hastily r[a]n away heading towards the Muslim Center leaving behind the other person and a maroon colored bag with 'Adidas' marking in the pavement." In other words, the maroon bag was left behind by the man

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[16] See *Valdez v. People*, G.R. No. 170180, November 23, 2007, 538 SCRA 611, 621-622; *People v. Chua*, G.R. Nos. 136066-67, February 4, 2003, 396 SCRA 657, 664.

[17] *People v. Chua, id.*

[18] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 451.

[19] Records, p. 9.

who ran away. But at the trial, PO3 Vigilla testified during direct examination that they spotted two persons talking to each other, and upon noticing them, "one of them scampered away and was chased by my companions **while the other one dropped a bag, sir.**"[20] Presumably, under his testimony, the bag was now held by the one who did not run away. Later, in another part of his testimony, he again changed this material fact. When he was asked by Prosecutor Senados as to who between the two persons they saw talking to each other ran away, PO3 Vigilla categorically answered, "[t]he one who is holding a bag, sir."[21] Such material inconsistency leaves much to be desired about the credibility of the prosecution's principal witness and casts reasonable doubt as to appellant's guilt for it renders questionable whether he in fact held the bag with intention to possess it and its contents.

In every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged and the complicity or participation of the accused.[22] While a lone witness' testimony is sufficient to convict an accused in certain instances, the testimony must be clear, consistent, and credible—qualities we cannot ascribe to this case. Jurisprudence is consistent that for testimonial evidence to be believed, it must both come from a credible witness and be credible in itself – tested by human experience, observation, common knowledge and accepted conduct that has evolved through the years.[23] Clearly from the foregoing, the prosecution failed to establish by proof beyond reasonable doubt that appellant was indeed in possession of *shabu*, and that he freely and consciously possessed the same.

The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on

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[20] TSN, April 26, 2001, p. 8. Emphasis supplied.

[21] *Id.* at 9.

[22] *People v. Limpangog*, 444 Phil. 691, 693 (2003).

[23] *People v. Mirandilla, Jr.*, G.R. No. 186417, July 27, 2011, 654 SCRA 761, 769.

the strength of the prosecution's evidence and not on the weakness of the defense.[24] In this case, the prosecution's evidence failed to overcome the presumption of innocence, and thus, appellant is entitled to an acquittal.

Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.[25]

WHEREFORE, the Decision dated March 1, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01600 is **REVERSED** and **SET ASIDE,** and appellant Zafra Maraorao *y* Macabalang is hereby **ACQUITTED** of the offense charged.

The Director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter is being lawfully held for other cause/s; and to inform the Court of the date of his release, or the reasons for his confinement, within five (5) days from notice.

With costs *de oficio*.

SO ORDERED.

Leonardo-de Castro[*] *(Acting Chairperson), del Castillo, Perez,*[**] and *Perlas-Bernabe,*[***] *JJ.*, concur.

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[24] *People v. Lorenzo*, G.R. No. 184760, April 23, 2010, 619 SCRA 389, 399.

[25] *Fernandez v. People*, G.R. No. 138503, September 28, 2000, 341 SCRA 277, 299.

[*] Designated Acting Chairperson of the First Division per Special Order No. 1226 dated May 30, 2012.

[**] Designated Additional Member of the First Division per Raffle dated June 11, 2012.

[***] Designated Acting Member of the First Division per Special Order No. 1227 dated May 30, 2012.

FIRST DIVISION

[G.R. No. 176671. June 20, 2012]

APO CEMENT CORPORATION, *petitioner, vs.* **ZALDY E. BAPTISMA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION; PRESENT IN CASE AT BAR.— The rule that only questions of law may be raised in a petition brought under Rule 45 of the Rules of Court is not without exception. Factual review may warrant when the factual findings of the NLRC are contrary to those of the Labor Arbiter and the CA; or when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by evidence on record. In this case, the Labor Arbiter and the CA found no just cause to warrant the dismissal of respondent. The NLRC, however, found otherwise. A factual review is, therefore, in order.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; LOSS OF TRUST AND CONFIDENCE, AS GROUND; GUIDELINES.— To validly dismiss an employee on the ground of loss of trust and confidence under Article 282 (c) of the Labor Code of the Philippines, the following guidelines must be observed: "1) loss of confidence should not be simulated; 2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; 3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and 4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith." More important, it "must be based on a willful breach of trust and founded on clearly established facts."

3. ID.; ID.; ID.; ID.; FOR MANAGERIAL EMPLOYEES, THE MERE EXISTENCE OF BASIS FOR BELIEVING THAT SUCH EMPLOYEE HAS BREACHED THE TRUST OF HIS EMPLOYER WOULD SUFFICE FOR HIS DISMISSAL; CASE AT BAR. — We find that the testimony

of Lobitaña constitutes substantial evidence to prove that respondent, as the then Power Plant Manager, accepted commissions and/or "kickbacks" from suppliers, which is a clear violation of Section 2.04 of petitioner's Company Rules and Regulations. Jurisprudence consistently holds that for managerial employees "the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal." As we then see it, respondent's termination was for a just and valid cause.

4. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; POSITIVE TESTIMONY PREVAILS OVER A NEGATIVE ONE; EXEMPLIFIED.— As between the positive testimony of Lobitaña that he gave respondent commissions and/or "kickbacks" on two separate occasions, and the negative testimony of respondent's witnesses Cedeño and Banzon that no such meeting took place, we are more inclined to give credence to the former. It bears stressing that a positive testimony prevails over a negative one, more especially in this case where respondent's witnesses did not even execute affidavits to attest to the truthfulness of their statements. Thus, it was error on the part of the Labor Arbiter and the CA to disregard the testimony of Lobitaña.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Armando M. Alforque for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In labor cases, all that is required is for the employer to show substantial evidence to justify the termination of the employee.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated November 15,

[1] *Rollo,* pp. 3-354 with Annexes "A" to "HH" inclusive.

[2] *Id.* at 59-67; penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Isaias P. Dicdican and Priscilla Baltazar-Padilla.

2006 and the Resolution[3] dated February 6, 2007 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 01220.

Factual Antecedents

On June 16, 1998, respondent Zaldy E. Baptisma was employed by petitioner Apo Cement Corporation, a duly registered corporation maintaining and operating a cement manufacturing plant in Tinaan, Naga, Cebu.[4]

Sometime in September 2003, petitioner received information from one of its employees, Armando Moralda (Moralda), that some of its personnel, including respondent who was then the manager of petitioner's Power Plant Department, were receiving commissions or "kickbacks" from suppliers.[5] To ascertain the veracity of the information given by Moralda, the top management of petitioner conducted an investigation during which Jerome Lobitaña (Lobitaña), one of petitioner's accredited suppliers, doing business under the name and style "Precision Process," came forward to corroborate the statement of Moralda.[6]

On October 10, 2003, Moralda and Lobitaña executed separate affidavits[7] to substantiate their claims. Pertinent portions of the affidavits read:

Moralda's Affidavit:

x x x x x x x x x

3. As a Buyer/Canvasser at the Purchasing Department enjoying the trust and confidence of Mr. Tinoco, I was privy to several anomalous practices and transactions involving the procurement of various supplies and services for the Company. Among the various *modus operandi* employed by some people in Apo are the following:

x x x x x x x x x

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[3] *Id.* at 68-74.

[4] *Id.* at 8 and 10.

[5] *Id.* at 191.

[6] *Id.*

[7] *Id.* at 84-87 and 88-91.

e. *10% to 20% of the quoted price usually set aside as bribe money for certain personnel.* Suppliers would often factor-in an additional 10% to 20% in their quoted price which would be used to bribe certain Apo personnel. A canvasser like me would get about 1% to 3% of the quoted price from the winning supplier. Some suppliers would categorically inform me how much has been promised to other Apo personnel who would help facilitate the award of the contract in their favor. Among those who receive bribes from suppliers aside from Mr. Tinoco are Mr. Jose Cruz, the Mechanical Maintenance Manager and Zaldy Baptisma, Apo Power Plant Manager.

x x x x x x x x x[8]

Lobitaña's Affidavit:

x x x x x x x x x

8.1. There were times when Mr. Tinoco himself talked directly to the end-user [to] negotiate for the amount or percentage of the kickback that they would get from me. There was one time when Mr. Tinoco informed me that he has negotiated with Mr. Zaldy Baptisma, the Power Plant Manager, and committed to give him a ten percent (10%) "commission" or kickback for all transactions which would be awarded to me. Upon the award of the contract amounting to approximately Two Hundred Thousand Pesos (₱200,000.00) and the remittance by Apo of the payment, I met with Mr. Baptisma outside the Apo plant and personally handed to him his ten percent (10%) "commission"/ kickback in cash.

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

Having been implicated in the irregularities, respondent, on November 3, 2003, received a Show Cause Letter with Notice of Preventive Suspension[10] from Plant Director Ariel Mendoza.[11]

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

[9] *Id.* at 89.

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

[11] *Id.* at 60.

On November 5, 2003, respondent submitted his written explanation[12] denying the accusations hurled against him.[13]

To further afford respondent ample opportunity to defend himself, petitioner conducted a series of administrative investigation hearings during which respondent was able to face his accusers.[14] This time, Lobitaña gave a more detailed narration of the events that transpired in August and September 2002. He said:

x x x x x x x x x

(a) That [on] two (2) separate occasions, I personally handed over to Mr. Baptisma some amounts representing the latter's ten [percent] (10%) "commission" and/or "kickbacks." The first instance took place sometime around the first or second week of August 2002, where I met with Mr. Baptisma at the Papa's Grill, a native restaurant located in V. Rama Avenue, Cebu City. Mr. Baptisma's two (2) subordinates, Mr. Reno Cedeño and Bobby Banzon, were also present. After our dinner, I personally handed over to Mr. Baptisma the amount of ₱37,701.81 (cash), which was 10% of the aggregate contract price of ₱377,018.19 for three (3) purchase orders I got from Apo, *i.e*. P.O. ON-00028642 (₱159,090.91), ON-000-28630 (₱168,181.82), and ON-00030162 (₱49,745.46). Mr. Baptisma readily received the amount from me.

(b) That the second instance took place sometime in the second week of September 2002. I again met with Mr. Baptisma and his two (2) subordinates, Mr. Reno Cedeño and Bobby Banzon, at the same Papa's Grill Restaurant. After our dinner, I personally handed over to Mr. Baptisma the amount of ₱15,909.09, which was 10% of the total contract price of ₱159,090.91 under P.O. No. ON-00030067 dated 8 June 2002 which I got from Apo.

(c) That I submitted to the Investigating Committee copies of the Purchase Orders corresponding to the transactions I had with Apo out of which Mr. Baptisma received "commissions" and/or "kickbacks" from me, as follows:

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[12] *Id.* at 94.

[13] *Id.* at 60.

[14] *Id.* at 15.

x x x x x x x x x

(d) That I maintain a notebook where I could enter the details of my dealings with Apo personnel who have been receiving "commissions" and/or "kickback[s]" from me. During the administrative investigation held on 9 December 2003, I showed to the Investigating Committee the particular portion of my notebook where I recorded the total amount of ₱53,610.00 representing the "commission[s]" and/or "kickbacks" that I gave to the "Power Plant Boys," in connection with the transactions I had with Apo covered by aforementioned Purchase Orders. One of the "Power Plant Boys" I referred to in my notebook was Mr. Baptisma.

x x x x x x x x x[15]

For his part, respondent presented his co-employees Bobby Banzon (Banzon), Reno Cedeño (Cedeño) and Christopher Navarro.[16] Banzon testified that sometime in December 2002, he, along with respondent and other Apo employees, went to Papa's Grill; that on said occasion, he saw Lobitaña with some companions at another table; and that Lobitaña did not approach them but only gave food and bottles of beer through a waiter.[17] Cedeño, on the other hand, denied meeting Lobitaña at Papa's Grill.[18]

On March 22, 2004, respondent received the Notice of Termination[19] dated March 19, 2004 informing him of his dismissal from employment effective immediately on the ground of loss of trust and confidence.[20] At the time of his termination, respondent was a Power Plant Manager earning a monthly salary of ₱71,100.00.[21]

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

[16] *Id.* at 189.

[17] *Id.* at 190.

[18] *Id.*

[19] *Id.* at 109.

[20] *Id.* at 192.

[21] *Id.* at 60.

On March 31, 2004, respondent filed with the Regional Arbitration Branch VII of the National Labor Relations Commission (NLRC) in Cebu City a complaint for illegal dismissal with claims for non-payments of salaries, 13th month pay, service incentive leave, damages, and attorney's fees, docketed as RAB Case No. VII-03-0701-04, against petitioner and its Vice-President for Human Resources, Atty. Maria Virginia Ongkiko-Eala.[22]

Ruling of the Labor Arbiter

On January 5, 2005, Labor Arbiter Jose G. Gutierrez rendered judgment in favor of respondent. The Labor Arbiter opined that since respondent was not involved in the canvassing and purchasing of supplies, he could not have entered into any irregular arrangement with suppliers.[23] The Labor Arbiter likewise considered the testimony of Moralda as hearsay and the testimony of Lobitaña as self-serving and doubtful.[24] Hence, he ruled that there was "no justifiable ground to support the validity of [respondent's] dismissal x x x."[25] The decretal portion of his Decision[26] reads:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered declaring the [respondent] illegally dismissed from his employment. [Petitioner and Atty. Eala] are therefore, directed to reinstate the complainant to his former position without loss of seniority rights and other privileges. Further, [petitioner and Atty. Eala] are directed to jointly and severally pay [respondent] the following:

I.	Backwages	———	₱668,184.60
II.	13th Month Pay	———	71,200.00
III.	Unpaid Salaries	———	16,450.00
			₱755,834.60

plus ₱79,141.53 or ten (10%) percent attorney's fees or a total aggregate amount of **PESOS: EIGHT HUNDRED THIRTY ONE**

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[22] *Id.* at 20 and 189.

[23] *Id.* at 195.

[24] *Id.* at 195-196.

[25] *Id.* at 196.

[26] *Id.* at 189-198.

THOUSAND FOUR HUNDRED EIGHTEEN & 06/100 (₱831,418.06). The amount awarded to [respondent] however should be recomputed when this decision becomes final and executory.

[Petitioner's] counter-claim is dismissed for lack of merit.

SO ORDERED.[27]

Aggrieved, petitioner filed an appeal with the NLRC,[28] docketed as NLRC Case No. V-000248-2005.

Respondent, on the other hand, filed a Motion for Issuance of a Writ of Execution.[29]

On February 21, 2005, the Labor Arbiter ordered petitioner to reinstate respondent as Power Plant Manager of its plant at Tinaan, Naga, Cebu,[30] prompting petitioner to file an Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction with the NLRC,[31] docketed as NLRC INJ. Case No. 000001-2005.

Ruling of the National Labor Relations Commission

On July 11, 2005, the NLRC reversed the ruling of the Labor Arbiter. It ruled that respondent's "personal and direct involvement in the irregularities complained of renders him unworthy of the trust and confidence demanded [of] his position."[32] The *fallo* of the Decision[33] reads:

WHEREFORE, premises considered the decision of the Labor Arbiter is hereby **SET ASIDE** and **VACATED** and a new one entered dismissing the complaint.

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[27] *Id.* at 197-198.

[28] *Id.* at 61.

[29] *Id*.

[30] *Id.* at 61-62.

[31] *Id.* at 62.

[32] *Id.* at 276.

[33] *Id.* at 260-281; penned by Commissioner Oscar S. Uy and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Aurelio D. Menzon.

SO ORDERED.[34]

Respondent moved for reconsideration but his motion was denied by the NLRC in a Resolution[35] dated August 25, 2005. Thus, respondent elevated the matter to the CA.

Ruling of the Court of Appeals

On November 15, 2006, the CA reinstated the Decision of the Labor Arbiter. It ruled that petitioner failed to prove the existence of a just cause to warrant the termination of respondent as the alleged loss of trust and confidence was not based on established facts.[36] It decreed:

IN LIGHT OF ALL THE FOREGOING, the petition filed in this case is hereby **GRANTED**. The assailed decision dated July 11, 2005 promulgated by the National Labor Relations Commission (Fourth Division) and its subsequent resolution dated August 25, 2005 in NLRC Case No. V-000248-2005 and NLRC INJ. Case No. V-000001-2005 are hereby **SET ASIDE.** The decision dated January 5, 2005 of Labor Arbiter Jose G. Gutierrez is hereby **REINSTATED**.

IT IS SO ORDERED.[37]

On reconsideration, the CA stood pat on its finding that there was no basis for petitioner's loss of trust and confidence in respondent.[38] It, however, modified the dispositive portion of its Decision, in this wise:

WHEREFORE, [petitioner's] Motion for Reconsideration is hereby **PARTIALLY GRANTED**. Our Decision, dated November 15, 2006, reinstating the decision of Labor Arbiter Jose G. Gutierrez, is hereby **MODIFIED.** The portion of the said decision directing x x x Atty. Maria Virginia Ongkiko-Eala to pay the monetary awards in favor of [respondent] is now **SET ASIDE.** [Petitioner] Apo Cement Corporation is hereby **ORDERED** to pay [respondent] his separation

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[34] *Id.* at 281.

[35] *Id.* at 282.

[36] *Id.* at 65-66.

[37] *Id.* at 66.

[38] *Id.* at 72.

pay, in lieu of the order to reinstate the latter to his former position, at the rate of one (1) month salary for every year of his employment, with a fraction of at least six (6) months being considered as one (1) year, computed from the first day of employment up to finality of this decision.

SO ORDERED.[39]

Issues

Hence, this petition raising the following issues:

I.

IN RULING THAT "THE LOSS OF CONFIDENCE WAS NOT GROUNDED ON ESTABLISHED FACTS," THE [CA] HAS DECIDED THE INSTANT CASE IN A WAY NOT IN ACCORD WITH LAW AND ESTABLISHED DECISIONS OF THE SUPREME COURT THAT NEITHER DIRECT EVIDENCE NOR PROOF BEYOND REASONABLE DOUBT IS REQUIRED TO JUSTIFY THE DISMISSAL OF A MANAGERIAL EMPLOYEE FOR LOSS OF TRUST AND CONFIDENCE.

II.

THE COURT OF APPEALS' FINDING THAT "THERE WAS NO REASON WHY A SUPPLIER WOULD GIVE COMMISSION TO THE RESPONDENT" IS BASED ON GROSS MISAPPREHENSION OF FACTS, SPECULATIONS, SURMISES AND GUESSWORK, WHICH WARRANTS A REVIEW BY THE HONORABLE COURT, IN ACCORDANCE WITH THE RULING IN *MEGAWORLD AND HOLDINGS, INC. VS. HON. JUDGE BENEDICTO G. COBARDE, ET. AL.* IN FACT, THE SAID FINDING OF THE [CA] IS AT VARIANCE WITH AND CONTRADICTORY TO THE DEFINITIVE FINDING OF THE NATIONAL LABOR RELATIONS COMMISSION THAT THE RESPONDENT "WOULD EXERCISE SOME DISCRETION EITHER TO ACCEPT OR REJECT THE ITEMS DELIVERED BY THE SUPPLIERS" AND THAT "IT IS OBVIOUSLY BECAUSE OF THIS INHERENT POWER TO ACCEPT OR REJECT THAT MR. LOBITAÑA HAD TO GIVE 10% KICKBACKS TO THE RESPONDENT," WHICH ALL THE MORE WARRANTS THE EXERCISE BY THE HONORABLE

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[39] *Id.* at 73-74.

COURT OF ITS POWER OF REVIEW, IN ACCORDANCE WITH THE CASE OF *DUCUSIN VS. COURT OF APPEALS.*

III.

IN DISREGARDING THE POSITIVE AND UNBIASED TESTIMONY OF JEROME LOBITAÑA, THE [CA] X X X DECIDED THE INSTANT CASE IN A WAY NOT IN ACCORD WITH LAW AND SETTLED DECISIONS OF THE SUPREME COURT THAT THE "TESTIMONY OF A WITNESS WHO HAS NOT BEEN SHOWN TO HAVE ANY ILL-MOTIVE TO FALSELY TESTIFY AGAINST ANOTHER DESERVES FULL WEIGHT AND CREDENCE" AND THAT THE "AFFIRMATIVE TESTIMONY OF A WITNESS PREVAILS OVER A MERE SELF-SERVING AND UNSUBSTANTIATED DEFENSE OF DENIAL."

IV.

THE [CA] X X X DECIDED THE INSTANT CASE IN A WAY NOT IN ACCORD WITH LAW AND SETTLED DECISIONS OF THE HONORABLE SUPREME COURT, WHEN IT REINSTATED THE DECISION OF THE LABOR ARBITER DATED 5 JANUARY 2005 FINDING PETITIONER GUILTY OF ILLEGAL DISMISSAL AND HOLDING IT LIABLE TO PAY RESPONDENT BACKWAGES, UNPAID SALARIES, PROPORTIONATE 13TH MONTH PAY AND ATTORNEY'S FEES, DESPITE THE FACT THAT:

(A) RESPONDENT'S DISMISSAL WAS VALID AND THERE WAS TOTAL ABSENCE OF ANY FINDING OF BAD FAITH ON PETITIONER'S PART IN TERMINATING RESPONDENT'S EMPLOYMENT;

(B) RESPONDENT HAS BEEN PAID HIS SALARY FOR THE PERIOD MARCH 1-15, 2004, AND THEREFORE, THE AWARD OF UNPAID SALARY HAS NO LEGAL BASIS;

(C) RESPONDENT HAS UNPAID CASH ADVANCES AND, THEREFORE, HE CANNOT LAWFULLY CLAIM PAYMENT OF HIS SALARY FOR THE PERIOD MARCH 16-22, 2004, AND HIS PROPORTIONATE 13TH MONTH PAY FOR 2004;

(D) RESPONDENT IS LIABLE TO PAY HIS CASH ADVANCES TO THE PETITIONER UNDER THE CASH BENEFIT AGREEMENT HE HAD SIGNED;

(E) RESPONDENT IS NOT ENTITLED TO ATTORNEY'S FEES AS THE PETITIONER DID NOT ACT IN BAD FAITH.[40]

Simply put, the crux of the controversy is whether there was just cause for the dismissal of respondent.

Petitioner's Arguments

At the outset, petitioner asserts that this petition is an exception to the rule that only questions of law may be raised in a petition under Rule 45 of the Rules of Court.[41] It submits that a factual review of the instant case is necessary because the factual findings of the NLRC and the CA are contradictory.[42]

Petitioner also imputes error on the CA for holding that the "loss of confidence was not grounded on established facts."[43] It points out that although respondent was not tasked to canvass, award, and approve the purchase orders for company supplies and equipment, he, nevertheless, had some authority to reject the delivery and demand replacement.[44] Petitioner likewise denies any inconsistencies in the affidavits of Lobitaña,[45] and claims that in the absence of any ill-motive on the part of Lobitaña to falsely accuse respondent of the offense, Lobitaña's testimony should prevail over the bare denials of respondent and his witnesses.[46]

Respondent's Arguments

Respondent prays for the dismissal of the petition on the ground that factual issues are not allowed in a petition filed under Rule 45 of the Rules of Court.[47] In any case, he insists that he was

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[40] *Id.* at 22-24.

[41] *Id.* at 465.

[42] *Id.* at 465-470.

[43] *Id.* at 470.

[44] *Id.* at 477-481.

[45] *Id.* at 485-490.

[46] *Id.* at 490-493.

[47] *Id.* at 431-432.

terminated without cause as the affidavits of Lobitaña do not merit any weight and consideration.[48] He maintains that the affidavits of Lobitaña are full of fabrications and inconsistencies.[49] Thus, he implores that the ruling of the Labor Arbiter, as affirmed by the CA, be upheld.[50]

Our Ruling

The petition has merit.

The rule that only questions of law may be raised in a petition brought under Rule 45 of the Rules of Court is not without exception. Factual review may warrant when the factual findings of the NLRC are contrary to those of the Labor Arbiter and the CA;[51] or when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by evidence on record.[52] In this case, the Labor Arbiter and the CA found no just cause to warrant the dismissal of respondent. The NLRC, however, found otherwise. A factual review is, therefore, in order.

To validly dismiss an employee on the ground of loss of trust and confidence under Article 282 (c)[53] of the Labor Code of the Philippines, the following guidelines must be observed: "1) loss of confidence should not be simulated; 2) it should not be used as subterfuge for causes which are improper, illegal or

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[48] *Id.* at 432-437.

[49] *Id.*

[50] *Id.* at 432-433.

[51] *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez*, G.R. No. 170181, June 26, 2008, 555 SCRA 537, 549.

[52] *Sevilla v. Court of Appeals*, G.R. No. 150284, November 22, 2010, 635 SCRA 508, 515.

[53] Art. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

x x x x x x x x x

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

x x x x x x x x x

unjustified; 3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and 4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith."[54] More important, it "must be based on a willful breach of trust and founded on clearly established facts."[55]

In this case, we agree with the NLRC that the termination of respondent on the ground of loss of trust and confidence was justified. Unlike the Labor Arbiter and the CA, we find the testimony of Lobitaña credible and truthful.

To begin with, we find no inconsistencies between the first and the second affidavits of Lobitaña. If at all, the only difference between the two is that the second affidavit is more detailed than the first one. This, however, is understandable considering that the first affidavit was executed by Lobitaña during petitioner's initial investigation, when it was still verifying the information it received from Moralda, while the second affidavit, which contains Lobitaña's testimony during respondent's administrative hearing, was executed long after the investigation was conducted.

Also, there appears to be no ill-motive on the part of Lobitaña to falsely accuse respondent of accepting commissions and/or "kickbacks." In fact, it was not Lobitaña but Moralda who reported the irregularities to petitioner. Lobitaña came forward only during petitioner's initial investigation to confirm the testimony of Moralda that some personnel were indeed receiving commissions and/or "kickbacks."

Moreover, as between the positive testimony of Lobitaña that he gave respondent commissions and/or "kickbacks" on two separate occasions, and the negative testimony of respondent's witnesses Cedeño and Banzon that no such meeting took place, we are more inclined to give credence to the former. It bears stressing that a positive testimony prevails

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[54] *Rubia v. National Labor Relations Commission, Fourth Division*, G.R. No. 178621, July 26, 2010, 625 SCRA 494, 506.

[55] *Sunrise Holiday Concepts, Inc. v. Arugay*, G.R. No. 189457, April 13, 2011, 648 SCRA 785, 792.

over a negative one,[56] more especially in this case where respondent's witnesses did not even execute affidavits to attest to the truthfulness of their statements. Thus, it was error on the part of the Labor Arbiter and the CA to disregard the testimony of Lobitaña.

Likewise erroneous is the reasoning of the Labor Arbiter and the CA that since respondent was not involved in the procurement process, he could not be guilty of violating Section 2.04[57] of petitioner's Company Rules and Regulations, which prohibits employees from:

> Obtaining or accepting money or anything of value by entering into unauthorized arrangements(s) with supplier (s), client(s) or other outsiders(s).

This is a non sequitur. As aptly pointed out by the NLRC, although he was not directly involved in the procurement process, respondent, as the then Power Plant Manager, had some power or authority "vital and indispensable to the procurement process."[58] Quoted below is the NLRC's ratiocination, which we approve and adopt:

> After going through the records, we are afraid the Labor Arbiter completely missed the point. While canvassing, awarding, and approving of purchase orders for company supplies, materials and equipment may not strictly be the official functions of the [respondent], these being the concerns of the Procurement Department, nevertheless as the then Power Plant Manager, [respondent] actually wielded some authority which is vital and indispensable to the "procurement process." As is usual in any industrial firm, the procurement of company supplies, materials, and equipment is being handled by its procurement department, then headed by Mr. Romeo Tinoco, Jr. The procurement department is tasked with the duty to "canvass" and place "purchase orders" for supplies, materials, and equipment sought to be procured by the other departments, from which the

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[56] *Arboleda v. National Labor Relations Commission*, 362 Phil. 383, 390 (1999).

[57] *Rollo*, p. 77.

[58] *Id.* at 271.

purchase request originated. The requesting department which generated the Purchase Request is called the "end-user" or "requestor."

Being more familiar with the particulars of the supplies, materials and equipment that their respective department[s] need, especially the technical aspect of it, the "end-users" are tasked with the duty to provide the specifications of the supplies, materials, equipment sought to be procured for their respective department[s]. Since the "end-users" are the ones [who] provide for specifications, they are necessarily empowered to determine whether the materials or equipment delivered by the supplier have complied with the given specifications. If the item delivered fails to meet the given specifications, the end-user has the discretion to reject the delivery and demand for replacement.

One of the end-users that often generates purchase requests is the Power Plant, of which [respondent] was then the manager. Being then the manager of the Power Plant, it was [respondent's] duty to approve purchase requisition[s] and prepare or caused to be prepared the desired specifications of the item sought to be procured for the Power Plant, especially on the technical side of the items. Upon the delivery, [respondent] has the authority to determine if the items or equipment delivered are in accordance with the specifications given.

In performing this function, [respondent] would exercise some discretion either to accept the items delivered if he finds them to have complied with the desired specifications or reject the same if to his judgment the items delivered failed to meet the desired specifications. In fact, [respondent] himself categorically admitted during the administrative investigation that in the event the item is rejected, the end-user has the right to demand for replacement:

x x x x x x x x x

Thus, to the mind of any supplier, the role of the end-user, like the Power Plant then headed by [respondent], in the entire procurement process is as important and indispensable as that of the procurement personnel. Since the final acceptance of the items and/or equipment delivered/supplied by a supplier lies with the "end-user," the "end-user" equally wields the power to "make or break" a supplier, and therefore, the suppliers have all the reasons in the world to "bribe" the "end-users" if only to smoothen the acceptance of the items supplied/delivered.

Consequently, just because [respondent's] signature cannot be found in Annexes "10," "10-A," "10-B," "12," "12-A," "13" and "13-A", it does not necessarily mean that "he has absolutely nothing to do" with the entire procurement process. As said, while [respondent] may not have been empowered, "to canvass and award purchase orders to suppliers," he was empowered, as an end-user, to determine whether to accept or reject any item delivered by any supplier, which authority is part and parcel of the entire procurement mechanism put in place by the company.

It is obviously because of this inherent power to accept or reject any item delivered that Mr. Lobitaña had to give 10% kickbacks to the [respondent]. x x x[59]

All told, we find that the testimony of Lobitaña constitutes substantial evidence to prove that respondent, as the then Power Plant Manager, accepted commissions and/or "kickbacks" from suppliers, which is a clear violation of Section 2.04 of petitioner's Company Rules and Regulations. Jurisprudence consistently holds that for managerial employees "the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal."[60] As we then see it, respondent's termination was for a just and valid cause.

WHEREFORE, the petition is hereby **GRANTED.** The assailed Decision dated November 15, 2006 and the Resolution dated February 6, 2007 of the Court of Appeals in CA-G.R. CEB-SP No. 01220 are hereby **REVERSED and SET ASIDE.** The Decision of the National Labor Relations Commission dated July 11, 2005 and its Resolution dated August 25, 2005 are hereby **REINSTATED and AFFIRMED.**

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Bersamin, Villarama, Jr.,* and *Perlas-Bernabe,*[**] *JJ.,* concur.

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[59] *Id.* at 271-275.

[60] *House of Sara Lee v. Rey*, 532 Phil. 121, 139 (2006).

[*] Per Special Order No. 1226 dated May 30, 2012.

[**] Per Special Order No. 1227 dated May 30, 2012.

SECOND DIVISION

[G.R. No. 181548. June 20, 2012]

HEIRS OF CANDIDO DEL ROSARIO and HEIRS OF GIL DEL ROSARIO, *petitioners, vs.* **MONICA DEL ROSARIO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; EXECUTIVE ORDER NO. 129-A; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB), CREATED; JURISDICTION; LIMITATION.— In the process of reorganizing the DAR, Executive Order (E.O.) No. 129-A created the DARAB to assume the powers and functions with respect to the adjudication of agrarian reform matters. x x x Specifically, the PARAD and the DARAB have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act (R.A.) No. 6657, as amended by R.A. No. 9700, E.O. Nos. 228, 229, and 129-A, R.A. No. 3844 as amended by R.A. No. 6389, P.D. No. 27 and other agrarian laws and their Implementing Rules and Regulations. Thus, the jurisdiction of the PARAD and the DARAB is only limited to cases involving agrarian disputes, including incidents arising from the implementation of agrarian laws.

2. ID.; ID.; ID.; ID.; JURISDICTION OF A TRIBUNAL IS DETERMINED BY THE MATERIAL ALLEGATIONS IN THE COMPLAINT; NOT PRESENT IN CASE AT BAR. — It is the rule that the jurisdiction of a tribunal, including a quasi-judicial office or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for irrespective of whether the petitioner or complainant is entitled to any or all such reliefs. x x x A perusal of the foregoing will readily show that the complaint essentially sought the following: *first*, the enforcement of the agreement entered into by and between Gil and Monica wherein the latter promised to cede to the former one-third portion of the subject land

upon the issuance of the emancipation patent over the same; and *second*, the recovery of petitioners' purported hereditary share over the subject land, in representation of Gil and Candido. Indubitably, the said complaint for amendment and partition does not involve any "agrarian dispute," nor does it involve any incident arising from the implementation of agrarian laws. The petitioners and Monica have no tenurial, leasehold, or any agrarian relations whatsoever that will bring this controversy within the jurisdiction of the PARAD and the DARAB. Since the PARAD and the DARAB have no jurisdiction over the present controversy, they should not have taken cognizance of the petitioners' complaint for amendment of the Emancipation Patent and partition. x x x While ostensibly assailing Monica's qualification as a farmer-beneficiary, the petitioners did not seek the nullification of the emancipation patent issued to Monica and the issuance of a new one in their names. Instead, the petitioners merely sought that the subject land be equally partitioned among the surviving heirs of Spouses Del Rosario, including Monica. Verily, by merely asking for the recovery of their alleged hereditary share in the subject land, the petitioners implicitly recognized the validity of the issuance of the emancipation patent over the subject land in favor of Monica.

3. ID.; ID.; ID.; ID.; EFFECT OF NULL AND VOID DECISION; JUSTIFIED. — The Decision dated January 8, 2004 of the DARAB is null and void and, thus, produced no effect whatsoever, the DARAB having no jurisdiction to take cognizance of the petitioners' complaint for amendment and partition. On this point, our disquisition in *Spouses Atuel v. Spouses Valdez* is instructive, thus: **Jurisdiction over the subject matter cannot be acquired through, or waived by, any act or omission of the parties. The active participation of the parties in the proceedings before the DARAB does not vest jurisdiction on the DARAB, as jurisdiction is conferred only by law. The courts or the parties cannot disregard the rule of non-waiver of jurisdiction. Likewise, estoppel does not apply to confer jurisdiction to a tribunal that has none over a cause of action.**

APPEARANCES OF COUNSEL

Vallejo & Benitez Law Offices for petitioners.
Padilla Law Office for respondents.

D E C I S I O N

REYES, *J.*:

Nature of the Petition

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by the Heirs of Candido Del Rosario and the Heirs of Gil Del Rosario (petitioners), assailing the Decision[1] dated January 21, 2008 issued by the Court of Appeals (CA) in CA-G.R. SP No. 85483.

The Antecedent Facts

This involves a parcel of land with an area of 9,536 square meters situated in *Barangay* Caingin, Bocaue, Bulacan. The subject land was formerly owned by Pedro G. Lazaro and tenanted by the spouses Jose Del Rosario and Florentina De Guzman (Spouses Del Rosario).

Spouses Del Rosario had three children: Monica Del Rosario (Monica), Candido Del Rosario (Candido) and Gil Del Rosario (Gil). The petitioners claimed that when Spouses Del Rosario died, only they continued to tenant and actually till the subject land.

Sometime in February 1991, Monica and Gil agreed that the latter would facilitate the application for an Emancipation Patent over the subject land in the name of the former. In exchange, Monica agreed to cede to Gil one-third of the said land after the Emancipation Patent had been issued to her.

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[1] Penned by Associate Justice Marina L. Buzon, with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan-Castillo, concurring; *rollo*, pp. 31-44.

On May 29, 1998, the Department of Agrarian Reform (DAR) issued to Monica Emancipation Patent No. 00733146 over the land. Subsequently, on October 22, 1998, the Registry of Deeds for the Province of Bulacan issued Transfer Certificate of Title (TCT) No. EP-257-M in the name of Monica.

The petitioners claimed that Monica, despite repeated demands, refused to cede to Gil the one-third portion of the subject land pursuant to their agreement. Thus, on April 17, 2000, the petitioners filed with the Office of the Provincial Agrarian Reform Adjudicator (PARAD) in Malolos, Bulacan a complaint against Monica for amendment of TCT No. EP-257-M and partition of the subject land.

For her part, Monica claimed that their father entrusted to her the cultivation of the subject land after the latter became ill and incapacitated sometime in 1950. Gil and Candido, in turn, were entrusted with the cultivation of other parcels of land tenanted by Spouses Del Rosario. Further, after Presidential Decree No. 27 (P.D. No. 27) took effect, Monica claimed that she was the one listed in the files of the DAR as the tenant-beneficiary of the subject land and that she was the one who was paying the amortizations over the same.

The PARAD's Decision

On May 22, 2002, PARAD Provincial Adjudicator Toribio E. Ilao, Jr. (PA Ilao) rendered a Decision[2] the decretal portion of which, in part, reads:

> WHEREFORE, premises considered, judgment is hereby rendered in the following manner:
>
> 1). Ordering the Register of Deeds of Bulacan to cancel TCT/EP No. 257(M)/00733146 containing an area of 9,536 square meters, more or less, issued to Monica del Rosario and partitioned (sic) the covered lot among the heirs of the late spouses Jose del Rosario and Florentina de Guzman;
>
> 2). Ordering the respondent to cede the ONE THIRD (1/3) portion of the 9,536 square meters, equivalent to 3,178 square meters of

[2] *Id.* at 77-83.

the subject agricultural land in favor of the heirs of the late Gil Del Rosario in compliance with their agreement;

3). Ordering the remaining portion of 6,358 square meters to be subdivided into four (4) equal shares: to the surviving heirs of the late spouses Jose del Rosario and Florentina de Guzman as follows, to wit:

a. Respondent Monica del Rosario – 1,589 square meters;

b. Heirs of Candido del Rosario represented by his children – 1,589 square meters;

c. Heirs of Gil del Rosario represented by his children – 1,589 square meters; and

d. Consolacion del Rosario – 1,589 square meters.

4). Directing the PARO of Bulacan thru the Operations Division and all DAR personnel concerned to generate and issue EPs/titles in the name of the parties concerned with the corresponding area of tillage as indicated above, in accordance with the DAR existing rules and regulations, and cause the registration of the new EPs/titles with the Registry of Deeds of Bulacan.[3]

PA Ilao found that Monica was not the *bona fide* tenant-farmer of the subject land and that she had continuously failed to cultivate or develop the same.

Unperturbed, Monica appealed from the foregoing disposition of PA Ilao to the Department of Agrarian Reform Adjudication Board (DARAB).

The DARAB's Decision

On January 8, 2004, the DARAB rendered a Decision,[4] which reversed and set aside the Decision dated May 22, 2002 of PA Ilao. The DARAB held that:

[Monica] and her siblings are not co-heirs to the landholding in question. The said land was not a part of the inheritance of their late parents. This conclusion is based on the simple reason that

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

[4] *Id.* at 45-53.

tenants are not the owners of the landholding they cultivate. Under the law, inheritance includes all the property, rights and obligations of a person which are not extinguished by his death x x x. In the case of a tenant, what he may transfer to his successor upon his death is merely the right to cultivate the landholding. Such transfer of right to cultivate, however, cannot be applied in the instant case. The right to cultivate the subject landholding was being exercised by [Monica's] father until he became incapacitated (due to high blood pressure) to till the land, at which time, he passed the responsibility of cultivation to his eldest child, [Monica]. x x x The records show that the parents of [Monica] gave her the right to till the property of Pedro Lazaro. This is corroborated by the fact that Pedro Lazaro has recognized [Monica] as the only registered tenant of the subject property as evidenced by their "*Kasunduan Sa Pamumuwisan*" dated 25 September 1973 x x x.[5]

Further, the DARAB ruled that the agreement between Monica and Gil that one-third of the subject land would be ceded to the latter after the same had been registered under Monica's name is contrary to law as P.D. No. 27 prohibits the transfer of parcels of land given to qualified farmer-beneficiaries other than by hereditary succession or to the government.

The petitioners sought a reconsideration of the Decision dated January 8, 2004, but it was denied by the DARAB in its Resolution[6] dated July 8, 2004.

Subsequently, the petitioners filed a petition for review[7] with the CA alleging that the DARAB erred in ruling that they and Monica are not co-owners of the subject land.

The CA's Decision

On January 21, 2008, the CA rendered the herein assailed decision denying the petition for review filed by the petitioners. The CA held that the PARAD and the DARAB had no jurisdiction to take cognizance of the petitioners' complaint for amendment of the Emancipation Patent and partition of the subject land,

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[5] *Id.* at 50-51.

[6] *Id.* at 57-58.

[7] *Id.* at 84-107.

there being no agrarian dispute or tenancy relations between the parties. Thus:

> While it is true that the DARAB has primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP), which include those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority, however, for the DARAB to have jurisdiction over a case, there must exist a tenancy relationship between the parties, which does not obtain in the petition at bench.
>
> The jurisdiction of a tribunal or *quasi-judicial* body over the subject matter is determined by the averments of the complaint/petition and the law extant at the time of the commencement of the suit/complaint/petition. All proceedings before a tribunal or *quasi-judicial* agency bereft of jurisdiction over the subject matter of the action are null and void.[8] (Citations omitted)

Nevertheless, the CA also held that the petitioners are bound by the decision of the DARAB declaring Monica as the *bona fide* holder of TCT No. EP-257-M since they participated in the proceedings before the PARAD and the DARAB without raising any objection thereto.

Issues

In the instant petition, the petitioners submit the following issues for this Court's resolution:

[I]

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT DENIED THE PETITION FOR REVIEW ON GROUND OF LACK OF JURISDICTION ON [THE] PART OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB).

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[8] *Id.* at 42-43.

[II]

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT PETITIONERS ARE BOUND BY THE DECISION OF THE DARAB DECLARING MONICA DEL ROSARIO AS BONA FIDE TCT/EP HOLDER, THAT THEY ARE NOT CO-HEIRS TO THE SUBJECT LANDHOLDING, THAT THE AGREEMENT THAT ONE THIRD (1/3) OF THE SUBJECT LANDHOLDING SHALL BE GIVEN TO GIL DEL ROSARIO IS NULL AND VOID FOR BEING CONTRARY [TO] AGRARIAN LAWS AND ORDERING THEM NOT TO INTERFERE WITH MONICA DEL ROSARIO'S CULTIVATION OF SUBJECT LANDHOLDING.[9]

Simply put, the issues for this Court's resolution are the following: *first*, whether the PARAD and the DARAB have jurisdiction to take cognizance of the petitioners' complaint for amendment and partition; and *second*, if the PARAD and the DARAB have no jurisdiction over the complaint for amendment and partition, whether the petitioners are bound by their respective dispositions.

The Court's Ruling

The petition is partly meritorious.

First Issue: Jurisdiction of the PARAD and the DARAB

Contrary to the CA's disposition, the petitioners insist that the PARAD and the DARAB have the jurisdiction to take cognizance of their complaint for amendment of the Emancipation Patent and partition of the subject land notwithstanding the absence of tenancy relationship between them and Monica. They assert that the complaint below essentially involves a determination of the actual tenant and eventual rightful beneficiary of the subject land.

On the other hand, Monica asserts that the CA did not err in declaring that the PARAD and the DARAB have no jurisdiction over the said complaint for amendment and partition since there was simply no "tenancy relationship" alleged therein.

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[9] *Id.* at 15.

The jurisdiction of the PARAD and the DARAB is limited only to all agrarian disputes and matters or incidents involving the implementation of the CARP.

In the process of reorganizing the DAR, Executive Order (E.O.) No. 129-A created the DARAB to assume the powers and functions with respect to the adjudication of agrarian reform matters.[10]

At the time the complaint for amendment and partition was filed by the petitioners, the proceedings before the PARAD and the DARAB were governed by the DARAB New Rules of Procedures, which were adopted and promulgated on May 30, 1994, and came into effect on June 21, 1994 after publication (1994 DARAB Rules). The 1994 DARAB Rules identified the cases over which the DARAB shall have jurisdiction, to wit:

RULE II

JURISDICTION OF THE ADJUDICATION BOARD

SECTION 1. *Primary and Exclusive Original and Appellate Jurisdiction.* – The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate **all agrarian disputes** involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

a) The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the CARP and other agrarian laws;

b) The valuation of land, and the preliminary determination and payment of just compensation, fixing and collection of

[10] *Heirs of Florencio Adolfo v. Cabral*, G.R. No. 164934, August 14, 2007, 530 SCRA 111, 118-119.

lease rentals, disturbance compensation, amortization payments, and similar disputes concerning the functions of the Land Bank of the Philippines (LBP);

c) The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or LBP;

d) Those case arising from, or connected with membership or representation in compact farms, farmers' cooperatives and other registered farmers' associations or organizations, related to lands covered by the CARP and other agrarian laws;

e) Those involving the sale, alienation, mortgage, foreclosure, pre-emption and redemption of agricultural lands under the coverage of the CARP or other agrarian laws;

f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

g) Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under Section 12 of Presidential No. 946, except sub-paragraph (Q) thereof and Presidential Decree No. 815.

It is understood that the aforementioned cases, complaints or petitions were filed with the DARAB after August 29, 1987.

Matters involving strictly the administrative implementation of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARP) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

h) And such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

SECTION 2. *Jurisdiction of the Regional and Provincial Adjudicator*. – The RARAD and the PARAD shall have concurrent original jurisdiction with the Board to hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within their assigned territorial jurisdiction. (Emphasis supplied.)

Specifically, the PARAD and the DARAB have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act (R.A.) No. 6657, as amended by R.A. No. 9700, E.O. Nos. 228, 229, and 129-A, R.A. No. 3844 as amended by R.A. No. 6389, P.D. No. 27 and other agrarian laws and their Implementing Rules and Regulations.[11]

Thus, the jurisdiction of the PARAD and the DARAB is only limited to cases involving agrarian disputes, including incidents arising from the implementation of agrarian laws. Section 3(d) of R.A. No. 6657 defines an agrarian dispute in this wise:

> (d) Agrarian dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements. It includes any controversy relating to compensation of lands acquired under R.A. 6657 and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

The petitioners' complaint for amendment and partition is beyond the jurisdiction of the PARAD and the DARAB.

Where a question of jurisdiction between the DARAB and the RTC is at the core of a dispute, basic jurisprudential tenets come into play. It is the rule that the jurisdiction of a tribunal, including a quasi-judicial office or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character

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[11] 2009 DARAB Rules of Procedure, Rule II, Section 1.

of the relief prayed for irrespective of whether the petitioner or complainant is entitled to any or all such reliefs.[12]

Accordingly, we turn to the petitioners' complaint for amendment and partition, wherein they alleged that:

2. The subject agricultural land identified as Lot No. C, Psd-03-091057 (AR) consisting of an area of 9,536 square meters more or less situated at *Brgy.* Caingin, Bocaue, Bulacan, was formerly owned by Pedro Lazaro and was tenanted by SPOUSES JOSE DEL ROSARIO AND FLORENTINA DE GUZMAN, the late grandparents of herein petitioners, as the registered tenant-farmers over the subject agricultural land devoted to planting of *palay*;

3. When the late grandparents of herein petitioners died, the children of the former, specifically, brothers CANDIDO DEL ROSARIO and GIL DEL ROSARIO, predecessors-in-interest of herein petitioners, continued in the tillage of the subject agricultural land;

x x x x x x x x x

6. The EP was issued by the DAR to the respondent with the help of her brother Gil Del Rosario who, aside from shouldering all expenses relative thereto, lodged the petition in Monica del Rosario's name for the issuance of EP over the subject agricultural land being tilled by them, including the co-tenant farmers that are adjacent and adjoining in that area;

7. **The respondent, after receiving the EP over the subject agricultural land, refused to give the shares of her brothers (predecessors-in-interest of herein petitioners) and subdivide equally the subject land among them, they being surviving heirs of their late parents who first tilled the subject agricultural land despite persistent demand**;

x x x x x x x x x

10. **An agreement was likewise entered into by the respondent and the other tenant farmers of the adjoining lots, with the late Gil del Rosario dated February 1991, committing themselves that after the issuance of their EPs by the DAR, the ONE THIRD**

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[12] *Del Monte Philippines, Inc. Employees Agrarian Reform Beneficiaries Cooperative (DEARBC) v. Sangunay*, G.R. No. 180013, January 31, 2011, 641 SCRA 87, 96. (Citation omitted)

(1/3) portion of their tillage will be segregated and given to her brother Gil del Rosario in consideration of the assistance of the latter, x x x;

x x x x x x x x x

12. The petitioners are seeking the assistance of this Honorable Board to **amend and partition the EP issued to the respondent and the subject agricultural land be divided equally among the respondent and the predecessors-in-interest of herein petitioners**;[13] (Emphasis supplied)

Based on these allegations, the petitioners sought the following reliefs:

WHEREFORE, premises considered, it [is] most respectfully prayed of this Honorable Board that after due hearing, judgment be rendered in the above-entitled petition as follows:

(a) Ordering respondent to partition or subdivide equally among the respondent and herein petitioners, in representation of their respective predecessors-in-interest, the subject agricultural land;

(b) Ordering respondent to stop collecting lease rentals from the herein petitioners relative to their establishments and those erected by their predecessors-in-interest;

(c) Ordering respondent to stop cutting [of] trees and other improvements thereon established by the herein petitioners and their predecessors-in-interest;

(d) Ordering respondent to allow the petitioners to plant *palay* or vegetable plants (sic) over the agricultural land occupied by them;

(e) Ordering respondent to pay attorney's fees of [₱]50,000.00 to petitioners and costs of litigation.[14] (Emphasis supplied)

A perusal of the foregoing will readily show that the complaint essentially sought the following: *first*, the enforcement of the agreement entered into by and between Gil and Monica wherein the latter promised to cede to the former one-third portion of

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[13] *Rollo*, pp. 67-69.

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

the subject land upon the issuance of the emancipation patent over the same; and *second*, the recovery of petitioners' purported hereditary share over the subject land, in representation of Gil and Candido.

Indubitably, the said complaint for amendment and partition does not involve any "agrarian dispute," nor does it involve any incident arising from the implementation of agrarian laws. The petitioners and Monica have no tenurial, leasehold, or any agrarian relations whatsoever that will bring this controversy within the jurisdiction of the PARAD and the DARAB. Since the PARAD and the DARAB have no jurisdiction over the present controversy, they should not have taken cognizance of the petitioners' complaint for amendment of the Emancipation Patent and partition.

Further, the instant case does not involve an "incident arising from the implementation of agrarian laws" as would place it within the jurisdiction of the PARAD and the DARAB. Admittedly, the petitioners alleged that it was Gil and Candido who continued the tillage of the subject land after the death of Spouses Del Rosario. While the foregoing allegation seems to raise a challenge to Monica's qualification as a farmer-beneficiary of the subject land, we nevertheless find the same insufficient to clothe the PARAD and the DARAB with jurisdiction over the complaint.

While ostensibly assailing Monica's qualification as a farmer-beneficiary, the petitioners did not seek the nullification of the emancipation patent issued to Monica and the issuance of a new one in their names. Instead, the petitioners merely sought that the subject land be equally partitioned among the surviving heirs of Spouses Del Rosario, including Monica. Verily, by merely asking for the recovery of their alleged hereditary share in the subject land, the petitioners implicitly recognized the validity of the issuance of the emancipation patent over the subject land in favor of Monica.

Second Issue: Effect of the DARAB's Decision

Despite its finding that the PARAD and the DARAB lacked jurisdiction to take cognizance of the petitioners' complaint for amendment and partition, the CA nevertheless ruled that the petitioners were bound by the DARAB's Decision dated January 8, 2004. Thus:

> However, considering that petitioners invoked the jurisdiction of the DARAB Provincial Adjudicator by opposing Monica's motion to dismiss the case on the ground that said Adjudicator has no jurisdiction over the case, they are, therefore, bound by the Decision of the DARAB declaring Monica as the *bona fide* TCT/EP holder; that they are not co-heirs to the subject landholding; and that the agreement that one third (1/3) of the subject landholding shall be given to Gil del Rosario is null and void for being contrary to agrarian laws; and ordering them not to interfere with Monica's cultivation of her landholding. Settled is the rule that participation by certain parties in the administrative proceedings without raising any objection thereto, bars them from any jurisdictional infirmity after an adverse decision is rendered against them.[15] (Citation omitted)

We do not agree with the foregoing ratiocination of the CA. The Decision dated January 8, 2004 of the DARAB is null and void and, thus, produced no effect whatsoever, the DARAB having no jurisdiction to take cognizance of the petitioners' complaint for amendment and partition.

On this point, our disquisition in *Spouses Atuel v. Spouses Valdez*[16] is instructive, thus:

> **Jurisdiction over the subject matter cannot be acquired through, or waived by, any act or omission of the parties. The active participation of the parties in the proceedings before the DARAB does not vest jurisdiction on the DARAB, as jurisdiction is conferred only by law. The courts or the parties cannot disregard the rule of non-waiver of jurisdiction. Likewise, estoppel does not apply to confer jurisdiction to a tribunal that has none over a cause of action.** The failure of the parties to challenge the

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[15] *Id.* at 43-44.

[16] 451 Phil. 631 (2003).

jurisdiction of the DARAB does not prevent this Court from addressing the issue, as the DARAB's lack of jurisdiction is apparent on the face of the complaint. Issues of jurisdiction are not subject to the whims of the parties.

In a long line of decisions, this Court has consistently held that an order or decision rendered by a tribunal or agency without jurisdiction is a total nullity. Accordingly, we rule that the decision of the DARAB in the instant case is null and void. Consequently, the decision of the Court of Appeals affirming the decision of the DARAB is likewise invalid. This Court finds no compelling reason to rule on the other issues raised by the Spouses Atuel and the Spouses Galdiano.[17] (Citations omitted and emphases supplied)

WHEREFORE, in consideration of the foregoing disquisitions, the Decision dated January 21, 2008 of the Court of Appeals in CA-G.R. SP No. 85483 is hereby **REVERSED** and **SET ASIDE.** The Provincial Agrarian Reform Adjudicator's Decision dated May 22, 2002, and the Department of Agrarian Reform Adjudication Board's Decision dated January 8, 2004 and Resolution dated July 8, 2004, are declared **NULL** and **VOID** for lack of jurisdiction.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Sereno, JJ.,* concur.

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[17] *Id.* at 645-646.

SECOND DIVISION

[G.R. No. 182486. June 20, 2012]

PHILBAG INDUSTRIAL MANUFACTURING CORPORATION, *petitioner, vs.* **PHILBAG WORKERS UNION-LAKAS AT GABAY NG MANGGAGAWANG NAGKAKAISA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; THE BURDEN OF PROVING THAT THE TERMINATION OF EMPLOYMENT WAS FOR A VALID OR AUTHORIZED CAUSE RESTS ON THE EMPLOYER; FAILURE TO DISCHARGE THIS BURDEN IN CASE AT BAR. — Under the law, the burden of proving that the termination of employment was for a valid or authorized cause rests on the employer. Failure to discharge this burden would result in an unjust or illegal dismissal, as aptly pointed out by the CA. We find such a failure on the part of the employer in this case. x x x We share the CA's reservations on Mauricio's dismissal. The company's evidence on his alleged infraction does not substantially show that he violated company rules and regulations to warrant his dismissal. Reinoso's report on Mauricio not doing his job on May 24, 2004 came one month after the alleged incident, thus inviting the CA's suspicion on its veracity. Also, as the CA observed, why did Reinoso not confront Mauricio and the four others she caught idling, if they had indeed been not doing their work. It is surprising that she did not call their attention about the incident considering that she was their supervisor. Reinoso's delayed report casts doubt on the company's case against Mauricio. In *Sevillana v. I.T. (International) Corporation, et al.*, the Court stressed that the evidence must be substantial and not arbitrary, and founded on clearly established facts to warrant a dismissal. The petition must fail with respect to Mauricio.

2. ID.; ID.; ID.; THE MANAGEMENT PREROGATIVE IN THE DISMISSAL OF EMPLOYEES MUST BE EXERCISED IN GOOD FAITH AND WITH DUE REGARD TO THE

RIGHTS OF THE WORKERS IN THE SPIRIT OF FAIRNESS AND WITH JUSTICE IN MIND; VIOLATION IN CASE AT BAR. — The company rules and regulations did not define the "demerits" system of employee discipline, but after a reading of the document, we gather that an employee is meted demerit points for committing any of the offenses listed under GROUNDS FOR ADMINISTRATIVE DISCIPLINARY ACTION, Sections A, B, C, D and E of the company rules and regulations. x x x Under the title DISCIPLINARY ACTION of the company, any employee who has been given 12 demerit points under Section E, or a total of 12 demerit points under Sections A to D, within a 12-month period, shall be separated from the service. The company factored in Camacho's earlier AWOL infraction (February 16, 2004) for two days (two demerit points) to make her demerit points add up to 14, two more than the limit. There is no dispute that Camacho was absent from work from March 5 to 21, 2004. But as the CA correctly pointed out, the circumstances surrounding her absence did not justify her separation from the service. x x x It is obvious that the company overstepped the bounds of its management prerogative in the dismissal of Mauricio and Camacho. It lost sight of the principle that management prerogative must be exercised in good faith and with due regard to the rights of the workers in the spirit of fairness and with justice in mind.

APPEARANCES OF COUNSEL

Andres Marcelo Padernal Guerrero & Paras for petitioner.

D E C I S I O N

BRION, *J.*:

This is a petition for review on *certiorari*[1] seeking the reversal of the decision dated April 25, 2007[2] and the resolution dated

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

[2] *Id.* at 34-44; penned by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justices Renato C. Dacudao and Edgardo F. Sundiam.

April 11, 2008[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 86849.

The Antecedents

Edwin Mauricio and Zharralyn Camacho were employees of the petitioner, Philbag Industrial Manufacturing Corporation (*company*), until their dismissal in the second half of 2004. They worked as cutter and circular loom operator, respectively. They were members of the respondent, Philbag Workers Union-Lakas at Gabay ng Manggagawang Nagkakaisa (*union*), the exclusive bargaining representative of the company's rank-and-file employees. The union had a collective bargaining agreement (*CBA*) with the company.

Mauricio and Camacho protested their dismissal, prompting the union and the company to convene the CBA's grievance machinery in an effort to resolve the matter at plant level. Unable to reach a settlement, they agreed to have the dispute resolved through voluntary arbitration. In a submission agreement,[4] they asked Voluntary Arbitrator (*VA*) Angel L. Ancheta to resolve the dispute. The union, through its President, Danilo Cañete, represented Mauricio and Camacho.

The Voluntary Arbitration Proceedings

Mauricio

The union alleged before VA Ancheta that Mauricio's dismissal arose from a scheme devised by the company's cutters to make their work easier. It involved unwinding the textile from the rolled bulk before they work on it, the length of the material to be determined by the cutter concerned. The cutters take turns in unwinding the textile from the roll.

Allegedly, on May 24, 2004, at around 5:00 a.m., Mauricio was at his turn unwinding the textile from the roll. At a distance, Anneliza Reinoso, the cutting supervisor, saw that Mauricio was not cutting the textile. She then concluded that Mauricio

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[3] *Id.* at 46-48.

[4] *Id.* at 166; dated July 16, 2004.

was not doing his job. Reinoso reported the incident to management on June 28, 2004.[5]

On May 26, 2004, Mauricio received a memorandum from management[6] directing him to explain in writing why he should not be dismissed for violating Section 3 of the company rules and regulations.[7] Section 3 states that commission of any of the offenses listed thereunder shall be given three demerit points. Offense no. 5 in the list involves "[i]dling or wasting company working hours or loitering on company time. Dressing up, washing up, or wasting time after punching in or before punching out."[8]

In a written statement dated May 26, 2004,[9] Mauricio denied that he committed the violation charged. He explained that he was doing his job on May 24, 2004. Nonetheless, he was given three demerit points, which if added to the demerit points he had earlier incurred would amount to a total of twelve (12) demerit points within a twelve-month period; the totality, the company claimed, sufficed to warrant his dismissal under the rules.[10] The company explained that Mauricio incurred nine demerit points for unauthorized absence and insubordination from September 10, 2003 to April 7, 2004.

Mauricio was dismissed on July 3, 2004. The union questioned the dismissal, contending that Reinoso's report was without basis.

Camacho

The company terminated Camacho's employment on June 26, 2004 for violation of company rules, as follows:[11]

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[5] *Id.* at 135.

[6] *Id.* at 98.

[7] *Id.* at 121.

[8] *Ibid.*

[9] *Id.* at 106.

[10] *Id.* at 124; section on DISCIPLINARY ACTION.

[11] *Id.* at 133; Memo dated June 21, 2004.

Section A, Rule # 1 - Absence without official leave (AWOL) for not more than two (2) consecutive days (equivalent to 2 demerit points each)

- AWOL [on] February 16, 2004 (Memo dated February 23, 2004)

Section E, Rule # 1 - Absence without official leave (AWOL) for six (6) or more consecutive days (equivalent to 12 demerit points each)

- AWOL [on] March 15 - 21, 2004 (Memo dated May 11, 2004)[.]

Concentrating on the second heavier charge, the union alleged that Camacho suffered from abdominal pain and slight bleeding on March 3, 2004, compelling her to go to Clinica Marquez[12] in Caloocan City for a medical check-up. She was advised to have a complete rest from March 3 to 14, 2004, for which she went on leave. Her medical certificate from Clinica Marquez was countersigned by the company doctor.

On March 15, 2004, Camacho went back to Clinica Marquez for a consultation as she continued to suffer from spot bleeding. Dr. Consuelo Marquez, her attending physician, diagnosed her condition as threatened abortion and advised her to rest for another twenty (20) days.[13]

On March 18, 2004, Camacho requested her aunt, Gloria Maquiling, to report her condition to the company and to present her medical certificate for countersignature of the company nurse and doctor. The two refused as they wanted to see Camacho first. Four days later, or on March 22, 2004, Camacho called up the company and talked with the personnel manager, Chona Beth Nieto. She apologized for her failure to personally notify the company about the additional 20-day rest period Dr. Marquez advised her to take. She assured Nieto that she would present the medical certificate when she returned to work. On April 5,

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[12] Not Clinica Enriquez as cited by the Voluntary Arbitrator and the CA.

[13] *Rollo*, p. 102; Medical Certificate issued by Dr. Marquez.

2004, she was again advised by Dr. Marquez to take a bed rest for another month, due to her vaginal bleeding.[14] Dr. Marquez certified that Camacho was fit to work effective May 11, 2004.[15]

In a memo dated May 11, 2004,[16] the company directed Camacho to explain why she should not be dismissed for violating Section E, Rule 1 of the company rules on absence without official leave for six or more consecutive days. She replied that because of her illness, she forgot to have her medical certificate countersigned by the company doctor.[17]

Through another memo dated May 17, 2004,[18] the company informed Camacho that she had already incurred fourteen (14) demerit points for her AWOL on February 16, 2004 (two demerit points) and her AWOL from March 15 to 21, 2004 (12 demerit points), which warranted her dismissal from the service. On June 21, 2004, the company served Camacho a termination letter.[19]

Camacho accused the company of bad faith, contending that she incurred her absences upon the advice of Dr. Marquez for her to take pregnancy rests.

To avoid liability, the company maintained that both Mauricio and Camacho violated company rules on employee discipline, thereby incurring demerit points that justified their separation from the service. It pointed out that Mauricio was observed idling and wasting company time for two hours on May 24, 2004 as reported by Reinoso who witnessed the incident. With respect to Camacho, the company stressed that she failed (1) to follow the procedure in taking a leave of absence (filing the required form) or getting permission from or notifying management that she could not report for work from March 15

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[14] *Id.* at 103.

[15] *Id.* at 126; Medical Certificate dated May 5, 2004.

[16] *Id.* at 130.

[17] *Id.* at 131.

[18] *Id.* at 132.

[19] *Id.* at 133.

to 21, 2004 and (2) to have her medical certificate countersigned by the company doctor.

The company further alleged that on May 11, 2004, Camacho reported for work and presented a medical certificate (dated March 15, 2004) to be countersigned by the company doctor. The doctor refused to countersign the certificate because it was past Camacho's sickness period of March 15 to 21, 2004. It argued that it conducted an investigation on March 22, 2004 where she admitted her failure to inform the company about her absences.

The Voluntary Arbitration Decision

In his decision of September 15, 2004,[20] VA Ancheta declared Mauricio and Camacho's dismissal valid. However, in view of their length of service to the company and for humanitarian consideration, he awarded them financial assistance: ₱20,000.00 to Mauricio and ₱15,000.00 to Camacho.

With the ruling, VA Ancheta upheld the company's prerogative to impose disciplinary action on its employees who violate company rules and regulations. The union sought relief from the CA through a petition for review under Rule 43 of the Rules of Court, contending that VA Ancheta committed grave abuse of discretion for his failure to appreciate the facts of the case and to apply existing law and jurisprudence.

The CA Decision

On April 25, 2007,[21] the CA granted the petition and reversed VA Ancheta's ruling. It found "no plausible reason for [the company] to [impose] demerit points on Mauricio and Camacho as a result of the subject incidents. Accordingly, they should not be considered as having accumulated twelve (12) demerit points, respectively[,] which would justify their dismissal from [the] service."[22]

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[20] *Id.* at 68-80.

[21] *Supra* note 2.

[22] *Id.* at 40.

In Mauricio's case, the CA found Reinoso's report not credible despite the company's insistence that she could not have fabricated the report. It noted two elements in the report which made it dubious: (1) it was dated June 28, 2004 or more than a month after the incident transpired; and (2) it did not state when the incident allegedly happened.

The CA wondered why Reinoso reported the incident one month after its occurrence. It asked how the company can make an intelligent investigation when Reinoso did not even mention the date when the incident occurred. If Mauricio and four of his co-employees stopped working for two hours why did Reinoso not do anything about it? In view of these lapses, the CA considered Reinoso's report a mere afterthought. It concluded that the company failed to prove its allegation that Mauricio violated Section B(5) of its rules and regulations.

With respect to Camacho, the CA acknowledged that indeed, she did not report for work from March 15 to 21, 2004 (7 days), without filing a leave of absence. It was not convinced, however, that she deliberately disregarded the company rules on the matter.

The CA thus ruled that Mauricio and Camacho were illegally dismissed. Accordingly, it ordered the company to pay them backwages and separation pay as it considered reinstatement to be no longer viable due to the passage of time. The company moved for reconsideration, reiterating essentially the same arguments it raised before the CA and, additionally, contending that the case has become academic since it had already ceased operations due to serious business losses. The CA denied the motion. It rejected the company's business closure defense, holding that Mauricio's and Camacho's monetary awards could still be pursued during liquidation, pursuant to Section 122 of the Corporation Code. More importantly, it reminded the company that the two employees were dismissed without just cause and, therefore, not covered by Article 283 of the Labor Code under which, an employer who closes its business due to serious financial losses is not required to grant separation pay to the dismissed employees.

The Parties' Positions

The Company

Aside from the petition itself,[23] the company submitted a comment (to the union's reply)[24] and a memorandum.[25]

It prays for the nullification of the CA rulings on the grounds that: (1) the CA had no jurisdiction over the petition for review as it was filed beyond the ten-day reglementary period; (2) the CA committed a misapprehension of the facts and the evidence; and (3) the CA erred in directing the payment of backwages and separation pay.

On its first assignment of error, the company argues that the CA should not have taken cognizance of the appeal for lack of jurisdiction. It contends that under Article 262-A of the Labor Code, the award or decision of the voluntary arbitrator or panel of voluntary arbitrators shall be final and executory after 10 calendar days from receipt of the copy of the award or decision by the parties.

The company points out that as alleged by the union in its petition with the CA, it received a copy of VA Ancheta's decision on September 24, 2004.[26] The union, the company argues, had only until October 4, 2004 to file the petition, not until October 9, 2004.[27] It stressed that as the appeal was filed late, VA Ancheta's decision had attained finality, removing the case from the CA's jurisdiction. It posits that the reglementary period that should govern in this case is the 10-day period under the Labor Code and not the 15-day period under Section 4, Rule 43 of the Rules of Court.

On the dismissal of Mauricio and Camacho, the company reiterates essentially the same arguments it presented to the CA

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[23] *Supra* note 1.

[24] *Rollo*, pp. 276-283; dated October 28, 2008.

[25] *Id.* at 287-309; dated February 27, 2009.

[26] *Id.* at 49.

[27] *Id.* at 2.

on why it had to terminate their employment. With respect especially to Camacho, it insists that her going on absence without official leave (AWOL) from March 15 to 21, 2004, her latest infraction, justified her dismissal. It explains that by such unauthorized absence, Camacho incurred 12 demerit points, bringing her total within a twelve-month period to 14 demerit points which exceeded the limit provided in the company rules.[28] She had been on AWOL earlier, or on February 16, 2004.

Lastly, the company faults the CA for awarding backwages to Mauricio and Camacho (from the date the wages were withheld up to the finality of the CA decision), as well as separation pay. It considers the award erroneous because it ceased operations on December 6, 2006. It maintains that in view of the cessation of its business operations, the backwages must necessarily be limited to the date of its closure. It likewise questions the separation pay award as the cessation of its operations was due to serious financial losses, a situation where it is not required to give its employees separation pay under Article 283 of the Labor Code.

Mauricio and Camacho

Mauricio and Camacho, through the union comment[29] and memorandum,[30] ask that the company's appeal be dismissed for lack of merit, with the following arguments:

First. The reglementary period for the filing of a petition for review of the decision of the voluntary arbitrator is 15 days from receipt of the denial of the petitioner's motion for reconsideration, pursuant to Rule 43 of the Rules of Court, not 10 days from receipt of the voluntary arbitrator's decision under the Labor Code. As admitted by the company itself, it filed the petition within the 15-day period. In any event, the company is estopped from raising the issue as it failed to raise it before the CA.

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[28] *Id.* at 124; Company Rules and Regulations, DISCIPLINARY ACTION.

[29] *Id.* at 252-265; dated August 28, 2008.

[30] *Id.* at 311-324; dated March 5, 2009.

Second. The CA committed no reversible error in declaring Mauricio and Camacho's dismissal illegal. In Mauricio's case, it is not true that he was idling or wasting company time in the morning of May 24, 2004. He was unwinding the textile from the roll and so it was but natural that Reinoso did not see him cutting the textile; also, she did not even come near the work area. At any rate, Reinoso did not call his attention or reprimand him about the matter if indeed, she actually saw him idling or wasting company time on the day in question.

With respect to Camacho, there is likewise no truth to the company's allegation that she merely asked her aunt, Maquiling, to call the company about her (Camacho's) absence from March 15 to 21, 2004. When her aunt called, she had with her Camacho's medical certificate to be countersigned by the company nurse and doctor, but they refused. Camacho then informed, by phone, the company's personnel manager on March 22, 2004 that she would present her medical certificate upon her return to work.

Third. Mauricio and Camacho, having been illegally dismissed, are entitled to reinstatement with full backwages. Reinstatement and backwages are separate and distinct from each other. Since the company is no longer in operation, however, they are amenable to the payment of separation pay in addition to the payment of backwages.

The Court's Ruling

The Procedural Issue

The company's argument that the CA had no jurisdiction over the case has no leg to stand on. It had already raised the issue with the CA, although based on a different legal premise. In its comment on the petition of the union[31] before the CA, the company prayed that the petition be dismissed for late filing (which would result in making VA Ancheta's decision final and executory) by reason of the union's failure to file it within the 15-day period under Rule 43 of the Rules of Court.[32]

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[31] *Id.* at 152-164.

[32] *Id.* at 155.

Parenthetically, it also asked that the petition be dismissed for lack of merit. The CA granted the petition, without resolving the procedural issues. The company then moved for reconsideration,[33] without questioning the non-resolution of the procedural issues it raised, **especially the petition's late filing, in effect submitting to the CA's jurisdiction**. The CA declared:

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We note that Philbag in their Comment pointed out several procedural lapses on the part of the Union which would warrant the dismissal of the petition. However, in the Memorandum which it subsequently filed, Philbag made no mention of said procedural lapses. This evidently constitutes as a waiver on its part and consequently, We need not rule on the same.[34]

In light of what transpired in the CA, the company cannot now be heard repudiating the CA's authority to resolve the case. In *Marquez v. Secretary of Labor*,[35] the Court said:

[A]fter voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court x x x. [I]t is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

x x x x x x x x x

[W]hile the rule has been applied to estop the plaintiff from raising the issue of jurisdiction, it has likewise been applied to the defendant and more specifically, to the x x x employer in a labor case. The active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the

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[33] *Supra* note 2.

[34] *Id.* at 39.

[35] 253 Phil. 329, 335-336 (1989), citing *Tijam v. Sibonghanoy*, 131 Phil. 556 (1968).

resolution of the case and will bar said party from later on impugning the court or body's jurisdiction [underscoring ours].

The Merits of the Case

Under the law, the burden of proving that the termination of employment was for a valid or authorized cause rests on the employer.[36] Failure to discharge this burden would result in an unjust or illegal dismissal,[37] as aptly pointed out by the CA. We find such a failure on the part of the employer in this case.

In Mauricio's case, the company's submissions fall short of establishing that he was indeed not doing his job as cutter on May 24, 2004, together with four other employees. He was, as he claimed (through his union), unwinding textile from the rolled bulk before cutting it. The cutters devised this "unwind-and-cut" method to make their work easier. **The union's claim on the matter had never been disputed by the company**.

Early on the day in question, Reinoso, the company's cutting supervisor, allegedly saw from a distance that Mauricio and four other employees were not cutting the textile and, therefore, not doing their jobs. Reinoso submitted an incident report to the company on June 28, 2004, more than a month after the alleged incident. On July 3, 2004, the company dismissed Mauricio after giving him three demerit points for violating Section B(5) of the company rules and regulations on "idling or wasting company working hours,"[38] which if added to the demerit points he incurred for past infractions would total 12 demerits points, within a twelve-month period, enough to warrant his dismissal.[39] The CA refused to give credit to Reinoso's report, dismissing it as a "mere afterthought,"[40] on grounds earlier mentioned.

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[36] LABOR CODE, Article 277(b).

[37] *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235, 243 (2002).

[38] *Supra* note 8.

[39] *Supra* note 10.

[40] *Supra* note 2 at 40.

We share the CA's reservations on Mauricio's dismissal. The company's evidence on his alleged infraction does not substantially show that he violated company rules and regulations to warrant his dismissal. Reinoso's report on Mauricio not doing his job on May 24, 2004 came one month after the alleged incident, thus inviting the CA's suspicion on its veracity. Also, as the CA observed, why did Reinoso not confront Mauricio and the four others she caught idling, if they had indeed been not doing their work. It is surprising that she did not call their attention about the incident considering that she was their supervisor. Reinoso's delayed report casts doubt on the company's case against Mauricio. In *Sevillana v. I.T. (International) Corporation, et al.*,[41] the Court stressed that the evidence must be substantial and not arbitrary, and founded on clearly established facts to warrant a dismissal. The petition must fail with respect to Mauricio.

We have the same conclusion in relation to Camacho. Like Mauricio, the company terminated Camacho's employment for having incurred more than the allowed demerit points to remain in the service. The company rules and regulations did not define the "demerits" system of employee discipline, but after a reading of the document,[42] we gather that an employee is meted demerit points for committing any of the offenses listed under GROUNDS FOR ADMINISTRATIVE DISCIPLINARY ACTION, Sections A, B, C, D and E of the company rules and regulations.

As the records show, the company charged Camacho of having been on AWOL from March 15-21, 2004 (7 days). It refused to recognize the medical certificate presented by Camacho for the period as it was not countersigned by the company doctor. She was thus meted 12 demerit points, enough to warrant her dismissal under Section E above, item 1 of which provides that being on AWOL for six or more consecutive days shall be given 12 demerit points. Under the title DISCIPLINARY ACTION of the company, any employee who has been given 12 demerit

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[41] 408 Phil. 570, 586 (2001).

[42] *Rollo*, pp. 119-125.

points under Section E, or a total of 12 demerit points under Sections A to D, within a 12-month period, shall be separated from the service. The company factored in Camacho's earlier AWOL infraction (February 16, 2004) for two days (two demerit points) to make her demerit points add up to 14, two more than the limit.

There is no dispute that Camacho was absent from work from March 5 to 21, 2004. But as the CA correctly pointed out, the circumstances surrounding her absence did not justify her separation from the service. We quote with approval the following excerpt from the CA ruling:

> A judicious evaluation of the facts shows that Camacho did not deliberately disregard the company rules. She did comply with the said policy although "quite belatedly." Nonetheless, We do not find any valid reason for the company doctor to refuse to countersign the subject medical certificate since it was properly signed by the physician of Camacho and bears all the earmarks of regularity in its issuance and hence, is entitled to full probative value. Besides, said company doctor could have easily verified the facts stated therein. In fact, Camacho had been absent from 3 to 14 of March 2004 due to abdominal pain and slight bleeding and the medical certificate covering the said period was duly countersigned by the company doctor. The same is true with the Medical Certificate dated 5 April 2004 which advised Camacho to rest for a month due to threatened abortion. Thus, Camacho's records would reveal that indeed she was suffering from threatened abortion and that she had a valid reason to absent herself for 20 days starting from 15 March 2004.
>
> Moreover, it is interesting to note that Philbag did not include the period from 22 March to 4 April 2004. Obviously, this is because it had already received information through a telephone call that Camacho was sick. If Philbag can give credence to a telephone call then why cannot it accept a medical certificate which only lacks a countersignature?[43]

It is obvious that the company overstepped the bounds of its management prerogative in the dismissal of Mauricio and Camacho. It lost sight of the principle that management

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[43] *Supra* note 2 at 42.

prerogative must be exercised in good faith and with due regard to the rights of the workers in the spirit of fairness and with justice in mind.[44]

In sum, we find Mauricio and Camacho's dismissal without a valid cause and, therefore, illegal.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The assailed decision and resolution of the Court of Appeals are **AFFIRMED *in toto*.**

Costs against Philbag Industrial Manufacturing Corporation.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Perez, Sereno, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 182716. June 20, 2012]

HEIRS OF JOSE MALIGASO, SR., namely, ANTONIO MALIGASO, CARMELO MALIGASO and JOSE MALIGASO, JR., *petitioners, vs.* **SPOUSES SIMON D. ENCINAS and ESPERANZA E. ENCINAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER CASES; CONSTRUED; WHEN NOT APPLICABLE.— Forcible entry and unlawful detainer cases are summary proceedings designed to provide for an expeditious means of protecting actual

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

possession or the right to the possession of the property involved. The avowed objective of actions for forcible entry and unlawful detainer, which have purposely been made summary in nature, is to provide a peaceful, speedy and expeditious means of preventing an alleged illegal possessor of property from unjustly continuing his possession for a long time, thereby ensuring the maintenance of peace and order in the community. The said objectives can only be achieved by according the proceedings a summary nature. However, its being summary poses a limitation on the nature of issues that can be determined and fully ventilated. It is for this reason that the proceedings are concentrated on the issue on possession. Thus, whether the petitioners have a better right to the contested area and whether fraud attended the issuance of Maria's title over Lot No. 3517 are issues that are outside the jurisdiction and competence of a trial court in actions for unlawful detainer and forcible entry. This is in addition to the long-standing rule that a Torrens title cannot be collaterally attacked, to which an ejectment proceeding, is not an exception. In *Soriente v. Estate of the Late Arsenio E. Concepcion*, a similar allegation – possession of the property in dispute since time immemorial – was met with rebuke as such possession, for whatever length of time, cannot prevail over a Torrens title, the validity of which is presumed and immune to any collateral attack.

2. CIVIL LAW; PROPERTY; PRESCRIPTION; LACHES DOES NOT OPERATE TO DEPRIVE THE REGISTERED OWNER OF A PARCEL OF LAND OF HIS RIGHT TO RECOVER POSSESSION THEREOF; CASE AT BAR.— As ruled in *Spouses Ragudo v. Fabella Estate Tenants Association, Inc.*, laches does not operate to deprive the registered owner of a parcel of land of his right to recover possession thereof: x x x It is, in fact, the petitioners who are guilty of laches. Petitioners, who claimed that Maria fraudulently registered the subject area inherited by their father, did not lift a finger to question the validity of OCT No. 543, which was issued in 1929. Petitioners waited for the lapse of a substantial period of time and if not for the respondents' demands to vacate, they would not have bothered to assert their father's supposed successional rights. The petitioners' inaction is contrary to the posture taken by a reasonably diligent person whose rights have supposedly been trampled upon and the pretense of ignorance does not provide justification or refuge.

Maria was able to register Lot No. 3517 in her name as early as 1929 and respondents acquired title in April 5, 1968 and knowledge of these events is imputed to the petitioners by the fact of registration.

APPEARANCES OF COUNSEL

Roberto T. Labitag for petitioners.
Edmundo H. Escalante for respondents.

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 Decision[1] dated November 26, 2007 and Resolution[2] dated April 28, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 64775. The CA reversed and set aside the Decision[3] dated April 2, 2001 of Branch 51 of the Regional Trial Court (RTC) of Sorsogon, Sorsogon, which affirmed the Decision[4] dated August 22, 2000 of the Municipal Trial Court (MTC) of Sorsogon, Sorsogon dismissing the Spouses Simon D. Encinas and Esperanza E. Encinas' (respondents) complaint for unlawful detainer.

Respondents are the registered owners of Lot No. 3517 of the Cadastral Survey of Sorsogon, which has an area of 2,867 square meters and covered by Transfer Certificate of Title (TCT) No. T-4773.[5] The subject matter of this controversy is a portion of Lot No. 3517 with an area of 980 square meters, which the Heirs of Jose Maligaso, Sr. (petitioners) continue to occupy

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[1] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Josefina Guevara-Salonga and Vicente Q. Roxas, concurring; *rollo*, pp. 31-41.

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

[3] *Id.* at 112-116.

[4] *Id.* at 102-111.

[5] *Id.* at 67-68.

despite having received two (2) notices to vacate from the respondents.

Lot No. 3517 was previously covered by Original Certificate of Title (OCT) No. 543, which was issued in the name of Maria Maligaso Ramos (Maria), the petitioners' aunt, on February 7, 1929. Sometime in May 1965, Maria sold Lot No. 3517 to Virginia Escurel (Virginia). Three (3) years later, on April 5, 1968, Virginia sold Lot No. 3517 to the respondents, resulting to the cancellation of OCT No. 543 and issuance of TCT No. T-4773.[6]

On March 16, 1998 and June 19, 1998 or approximately thirty (30) years from the time they purchased Lot No. 3517, the respondents issued two (2) demand letters to the petitioners, asking them to vacate the contested area within thirty (30) days from notice.[7] The petitioners refused to leave, claiming that the subject area was the share of their father, Jose Maligaso, Sr. (Jose, Sr.), in their grandparents' estate. Thus, the respondents filed a complaint for unlawful detainer against them with the MTC, alleging that the petitioners' occupation is by mere tolerance and had become illegal following their refusal to vacate the property despite being demanded to do so twice.

The petitioners, in their defense, denied that their possession of the disputed area was by mere tolerance and claimed title thereto on the basis of their father's successional rights. That the petitioners' occupation remained undisturbed for more than thirty (30) years and the respondents' failure to detail and specify the petitioners' supposedly tolerated possession suggest that they and their predecessors-in-interest are aware of their claim over the subject area. The petitioners also attacked the validity of OCT No. 543 and TCT No. T-4773, alleging that it was thru fraud that Maria was able to register Lot No. 3517, including the disputed area, under her name. The petitioners likewise moved for the dismissal of the complaint, claiming that the allegations therein indicate that it was actually an action for

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[6] *Id.* at 32.

[7] *Id.* at 33.

reconveyance. Further, laches had already set in view of the respondents' failure to assail their possession for more than thirty (30) years.[8]

In an August 22, 2000 Decision,[9] the dispositive portion of which is quoted below, the MTC dismissed the respondents' complaint.

> WHEREFORE, premises considered, judgment is hereby rendered
>
> **1. Dismissing the instant case;**
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> **2. Adjudicating the possessory rights over the litigated portion to the defendants;**
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> **3. Ordering the Register of Deeds to cause the annotation of the equitable title of defendants, who are entitled to their father's rightful inheritance which is part of the property in plaintiffs' TCT No. T-4773 as a lien or encumbrance;**
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> **4. Ordering the plaintiffs to pay defendants the amount of [₱]10,000.00 as attorney's fees; and**
>
> **5. The cost of suit.**
>
> **SO ORDERED**.[10]

The MTC gave more weight to the petitioners' possession of the contested area than the respondents' title as the former is founded on Jose Sr.'s successional rights and even held that the registration of Lot No. 3517 in Maria's name created a trust in Jose Sr.'s favor insofar as the disputed portion is concerned. The MTC also held that the respondents are barred by laches from pursuing their cause of action against the petitioners given their inaction for more than thirty (30) years despite being fully aware of the petitioners' adverse possession and claim over the subject property.

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[8] *Id.* at 34.

[9] *Id.* at 102-111.

[10] *Id.* at 110-111.

The RTC dismissed the respondents' appeal and affirmed the MTC's Decision dated August 22, 2000. In a Decision[11] dated April 2, 2001, the RTC found the respondents' allegations relative to the petitioners' merely tolerated possession of the subject area to be wanting. The RTC also concluded, albeit implicitly, that the petitioners' possession is a necessary consequence of their title as evidenced by their occupation in the concept of an owner for a significant period of time. The dispositive portion thereof states:

> WHEREFORE, premises considered, the appealed decision is **AFFIRMED** with the modification that the annotations and the payment of attorney[']s fees as ordered by the Court *a quo* be deleted. The instant appeal is **DISMISSED**, for lack of merit.[12]

Consequently, the respondents filed with the CA a petition for review under Rule 42 of the Rules of Court. This was given due course and the RTC's Decision dated April 2, 2001 was reversed and set aside. In its Decision[13] dated November 26, 2007, the CA had a different view and rationalized the grant of possession to the respondents as follows:

> The rule is well-entrenched that a person who has a Torrens title over the property is entitled to the possession thereof. In like manner, prior physical possession by the plaintiff is not necessary in unlawful detainer cases as the same is only required in forcible entry cases. Moreover, the allegations in the answer of [the] defendant as to the nullity of plaintiff's title is unavailing and has no place in an unlawful detainer suit since the issue of the validity of a Torrens title can only be assailed in an action expressly instituted for that purpose. This may be gleaned from **Spouses Apostol vs. Court of Appeals and Spouses Emmanuel**, where the Supreme Court held that:
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> x x x x x x x x x
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> In the case at bench, petitioners are the registered owners of Lot No. 3517 and, as a consequence of such, are entitled to the material and physical possession thereof. Thus, both the MTC and RTC

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[11] *Id.* at 112-116.

[12] *Id.* at 116.

[13] *Id.* at 31-41.

erred in ruling that respondents' prior physical possession and actual possession of the 980-square meter disputed portion of Lot No. 3517 should prevail over petitioners' Torrens title over the said property. Such pronouncement contravenes the law and settled jurisprudence on the matter.[14] (Citation omitted)

The CA denied the petitioners' motion for reconsideration in its Resolution dated April 28, 2008.[15]

As earlier intimated, the petitioners anchor their possession of the subject property on their father's right thereto as one of his parents' heirs. The petitioners insist on the nullity of the respondents' title, TCT No. T-4773, as the inclusion of the contested area in its coverage was never intended. The petitioners accuse Maria of fraud for having registered Lot No. 3517 in her name, including the portion that their father allegedly inherited from his parents, thus, reneging on her promise to cause the registration of such portion in his name. It was their father who had a legitimate claim over the subject area and Maria never acquired any right thereto. Therefore, respondents' purchase of Lot No. 3517 did not include the portion occupied by the petitioners, who succeeded to Jose Sr.'s rights thereto.

On the other hand, the respondents' cause of action is based on their ownership of Lot No. 3517, which is evidenced by TCT No. T-4773, and on their claim that they merely tolerated the petitioners' occupation thereof. According to the respondents, their being registered owners of Lot No. 3517, including the portion possessed by the petitioners, entitles them to the possession thereof and their right to recovery can never be barred by laches. They also maintain that the petitioners cannot collaterally attack their title to the subject property.

The point of inquiry is whether the respondents have the right to evict the petitioners from the subject property and this should be resolved in the respondents' favor. Between the petitioners' unsubstantiated self-serving claim that their father inherited the contested portion of Lot No. 3517 and the respondents' Torrens

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[14] *Id.* at 37-38.

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

title, the latter must prevail. The respondents' title over such area is evidence of their ownership thereof. That a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein and that a person who has a Torrens title over a land is entitled to the possession thereof[16] are fundamental principles observed in this jurisdiction. Alternatively put, the respondents' title and that of their predecessors-in-interest give rise to the reasonable presumption that the petitioners have no right over the subject area and that their stay therein was merely tolerated. The petitioners failed to overcome this presumption, being inadequately armed by a narration that yearns for proof and corroboration. The petitioners harped that the subject area was their father's share in his parents' estate but the absence of any evidence that such property was indeed adjudicated to their father impresses that their claim of ownership is nothing but a mere afterthought. In fact, Lot No. 3517 was already registered in Maria's name when Jose Sr. built the house where the petitioners are now presently residing. It is rather specious that Jose Sr. chose inaction despite Maria's failure to cause the registration of the subject area in his name and would be contented with a bungalow that is erected on a property that is supposedly his but registered in another's name. That there is allegedly an unwritten agreement between Maria and Virginia that Jose Sr.'s and the petitioners' possession of the subject area would remain undisturbed was never proven, hence, cannot be the basis for their claim of ownership. Rather than proving that Jose Sr. and the petitioners have a right over the disputed portion of Lot No. 3517, their possession uncoupled with affirmative action to question the titles of Maria and the respondents show that the latter merely tolerated their stay.

Forcible entry and unlawful detainer cases are summary proceedings designed to provide for an expeditious means of protecting actual possession or the right to the possession of

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[16] *Esmaquel v. Coprada*, G.R. No. 152423, December 15, 2010, 638 SCRA 429, 438, citing *Caña v. Evangelical Free Church of the Philippines*, G.R. No. 157573, February 11, 2008, 544 SCRA 225, 238-239.

the property involved. The avowed objective of actions for forcible entry and unlawful detainer, which have purposely been made summary in nature, is to provide a peaceful, speedy and expeditious means of preventing an alleged illegal possessor of property from unjustly continuing his possession for a long time, thereby ensuring the maintenance of peace and order in the community.[17] The said objectives can only be achieved by according the proceedings a summary nature. However, its being summary poses a limitation on the nature of issues that can be determined and fully ventilated. It is for this reason that the proceedings are concentrated on the issue on possession. Thus, whether the petitioners have a better right to the contested area and whether fraud attended the issuance of Maria's title over Lot No. 3517 are issues that are outside the jurisdiction and competence of a trial court in actions for unlawful detainer and forcible entry. This is in addition to the long-standing rule that a Torrens title cannot be collaterally attacked, to which an ejectment proceeding, is not an exception.

In *Soriente v. Estate of the Late Arsenio E. Concepcion*,[18] a similar allegation – possession of the property in dispute since time immemorial – was met with rebuke as such possession, for whatever length of time, cannot prevail over a Torrens title, the validity of which is presumed and immune to any collateral attack.

In this case, the trial court found that respondent owns the property on the basis of Transfer Certificate of Title No. 12892, which was "issued in the name of Arsenio E. Concepcion, x x x married to Nenita L. Songco." It is a settled rule that the person who has a Torrens title over a land is entitled to possession thereof. Hence, as the registered owner of the subject property, respondent is preferred to possess it.

The validity of respondent's certificate of title cannot be attacked by petitioner in this case for ejectment. Under Section 48 of

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[17] *Salandanan v. Mendez*, G.R. No. 160280, March 13, 2009, 581 SCRA 195, citing *Five Star Marketing Co., Inc. v. Booc*, G.R. No. 143331, October 5, 2007, 535 SCRA 28, 43-44.

[18] G.R. No. 160239, November 25, 2009, 605 SCRA 315.

Presidential Decree No. 1529, a certificate of title shall not be subject to collateral attack. It cannot be altered, modified or cancelled, except in a direct proceeding for that purpose in accordance with law. The issue of the validity of the title of the respondents can only be assailed in an action expressly instituted for that purpose. Whether or not petitioner has the right to claim ownership over the property is beyond the power of the trial court to determine in an action for unlawful detainer.[19] (Citations omitted)

In *Salandanan*,[20] the prohibition against the collateral attack of a Torrens title was reiterated:

In *Malison*, the Court emphasized that when [a] property is registered under the Torrens system, the registered owner's title to the property is presumed and cannot be collaterally attacked, especially in a mere action for unlawful detainer. In this particular action where petitioner's alleged ownership cannot be established, coupled with the presumption that respondents' title to the property is legal, then the lower courts are correct in ruling that respondents are the ones entitled to possession of the subject premises.[21] (Citation omitted)

Given the foregoing, the petitioners' attempt to remain in possession by casting a cloud on the respondents' title cannot prosper.

Neither will the sheer lapse of time legitimize the petitioners' refusal to vacate the subject area or bar the respondents from gaining possession thereof. As ruled in *Spouses Ragudo v. Fabella Estate Tenants Association, Inc.*,[22] laches does not operate to deprive the registered owner of a parcel of land of his right to recover possession thereof:

It is not disputed that at the core of this controversy is a parcel of land registered under the Torrens system. In a long line of cases, we have consistently ruled that lands covered by a title cannot be acquired by prescription or adverse possession. So it is that in *Natalia*

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[19] *Id.* at 329-330.

[20] *Supra* note 17.

[21] *Id.* at 198.

[22] 503 Phil. 751 (2005).

Realty Corporation vs. Vallez, et al., we held that a claim of acquisitive prescription is baseless when the land involved is a registered land because of Article 1126 of the Civil Code, in relation to Act 496 (now, Section 47 of Presidential Decree No. 1529).

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Petitioners would take exception from the above settled rule by arguing that FETA as well as its predecessor[-]in[-]interest, Don Dionisio M. Fabella, are guilty of laches and should, therefore, be already precluded from asserting their right as against them, invoking, in this regard, the rulings of this Court to the effect that while a registered land may not be acquired by prescription, yet, by virtue of the registered owner's inaction and neglect, his right to recover the possession thereof may have been converted into a stale demand.

While, at a blush, there is apparent merit in petitioners' posture, a closer look at our jurisprudence negates their submission.

To start with, the lower court found that petitioners' possession of the subject lot was merely at the tolerance of its former lawful owner. In this connection, *Bishop vs. Court of Appeals* teaches that if the claimant's possession of the land is merely tolerated by its lawful owner, the latter's right to recover possession is never barred by laches.

> As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. *Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.*[23] (Citations omitted)

It is, in fact, the petitioners who are guilty of laches. Petitioners, who claimed that Maria fraudulently registered the subject area inherited by their father, did not lift a finger to question the validity of OCT No. 543, which was issued in 1929. Petitioners waited for the lapse of a substantial period of time and if not

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[23] *Id.* at 763-764.

for the respondents' demands to vacate, they would not have bothered to assert their father's supposed successional rights. The petitioners' inaction is contrary to the posture taken by a reasonably diligent person whose rights have supposedly been trampled upon and the pretense of ignorance does not provide justification or refuge. Maria was able to register Lot No. 3517 in her name as early as 1929 and respondents acquired title in April 5, 1968 and knowledge of these events is imputed to the petitioners by the fact of registration.

In fine, this Court finds no cogent reason to reverse and set aside the findings and conclusions of the CA.

WHEREFORE, premises considered, the petition is **DENIED** and the Decision dated November 26, 2007 and Resolution dated April 28, 2008 of the Court of Appeals in CA-G.R. SP No. 64775 are hereby **AFFIRMED.**

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Sereno, JJ.*, concur.

SECOND DIVISION

[G.R. No. 185663. June 20, 2012]

REMEDIOS ANTONINO, *petitioner, vs.* **THE REGISTER OF DEEDS OF MAKATI CITY and TAN TIAN SU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT, AS A REMEDY; WHEN AVAILABLE.— In *Ramos v. Judge Combong, Jr.*, this Court expounded that the remedy of annulment of judgment is only available under certain exceptional circumstances as this is adverse to the concept

of immutability of final judgments: x x x In *Barco v. Court of Appeals*, this Court emphasized that only void judgments, by reason of "extrinsic fraud" or the court's lack of jurisdiction, are susceptible to being annulled. Apart from the requirement that the existence of "extrinsic fraud" or "lack of jurisdiction" should be amply demonstrated, one who desires to avail this remedy must convince that the ordinary and other appropriate remedies, such as an appeal, are no longer available for causes not attributable to him. This is clearly provided under Section 1, Rule 47 of the Rules of Court.

2. ID.; ID.; MOTION FOR RECONSIDERATION; DENIAL THEREOF, WHEN APPEALABLE; CASE AT BAR.— Knowledge of rudimentary remedial rules immediately indicates that an appeal was already available from the Order dated December 8, 2004, as this is a final order as contemplated under Sections 2, 3 and 5 of Rule 41 of the Rules of Court, and there was no legal compulsion for Antonino to move for reconsideration. Nonetheless, since there is no bar for her to file a motion for reconsideration so as to give the RTC opportunity to reverse itself before elevating the matter for the appellate courts' review, appeal is the prescribed remedy from the denial of such motion and not another motion for reconsideration. While Section 1 of Rule 41 of the Rules of Court includes "an order denying a motion for new trial or reconsideration" in the enumeration of unappealable matters, this Court clarified in *Quelnan v. VHF Philippines, Inc.* that such refers to a motion for reconsideration of an interlocutory order and the denial of a motion for reconsideration of an order of dismissal is a final order, therefore, appealable. Moreover, a second motion for reconsideration from a final judgment or order is prohibited, hence, can never interrupt the period to perfect an appeal.

3. ID.; ID.; ANNULMENT OF JUDGMENT; GROUNDS TO ANNUL FINAL OR EXECUTORY ORDER; GRAVE ABUSE OF DISCRETION, NOT INCLUDED; CASE AT BAR.— A petition for annulment of judgment can only be based on "extrinsic fraud" and "lack of jurisdiction" and cannot prosper on the basis of "grave abuse of discretion". By anchoring her petition on the alleged grave abuse of discretion that attended the dismissal of her complaint and the denial of her two (2) motions for reconsideration, Antonino, is, in effect, enlarging

the concept of "lack of jurisdiction". As this Court previously clarified in *Republic of the Philippines v. "G" Holdings, Inc.*, "lack of jurisdiction" as a ground for the annulment of judgments pertains to lack of jurisdiction over the person of the defending party or over the subject matter of the claim. It does not contemplate "grave abuse of discretion" considering that "jurisdiction" is different from the exercise thereof.

4. ID.; ID.; NATURE OF ACTION; PERSONAL ACTION DISTINGUISHED FROM REAL ACTION.— Personal action is one that is founded on privity of contracts between the parties; and in which the plaintiff usually seeks the recovery of personal property, the enforcement of a contract, or recovery of damages. Real action, on the other hand, is one anchored on the privity of real estate, where the plaintiff seeks the recovery of ownership or possession of real property or interest in it.

5. ID.; ID.; ID.; THE COMPLAINT IS NOT IN THE NATURE OF REAL ACTION WHEN OWNERSHIP OF THE SUBJECT PROPERTY IS NOT AT ISSUE; CASE AT BAR. — That there is a private document supposedly evidencing the alleged sale does not confer to Antonino title to the subject property. Ownership is transferred when there is actual or constructive delivery and the thing is considered delivered when it is placed in the control or possession of the buyer or when the sale is made through a public instrument and the contrary does not appear or cannot be clearly inferred. In other words, Antonino's complaint is not in the nature of a real action as ownership of the subject property is not at issue. Moreover, that the object of the alleged sale is a real property does not make Antonino's complaint real in nature in the absence of a contrary claim of title. After a contract of sale is perfected, the right of the parties to reciprocally demand performance, thus consummation, arises – the vendee may require the vendor to compel the transfer the title to the object of the sale and the vendor may require the payment of the purchase price. The action to cause the consummation of a sale does not involve an adverse claim of ownership as the vendor's title is recognized and the vendor is simply being asked to perform an act, specifically, the transfer of such title by any of the recognized modes of delivery.

APPEARANCES OF COUNSEL

Severo L. Brillantes for petitioner.
Soo Gutierrez Leogardo & Lee for private respondent.

R E S O L U T I O N

REYES, *J.*:

Nature of the Case

This is a petition for review under Rule 45 of the Rules of Court, assailing the Decision[1] dated May 26, 2008 and Resolution[2] dated December 5, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 89145.

Factual Antecedents

Since March 21, 1978, petitioner Remedios Antonino (Antonino) had been leasing a residential property located at Makati City and owned by private respondent Tan Tian Su (Su). Under the governing lease contract, Antonino was accorded with the right of first refusal in the event Su would decide to sell the subject property.[3]

On July 7, 2004, the parties executed a document denominated as Undertaking Agreement[4] where Su agreed to sell to Antonino the subject property for ₱39,500,000.00. However, in view of a disagreement as to who between them would shoulder the payment of the capital gains tax, the sale did not proceed as intended.[5]

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Remedios A. Salazar-Fernando and Pampio A. Abarintos, concurring; *rollo,* pp. 28-35.

[2] *Id.* at 37-38.

[3] *Id.* at 29.

[4] *Id.* at 69.

[5] *Id.* at 29.

On July 9, 2004, Antonino filed a complaint against Su with the Regional Trial Court (RTC) of Makati City, for the reimbursement of the cost of repairs on the subject property and payment of damages. The complaint was raffled to Branch 149 and docketed as Civil Case No. 04-802.[6] Later that same day, Antonino filed an amended complaint to enforce the Undertaking Agreement and compel Su to sell to her the subject property.[7]

In an Order[8] dated December 8, 2004, the RTC dismissed Antonino's complaint on the grounds of improper venue and non-payment of the appropriate docket fees. According to the RTC, Antonino's complaint is one for specific performance, damages and sum of money, which are personal actions that should have been filed in the court of the place where any of the parties resides. Antonino and Su reside in Muntinlupa and Manila, respectively, thus Makati City is not the proper venue. Specifically:

> The instant case is an action for specific performance with damages, a personal action, which may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides (*Section 2, Rule 5 of the Rules of Court)*. Records show that plaintiff is a resident of 706 Acacia Avenue, Ayala Alabang Village, Muntinlupa City while defendant is a resident of 550 Sto. Cristo St., Binondo, Manila. Hence, the instant case should have been filed in the place of residence of either the plaintiff or defendant, at the election of the plaintiff. Contrary to the claim of plaintiff, the alleged written agreements presented by the plaintiff in her Amended Complaint do not contain any stipulation as to the venue of actions. x x x[9]

The RTC also ruled that it did not acquire jurisdiction over Antonino's complaint in view of her failure to pay the correct

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[6] *Id.* at 264-268.

[7] *Id.* at 269-275.

[8] *Id.* at 335-337.

[9] *Id.* at 336.

amount of docket fees. Citing *Manchester Development Corporation v. Court of Appeals*,[10] the RTC ruled that:

> Anent the non-payment of filing fees on the Amended Complaint, plaintiff alleges that no new assessment was made when the Amended Complaint was filed since there [were] no additional damages prayed for. The Manchester decision has been recently relaxed as to allow additional payment of the necessary fees if the Honorable Court so orders an assessment thereof.
>
> The Court is not persuaded.
>
> The Amended Complaint, which the Court notes to have been filed at 4:00 o'clock in the afternoon or few hours after the initial complaint was filed, further prays that judgment be rendered "ordering defendant to sell his property located at 1623 Cypress, Dasmariñas Village, Makati City covered by TCT No. 426900 to plaintiff in accordance with the terms and conditions stipulated in their agreement dated July 7, 2004 and ordering defendant to desist from selling his property to any other party other than plaintiff.", which makes the instant case also an action for Specific Performance in addition to the claim for Damages. However, the value of the described property was not stated in the prayer and no docket fees were paid. Thus, following the ruling of the Supreme Court in the case of Manchester Development Corporation vs. Court of Appeals, G.R. No. 75919, May 7, 1987, that the Court acquires jurisdiction over any case only upon the payment of the prescribed docket fee, the instant case is hereby dismissed.[11]

On December 23, 2004, Su filed an Omnibus Motion,[12] praying for the cancellation of the notice of *lis pendens*, which Antonino caused to be annotated on the title covering the subject property and the issuance of a summary judgment on his counterclaims. Su, among others, alleged the propriety of cancelling the notice of *lis pendens* in view of the dismissal of the complaint and Antonino's failure to appeal therefrom.

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[10] 233 Phil. 579 (1987).

[11] *Rollo*, pp. 336-337.

[12] *Id.* at 338-350.

On January 3, 2005, Antonino filed a Motion for Reconsideration,[13] claiming that her complaint is a real action and the location of the subject property is determinative of its venue. Alternatively, she submitted a certification issued by the Commission on Elections, stating that she is a resident of Makati City. She then prayed for the reinstatement of her complaint and issuance of an order directing the clerk of court to assess the proper docket fees. This was denied by the RTC in an Order[14] dated January 6, 2005, holding that there was non-compliance with Sections 4 and 5 of Rule 15 of the Rules of Court.

Antonino thus filed a Motion for Reconsideration[15] dated January 21, 2005, claiming that there was due observance of the rules on motions. Antonino alleged that her motion for reconsideration from the RTC's December 8, 2004 was set for hearing on January 7, 2005 and Su received a copy thereof on January 6, 2005. Antonino pleaded for a liberal interpretation of the rules as Su was notified of her motion before the hearing thereon and was not in any way prejudiced. She also reiterated her arguments for the reinstatement of her complaint.

In a Joint Resolution[16] dated February 24, 2005, the RTC denied Su's Omnibus Motion and Antonino's January 21, 2005 Motion for Reconsideration. The RTC refused to cancel the notice of *lis pendens*, holding that:

> It is quite clear that the dismissal of the Amended Complaint was anchored on two grounds, *e.g.* (1) for improper venue and (2) for non-payment of docket fee. It is elementary that when a complaint was dismissed based on these grounds[,] the court did not resolve the case on the merits. Moreover, "a court cannot acquire jurisdiction over the subject matter of a case unless the docket fees are paid" x x x. Thus, the cause of action laid down in the complaint remains

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[13] *Id.* at 351-355.

[14] *Id.* at 356.

[15] *Id.* at 357-363.

[16] *Id.* at 393-396.

unresolved for proper re-filing before the proper court. Furthermore, the Supreme Court said: "The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time." x x x[17]

The RTC maintained its earlier ruling that Antonino's Motion for Reconsideration from the December 8, 2004 Order is pro-forma and did not suspend the running of the period to file an appeal. The RTC also reiterated that Antonino's complaint is a personal action such that the proper venue therefore is either the City of Manila or Muntinlupa City.

On April 1, 2005, Antonino filed with the CA a petition for annulment of judgment.[18] Antonino prayed for the nullification of the RTC's Order dated December 8, 2004 dismissing her complaint, Order dated January 6, 2005 denying her motion for reconsideration and Joint Resolution dated February 24, 2005 denying her motion for reconsideration of the January 6, 2005 Order. According to Antonino, the RTC committed grave abuse of discretion amounting to lack of jurisdiction when it ruled that her action for the enforcement of the Undertaking Agreement is personal and when it deprived her of an opportunity to pay the correct amount of docket fees. The RTC's grave abuse of discretion, Antonino posited, was likewise exhibited by its strict application of the rules on motions and summary denial of her motion for reconsideration.

In its Decision[19] dated May 26, 2008, the CA dismissed Antonino's petition. While the CA recognized Antonino's faulty choice of remedy, it proceeded to resolve the issues she raised relative to the dismissal of her complaint. Thus:

It should be stressed that in this case, there is neither allegation in the petition, nor sufficient proof adduced showing highly exceptional circumstance to justify the failure of petitioner to avail

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[17] *Id.* at 394-395.

[18] *Id.* at 397-419.

[19] *Supra* note 1.

of the remedies of appeal, petition for relief or other appropriate remedy through no fault attributable to [her] before filing this petition for annulment of judgment. In *Manipor v. Ricafort*, the Supreme Court held, thus:

> If the petitioner failed to avail of such remedies without sufficient justification, he cannot avail of an action for annulment because, otherwise, he would benefit from his own inaction or negligence.

Notwithstanding the foregoing procedural infirmity, and in the interest of justice, we shall look into the issues raised and decide the case on the merit.

x x x x x x x x x

A perusal of the allegations of the complaint unambiguously shows that petitioner seeks to enforce the commitment of private respondent to sell his property in accordance with the terms and conditions of their purported agreement dated July 7, 2004. By implication, petitioner does not question the ownership of private respondent over the property nor does she claim, by any color of title, right to possess the property or to its recovery. The action is simply for the enforcement of a supposed contract, and thus, unmistakably a personal action.

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Guided by the above rule (Section 2 of the 1997 Rules of Court), petitioner should have filed the case either in Muntinlupa City, where she resides, or in Manila, where private respondent maintains his residence. Other than filing the complaint in any of these places, petitioner proceeds with the risk of a possible dismissal of her case. Unfortunately for petitioner, private respondent forthwith raised improper venue as an affirmative defense and his stand was sustained by trial court, thus, resulting to the dismissal of the case.

Further, it is important to note that in a petition for annulment of judgment based on lack of jurisdiction, the petitioner must show not merely an abuse of jurisdictional discretion but an absolute lack of jurisdiction. The concept of lack of jurisdiction as a ground to annul a judgment does not embrace abuse of discretion. Petitioner, by claiming grave abuse of discretion on the part of the trial court, actually concedes and presupposes the jurisdiction of the court to take cognizance of the case. She only assails the manner in which

the trial court formulated its judgment in the exercise of its jurisdiction. It follows that petitioner cannot use lack of jurisdiction as ground to annul the judgment by claiming grave abuse of discretion. In this case where the court refused to exercise jurisdiction due to improper venue, neither lack of jurisdiction nor grave abuse of discretion is available to challenge the assailed order of dismissal of the trial court.[20] (Citations omitted)

Antonino filed a motion for reconsideration, which was denied by the CA in its Resolution dated December 5, 2008.[21]

Issue

The sole issue for the resolution of this Court is the propriety of Antonino's use of the remedy of a petition for annulment of judgment as against the final and executory orders of the RTC.

Our Ruling

In *Ramos v. Judge Combong, Jr.*,[22] this Court expounded that the remedy of annulment of judgment is only available under certain exceptional circumstances as this is adverse to the concept of immutability of final judgments:

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Rule 47 of the 1997 Rules of Civil Procedure, as amended, governs actions for annulment of judgments or final orders and resolutions, and Section 2 thereof explicitly provides only two grounds for annulment of judgment, *i.e.*, extrinsic fraud and lack of jurisdiction. The underlying reason is traceable to the notion that annulling final judgments goes against the grain of finality of judgment. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause involved therein should be laid to rest. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that at the risk of occasional error, the judgment of courts

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

[21] *Supra* note 2.

[22] 510 Phil. 277 (2005).

and the award of quasi-judicial agencies must become final at some definite date fixed by law.[23] (Citations omitted)

In *Barco v. Court of Appeals*,[24] this Court emphasized that only void judgments, by reason of "extrinsic fraud" or the court's lack of jurisdiction, are susceptible to being annulled.

> The law sanctions the annulment of certain judgments which, though final, are ultimately void. Annulment of judgment is an equitable principle not because it allows a party-litigant another opportunity to reopen a judgment that has long lapsed into finality but because it enables him to be discharged from the burden of being bound to a judgment that is an absolute nullity to begin with.[25]

Apart from the requirement that the existence of "extrinsic fraud" or "lack of jurisdiction" should be amply demonstrated, one who desires to avail this remedy must convince that the ordinary and other appropriate remedies, such as an appeal, are no longer available for causes not attributable to him. This is clearly provided under Section 1, Rule 47 of the Rules of Court.

Antonino's recourse to annulment of judgment is seriously flawed and the reasons are patent. There is therefore no reason to disturb the questioned issuances of the RTC that are already final and executory.

A petition for annulment of judgment cannot serve as a substitute for the lost remedy of an appeal.

First, Antonino cannot pursue the annulment of the various issuances of the RTC, primary of which is the Order dated December 8, 2004, in order to avoid the adverse consequences of their becoming final and executory because of her neglect in utilizing the ordinary remedies available. Antonino did not proffer

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[23] *Id.* at 281-282.

[24] 465 Phil. 39 (2004).

[25] *Id.* at 64.

any explanation for her failure to appeal the RTC's Order dated December 8, 2004 and, thereafter, the Order dated January 6, 2005, denying her Motion for Reconsideration dated January 3, 2005. Knowledge of rudimentary remedial rules immediately indicates that an appeal was already available from the Order dated December 8, 2004, as this is a final order as contemplated under Sections 2, 3 and 5 of Rule 41 of the Rules of Court, and there was no legal compulsion for Antonino to move for reconsideration. Nonetheless, since there is no bar for her to file a motion for reconsideration so as to give the RTC opportunity to reverse itself before elevating the matter for the appellate courts' review, appeal is the prescribed remedy from the denial of such motion and not another motion for reconsideration. While Section 1 of Rule 41 of the Rules of Court includes "an order denying a motion for new trial or reconsideration" in the enumeration of unappealable matters, this Court clarified in *Quelnan v. VHF Philippines, Inc.*[26] that such refers to a motion for reconsideration of an interlocutory order and the denial of a motion for reconsideration of an order of dismissal is a final order, therefore, appealable. Moreover, a second motion for reconsideration from a final judgment or order is prohibited, hence, can never interrupt the period to perfect an appeal.

The RTC may have been overly strict in the observance of the three-day notice rule under Section 4, Rule 15 of the Rules of Court contrary to liberal stance taken by this Court in cases when the purpose of such rule can be achieved by giving the opposing party sufficient time to study and controvert the motion.[27] Justice and equity would thus suggest that the fifteen-day period within which Antonino can appeal should be counted from her receipt on January 7, 2005[28] of the Order dated January 6, 2005 denying her Motion for Reconsideration dated January 3, 2005. Unfortunately, even liberality proved to be inadequate to neutralize the adverse consequences of Antonino's negligence

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[26] G.R. No. 145911, July 7, 2004, 433 SCRA 631.

[27] See *Preysler v. Manila Southcoast Development Corporation*, G.R. No. 171872, June 28, 2010, 621 SCRA, 636, 642-643.

[28] *Rollo*, p. 371.

as she allowed such period to lapse without filing an appeal, erroneously believing that a second motion for reconsideration is the proper remedy. While a second motion for reconsideration is not prohibited insofar as interlocutory orders are concerned,[29] the Orders dated December 8, 2004 and January 6, 2005 are final orders.

In fact, even if the period to appeal would be counted from Antonino's receipt of the Order dated February 24, 2005 denying her second motion for reconsideration, she interposed no appeal and filed a petition for annulment of judgment on April 1, 2005 instead. This, for sure, constitutes a categorical admission that the assailed issuances of the RTC had already become final and executory in view of her omission to perfect an appeal within the mandated period. By no means can her petition for annulment of judgment prosper as that would, in effect, sanction her blatant negligence or sheer obliviousness to proper procedure.

> Let it be stressed at the outset that before a party can avail of the reliefs provided for by Rule 47, *i.e.*, annulment of judgments, final orders, and resolutions, it is a condition *sine qua non* that one must have failed to move for new trial in, or appeal from, or file a petition for relief against said issuances or take other appropriate remedies thereon, through no fault attributable to him. If he failed to avail of those cited remedies without sufficient justification, he cannot resort to the action for annulment provided in Rule 47, for otherwise he would benefit from his own inaction or negligence.[30] (Citation omitted)

"Grave abuse of discretion" is not a ground to annul a final and executory judgment.

Second, a petition for annulment of judgment can only be based on "extrinsic fraud" and "lack of jurisdiction" and cannot prosper on the basis of "grave abuse of discretion". By anchoring

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[29] See *Philippine National Bank v. Intestate Estate of Francisco De Guzman*, G.R. No. 182507, June 18, 2010, 621 SCRA, 131, 139.

[30] *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc.*, 456 Phil. 414, 421-422 (2003).

her petition on the alleged grave abuse of discretion that attended the dismissal of her complaint and the denial of her two (2) motions for reconsideration, Antonino, is, in effect, enlarging the concept of "lack of jurisdiction". As this Court previously clarified in *Republic of the Philippines v. "G" Holdings, Inc.*,[31] "lack of jurisdiction" as a ground for the annulment of judgments pertains to lack of jurisdiction over the person of the defending party or over the subject matter of the claim. It does not contemplate "grave abuse of discretion" considering that "jurisdiction" is different from the exercise thereof. As ruled in *Tolentino v. Judge Leviste*:[32]

> Jurisdiction is not the same as the exercise of jurisdiction. As distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein. Where there is jurisdiction over the person and the subject matter, the decision on all other questions arising in the case is but an exercise of the jurisdiction. And the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.[33] (Citation omitted)

In fact, the RTC did not gravely abuse its discretion or err in dismissing Antonino's complaint. The RTC was correct in classifying Antonino's cause of action as personal and in holding that it was instituted in the wrong venue. Personal action is one that is founded on privity of contracts between the parties; and in which the plaintiff usually seeks the recovery of personal property, the enforcement of a contract, or recovery of damages. Real action, on the other hand, is one anchored on the privity of real estate, where the plaintiff seeks the recovery of ownership or possession of real property or interest in it.[34] Antonino's following allegations in her amended complaint show that one

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[31] 512 Phil. 253 (2005).

[32] 485 Phil. 661 (2004).

[33] *Id.* at. 674.

[34] *Tomawis v. Balindong*, G.R. No. 182434, March 5, 2010, 614 SCRA 354, 365. (Citations omitted)

of her causes of action is one for the enforcement or consummation of a contract, hence, a personal action:

XII

On July 7, 2004, plaintiff and defendant executed a document entitled "Undertaking Agreement" (copy of which is hereto attached as Annex H) wherein defendant agreed to sell said property to plaintiff "**who has leased said property since March 21, 1978 up to the present**" with the plaintiff paying a downpayment of $50,000.00 US dollars the following day, July 8, 2004.

x x x x x x x x x

XIV

Defendant also refused to accept the $50,000.00 US Dollars and was about to tear up the document they previously signed the day before when plaintiff prevented him from doing so.

XV

Consequently, plaintiff discovered that defendant was already negotiating to sell the said property to another Chinese national who incidentally is also one of plaintiff's buyers.

x x x x x x x x x

Premises considered, in the interest of substantial justice, it is most respectfully prayed that after due hearing that judgment be rendered:

1. Ordering defendant to sell his property located at 1623 Cypress, Dasmariñas Village, Makati City covered by TCT No. 426900 to plaintiff in accordance with the terms and conditions stipulated in their agreement dated July 7, 2004.

x x x x x x x x x[35]

Antonino's cause of action is premised on her claim that there has already been a perfected contract of sale by virtue of their execution of the Undertaking Agreement and Su had refused to comply with his obligations as seller. However, by claiming the existence of a perfected contract of sale, it does not mean that Antonino acquired title to the subject property. She does

[35] *Id.* at 271-274.

not allege otherwise and tacitly acknowledges Su's title to the subject property by asking for the consummation of the sale.

That there is a private document supposedly evidencing the alleged sale does not confer to Antonino title to the subject property. Ownership is transferred when there is actual or constructive delivery and the thing is considered delivered when it is placed in the control or possession of the buyer or when the sale is made through a public instrument and the contrary does not appear or cannot be clearly inferred.[36] In other words, Antonino's complaint is not in the nature of a real action as ownership of the subject property is not at issue.

Moreover, that the object of the alleged sale is a real property does not make Antonino's complaint real in nature in the absence of a contrary claim of title. After a contract of sale is perfected, the right of the parties to reciprocally demand performance, thus consummation, arises – the vendee may require the vendor to compel the transfer the title to the object of the sale[37] and the vendor may require the payment of the purchase price.[38] The action to cause the consummation of a sale does not involve an adverse claim of ownership as the vendor's title is recognized and the vendor is simply being asked to perform an act, specifically, the transfer of such title by any of the recognized modes of delivery.

Considering that the filing of the complaint in a wrong venue sufficed for the dismissal thereof, it would be superfluous to discuss if Antonino's non-payment of the correct docket fees likewise warranted it.

At any rate, even if the RTC erred in ordering the dismissal of her complaint, such had already become final and executory and will not be disturbed as it had jurisdiction and it was not alleged, much less, proved that there was extrinsic fraud.

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[36] See *Asset Privatization Trust v. T.J. Enterprises*, G.R. No. 167195, May 8, 2009, 587 SCRA 481, 486.

[37] CIVIL CODE OF THE PHILIPPINES, Article 1475.

[38] CIVIL CODE OF THE PHILIPPINES, Article 1458.

Moreover, annulment of the assailed orders of the RTC will not issue if ordinary remedies, such as an appeal, were lost and were not availed of because of Antonino's fault. Litigation should end and terminate sometime and somewhere. It is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party should not be deprived of the fruits of the verdict.[39]

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit and the Decision dated May 26, 2008 and Resolution dated December 5, 2008 of the Court of Appeals in CA-G.R. SP No. 89145 are hereby **AFFIRMED.**

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 187744. June 20, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGER TEJERO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CONCLUSIONS OF THE TRIAL COURT; GENERALLY ACCORDED GREAT WEIGHT AND RESPECT; RATIONALE.— Basic is the rule that factual findings of trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect

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[39] *Republic of the Philippines v. "G" Holdings, Inc., supra* note 31 at 266.

by this Court, particularly when the Court of Appeals affirms the findings. The trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying, it was truly competent and in the best position to assess whether the witnesses were telling the truth.

2. CRIMINAL LAW; RAPE; FAILURE OF VICTIM TO IMMEDIATELY REPORT THE RAPE IS NOT NECESSARILY AN INDICATION OF A FABRICATED CHARGE. — In a long line of cases, the Court pronounced that the failure of the victim to immediately report the rape is not necessarily an indication of a fabricated charge. It is quite understandable how AAA's tender age, AAA's regard for Tejero as her stepfather, Tejero's threat to kill AAA and her whole family, and Tejero's physical proximity to AAA and her family (Tejero lives in the same house with AAA and her family) could all have easily convinced AAA that Tejero's threat was real and discouraged AAA from immediately reporting the rapes to anyone.

3. ID.; ID.; ELEMENTS; PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED WHEN INTIMIDATION IS EXERCISED UPON THE VICTIM AND THE LATTER SUBMITS HERSELF OUT OF FEAR.— The Court need not require AAA to prove that she fought back or protected herself in some way to stop the rape or to keep the rape from happening again. It is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case. Besides, in rape cases, physical resistance need not be established when intimidation is exercised upon the victim and the latter submits herself out of fear. Intimidation is addressed to the mind of

the victim and is therefore subjective. Barely out of childhood, there was nothing AAA could do but resign to appellant's evil desires to protect her life. Minor victims like AAA are easily intimidated and browbeaten into silence even by the mildest threat on their lives.

4. ID.; ID.; POSITIVE IDENTIFICATION OF THE ACCUSED PREVAILS OVER ALIBI AND DENIAL; CASE AT BAR. — For an alibi to prosper, it should be satisfactorily shown that the accused was at some other place during the commission of the crime and that it was physically impossible for him to have been then at the site thereof. Tejero insists that he was plying a jeepney on the days when AAA was raped, and was at a parking lot in Bangued, Abra, waiting for passengers at the exact time when the rapes occurred. Without corroborating witnesses, however, Tejero's testimony is essentially self-serving. Also, since Tejero had access to a vehicle, it was not improbable that he could have been at AAA's house at some time during the days of the rape incidents. Jurisprudence teaches that between categorical testimonies that ring of truth, on one hand, and a bare denial, on the other, the Court has strongly ruled that the former must prevail. Indeed, positive identification of the accused, when categorical and consistent, and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.

5. ID.; ANTI-RAPE LAW OF 1997 (REPUBLIC ACT NO. 8353); RECLASSIFIED RAPE AS A CRIME AGAINST PERSONS; LAW APPLICABLE IN CASE AT BAR.— When AAA was raped, Republic Act No. 8353 or the Anti-Rape Law of 1997 (which repealed Article 335 of the Revised Penal Code and classified rape as a crime against persons) was already effective. x x x Under the above provision, one way to commit rape is having carnal knowledge of a woman using force or intimidation. Tejero herein was able to have carnal knowledge of AAA thrice by threatening to kill AAA and her family. Furthermore, Tejero also exercised moral ascendancy over AAA since Tejero was then cohabiting with BBB, AAA's mother, and AAA considered Tejero as her stepfather. Such moral ascendancy sufficiently qualifies as intimidation.

6. ID.; RAPE; CIVIL INDEMNITY AND MORAL DAMAGES; AWARD THEREOF, PROPER; CASE AT BAR.— The

award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. Based on prevailing jurisprudence, the award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages for each count of simple rape are proper.

7. ID.; ID.; EXEMPLARY DAMAGES; WHEN JUSTIFIED.— Conformably with the ruling in *People v. Esperanza*, when either one of the qualifying circumstances of relationship or minority (for qualified rape under Article 266-B of the Revised Penal Code) is omitted or lacking, that which is pleaded in the Information and proved by the evidence may be considered as an aggravating circumstance. As such, AAA's minority may be considered as an aggravating circumstance. When a crime is committed with an aggravating circumstance either as qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code. Consequently, AAA is entitled to the additional award of exemplary damages in the amount of ₱30,000.00 for each count of simple rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

On appeal is the Decision[1] dated November 28, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02905 which affirmed with modifications the Decision[2] dated June 22, 2007

[*] Per Special Order No. 1226 dated May 30, 2012.

[1] *Rollo*, pp. 2-14; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Normandie B. Pizarro, concurring.

[2] CA *rollo*, pp. 70-74; penned by Judge Charito B. Gonzales.

of the Regional Trial Court (RTC) of Bangued, Abra, Branch 1, in Criminal Case Nos. 2004-202, 2004-203 and 2004-204. The RTC found accused-appellant Roger Tejero (Tejero) guilty beyond reasonable doubt of three counts of rape committed against AAA[3] and sentenced him to suffer the penalty of *reclusion perpetua* and to pay AAA the amount of ₱50,000.00 as moral damages for each count of rape. The Court of Appeals ordered Tejero to pay the additional amount of ₱50,000.00 as civil indemnity.

In three separate Informations dated October 6, 2004 filed before the RTC, Tejero was charged with three counts of rape committed against AAA on February 1, 2004,[4] February 8, 2004[5] and April 4, 2004,[6] which were docketed as Criminal Case Nos. 2004-204, 2004-203 and 2004-202, respectively. Except as to the aforesaid different dates of the commission of the crime, the Informations were identically worded. The Information in Criminal Case No. 2004-204[7] reads:

CRIM. CASE NO. 2004-204

The undersigned 3rd Asst. Provincial Prosecutor accuses ROGER TEJERO for violation of R.A. 7610 (RAPE) committed as follows:

> That on or about February 1, 2004 at 3:00 P.M. at x x x, Abra, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously succeeded in having carnal knowledge with AAA, a minor, 14 years of age, by means of force and intimidation, against her will and consent, to the great damage and prejudice of the offended party.

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[3] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. See our ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] CA *rollo*, pp. 10-11.

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

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

[7] *Id.* at 10-11.

During his arraignment on April 25, 2005, Tejero entered a plea of not guilty for all three counts.[8]

During trial, the prosecution submitted as evidence victim AAA's testimony and documents consisting of (1) the Medico Legal Certificate[9] presenting the result of the medical examination conducted on AAA by Dr. Liberty Bañez (Dr. Bañez) on July 24, 2004, and (2) AAA's Certificate of Live Birth[10] issued by the Office of the Municipal Civil Registrar of Bangued, Abra, showing that AAA was born on March 27, 1990. The prosecution's version of the events was summarized by the RTC as follows:

> The prosecution presented the private complainant herself, [AAA] who testified that she was only fourteen years old when the accused raped her on three different occasions in the year 2004. Her Birth Certificate which indicated that she was born on March 27, 1990 was formally offered in evidence to show her minority at the time the crimes were allegedly committed against her. She was also a student at the x x x National High School at x x x, Abra at this time. She directly identified accused ROGER TEJERO as the man who raped her repeatedly. She regarded him as her stepfather since he has been cohabiting with her mother in their home at x x x, Abra when these criminal acts were committed by him. She claimed that she was first raped by the accused on a Sunday February 1, 2004 at their living room. In her sworn statement (Exhibit B) which formed part of her testimony, she stated that this happened at 3:00 o'clock in the afternoon when her mother was out selling vegetables and while her two siblings went to the family house of their maternal grandparents. She narrated that she was suddenly pulled by her stepfather, removed her clothes and then raped her. He then warned her not to tell anybody or else he would kill all of them.
>
> On February 8, 2004, the next Sunday, the accused again raped her at their living room in the same house. At that time, her mother was selling vegetables again in another barangay while the accused

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[8] Records (Crim. Case No. 2004-202), p. 13; (Crim. Case No. 2004-203), p. 11; and (Crim. Case No. 2004-204), p. 12.

[9] Records (Crim. Case No. 2004-202), p. 7.

[10] *Id.* at 20.

fended off her sisters to the family house of their maternal grandparents again. In her sworn statement, she observed that his breath even stank with alcohol when he was raping her. The accused also pointed a rifle at her to threaten her.

For the third time, the accused again raped her on April 4, 2004 at about 5:00 o'clock in the afternoon now inside a room at their house while her mother was out selling vegetables again. In her sworn statement, she also revealed that she did not report all the incidents to anyone because of her fear of her stepfather's repeated threats that he would kill all of them if she did. Her mother [BBB] only came to know that she has been repeatedly ravaged by him when she was hospitalized for three weeks due to her appendicitis. During her check-up, her attending doctor discovered that she was already about five months pregnant. She said that her pregnancy was a result of the rape. She eventually gave birth to a baby boy.[11]

For the defense, Tejero himself took the witness stand. The RTC gave the following gist of Tejero's testimony:

On the other hand, the defense presented accused Roger Tejero. He said that he is a widower and that after his first wife died, he and the mother of the complainant [BBB] have been living together as husband and wife for the past years. They have two other children. The private complainant, [BBB's] biological daughter [AAA], is only his stepdaughter. He said that he used to work as a jeepney driver for his sister DELIA TEJERO since March 28, 2002 every Sunday of the week since another driver drives a public utility jeepney from Mondays to Saturdays. He belied the allegation that he raped [his] stepdaughter on three separate occasions since all of these dates fell on a Sunday, the day that he was always scheduled to drive the jeepney.

On February 1, 2004, on the occasion of the first alleged rape, the accused recounted that at about 3:00 o'clock p.m., he was at the parking space in Bangued, Abra for jeepneys bound for Lagangilang, Abra waiting for passengers. The jeepney was loaded by 4:30 o'clock p.m. and he reached the jeepney stop at x x x at around 5:00 o'clock p.m. He traversed another six kilometers to reach their house at x x x which took about another thirty minutes. On February 8, 2004, on the occasion of the second alleged rape, at about 3:00 to 4:00

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[11] CA *rollo*, p. 71.

o'clock p.m., he was again at the same parking space in Bangued, Abra waiting for passengers and he was able to reach x x x at about 5:00 p.m. only. On April 4, 2004 on the occasion of the third alleged rape, at about 2:00 o'clock p.m., he was again at the same parking space in Bangued, Abra waiting for passengers. He concluded that the allegations of rape that happened on these dates were all lies and that he knew nothing about the criminal acts.[12]

On June 22, 2007, the RTC rendered its Decision giving credence to AAA's testimony and rejecting Tejero's defense of denial and alibi. The dispositive portion of the RTC judgment reads:

WHEREFORE, premises considered, the Court hereby finds accused **ROGER TEJERO GUILTY beyond reasonable doubt** of the commission of three counts of **RAPE** and hereby sentences him to the maximum penalty of ***RECLUSION PERPETUA* for each COUNT of RAPE** in the presence of the aggravating circumstances of minority and the relation of the victim to the accused as his step-parent. He is also ordered to pay the private complainant AAA the amount of Fifty Thousand Pesos (₱50,000.00) in moral damages.[13]

As a result, the RTC issued an Order of Commitment[14] for Tejero on July 30, 2007, pursuant to which, Tejero was received at the New Bilibid Prison on August 4, 2007.[15]

Tejero subsequently filed an appeal with the Court of Appeals where it was docketed as CA-G.R. CR.-H.C. No. 02905. The appellate court, though, in its Decision dated November 28, 2008, merely affirmed the judgment of conviction of the RTC, with the modification ordering Tejero to pay an additional amount of ₱50,000.00 as civil indemnity. The Court of Appeals decreed thus:

WHEREFORE, the appealed Decision dated June 22, 2007 of the trial court is affirmed, subject to the modification that accused-

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[12] *Id.* at 72.

[13] *Id.* at 73-74.

[14] *Rollo*, p. 18.

[15] *Id.* at 22.

appellant is further ordered to pay fifty thousand pesos (₱50,000.00) to AAA as civil indemnity.[16]

Thereafter, the Court of Appeals elevated Tejero's case to this Court in view of the penalty imposed. After both parties filed their separate manifestations in which they waived the filing of supplemental briefs, the Court submitted the case for resolution.

In his Brief before the Court of Appeals, Tejero made a lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[17]

Tejero's instant appeal is anchored on the catch-all argument that his guilt has not been proven beyond reasonable doubt. Tejero challenges AAA's credibility considering: (1) AAA's concealment of the alleged rapes for more than six months after they happened without a satisfactory explanation for the delay in reporting the same; (2) AAA's failure to take precautionary measures to prevent the successive rapes committed against her; and (3) AAA's untruthful account that Tejero pointed a gun at her during one of the rape incidents, meant only to ensure the latter's conviction.

The instant appeal has no merit.

Inarguably, Tejero wants the Court to inquire into the sufficiency of the evidence presented, including the credibility of the lone witness for the prosecution, AAA, a course of action which this Court will not do, consistent with its repeated holding that this Court is not a trier of facts. Basic is the rule that factual findings of trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the findings.[18]

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[16] *Id.* at 13.

[17] CA *rollo*, p. 58.

[18] *Lateo v. People*, G.R. No. 161651, June 8, 2011, 651 SCRA 262, 272.

The trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, unless there appear in the record certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case. Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witnesses while testifying, it was truly competent and in the best position to assess whether the witnesses were telling the truth.[19]

The Court finds no reason herein to depart from the general rule. Tejero fails to convince this Court that both the RTC and the Court of Appeals overlooked or misappreciated any fact or circumstance on record of weight and value that would have altered the results of the case. To the contrary, the evidence on record strongly supports the finding of guilt rendered by the RTC and the Court of Appeals against Tejero.

AAA was firm and unrelenting in pointing to Tejero as the one who raped her on three occasions. AAA knew Tejero very well as Tejero was cohabiting with BBB, AAA's mother, and AAA deemed Tejero as her stepfather. AAA's testimony was candid, spontaneous, and consistent as revealed in the following excerpts from the Transcript of Stenographic Notes (TSN):

Q You claimed that you were raped by this Roger Tejero, will you tell this Honorable Court how you were raped by this person Miss Witness?
A [He] suddenly pulled me, sir, he removed my clothes and then rape me.

Q When was that Miss Witness?
A February 1, 2004, inside our house at our living room, sir.

Q And what else did he do on that date February 1, 2004?
A He warned me, sir, not to tell to anybody because if I will tell this to anybody, he will kill us all.

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[19] *People v. Dollano, Jr.*, G.R. No. 188851, October 19, 2011.

Q That happened after he raped you on February 1, 2004 is that correct Miss Witness?
A Yes, sir.

Q And while he was doing that act on you Miss Witness on February 1, 2004, did you feel anything?
A I was feeling pain, sir.

Q After that incident on February 1, 2004, are there other incident that happened Miss Witness?
A Yes, sir.

Q When is that Miss Witness?
A February 8, 2004, sir.

Q And what happened again on that date Miss Witness?
A He again raped me, sir.

Q How did he do that Miss Witness?
A My mother went to [s]ell vegetable to the other barangay and my sisters went to our family house that time, sir.

Q What else did you (sic) do on February 8, 2004?
A He again raped me, sir, at the living room of our house.

Q That is on February 8, 2004?
A Yes, sir.

Q After that rape on February 8, 2004 are there other incidents that happen to you again Miss Witness?
A Yes, sir.

Q When was that Miss Witness?
A April 4, 2004, sir.

Q Do you remember what time was that Miss Witness?
A Yes, sir, 5:00 o'clock in the afternoon.

Q How did he do that to you Miss Witness?
A My mother went again to sell vegetables because she was the one providing us, sir.[20]

The RTC observed that the defense failed to shake AAA's credibility even during cross-examination:

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[20] TSN, September 20, 2005, pp. 5-7.

The defense could not even shake the credibility of the young victim when they subjected her to a rigorous cross-examination nor even point to any malicious motivation by the defendant's stepdaughter or her mother why they would say brazen lies that could destroy not just any ordinary man but their very own stepfather and husband, respectively. It is simply improbable that the private complainant who is of a tender age, innocent and guileless, would brazenly impute a crime so serious as rape to a man she consider as stepfather, if these were simply lies.[21]

AAA was just 14 years old when she was raped. The Court explains in *People v. Bonaagua*[22] why it gives credence to testimonies of young girls who allege being raped:

It is well entrenched in this jurisdiction that when the offended parties are young and immature girls, as in this case, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the shame and embarrassment to which they would be exposed if the matter about which they testified were not true. A young girl would not usually concoct a tale of defloration; publicly admit having been ravished and her honor tainted; allow the examination of her private parts; and undergo all the trouble and inconvenience, not to mention the trauma and scandal of a public trial, had she not in fact been raped and been truly moved to protect and preserve her honor, and motivated by the desire to obtain justice for the wicked acts committed against her. Moreover, the Court has repeatedly held that the lone testimony of the victim in a rape case, if credible, is enough to sustain a conviction.[23]

What is more, in the case at bar, Dr. Bañez's physical examination of AAA on July 24, 2004 revealed AAA's old healed vaginal lacerations and confirmed AAA's five-month pregnancy, which were consistent with AAA's allegations of rape in February and April 2004:

Abdomen: positive abdominal mass
S/P appendectomy
Enlarged to about five months age of gestation

[21] CA *rollo*, p. 73.

[22] G.R. No. 188897, June 6, 2011, 650 SCRA 620.

[23] *Id.* at 632.

Extremities: no edema

Perineal Examination:

Old healed superficial lacerations at 2, 4, 7 o'clock positions
Old healed deep laceration at 3 o'clock position

Internal Examination:

Introitus admits two fingers with ease
Cervix – soft, closed
Uterus – enlarged to 5 months AOG
Positive bleeding, negative tenderness

Laboratory Examination:

Urinalysis:

Pus cells - 0-3
Epith Cells - +
Bacteria - + + + +

Pregnancy Test - Positive[24]

AAA's delay in reporting the rapes does not undermine her credibility. In a long line of cases, the Court pronounced that the failure of the victim to immediately report the rape is not necessarily an indication of a fabricated charge.[25] It is quite understandable how AAA's tender age, AAA's regard for Tejero as her stepfather, Tejero's threat to kill AAA and her whole family, and Tejero's physical proximity to AAA and her family (Tejero lives in the same house with AAA and her family) could all have easily convinced AAA that Tejero's threat was real and discouraged AAA from immediately reporting the rapes to anyone. AAA's plight is similar to that of the rape victim in *People v. Casil*,[26] wherein the Court recognized that:

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[24] Records (Crim. Case No. 2004-202), p. 7.

[25] *People v. Espinoza*, 317 Phil. 79, 86-87 (1995); *People v. Plaza*, 312 Phil. 830, 838 (1995); *People v. Abendano*, 312 Phil. 625, 636 (1995); *People v. Casil*, 311 Phil. 300, 309 (1995).

[26] *Id.*

The threats of appellant to kill her and all members of her family should she report the incidents to anyone were etched in her gullible mind and sufficed to intimidate her into silence. Add to this the fact that she was living with appellant during the entire period of her tribulation, with her mother often away working for a living, and one can readily visualize the helplessness of her plight.[27]

The Court further held in *People v. Manuel*[28] that:

One should not expect a fourteen-year old girl to act like an adult or mature and experienced woman who would know what to do under such difficult circumstances and who would have the courage and intelligence to disregard a threat on her life and complain immediately that she had been forcibly deflowered. It is not uncommon for young girls to conceal for sometime the assaults on their virtue because of the rapist's threat on their lives, more so when the rapist is living with her.[29]

Equally unsuccessful is Tejero's attempt to destroy AAA's credibility by questioning the latter's failure to take precautionary measures to prevent the successive rapes. Again, AAA is a young girl who had been raped and threatened by someone she considers her stepfather and who lives with her and her family in the same house. The Court need not require AAA to prove that she fought back or protected herself in some way to stop the rape or to keep the rape from happening again. It is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and there is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case.[30]

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[27] *Id.* at 310.

[28] G.R. Nos. 107732-33, September 19, 1994, 236 SCRA 545.

[29] *Id.* at 552.

[30] *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 343.

Besides, in rape cases, physical resistance need not be established when intimidation is exercised upon the victim and the latter submits herself out of fear. Intimidation is addressed to the mind of the victim and is therefore subjective. Barely out of childhood, there was nothing AAA could do but resign to appellant's evil desires to protect her life. Minor victims like AAA are easily intimidated and browbeaten into silence even by the mildest threat on their lives.[31]

In comparison to the evidence for the prosecution, Tejero proffered denial and alibi as his defense. For an alibi to prosper, it should be satisfactorily shown that the accused was at some other place during the commission of the crime and that it was physically impossible for him to have been then at the site thereof.[32] Tejero insists that he was plying a jeepney on the days when AAA was raped, and was at a parking lot in Bangued, Abra, waiting for passengers at the exact time when the rapes occurred. Without corroborating witnesses, however, Tejero's testimony is essentially self-serving. Also, since Tejero had access to a vehicle, it was not improbable that he could have been at AAA's house at some time during the days of the rape incidents.

Jurisprudence teaches that between categorical testimonies that ring of truth, on one hand, and a bare denial, on the other, the Court has strongly ruled that the former must prevail. Indeed, positive identification of the accused, when categorical and consistent, and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[33]

When AAA was raped, Republic Act No. 8353 or the Anti-Rape Law of 1997 (which repealed Article 335 of the Revised Penal Code and classified rape as a crime against persons) was

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[31] *People v. Castro*, G.R. No. 172691, August 10, 2007, 529 SCRA 800, 809.

[32] *People v. Villaraza*, 394 Phil. 175, 195 (2000).

[33] *People v. Amatorio*, G.R. No. 175837, August 9, 2010, 627 SCRA 292, 304-305.

already effective. The new provisions on rape, particularly, Articles 266-A and 266-B of the Revised Penal Code, read:

> Art. 266-A. *Rape*; *When and how committed*. - Rape is committed–
>
> 1.) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation[.]
>
> Art. 266-B. *Penalties*.- Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

Under the above provision, one way to commit rape is having carnal knowledge of a woman using force or intimidation. Tejero herein was able to have carnal knowledge of AAA thrice by threatening to kill AAA and her family. Furthermore, Tejero also exercised moral ascendancy over AAA since Tejero was then cohabiting with BBB, AAA's mother, and AAA considered Tejero as her stepfather. Such moral ascendancy sufficiently qualifies as intimidation.

Although the rape of a person under 18 years of age by the common-law spouse of the victim's mother is punishable by death, this penalty cannot be imposed on Tejero because his relationship was not what was alleged in the Informations.[34] Thus, Tejero is guilty only of three counts of simple rape, punishable by *reclusion perpetua* for each count.

The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the

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[34] *Id.*, citing *People v. Fraga*, 386 Phil. 884, 909-910 (2000).

other hand, are awarded to rape victims without need of proof other than the fact of rape under the assumption that the victim suffered moral injuries from the experience she underwent. Based on prevailing jurisprudence, the award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages for each count of simple rape are proper.[35]

Conformably with the ruling in *People v. Esperanza*,[36] when either one of the qualifying circumstances of relationship or minority (for qualified rape under Article 266-B of the Revised Penal Code) is omitted or lacking, that which is pleaded in the Information and proved by the evidence may be considered as an aggravating circumstance. As such, AAA's minority may be considered as an aggravating circumstance. When a crime is committed with an aggravating circumstance either as qualifying or generic, an award of exemplary damages is justified under Article 2230 of the New Civil Code. Consequently, AAA is entitled to the additional award of exemplary damages in the amount of ₱30,000.00 for each count of simple rape.[37]

WHEREFORE, the Decision dated November 28, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02905 is **AFFIRMED** with **MODIFICATIONS.** Accused-appellant Roger Tejero is found **GUILTY** beyond reasonable doubt of three (3) counts of SIMPLE RAPE and is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the victim AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages for every count. All damages awarded in this case should be imposed with interest at the rate of six percent (6%) *per annum* from the finality of the judgment until fully paid.[38]

No pronouncement as to costs.

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[35] *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 398.

[36] 453 Phil. 54 (2003).

[37] *People v. Cañada*, *supra* note 35 at 398.

[38] *People v. Bulagao*, G.R. No. 184757, October 5, 2011.

SO ORDERED.

Bersamin, del Castillo, Villarama, Jr., and *Perlas-Bernabe,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 188329. June 20, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUPERTO DONES** *a.k.a.* **PERTO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT IN CRIMINAL CASES; ESTABLISHED IN CASE AT BAR.— Accused appellant insists that the narration of Melanie and her conduct then were contrary to human experience and unbelievable. However, *nothing* in the records or even in the Appellant's Brief would warrant that conclusion. What is unbelievable is the contention of the accused that Melanie fabricated her account only because he was not able to attend the funeral wake for Tersiro. The RTC rightly dismissed this allegation as a flimsy afterthought. Moreover, the argument that Melanie might have committed a mistake in identifying the perpetrator is bereft of support. We find that the prosecution was able to prove beyond reasonable doubt that, on the evening of 15 January 2002, Ruperto Dones shot and killed Tersiro de Gala.

2. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS THEREOF; PRESENT IN CASE AT BAR.— There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and especially

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[**] Per Special Order No. 1227 dated May 30, 2012.

to ensure its execution, without risk to the offender arising from any defense that the offended party might make. The elements of treachery are as follows: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted. This is the essence of treachery — a deliberate and sudden attack; affording the hapless, unarmed, and unsuspecting victim no chance to resist or to escape. In treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate. These elements were correctly found to be present in the intermediate appellate review. Although the accused was standing directly in front of the De Gala spouses, the victim Tersiro was preoccupied with crossing the *prinsa* when the accused started shooting. The CA found that the accused had waited for that exact moment before repeatedly pulling the trigger. The suddenness and unexpectedness of the attack, considering that it was nighttime and the place was deserted, rendered both Melanie and Tersiro defenseless. There was no means of escape, as they were trapped in waist-high grass between the *prinsa* and the accused. It was apparent that accused-appellant sought cover in the darkness, waiting for the couple to return home. Even after Tersiro fell, the accused continued to pepper him with bullets, thus ensuring that the victim would not survive or retaliate.

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 this Court is an appeal from the Decision[1] of the Court of Appeals (CA) dated 28 April 2009, which affirmed the

[1] Penned by Associate Justice Jose Catral Mendoza, concurred in by Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Ramon M. Bato, Jr., in CA-G.R. CR-HC No. 02961; SC *rollo,* pp. 2-18.

judgment[2] of the Regional Trial Court (RTC) of Gumaca, Quezon. The RTC found accused Ruperto Dones guilty of murder, for which sentenced him to suffer the penalty of *reclusion perpetua* and to pay ₱50,000 as civil indemnity and ₱50,000 as moral damages.

For eight years, spouses Melanie and Tersiro de Gala worked as overseers of a fishpond owned by John Victoria and located in Sitio Bacolod.[3] On 15 January 2002, around 9:30 p.m., they were traversing the rice paddies of Sitio Bacolod, *Barangay* Manlampong in San Narciso, Quezon.[4] They were returning to the fishpond, where they also resided, after a day of selling shrimps. Melanie walked one meter ahead of her husband in the waist-high grass, holding a flashlight to light the way. She was waiting for Tersiro to cross the *prinsa* or gate bordering the fishpond, when he was shot by another man standing five meters in front of them. She was searching for the direction where the shots came from when she trained the flashlight directly at the face of a man she recognized to be Ruperto Dones. Even after Tersiro fell down, Dones allegedly kept shooting at him with a gun about eight inches long.[5] Frightened, Melanie moved backward, turned off the flashlight, and called for help. Dones finally stopped shooting and ran away. Rudy, a *tuba* gatherer, responded to her call and went to the *Centro*, where he enlisted the aid of the townsfolk. When he came back with several companions, Tersiro was already dead.[6]

The postmortem findings indicated multiple gunshot wounds as the cause of death. A total of eight wounds were found on the victim's body.[7] On cross-examination, Melanie testified that she recognized the accused Dones, because he had been employed

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[2] Penned by Executive Judge/Presiding Judge Aurora V. Maqueda-Roman on 13 June 2007 in Criminal Case No. 7329-G; CA *rollo,* pp. 17-33.

[3] *Id.* at 2.

[4] *Id*.

[5] *Id.* at 25-26.

[6] SC *rollo,* p. 3.

[7] CA *rollo,* p. 20.

in the same fishpond for two years.[8] Before he worked there as a guard, he was also employed as a laborer constructing dikes under the supervision of Tersiro. A month before the incident, Melanie learned from their neighbors and from the accused himself that Dones harboured a grudge against her husband for allegedly discrediting him in front of their employer.[9]

For his part, Dones claims that he was at Sitio Bacolod at the time of the incident, pumping water into the fishpond owned by Felicito Dinglasan. Dones was accompanied by Hagibis Agason, the latter's wife and children, Boy Sevilla, Pito Sevilla, and Arnold Collato; none of them, however was able to testify at the trial. Dones denied assertion of Melanie that she saw him shoot her husband that night. He explained that her accusation was triggered by his failure to attend the funeral wake of her husband.[10]

The Ruling of the RTC

The trial court gave full credence to Melanie's eyewitness account, describing it as "enlightening...frank, categorical and straightforward."[11] It ruled that the intent to kill was manifest in the manner in which Dones shot Tersiro repeatedly, even when the latter had fallen to the ground, thus ensuring that the victim would not leave the place alive. The RTC also found that treachery was present based on the following: the suddenness of the attack, the remoteness of the place, and the fact that the shooting occurred at nighttime. These were factors that contributed to the helplessness of Melanie and Tersiro and ensured the execution of the crime.[12] The trial court found that the defense of alibi proffered by the accused was weak and unsubstantiated. Furthermore, the place where he claimed to be pumping water

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[8] *Id.* at 18.

[9] *Id.* at 19.

[10] *Id.* at 32, citing the TSN, 10 February 2005, p. 10.

[11] *Id.* at 22.

[12] *Id.* at 27.

was a mere six meters away from the spot where the victim was shot.[13] Thus, the accused was not able to prove that it was physically impossible for him to be present at the scene of the crime. His blanket denials were also insufficient to create reasonable doubt or make a dent in the solid case forwarded by the prosecution.[14]

The ruling of the CA

On appeal, accused-appellant questioned the trial court's reliance on the testimony given by Melanie, as well as its appreciation of the qualifying circumstance of treachery. He argued that her act of focusing her flashlight on the face of the assassin was inconsistent with her claim that she turned it off right away out of fear. Her claim of seeing the firearm held by the assailant was purportedly false, given that the incident transpired at night, and no illumination was available save for the beam from a single flashlight, which was quickly turned off. The trial court purportedly erred in appreciating *alevosia* and qualifying the crime as murder, because the prosecution failed to establish the particular mode of attack used by appellant or the fact that he deliberately adopted this mode to fend off any retaliation from the victim.[15]

The CA affirmed the findings of the RTC in all respects, ruling that Melanie consistently narrated what transpired that night: that she focused the flashlight's beam on the face of the accused and turned it off only after he had repeatedly shot her husband.[16] The CA found that her testimony coincided with the postmortem examination of Dr. Reynaldo Florido. It also affirmed the RTC's finding of treachery in the suddenness of the attack upon the couple, who were caught off-guard by the accused.

The accused has now elevated his case to this Court. In compliance with its Resolution dated 10 August 2009, he

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[13] *Id.* at 32.

[14] *Id.* at 33.

[15] SC *rollo,* p. 8.

[16] *Id.* at 10.

manifested[17] on 20 October 2009 that he was adopting, as supplemental brief,[18] the Appellant's Brief that he had submitted to the CA. He assigns the following errors, which allegedly warrant a reversal of the RTC's findings:

I. The trial court erred in finding accused-appellant guilty beyond reasonable doubt of the offense charged by relying on the inconsistent and unnatural testimony of the alleged eyewitness.

II. The court *a quo* gravely erred in finding accused-appellant guilty of the crime charged despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

III. The trial court gravely erred in appreciating the qualifying circumstance of treachery.

The Court's Ruling

After a careful scrutiny of the records and pleadings, we find no cogent reason to overturn the findings of the RTC or the CA. Anent the reliance of the RTC on the eyewitness testimony of Melanie, this particular finding is best left to its competence. The assessment of the credibility of witnesses and their testimonies is best undertaken by the trial court due to its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination.[19] Unless trial courts are found to have plainly overlooked certain facts of substance and value, their conclusions on the credibility of witnesses should be respected.[20]

In any case, the RTC correctly evaluated Melanie's testimony to be candid and straightforward. Her account of the events on the night of 15 January 2002 was sufficiently detailed and unwavering, even under probing questions from the defense. In

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[17] Manifestation In Lieu of Supplemental Brief, SC *rollo*, pp. 36-38.

[18] Brief for the Accused-Appellant, CA *rollo*, pp. 51-66.

[19] *People v. Lopez*, G.R. No. 172369, 7 March 2007, 517 SCRA 749, 760.

[20] *People v. Padre-e*, 319 Phil. 545, 554 (1995).

fact, the answers she provided on cross-examination only served to highlight the positive identification of the accused as the killer:

Q: And you and your husband has a flashlight with you, is that correct?
A: Yes, sir, I was the one carrying the flashlight.

Q: How many batteries is that flashlight powered?
A: Chargeable flashlight, sir, as long as this (Witness indicating a length of about one (1) foot).

Q: It has two (2) bulbs?
A: Only one (1), sir.

Q: So the light of that flashlight was spread wide?
A: The light of the flashlight is round (buo), sir.

Q: When you focused your light, to what direction did you focus it in relation to where you were standing and your husband was shot?
A: My husband was shot and then I focused my flashlight, I saw that he was there, sir.

Q: Now, you said you focused your light when your husband was shot and you saw Ruperto Dones shot your husband. To the direction where you were going, where was Ruperto Dones shooting your husband?
A: He was on my front, I was facing him and I was waiting for my husband to traverse the prinsa, sir.

Q: You mentioned 'prinsa.' What is this 'prinsa'?
A: That is the place where we get the shrimps, sir, the water-gate.

Q: It is now clear that your husband was at your back, Ruperto Dones in your front, you are at the middle, is that correct?
A: No, sir, my husband was in front of me?

Q: When you were walking, your husband was walking ahead of you, is that correct?
A: He was at my back when we crossed the prinsa, I was the one who crossed the prinsa and then I was waiting for my husband, I was facing him and then he was shot, sir.

Q: Mrs. Witness, what was your interval with your husband when you crossed the water-gate or prinsa?

A: From here, sir, up to there, about half meter.

Q: So where was now Dones who fired at your husband?
A: He was near the grassy place, sir.

Q: How far from the place where you were with your husband when he was shot?
A: From here up to the second bench, sir.

INTERPRETER: Witness indicated a distance which, upon stipulation between counsels, is estimated to be five (5) meters.

ATTY. HASIM:

Q: So in relation to the place where you were facing, in what direction was this Dones about five (5) meters?
A: He was in front of my husband, in front of me, sir, I saw him.[21] (Emphasis supplied.)

Thus, contrary to the contention of the accused, Melanie was able to categorically identify him as the assailant who shot and killed her husband. There was no inconsistency in her narration of the details, particularly of the fact that she first trained the flashlight to light the way for Tersiro as he crossed the *prinsa*, but turned it off after she had moved backwards:

ATTY. HASIM:

Q: Now while your husband was being shot by Ruperto Dones, what were you doing?
A: When I saw he was our companion in the fishpond, I asked for help and I moved backward and I put off my flashlight, sir.

Q: When you said you moved backward, to what direction did you move?
A: At my back, sir, I walked backward, there is a dike.

Q: About how many meters did you move backward from your husband?
A: From here up to there, sir.

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[21] TSN, 4 December 2002, pp. 13-17; as cited in SC *rollo*, p. 11-12.

INTERPRETER: Witness indicated a distance which, upon stipulation between counsels, is about four (4) meters.[22]

Accused appellant insists that the narration of Melanie and her conduct then were contrary to human experience and unbelievable. However, *nothing* in the records or even in the Appellant's Brief would warrant that conclusion. What is unbelievable is the contention of the accused that Melanie fabricated her account only because he was not able to attend the funeral wake for Tersiro. The RTC rightly dismissed this allegation as a flimsy afterthought. Moreover, the argument that Melanie might have committed a mistake in identifying the perpetrator is bereft of support. We find that the prosecution was able to prove beyond reasonable doubt that, on the evening of 15 January 2002, Ruperto Dones shot and killed Tersiro de Gala.

As to the contention that the qualifying circumstance of treachery was not proven in the present case, we concur with the CA and the Solicitor General that the prosecution sufficiently established the elements of the crime charged. In the Appellant's Brief, the defense argued that treachery was not established, as there was no indication of the mode employed or that the accused consciously adopted such mode of attack.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and especially to ensure its execution, without risk to the offender arising from any defense that the offended party might make.[23] The elements of treachery are as follows: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted.[24] This is the essence of treachery — a

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[22] *Id.* at 13.

[23] Revised Penal Code, Art. 14, par. 16.

[24] *People v. Lacaden*, G.R. No. 187682, 25 November 2009, 605 SCRA 784, 801-802.

deliberate and sudden attack; affording the hapless, unarmed, and unsuspecting victim no chance to resist or to escape. In treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate.[25]

These elements were correctly found to be present in the intermediate appellate review. Although the accused was standing directly in front of the De Gala spouses, the victim Tersiro was preoccupied with crossing the *prinsa* when the accused started shooting. The CA found that the accused had waited for that exact moment before repeatedly pulling the trigger. The suddenness and unexpectedness of the attack, considering that it was nighttime and the place was deserted, rendered both Melanie and Tersiro defenseless. There was no means of escape, as they were trapped in waist-high grass between the *prinsa* and the accused.[26] It was apparent that accused-appellant sought cover in the darkness, waiting for the couple to return home. Even after Tersiro fell, the accused continued to pepper him with bullets, thus ensuring that the victim would not survive or retaliate.

In view of the foregoing, we deny the appeal and affirm accused- appellant's conviction. We find it necessary to modify the civil liability of accused-appellant to include exemplary damages. Since the killing of the victim was attended by treachery his heirs are entitled to exemplary damages in the amount of 30,000, in accordance with jurisprudence.[27]

WHEREFORE, the 28 April 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02961 is hereby **AFFIRMED** with **MODIFICATION.** Appellant Ruperto "Perto" Dones is found guilty beyond reasonable doubt of the crime of murder, for which he is sentenced to suffer the penalty of *reclusion perpetua.* He is further ordered to pay the heirs of the victim, Tersiro de

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[25] *People v. Tolentino*, G.R. No. 176385, 26 February 2008, 546 SCRA 671, 697.

[26] CA Decision, SC *rollo*, p. 15.

[27] *Supra* note 24, at 805; *People v. Gidoc*, G.R. No. 185162, 24 April 2009, 586 SCRA 825, 837; *People of the Philippines v. Arnold Pelis*, 643 Phil. 598, 602 (2011).

Gala, ₱50,000 as civil indemnity *ex delicto,* ₱50,000 as moral damages, and ₱30,000 as exemplary damages.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 189418. June 20, 2012]

HEIRS OF SHOMANAY PACLIT, CATURAY PACLIT and ANDRES PACLIT, namely: SPOUSES PRIMO and PATRICIA TEOFILO, LETICIA OLMAN, PRESCILLA OLMAN, WILLY OLMAN, JR., SAMUEL OLMAN, RAQUEL OLMAN, KENNEDY OLMAN, SHERWIN OLMAN, SPOUSES MELICIO and CARMEN CAYAO, FERMINA VISAYA, SPOUSES LUCIO and PAULINA LEYTE, SPOUSES EMILIO and SOFIA SUHAT, MARY EBBES, TERESA PACLIT, JUANITA PACLIT, SPOUSES LAFTON and SEMONA SAFUCAY, SPOUSES ROBERTO and CRISTINA CAYAT, FELIZA GANGA, SEBASTIAN OIDE and MARIO LEYTE, KENNEDY and SHERWIN OLMAN, who are minors, are herein assisted by their mother LETICIA OLMAN, herein represented by SOFIA SUHAT, *petitioners, vs.* **CESAR BELISARIO and SALUD BELISARIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; ONCE A JUDGMENT ATTAINS FINALITY IT THEREBY BECOMES IMMUTABLE AND UNALTERABLE; EXCEPTIONS TO

IMMUTABILITY OF FINAL JUDGMENT ARE ALLOWED ONLY UNDER THE MOST EXTRAORDINARY CIRCUMSTANCES.— Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality. Exceptions to the immutability of final judgment are allowed only under the most extraordinary of circumstances. The instant case cannot be considered an exceptional especially when the petitioner did not even deem it appropriate to give any compelling reason for the late filing of their motion for reconsideration with the CA. x x x It bears stressing that litigations should, and do, come to an end. Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice.

2. ID.; ID.; PLEADINGS; COURTS MAY *MOTU PROPRIO* DISMISS A CLAIM EVEN IF THE DEFENDANT FAILED TO RAISE THE DEFENSE OF PRESCRIPTION AS LONG AS THE FACTS DEMONSTRATING THE LAPSE OF THE PRESCRIPTIVE PERIOD ARE APPARENT FROM THE PLEADINGS OR THE EVIDENCE ON RECORD.— It is fitting to remind the petitioners that courts have the authority to dismiss a claim when it appears from the pleadings or the evidence on record that the action is already barred by the statute of limitations. Section 1, Rule 9 of the Rules of Court is categorical on this matter. x x x Indeed, courts may *motu proprio* dismiss a claim even if the defendant failed to raise the defense of prescription

as long as the facts demonstrating the lapse of the prescriptive period are apparent from the pleadings or the evidence on record.

3. CIVIL LAW; CIVIL CODE; PRESCRIPTION OF ACTIONS; AN ACTION UPON A WRITTEN CONTRACT MUST BE BROUGHT WITHIN 10 YEARS FROM THE TIME THE RIGHT OF ACTION ACCRUES.— The averments in the petitioners' complaint succinctly showed the lapse of the prescriptive period, thus warranting the immediate dismissal of the same. The suit before the RTC was actually an action for rescission (resolution) under Article 1191 of the Civil Code, the petitioners primarily seeking the annulment of the deed of sale with real estate mortgage on the ground of the respondents' supposed non-payment of the full purchase price. The reconveyance of the subject parcel of land, which the petitioners vehemently espouse as the real nature of the action, and the annulment of the certificates of title would prosper only if and when the deed of sale with real estate mortgage over the subject parcel of land is annulled. "Resolution," the action referred to in Article 1191 of the Civil Code, is based on the defendant's breach of faith, a violation of the reciprocity between the parties. As an action based on the binding force of a written contract, therefore, rescission (resolution) under Article 1191 prescribes in 10 years. Article 1144 of the Civil Code provides that an action upon a written contract must be brought within 10 years from the time the right of action accrues. x x x Here, the following facts are sufficiently and satisfactorily apparent on the record: *first*, Shomanay, Caturay and Andres executed the assailed deed of sale in favor of the respondents on March 31, 1965; *second*, the said deed of sale indicated that the balance of the purchase price would be paid by the respondents within six months from the execution of the same; *third*, the respondents allegedly failed to pay the balance of the purchase price; and *fourth*, the said complaint for reconveyance, annulment of deed of sale with real estate mortgage and annulment of certificates of title was only filed by the petitioners on August 13, 2003.

4. ID.; ID.; CONSIDERING THAT THE SUBJECT COMPLAINT WAS FILED 38 YEARS FROM THE TIME THEIR RIGHT OF ACTION ACCRUED, PETITIONERS ARE ALREADY BARRED FROM ASSERTING THEIR CLAIM AGAINST THE RESPONDENTS AS PRESCRIPTION HAD ALREADY SET

IN.— It is clear that the petitioners' action to annul the said deed of sale with real estate mortgage is already time-barred. The petitioners' right of action in this case accrued in September 1965 or six months from the execution of the said deed of sale with real estate mortgage – the period given to the respondents within which to pay the balance of the purchase price. Considering that the complaint below was only filed on August 13, 2003 or about 38 years from the time their right of action accrued, the petitioners are already barred from asserting their claim against the respondents as prescription had already set in.

APPEARANCES OF COUNSEL

Law Firm of Avila Reyes Licnachan Maceda Lim Arevalo-Manaois Libiran Marquez & Cadio for petitioners.

S.B. Britanico Britanico & Associates Law Offices for respondents.

R E S O L U T I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated December 19, 2008 issued by the Court of Appeals (CA) in CA-G.R. CV No. 84231. The assailed decision affirmed the Resolution[2] dated May 7, 2004 issued by the Regional Trial Court (RTC), Branch 8 of La Trinidad, Benguet in Civil Case No. 03-CV-1879.

Shomanay Paclit (Shomanay), Caturay Paclit (Caturay) and Andres Paclit (Andres) were the registered owners of a parcel of land situated in Alapang, La Trinidad, Benguet, consisting of 75,824 square meters and covered by Transfer Certificate of Title (TCT) No. T-2370. On March 31, 1965, they sold the

[1] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr., concurring; *rollo*, pp. 27-40.

[2] *Id.* at 80-84.

said parcel of land in favor of Cesar Belisario (Cesar) as evidenced by a "Deed of Sale with Real Estate Mortgage." They acknowledged therein that they received from Cesar the amount of ₱31,500.00 as downpayment for the purchase price, with the balance of ₱67,071.00 to be paid within six months therefrom. To secure the payment of ₱67,071.00, Cesar mortgaged the said parcel of land in favor of Shomanay, Caturay and Andres.

On March 2, 1966, Cesar executed an "Acknowledgement of Indebtedness" wherein he admitted that, out of the total amount of the purchase price for the said parcel of land, he was only able to pay ₱61,751.00 leaving a balance of ₱36,820.00. He likewise stated therein that Shomanay, Caturay and Andres had already discharged the mortgage which he executed over the said parcel of land. Thus, TCT No. T-2370 was cancelled and TCT No. 2832 was issued in the name of Cesar.

On August 13, 2003, the heirs of Shomanay, Caturay and Andres (petitioners) filed with the RTC a Complaint[3] for reconveyance, annulment of deed of sale with real estate mortgage and annulment of certificates of title against Cesar and his wife Salud Belisario (respondents). They asserted that Cesar has yet to pay the balance on the purchase price of the said parcel of land and that the cancellation of the mortgage over the same was attended by fraud. They claimed that they only discovered the said sale in favor of Cesar and the cancellation of TCT No. T-2370 after 33 years or sometime in July 1999.

On October 17, 2003, the respondents filed a motion to dismiss[4] on the ground that the correct docket fees were not paid and, thus, the RTC did not acquire jurisdiction over the case.

On May 7, 2004, the RTC issued a Resolution[5] which, *inter alia*, dismissed the complaint filed by the petitioners on the ground of prescription. Thus:

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[3] *Id.* at 63-72.

[4] *Id.* at 74-77.

[5] *Supra* note 2.

As the deed of sale sought to be annulled was executed in 1965 and under Art. 1144 of the Civil Code, actions upon a written contract must be brought within ten (10) years from the time the right of action accrues, it is clear that plaintiff's right to have the deed of sale annulled has prescribed.

Moreover, plaintiff admits that TCT No. T-2832 in the name of defendants was issued way back [in] June 30, 1965 but the heirs only found out about it in 1999. This is difficult to believe as if they are paying real property taxes religiously over their property, they would have readily discovered that the property is no longer in the name of their predecessor[s]-in-interest. But more importantly, plaintiff Suhat cannot claim ignorance as registration of a property under the Torrens System is [notice] to the whole world. x x x[6]

On appeal, the CA rendered a Decision[7] dated December 19, 2008 which affirmed the dismissal of the said complaint filed by the petitioners on the ground of prescription. The CA further held that the petitioners' inaction for 38 years before attacking the respondents' title indubitably constituted laches. The petitioners alleged that they received a copy of the assailed decision only on February 28, 2009.

On March 12, 2009, the petitioners sought reconsideration[8] of the Decision dated December 19, 2008 but it was denied by the CA in its Resolution[9] dated August 26, 2009. The CA pointed out that the assailed decision had already become final as the petitioners' motion for reconsideration was filed beyond the reglementary period. The CA explained that:

It must be pointed [out] that, contrary to plaintiffs-appellants' allegation in their motion for reconsideration filed on 11 March 2009 that they received on "28 February 2009" a copy of this Court's Decision dated 19 December 2008 denying their appeal, as shown by the Registry Return Receipt attached at the dorsal side of page 116 of the records, plaintiffs-appellants' counsel received on "Jan.

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[6] *Rollo*, p. 83.

[7] *Supra* note 1.

[8] *Rollo*, pp. 41-59.

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

5, 2009" a copy of this Court's Decision promulgated on 19 December 2008. As provided under Section 1 of Rule 52 of the 1997 Rules of Procedure, "[A] party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party." The fact that plaintiffs-appellants filed their motion for reconsideration on 11 March 2009, the same was filed out of time or sixty five (65) days from the time counsel for the plaintiffs-appellants received on "Jan. 5, 2009" a copy of the assailed Decision. As such, the assailed Decision is no longer subject to review, modification or reversal being final and executory. x x x[10]

Undaunted, the petitioners instituted the instant petition for review on *certiorari* before this Court essentially asserting that the CA erred in ruling that their complaint for reconveyance, annulment of deed of sale and annulment of certificates of titles was properly dismissed by the RTC on the ground of prescription.

In their Comment,[11] the respondents asserted that the instant petition ought to be denied as the Decision dated December 29, 2008 of the CA had already become final on account of the petitioners' failure to file their motion for reconsideration within the reglementary period.

The petition is denied.

The Rules of Court grants an aggrieved party a period of 15 days from his/her receipt of the CA's decision or order disposing of the action or proceeding to appeal or move to reconsider the same.[12] After the lapse of the 15-day period without any appeal or motion for reconsideration having been filed by the aggrieved party, the said decision or order disposing of the action or proceeding becomes final and executory.

Here, the CA pointed out that the petitioners received a copy of the Decision dated December 29, 2008 on January 5, 2009, as evidenced by the Registry Return Receipt, and not on February

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[10] *Id.* at 25.

[11] *Id.* at 124-135.

[12] RULES OF COURT, Rule 45, Section 2; Rule 52, Section 1.

28, 2009 as dubiously claimed by them. Thus, the petitioners only had until January 20, 2009 within which to appeal or move to reconsider the assailed decision of the CA.

However, the petitioners were only able to file their motion for reconsideration on March 11, 2009. Accordingly, the Decision dated December 29, 2008 of the CA had already become final and executory and no longer subject to review.

Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case. The doctrine of finality of judgment is grounded on fundamental considerations of public policy and sound practice, and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[13]

Exceptions to the immutability of final judgment are allowed only under the most extraordinary of circumstances.[14] The instant case cannot be considered an exception especially when the petitioners did not even deem it appropriate to give any compelling reason for the late filing of their motion for reconsideration with the CA.

Worse, the petitioners even tried to conceal the same by alleging that they received a copy of the said Decision dated

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[13] *Gallardo-Corro v. Gallardo,* 403 Phil. 498, 511 (2001).

[14] *Selga v. Brar,* G.R. No. 175151, September 21, 2011.

December 29, 2008 only on February 28, 2009. This claim, however, is belied by the Registry Return Receipt which indicated that the petitioners' counsel received a copy of the assailed decision on January 5, 2009. This finding of fact by the CA deserves more credence. Undoubtedly, as between the Registry Return Receipt and the petitioners' bare assertion, the former is more credible.

It bears stressing that litigations should, and do, come to an end. Public interest demands an end to every litigation and a belated effort to reopen a case that has already attained finality will serve no purpose other than to delay the administration of justice.[15]

In any case, even if we are to disregard the belated filing of the petitioners' motion for reconsideration with the CA, the instant petition would still merit dismissal. A perusal of the allegations, issues and arguments set forth by the petitioners would readily show that the CA did not commit any reversible error as to warrant the exercise of the Court's appellate jurisdiction.

The petitioners' insistence that their complaint filed with the RTC could not be dismissed on the ground of prescription on account of the respondents' failure to raise the said defense in their motion to dismiss is untenable.

It is fitting to remind the petitioners that courts have the authority to dismiss a claim when it appears from the pleadings or the evidence on record that the action is already barred by the statute of limitations. Section 1, Rule 9 of the Rules of Court is categorical on this matter, thus:

> Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. **However, when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred by** a

[15] *Abrenica v. Law Firm of Abrenica, Tungol and Tibayan*, G.R. No. 169420, September 22, 2006, 502 SCRA 614, 625.

prior judgment or **by statute of limitations, the court shall dismiss the claim.** (Emphasis supplied.)

Indeed, courts may *motu proprio* dismiss a claim even if the defendant failed to raise the defense of prescription as long as the facts demonstrating the lapse of the prescriptive period are apparent from the pleadings or the evidence on record. Thus, in *Feliciano v. Canoza*,[16] we stressed that:

We have ruled that trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred x x x; and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or **even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings,** or where a defendant has been declared in default. **What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiffs complaint, or otherwise established by the evidence.**[17] (Emphasis supplied)

The averments in the petitioners' complaint succinctly showed the lapse of the prescriptive period, thus warranting the immediate dismissal of the same.

The suit before the RTC was actually an action for rescission (resolution) under Article 1191[18] of the Civil Code, the petitioners

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[16] G.R. No. 161746, September 1, 2010, 629 SCRA 550, 558-559.

[17] *Id.* at 145, citing *Gicano v. Gegato*, 241 Phil. 139-146 (1988).

[18] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

primarily seeking the annulment of the deed of sale with real estate mortgage on the ground of the respondents' supposed non-payment of the full purchase price. The reconveyance of the subject parcel of land, which the petitioners vehemently espouse as the real nature of the action, and the annulment of the certificates of title would prosper only if and when the deed of sale with real estate mortgage over the subject parcel of land is annulled.

"Resolution," the action referred to in Article 1191 of the Civil Code, is based on the defendant's breach of faith, a violation of the reciprocity between the parties. As an action based on the binding force of a written contract, therefore, rescission (resolution) under Article 1191 prescribes in 10 years.[19] Article 1144 of the Civil Code provides that an action upon a written contract must be brought within 10 years from the time the right of action accrues, thus:

> Article 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> (1) Upon a written contract;
>
> (2) Upon an obligation created by law;
>
> (3) Upon a judgment.

Here, the following facts are sufficiently and satisfactorily apparent on the record: first, Shomanay, Caturay and Andres executed the assailed deed of sale in favor of the respondents on March 31, 1965; second, the said deed of sale indicated that the balance of the purchase price would be paid by the respondents within six months from the execution of the same; third, the respondents allegedly failed to pay the balance of the purchase price; and fourth, the said complaint for reconveyance, annulment of deed of sale with real estate mortgage and annulment of

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This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[19] See Heirs of *Sofia Quirong v. Development Bank of the Philippines*, G.R. No. 173441, December 3, 2009, 606 SCRA 543, 550.

certificates of title was only filed by the petitioners on August 13, 2003.

From the foregoing, it is clear that the petitioners' action to annul the said deed of sale with real estate mortgage is already time-barred. The petitioners' right of action in this case accrued in September 1965 or six months from the execution of the said deed of sale with real estate mortgage — the period given to the respondents within which to pay the balance of the purchase price. Considering that the complaint below was only filed on August 13, 2003 or about 38 years from the time their right of action accrued, the petitioners are already barred from asserting their claim against the respondents as prescription had already set in.

At this juncture, we deem it necessary to reiterate our disquisition in *Multi-Realty Development Corporation v. The Makati Tuscany Condominium Corporation*,[20] thus:

> Prescription is rightly regarded as a statute of repose whose object is to suppress fraudulent and stale claims from springing up at great distances of time and surprising the parties or their representatives when the facts have become obscure from the lapse of time or the defective memory or death or removal of witnesses. The essence of the statute of limitations is to prevent fraudulent claims arising from unwarranted length of time and not to defeat actions asserted on the honest belief that they were sufficiently submitted for judicial determination. Our laws do not favor property rights hanging in the air, uncertain, over a long span of time.[21] (Citations omitted)

WHEREFORE, in consideration of the foregoing disquisitions, the petition is **DENIED.** The Decision dated December 19, 2008 rendered by the Court of Appeals in CA-G.R. CV No. 84231 is **AFFIRMED.**

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Sereno, JJ.,* concur.

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[20] 524 Phil. 318 (2006).

[21] *Id.* at 337.

SECOND DIVISION

[G.R. No. 191563. June 20, 2012]

LEGAL HEIRS OF THE LATE EDWIN B. DEAUNA, represented by his wife, MRS. ARLINA DEAUNA, *petitioners, vs.* **FIL-STAR MARITIME CORPORATION, GREGORIO ORTEGA, CAPT. VICTOR S. MILLALOS and GRANDSLAM ENTERPRISES CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; WHILE GENERALLY ONLY QUESTIONS OF LAW CAN BE RAISED, THE INSTANT PETITION FALLS AMONG THE EXCEPTIONS IN THE LIGHT OF THE CONFLICTING FACTUAL FINDINGS OF THE VOLUNTARY ARBITRATOR AND THE COURT OF APPEALS.— The instant petition ascribes misappreciation of facts on the part of the CA, which if allegedly reconsidered, would yield a conclusion favorable to the petitioners. As a rule, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45. The Court is thus generally bound by the CA's factual findings. There are, however, exceptions to the foregoing, among which is when the CA's factual findings are contrary to those of the trial court or administrative body exercising quasi-judicial functions from which the action originated. The instant petition falls under the aforementioned exception in the light of the divergent factual findings of the VA and the CA.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENTS (CBA); THE SPECIAL CLAUSES ON COLLECTIVE BARGAINING AGREEMENTS MUST PREVAIL OVER THE STANDARD TERMS AND BENEFITS FORMULATED BY THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA) IN ITS STANDARD EMPLOYMENT CONTRACT.— It bears noting that the petitioners' complaint was initially filed with

the NLRC which referred the same to the NCMB for voluntary arbitration. VA Ofreneo took cognizance and ruled on the complaint. Thereafter, the respondents assailed before the CA, through a petition for review under Rule 43 of the Rules of Court, the notice of award issued by VA Ofreneo. In the said petition, the parties never raised the issue of the VA's jurisdiction. In effect, it was an admission on the part of both the petitioners and the respondents that the controversy involves the interpretation of CBA provisions relative to the claims for death compensation benefits. Stated otherwise, in the proceedings below, the contending parties both impliedly acquiesced to the applicability of the CBA provisions and not of the POEA SEC over the claims of the petitioners. More importantly, the special clauses on collective bargaining agreements must prevail over the standard terms and benefits formulated by the POEA in its Standard Employment Contract. A contract of labor is so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer. This is in consonance with the avowed policy of the State to give maximum aid and full protection to labor as enshrined in Article XIII of the 1987 Constitution.

3. **ID.; ID.; ID.; UNDER THE PROVISIONS OF THE CBA, THE DECEASED SEAFARER'S DEATH, A LITTLE MORE THAN A YEAR FROM HIS REPATRIATION CAN STILL BE CONSIDERED AS ONE OCCURRING WHILE HE WAS STILL UNDER RESPONDENT'S EMPLOY.—** We can conclude that at the time of Edwin's death on April 13, 2006 due to GBM, he was still in the employment of the respondents. While it is true that Article 22.1 of the IBF/AMOSUP/IMMAJ CBA considers a seafarer as terminated when he signs off from the vessel due to sickness, the foregoing is subject to the provisions of Article 29. Under Article 29, a seafarer remains under the respondents' employ as long as the former is still entitled to medical assistance and sick pay, and provided that the death which eventually occurs is directly attributable to the sickness which caused the seafarer's employment to be terminated. As discussed above, the company-designated physician, Dr. Cruz, in effect admitted that Edwin was repatriated due to symptoms which a person suffering from GBM normally exhibits. Further, he recommended to Capt. Millalos Edwin's entitlement to medical assistance and sick pay for a period

beyond 130 days from repatriation. Edwin subsequently died of GBM, the symptoms of which were the cause of his earlier repatriation. Hence, since Edwin's death is reasonably connected to the cause of his repatriation, within the purview of the IBF/AMOSUP/IMMAJ CBA, he indubitably died while under the respondents' employ, thus, entitling the petitioners to death benefits as provided for in Appendix 3 of the said CBA.

4. CIVIL LAW; DAMAGES; PETITIONERS ARE NOT ENTITLED TO MORAL, EXEMPLARY AND ATTORNEY'S FEES CONSIDERING THAT THE ACTS OF RESPONDENTS HARDLY INDICATE AN INTENT ON THEIR PART TO EVADE THE PAYMENT OF THEIR OBLIGATIONS.— We find that the acts of the respondents hardly indicate an intent on their part to evade the payment of their obligations so as to justify the award of moral and exemplary damages and attorney's fees to the petitioners. The respondents extended medical assistance and allowances to Edwin while he went through his treatment. Further, the respondents offered an amount of US$60,000.00 as disability benefits even when the petitioners' claims had not been conclusively established yet.

APPEARANCES OF COUNSEL

Bantog and Andaya Law Offices for petitioners.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

REYES, *J.*:

Before us is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, filed by the legal heirs (collectively referred to as the petitioners) of the late Edwin Deauna (Edwin), represented by his wife, Arlina Deauna, to assail the Decision[2]

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[1] *Rollo*, pp. 34-58.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring; *id.* at 11-29.

dated July 15, 2009 and the Resolution[3] dated March 8, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 106199. The dispositive portion of the assailed decision reads:

> **WHEREFORE,** premises considered, the assailed Decision dated 28 October 2008 of Voluntary Arbitrator Rene Ofreneo in AC 94-NCMB-NCR, is hereby, **REVERSED** and **SET ASIDE,** and a new one entered absolving the petitioner[s] [herein respondents] from liability for the death benefits under the terms and conditions of the POEA Contract and Article 29 pf (sic) the AMOSUP/JSU-CBA.
>
> **SO ORDERED.**[4]

The assailed resolution denied the petitioners' motion for reconsideration.

Antecedent Facts

Respondent Fil-Star Maritime Corporation (Fil-Star) is a local manning agency, with respondent Captain Victor S. Millalos (Capt. Millalos) as its general manager. Respondent Grandslam Enterprise Corporation (Grandslam) is among Fil-Star's foreign principals. Grandslam owns and manages the vessel M/V Sanko Stream (Sanko) which Edwin boarded on August 1, 2004 for a nine-month engagement as Chief Engineer. As such, he was responsible for the operations and maintenance of the entire vessel's engineering equipment. He also determined the requirements for fuel, lube oil and other consumables necessary for a voyage, conducted inventory of spare parts, prepared the engine room for inspection by marine and safety authorities, and took charge of the engine room during maneuvering and emergency situations.

Prior to Edwin's deployment, he underwent the customary Pre-employment Medical Examination (PEME) and was found as "fit to work" as was repeatedly the case in the past 30 years since his first deployment by Fil-Star in 1975.

Sometime in October 2004, Edwin experienced abdominal pains while on-board Sanko. He was promptly referred to a

[3] *Id.* at 31-32.

[4] *Id.* at 28-29.

doctor in Paranagua, Brazil. An ultrasound examination revealed that he had kidney stones for which he was administered oral medications. Thereafter, he resumed his work on-board Sanko.

On April 3, 2005 or more or less 8 months from deployment, Edwin was repatriated. There were, however, conflicting claims regarding the cause of his repatriation. The respondents claimed that Edwin requested for an early termination of his contract in order to attend his daughter's graduation ceremony. On the other hand, the petitioners averred that Edwin was repatriated due to the latter's "body weakness and head heaviness."[5] The petitioners likewise claimed that on April 4, 2005, they called Capt. Millalos to inform the latter that upon arrival at the airport, Edwin was very sick, weak, disoriented, and merely wanted to immediately go home to Daet, Camarines Norte.[6] Edwin can neither physically report in Fil-Star's office nor board his next vessel of assignment.

On April 27, 2005, Dr. Eduardo R. Mercado (Dr. Mercado), a neurosurgeon at the Cardinal Santos Medical Center certified that:

> Mr. Edwin Deauna, 52 years of age, is presently under my care at the Cardinal Santos Medical Center. He presented with (sic) behavioral changes associated with a left-sided facial and upper extremity weakness. An MRI of the brain done [on] April 26, 2005 showed a large right-sided brain tumor with involvement of his right temporal lobe, basal ganglia, corona radiate and insular cortex. There is associated severe swelling and shift (mass effect) to the opposite side. He is undergoing medical decompression to relieve pressure intracranially.
>
> He will need stereotactic biopsy of his brain tumor for "grading purposes". Thereafter, treatment options will be discussed with family but I can predict that he will need radiation treatment as well as chemotherapy. This is necessary for palliation purposes and prolongation of life with good quality.[7] (Citation omitted)

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[5] *Id.* at 13.

[6] Affidavit executed by Arlina Deauna, CA *rollo*, p. 147.

[7] *Rollo*, p. 13.

The petitioners sent the respondents two letters requesting for the conduct of a medical examination and treatment of Edwin's brain tumor. The respondents averred that they provided Edwin with medical assistance for him to be able to promptly undergo a biopsy.

On May 4, 2005, Dr. Mercado found out from the pathology report that Edwin was suffering from "Glioblastoma WHO Grade 4" (GBM), a malignant and aggressive form of brain cancer. According to Dr. Mercado, "it is logical/safe to surmise that the tumor has been existent and progressively growing for a number of months".[8]

On May 13, 2005, the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz), opined that the "etiology of GBM is unknown". Further, Edwin's "illness is work-related if he has history of exposure to radiation, vinyl products and the likes and working in near proximity of power line, otherwise, it is not," and that "the tumor is already present even prior to embarkation but not detectable but (*sic*) ordinary PEME".[9]

On August 22, 2005, or about four months after Edwin's repatriation, Dr. Cruz sent Capt. Millalos a medical report stating that:

> The patient was repatriated because of body weakness and head heaviness since October 2004. He had his consultation in Brazil, where he was evaluated to have "kidney stones" after undergoing ultrasound. Patient then finished his contract. At the airport, upon his arrival last April 03, 2005, he was noted to be drowsy and disoriented. On April 05, 2005, he was seen by a physician in Daet. CT Scan was done and he was diagnosed to have hypertension and neurologic disease. He was seen at the Cardinal Santos Hospital and on April 30, 2005, he underwent biopsy of the brain mass and the pathology report revealed Glioblastoma Multiforme. He has completed his 1st period of radiotherapy.
>
> The MRI of the brain showed slight reduction in the size of the tumor. He has weakness of the left foot resulting to episodic foot

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[8] CA *rollo*, p. 103.

[9] *Id.* at 49.

drop. He also has facial edema secondary to steroid intake. He also complains of occasional doubling of vision but he has no headache.

Submitting to you the monthly expenses for his chemotherapy.

DIAGNOSIS:

Glioblastoma Multiforme

Advised to come back on September 23, 2005.[10]

The respondents claimed that out of compassion and intent to avoid legal battles, they extended to Edwin an allowance of US$6,033.36. They also offered the payment of US$60,000.00 disability benefits despite having no obligation to do so on their part as GBM can only be considered as work-related if a person who suffers therefrom had exposures to radiation or vinyl products, or had worked in the vicinity of power lines.[11] The respondents claimed that Edwin did not have such exposure while under their employ.

Two demand letters seeking disability benefits were thereafter sent by the petitioners to the respondents. The first, which was received by the respondents on November 21, 2005, sought the payment of US$125,000.00 as allegedly provided under the International Bargaining Forum/Associated Marine Officers' and Seamen's Union of the Philippines/International Mariners Management Association of Japan Collective Bargaining Agreement (IBF/AMOSUP/IMMAJ CBA). The second letter, dated December 8, 2005, reiterated the petitioners' claims for disability benefits. The respondents replied that they had already aptly dealt with the illness under the respective employment agreement. Not long after, the petitioners again wrote the respondents informing the latter that Edwin's condition was already critical. Hence, the possibility that the claims for disability benefits would be converted to death benefits arose. The respondents denied the petitioners' demand.

In December 2005, a complaint for disability benefits, medical and transportation reimbursements, moral and exemplary damages

[10] *Id.* at 106.

[11] *Id.* at 49.

and attorney's fees were filed before the National Labor Relations Commission (NLRC). Edwin died on April 13, 2006 during the pendency of the proceedings. He was substituted therein by the petitioners who sought the payment of death benefits.

After finding that there was an arbitration clause in the IBF/AMOSUP/IMMAJ CBA, the Labor Arbiter (LA) rendered a decision referring the complaint to voluntary arbitration. The case was thereafter docketed with the National Conciliation and Mediation Board (NCMB) as AC 94-NCMB-NCR-39-01-13-07.

On October 28, 2008, Voluntary Arbitrator Rene Ofreneo (VA Ofreneo), invoking the provisions of the Philippine Overseas Employment Administration Standard Employment Contract (POEA SEC) and the IBF/AMOSUP/IMMAJ CBA, awarded death benefits to the petitioners. VA Ofreneo ratiocinated that:

> This Office has also taken cognizance of the following facts that were not questioned or contested by the parties: One, that EDWIN DEAUNA was under the employ of the same company for roughly 25 years due to repeated re-hiring from 1975 to 2005, and Two, that the RESPONDENTS made an earlier settlement offer of US$60,000 as payment for disability benefits.
>
> On the repatriation of EDWIN DEAUNA and the relationship of his ailment to his work as Chief Engineer of the vessel Sanko Stream, the medical report dated 22 August 2005 by the company physician, DR. NICOMEDES G. CRUZ, to CAPTAIN VICTORIO S. MILLALOS, General Manager of Fil-Star Maritime Corporation, does not need any other interpretation other than observation that EDWIN DEAUNA's health status had been deteriorating on board. x x x
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> x x x x x x x x x
>
> From the foregoing facts and circumstances, it is abundantly clear that the ailment of EDWIN DEAUNA was work-related and manifested while he was on board in his last sailing. This ailment developed and progressed in the course of his employment, that is, during the long and continuous service EDWIN DEAUNA rendered to the same manning company, which spanned a period of over 25 years. His repatriation, recorded as made upon his request, was clearly

unavoidable given his rapidly deteriorating health situation as proven no less by the series of medical tests and treatment EDWIN DEAUNA was subjected to with the help of private and Company physicians – and eventually by his death.[12]

The respondents filed with the CA a petition for review under Rule 43 of the Rules of Court to challenge VA Ofreneo's award. Before the CA could resolve the case, the petitioners filed a motion for execution[13] which was granted by VA Ofreneo over the respondents' vehement opposition.[14] Consequently, the respondents paid to the petitioners the sum of ₱5,603,026.00,[15] but the former manifested that their act was without prejudice to the outcome of the proceedings then pending with the CA.[16]

On July 15, 2009, the CA rendered the now assailed decision reversing VA Ofreneo's award based on the following grounds:

> Under the Definition of Terms found in the Standard Contract, a work-related illness is defined as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." An illness not otherwise listed in Section 32-A is disputably presumed work-related.
>
> Glioblastoma multiforme is the most aggressive of the gliomas, a collection of tumors arising from glia or their precursors within the central nervous system. Most glioblastoma tumors appear to be sporadic, without any genetic predisposition. No links have been found between glioblastoma and smoking, diet, cellular phones or electromagnetic fields. Recently, evidence for a viral cause has been discovered, possibly SV40 or cytomegalovirus. There also appears to be a small link between ionizing radiation and glioblastoma. Having one of the following genetic disorders is associated with an increased

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[12] *Id.* at 46-48.

[13] *Rollo*, pp. 133-134.

[14] *Id.* at 138-145.

[15] Then equivalent to US$121,000.00 based on the prevailing exchange rates.

[16] Satisfaction of Judgment Pursuant to Writ of Execution, *rollo*, pp. 183-184.

incidence of glomas: neurofibromatosis, tuberous sclerosis, Von Hippel-Lindau disease, Li-Fraumeni syndrome, turcot syndrome. These tumors manifest *de novo*, presenting after a short clinical history, usually less than 3 months.

The presumption was disproved by petitioner[s] [herein respondents] in its (sic) arguments. Petitioner[s] presented the expert medical opinion of its (sic) company-designated doctor, opining that the deceased seaman's Glioblastoma Multiforme was not work-related considering that he was never exposed to factors that would cause the same during his employment with the petitioners. While opinions of petitioner's (sic) doctor should not be given evidentiary weight as they are palpably self-serving and biased in favor of the former, and certainly could not be considered independent, respondent[s] has (sic) used the medical report of the very same physician to support their arguments, and is (sic) thus considered in estoppel.

Respondent's (sic) bare assertion, without any scientific or logical proof, that such employment of the deceased seaman in the vessel of the petitioner[s], is the cause of his illness and eventual death, cannot be upheld by this court. Under P.D. No. 626, if an ailment or sickness is not listed as an "occupational disease," the claimant must prove that the risk of contracting the illness suffered was increased by his or her working conditions. The degree of proof required is "substantial evidence." Jurisprudence defines "substantial evidence" as that amount of relevant evidence which a reasonable mind might accept as adequate to justify the conclusion. It provides that to establish compensability of a non-occupational disease, reasonable proof and not direct proof of a causal connection between the work and the ailment is required. To require proof of actual causes or factors which lead to the ailment would not be consistent with the liberal interpretation of the social justice guarantee in favor of workers.

Thus, death compensation benefits cannot be awarded unless there is substantial evidence showing that (a) the cause of Deauna's death was reasonably connected with his work; or (b) the sickness for which he died is an accepted occupational disease; or (c) his working conditions increased the risk of contracting the disease for which he died.

The deceased seaman's cause of death was not connected with his employment on board the vessel as a Chief Engineer. A Chief Engineer is someone qualified to oversee the entire engine department. He is also responsible for all operations and maintenance that has

to do with any and all engineering equipment throughout the entire ship. He also determines the fuel, lube oil, and other consumables required for a voyage; [r]equired inventory for spare parts, oversees fuel, lube and slop oil transfers, prepares the engine room for inspection by local marine/safety authorities, oversees all major maintenance; is required to be in the engine room during maneuvering operations, and is in charge of the engine room during emergency situations.

Glioblastoma Multiforme is not an accepted occupational disease of a Chief Engineer under the POEA-SEC, Art. 32-A. It does not arise from known occupational hazards, such as being a Chief Engineer as in this case, and its origin has not yet been pinpointed by any medical experts or organizations up to the present. Furthermore, to say that his earlier illness of kidney stones, even if such was proven to have been caused by the deceased seaman's occupation, lead to the development of the Glioblastoma Multiforme, which eventually caused his death, is stretching the facts too far. We are not medical experts to be able to connect such illness as the cause of GBM, which even the former has not yet discovered, and thus, warrant a new discovery in the field of medicine and grant the death benefits prayed for by the respondents.

Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent. This Court finds that under the circumstances[,] respondents' bare allegations do not suffice to discharge the required quantum of proof of compensability. Awards of compensation cannot rest on speculations or presumptions, like the one made by herein respondents. The beneficiaries must present evidence to prove a positive proposition.

For the second argument, petitioner[s] argues (sic) that when the deceased seaman was repatriated on April 3, 2005, whether it is due to finished contract or for medical reasons, this will have the effect of terminating the employment of the said seaman. When the seaman died on April 16, 2006, he was no longer under the employment of the petitioners.

Petitioner[s] cited the case of Gau Sheng v. Joaquin, [through which] the Highest Tribunal ruled that in order to give effect to the benefits granted under the (sic) Memorandum Circular No. 41, Series

of 1989, it must be shown that the employee died during the effectivity of the contract of employment.

We rule in the affirmative.

Art. 29 of the said IBF AMOSUP-JSU IMMAJ CBA provides, in part, that:

> "If a seafarer dies of any cause **whilst in the employment of the company** including death from natural causes and death occurring whilst traveling to and from the vessel, or as a result of marine or other similar peril, but excluding death due to willful act, the Company shall pay the sums specified xxx to a nominated beneficiary and to each dependent child up to a maximum of four (4) under 21 years of age. The above compensation shall include those Seafarers who have been missing as a result of peril of the sea xxx and presumed to be dead three (3) months after the adversity xxx."

It is clear from the above provision that in order to come under the operation of the said CBA agreement, it must be shown by the respondent[s] that the ailment must have been incurred while on the employment with the petitioner[s]. Respondent's (sic) contention that since the origin or cause of the illness was unknown, it is presumed to have been contracted during employment, is untenable. There is no such correlation between the two to give rise to such presumption. The issuance of a clean bill of health to the deceased seaman, made by the physicians selected/accredited by the petitioner[s] does not necessarily follow that the illness for which the former died of was acquired during his employment.

Stated differently, for death of a seafarer to be compensable, the death must occur during the term of his contract of employment. It is the only condition for compensability of a seafarer's death. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable. By provision of Section 20 (A) of the POEA Standard Employment Contract, based on POEA Memorandum Circular No. 055, series of 1996, payment of death benefit pension is mandated in case of death of a seafarer during the term of his employment.

Section 20 (A) (1) and (4) (A, B and C) of the POEA Standard Employment Contract provides:

"Section 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. In case of death of the seafarer **during the term of his contract**, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

x x x x x x x x x

4. The other liabilities of the employer when the seafarer dies as a result of injury or illness during the term of employment are as follows:

a. The employer shall pay the deceased's beneficiary all outstanding obligations due the seafarer under this Contract.

b. The employer shall transport the remains and personal effects of the seafarer to the Philippines at employer's expense except if the death occurred in a port where local government laws or regulations do not permit the transport of such remains. In case death occurs at sea, the disposition of the remains shall be handled or dealt with in accordance with the master's best judgment. In all cases, the employer/master shall communicate with the manning agency to advice (sic) for disposition of seafarer's remains.

The employer shall pay the beneficiaries of the seafarer the Philippine currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment."

This is a similar, if not exact, provision of the CBA aforementioned. The law demands the same requirements as it was in the latter. The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable. However, if the seaman dies after the termination of his contract of employment, his beneficiaries are not entitled to the death benefits enumerated above.

Finally, the Voluntary Arbitrator has erred in relying only on the medical report presented by the company physician Dr. Nicomedes G. Cruz in making his conclusion that the ailment of the deceased seaman was work-related and it manifested while he was on board of (sic) the vessel in his last sailing. He did not consider the other equally important points such as whether the death of the seaman was suffered during the term of his employment or that assuming *arguendo*, that he was indeed repatriated due to medical reasons, his death occurred after the term of his employment has already ceased.

That administrative quasi-judicial bodies like the Voluntary Arbitrator are not bound by technical rules of procedure in the adjudication of cases, does not mean that the basic rules on proving allegations should be entirely dispensed with. A party alleging a critical fact must still support his allegation with substantial evidence. Any decision based on unsubstantiated allegation cannot stand as it will offend due process. The liberality of procedure in administrative actions is subject to limitations imposed by basic requirements of due process. As this Court said in Ang Tibay v. CIR, the provision for flexibility in administrative procedure "does not go so far as to justify orders without a basis in evidence having rational probative value."

Furthermore, as held in *Uichico v. NLRC*, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules.[17] (Citations omitted)

The CA thereafter issued the assailed resolution denying the petitioners' motion for reconsideration to the foregoing. Hence, the instant petition.

The Issues

The petitioners submit the following for resolution:

THE FINDINGS OF FACT OF THE HONORABLE COURT OF APPEALS DO NOT CONFORM TO THE EVIDENCE ON RECORD. MOREOVER, THERE WAS A MISAPPRECIATION OF FACTS AND THE HONORABLE COURT OF APPEALS FAILED TO NOTICE CERTAIN RELEVANT POINTS WHICH IF CONSIDERED WOULD JUSTIFY A DIFFERENT CONCLUSION. HENCE, THE DECISION

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[17] *Id.* at 20-28.

OF THE COURT OF APPEALS IS CONTRARY TO THE APPLICABLE LAW AND JURISPRUDENCE.

> A. THE SURVIVING SPOUSE AND LEGAL HEIRS OF THE DECEASED SEAFARER ARE ENTITLED TO DEATH COMPENSATION IN THE SUM OF US$121,000.00 UNDER THE AMOSUP/JSU-CBA;
>
> B. PETITIONER[S] [ARE] ENTITLED TO MORAL DAMAGES FOR (sic) Php1,000,000.00, EXEMPLARY DAMAGES [OF] Php200,000.00 AND TEN PERCENT (10%) OF THE AWARDS AS AND BY WAY OF ATTORNEY'S FEES.[18]

The Petitioners' Arguments

The petitioners emphasize that under the IBF/AMOSUP/IMMAJ CBA, a seafarer's death is compensable **regardless of its cause and its non work-relatedness** as long as it occurs **during** the term of the latter's employment. The only exception to compensability is when death is due to willful acts. In Edwin's case, he had been under the respondents' employment for the past 30 years. Prior to boarding Sanko, he passed the PEME but was thereafter medically-repatriated as stated in Dr. Cruz's report. He died of GBM, the origin of which is unknown. Hence, it can be presumed that GBM had been contracted during his employment with the respondents.

The petitioners also point out that the dictum that death must occur during the term of a seafarer's employment is not even a hard and fast rule. In *Carmelita C. Arambulo v. West Fleet Phil./Pandiman Phil., Inc./Pacific Maritime, Inc.*,[19] the NLRC declared that for an illness to be compensable, it is not necessary for death to occur during the term of employment. What is merely required is for the connection between the cause of repatriation and the cause of death to be duly established. In *Seagull Shipmanagement & Transport, Inc. v. NLRC*,[20] the

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[18] *Id.* at 40.

[19] NLRC CA 014480-94, July 9, 1998.

[20] 388 Phil. 906 (2000).

Court similarly declared that "if the disease is the proximate cause of the employee's death for which compensation is sought, the previous physical condition of the employee is unimportant, and recovery may be had for said death, independently of any pre-existing disease."

The petitioners also refute in detail the applicability of the doctrines invoked by the respondents as the circumstances surrounding them do not obtain in the case at bar. In *Gau Sheng Phils., Inc. v. Joaquin*,[21] employment was terminated upon the parties' mutual consent and the seafarer's claim was anchored on the POEA SEC and not on the provisions of a CBA. In *Hermogenes v. Osco Shipping Services, Inc.*,[22] no evidence was offered to prove the cause of the early termination of the seafarer's contract. In *Spouses Aya-ay, Sr. v. Arpaphil Shipping Corporation*,[23] the seafarer was repatriated due to an eye injury but he died of cardiovascular arrest after his contract was already terminated. In *Prudential Shipping and Management Corporation v. Sta. Rita*,[24] the seafarer was repatriated due to umbilical hernia and he died ten days after with cardiopulmonary arrest as the immediate cause, acute renal failure as the antecedent cause and hepatocellular carcinoma as the underlying cause. In *Klaveness Maritime Agency, Inc. v. Beneficiaries of the Late Second Officer Anthony S. Allas*,[25] the seafarer was not medically repatriated. In the *Estate of Posedio Ortega v. Court of Appeals*,[26] the seafarer died of lung cancer and his heirs anchored their claim for death benefits on the POEA SEC, which unfortunately does not list the said illness as an occupational disease. The petitioners thus conclude that the contexts of the aforecited cases are different, hence, the doctrines enunciated therein find no application.

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[21] 481 Phil. 222 (2004).

[22] 504 Phil. 564 (2005).

[23] 516 Phil. 628 (2006).

[24] G.R. No. 166580, February 8, 2007, 515 SCRA 157.

[25] G.R. No. 168560, January 28, 2008, 542 SCRA 593.

[26] G.R. No. 175005, April 30, 2008, 553 SCRA 649.

The petitioners also allege that the respondents' prior actions indicated nothing less but an admission of the latter's legal and moral obligation to pay Edwin the amounts he was entitled to. For one, the expenses for the initial treatment administered to Edwin were shouldered by the respondents. Further, the respondents paid Edwin a full sickness allowance as provided for under POEA SEC. Moreover, the respondents repeatedly offered Edwin the amount of US$60,000.00 corresponding to the original claim for disability benefits under the POEA SEC. This clearly meant that the respondents recognized that Edwin's illness entitled him to benefits under the POEA SEC.

The petitioners likewise aver their entitlement to moral and exemplary damages and attorney's fees on account of the respondents' unjustified refusal to comply with their contractual obligations.

The Respondents' Contentions

In their Comment with Manifestation,[27] the respondents counter that Edwin's illness was not work-related and his death occurred not during the term of his employment. Thus, the petitioners are not entitled to the payment of any benefits. The mere circumstance that the manifestations of an illness appeared while the seafarer is on-board does not necessarily render it as work-related. In the POEA SEC, the words "during the term of contract" refer to the time when death occurs while "work-related" refers to the cause of death. The two requisites must both be proven especially in view of the Court's declaration in *Rivera v. Wallem Maritime Services, Inc.*,[28] that "in the absence of substantial evidence, working conditions cannot be presumed to have increased the risk of contracting the disease."

In the case at bar, the petitioners' bare allegation, that GBM was work-related as can be inevitably concluded from Edwin's lengthy and repeated employment with the respondents, deserves no probative value unless corroborated by substantial evidence.

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[27] *Rollo,* pp. 102-132.

[28] 511 Phil. 338 (2005).

Dr. Cruz, who had attended to Edwin's medical needs for more than three months, opined that GBM was not work-related as the latter, in the course of his employment with the respondents, was never exposed to factors which would have increased the risk of contracting the illness.

Further, Articles 25 and 26 of the CBA provide for the entitlement of a seafarer to medical treatment and sick wages for a maximum period of 130 days from repatriation. In Edwin's case, he died on April 13, 2006 or more than a year after his repatriation. Hence, when he died, he was no longer under the respondents' employ. Moreover, his repatriation, regardless of its cause, already terminated his employment. This is in consonance with Section 18 of the POEA SEC, which in part expressly provides that a seafarer's employment ceases when he signs off from the vessel and arrives at the point of hire due to medical reasons. Besides, even Article 29 of the CBA states that death is only compensable if it occurs to the seafarer "whilst in the employment of the company".

The respondents likewise deny that in effect, they admitted their liability when they made repeated offers to pay the petitioners US$60,000.00. The respondents state that the offers were made *sans* prejudice to the defenses they were raising. Further, they withdrew the offers during the pendency of the proceedings before the LA and VA Ofreneo.

In *Escarcha v. Leonis Navigation Co., Inc.*,[29] the heirs of a deceased seafarer were ordered to return the amount paid to them pursuant to the execution of an award favorable to them but which was subsequently reversed by the Court. In Edwin's case, equity dictates that the proper reimbursement be effected as well by the petitioners.

Our Ruling

While generally, only questions of law can be raised in a petition for review on *certiorari* under Rule 45

[29] G.R. No. 182740, July 5, 2010, 623 SCRA 423.

of the Rules of Court, the instant petition falls among the exceptions in the light of the conflicting factual findings of the VA and the CA.

The instant petition ascribes misappreciation of facts on the part of the CA, which if allegedly reconsidered, would yield a conclusion favorable to the petitioners. As a rule, only questions of law, not questions of fact, may be raised in a petition for review on *certiorari* under Rule 45.[30] The Court is thus generally bound by the CA's factual findings. There are, however, exceptions to the foregoing, among which is when the CA's factual findings are contrary to those of the trial court or administrative body exercising quasi-judicial functions from which the action originated.[31] The instant petition falls under the aforementioned exception in the light of the divergent factual findings of the VA and the CA.

Anent the substantive arguments, we find the instant petition partially impressed with merit.

The petitioners insist their entitlement to the payment of death compensation benefits not pursuant to the provisions of the POEA SEC but under Article 29 of the CBA. According to them, the CBA merely focuses on the fact of death occurring during the term of a seafarer's employment, regardless of its cause. They further claim that even if death occurs beyond the term of a seafarer's employment, compensation should still be awarded as long as a connection can be established between the causes of repatriation and death.

On the other hand, the respondents' denial of the petitioners' claims rests on the (1) circumstance that Edwin died after the termination of his employment contract or more than a year after he was already repatriated; and (2) argument that GBM

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[30] *Antiquina v. Magsaysay Maritime Corporation,* G.R. No. 168922, April 13, 2011, 648 SCRA 659, 669.

[31] *AMA Computer College-East Rizal v. Ignacio,* G.R. No. 178520, June 23, 2009, 590 SCRA 633, 651.

was supposedly not work-related in the absence of proofs of exposure of a seafarer to vinyl, radiation or power lines while in the work place.

The IBF/AMOSUP/IMMAJ CBA provisions govern the relations of the parties especially since the issue of the VA's jurisdiction was never challenged in the proceedings below.

It bears noting that the petitioners' complaint was initially filed with the NLRC which referred the same to the NCMB for voluntary arbitration. VA Ofreneo took cognizance and ruled on the complaint. Thereafter, the respondents assailed before the CA, through a petition for review under Rule 43 of the Rules of Court, the notice of award issued by VA Ofreneo. In the said petition, the parties never raised the issue of the VA's jurisdiction. In effect, it was an admission on the part of both the petitioners and the respondents that the controversy involves the interpretation of CBA provisions relative to the claims for death compensation benefits. Stated otherwise, in the proceedings below, the contending parties both impliedly acquiesced to the applicability of the CBA provisions and not of the POEA SEC over the claims of the petitioners.

More importantly, the special clauses on collective bargaining agreements must prevail over the standard terms and benefits formulated by the POEA in its Standard Employment Contract. A contract of labor is so impressed with public interest that the more beneficial conditions must be endeavored in favor of the laborer. This is in consonance with the avowed policy of the State to give maximum aid and full protection to labor as enshrined in Article XIII of the 1987 Constitution.[32]

We thus proceed to the inquiry on whether or not within the purview of the IBF/AMOSUP/IMMAJ CBA, Edwin's death on April 13, 2006, or more than a year from his repatriation,

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[32] See *Quitoriano v. Jebsens Maritime, Inc.*, G.R. No. 179868, January 21, 2010, 610 SCRA 529, 534.

can be considered as one occurring while he was still in the employment of the respondents.

Under the IBF/AMOSUP/IMMAJ CBA provisions, Edwin's death a little more than a year from his repatriation can still be considered as one occurring while he was still under the respondents' employ.

Articles 22 (Termination of Employment), 25 (Medical), 26 (Sick Pay) and 29 (Loss of Life – Death in Service) and Appendix 3 of the IBF/AMOSUP/IMMAJ CBA state in part:

> 22.1 The employment shall be terminated:
>
> x x x x x x x x x
>
> (b) when signing off owing to sickness or injury, after medical examination in accordance with Article 25, but subject to the provision of Article 29.
>
> x x x x x x x x x
>
> 25.3 A seafarer repatriated to their port of engagement, unfit as a result of sickness or injury, shall be entitled to medical attention (including hospitalisation) at the Company's expense:
>
> (a) in the case of sickness, for up to a minimum of sixty (60) days and a maximum of one hundred and thirty (130) days after repatriation, subject to the submission of satisfactory medical reports.
>
> x x x x x x x x x
>
> 26.1 When a seafarer is landed at any port because of sickness or injury, payment of their basic wages shall continue until they have been repatriated at the Company's expense.
>
> 26.2 Thereafter[,] the seafarers shall be entitled to sick pay at the rate equivalent to their basic wage while they remain sick up to a minimum of sixty (60) days and a maximum of one hundred and thirty (130) days.
>
> x x x x x x x x x

26.4 Proof of continued entitlement to sick pay shall be by submission of satisfactory medical reports, endorsed where necessary, by a Company[-] appointed doctor. If a doctor appointed by or in behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.

x x x x x x x x x

29.1 If a **Seafarer dies through any cause whilst in the employment of the Company including death from natural causes** and death occurring whilst travelling to and from the vessel, or as a result of marine or other similar peril, but excluding death due to willful acts, the Company shall pay the sums specified in the attached APPENDIX 3 to a nominated beneficiary and to each dependent child up to a maximum of four (4) under 21 years of age. x x x

x x x x x x x x x

29.4 **For the purpose of this clause[,] a seafarer shall be regarded as "in the employment of the company" for so long as the provisions of Articles 25 and 26 apply and provided the death is directly attributable to sickness or injury that caused the seafarer's employment to be terminated in accordance with Article 22.1(b)**.

Appendix 3

x x x x x x x x x

Loss of Life – Death in Service

Death in service benefits as provided in Article 29 of this Agreement shall, unless more favourable benefits are negotiated, be:

To the nominated beneficiary …..... US$75,000.00

To each dependent child (maximum four (4) under 21 years of age) ….....US$15,000.00
(Emphasis and underlining supplied)

Article 22.1(b) considers an employment as terminated if a seafarer signs off from the vessel due to sickness, but subject to the provisions of Article 29.

Article 29.1 of the IBF/AMOSUP/IMMAJ CBA provides that **the death of a seafarer, for any cause, is compensable when it occurs while he is in the employment of the company.** Article 29.4, on the other hand, clarifies that **the seafarer shall be considered as in the employment of the company "for so long as the provisions of Articles 25 and 26 apply and provided the death is directly attributable to sickness or injury that caused the seafarer's employment to be terminated in accordance with Article 22.1(b)."**

Under Article 25.3, a seafarer repatriated to the port of his engagement, unfit as a result of sickness, shall be entitled to medical attention at the company's expense for up to a maximum period of 130 days after repatriation, subject to the submission of satisfactory medical reports. Article 26.2 further states that a seafarer shall likewise be entitled to sick pay at the rate equivalent to his basic wage while he remains sick up to a maximum of 130 days. Article 26.4 allows continued entitlement to sick pay beyond the 130 day period, reckoned from repatriation, provided satisfactory medical reports shall be submitted and endorsed where necessary, by a company-appointed doctor.

We now apply the provisions of the IBF/AMOSUP/IMMAJ CBA to the circumstances surrounding Edwin's death.

On August 22, 2005, or more or less 130 days from Edwin's arrival in the Philippines, the company-designated physician, Dr. Cruz, indicated in a medical report[33] addressed to Capt. Millalos that Edwin's repatriation was due to "body weakness and head heaviness since October 2004". Dr. Cruz also stated that upon Edwin's arrival at the airport on April 3, 2005, the latter was noted to be "drowsy and disoriented." Dr. Cruz diagnosed Edwin to be suffering from GBM and submitted the monthly expenses for the latter's chemotherapy to Capt. Millalos. Edwin was advised to come back on September 23, 2005. Edwin eventually died of GBM on April 13, 2006.

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[33] CA *rollo*, p. 106.

We note that body weakness, head heaviness, drowsiness and disorientedness are among the symptoms associated with GBM. Dr. Cruz indicated that these symptoms were exhibited by Edwin since October 2004 while he was still on board Sanko and were notable even when the latter was repatriated on April 3, 2005. Prior to repatriation, Edwin had only been diagnosed in Brazil to be suffering from kidney stones, but no exhaustive examination was conducted on him and no finding was rendered declaring that he had GBM. Nonetheless, the symptoms previously referred to were the cause of Edwin's repatriation more or less than a month before his contract was about to expire. On May 4, 2005 or about a month after repatriation, Dr. Mercado found that Edwin was afflicted with GBM and that the tumor had been progressively growing for months.[34] Further, the medical report, dated August 22, 2005, addressed to Capt. Millalos, submitting to him the monthly expenses for Edwin's chemotherapy and advising the latter to come back on September 23, 2005, was an implied admission on the part of Dr. Cruz that medical assistance and sick pay should indeed be extended to Edwin even beyond the 130-day period prescribed by Articles 25 and 26 of the IBF/AMOSUP/IMMAJ CBA.

From the foregoing, we can thus conclude that at the time of Edwin's death on April 13, 2006 due to GBM, he was still in the employment of the respondents. While it is true that Article 22.1 of the IBF/AMOSUP/IMMAJ CBA considers a seafarer as terminated when he signs off from the vessel due to sickness, the foregoing is subject to the provisions of Article 29. Under Article 29, a seafarer remains under the respondents' employ as long as the former is still entitled to medical assistance and sick pay, and provided that the death which eventually occurs is directly attributable to the sickness which caused the seafarer's employment to be terminated. As discussed above, the company-designated physician, Dr. Cruz, in effect admitted that Edwin was repatriated due to symptoms which a person suffering from GBM normally exhibits. Further, he recommended to Capt. Millalos Edwin's entitlement to medical assistance and sick pay for a period beyond 130 days from repatriation.

[34] *Id.* at 103.

Edwin subsequently died of GBM, the symptoms of which were the cause of his earlier repatriation. Hence, since Edwin's death is reasonably connected to the cause of his repatriation, within the purview of the IBF/AMOSUP/IMMAJ CBA, he indubitably died while under the respondents' employ, thus, entitling the petitioners to death benefits as provided for in Appendix 3 of the said CBA.

The petitioners are, however, not entitled to moral and exemplary damages and attorney's fees.

We find that the acts of the respondents hardly indicate an intent on their part to evade the payment of their obligations so as to justify the award of moral and exemplary damages and attorney's fees to the petitioners. The respondents extended medical assistance and allowances to Edwin while he went through his treatment. Further, the respondents offered an amount of US$60,000.00 as disability benefits even when the petitioners' claims had not been conclusively established yet.

WHEREFORE, IN VIEW OF THE FOREGOING, the instant petition is **PARTIALLY GRANTED.** The Decision dated July 15, 2009 and Resolution dated March 8, 2010 of the Court of Appeals, absolving the respondents from liability for death benefits pertaining to the petitioners by reason of Edwin Deauna's death, are **REVERSED and SET ASIDE.** The Decision dated October 28, 2008 of the Voluntary Arbitrator, awarding the amount of US$121,000.00 to the petitioners in accordance with Appendix 3 of the International Bargaining Forum/Associated Marine Officers' and Seamen's Union of the Philippines/International Mariners Management Association of Japan Collective Bargaining Agreement, is **REINSTATED.** However, interests on the award shall no longer be imposed in view of the execution of the said decision already made on May 28, 2009.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 193676. June 20, 2012]

COSMOS BOTTLING CORP., *petitioner, vs.* **WILSON FERMIN,** *respondent.*

[G.R. No. 194303. June 20, 2012]

WILSON B. FERMIN, *petitioner, vs.* **COSMOS BOTTLING CORPORATION and CECILIA BAUTISTA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SERIOUS MISCONDUCT; THEFT COMMITTED AGAINST A CO-EMPLOYEE IS CONSIDERED AS A CASE ANALOGOUS TO SERIOUS MISCONDUCT WARRANTING THE PENALTY OF DISMISSAL FROM SERVICE.— It must be noted that in the case at bar, **all the lower tribunals were in agreement that Fermin's act of taking Braga's cellphone amounted to theft**. Factual findings made by administrative agencies, if established by substantial evidence as borne out by the records, are final and binding on this Court, whose jurisdiction is limited to reviewing questions of law. The only disputed issue left for resolution is whether the imposition of the penalty of dismissal was appropriate. We rule in the affirmative. Theft committed against a co-employee is considered as a case analogous to serious misconduct, for which the penalty of dismissal from service may be meted out to the erring employee. x x x In this case, the LA has already made a factual finding, which was affirmed by both the NLRC and the CA, that Fermin had committed theft when he took Braga's cellphone. Thus, this act is deemed analogous to serious misconduct, rendering Fermin's dismissal from service just and valid. Further, the CA was correct in ruling that previous infractions may be cited as justification for dismissing an employee only if they are related to the subsequent offense. However, it must be noted that such a discussion was

unnecessary since the theft, taken in isolation from Fermin's other violations, was in itself a valid cause for the termination of his employment.

2. ID.; ID.; ID.; ID.; AWARD OF FINANCIAL COMPENSATION OR ASSISTANCE TO AN EMPLOYEE VALIDLY DISMISSED FROM SERVICE HAS NO BASIS IN LAW.— It must be emphasized that the award of financial compensation or assistance to an employee validly dismissed from service has no basis in law. Therefore, considering that Fermin's act of taking the cellphone of his co-employee is a case analogous to serious misconduct, this Court is constrained to reverse the CA's ruling as regards the payment of his full retirement benefits. In the same breath, neither can this Court grant his prayer for backwages.

APPEARANCES OF COUNSEL

Reyes Reyes & Rivera-Lumibao Law Offices for Cosmos Bottling Corp. & Cecilia Bautista.

Remigio Saladero, Jr. for Wilson Fermin.

D E C I S I O N

SERENO, *J.*:

Before this Court are two consolidated cases, namely: (1) Petition for Review dated 26 October 2010 (G.R. No. 193676) and (2) Petition for Review on *Certiorari* under Rule 45 dated 14 October 2010 (G.R. No. 194303).[1] Both Petitions assail the Decision dated 20 May 2009[2] and Resolution dated 8 September 2010[3] issued by the Court of Appeals (CA). The dispositive portion of the Decision reads:

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[1] Resolution dated 17 November 2010 ordering the consolidation of G.R. Nos. 193676 and 194303, *rollo* (G.R. No. 194303), pp. 144-145.

[2] *Rollo* (G.R. No. 193676), pp. 7-21; *rollo* (G.R. No. 194303), pp. 26-39. Penned by CA Associate Justice Noel G. Tijam and concurred in by Associate Justices Arturo G. Tayag and Priscilla J. Baltazar-Padilla.

[3] *Rollo* (G.R. No. 193676), pp. 22-28; *rollo* (G.R. No. 194303), pp. 40-45.

WHEREFORE, the August 31, 2005 *Decision* and October 21, 2005 *Resolution* of the National Labor Relations Commission in NLRC NCR CA No. 043301-05 are hereby **SET ASIDE**. Respondent Cosmos Bottling Corporation is, in light of the foregoing discussions, hereby **ORDERED** to pay Petitioner his full retirement benefits.

There being no data from which this Court can properly assess Petitioner's full retirement benefits, the case is, thus, remanded to the Labor Arbiter only for that purpose.

SO ORDERED.

Wilson B. Fermin (Fermin) was a forklift operator at Cosmos Bottling Corporation (COSMOS), where he started his employment on 27 August 1976.[4] On 16 December 2002, he was accused of stealing the cellphone of his fellow employee, Luis Braga (Braga).[5] Fermin was then given a Show Cause Memorandum, requiring him to explain why the cellphone was found inside his locker.[6] In compliance therewith, he submitted an affidavit the following day, explaining that he only hid the phone as a practical joke and had every intention of returning it to Braga.[7]

On 21 December 2002, Braga executed a handwritten narration of events stating the following:[8]

(a) At around 6:00 a.m. on 16 December 2002, he was changing his clothes inside the locker room, with Fermin as the only other person present.

(b) Braga went out of the locker room and inadvertently left his cellphone by the chair. Fermin was left inside the room.

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[4] Petition, *rollo* (G.R. No. 193676), p. 40; Petition, *rollo* (G.R. No. 194303), p. 15.

[5] Petition, *rollo* (G.R. No. 193676), p. 41.

[6] Show Cause Memorandum dated 16 December 2002, *rollo* (G.R. No. 193676), p. 149; *rollo* (G.R. No. 194303), p. 66.

[7] Letter dated 17 December 2002, *rollo* (G.R. No. 194303), p. 76; *rollo* (G.R. No. 193676), p.163.

[8] *Rollo* (G.R. No. 193676), p. 172.

(c) After 10 minutes, Braga went back to the locker room to retrieve his cellphone, but it was already gone.

(d) Braga asked if Fermin saw the cellphone, but the latter denied noticing it.

(e) Braga reported the incident to the security guard, who thereafter conducted an inspection of all the lockers.

(f) The security guard found the cellphone inside Fermin's locker.

(g) Later that afternoon, Fermin talked to Braga to ask for forgiveness. The latter pardoned the former and asked him not to do the same to their colleagues.

After conducting an investigation, COSMOS found Fermin guilty of stealing Braga's phone in violation of company rules and regulations.[9] Consequently, on 2 October 2003,[10] the company terminated Fermin from employment after 27 years of service,[11] effective on 6 October 2003.[12]

Following the dismissal of Fermin from employment, Braga executed an affidavit, which stated the belief that the former had merely pulled a prank without any intention of stealing the

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[9] Stealing or pilfering the property, records, documents or other effects of the company, or those of fellow employees or of other persons within the premises of the Company, including those of company customers and suppliers, or obtaining such properties, records, documents or effects in a fraudulent manner. CA Decision, p. 2; *rollo* (G.R. No. 193676), p. 9; *rollo* (G.R. No. 194303), p. 27.

[10] The Decisions of the Labor Arbiter and the CA indicate 21 October 2003 as the date of Fermin's dismissal from employment, while the pleadings of the parties refer to 2 October 2003. *See* CA Decision, p. 2, *rollo* (G.R. No. 193676), p. 9; Labor Arbiter's Decision, *rollo* (G.R. No. 193676), p. 186; Reply for Respondents (COSMOS), *rollo* (G.R. No. 193676), p. 157; Petition for *Certiorari*, *rollo* (G.R. No. 193676), p. 247.

[11] CA Decision, p. 2, *rollo* (G.R. No. 193676), p. 9; *rollo* (G.R. No. 194303), p. 27.

[12] Petition, *rollo* (G.R. No. 193676), p. 40; Petition, *rollo* (G.R. No. 194303), p. 15; CA Decision, p. 6; *rollo* (G.R. No. 193676), p. 13; *rollo* (G.R. No. 194303), p. 31.

cellphone, and withdrew from COSMOS his complaint against Fermin.[13]

Meanwhile, Fermin filed a Complaint for Illegal Dismissal,[14] which the Labor Arbiter (LA) dismissed for lack of merit on the ground that the act of taking a fellow employee's cellphone amounted to gross misconduct.[15] Further, the LA likewise took into consideration Fermin's other infractions, namely: (a) committing acts of disrespect to a superior officer, and (b) sleeping on duty and abandonment of duty.[16]

Fermin filed an appeal with the National Labor Relations Commission (NLRC), which affirmed the ruling of the LA[17] and denied Fermin's subsequent Motion for Reconsideration.[18]

Thereafter, Fermin filed a Petition for *Certiorari* with the Court of Appeals (CA),[19] which reversed the rulings of the LA and the NLRC and awarded him his full retirement benefits.[20] Although the CA accorded with finality the factual findings of the lower tribunals as regards Fermin's commission of theft, it nevertheless held that the penalty of dismissal from service

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[13] *Sinumpaang Salaysay* dated 16 October 2003, *rollo* (G.R. No. 194303), p. 60.

[14] *Rollo* (G.R. No. 194303), p. 53.

[15] Decision dated 20 August 2004 penned by Labor Arbiter Waldo Emerson R. Gan, *rollo* (G.R. No. 193676), pp. 184-198; *rollo* (G.R. No. 194303), pp. 87-100.

[16] *Id.*

[17] Decision dated 31 August 2005 penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Tito F. Genilo and Romeo C. Lagman, *rollo* (G.R. No. 193676), pp. 207-213; *rollo* (G.R. No. 194303), pp. 116-121.

[18] Resolution 21 October 2005, *rollo* (G.R. No. 193676), pp. 243-244; *rollo* (G.R. No. 194303), pp. 127-128.

[19] Petition for *Certiorari* Under Rule 65 dated 5 January 2006, *rollo* (G.R. No. 193676), pp. 245-257; *rollo* (G.R. No. 194303), pp. 129-140.

[20] Decision dated 20 May 2009, *rollo* (G.R. No. 193676), pp. 7-21; *rollo* (G.R. No. 194303), pp. 26-39.

was improper on the ground that the said violation did not amount to serious misconduct or wilful disobedience, to wit:

> [COSMOS], on which the *onus* of proving lawful cause in sustaining the dismissal of [Fermin] lies, failed to prove that the latter's misconduct was induced by a perverse and wrongful intent, especially in the light of Braga's *Sinumpaang Salaysay* which corroborated [Fermin's] claim that [Fermin] was merely playing a prank when he hid Braga's cellular phone. Parenthetically, the labor courts dismissed Braga's affidavit of desistance as a mere afterthought because the same was executed only after [Fermin] had been terminated.
>
> It must be pointed out, however, that in labor cases, in which technical rules of procedure are not to be strictly applied if the result would be detrimental to the workingman, an affidavit of desistance gains added importance in the absence of any evidence on record explicitly showing that the dismissed employee committed the act which caused the dismissal. While We cannot completely exculpate [Fermin] from his violation at this point, We cannot, however, turn a blind eye and disregard Braga's recantation altogether. Braga's recantation all the more bolsters Our conclusion that [Fermin's] violation does not amount to or borders on "serious or willful" misconduct or willful disobedience to call for his dismissal.
>
> Morever, [COSMOS] failed to prove any resultant material damage or prejudice on their part as a consequence of [Fermin's] questioned act. To begin with, the cellular phone subject of the stealth belonged, not to [COSMOS], but to Braga. Secondly, the said phone was returned to Braga in due time. Under the circumstances, a penalty such as suspension without pay would have sufficed to teach [Fermin] a lesson and for him to realize his wrongdoing.
>
> x x x x x x x x x
>
> On another note, [COSMOS], in upholding the legality of [Fermin's] termination from service, considered the latter's past infractions with [COSMOS], *i.e.* threatening, provoking, challenging, insulting and committing acts of disrespect to a superior officer/defiance to an instruction and a lawful order of a superior officer; and, sleeping while on duty and abandonment of duty or leaving assigned post with permission from immediate supervisor, as *aggravating circumstances* to his present violation [stealth (sic) of a co-employee's property]. We *disagree with Public Respondent on this matter.*

The correct rule is that previous infractions may be used as justification for an employee's dismissal from work in connection with a subsequent *similar* offense, which is obviously not the case here. x x x.[21] (Emphases in the original.)

COSMOS and Fermin moved for reconsideration, but the CA likewise denied their motions.[22] Thus, both parties filed the present Petitions for Review.

COSMOS argues, among other things, that: (a) Fermin committed a clear act of bad faith and dishonesty in taking the cellphone of Braga and denying knowledge thereof; (b) the latter's recantation was a mere afterthought; (c) the lack of material damage or prejudice on the part of COSMOS does not preclude it from imposing the penalty of termination; and (d) the previous infractions committed by Fermin strengthen the decision of COSMOS to dismiss him from service.[23]

On the other hand, Fermin contends that since the CA found that the penalty of dismissal was not proportionate to his offense, it should have ruled in favor of his entitlement to backwages.[24]

It must be noted that in the case at bar, **all the lower tribunals were in agreement that Fermin's act of taking Braga's cellphone amounted to theft**. Factual findings made by administrative agencies, if established by substantial evidence as borne out by the records, are final and binding on this Court, whose jurisdiction is limited to reviewing questions of law.[25] The only disputed issue left for resolution is whether the imposition of the penalty of dismissal was appropriate. We rule in the affirmative.

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[21] Decision dated 20 May 2009, *rollo* (G.R. No. 193676), pp. 16-17, 19; *rollo* (G.R. No. 194303), pp. 34-35, 37.

[22] Resolution dated 8 September 2010, *rollo* (G.R. No. 193676), pp. 22-28; *rollo* (G.R. No. 194303), pp. 40-45.

[23] Petition for Review, pp. 6-17, *rollo* (G.R. No. 193676), pp. 44-55.

[24] Petition for Review on *Certiorari* Under Rule 45, pp. 7-10, *rollo* (G.R. No. 194303), pp. 19-22.

[25] *Gonzales v. Civil Service Commission,* 524 Phil. 271, 279 (2006).

Theft committed against a co-employee is considered as a case analogous to serious misconduct, for which the penalty of dismissal from service may be meted out to the erring employee,[26] *viz*:

Article 282 of the Labor Code provides:

> Article 282. Termination by Employer. - An employer may terminate an employment for any of the following causes:
>
> (a) **Serious misconduct** or willful disobedience by the employee of the lawful orders of his employer or his representatives **in connection with his work**;
>
> x x x x x x x x x
>
> (e) Other causes analogous to the foregoing.

Misconduct involves "the transgression of some established and definite rule of action, forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment." For misconduct to be serious and therefore a valid ground for dismissal, it must be:

> 1. of grave and aggravated character and not merely trivial or unimportant and
>
> 2. connected with the work of the employee.

In this case, petitioner dismissed respondent based on the NBI's finding that the latter stole and used Yuseco's credit cards. But **since the theft was not committed against petitioner itself but against one of its employees, respondent's misconduct was not work-related and therefore, she could not be dismissed for serious misconduct.**

Nonetheless, Article 282(e) of the Labor Code talks of other analogous causes or those which are susceptible of comparison to another in general or in specific detail. For an employee to be validly dismissed for a cause analogous to those enumerated in Article 282, the cause must involve a voluntary and/or willful act or omission of the employee.

A cause analogous to serious misconduct is a voluntary and/or willful act or omission attesting to an employee's moral depravity.

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[26] *John Hancock Life Insurance Corporation v. Davis*, G.R. No. 169549, 3 September 2008, 564 SCRA 92.

Theft committed by an employee against a person other than his employer, if proven by substantial evidence, is a cause analogous to serious misconduct.[27] (Emphasis supplied.)

In this case, the LA has already made a factual finding, which was affirmed by both the NLRC and the CA, that Fermin had committed theft when he took Braga's cellphone. Thus, this act is deemed analogous to serious misconduct, rendering Fermin's dismissal from service just and valid.

Further, the CA was correct in ruling that previous infractions may be cited as justification for dismissing an employee only if they are related to the subsequent offense.[28] However, it must be noted that such a discussion was unnecessary since the theft, taken in isolation from Fermin's other violations, was in itself a valid cause for the termination of his employment.

Finally, it must be emphasized that the award of financial compensation or assistance to an employee validly dismissed from service has no basis in law. Therefore, considering that Fermin's act of taking the cellphone of his co-employee is a case analogous to serious misconduct, this Court is constrained to reverse the CA's ruling as regards the payment of his full retirement benefits. In the same breath, neither can this Court grant his prayer for backwages.

WHEREFORE, the Petition in G.R. No. 194303 is **DENIED,** while that in G.R. No. 193676 is **GRANTED.** The Decision dated 20 May 2009 and Resolution dated 8 September 2010 of the Court of Appeals are hereby **REVERSED** and **SET ASIDE.** The Decision dated 20 August 2004 of the Labor Arbiter is **REINSTATED.**

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Reyes, JJ.,* concur.

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[27] *Id.* at 96-98.

[28] *Citing McDonald's (Katipunan Branch) v. Alba*, G.R. No. 156382, 18 December 2008, 574 SCRA 427, 436-437.

SECOND DIVISION

[G.R. No. 194880. June 20, 2012]

REPUBLIC OF THE PHILIPPINES and NATIONAL POWER CORPORATION, both represented by the PRIVATIZATION MANAGEMENT OFFICE, *petitioners, vs.* **SUNVAR REALTY DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THREE (3) MODES OF APPEAL FROM DECISIONS OF THE REGIONAL TRIAL COURT (RTC).— In *Republic v. Malabanan*, the Court clarified the three modes of appeal from decisions of the RTC, to wit: (1) by ordinary appeal or appeal by writ of error under Rule 41, whereby judgment was rendered in a civil or criminal action by the RTC in the exercise of its original jurisdiction; (2) by a petition for review under Rule 42, whereby judgment was rendered by the RTC in the exercise of its appellate jurisdiction; and (3) by a petition for review on *certiorari* before the Supreme Court under Rule 45. "The first mode of appeal is taken to the [Court of Appeals] on questions of fact or mixed questions of fact and law. The second mode of appeal is brought to the CA on questions of fact, of law, or mixed questions of fact and law. **The third mode of appeal is elevated to the Supreme Court only on questions of law**."

2. ID.; ID.; ID.; SINCE PETITIONERS RAISE ONLY QUESTIONS OF LAW WITH RESPECT TO THE JURISDICTION OF THE RTC TO ENTERTAIN A *CERTIORARI* PETITION FILED AGAINST THE INTERLOCUTORY ORDER OF THE METROPOLITAN TRIAL COURT (MeTC) IN AN UNLAWFUL DETAINER SUIT, THE INSTANT PETITION WAS PROPERLY LODGED WITH THE COURT UNDER RULE 45 OF THE RULES OF COURT.— There is a question of law when the issue does not call for an examination of the probative value of the evidence presented or of the truth or falsehood of the facts being admitted, and the doubt concerns the correct application of law and jurisprudence on the matter. The resolution of the issue must

rest solely on what the law provides on the given set of circumstances. In the instant case, petitioners raise only questions of law with respect to the jurisdiction of the RTC to entertain a *certiorari* petition filed against the interlocutory order of the MeTC in an unlawful detainer suit. At issue in the present case is the correct application of the Rules on Summary Procedure; or, more specifically, whether the RTC violated the Rules when it took cognizance and granted the *certiorari* petition against the denial by the MeTC of the Motion to Dismiss filed by respondent Sunvar. This is clearly a question of law that involves the proper interpretation of the Rules on Summary Procedure. Therefore, the instant Rule 45 Petition has been properly lodged with this Court.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AS A GENERAL RULE, NO SPECIAL CIVIL ACTION FOR *CERTIORARI* MAY BE FILED WITH A SUPERIOR COURT FROM CASES COVERED BY THE REVISED RULES OF ON SUMMARY PROCEDURE; NO CIRCUMSTANCES ARE PRESENT TO SUPPORT RELAXATION OF THE GENERAL RULE IN CASE AT BAR.— Contrary to the assertion of respondent Sunvar, the factual circumstances in these two cases are not comparable with respondents' situation, and our rulings therein are inapplicable to its cause of action in the present suit. As this Court explained in *Bayog*, the general rule is that no special civil action for *certiorari* may be filed with a superior court from cases covered by the Revised Rules on Summary Procedure. Respondent Sunvar filed a *certiorari* Petition in an ejectment suit pending before the MeTC. Worse, the subject matter of the Petition was the denial of respondent's Motion to Dismiss, which was necessarily an interlocutory order, which is generally not the subject of an appeal. No circumstances similar to the situation of the agricultural tenant-lessee in *Bayog* are present to support the relaxation of the general rule in the instant case. Respondent cannot claim to have been deprived of reasonable opportunities to argue its case before a summary judicial proceeding.

4. ID.; ID.; ID.; ID.; RESPONDENT'S RESORT TO *CERTIORARI* OVER AN INTERLOCUTORY ORDER IN A SUMMARY EJECTMENT PROCEEDING WAS NOT ONLY PROHIBITED BUT A SUPERFLUITY ON ACCOUNT OF RESPONDENT'S HAVING TAKEN ADVANTAGE OF A SPEEDY AND

AVAILABLE REMEDY BY FILING AN ANSWER WITH THE MeTC.— There exists no procedural void akin to that in *Go v. Court of Appeals* that would justify respondent's resort to a *certiorari* Petition before the RTC. When confronted with the MeTC's adverse denial of its Motion to Dismiss in the ejectment case, the expeditious and proper remedy for respondent should have been to proceed with the summary hearings and to file its answer. Indeed, its resort to a *certiorari* Petition in the RTC over an interlocutory order in a summary ejectment proceeding was not only prohibited. The *certiorari* Petition was already a superfluity on account of respondent's having already taken advantage of a speedy and available remedy by filing an Answer with the MeTC.

5. ID.; ID.; ID.; ID.; IF THE COURT WERE TO RELAX THE INTERPRETATION OF THE PROHIBITION AGAINST FILING OF *CERTIORARI* PETITIONS UNDER THE REVISED RULES OF SUMMARY PROCEDURE, THE RTCS MAY BE INUNDATED WITH SIMILAR PRAYERS FROM ADVERSELY AFFECTED PARTIES QUESTIONING EVERY ORDER OF THE LOWER COURT AND COMPLETELY DISPENSING WITH THE GOAL OF SUMMARY PROCEEDINGS IN FORCIBLE ENTRY AND UNLAWFUL DETAINER.— Respondent Sunvar failed to substantiate its claim of extraordinary circumstances that would constrain this Court to apply the exceptions obtaining in *Bayog* and *Go*. The Court hesitates to liberally dispense the benefits of these two judicial precedents to litigants in summary proceedings, lest these exceptions be regularly abused and freely availed of to defeat the very goal of an expeditious and inexpensive determination of an unlawful detainer suit. If the Court were to relax the interpretation of the prohibition against the filing of *certiorari* petitions under the Revised Rules on Summary Procedure, the RTCs may be inundated with similar prayers from adversely affected parties questioning every order of the lower court and completely dispensing with the goal of summary proceedings in forcible entry or unlawful detainer suits.

6. ID.; ID.; UNLAWFUL DETAINER; NATURE AND SCOPE.— Under the Rules of Court, lessors against whom possession of any land is unlawfully withheld after the expiration of the right to hold possession may – by virtue of any express or implied contract, and within one year after the unlawful deprivation – bring an action in the municipal trial court against

the person unlawfully withholding possession, for restitution of possession with damages and costs. Unless otherwise stipulated, the action of the lessor shall commence only after a demand to pay or to comply with the conditions of the lease and to vacate is made upon the lessee; or after a written notice of that demand is served upon the person found on the premises, and the lessee fails to comply therewith within 15 days in the case of land or 5 days in the case of buildings. In *Delos Reyes v. Spouses Odenes*, the Court recently defined the nature and scope of an unlawful detainer suit, as follows: Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession by the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. The proceeding is summary in nature, jurisdiction over which lies with the proper MTC or metropolitan trial court. **The action must be brought up within one year from the date of last demand, and the issue in the case must be the right to physical possession**.

7. ID.; ID.; ID.; UNLAWFUL DETAINER DISTINGUISHED FROM *ACCION PUBLICIANA*.— A complaint sufficiently alleges a cause of action for unlawful detainer if it states the following elements: 1. Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff. 2. Eventually, the possession became illegal upon the plaintiff's notice to the defendant of the termination of the latter's right of possession. 3. Thereafter, the defendant remained in possession of the property and deprived the plaintiff of the latter's enjoyment. 4. Within one year from the making of the last demand on the defendant to vacate the property, the plaintiff instituted the Complaint for ejectment. "On the other hand, *accion publiciana* is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. **In other words, if at the time of the filing of the complaint, more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of forcible entry or illegal detainer, but an *accion publiciana*.**"

8. ID.; ID.; ID.; THE LAST DEMAND TO VACATE IS THE RECKONING PERIOD FOR DETERMINING THE ONE-YEAR PERIOD IN AN ACTION FOR UNLAWFUL DETAINER.— Contrary to the reasoning of the RTC, the one-year period to file an unlawful detainer case is not counted from the expiration of the lease contract on 31 December 2002. Indeed, the **last demand for petitioners to vacate** is the reckoning period for determining the one-year period in an action for unlawful detainer. "Such one year period should be counted from the date of plaintiff's last demand on defendant to vacate the real property, because only upon the lapse of that period does the possession become unlawful."

9. ID.; ID.; ID.; THE SUBJECT COMPLAINT IN CASE AT BAR WAS FILED WITHIN THE ONE-YEAR PERIOD.— From the time that the main lease contract and sublease agreements expired (01 January 2003), respondent Sunvar no longer had any possessory right over the subject property. Absent any express contractual renewal of the sublease agreement or any separate lease contract, it illegally occupied the land or, at best, was allowed to do so by mere tolerance of the registered owners – petitioners herein. Thus, respondent Sunvar's possession became unlawful upon service of the final notice on 03 February 2009. Hence, as an unlawful occupant of the land of petitioners, and without any contract between them, respondent is "necessarily bound by an implied promise" that it "**will vacate upon demand**, failing which a summary action for ejectment is the proper remedy against them." Upon service of the final notice of demand, respondent Sunvar should have vacated the property and, consequently, petitioners had one year or until 02 February 2010 in which to resort to the summary action for unlawful detainer. In the instant case, their Complaint was filed with the MeTC on 23 July 2009, which was well within the one-year period.

APPEARANCES OF COUNSEL

The Solicitor General and *Siguion Reyna Montecillo & Ongsiako* for petitioners.

D E C I S I O N

SERENO, *J.*:

This is a Rule 45 Petition questioning the Decision of the Regional Trial Court (RTC) of Makati City, which ordered the dismissal of the Complaint for unlawful detainer filed by petitioners herein with the Metropolitan Trial Court.

Petitioners Republic of the Philippines (Republic) and National Power Corporation (NPC) are registered co-owners of several parcels of land located along Pasong Tamo Extension and Vito Cruz in Makati City, and covered by four Transfer Certificates of Title (TCTs).[1] The main subject matter of the instant Petition is one of these four parcels of land covered by TCT No. 458365, with an area of approximately 22,294 square meters (hereinafter, the subject property). Eighty percent (80%) of the subject property is owned by petitioner Republic, while the remaining twenty percent (20%) belongs to petitioner NPC.[2] Petitioners are being represented in this case by the Privatization Management Office (PMO), which is the agency tasked with the administration and disposal of government assets.[3] Meanwhile, respondent Sunvar Realty Development Corporation (Sunvar) occupied the subject property by virtue of sublease agreements, which had in the meantime expired.

The factual antecedents of the case are straightforward. On 26 December 1977,[4] petitioners leased the four parcels of land, including the subject property, to the Technology Resource Center Foundation, Inc., (TRCFI) for a period of 25 years

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[1] TCT Nos. 458364, 458365, 458366 and 458367.

[2] Petitioner Republic owns approximately 17,574 square meters of the subject property, while petitioner NPC owns 5,350 square meters. (NPC Resolution No. 2009-13 dated 09 March 2009; *rollo*, p. 73)

[3] Executive Order No. 323 dated 06 December 2000, Art. III, Sec. 2.

[4] Complaint dated 26 May 2009, pp. 3-4, para. 4; *rollo*, pp. 77-78.

beginning 01 January 1978 and ending on **31 December 2002**.[5] Under the Contract of Lease (the main lease contract), petitioners granted TRCFI the right to sublease any portion of the four parcels of land.[6]

Exercising its right, TRCFI consequently subleased a majority of the subject property to respondent Sunvar through several sublease agreements (the sublease agreements).[7] Although these agreements commenced on different dates, all of them contained common provisions on the terms of the sublease and were altogether set to expire on **31 December 2002**, the expiration date of TRCFI's main lease contract with petitioners, but subject to renewal at the option of respondent:[8]

The term of the sublease shall be for an initial period of [variable] years and [variable] months commencing on [variable], renewable for another twenty-five (25) years at SUNVAR's exclusive option.[9]

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[5] Contract of Lease between petitioners Republic and NPC with TRCFI; *rollo*, pp. 492-502.

[6] "The LESSEE [TRCFI] shall have the right, upon notice to the LESSORS [petitioners Republic and NPC], to sublease the whole or part of the leased land." (Contract of Lease, Sec. VI, p. 6; *rollo*, p. 497)

[7] The entire subject property was subleased by TRCFI to respondent Sunvar in five agreements: (a) Agreement dated 18 August 1980 (*rollo*, pp. 503-519); (b) Sub-Lease Agreement dated 28 February 1982 (*rollo*, pp. 523-536); (c) 1983 Sub-Lease Agreement with illegible exact date (*rollo*, pp. 537-545); (d) Sub Lease Agreement dated 28 August 1983 (*rollo*, pp. 546-554); and (e) the remaining portions were also subleased by Sunvar, according to petitioners (Complaint dated 26 May 2009, p. 6, para. 9; *rollo*, p. 80).

[8] Complaint dated 26 May 2009, p. 6, para. 10; *rollo*, p. 80.

[9] (a) Agreement dated 18 August 1980, p. 9; *rollo*, p. 511 (22 years and 5 months from 31 July 1980); (b) Sub-Lease Agreement dated 28 February 1982, p. 3; *rollo*, p. 526 (20 years and 10 months from 28 February 1982); (c) 1983 Sub-Lease Agreement with illegible exact date, p. 2; *rollo*, p. 538 (19 years and 9 months from March 1983); and (d) Sub Lease Agreement dated 28 August 1983, p. 2; *rollo*, p. 547 (19 years and 3 months from September 1984).

According to petitioners, in all the sublease agreements, respondent Sunvar agreed "to return or surrender the subleased land, without any delay whatsoever upon the termination or expiration of the sublease contract or any renewal or extension thereof."[10]

During the period of its sublease, respondent Sunvar introduced useful improvements, consisting of several commercial buildings, and leased out the spaces therein.[11] It also profitably utilized the other open spaces on the subject property as parking areas for customers and guests.[12]

In 1987, following a reorganization of the government, TRCFI was dissolved. In its stead, the Philippine Development Alternatives Foundation (PDAF) was created, assuming the functions previously performed by TRCFI.[13]

On 26 April 2002, less than a year before the expiration of the main lease contract and the sublease agreements, respondent Sunvar wrote to PDAF as successor of TRCFI. Respondent expressed its desire to exercise the option to renew the sublease over the subject property and proposed an increased rental rate and a renewal period of another 25 years.[14] On even date, it also wrote to the Office of the President, Department of Environment and Natural Resources and petitioner NPC. The letters expressed the same desire to renew the lease over the subject property under the new rental rate and renewal period.[15]

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[10] Complaint dated 26 May 2009, p. 6, para. 11; *rollo*, p. 80.

[11] Among these commercial buildings are what are known today as Premier Cinema, Mile Long Arcade, Makati Creekside Building, The Gallery Building and Sunvar Plaza. (Complaint dated 26 May 2009, pp. 6-7, para. 12; *rollo*, pp. 80-81)

[12] Complaint dated 26 May 2009, pp. 6-7, para. 12; *rollo*, pp. 80-81.

[13] Complaint dated 26 May 2009, p. 7, para. 13; *rollo*, p. 81.

[14] Respondent Sunvar's Letter dated 26 April 2002 to PDAF; *rollo*, pp. 714-715.

[15] Respondent Sunvar's Letter dated 26 April 2002 to the Office of the President, the Department of Environment and Natural Resources, and petitioner NPC; *rollo*, pp. 712-713.

On 10 May 2002, PDAF informed respondent that the notice of renewal of the lease had already been sent to petitioners, but that it had yet to receive a response.[16] It further explained that the proposal of respondent for the renewal of the sublease could not yet be acted upon, and neither could the proposed rental payments be accepted.[17] Respondent acknowledged receipt of the letter and requested PDAF to apprise the former of any specific actions undertaken with respect to the said lease arrangement over the subject property.[18]

On 03 June 2002, six months before the main contract of lease was to expire, petitioner NPC – through Atty. Rainer B. Butalid, Vice-President and General Counsel – notified PDAF of the former's decision not to renew the contract of lease.[19] In turn, PDAF notified respondent of NPC's decision.[20]

On the other hand, petitioner Republic through then Senior Deputy Executive Secretary Waldo Q. Flores likewise notified PDAF of the former's decision not to renew the lease contract.[21]

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[16] PDAF's letter dated 10 May 2002; *rollo*, p. 716.

[17] "We wish to inform you that as of this date, our office has not received any response from the NG [petitioner Republic] nor the NPC. Consequently, since the renewal of our Sublease Contract is dependent on our Foundation's own renewal of our Contract of Lease with the NG and the NPC, we cannot yet act on your letter or give favorable consideration on your desire to renew our Sublease Contract, notwithstanding the provisions thereof."

"In view hereof, we likewise cannot accept any proposed rental payments from your office for the renewal term until such time that we already have an indication of the terms and conditions of any renewal acceptable to the NG and the NPC and, hence, our decision to return the check you sent to us." (PDAF's letter dated 10 May 2002; *rollo*, p. 716)

[18] Respondent Sunvar's Letter dated 27 May 2002; *rollo*, p. 717.

[19] "We wish to inform you that in its last meeting on May 29, 2002, the NPC Board of Directors decided not to renew the contract of lease which is set to expire on December 31, 2002 …" (NPC Letter dated 03 June 2010 [*rollo*, p. 555]; *see also* Complaint dated 26 May 2009, p. 7, para. 14 [*rollo*, p. 81])

[20] PDAF's Letter dated 14 June 2002; *rollo*, p. 718.

[21] "You are hereby given by this Office notice that subject lease should no longer be renewed/extended."

The Republic reasoned that the parties had earlier agreed to shorten the corporate life of PDAF and to transfer the latter's assets to the former for the purpose of selling them to raise funds.[22] On 25 June 2002, PDAF duly informed respondent Sunvar of petitioner Republic's decision not to renew the lease and quoted the Memorandum of Senior Deputy Executive Secretary Flores.[23]

On **31 December 2002**, the main lease contract with PDAF, as well as its sublease agreements with respondent Sunvar, all expired. Hence, petitioners recovered from PDAF all the rights over the subject property and the three other parcels of land. Thereafter, petitioner Republic transferred the subject property to the PMO for disposition. Nevertheless, respondent Sunvar continued to occupy the property.

On **22 February 2008**, or six years after the main lease contract expired, petitioner Republic, through the Office of the Solicitor General (OSG), advised respondent Sunvar to completely vacate the subject property within thirty (30) days.[24] The latter duly received the Notice from the OSG through registered mail,[25] but failed to vacate and remained on the property.[26]

The Lease should end by January 2003, so that Notice of Non Renewal/ Non Extension should be given to Lessor not less than 6 months from said date given PDAF is now in the process of dissolution." (Memorandum dated 13 June 2002; *rollo*, p. 556)

[22] Complaint dated 26 May 2009, p. 7, para. 15; *rollo*, p. 81.

[23] PDAF Letter dated 25 June 2002; *rollo*, p. 557.

[24] "As you very well know, this property is owned by the National Government of the Republic of the Philippines and the National Power Corporation, both of which has not extended or renewed, either expressly or impliedly, any lease [contract] involving the same in favor of any party, private or public. This being the case, your sublease agreement with the Philippine Development Alternative Foundation (PDAF) which expired on December 31, 2002 could not possibly have been renewed or extended. We hereby advise you to completely vacate said property within THIRTY (30) DAYS from receipt of this letter." (OSG Letter dated 22 February 2008; *rollo*, p. 558)

[25] Registry Receipt No. 2826; *rollo*, p. 559.

[26] Complaint dated 26 May 2009, p. 9, para. 20; *rollo*, p. 83.

On **03 February 2009**, respondent Sunvar received from respondent OSG a final notice to vacate within 15 days.[27] When the period lapsed, respondent Sunvar again refused to vacate the property and continued to occupy it.

On 02 April 2009, the PMO issued an Inspection and Appraisal Report to determine the fair rental value of the subject property and petitioners' lost income – a loss arising from the refusal of respondent Sunvar to vacate the property after the expiration of the main lease contract and sublease agreements.[28] Using the market comparison approach, the PMO determined that the fair rental value of the subject property was ₱10,364,000 per month, and that respondent Sunvar owed petitioners a total of ₱630,123,700 from 01 January 2002 to 31 March 2009.[29]

On **23 July 2009**, petitioners filed the Complaint dated 26 May 2009 for unlawful detainer with the Metropolitan Trial Court (MeTC) of Makati City. Petitioners prayed that respondent Sunvar be ordered to vacate the subject property and to pay damages for the illegal use and lost income owing to them:

WHEREFORE, PREMISES CONSIDERED, it is most respectfully prayed that after proper proceedings, judgment be rendered:

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[27] "This is in reiteration of our first letter dated February 22, 2008 demanding that you vacate the property covered by your sublease agreements with the Philippine Development Alternative Foundation (PDAF) which expired on December 31, 2002, or more specifically, the parcel of land covered by TCT No. (458365) S-77242 located between De la Rosa and Arnaiz streets and parallel to Amorsolo street in Legaspi Village, Makati City."

"Once again, we demand that you completely vacate said property within FIFTEEN (15) days from receipt of this letter, or we will be constrained to file the necessary legal action against you before the proper court." (OSG Final Notice to Vacate dated 26 January 2009; *rollo*, p. 560)

[28] Inspection and Appraisal Report dated 02 April 2009; *rollo*, pp. 563-566.

[29] "As per instruction, please see attached copy of Inspection and Appraisal Report dated April 2, 2009 indicating a Fair Rental Value of Php 10,364,000 per month and an Income Loss of Php 630,123,700, respectively." (PMO letter dated 02 April 2009; *rollo*, p. 562)

1. Ordering defendant SUNVAR REALTY DEVELOPMENT CORPORATION and all persons, natural and juridical, claiming rights under it, to vacate the subject property and peacefully surrender the same, with the useful improvements therein, to the plaintiffs or to their authorized representative; and

2. Ordering defendant SUNVAR REALTY DEVELOPMENT CORPORATION to pay plaintiffs damages in the amount of SIX HUNDRED THIRTY MILLION ONE HUNDRED TWENTY THREE THOUSAND SEVEN HUNDRED PESOS (₱630,123,700.00) for the illegal and unauthorized use and occupation of the subject property from January 1, 2003 to March 31, 2009, and the amount of TEN MILLION THREE HUNDRED SIXTY-FOUR THOUSAND PESOS (₱10,364,000.00) per month from April 1, 2008 until the subject property, together with its improvements, are completely vacated and peacefully surrendered to the plaintiffs or to their authorized representative.[30]

Respondent Sunvar moved to dismiss the Complaint and argued that the allegations of petitioners in the Complaint did not constitute an action for unlawful detainer, since no privity of contract existed between them.[31] In the alternative, it also argued that petitioners' cause of action was more properly an *accion publiciana*, which fell within the jurisdiction of the RTC, and not the MeTC, considering that the petitioners' supposed dispossession of the subject property by respondent had already lasted for more than one year.

In its Order dated 16 September 2009, the MeTC denied the Motion to Dismiss and directed respondent Sunvar to file an answer to petitioners' Complaint.[32] The lower court likewise denied the Motion for Reconsideration[33] filed by

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[30] Complaint dated 26 May 2009, p. 11; *rollo*, p. 85.

[31] Motion to Dismiss (for Lack of Jurisdiction over the Subject Matter) dated 07 August 2009; *rollo*, pp. 90-102.

[32] MeTC Order dated 16 September 2009, docketed as Civil Case No. 98708; *rollo*, pp. 116-117.

[33] Respondent Sunvar's Omnibus Motion: (1) for Reconsideration (of the Order dated 16 September 2009); and (2) to Hold in Abeyance the Period to File an Answer dated 02 October 2009; *rollo*, pp. 118-141.

respondent.[34] Respondent later on filed its Answer[35] to the Complaint.[36]

Despite the filing of its Answer in the summary proceedings for ejectment, respondent Sunvar filed a Rule 65 Petition for *Certiorari* with the RTC of Makati City to assail the denial by the MeTC of respondent's Motion to Dismiss.[37]

In answer to the Rule 65 Petition of respondent, petitioners placed in issue the jurisdiction of the RTC and reasoned that the Rules on Summary Procedure expressly prohibited the filing of a petition for *certiorari* against the interlocutory orders of the MeTC.[38] Hence, they prayed for the outright dismissal of the *certiorari* Petition of respondent Sunvar.

The RTC denied the motion for dismissal and ruled that extraordinary circumstances called for an exception to the general rule on summary proceedings.[39] Petitioners filed a Motion for Reconsideration,[40] which was subsequently denied by the RTC.[41] Hence, the hearing on the *certiorari* Petition

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[34] MeTC Order dated 08 December 2009; *rollo*, pp. 162-163.

[35] Respondent Sunvar's Verified Answer *ad Cautelam* dated 18 December 2009; *rollo*, pp. 678-711.

[36] Thereafter, MeTC Judge Rico Sebastian D. Liwanag voluntarily inhibited himself, and petitioners' unlawful detainer suit was re-raffled to Judge Roberto P. Buenaventura.

[37] Petition for *Certiorari* dated 22 January 2010; *rollo*, pp. 164-208.

[38] Petitioners' Comment (In Compliance with the Honorable Court's Order Issued in Open Court on February 12, 2010) dated 18 February 2010; *rollo*, pp. 255-272.

[39] "Thus, in view of the extraordinary circumstances prevailing in the present petition, the Court resolves to relax the application of the rules and to proceed with the hearing on the petitioners' application for TRO/ Injunction on March 12, 2010 at 2:00 in the afternoon." (RTC Order dated 08 March 2010; *rollo*, pp. 273-275)

[40] Petitioners' Motion for Reconsideration dated 16 March 2010; *rollo*, pp. 276-295.

[41] RTC Order dated 29 April 2010; *rollo*, pp. 296-297.

of respondent proceeded, and the parties filed their respective Memoranda.[42]

In the assailed Order dated 01 December 2010, which discussed the merits of the *certiorari* Petition, the RTC granted the Rule 65 Petition and directed the MeTC to dismiss the Complaint for unlawful detainer for lack of jurisdiction.[43] The RTC reasoned that the one-year period for the filing of an unlawful detainer case was reckoned from the expiration of the main lease contract and the sublease agreements on 31 December 2002. Petitioners should have then filed an *accion publiciana* with the RTC in 2009, instead of an unlawful detainer suit.

Hence, the instant Rule 45 Petition filed by petitioners.[44]

I

Petitioners' Resort to a Rule 45 Petition

Before the Court proceeds with the legal questions in this case, there are procedural issues that merit preliminary attention.

Respondent Sunvar argued that petitioners' resort to a Rule 45 Petition for Review on *Certiorari* before this Court is an improper mode of review of the assailed RTC Decision. Allegedly, petitioners should have availed themselves of a Rule 65 Petition instead, since the RTC Decision was an order of dismissal of the Complaint, from which no appeal can be taken except by a *certiorari* petition.

The Court is unconvinced of the arguments of respondent Sunvar and holds that the resort by petitioners to the present Rule 45 Petition is perfectly within the bounds of our procedural rules.

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[42] Respondent Sunvar's Memorandum dated 10 June 2010 (*rollo*, pp. 805-843); Petitioners' Memorandum dated 11 June 2010 (*rollo*, pp. 844-868).

[43] RTC Decision dated 01 December 2010; *rollo*, pp. 62-72.

[44] Petition for Review on *Certiorari* dated 14 February 2011; *rollo*, pp. 25-61.

As respondent Sunvar explained, no appeal may be taken from an order of the RTC dismissing an action without prejudice,[45] but the aggrieved party may file a *certiorari* petition under Rule 65.[46] Nevertheless, the Rules do not prohibit any of the parties from filing a Rule 45 Petition with this Court, in case **only questions of law are raised or involved**.[47] This latter situation was one that petitioners found themselves in when they filed the instant Petition to raise only questions of law.

In *Republic v. Malabanan*,[48] the Court clarified the three modes of appeal from decisions of the RTC, to wit: (1) by ordinary appeal or appeal by writ of error under Rule 41, whereby judgment was rendered in a civil or criminal action by the RTC in the exercise of its original jurisdiction; (2) by a petition for review under Rule 42, whereby judgment was rendered by the RTC in the exercise of its appellate jurisdiction; and (3) by a petition for review on *certiorari* before the Supreme Court under Rule 45. "The first mode of appeal is taken to the [Court of Appeals] on questions of fact or mixed questions of fact and law. The second mode of appeal is brought to the CA on questions of fact, of law, or mixed questions of fact and law. **The third mode of appeal is elevated to the Supreme Court only on questions of law**."[49] (Emphasis supplied.)

There is a question of law when the issue does not call for an examination of the probative value of the evidence presented or of the truth or falsehood of the facts being admitted, and the doubt concerns the correct application of

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[45] Rules of Court, Rule 41, Sec. 1 (g).

[46] "In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65." (Rules of Court, Rule 41, Sec. 1)

[47] "*Appeal by Certiorari* – In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.' (Rules of Court, Rule 41, Sec. 2 [c]).

[48] G.R. No. 169067, 06 October 2010, 632 SCRA 338.

[49] *Id.* at 344-345.

law and jurisprudence on the matter.[50] The resolution of the issue must rest solely on what the law provides on the given set of circumstances.[51]

In the instant case, petitioners raise only questions of law with respect to the jurisdiction of the RTC to entertain a *certiorari* petition filed against the interlocutory order of the MeTC in an unlawful detainer suit. At issue in the present case is the correct application of the Rules on Summary Procedure; or, more specifically, whether the RTC violated the Rules when it took cognizance and granted the *certiorari* petition against the denial by the MeTC of the Motion to Dismiss filed by respondent Sunvar. This is clearly a question of law that involves the proper interpretation of the Rules on Summary Procedure. Therefore, the instant Rule 45 Petition has been properly lodged with this Court.

II

Propriety of a Rule 65 Petition in Summary Proceedings

Proceeding now to determine that very question of law, the Court finds that it was erroneous for the RTC to have taken cognizance of the Rule 65 Petition of respondent Sunvar, since the Rules on Summary Procedure expressly prohibit this relief for unfavorable interlocutory orders of the MeTC. Consequently, the assailed RTC Decision is annulled.

Under the Rules on Summary Procedure, a *certiorari* petition under Rule 65 against an interlocutory order issued by the court in a summary proceeding is a prohibited pleading.[52] The prohibition is plain enough, and its further exposition is unnecessary

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[50] *Heirs of Nicolas S. Cabigas v. Limbaco,* G.R. No. 175291, 27 July 2011, 654 SCRA 643, citing *Roman Catholic Archbishop of Manila v. CA,* 327 Phil. 810, 825-826 (1996), citing *Arroyo v. El Beaterio del Santissimo Rosario de Molo,* 132 Phil. 9 (1968).

[51] *Five Star Marketing Co., Inc., v. Booc,* G.R. No. 143331, 05 October 2007, 535 SCRA 28.

[52] 1991 Revised Rules on Summary Procedure, Sec. 19 (g).

verbiage.[53] The RTC should have dismissed outright respondent Sunvar's Rule 65 Petition, considering that it is a prohibited pleading. Petitioners have already alerted the RTC of this legal bar and immediately prayed for the dismissal of the *certiorari* Petition.[54] Yet, the RTC not only refused to dismiss the *certiorari* Petition,[55] but even proceeded to hear the Rule 65 Petition on the merits.

Respondent Sunvar's reliance on *Bayog v. Natino*[56] and *Go v. Court of Appeals*[57] to justify a *certiorari* review by the RTC owing to "extraordinary circumstances" is misplaced. In both cases, there were peculiar and specific circumstances that justified the filing of the mentioned prohibited pleadings under the Revised Rules on Summary Procedure – conditions that are not availing in the case of respondent Sunvar.

In *Bayog*, Alejandro Bayog filed with the Municipal Circuit Trial Court (MCTC) of Patnongon-Bugasong-Valderama, Antique an ejectment case against Alberto Magdato, an agricultural tenant-lessee who had built a house over his property. When Magdato, an illiterate farmer, received the Summons from the MCTC to file his answer within 10 days, he was stricken with pulmonary tuberculosis and was able to consult a lawyer in San Jose, Antique only after the reglementary period. Hence, when the Answer of Magdato was filed three days after the lapse of the 10-day period, the MCTC ruled that it could no longer take cognizance of his Answer and, hence, ordered his ejectment from Bayog's land. When his house was demolished in January 1994, Magdato filed a Petition for Relief with the RTC-San Jose, Antique, claiming that he was a duly instituted

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[53] *Muñoz v. Yabut, Jr.*, G.R. Nos. 142676 & 146718, 06 June 2011, 650 SCRA 344.

[54] Petitioners' Comment (In Compliance with the Honorable Court's Order Issued in Open Court on February 12, 2010) dated 18 February 2010; *rollo*, pp. 255-272.

[55] RTC Order dated 08 March 2010; *rollo*, pp. 273-275.

[56] 327 Phil. 1019 (1996).

[57] 358 Phil. 214 (1998).

tenant in the agricultural property, and that he was deprived of due process. Bayog, the landowner, moved to dismiss the Petition on the ground of lack of jurisdiction on the part of the RTC, since a petition for relief from judgment covering a summary proceeding was a prohibited pleading. The RTC, however, denied his Motion to Dismiss and remanded the case to the MCTC for proper disposal.

In resolving the Rule 65 Petition, we ruled that although a petition for relief from judgment was a prohibited pleading under the Revised Rules on Summary Procedure, the Court nevertheless allowed the filing of the Petition *pro hac vice*, since Magdato would otherwise suffer grave injustice and irreparable injury:

> We disagree with the RTC's holding that a petition for relief from judgment (Civil Case No. 2708) is not prohibited under the Revised Rule on Summary Procedure, in light of the *Jakihaca* ruling. **When Section 19 of the Revised Rule on Summary Procedure bars a petition for relief from judgment, or a petition for *certiorari, mandamus*, or prohibition against any interlocutory order issued by the court, it has in mind no other than Section 1, Rule 38 regarding petitions for relief from judgment, and Rule 65 regarding petitions for *certiorari, mandamus*, or prohibition, of the Rules of Court, respectively**. These petitions are cognizable by Regional Trial Courts, and not by Metropolitan Trial Courts, Municipal Trial Courts, or Municipal Circuit Trial Courts. If Section 19 of the Revised Rule on Summary Procedure and Rules 38 and 65 of the Rules of Court are juxtaposed, the conclusion is inevitable that **no petition for relief from judgment nor a special civil action of *certiorari*, prohibition, or *mandamus* arising from cases covered by the Revised Rule on Summary Procedure may be filed with a superior court**. This is but consistent with the mandate of Section 36 of B.P. Blg. 129 to achieve an expeditious and inexpensive determination of the cases subject of summary procedure.
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> **Nevertheless, in view of the unusual and peculiar circumstances of this case, unless some form of relief is made available to MAGDATO, the grave injustice and irreparable injury that visited him through no fault or negligence on his part will only be perpetuated. Thus, the petition for relief from judgment which he filed may be allowed or treated, *pro hac vice*, either as an exception to the rule, or a regular appeal to the RTC, or even an action to**

annul the order (decision) of the MCTC of 20 September 1993. As an exception, the RTC correctly held that the circumstances alleged therein and the justification pleaded worked in favor of MAGDATO, and that the motion to dismiss Civil Case No. 2708 was without merit. xxx[58] (Emphasis supplied.)

On the other hand, in *Go v. Court of Appeals*, the Court was confronted with a procedural void in the Revised Rules of Summary Procedure that justified the resort to a Rule 65 Petition in the RTC. In that case, the preliminary conference in the subject ejectment suit was held in abeyance by the Municipal Trial Court in Cities (MTCC) of Iloilo City until after the case for specific performance involving the same parties shall have been finally decided by the RTC. The affected party appealed the suspension order to the RTC. In response, the adverse party moved to dismiss the appeal on the ground that it concerned an interlocutory order in a summary proceeding that was not the subject of an appeal. The RTC denied the Motion to Dismiss and subsequently directed the MTCC to proceed with the hearing of the ejectment suit, a ruling that was upheld by the appellate court.

In affirming the Decisions of the RTC and CA, the Supreme Court allowed the filing of a petition for *certiorari* against an interlocutory order in an ejectment suit, considering that the affected party was deprived of any recourse to the MTCC's erroneous suspension of a summary proceeding. Retired Chief Justice Artemio V. Panganiban eloquently explained the procedural void in this wise:

> Indisputably, the appealed [suspension] order is interlocutory, for "it does not dispose of the case but leaves something else to be done by the trial court *on the merits* of the case." It is axiomatic that an interlocutory order cannot be challenged by an appeal. Thus, it has been held that "the proper remedy in such cases is an ordinary appeal from an adverse judgment *on the merits* incorporating in said appeal the grounds for assailing the interlocutory order. Allowing appeals from interlocutory orders would result in the 'sorry spectacle' of a case being subject of a counterproductive ping-pong to and

[58] 327 Phil. 1019, 1040-1041 (1996).

from the appellate court as often as a trial court is perceived to have made an error in any of its interlocutory rulings. **However, where the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court may allow *certiorari* as a mode of redress**."

Clearly, private respondent cannot appeal the order, being interlocutory. But neither can it file a petition for *certiorari*, because ejectment suits fall under the Revised Rules on Summary Procedure, Section 19(g) of which considers petitions for *certiorari* prohibited pleadings:

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Based on the foregoing, private respondent was literally caught "between Scylla and Charybdis" in the procedural void observed by the Court of Appeals and the RTC. **Under these extraordinary circumstances, the Court is constrained to provide it with a remedy consistent with the objective of speedy resolution of cases**.

As correctly held by Respondent Court of Appeals, "the purpose of the Rules on Summary Procedure is 'to achieve an expeditious and inexpensive determination of cases without regard to technical rules.' (Section 36, Chapter III, BP Blg. 129)" Pursuant to this objective, the Rules prohibit petitions for *certiorari*, like a number of other pleadings, in order to prevent unnecessary delays and to expedite the disposition of cases. **In this case, however, private respondent challenged the MTCC order *delaying* the ejectment suit, precisely to avoid the mischief envisioned by the Rules**.

Thus, this Court holds that in situations wherein a summary proceeding is suspended indefinitely, a petition for *certiorari* alleging grave abuse of discretion may be allowed. Because of the extraordinary circumstances in this case, a petition for *certiorari*, in fact, gives spirit and life to the Rules on Summary Procedure. A contrary ruling would unduly delay the disposition of the case and negate the rationale of the said Rules.[59] (Emphasis supplied.)

Contrary to the assertion of respondent Sunvar, the factual circumstances in these two cases are not comparable with respondents' situation, and our rulings therein are inapplicable to its cause of action in the present suit. As this Court explained

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[59] 358 Phil. 214, 223-225 (1998).

in *Bayog*, the general rule is that no special civil action for *certiorari* may be filed with a superior court from cases covered by the Revised Rules on Summary Procedure. Respondent Sunvar filed a *certiorari* Petition in an ejectment suit pending before the MeTC. Worse, the subject matter of the Petition was the denial of respondent's Motion to Dismiss, which was necessarily an interlocutory order, which is generally not the subject of an appeal. No circumstances similar to the situation of the agricultural tenant-lessee in *Bayog* are present to support the relaxation of the general rule in the instant case. Respondent cannot claim to have been deprived of reasonable opportunities to argue its case before a summary judicial proceeding.

Moreover, there exists no procedural void akin to that in *Go v. Court of Appeals* that would justify respondent's resort to a *certiorari* Petition before the RTC. When confronted with the MeTC's adverse denial of its Motion to Dismiss in the ejectment case, the expeditious and proper remedy for respondent should have been to proceed with the summary hearings and to file its answer. Indeed, its resort to a *certiorari* Petition in the RTC over an interlocutory order in a summary ejectment proceeding was not only prohibited. The *certiorari* Petition was already a superfluity on account of respondent's having already taken advantage of a speedy and available remedy by filing an Answer with the MeTC.

Respondent Sunvar failed to substantiate its claim of extraordinary circumstances that would constrain this Court to apply the exceptions obtaining in *Bayog* and *Go*. The Court hesitates to liberally dispense the benefits of these two judicial precedents to litigants in summary proceedings, lest these exceptions be regularly abused and freely availed of to defeat the very goal of an expeditious and inexpensive determination of an unlawful detainer suit. If the Court were to relax the interpretation of the prohibition against the filing of *certiorari* petitions under the Revised Rules on Summary Procedure, the RTCs may be inundated with similar prayers from adversely affected parties questioning every order of the lower court and completely dispensing with the goal of summary proceedings in forcible entry or unlawful detainer suits.

III

Reckoning the One-Year Period in Unlawful Detainer Cases

We now come to another legal issue underlying the present Petition – whether the Complaint filed by petitioners is properly an action for unlawful detainer within the jurisdiction of the MeTC or an *accion publiciana* lodged with the RTC. At the heart of the controversy is the reckoning period of the one-year requirement for unlawful detainer suits.

Whether or not petitioners' action for unlawful detainer was brought within one year after the unlawful withholding of possession will determine whether it was properly filed with the MeTC. If, as petitioners argue, the one-year period should be counted from respondent Sunvar's receipt on 03 February 2009 of the Final Notice to Vacate, then their Complaint was timely filed within the one-year period and appropriately taken cognizance of by the MeTC. However, if the reckoning period is pegged from the expiration of the main lease contract and/or sublease agreement, then petitioners' proper remedy should have been an *accion publiciana* to be filed with the RTC.

The Court finds that petitioners correctly availed themselves of an action for unlawful detainer and, hence, reverses the ruling of the RTC.

Under the Rules of Court, lessors against whom possession of any land is unlawfully withheld after the expiration of the right to hold possession may – by virtue of any express or implied contract, and within one year after the unlawful deprivation – bring an action in the municipal trial court against the person unlawfully withholding possession, for restitution of possession with damages and costs.[60] Unless otherwise stipulated, the action of the lessor shall commence only after a demand to pay or to comply with the conditions of the lease and to vacate is made upon the lessee; or after a written notice of that demand is served upon the person found on the premises, and the lessee

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[60] Rules of Court, Rule 70, Sec. 1.

fails to comply therewith within 15 days in the case of land or 5 days in the case of buildings.[61]

In *Delos Reyes v. Spouses Odenes*,[62] the Court recently defined the nature and scope of an unlawful detainer suit, as follows:

> Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession by the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. The proceeding is summary in nature, jurisdiction over which lies with the proper MTC or metropolitan trial court. **The action must be brought up within one year from the date of last demand, and the issue in the case must be the right to physical possession**. (Emphasis supplied.)

Hence, a complaint sufficiently alleges a cause of action for unlawful detainer if it states the following elements:

1. Initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff.

2. Eventually, the possession became illegal upon the plaintiff's notice to the defendant of the termination of the latter's right of possession.

3. Thereafter, the defendant remained in possession of the property and deprived the plaintiff of the latter's enjoyment.

4. Within one year from the making of the last demand on the defendant to vacate the property, the plaintiff instituted the Complaint for ejectment.[63]

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[61] Rules of Court, Rule 70, Sec. 2.

[62] G.R. No. 178096, 23 March 2011, 646 SCRA 328, 334, citing *Valdez, Jr. v. CA*, 523 Phil. 39, 46 (2006).

[63] *Macaslang v. Spouses Zamora*, G.R. No. 156375, 30 May 2011, 649 SCRA 92, 104, citing *Cabrera v. Getaruela*, 586 SCRA 129, 136-137 (2009); see also *Corpuz v. Spouses Agustin*, G.R. No. 183822, 18 January 2012 and *Delos Reyes v. Spouses Odones*, G.R. No. 178096, 23 March 2011, 646 SCRA 328, 334-335, *Iglesia Evangelica Metodista en Las Islas*

"On the other hand, *accion publiciana* is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. **In other words, if at the time of the filing of the complaint, more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of forcible entry or illegal detainer, but an *accion publiciana*.**"[64]

There are no substantial disagreements with respect to the first three requisites for an action for unlawful detainer. Respondent Sunvar initially derived its right to possess the subject property from its sublease agreements with TRCFI and later on with PDAF. However, with the expiration of the lease agreements on 31 December 2002, respondent lost possessory rights over the subject property. Nevertheless, it continued occupying the property for almost seven years thereafter. It was only on 03 February 2009 that petitioners made a final demand upon respondent Sunvar to turn over the property. What is disputed, however, is the fourth requisite of an unlawful detainer suit.

The Court rules that the final requisite is likewise availing in this case, and that the one-year period should be counted from the final demand made on 03 February 2009.

Contrary to the reasoning of the RTC,[65] the one-year period to file an unlawful detainer case is not counted from the expiration

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Filipinas (IEMELIF), Inc. v. Juane, G.R. Nos. 172447 & 179404, 18 September 2009, 600 SCRA 555, 562-563; *Parsicha, v. Don Luis Dison Realty, Inc.*, G.R. No. 136409, 14 March 2008, 548 SCRA 273, 288; *Fernando v. Spouses Lim*, G.R. No. 176282, 22 August 2008, 563 SCRA 147, 159-160.

[64] *Canlas v. Tubil*, G.R. No. 184285, 25 September 2009, 601 SCRA 147, 157.

[65] "Hence, in the present petition, upon the expiration of the term of the sublease on December 31, 2002, the private respondents (petitioners Republic and NPC) have one year to file an unlawful detainer case. The complaint having been filed beyond the prescribed one year period it cannot

of the lease contract on 31 December 2002. Indeed, the **last demand for petitioners to vacate** is the reckoning period for determining the one-year period in an action for unlawful detainer. "Such one year period should be counted from the date of plaintiff's last demand on defendant to vacate the real property, because only upon the lapse of that period does the possession become unlawful."[66]

In case several demands to vacate are made, the period is reckoned from the date of the last demand.[67] In *Leonin v. Court of Appeals*,[68] the Court, speaking through Justice Conchita Carpio Morales, reckoned the one-year period to file the unlawful detainer Complaint – filed on 25 February 1997 – from the latest demand letter dated 24 October 1996, and not from the earlier demand letter dated 03 July 1995:

> Prospero Leonin (Prospero) and five others were co-owners of a 400-square meter property located at K-J Street, East Kamias, Quezon City whereon was constructed a two-storey house and a three-door apartment identified as No. 1-A, B, and C.
>
> Prospero and his co-owners allowed his siblings, herein petitioners, to occupy Apartment C without paying any rentals.
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> xxx x x x xxx
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> Petitioners further contend that respondent's remedy is *accion publiciana* because their possession is not *de facto*, they having

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properly qualify as an action for unlawful detainer over which the lower court can exercise jurisdiction as it is an *accion publiciana*." (RTC Decision dated 01 December 2010, p. 10; *rollo*, p. 71)

[66] *Estate of Soledad Manantan v. Somera*, G.R. No. 145867, 07 April 2009, 584 SCRA 81, 90, citing *Sarmiento v. Court of Appeals*, 320 Phil. 146, 154 (1995); *Lopez v. David, Jr.*, G.R. No. 152145, 30 March 2004, 426 SCRA 535, 542; *Varona v. Court of Appeals*, G.R. No. 124148, 20 May 2004, 428 SCRA 577, 583-584.

[67] *Labastida v. Court of Appeals*, 351 Phil. 162 (1998), citing *Sy Oh v. Garcia*, 28 SCRA 735 (1969) and *Calubayan v. Pascual*, 128 Phil. 160 (1967).

[68] G.R. No. 141418, 27 September 2006, 503 SCRA 423.

been authorized by the true and lawful owners of the property; and **that one year had elapsed from respondent's demand given on "July 3, 1995" when the unlawful detainer complaint was filed.**

The petition fails.

Contrary to petitioners' contention, the allegations in the complaint make out a case for unlawful detainer. Thus, respondent alleged, *inter alia*, that she is the registered owner of the property and that petitioners, who are tenants by tolerance, refused to vacate the premises despite the notice to vacate sent to them.

Likewise, contrary to petitioners' contention, the one-year period for filing a complaint for unlawful detainer is reckoned from the *date of the last demand, in this case October 24, 1996*, the reason being that the lessor has the right to waive his right of action based on previous demands and let the lessee remain meanwhile in the premises. **Thus, the filing of the complaint on February 25, 1997 was well within the one year reglementary period.**[69] (Emphasis supplied.)

From the time that the main lease contract and sublease agreements expired (01 January 2003), respondent Sunvar no longer had any possessory right over the subject property. Absent any express contractual renewal of the sublease agreement or any separate lease contract, it illegally occupied the land or, at best, was allowed to do so by mere tolerance of the registered owners – petitioners herein. Thus, respondent Sunvar's possession became unlawful upon service of the final notice on 03 February 2009. Hence, as an unlawful occupant of the land of petitioners, and without any contract between them, respondent is "necessarily bound by an implied promise" that it "**will vacate upon demand**, failing which a summary action for ejectment is the proper remedy against them."[70] Upon service of the final notice of demand, respondent Sunvar should have vacated the property and, consequently, petitioners had one year or until 02 February 2010 in which to resort to the summary action for unlawful detainer. In the instant case, their Complaint

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[69] *Id*, at 424-428.

[70] *Spouses Beltran v. Nieves*, G.R. No. 175561, 20 October 2010, 634 SCRA 242, 249, citing *Calubayan v. Pascual*, 128 Phil. 160, 163 (1967).

was filed with the MeTC on 23 July 2009, which was well within the one-year period.

The Court is aware that petitioners had earlier served a Notice to Vacate on 22 February 2008, which could have possibly tolled the one-year period for filing an unlawful detainer suit. Nevertheless, they can be deemed to have waived their right of action against respondent Sunvar and continued to tolerate its occupation of the subject property. That they sent a final Notice to Vacate almost a year later gave respondent another opportunity to comply with their implied promise as occupants by mere tolerance. Consequently, the one-year period for filing a summary action for unlawful detainer with the MeTC must be reckoned from the latest demand to vacate.

In the past, the Court ruled that subsequent demands that are merely in the nature of reminders of the original demand do not operate to renew the one-year period within which to commence an ejectment suit, considering that the period will still be reckoned from the date of the original demand.[71] If the subsequent demands were merely in the nature of reminders of the original demand, the one-year period to commence an ejectment suit would be counted from the first demand.[72] However, respondent failed to raise in any of the proceedings below this question of fact as to the nature of the second demand issued by the OSG. It is now too late in the proceedings for them to argue that the 2009 Notice to Vacate was a mere reiteration or reminder of the 2008 Notice to Vacate. In any event, this factual determination is beyond the scope of the present Rule 45 Petition, which is limited to resolving questions of law.

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[71] *Racaza v. Gozum*, 523 Phil. 694 (2006), citing *Desbarats v. Laureano*, 124 Phil. 704 (1966).

[72] *Spouses Cruz v. Spouses Torres*, 374 Phil. 529 (1999), citing *Pacis v. Court of Appeals*, G.R. No. 102676, 03 February 1992, min. res., cited in Summary of 1992 Supreme Court Rulings, Part III, by Atty. Daniel T. Martinez, p. 1847; *Desbarats v. de Laureano*, *supra*.

The Court notes that respondent Sunvar has continued to occupy the subject property since the expiration of its sublease on 31 December 2002. The factual issue of whether respondent has paid rentals to petitioners from the expiration of the sublease to the present was never raised or sufficiently argued before this Court. Nevertheless, it has not escaped the Court's attention that almost a decade has passed without any resolution of this controversy regarding respondent's possession of the subject property, contrary to the aim of expeditious proceedings under the Revised Rules on Summary Procedure. With the grant of the instant Petition and the remand of the case to the MeTC for continued hearing, the Court emphasizes the duty of the lower court to speedily resolve this matter once and for all, especially since this case involves a prime property of the government located in the country's business district and the various opportunities for petitioners to gain public revenues from the property.

WHEREFORE, the Court **GRANTS** the Petition for Review on *Certiorari* dated 14 February 2011, filed by petitioners Republic and National Power Corporation, which are represented here by the Privatization Management Office. The assailed Decision dated 01 December 2010 of the Regional Trial Court of Makati City, Branch 134, is hereby **REVERSED** and **SET ASIDE.** The Metropolitan Trial Court of Makati City, Branch 63, is **DIRECTED** to proceed with the summary proceedings for the unlawful detainer case in Civil Case No. 98708.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), concurs.

Brion, Perez, and *Reyes, JJ.,* concur.

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MOTION TO DISMISS

Litis pendentia as a ground — 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. (United Abangan Clan, Inc. *vs*. Sabellano-Sumagang, G.R. No. 186722, June 18, 2012) p. 214

PARENTAL AUTHORITY

Parental authority over the minor — Belongs to the parents thereof; absent a special power of attorney authorizing her, a stepmother cannot represent her stepchildren. (Sps. Atty. Erlando and Joena Abrenica *vs*. Law Firm of Abrenica, G.R. No. 180572, June 18, 2012) p. 170

PARTIES TO CIVIL ACTIONS

Doctrine of locus standi — The doctrine requires a litigant to have a material interest in the outcome of a case; in private suits, locus standi requires a litigant to be a "real party in interest," which is defined as "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit." (United Church of Christ in the Phils., Inc. *vs*. Bradford United Church of Christ, Inc., G.R. No. 171905, June 20, 2012) p. 408

Real party in interest — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit; by real interest is meant a present substantial interest, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest. (United Church of Christ in the Phils., Inc. *vs*. Bradford United Church of Christ, Inc., G.R. No. 171905, June 20, 2012) p. 408

— Restrictive venue stipulation applies not only to the principal obligation but also to mortgages in case at bar; phrase "waiving any other venue" shows exclusivity. *(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. (People of the Phils. *vs.* Maraorao *y* Macabalang, G. R. No. 174369, June 20, 2012) p. 458

(People of the Phils. *vs.* Biglete *y* Camacho, G.R. No. 182920, June 18, 2012) p. 199

— Failure of victim to immediately report the rape is not necessarily an indication of a fabricated charge. (People of the Phils. *vs.* Tejero, G.R. No. 187744, June 20, 2012) p. 543

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