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2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 171591. June 25, 2012]

ACE NAVIGATION CO., INC., *petitioner, vs.* **FGU INSURANCE CORPORATION and PIONEER INSURANCE AND SURETY CORPORATION,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; COMMON CARRIERS; BILL OF LADING; DEFINED; AS A CONTRACT, IT SHALL ONLY BE BINDING UPON THE PARTIES WHO MAKE THEM, THEIR ASSIGNS AND HEIRS.—** A bill of lading is defined as "an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight to be delivered to the order or assigns of a specified person at a specified place." It operates both as a receipt and as a contract. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks and condition, quality, and value. As a contract, it names the contracting parties, which include the consignee, fixes the route, destination, and freight rates or charges, and stipulates the rights and obligations assumed by the parties. As such, it shall only be binding upon the parties who make them, their assigns and heirs. In this case, the original parties to the bill of lading are: (a) the shipper CARDIA; (b) the carrier PAKARTI; and (c) the consignee

HEINDRICH. However, by virtue of their relationship with PAKARTI under separate charter arrangements, SHINWA, KEE YEH and its agent SKY likewise became parties to the bill of lading. In the same vein, ACENAV, as admitted agent of CARDIA, also became a party to the said contract of carriage.

2. **ID.; CODE OF COMMERCE; PETITIONER IS NOT A SHIP AGENT WITHIN THE MEANING AND CONTEXT OF ARTICLE 586 OF THE CODE OF COMMERCE, BUT A MERE AGENT OF THE SHIPPER.—** Records show that the obligation of ACENAV was limited to informing the consignee HEINDRICH of the arrival of the vessel in order for the latter to immediately take possession of the goods. No evidence was offered to establish that ACENAV had a hand in the provisioning of the vessel or that it represented the carrier, its charterers, or the vessel at any time during the unloading of the goods. Clearly, ACENAV's participation was simply to assume responsibility over the cargo when they were unloaded from the vessel. Hence, no reversible error was committed by the courts *a quo* in holding that ACENAV was not a ship agent within the meaning and context of Article 586 of the Code of Commerce, but a *mere agent* of CARDIA, the shipper. On this score, Article 1868 of the Civil Code states: ART. 1868. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

3. **CIVIL LAW; CIVIL CODE; AGENCY; AN AGENT IS NOT PERSONALLY LIABLE TO THE PARTY WITH WHOM HE CONTRACTS, UNLESS HE EXPRESSLY BINDS HIMSELF OR EXCEEDS THE LIMITS OF HIS AUTHORITY WITHOUT GIVING SUCH PARTY SUFFICIENT NOTICE OF HIS POWERS.—** Corollarily, Artilce 1897 of the same Code provides that an agent is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers. Both exceptions do not obtain in this case. Records are bereft of any showing that ACENAV exceeded its authority in the discharge of its duties as a mere agent of CARDIA. Neither was it alleged, much less proved, that ACENAV's limited obligation as agent of the shipper, CARDIA, was not known to HEINDRICH. Futhermore, since CARDIA was not impleaded

as a party in the instant suit, the liability attributed upon it by the CA on the basis of its finding that the damage sustained by the cargo was due to improper packing cannot be borne by ACENAV. As mere agent, ACENAV cannot be made responsible or held accountable for the damage supposedly caused by its principal.

APPEARANCES OF COUNSEL

Nolasco & Associates Law Offices for petitioner.
Astorga & Repol Law Offices for respondents.

D E C I S I O N

PERLAS-BERNABE, *J*.:

This is an appeal under Rule 45 of the Rules of Court seeking to reverse the June 22, 2004 Decision[1] and February 17, 2006 Resolution[2] of the Court of Appeals (CA) ordering petitioner Ace Navigation Co., Inc., jointly and severally with Cardia Limited, to pay respondents FGU Insurance Corp. and Pioneer Insurance and Surety Corp. the sum of ₱213,518.20 plus interest at the rate of six percentum (6%) from the filing of the complaint until paid.

<u>The Facts</u>

On July 19, 1990, Cardia Limited (CARDIA) shipped on board the vessel *M/V Pakarti Tiga* at Shanghai Port China, 8,260 metric tons or 165,200 bags of Grey Portland Cement to be discharged at the Port of Manila and delivered to its consignee, Heindrich Trading Corp. (HEINDRICH). The subject shipment was insured with respondents, FGU Insurance Corp. (FGU) and Pioneer Insurance and Surety Corp. (PIONEER), against all risks under Marine Open Policy No. 062890275 for the amount of ₱18,048,421.00.[3]

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[1] *Rollo* (G.R. No. 171591), pp. 25-34.

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

[3] *Id.* at 26.

The subject vessel is owned by P.T. Pakarti Tata (PAKARTI) which it chartered to Shinwa Kaiun Kaisha Ltd. (SHINWA).[4] Representing itself as owner of the vessel, SHINWA entered into a charter party contract with Sky International, Inc. (SKY), an agent of Kee Yeh Maritime Co. (KEE YEH),[5] which further chartered it to Regency Express Lines S.A. (REGENCY). Thus, it was REGENCY that directly dealt with consignee HEINDRICH, and accordingly, issued Clean Bill of Lading No. SM-1.[6]

On July 23, 1990, the vessel arrived at the Port of Manila and the shipment was discharged. However, upon inspection of HEINDRICH and petitioner Ace Navigation Co., Inc. (ACENAV), agent of CARDIA, it was found that out of the 165,200 bags of cement, 43,905 bags were in bad order and condition. Unable to collect the sustained damages in the amount of ₱1,423,454.60 from the shipper, CARDIA, and the charterer, REGENCY, the respondents, as co-insurers of the cargo, each paid the consignee, HEINDRICH, the amounts of ₱427,036.40 and ₱284,690.94, respectively,[7] and consequently became subrogated to all the rights and causes of action accruing to HEINDRICH.

Thus, on August 8, 1991, respondents filed a complaint for damages against the following defendants: "REGENCY EXPRESS LINES, S.A./UNKNOWN CHARTERER OF THE VESSEL 'PAKARTI TIGA'/UNKNOWN OWNER and/or DEMIFE (sic) CHARTERER OF THE VESSEL 'PAKARTI TIGA,' SKY INTERNATIONAL, INC. and/or ACE NAVIGATION COMPANY, INC."[8] which was docketed as Civil Case No. 90-2016.

In their answer with counterclaim and cross-claim, PAKARTI and SHINWA alleged that the suits against them cannot prosper because they were not named as parties in the bill of lading.[9]

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[4] *Id.* at 30.

[5] *Id.* at 29.

[6] *Supra* note 3.

[7] *Id.*

[8] *Supra* note 5.

[9] *Rollo* (G.R. No. 171591), p. 27.

Similarly, ACENAV claimed that, not being privy to the bill of lading, it was not a real party-in-interest from whom the respondents can demand compensation. It further denied being the local ship agent of the vessel or REGENCY and claimed to be the agent of the shipper, CARDIA.[10]

For its part, SKY denied having acted as agent of the charterer, KEE YEH, which chartered the vessel from SHINWA, which originally chartered the vessel from PAKARTI. SKY also averred that it cannot be sued as an agent without impleading its alleged principal, KEE YEH.[11]

On September 30, 1991, HEINDRICH filed a similar complaint against the same parties and Commercial Union Assurance Co. (COMMERCIAL), docketed as Civil Case No. 91-2415, which was later consolidated with Civil Case No. 91-2016. However, the suit against COMMERCIAL was subsequently dismissed on joint motion by the respondents and COMMERCIAL.[12]

Proceedings Before the RTC and the CA

In its November 26, 2001 Decision,[13] the RTC dismissed the complaint, the fallo of which reads:

> WHEREFORE, premises considered, plaintiffs' complaint is DISMISSED. Defendants' counter-claim against the plaintiffs are likewise dismissed, it appearing that plaintiff[s] did not act in evident bad faith in filing the present complaint against them.
>
> Defendant Pakarti and Shinwa's cross-claims against their co-defendants are likewise dismissed for lack of sufficient evidence.
>
> No costs.
>
> SO ORDERED.

---

[10] *Id.* at 26, 10.

[11] *Supra* note 9.

[12] *Id.*

[13] *Rollo* (G.R. No. 171591), pp. 38-42.

Dissatisfied, the respondents appealed to the CA which, in its assailed June 22, 2004 Decision,[14] found PAKARTI, SHINWA, KEE YEH and its agent, SKY, solidarily liable for 70% of the respondents' claim, with the remaining 30% to be shouldered solidarity by CARDIA and its agent, ACENAV, thus:

> WHEREFORE, premises considered, the Decision dated November 26, 2001 is hereby MODIFIED in the sense that:
>
> a) defendant-appellees P.T. Pakarti Tata, Shinwa Kaiun Kaisha, Ltd., Kee Yeh Maritime Co., Ltd. and the latter's agent Sky International, Inc. are hereby declared jointly and severally liable, and are DIRECTED to pay FGU Insurance Corporation the amount of Two Hundred Ninety Eight Thousand Nine Hundred Twenty Five and 45/100 (₱298,925.45) Pesos and Pioneer Insurance and Surety Corp. the sum of One Hundred Ninety Nine Thousand Two Hundred Eighty Three and 66/100 (₱199,283.66) Pesos representing Seventy (70%) percentum of their respective claims as actual damages plus interest at the rate of six (6%) percentum from the date of the filing of the complaint; and
>
> b) defendant Cardia Ltd. and defendant-appellee Ace Navigation Co., Inc. are DECLARED jointly and severally liable and are hereby DIRECTED to pay FGU Insurance Corporation One Hundred Twenty Eight Thousand One Hundred Ten and 92/100 (₱128,110.92) Pesos and Pioneer Insurance and Surety Corp. Eighty Five Thousand Four Hundred Seven and 28/100 (₱85,407.28) Pesos representing thirty (30%) percentum of their respective claims as actual damages, plus interest at the rate of six (6%) percentum from the date of the filing of the complaint.
>
> SO ORDERED.

Finding that the parties entered into a time charter party, not a demise or bareboat charter where the owner completely and exclusively relinquishes possession, command and navigation to the charterer, the CA held PAKARTI, SHINWA, KEE YEH and its agent, SKY, solidarily liable for 70% of the damages sustained by the cargo. This solidarity liability was borne by their failure to prove that they exercised extraordinary diligence

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[14] *Id.* at 25-34.

in the vigilance over the bags of cement entrusted to them for transport. On the other hand, the CA passed on the remaining 30% of the amount claimed to the shipper, CARDIA, and its agent, ACENAV, upon a finding that the damage was partly due to the cargo's inferior packing.

With respect to REGENCY, the CA affirmed the findings of the RTC that it did not acquire jurisdiction over its person for defective service of summons.

PAKARTI's, SHINWA's, SKY's and ACENAV's respective motions for reconsideration were subsequently denied in the CA's assailed February 17, 2006 Resolution.

Issues Before the Court

PAKARTI, SHINWA, SKY and ACENAV filed separate petitions for review on *certiorari* before the Court, docketed as G.R. Nos. 171591, 171614, and 171663, which were ordered consolidated in the Court's Resolution dated July 31, 2006.[15]

On April 21, 2006, SKY manifested[16] that it will no longer pursue its petition in G.R. No. 171614 and has preferred to await the resolution in G.R. No. 171663 filed by PAKARTI and SHINWA. Accordingly, an entry of judgment[17] against it was made on August 18, 2006. Likewise, on November 29, 2007, PAKARTI and SHINWA moved[18] for the withdrawal of their petitions for lack of interest, which the Court granted in its January 21, 2008 Resolution.[19] The corresponding entry of judgment[20] against them was made on March 17, 2008.

Thus, only the petition of ACENAV remained for the Court's resolution, with the lone issue of whether or not it may be held liable to the respondents for 30% of their claim.

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[15] *Id.* at 55.

[16] *Rollo* (G.R. No. 171614), p. 9.

[17] *Id.* at 35-36.

[18] *Rollo* (G.R. No. 171663), pp. 349-354.

[19] *Id.* at 355-356.

[20] *Id.* at 357-358.

Maintaining that it was not a party to the bill of lading, ACENAV asserts that it cannot be held liable for the damages sought to be collected by the respondents. It also alleged that since its principal, CARDIA, was not impleaded as a party-defendant/ respondent in the instant suit, no liability can therefore attach to it as a mere agent. Moreover, there is dearth of evidence showing that it was responsible for the supposed defective packing of the goods upon which the award was based.

The Court's Ruling

A bill of lading is defined as "an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight to be delivered to the order or assigns of a specified person at a specified place."[21] It operates both as a receipt and as a contract. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks and condition, quality, and value. As a contract, it names the contracting parties, which include the consignee, fixes the route, destination, and freight rates or charges, and stipulates the rights and obligations assumed by the parties.[22] As such, it shall only be binding upon the parties who make them, their assigns and heirs.[23]

In this case, the original parties to the bill of lading are: (a) the shipper CARDIA; (b) the carrier PAKARTI; and (c) the consignee HEINDRICH. However, by virtue of their relationship with PAKARTI under separate charter arrangements, SHINWA, KEE YEH and its agent SKY likewise became parties to the bill of lading. In the same vein, ACENAV, as admitted agent of CARDIA, also became a party to the said contract of carriage.

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[21] Martin, *Commentaries and Jurisprudence on the Philippine Commercial Laws,* 1989 Revised Ed., Vol. 3, p. 91.

[22] *Iron Bulk Shipping Phil., Co., Ltd. v. Remington Industrial Sales Corp*., G.R. No. 136960, December 8, 2003, 417 SCRA 229, 234-235.

[23] Art. 1311, Civil Code.

The respondents, however, maintain[24] that ACENAV is a *ship agent* and not a mere agent of CARDIA, as found by both the CA[25] and the RTC.[26]

The Court disagrees.

Article 586 of the Code of Commerce provides:

ART. 586. The shipowner and the ship agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair, equip, and provision the vessel, provided the creditor proves that the amount claimed was invested therein.

By *ship agent* **is understood** *the person entrusted with the provisioning of a vessel, or who represents her in the port in which she may be found.* (Emphasis supplied)

Records show that the obligation of ACENAV was limited to informing the consignee HEINDRICH of the arrival of the vessel in order for the latter to immediately take possession of the goods. No evidence was offered to establish that ACENAV had a hand in the provisioning of the vessel or that it represented the carrier, its charterers, or the vessel at any time during the unloading of the goods. Clearly, ACENAV's participation was simply to assume responsibility over the cargo when they were unloaded from the vessel. Hence, no reversible error was committed by the courts *a quo* in holding that ACENAV was not a ship agent within the meaning and context of Article 586 of the Code of Commerce, but a *mere agent* of CARDIA, the shipper.

On this score, Article 1868 of the Civil Code states:

ART. 1868. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

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[24] *Rollo* (G.R. No. 171591), pp. 64-69.

[25] *Id.* at 33.

[26] *Id.* at 42.

Corollarily, Article 1897 of the same Code provides that an agent is not personally liable to the party with whom he contracts, unless he expressly binds himself or exceeds the limits of his authority without giving such party sufficient notice of his powers.

Both exceptions do not obtain in this case. Records are bereft of any showing that ACENAV exceeded its authority in the discharge of its duties as a *mere agent* of CARDIA. Neither was it alleged, much less proved, that ACENAV's limited obligation as agent of the shipper, CARDIA, was not known to HEINDRICH.

Furthermore, since CARDIA was not impleaded as a party in the instant suit, the liability attributed upon it by the CA[27] on the basis of its finding that the damage sustained by the cargo was due to improper packing cannot be borne by ACENAV. As *mere agent*, ACENAV cannot be made responsible or held accountable for the damage supposedly caused by its principal.[28]

Accordingly, the Court finds that the CA erred in ordering ACENAV jointly and severally liable with CARDIA to pay 30% of the respondents' claim.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are hereby **REVERSED**. The complaint against petitioner Ace Navigation Co., Inc. is hereby **DISMISSED**.

SO ORDERED.

Peralta (Acting Chairperson),[*] *Abad, Villarama, Jr.,*[**] and *Reyes,*[***] *JJ.,* concur.

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[27] *Id.* at 33.

[28] *Maritime Agencies & Services, Inc. v. Court of Appeals*, G.R. Nos. 77638 and 77674, July 12, 1990, 187 SCRA 346, 355.

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

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

[***] Designated member in lieu of Justice Jose C. Mendoza per Raffle dated 08 February 2012.

SECOND DIVISION

[G.R. No. 183623. June 25, 2012]

LETICIA B. AGBAYANI, *petitioner, vs.* **COURT OF APPEALS, DEPARTMENT OF JUSTICE and LOIDA MARCELINA J. GENABE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; DEPARTMENT OF JUSTICE CIRCULAR NO. 70 OR THE 2000 NATIONAL PROSECUTION SERVICE (NPS) RULES ON APPEAL; SUBSTANTIALLY COMPLIED WITH BY RESPONDENT IN CASE AT BAR.— Contrary to petitioner Agbayani's claim, there was substantial compliance with the rules. Respondent Genabe actually mentioned on page 2 of her petition for review to the DOJ the name of the petitioner as the private complainant, as well as indicated the latter's address on the last page thereof as "RTC Branch 275, Las Piñas City." The CA also noted that there was proper service of the petition as required by the rules since the petitioner was able to file her comment thereon. A copy thereof, attached as Annex "L" in the instant petition, bears a mark that the comment was duly received by the Prosecution Staff, Docket Section of the DOJ. Moreover, a computer verification requested by the petitioner showed that the prosecutor assigned to the case had received a copy of the petitioner's comment.

2. ID.; ID.; THE POWER OF REVIEW OF THE SECRETARY OF JUSTICE INCLUDES THE DISCRETION TO ACCEPT ADDITIONAL EVIDENCE FROM THE INVESTIGATING PROSECUTOR OR FROM RESPONDENT WHICH APPEARS TO HAVE BEEN SUBMITTED TO THE INVESTIGATING PROSECUTOR BUT INADVERTENTLY OMITTED BY PETITIONER WHEN SHE FILED HER PETITION.— In *Guy vs. Asia United Bank*, a motion for reconsideration from the resolution of the Secretary of Justice, which was filed four (4) days beyond the "non-extendible period of ten (10) days", was allowed under Section 13 of the 2000 NPS Rules on Appeal. The Supreme

Court held that the authority of the Secretary of Justice to review and order the withdrawal of an Information in instances where he finds the absence of a *prima facie* case is not time-barred, albeit subject to the approval of the court, if its jurisdiction over the accused has meanwhile attached. x x x The Court further stated in *Guy* that when the DOJ Secretary took cognizance of the petitioner's motion for reconsideration, he "effectively excepted such motion from the operation of the aforequoted Section 13 of DOJ Circular No. 70, s. 2000. This show of liberality is, to us, within the competence of the DOJ Secretary to make. The Court is not inclined to disturb the same absent compelling proof, that he acted out of whim and that petitioner was out to delay the proceedings to the prejudice of respondent in filing the motion for reconsideration." x x x But while prosecutors are given sufficient latitude of discretion in the determination of probable cause, their findings are still subject to review by the Secretary of Justice. Surely, this power of the Secretary of Justice to review includes the discretion to accept additional evidence from the investigating prosecutor or from herein respondent Genabe, evidence which nonetheless appears to have already been submitted to the investigating prosecutor but inadvertently omitted by her when she filed her petition.

3. ID.; ID.; DEPARTMENT OF JUSTICE CIRCULAR NO. 70 IS A MERE TOOL DESIGNED TO FACILITATE, NOT OBSTRUCT, THE ATTAINMENT OF JUSTICE THROUGH APPEALS TAKEN WITH THE NATIONAL PROSECUTION SERVICE; THE TECHNICAL RULES OF PROCEDURE LIKE THOSE FOUND IN SECTIONS 5 AND 6 THEREOF SHOULD BE INTERPRETED IN SUCH A WAY TO PROMOTE, NOT FRUSTRATE JUSTICE.— Petitioner Agbayani insists that the DOJ should have dismissed respondent Genabe's petition for review outright pursuant to Sections 5 and 6 of DOJ Circular No. 70. It is true that the general rule in statutory construction is that the words "shall," "must," "ought," or "should" are words of mandatory character in common parlance and in their in ordinary signification, yet, it is also well-recognized in law and equity as a not absolute and inflexible criterion. Moreover, it is well to be reminded that DOJ Circular No. 70 is a mere tool designed to facilitate, not obstruct, the attainment of justice through appeals taken

with the National Prosecution Service. Thus, technical rules of procedure like those under Sections 5 and 6 thereof should be interpreted in such a way to promote, not frustrate, justice. Besides, Sections 7 and 10 of DOJ Circular No. 70 clearly give the Secretary of Justice, or the Undersecretary in his place, wide latitude of discretion whether or not to dismiss a petition. Section 6 of DOJ Circular No. 70, invoked by petitioner Agbayani, is clearly encompassed within this authority, as shown by a cursory reading of Sections 7 and 10.

4. **POLITICAL LAW; LOCAL GOVERNMENT CODE; KATARUNGANG PAMBARANGAY; COMPULSORY PROCESS OF ARBITRATION IS A PRE-CONDITION FOR THE FILING OF A COMPLAINT IN COURT; NOT COMPLIED WITH IN CASE AT BAR.—** Undeniably, both petitioner Agbayani and respondent Genabe are residents of Las Piñas City and both work at the RTC, and the incident which is the subject matter of the case happened in their workplace. Agbayani's complaint should have undergone the mandatory *barangay* conciliation for possible amicable settlement with respondent Genabe, pursuant to Sections 408 and 409 of Republic Act No. 7160 or the Local Government Code of 1991. The compulsory process of arbitration is a pre-condition for the filing of the complaint in court. Where the complaint (a) did not state that it is one of excepted cases, or (b) it did not allege prior availment of said conciliation process, or (c) did not have a certification that no conciliation had been reached by the parties, the case should be dismissed. Here, petitioner Agbayani failed to show that the instant case is not one of the exceptions enumerated above. Neither has she shown that the oral defamation caused on her was so grave as to merit a penalty of more than one year.

APPEARANCES OF COUNSEL

Karen A. Gempis for petitioner.
Rosemarie Carmen Veloz Perey for private respondent.

DECISION

REYES, *J.*:

On petition for review under Rule 45 of the 1997 Rules of Court is the Decision[1] dated March 27, 2008 of the Court of Appeals (CA) dismissing the petition for *certiorari* and the Resolution[2] dated July 3, 2008 denying the motion for reconsideration thereof in CA-G.R. SP No. 99626. Petitioner Leticia B. Agbayani (Agbayani) assails the resolution of the Department of Justice (DOJ) which directed the withdrawal of her complaint for grave oral defamation filed against respondent Loida Marcelina J. Genabe (Genabe).

Antecedent Facts

Agbayani and Genabe were both employees of the Regional Trial Court (RTC), Branch 275 of Las Piñas City, working as Court Stenographer and Legal Researcher II, respectively. On December 29, 2006, Agbayani filed a criminal complaint for grave oral defamation against Genabe before the Office of the City Prosecutor of Las Piñas City, docketed as I.S. No. 07-0013, for allegedly uttering against her, in the presence of their fellow court employees and while she was going about her usual duties at work, the following statements, to wit:

> *"ANG GALING MO LETY, SINABI MO NA TINAPOS MO YUNG MARVILLA CASE, ANG GALING MO. FEELING LAWYER KA KASI, BAKIT DI KA MAGDUTY NA LANG, STENOGRAPHER KA MAGSTENO KA NA LANG, ANG GALING MO, FEELING LAWYER KA TALAGA. NAGBEBENTA KA NG KASO, TIRADOR KA NG JUDGE. SIGE HIGH BLOOD DIN KA, MAMATAY KA SANA SA HIGH BLOOD MO."*[3]

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[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Hakim S. Abdulwahid and Mariflor Punzalan Castillo, concurring; *rollo*, pp. 28-45.

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

[3] *Id.* at 29-30.

In a Resolution[4] rendered on February 12, 2007, the Office of the City Prosecutor of Las Piñas City[5] found probable cause for the filing of the Information for grave oral defamation against Genabe.

However, upon a petition for review filed by Genabe, the DOJ Undersecretary Ernesto L. Pineda (Pineda) found that:

After careful evaluation and consideration of the evidence on record, we find merit in the instant petition.

Contrary to the findings in the assailed resolution, we find that the subject utterances of respondent constitute only slight oral defamation.

As alleged by the [petitioner] in paragraphs 2, 3 and 4 of her complaint-affidavit, respondent uttered the remarks subject matter of the instant case in the heat of anger. This was also the tenor of the sworn statements of the witnesses for complainant. The Supreme Court, in the case of *Cruz vs. Court of Appeals*, G.R. Nos. 56224-26, November 25, 1982, x x x held that although abusive remarks may ordinarily be considered as serious defamation, under the environmental circumstances of the case, there having been provocation on complainant's part, and the utterances complained of having been made in the *heat of unrestrained anger and obfuscation,* such utterances constitute only the crime of slight oral defamation.

Notwithstanding the foregoing, we believe that the instant case should nonetheless be dismissed for non-compliance with the provisions of Book III, Title I, Chapter 7 (Katarungang Pambarangay), of Republic Act No. 7160 (The Local Government Code of 1991). As shown by the records, the parties herein are residents of Las Piñas City. x x x

The complaint-affidavit, however, failed to show that the instant case was previously referred to the *barangay* for conciliation in compliance with Sections 408 and 409, paragraph (d), of the Local Government Code, which provides:

Section 408. Subject Matter for Amicable Settlement; Exception Thereto. — The lupon of each *barangay* shall have authority to bring

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[4] *Id.* at 69-71.

[5] Through Prosecution Attorney II Carlo DL. Monzon.

together the parties actually residing in the same city or municipality for amicable settlement of all disputes except: x x x

Section 409. Venue. x x x (d) Those arising at the workplace where the contending parties are employed or xxx shall be brought in the *barangay* where such workplace or institution is located.

The records of the case likewise show that the instant case is not one of the exceptions enumerated under Section 408 of the Local Government Code. Hence, the dismissal of the instant petition is proper.

It is well-noted that the Supreme Court held that where the case is covered by P.D. 1508 (Katarungang Pambarangay Law), the compulsory process of arbitration required therein is a pre-condition for filing a complaint in court. Where the complaint (a) did not state that it is one of the excepted cases, or (b) it did not allege prior availment of said conciliation process, or (c) did not have a certification that no conciliation or settlement had been reached by the parties, the case should be dismissed x x x. While the foregoing doctrine is handed down in civil cases, it is submitted that the same should apply to criminal cases covered by, but filed without complying with, the provisions of P.D. 1508 x x x.[6]

Thus, in a Resolution[7] dated May 17, 2007, the DOJ disposed, to wit:

WHEREFORE, premises considered, the assailed resolution is hereby **REVERSED** and **SET ASIDE**. Accordingly, the City Prosecutor of Las Piñas City is directed to move for the withdrawal of the information for grave oral defamation filed against respondent Loida Marcelina J. Genabe, and report the action taken thereon within ten (10) days from receipt hereof.

SO ORDERED.[8]

The petitioner filed a motion for reconsideration, which was denied in a Resolution[9] dated June 25, 2007.

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[6] *Rollo*, pp. 91-93.

[7] *Id.* at 90-93.

[8] *Id.* at 93.

[9] *Id.* at 109-110.

Consequently, Agbayani filed a petition for *certiorari* with the CA alleging that the DOJ committed grave abuse of discretion in setting aside the Resolution dated February 12, 2007 of the City Prosecutor of Las Piñas City in I.S. Case No. 07-0013. She averred that the respondent's petition for review filed with the DOJ did not comply with Sections 5 and 6 of DOJ Circular No. 70, or the "2000 National Prosecution Service (NPS) Rules on Appeal," and maintained that her evidence supported a finding of probable cause for grave oral defamation against respondent Genabe.

On March 27, 2008, the CA dismissed the petition after finding no grave abuse of discretion on the part of the DOJ. Citing *Punzalan v. Dela Peña*,[10] the CA stated that for grave abuse of discretion to exist, the complained act must constitute a capricious and whimsical exercise of judgment as it is equivalent to lack of jurisdiction, or when 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 enjoined or to act at all in contemplation of law. It is not sufficient that a tribunal, in the exercise of its power, abused its discretion; such abuse must be grave.

On motion for reconsideration by the petitioner, the CA denied the same in its Resolution[11] dated July 3, 2008. Hence, the instant petition.

Assignment of Errors

Maintaining her stance, Agbayani raised the following, to wit:

I. RESPONDENT COURT GRAVELY ERRED IN HOLDING THAT THE RESPONDENT DOJ DID NOT ABUSE ITS DISCRETION WHEN THE LATTER REVERSED AND SET ASIDE THE RESOLUTION OF THE CITY PROSECUTOR OF LAS PIÑAS CITY.

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[10] 478 Phil. 771 (2004).

[11] *Supra* note 2.

II. RESPONDENT COURT GRAVELY ERRED IN AFFIRMING RESPONDENT DOJ'S FINDING THAT WHAT PRIVATE RESPONDENT COMMITTED WAS ONLY SLIGHT ORAL DEFAMATION.

III. RESPONDENT COURT GRAVELY ERRED IN AFFIRMING RESPONDENT DOJ'S DISMISSAL OF THE COMPLAINT DUE TO NON-COMPLIANCE WITH THE PROVISIONS OF THE LOCAL GOVERNMENT CODE OF 1991.

IV. RESPONDENT COURT GRAVELY ERRED WHEN IT HELD THAT THE REQUIREMENTS UNDER DOJ CIRCULAR NO. 70 (2000 NPS Rule on Appeal) ARE NOT MANDATORY.[12]

Ruling and Discussions

The petition is bereft of merit.

We shall first tackle Agbayani's arguments on the first two issues raised in the instant petition.

1. Petitioner Agbayani alleged that Undersecretary Pineda unfairly heeded only to the arguments interposed by respondent Genabe in her comment; and the CA, in turn, took his findings and reasoning as gospel truth. Agbayani's comment was completely disregarded and suppressed in the records of the DOJ. Agbayani discovered this when she went to the DOJ to examine the records, as soon as she received a copy of the DOJ Resolution of her motion for reconsideration.

2. Further, petitioner Agbayani maintained that respondent Genabe's Petition for Review[13] should have been dismissed outright, since it failed to state the name and address of the petitioner, nor did it show proof of service to her, pursuant to Sections 5 and 6 of DOJ Circular No. 70. Also, the petition

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[12] *Rollo*, p. 13.

[13] *Id.* at 72-81.

was not accompanied with the required attachments, *i.e.* certified copies of the complaint, affidavits of witnesses, petitioner's reply to respondent's counter-affidavit, and documentary evidences of petitioner. Thus, a grave irregularity was committed by the DOJ in allowing the surreptitious insertion of these and many other documents in the records of the case, after the petition had been filed.

In particular, petitioner Agbayani alleged that when the petition was filed on March 22, 2007, only five (5) documents were attached thereto, namely: (a) the Resolution of the City Prosecutor; (b) the respondent's Counter-affidavit; (c) Letter of the staff dated January 2, 2005; (d) her Answer; and (e) the Information filed against respondent Genabe with the Office of the City Prosecutor of Las Piñas City. However, at the time the Resolution of the DOJ was issued, a total of forty-one (41) documents[14] formed part of the records of the petition. Besides, respondent Genabe's Motion to Defer Arraignment (Document No. 40) and the court order relative to the granting of the same (Document No. 41) were both dated March 23, 2007, or a day after the petition was filed. Agbayani asserted that these thirty-six (36) documents were surreptitiously and illegally attached to the records of the case, an act constituting extrinsic fraud and grave misconduct.[15] At the very least, the DOJ should have required respondent Genabe to formalize the "insertion" of the said documents.

Petitioner Agbayani reiterated that her version of the incident was corroborated by several witnesses (officemates of Agbayani and Genabe), while that of Genabe was not. And since the crime committed by respondent Genabe consisted of her exact utterances, the DOJ erred in downgrading the same to slight oral defamation, completely disregarding the finding by the Investigating Prosecutor of probable cause for the greater offense of grave oral defamation. She denied that she gave provocation

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[14] *Id.* at 97-99.

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

to respondent Genabe, insisting that the latter committed the offense with malice aforethought and not in the heat of anger.

We find no merit in the above arguments.

It is well to be reminded, first of all, that the rules of procedure should be viewed as mere instruments designed to facilitate the attainment of justice. They are not to be applied with severity and rigidity when such application would clearly defeat the very rationale for their conception and existence. Even the Rules of Court reflects this principle.[16]

Anent the charge of non-compliance with the rules on appeal, Sections 5 and 6 of the aforesaid DOJ Circular provide:

> SECTION 5. Contents of petition. — The petition shall contain or state: (a) the names and addresses of the parties; (b) the Investigation Slip number (I.S. No.) and criminal case number, if any, and title of the case, including the offense charged in the complaint; (c) the venue of the preliminary investigation; (d) the specific material dates showing that it was filed on time; (e) a clear and concise statement of the facts, the assignment of errors, and the reasons or arguments relied upon for the allowance of the appeal; and (f) proof of service of a copy of the petition to the adverse party and the Prosecution Office concerned.
>
> The petition shall be accompanied by legible duplicate original or certified true copy of the resolution appealed from together with legible true copies of the complaint, affidavits/sworn statements and other evidence submitted by the parties during the preliminary investigation/ reinvestigation.
>
> If an information has been filed in court pursuant to the appealed resolution, a copy of the motion to defer proceedings filed in court must also accompany the petition.
>
> The investigating/reviewing/approving prosecutor shall not be impleaded as party respondent in the petition. The party taking the appeal shall be referred to in the petition as either "Complainant-Appellant" or "Respondent-Appellant."
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> SECTION 6. Effect of failure to comply with the requirements. — The failure of petitioner to comply WITH ANY of the foregoing

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[16] *Ginete v. CA*, 357 Phil. 36, 51 (1998).

requirements shall constitute sufficient ground for the dismissal of the petition.

Contrary to petitioner Agbayani's claim, there was substantial compliance with the rules. Respondent Genabe actually mentioned on page 2 of her petition for review to the DOJ the name of the petitioner as the private complainant, as well as indicated the latter's address on the last page thereof as "RTC Branch 275, Las Piñas City." The CA also noted that there was proper service of the petition as required by the rules since the petitioner was able to file her comment thereon. A copy thereof, attached as Annex "L" in the instant petition, bears a mark that the comment was duly received by the Prosecution Staff, Docket Section of the DOJ. Moreover, a computer verification requested by the petitioner showed that the prosecutor assigned to the case had received a copy of the petitioner's comment.[17]

As to the charge of extrinsic fraud, which consists of the alleged suppression of Agbayani's Comment and the unauthorized insertion of documents in the records of the case with the DOJ, we agree with the CA that this is a serious charge, especially if made against the Undersecretary of Justice; and in order for it to prosper, it must be supported by clear and convincing evidence. However, petitioner Agbayani's only proof is her bare claim that she personally checked the records and found that her Comment was missing and 36 new documents had been inserted. This matter was readily brought to the attention of Undersecretary Pineda by petitioner Agbayani in her motion for reconsideration, who however must surely have found such contention without merit, and thus denied the motion.[18]

Section 5 of the 2000 NPS Rules on Appeal also provides that the petition for review must be accompanied by a legible duplicate original or certified true copy of the resolution appealed from, together with legible true copies of the complaint, affidavits or sworn statements and other evidence submitted by the parties

[17] *Rollo*, p. 37.

[18] *Id.*

during the preliminary investigation or reinvestigation. Petitioner Agbayani does not claim that she was never furnished, during the preliminary investigation, with copies of the alleged inserted documents, or that any of these documents were fabricated. In fact, at least seven (7) of these documents were copies of her own submissions to the investigating prosecutor.[19] Presumably, the DOJ required respondent Genabe to submit additional documents produced at the preliminary investigation, along with Document Nos. 40 and 41, for a fuller consideration of her petition for review.

As for Document Nos. 40 and 41, which were dated a day after the filing of the petition, Section 5 of the 2000 NPS Rules on Appeal provides that if an Information has been filed in court pursuant to the appealed resolution, a copy of the Motion to Defer Proceedings must also accompany the petition. Section 3 of the above Rules states that an appeal to the DOJ must be taken within fifteen (15) days from receipt of the resolution or of the denial of the motion for reconsideration. While it may be presumed that the motion to defer arraignment accompanying the petition should also be filed within the appeal period, respondent Genabe can not actually be faulted if the resolution thereof was made after the lapse of the period to appeal.

In *Guy vs. Asia United Bank*,[20] a motion for reconsideration from the resolution of the Secretary of Justice, which was filed four (4) days beyond the "non-extendible period of ten (10) days," was allowed under Section 13 of the 2000 NPS Rules on Appeal. The Supreme Court held that the authority of the Secretary of Justice to review and order the withdrawal of an Information in instances where he finds the absence of a *prima facie* case is not time-barred, albeit subject to the approval of the court, if its jurisdiction over the accused has meanwhile attached.[21] We further explained:

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[19] Doc Nos. 12, 13, 25, 27, 36, 37, 38, per petitioner Agbayani's Motion for Reconsideration from the Department of Justice Resolution; *id.* at 97-99.

[20] G.R. No. 174874, October 4, 2007, 534 SCRA 703.

[21] *Crespo v. Judge Mogul*, 235 Phil. 465 (1987).

[I]t is not prudent or even permissible for a court to compel the Secretary of Justice or the fiscal, as the case may be, to prosecute a proceeding originally initiated by him on an information, if he finds that the evidence relied upon by him is insufficient for conviction. Now, then, if the Secretary of Justice possesses sufficient latitude of discretion in his determination of what constitutes probable cause and can legally order a reinvestigation even in those extreme instances where an information has already been filed in court, is it not just logical and valid to assume that he can take cognizance of and competently act on a motion for reconsideration, belatedly filed it might have been, dealing with probable cause? And is it not a grievous error on the part of the CA if it virtually orders the filing of an information, as here, despite a categorical statement from the Secretary of Justice about the lack of evidence to proceed with the prosecution of the petitioner? The answer to both posers should be in the affirmative. As we said in *Santos v. Go*:

> "[C]ourts cannot interfere with the discretion of the public prosecutor in evaluating the offense charged. He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance, or without any ground. Or, he may proceed with the investigation if the complaint in his view is sufficient and in proper form. The decision whether to dismiss a complaint or not, is dependent upon the sound discretion of the prosecuting fiscal and, ultimately, that of the Secretary of Justice. Findings of the Secretary of Justice are not subject to review unless made with grave abuse of discretion.

x x x x x x x x x

[T]o strike down the April 20, 2006 DOJ Secretary's Resolution as absolutely void and without effect whatsoever, as the assailed CA decision did, for having been issued after the Secretary had supposedly lost jurisdiction over the motion for reconsideration subject of the resolution may be reading into the aforequoted provision a sense not intended. For, the irresistible thrust of the assailed CA decision is that the DOJ Secretary is peremptorily barred from taking a second hard look at his decision and, in appropriate cases, reverse or modify the same unless and until a motion for reconsideration is timely interposed and pursued. The Court cannot accord cogency to the posture assumed by the CA under the premises which, needless to stress, <u>would deny the DOJ the authority to *motu proprio* undertake a review of his own decision with the end in view of protecting, in</u>

line with his oath of office, innocent persons from groundless, false or malicious prosecution. As the Court pointed out in *Torres, Jr. v. Aguinaldo*, the Secretary of Justice *would be committing a serious dereliction of duty if he orders or sanctions the filing of an information based upon a complaint where he is not convinced that the evidence warrants the filing of the action in court*.[22] (Citations omitted and underscoring supplied)

The Court further stated in *Guy* that when the DOJ Secretary took cognizance of the petitioner's motion for reconsideration, he "effectively excepted such motion from the operation of the aforequoted Section 13 of DOJ Circular No. 70, s. 2000. This show of liberality is, to us, within the competence of the DOJ Secretary to make. The Court is not inclined to disturb the same absent compelling proof, that he acted out of whim and that petitioner was out to delay the proceedings to the prejudice of respondent in filing the motion for reconsideration."[23]

The case of *First Women's Credit Corporation v. Perez*,[24] succinctly summarizes the general rules relative to criminal prosecution: that criminal prosecution may not be restrained or stayed by injunction, preliminary or final, albeit in extreme cases, exceptional circumstances have been recognized; that courts follow the policy of non-interference in the conduct of preliminary investigations by the DOJ, and of leaving to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against a supposed offender; and, that the court's duty in an appropriate case is confined to a determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.

But while prosecutors are given sufficient latitude of discretion in the determination of probable cause, their findings are still

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[22] *Supra* note 20, at 712-714.

[23] *Id.* at 714.

[24] G.R. No. 169026, June 15, 2006, 490 SCRA 774.

subject to review by the Secretary of Justice. Surely, this power of the Secretary of Justice to review includes the discretion to accept additional evidence from the investigating prosecutor or from herein respondent Genabe, evidence which nonetheless appears to have already been submitted to the investigating prosecutor but inadvertently omitted by her when she filed her petition.

3. Coming now to the DOJ's finding that the complaint fails to state a cause of action, the CA held that the DOJ committed no grave abuse of discretion in causing the dismissal thereof on the ground of non-compliance with the provisions of the Local Government Code of 1991, on the *Katarungang Pambarangay* conciliation procedure.

Undeniably, both petitioner Agbayani and respondent Genabe are residents of Las Piñas City and both work at the RTC, and the incident which is the subject matter of the case happened in their workplace.[25] Agbayani's complaint should have undergone the mandatory *barangay* conciliation for possible amicable settlement with respondent Genabe, pursuant to Sections 408 and 409 of Republic Act No. 7160 or the Local Government Code of 1991 which provide:

> Sec. 408. Subject Matter for Amicable Settlement; Exception thereto. — The lupon of each *barangay* shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes, except: x x x
>
> Sec. 409. Venue. x x x (d) Those arising at the workplace where the contending parties are employed or x x x shall be brought in the *barangay* where such workplace or institution is located.

Administrative Circular No. 14-93,[26] issued by the Supreme Court on July 15, 1993 states that:

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[25] *Rollo,* p. 92.

[26] Guidelines on the *Katarungang Pambarangay* Conciliation Procedure to Prevent Circumvention of the Revised *Katarungang Pambarangay* Law [Sections 399-442, Chapter VII, Title I, Book III, R.A. No. 7160, otherwise known as the Local Government Code of 1991].

x x x x x x x x x

I. All disputes are subject to *Barangay* conciliation pursuant to the Revised Katarungang Pambarangay Law [formerly P.D. 1508, repealed and now replaced by Secs. 399-422, Chapter VII, Title I, Book III, and Sec. 515, Title I, Book IV, R.A. 7160, otherwise known as the Local Government Code of 1991], and prior recourse thereto is a pre-condition before filing a complaint in court or any government offices, *except* in the following disputes:

[1] Where one party is the government, or any subdivision or instrumentality thereof;

[2] Where one party is a public officer or employee and the dispute relates to the performance of his official functions;

[3] Where the dispute involves real properties located in different cities and municipalities, unless the parties thereto agree to submit their difference to amicable settlement by an appropriate Lupon;

[4] Any complaint by or against corporations, partnerships or juridical entities, since only individuals shall be parties to *Barangay* conciliation proceedings either as complainants or respondents [Sec. 1, Rule VI, Katarungang Pambarangay Rules];

[5] Disputes involving parties who actually reside in *barangays* of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate Lupon;

[6] Offenses for which the law prescribes a maximum penalty of imprisonment exceeding one [1] year or a fine of over five thousand pesos ([₱]5,000.00);

[7] Offenses where there is no private offended party;

[8] Disputes where urgent legal action is necessary to prevent injustice from being committed or further continued, specifically the following:

[a] Criminal cases where accused is under police custody or detention [See Sec. 412(b)(1), Revised Katarungang Pambarangay Law];

[b] Petitions for *habeas corpus* by a person illegally deprived of his rightful custody over another or a person illegally deprived of or on acting in his behalf;

[c] Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support during the pendency of the action; and

[d] Actions which may be barred by the Statute of Limitations.

[9] Any class of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice;

[10] Where the dispute arises from the Comprehensive Agrarian Reform Law (CARL) [Secs. 46 & 47, R. A. 6657];

[11] Labor disputes or controversies arising from employer-employee relations [Montoya vs. Escayo, 171 SCRA 442; Art. 226, Labor Code, as amended, which grants original and exclusive jurisdiction over conciliation and mediation of disputes, grievances or problems to certain offices of the Department of Labor and Employment];

[12] Actions to annul judgment upon a compromise which may be filed directly in court [See Sanchez vs. [Judge] Tupaz, 158 SCRA 459]."

x x x x x x x x x

The compulsory process of arbitration is a pre-condition for the filing of the complaint in court. Where the complaint (a) did not state that it is one of excepted cases, or (b) it did not allege prior availment of said conciliation process, or (c) did not have a certification that no conciliation had been reached by the parties, the case should be dismissed.[27]

Here, petitioner Agbayani failed to show that the instant case is not one of the exceptions enumerated above. Neither has she shown that the oral defamation caused on her was so grave as to merit a penalty of more than one year. Oral defamation under Article 358 of the Revised Penal Code, as amended, is penalized as follows:

"Article 358. Slander. — Oral defamation shall be punished by *arresto mayor* in its maximum period to *prision correccional* in

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[27] *Morato v. Go, et al.*, 210 Phil. 367 (1983).

its minimum period if it is of a serious and insulting nature; otherwise, the penalty shall be *arresto menor* or a fine not exceeding 200 pesos."

Apparently, the DOJ found probable cause only for slight oral defamation. As defined in *Villanueva v. People*,[28] oral defamation or slander is the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood. It is grave slander when it is of a serious and insulting nature. The gravity depends upon: (1) the expressions used; (2) the personal relations of the accused and the offended party; and (3) the special circumstances of the case, the antecedents or relationship between the offended party and the offender, which may tend to prove the intention of the offender at the time. In particular, it is a rule that uttering defamatory words in the heat of anger, with some provocation on the part of the offended party constitutes only a light felony.[29]

We recall that in the morning of December 27, 2006 when the alleged utterances were made, Genabe was about to punch in her time in her card when she was informed that she had been suspended for failing to meet her deadline in a case, and that it was Agbayani who informed the presiding judge that she had missed her deadline when she left to attend a convention in Baguio City, leaving Agbayani to finish the task herself. According to Undersecretary Pineda, the confluence of these circumstances was the immediate cause of respondent Genabe's emotional and psychological distress. We rule that his determination that the defamation was uttered while the respondent was in extreme excitement or in a state of passion and obfuscation, rendering her offense of lesser gravity than if it had been made with cold and calculating deliberation, is beyond the ambit of our review.[30] The CA concurred that the complained utterances constituted only slight oral defamation, having been said in the heat of anger and with perceived provocation from Agbayani.

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[28] 521 Phil. 191 (2006).

[29] *Id.* at 204, citing the REVISED PENAL CODE.

[30] *Buan vs. Matugas*, G.R. No. 161179, August 7, 2007, 529 SCRA 263.

Respondent Genabe was of a highly volatile personality prone to throw fits (*sumpongs*), who thus shared a hostile working environment with her co-employees, particularly with her superiors, Agbayani and Hon. Bonifacio Sanz Maceda, the Presiding Judge of Branch 275, whom she claimed had committed against her "grievous acts that outrage moral and social conduct." That there had been a long-standing animosity between Agbayani and Genabe is not denied.

4. Lastly, petitioner Agbayani insists that the DOJ should have dismissed respondent Genabe's petition for review outright pursuant to Sections 5 and 6 of DOJ Circular No. 70. It is true that the general rule in statutory construction is that the words "shall," "must," "ought," or "should" are words of mandatory character in common parlance and in their in ordinary signification,[31] yet, it is also well-recognized in law and equity as a not absolute and inflexible criterion.[32] Moreover, it is well to be reminded that DOJ Circular No. 70 is a mere tool designed to facilitate, not obstruct, the attainment of justice through appeals taken with the National Prosecution Service. Thus, technical rules of procedure like those under Sections 5 and 6 thereof should be interpreted in such a way to promote, not frustrate, justice.

Besides, Sections 7 and 10 of DOJ Circular No. 70 clearly give the Secretary of Justice, or the Undersecretary in his place, wide latitude of discretion whether or not to dismiss a petition. Section 6 of DOJ Circular No. 70, invoked by petitioner Agbayani, is clearly encompassed within this authority, as shown by a cursory reading of Sections 7 and 10, to wit:

> SECTION 7. Action on the petition. The Secretary of Justice **may** dismiss the petition outright if he finds the same to be patently without merit or manifestly intended for delay, or when the issues raised therein are too unsubstantial to require consideration.

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[31] Agpalo, *Statutory Construction*, 1990 Edition, at 238.

[32] *Id.* at 239-240.

SECTION 12. Disposition of the appeal. The Secretary **may** reverse, affirm or modify the appealed resolution. He may, *motu proprio* or upon motion, dismiss the petition for review on any of the following grounds:

– That the petition was filed beyond the period prescribed in Section 3 hereof;

– That the procedure or any of the requirements herein provided has not been complied with;

– That there is no showing of any reversible error;

– That the appealed resolution is interlocutory in nature, except when it suspends the proceedings based on the alleged existence of a prejudicial question;

– That the accused had already been arraigned when the appeal was taken;

– That the offense has already prescribed; and

– That other legal or factual grounds exist to warrant a dismissal.

We reiterate what we have stated in *Yao v. Court of Appeals*[33] that:

In the interest of substantial justice, procedural rules of the most mandatory character in terms of compliance, may be relaxed. In other words, if strict adherence to the letter of the law would result in absurdity and manifest injustice, or where the merit of a party's cause is apparent and outweighs consideration of non-compliance with certain formal requirements, procedural rules should definitely be liberally construed. A party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on mere technicalities.[34] (Citations omitted)

All told, we find that the CA did not commit reversible error in upholding the Resolution dated May 17, 2007 of the DOJ as we, likewise, find the same to be in accordance with law and jurisprudence.

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[33] 398 Phil. 86 (2000).

[34] *Id.* at 107-108.

WHEREFORE, premises considered, the petition for review is hereby **DENIED**. Accordingly, the Decision dated March 27, 2008 and the Resolution dated July 3, 2008 of the Court of Appeals in CA-G.R. SP No. 99626 are **AFFIRMED** *in toto.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187604. June 25, 2012]

CITY OF MANILA, *petitioner, vs.* **ALEGAR CORPORATION, TEROCEL REALTY CORPORATION, and FILOMENA** ***VDA. DE*** **LEGARDA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; PETITIONER CITY OF MANILA WAS NOT DENIED OF ITS RIGHT TO BE HEARD ON ITS ACTION WHEN THE COURT DISMISSED THE SAME; REASON; TWO STAGES IN AN EXPROPRIATION OF PRIVATE LAND.—** The RTC did not deny the City its right to be heard on its action when that court dismissed the same. An expropriation proceeding of private lands has two stages: *first*, the determination of plaintiff's authority to exercise the power of eminent domain in the context of the facts of the case and, *second*, if there be such authority, the determination of just compensation. The first phase ends with either an order of dismissal or a determination that the property is to be acquired for a public purpose. Here, the City's action was still in the first stage when the RTC called the parties to a pre-trial conference where, essentially, their task was to determine how

the court may resolve the issue involved in the first stage: the City's authority to acquire by expropriation the particular lots for its intended purpose. As it happened, the parties opted to simultaneously submit their memoranda on that issue. There was nothing infirm in this agreement since it may be assumed that the parties knew what they were doing and since such agreement would facilitate early disposal of the case. Unfortunately, the agreement implied that the City was waiving its right to present evidence that it was acquiring the subject lots by expropriation for a proper public purpose. Counsel for the City may have been confident that its allegations in the complaint can stand on their own, ignoring the owners' challenge to its right to expropriate their lots for the stated purpose. Parenthetically, the City moved for the reconsideration of the RTC's order of dismissal but withdrew this remedy by filing a notice of appeal from that order to the CA. Evidently, the City cannot claim that it had been denied the opportunity of a hearing.

2. **ID.; ID.; ID.; THE PROPERTY OWNER'S ANSWER TO THE COMPLAINT TENDERED A FACTUAL ISSUE THAT CALLED FOR EVIDENCE ON THE CITY'S PART TO PROVE THE AFFIRMATIVE OF ITS ALLEGATIONS.—** Admittedly, the City alleged in its amended complaint that it wanted to acquire the subject lots in connection with its land-for-the-landless program and that this was in accord with its Ordinance 8012. But the City misses the point. The owners directly challenged the validity of the objective of its action. They alleged that the taking in this particular case of their lots is not for public use or purpose since its action would benefit only a few. Whether this is the case or not, the owners' answer tendered a factual issue that called for evidence on the City's part to prove the affirmative of its allegations. As already stated, the City submitted the issue for the RTC's resolution without presenting evidence.

3. **POLITICAL LAW; LOCAL GOVERNMENT; URBAN DEVELOPMENT HOUSING ACT (R.A. 7279); PETITIONER CITY OF MANILA FAILED TO SHOW THAT IT COMPLIED WITH THE REQUIREMENTS OF SECTION 9 OF R.A. 7279 WHICH LAYS DOWN THE ORDER OF PRIORITY IN THE ACQUISITION THROUGH EXPROPRIATION OF LANDS FOR SOCIALIZED**

HOUSING.— The CA correctly ruled that the City failed to show that it complied with the requirements of Section 9 of R.A. 7279 which lays down the order of priority in the acquisition through expropriation of lands for socialized housing. x x x The City of course argues that it did not have to observe the order of priority provided above in acquiring lots for socialized housing since it found on-site development to be more practicable and advantageous to the beneficiaries who were these lots' long-time occupants. But the problem remains. The City did not adduce evidence that this was so. Besides, Section 10 of R.A. 7279 also prefers the acquisition of private property by "negotiated sale" over the filing of an expropriation suit. It provides that such suit may be resorted to only when the other modes of acquisitions have been exhausted. x x x There is a sensible reason for the above. Litigation is costly and protracted. The government should also lead in avoiding litigations and overburdening its courts.

4. ID.; LOCAL GOVERNMENT CODE; UNDER ARTICLE 35 OF THE RULES AND REGULATIONS IMPLEMENTING THE LOCAL GOVERNMENT CODE, THE GOVERNMENT MUST EXHAUST ALL REASONABLE EFFORTS TO OBTAIN BY AGREEMENT THE LAND IT DESIRES AND ITS FAILURE TO COMPLY WILL WARRANT DISMISSAL OF THE COMPLAINT.— The Court has held that when the property owner rejects the offer but hints for a better price, the government should renegotiate by calling the property owner to a conference. The government must exhaust all reasonable efforts to obtain by agreement the land it desires. Its failure to comply will warrant the dismissal of the complaint. Article 35 of the Rules and Regulations Implementing the Local Government Code provides for this procedure. x x x Here, the City of Manila initially offered ₱1,500.00 per sq m to the owners for their lots. But after the latter rejected the offer, claiming that the offered price was even lower than their current zonal value, the City did not bother to renegotiate or improve its offer. The intent of the law is for the State or the local government to make a reasonable offer in good faith, not merely a *pro forma* offer to acquire the property. The Court cannot treat the requirements of Sections 9 and 10 of R.A. 7279 lightly. It held in *Estate or Heirs of the Late Ex-Justice Jose B.L. Reyes v. City of Manila*, that these requirements are strict

limitations on the local government's exercise of the power of eminent domain. They are the only safeguards of property owners against the exercise of that power. The burden is on the local government to prove that it satisfied the requirements mentioned or that they do not apply in the particular case.

5. **ID.; ID.; EMINENT DOMAIN; DUAL PURPOSE OF THE ADVANCE DEPOSIT REQUIRED UNDER SECTION 19 OF THE LOCAL GOVERNMENT CODE.—** The City insists that it made a deposit of ₱1.5 million with the RTC by way of advance payment on the lots it sought to expropriate. By withdrawing this deposit, respondents may be assumed to have given their consent to the expropriation. But the advance deposit required under Section 19 of the Local Government Code constitutes an advance payment only in the event the expropriation prospers. Such deposit also has a dual purpose: as pre-payment if the expropriation succeeds and as indemnity for damages if it is dismissed. This advance payment, a prerequisite for the issuance of a writ of possession, should not be confused with payment of just compensation for the taking of property even if it could be a factor in eventually determining just compensation. If the proceedings fail, the money could be used to indemnify the owner for damages.

6. **ID.; ID.; ID.; THE PROPERTY OWNER'S WITHDRAWAL OF THE DEPOSIT THAT THE CITY MADE DOES NOT AMOUNT TO A WAIVER OF THE DEFENSES THEY RAISED AGAINST EXPROPRIATION; THE ADVANCE DEPOSIT OR A PORTION OF IT COULD BE AWARDED TO THE OWNERS AS INDEMNITY TO COVER THE EXPENSES THEY INCURRED IN DEFENDING THEIR RIGHT.—** The owners' withdrawal of the deposit that the City made does not amount to a waiver of the defenses they raised against the expropriation. With the dismissal of the complaint, the amount or a portion of it could be awarded to the owners as indemnity to cover the expenses they incurred in defending their right. Notably, the owners neither filed a counterclaim for damages against the City nor did they seek indemnity for their expenses after the RTC dismissed its action. Consequently, the City government is entitled to the return of the advance deposit it made and that the owners withdrew. But, considering the expenses that the owners needed to incur in defending themselves in the appeals that the City instituted before the

CA and this Court, an award of ₱50,000.00 in attorney's fees against the City is in order. The owners must return the rest of the ₱1,500,000.00 that they withdrew.

APPEARANCES OF COUNSEL

Office of the City Legal Officer for petitioner.
Cruz Capule Marcon and Nabaza Law Offices for respondents.

D E C I S I O N

ABAD, *J*.:

This case is about the issues that a local government unit has to cope with when expropriating private property for socialized housing.

The Facts and the Case

On March 1, 2001 the City Council of Manila passed Ordinance 8012 that authorized the City Mayor to acquire certain lots[1] belonging to respondents Alegar Corporation, Terocel Realty Corporation, and Filomena *Vda. De* Legarda, for use in the socialized housing project of petitioner City of Manila. The City offered to buy the lots at ₱1,500.00 per square meter (sq m) but the owners rejected this as too low with the result that on December 2, 2003 the City filed a complaint for expropriation against them before the Regional Trial Court (RTC) of Manila.[2]

The City alleged in its complaint that it wanted to acquire the lots for its land-for-the-landless and on-site development programs involving the residents occupying them.[3] The City offered to acquire the lots for ₱1,500.00 per sq m[4] but the

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[1] Totaling 1,505.30 square meters covered by TCT 61050, 61051, 61052, 61059, 61061, 61062, 61063, 61064, 90853 and 126822.

[2] Docketed as Civil Case 03-108565.

[3] Amended Complaint, paragraphs 3 & 5, records, Vol. I, p. 49.

[4] *Id.*, paragraph 4.

owners rejected the offer. The total aggregate value of the lots for taxation purpose was ₱809,280.00 but the City deposited ₱1,500,000.00 with the Land Bank of the Philippines to enable it to immediately occupy the same pending hearing of the case.

Both Alegar and Terocel questioned the legitimacy of the City's taking of their lots solely for the benefit of a few long-time occupants. Alegar also pointed out that, while it declined the City's initial offer, it did not foreclose the possibility of selling the lots for the right price.[5] The filing of the suit was premature because the City made no effort in good faith to negotiate the purchase.

Meantime, on June 9, 2004 the trial court issued a writ of possession in the City's favor. On December 19, 2006, upon the joint motion of the parties, the RTC released the ₱1,500,000.00 deposit to the defendant owners.

On October 15, 2007 the parties agreed to forego with the pre-trial, opting instead to simultaneously submit their memoranda on the issue of whether or not there is necessity for the City to expropriate the subject properties for public use. The owners of the lots submitted their memorandum but the City did not.

On February 12, 2008 the RTC dismissed the complaint on the ground that the City did not comply with Section 9 of Republic Act (R.A.) 7279[6] which set the order of priority in the acquisition of properties for socialized housing. Private properties ranked last in the order of priorities for such acquisition and the City failed to show that no other properties were available for the project. The City also failed to comply with Section 10 which authorized expropriation only when resort to other modes (such as community mortgage, land swapping, and negotiated purchase) had been exhausted.

The trial court pointed out that the City also failed to show that it exhausted all reasonable efforts to acquire the lots through

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[5] Annex "2" of Answer.

[6] Known as the Urban Development Housing Act (UDHA).

a negotiated sale. Article 35 of the Rules and Regulations Implementing the Local Government Code provides that when property owners are willing to sell but for a higher price than that offered, the local chief executive must confer with them for the possibility of coming to an agreement on the price. Here, after the owners refused to sell the lots for ₱1,500.00 per sq m offer, the City did not exert any effort to renegotiate or revise its offer. The RTC also ruled that the City submitted the issue of genuine necessity to acquire the properties for public purpose or benefit without presenting evidence on the same.

The City moved for the reconsideration of the order of dismissal but before the RTC could act on it, the City appealed the case to the Court of Appeals (CA).[7]

On February 27, 2009[8] the CA affirmed the RTC's dismissal of the City's action, mainly for the reason that the City failed to comply with the requirements of Sections 9 and 10 of R.A. 7279 which ranked privately-owned lands last in the order of priority in acquiring lots for socialized housing and which preferred modes other than expropriation for acquiring them. The CA rejected the City's claim that the RTC denied it its right to due process, given that the City agreed to forego with pre-trial and to just submit a memorandum on the threshold issues raised by the owners' answer regarding the propriety of expropriation.[9] The City simply did not submit a memorandum. Although it moved for the reconsideration of the order of dismissal, the City filed a notice of appeal before the RTC could resolve the motion.

The Issues

The petition raises the following issues:

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[7] Docketed as CA-G.R. CV 90530.

[8] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associates Justices Fernanda Lampas-Peralta and Apolinario D. Bruselas, Jr.

[9] Order dated October 15, 2007.

1. Whether or not the CA erred in failing to rule that the RTC denied the City its right to due process when it dismissed the case without hearing the City's side;

2. Whether or not the CA erred in affirming the RTC's ruling that the City failed to comply with the requirements of Sections 9 and 10 of R.A. 7279 in trying to acquire the subject lots by expropriation;

3. Whether or not the CA erred in failing to set aside the RTC's ruling that the City failed to establish the existence of genuine necessity in expropriating the subject lots for public use or purpose; and

4. Whether or not the CA erred in failing to rule that the owners' withdrawal of its ₱1.5 million deposit constituted implied consent to the expropriation of their lots.

The Rulings of the Court

One. The RTC did not deny the City its right to be heard on its action when that court dismissed the same. An expropriation proceeding of private lands has two stages: *first*, the determination of plaintiff's authority to exercise the power of eminent domain in the context of the facts of the case and, *second*, if there be such authority, the determination of just compensation. The first phase ends with either an order of dismissal or a determination that the property is to be acquired for a public purpose.[10]

Here, the City's action was still in the first stage when the RTC called the parties to a pre-trial conference where, essentially, their task was to determine how the court may resolve the issue involved in the first stage: the City's authority to acquire by expropriation the particular lots for its intended purpose. As it happened, the parties opted to simultaneously submit their memoranda on that issue. There was nothing infirm in this agreement since it may be assumed that the parties knew what

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[10] *City of Iloilo v. Hon. Lolita Contreras-Besana*, G.R. No. 168967, February 12, 2010, 612 SCRA 458, 467-468.

they were doing and since such agreement would facilitate early disposal of the case.[11]

Unfortunately, the agreement implied that the City was waiving its right to present evidence that it was acquiring the subject lots by expropriation for a proper public purpose. Counsel for the City may have been confident that its allegations in the complaint can stand on their own, ignoring the owners' challenge to its right to expropriate their lots for the stated purpose. Parenthetically, the City moved for the reconsideration of the RTC's order of dismissal but withdrew this remedy by filing a notice of appeal from that order to the CA. Evidently, the City cannot claim that it had been denied the opportunity of a hearing.

Two. The CA correctly ruled that the City failed to show that it complied with the requirements of Section 9 of R.A. 7279 which lays down the order of priority in the acquisition through expropriation of lands for socialized housing. This section provides:

Section 9. *Priorities in the acquisition of Land.* — Lands for socialized housing shall be acquired in the following order:

(a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;

(b) Alienable lands of the public domain;

(c) Unregistered or abandoned and idle lands;

(d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;

(e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and

(f) **Privately-owned lands**.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this

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[11] RULES OF COURT, Rule 18, Section 2(i).

section shall not apply. The local government units shall give budgetary priority to on-site development of government lands. (Emphasis supplied)

The City of course argues that it did not have to observe the order of priority provided above in acquiring lots for socialized housing since it found on-site development to be more practicable and advantageous to the beneficiaries who were these lots' long-time occupants. But the problem remains. The City did not adduce evidence that this was so.

Besides, Section 10 of R.A. 7279 also prefers the acquisition of private property by "negotiated sale" over the filing of an expropriation suit. It provides that such suit may be resorted to only when the other modes of acquisitions have been exhausted. Thus:

> Section 10. *Modes of Land Acquisition*. — The modes of acquiring land for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation: Provided, however, **That expropriation shall be resorted to only when other modes of acquisition have been exhausted**; Provided, further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act. x x x (Emphasis supplied)

There is a sensible reason for the above. Litigation is costly and protracted. The government should also lead in avoiding litigations and overburdening its courts.

Indeed, the Court has held that when the property owner rejects the offer but hints for a better price, the government should renegotiate by calling the property owner to a conference.[12] The government must exhaust all reasonable efforts to obtain by agreement the land it desires. Its failure to comply will warrant the dismissal of the complaint. Article 35 of the Rules and Regulations Implementing the Local Government Code provides for this procedure. Thus:

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[12] *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now City) of Pasig, Metro Manila*, 503 Phil. 845, 864 (2005).

Article 35. *Offer to Buy and Contract of Sale*—(a) The offer to buy private property for public use or purpose shall be in writing. It shall specify the property sought to be acquired, the reasons for its acquisition, and the price offered.

x x x x x x x x x

(c) If the owner or owners are willing to sell their property but at a price higher than that offered to them, the local chief executive shall call them to a conference for the purpose of reaching an agreement on the selling price. The chairman of the appropriation or finance committee of the *sanggunian*, or in his absence, any member of the *sanggunian* duly chosen as its representative, shall participate in the conference. When an agreement is reached by the parties, a contract of sale shall be drawn and executed.

Here, the City of Manila initially offered ₱1,500.00 per sq m to the owners for their lots. But after the latter rejected the offer, claiming that the offered price was even lower than their current zonal value, the City did not bother to renegotiate or improve its offer. The intent of the law is for the State or the local government to make a reasonable offer in good faith, not merely a *pro forma* offer to acquire the property.[13]

The Court cannot treat the requirements of Sections 9 and 10 of R.A. 7279 lightly. It held in *Estate or Heirs of the Late Ex-Justice Jose B.L. Reyes v. City of Manila*,[14] that these requirements are strict limitations on the local government's exercise of the power of eminent domain. They are the only safeguards of property owners against the exercise of that power. The burden is on the local government to prove that it satisfied the requirements mentioned or that they do not apply in the particular case.[15]

Three. Admittedly, the City alleged in its amended complaint that it wanted to acquire the subject lots in connection with its land-for-the-landless program and that this was in accord with its Ordinance 8012. But the City misses the point. The owners

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[13] *Id.* at 866.

[14] 467 Phil. 165 (2004).

[15] *Filstream International, Inc. v. Court of Appeals*, 348 Phil. 756, 775 (1998).

directly challenged the validity of the objective of its action. They alleged that the taking in this particular case of their lots is not for public use or purpose since its action would benefit only a few. Whether this is the case or not, the owners' answer tendered a factual issue that called for evidence on the City's part to prove the affirmative of its allegations. As already stated, the City submitted the issue for the RTC's resolution without presenting evidence.

Four. The City insists that it made a deposit of ₱1.5 million with the RTC by way of advance payment on the lots it sought to expropriate. By withdrawing this deposit, respondents may be assumed to have given their consent to the expropriation.

But the advance deposit required under Section 19 of the Local Government Code constitutes an advance payment only in the event the expropriation prospers. Such deposit also has a dual purpose: as pre-payment if the expropriation succeeds and as indemnity for damages if it is dismissed. This advance payment, a prerequisite for the issuance of a writ of possession, should not be confused with payment of just compensation for the taking of property even if it could be a factor in eventually determining just compensation.[16] If the proceedings fail, the money could be used to indemnify the owner for damages.[17]

Here, therefore, the owners' withdrawal of the deposit that the City made does not amount to a waiver of the defenses they raised against the expropriation. With the dismissal of the complaint, the amount or a portion of it could be awarded to the owners as indemnity to cover the expenses they incurred in defending their right.

Notably, the owners neither filed a counterclaim for damages against the City nor did they seek indemnity for their expenses after the RTC dismissed its action. Consequently, the City government is entitled to the return of the advance deposit it

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[16] *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*, G.R. No. 169453, December 6, 2006, 510 SCRA 590, 602-603.

[17] *Visayan Refining Company v. Camus*, 40 Phil. 550, 563 (1919).

made and that the owners withdrew. But, considering the expenses that the owners needed to incur in defending themselves in the appeals that the City instituted before the CA and this Court, an award of ₱50,000.00 in attorney's fees against the City is in order. The owners must return the rest of the ₱1,500,000.00 that they withdrew.

Lastly, the Court must point out that the ruling in this case is without prejudice to the right of the City to re-file the action after it has complied with the relevant mandatory provisions of R.A. 7279 and Article 35 of the Rules and Regulations Implementing the Local Government Code.

WHEREFORE, the Court **DENIES** the petition and ***AFFIRMS*** the decision of the Court of Appeals dated February 27, 2009 in CA-G.R. CV 90530 subject to the following **MODIFICATIONS**:

1. Petitioner City of Manila is ordered to indemnify respondents Alegar Corporation, Terocel Realty Corporation, and Filomena *Vda. De* Legarda in the amount of ₱50,000.00 as attorney's fees;

2. Respondents Alegar Corporation, Terocel Realty Corporation, and Filomena *Vda. De* Legarda are in turn ordered to return the advance deposit of ₱1,500,000.00 that they withdrew incident to the expropriation case; and

3. This decision is without prejudice to the right of the City of Manila to re-file their action for expropriation after complying with what the law requires.

SO ORDERED.

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

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[*] 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.

[***] Designated Additional Member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated June 11, 2012.

SECOND DIVISION

[G.R. No. 187951. June 25, 2012]

THE WELLEX GROUP, INC., *petitioner, vs.* **SANDIGANBAYAN,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; PLUNDER LAW (R.A. 7080); FORFEITURE OF WEALTH PROVEN TO BE ILL-GOTTEN INCLUDES THEIR INTERESTS, INCOMES AND ASSETS INCLUDING THE PROPERTIES AND SHARES OF STOCK DERIVED FROM THE DEPOSIT OR INVESTMENT THEREOF FORFEITED IN FAVOR OF THE STATE.—** When petitioner Wellex contracted the loan from then Equitable PCI-Bank, the former voluntarily constituted a chattel mortgage over its Waterfront shares, with the subsequent addition of the subject Wellex shares as added security for the loan obligation. Thus, the Wellex loan and the Chattel Mortgage, which were constituted over the Wellex and Waterfront shares of stock, became the asset of the aforementioned IMA Trust Account. In this case, the loan transaction between Wellex and Equitable PCI-Bank, as Investment Manager of the IMA Trust Account, constitutes the principal contract; and the Chattel Mortgage over the subject shares of stock constitutes the accessory contract. It was established during the trial of the plunder case that the source of funding for the loan extended to Wellex was former President Estrada, who had in turn sourced the fund from S/A 0160-62501-5 and coursed it through IMA Trust Account 101-78056-1. After his conviction for the crime of plunder, the IMA Trust Account under the name of Jose Velarde was forfeited. As a consequence, all assets and receivables of the said trust account were also included in the forfeiture, which was not without any legal basis. Section 2 of R.A. 7080, as amended, provides for the forfeiture of the wealth proven to be ill-gotten, as well its interests, thus: x x x **The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment**

thereof forfeited in favor of the State. x x x There is no dispute that the subject shares of stock were mortgaged by petitioner Wellex as security for its loan. These shares being the subject of a contract that was accessory to the Wellex loan and being an asset of the forfeited IMA trust Account, the said shares necessarily follow the fate of the trust account and are forfeited as well. However, the forfeiture of the said trust account, together with all its assets and receivables, does not affect the validity of the loan transaction between BDO the creditor and Wellex the debtor. The loan continues to be valid despite the forfeiture by the government of the IMA Trust Account and is considered as an asset. Consequently, the forfeiture had the effect of subrogating the state to the rights of the trust account as creditor.

2. **ID.; ID.; THE SCOPE OF CRIMINAL FORFEITURE BY THE GOVERNMENT INCLUDES ANY PROPERTY, REAL OR PERSONAL, INVOLVED IN THE CRIME OR TRACEABLE TO THE PROPERTY.—** Forfeiture in a criminal case is considered *in personam,* similar to a money judgment that runs against a defendant until it is fully satisfied. This criminal forfeiture is considered part of the criminal proceedings against the defendant, rather than a separate proceeding against the property itself. The scope of criminal forfeiture by the government includes any property, real or personal, involved in the crime or traceable to the property. The term "involved in" has consistently been interpreted broadly by courts to include any property involved in, used to commit, or used to facilitate the crime.

3. **ID.; ID.; PETITIONER'S INTERPRETATION OF SECTION 2 OF R.A. 7080 IS NARROW AND RIGID AND DEFEATS RATHER THAN SERVES THE ENDS OF JUSTICE IN PLUNDER CASES.—** Petitioner's interpretation of Section 2 of R.A. 7080 is narrow and rigid and defeats rather than serves the ends of justice in plunder cases. Section 2 of R.A. 7080 mandates the court to forfeit not only the ill-gotten wealth, interests earned, and other incomes and assets, but also the properties and shares of stock derived from the deposit or investment. The Sandiganbayan Decision imposed the penalty of forfeiture when it convicted the former President Estrada of the crime of plunder. It is beyond cavil that it found the subject IMA Trust Account traceable to the accounts declared

to be ill-gotten by the former President. Thus, to rigidly construe the mandate of Section 2 of R.A. 7080, as petitioner would want us to do, is to render the Plunder Law inutile.

4. ID.; ID.; THE SANDIGANBAYAN CORRECTLY LAID THE BASIS OF ITS ORDER OF FORFEITURE.—In its Resolution dated 28 January 2008 (in Criminal Case No. 26558 from which the assailed Resolution subject of this Petition originated), the Sandiganbayan correctly laid the basis of its Order of forfeiture as follows: The provision of Section 2 must be interpreted in its entirely and cannot be confined to words and phrases which are taken out of context. The trunk of the tree of forfeiture under Section 2 is ill-gotten wealth and the branches of the ill-gotten wealth are the interests, incomes, assets, properties and shares of stocks derived from or traceable to the deposit or investment of such ill-gotten wealth. Interpreted otherwise, what should be forfeited are assets in whatever form that are derived or can be traced to the ill-gotten wealth as defined under sub-pars. 1-6, par. (d), Section 1 of the Plunder Law. Should Assets (sic) not derived, nor traceable to the ill-gotten wealth be forfeited in favor of the State, such would result in deprivation of property without due process of law. x x x. No less than Movant had admitted that while the Decision of the Court includes forfeiture of a specific sum, the Plunder Law limits this only to property derived or traceable to the instruments or proceeds of the crime. Not only does the Plunder Law authorize the forfeiture of the ill-gotten wealth as well as any asset acquired with the use of the ill-gotten wealth, Section 6 likewise authorizes the forfeiture of these ill-gotten wealth and any assets acquired therefrom even if they are in the possession of other persons. Thus, Section 6 provides: "Section 6. *Prescription of Crimes* — The crime punishable under this Act shall prescribe in twenty (20) years. However, the rights of the State to receive properties unlawfully acquired by public officers from them or from their nominees or transferees shall not be barred by prescription, laches, or estoppel." Even petitioner admits that the amount of ₱506,416,666.66 was deposited to S/A 0160-62501-5 via a credit memo, and that ₱500 million was subsequently withdrawn from the said savings account, deposited to IMA Trust Account No. 101-78056-1, and then loaned to petitioner. The Sandiganbayan made a categorical finding that former President

Estrada was the real and beneficial owner of S/A 0160-62501-5 in the name of Jose Velarde.

5. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; THE DECEMBER 12, 2007 DECISION OF THE SANDIGANBAYAN IN CRIMINAL CASE NO. 26558 HAS BECOME FINAL AND EXECUTORY AND AS A CONSEQUENCE, THE FINDINGS OF FACT AND LEGAL CONCLUSION OF THE SAID DECISION THAT THE ₱500 MILLION WAS COURSED THROUGH THE *JOSE VELARDE* ACCOUNT ADJUDGED AS ILL-GOTTEN ARE NOW IMMUTABLE AND UNALTERABLE.—** We agree with Wellex that the 12 September 2007 Decision of the Sandiganbayan in Criminal Case No. 26558 has become final and executory. As a consequence, the findings of fact and legal conclusion of the said Decision — that the ₱500 million was coursed through the Jose Velarde account adjudged as ill-gotten — are now immutable and unalterable. In addition, petitioner waived its right to correct whatever error it perceived in the assailed Resolutions, when it failed to submit its memorandum in Criminal Case No. 26558 to settle the validity of the BIR's claim over the IMA Trust Account.

6. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NO GRAVE ABUSE OF DISCRETION IS PRESENT IN CASE AT BAR TO MERIT NULLIFICATION OF THE ASSAILED RESOLUTIONS.—** Grave abuse of discretion has been defined as such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. We do not find this situation present in this case to merit the nullification of the assailed Resolutions. It is beyond doubt that IMA Trust Account No. 101-78056-1 and its assets were traceable to the account adjudged as ill-gotten. As such, the trust account and its assets were indeed within the scope of the forfeiture Order issued by the Sandiganbayan in the plunder case against the former President. Thus, it did not commit grave abuse of discretion when it ordered the forfeiture of the trust account in BDO, including the assets and receivables thereof.

APPEARANCES OF COUNSEL

Corporate Counsels, Philippines Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *J.*:

This is a Petition for *Certiorari* under Rule 65 seeking to nullify the Resolutions dated 24 September 2008 and 02 April 2009 promulgated by the Sandiganbayan (Special Division) in Criminal Case No. 26558, *People of the Philippines v. Joseph Ejercito Estrada*.

Petitioner The Wellex Group, Inc. (Wellex) assails the mentioned Resolutions of the Sandiganbayan, alleging that the latter unduly included 450 million shares of stock of Waterfront Philippines, Inc. in the forfeiture proceedings ordered under respondent's Amended Writ of Execution in Criminal Case No. 26558. Petitioner asserts that the subject shares of stock should not be forfeited as part of the execution process in the plunder case, because Wellex is not a party to the case. Thus, it avers that the Sandiganbayan committed grave abuse of discretion in issuing the questioned Resolutions, which included the shares for forfeiture.

The Facts

On 12 September 2007, the Sandiganbayan, through its Special Division, promulgated a Decision in Criminal Case No. 26558, the plunder case filed against former President Joseph Ejercito Estrada (former President Estrada). The said Decision found him guilty of the crime of plunder and ordered the forfeiture of the following:

Moreover, in accordance with Section 2 of Republic Act No. 7080, as amended by Republic Act No. 7659, the Court hereby declares the forfeiture in favor of the Government of the following:

(1) The total amount of Five Hundred Forty Two Million Seven Hundred Ninety One Thousand Pesos (₱545,291,000.00) [sic], with interest and income earned, inclusive of the amount of Two Hundred Million Pesos (₱200,000,000.00), deposited in the name and account of the Erap Muslim Youth Foundation.

(2) The amount of One Hundred Eighty Nine Million Pesos (₱189,000,000.00), inclusive of interests and income earned, deposited in the Jose Velarde account.

(3) The real property consisting of a house and lot dubbed as "Boracay Mansion" located at #100 11th Street, New Manila, Quezon City.[1]

On 25 October 2007, President Arroyo granted former President Estrada executive clemency through a Pardon, which he accepted on 26 October 2007.[2] The Pardon, however, expressly stipulates as follows:

The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof, except for the bank account(s) he owned before his tenure as President.[3]

With this development, the Special Division of the Sandiganbayan on 26 October 2007 ordered the issuance of a Writ of Execution for the satisfaction of the judgment, which was not covered by the Executive Clemency granted to former President Estrada.[4] On 05 November 2007, the Writ of Execution[5] was issued against him.

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[1] *Rollo,* p. 332, Sandiganbayan (Special Division) Decision dated 12 September 2007 penned by then former Presiding (now Supreme Court) Justice Teresita J. Leonardo-De Castro and concurred in by Associate Justice Francisco H. Villaruz, Jr. and former Sandiganbayan Associate (now Supreme Court) Justice Diosdado M. Peralta.

[2] Sandiganbayan Criminal Case No. 26558 records, Vol. 59, p. 81.

[3] *Id.*

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

[5] *Id.* at 113-114.

On 09 November 2007, former President Estrada filed a Motion to Quash Writ of Execution.[6] He alleged that the Writ of Execution expanded the 12 September 2007 Decision by including within the scope of forfeiture "any and all" of his personal and real properties. He believes that the added portion in the writ is tantamount to the imposition of a penalty and is thus a nullity.[7]

In the plunder case, the Office of the Special Prosecutor filed an Opposition[8] to the Motion to Quash of the former President. It rebutted his averments of movant Estrada and asserted its position that the Writ of Execution sought to be quashed did not vary the 12 September 2007 Decision of the Sandiganbayan, but in fact only implemented Section 2 of Republic Act No. 7080,[9] the Plunder Law, under which his was convicted.[10]

On 21 January 2008, Wellex wrote a letter[11] to Banco De Oro expressing the desire to retrieve the Waterfront shares the former had used as collateral to secure an earlier loan obligation

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[6] *Id.* at 121.

[7] *Id.* at 125.

[8] *Id.* at 158.

[9] R.A. No. 7080 – Section 2 (as amended). *Definition of the Crime of Plunder; Penalties*. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

[10] Sandiganbayan Criminal Case No. 26558, records, Vol. 59, p. 163.

[11] *Id.* at 280.

to Equitable-PCI Bank. It was at this time that Wellex became aware of the Writ of Constructive Distraint issued by the BIR to Investment Management Account (IMA) Trust Account No. 101-78056-1 in relation to the plunder case. While petitioner admits the existence of its loan and acknowledges Equitable-PCI Bank as the lender, the former wants the mortgaged shares back. Alleging that its loan obligation for which the shares were given as collateral has been extinguished, petitioner says:

It appears that interest payments on the loan were made for a certain period but these payments stopped at some point in time. Inquiries resulted in our view that coincident to the stoppage of interest payments, **principal payment of the obligation was made by or on behalf of the borrower, not to your bank as investment manager, but instead directly to the owner of the account.** THE WELLEX GROUP, INC. is presently interested in retrieving the shares given as security for the loan obligation which apparently has been extinguished. (Emphasis supplied)[12]

On 28 January 2008, the Sandiganbayan promulgated a Resolution[13] partially granting the Motion to Quash of former President Estrada. It qualified its ruling by stating that the forfeiture process under the Plunder Law was limited only to those proven to be traceable as ill-gotten. The dispositive portion of the 28 January 2008 Resolution reads:

NOW THEREFORE, you are hereby commanded to cause the forfeiture in favor of the government of the abovementioned amounts and property listed in the said dispositive portion of the decision, including payment in full of your lawful fees for the service of the writ.

In the event that the amounts or property listed for forfeiture in the dispositive portion be insufficient or could no longer be

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[12] *Id.* at 281.

[13] Resolution dated 28 January 2008 by Sandiganbayan Justice Francisco H. Villaruz, Jr. and concurred in by former Sandiganbayan (now Supreme Court Associate) Justice Diosdado M. Peralta and Justice Adolfo A. Ponferrada, Sandiganbayan Criminal Case No. 26558; records, Vol. 59, pp. 243 to 251.

found, you are authorized to issue notices of levy and/or garnishment to any person who is in possession of any and all form of assets that is traceable or form part of the amounts or property which have been ordered forfeited by this Court, including but not limited to the accounts receivable and assets found at Banco De Oro (the successor in interest of Equitable PCI Bank) in the personal IMA Trust Account No. 101-78056-1 in the name of Jose Velarde (which has been adjudged by the Court to be owned by former President Joseph Ejercito Estrada and the depositary of the ill-gotten wealth) consisting of Promissory Notes evidencing the loan of ₱500,000,000.00 with due date as of August 2, 2000 and the chattel mortgage securing the loan; Waterfront shares aggregating ₱750,000,000 shares (estimated to be worth ₱652,000,000.00 at the closing price of ₱0.87 per share as of January 21, 2008); and Common Trust Fund money in the amount of ₱95,759,000.00 plus interest earned thereby.

You are hereby directed to submit a weekly report on your proceedings in the implementation of this Writ of Execution. (Emphasis supplied)

Pursuant to the 28 January 2008 Resolution, the Sandiganbayan issued an Amended Writ of Execution on 19 February 2008 directing Sheriff Edgardo A. Urieta, Chief Judicial Staff Officer, Security and Sheriff Services of the Sandiganbayan, to implement the amended writ and to submit a weekly report through the Executive Clerk of Court.[14]

On 22 February 2008, Sheriff Urieta submitted a Sheriff's Progress Report on the implementation of the Amended Writ of Execution. The report stated, among others, that Banco De Oro Unibank, Inc. (BDO), having acquired Equitable PCI-Bank, informed his office that the Jose Velarde Account was under the Constructive Distraint issued by the Bureau of Internal Revenue (BIR). Thus, the assets under the said account could not yet be delivered to the Sandiganbayan pursuant to the Writ of Execution, pending the termination of the investigation conducted by the National Investigation Division of the BIR.[15]

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[14] *Rollo,* pp. 336-338.

[15] Sandiganbayan records (Criminal Case No. 26558), Vol. 59, pp. 267-268.

On 18 April 2008, BDO filed through its counsel a Manifestation (with Motion for Leave to File Manifestation) confirming to the Sandiganbayan that the assets of IMA Trust Account No. 101-78056-1 (as of 02 October 2002) under the name of Jose Velarde remained intact.[16] The assets of the trust account, which included 450 million shares of Waterfront Philippines, was under the auspices of its Trust Department. Those assets remained on hold by virtue of a Constructive Distraint issued on January 2001 by the BIR through its then officer in charge, Commissioner Lilian B. Hefti.[17] BDO also sought the guidance of the Sandiganbayan on how to proceed with the disposition of the subject IMA Trust Account in view of the lien by the BIR and the claim of Wellex.[18]

On 16 May 2008, the Sandiganbayan held a hearing, in which the parties explained their respective positions on the propriety of the levy over the subject shares. Thereafter, it ordered the parties to submit their respective memoranda.[19] Only the BIR filed its Memorandum, while petitioner Wellex failed to file any.[20]

On 28 May 2008, instead of filing its memorandum, BDO made a submission informing the Sandiganbayan that the bank had not yet received any payment from Wellex for the latter's principal obligation, which was secured by the subject Waterfront shares and covered by a Promissory Note and a chattel mortgage, both dated 04 February 2000.[21]

We quote the Certification issued by BDO as follows:

CERTIFICATION

As the Investment Manager of **Investment Management Account (IMA) No. 101-78056-1** covered by the Investment Management

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[16] *Id.* at 314.

[17] *Id.* at 314- 317.

[18] *Id.* at 316.

[19] *Id.* at 387.

[20] *Id.* at 432.

[21] *Id.* at 407.

Agreement dated February 4, 2000, we hereby certify that we have not received any principal payment on the loan/investment amounting to **PESOS: FIVE HUNDRED MILLION (₱500,000,000.00)** granted/made by said account to The Wellex Group, Inc. covered by the Promissory Note and Chattel Mortgage dated February 4, 2000, as amended on August 2, 2000 (the "Loan"). Thus, the same remains outstanding in the books of Equitable PCIBank, Inc. — Trust Banking (now Banco de Oro Unibank-Trust and Investments Group).

We likewise certify that interest payments on the Loan totalling **PESOS: EIGHTY MILLION & 00/100 (₱80,000,000.00)** were received from The Wellex Group, Inc. starting March 6, 2000 until January 29, 2001. No further interest payments were made thereafter. Such interest payments were invested by the Bank in various investment outlets such that, as of date, it now amounts to **PESOS: NINETY SIX MILLION FOUR HUNDRED EIGHT THOUSAND NINE HUNDRED EIGHTY SEVEN & 90/100 (₱96,408,987.90)**.

This certification is being issued for whatever legal purpose this may serve.

May 28, 2008, Makati City.[22] (Emphasis in the original)

On 24 September 2008, the Sandiganbayan promulgated a Resolution dated 15 September 2008 acknowledging the validity of the claim of the BIR against the former President and his spouse for income tax deficiency. However, the Resolution noted that despite the prior issuance by the BIR of a Constructive Distraint over the subject trust account, it failed to issue a formal assessment to the spouses Estrada. The Sandiganbayan noted that the BIR had not yet finished its investigation to determine the deficiency income tax of the spouses for the taxable year 1999. The anti-graft court held that it could not wait for the BIR to finish the investigation of the matter before the former could proceed with the forfeiture of the IMA Trust Account, considering that its Decision convicting the former President had already become final.[23]

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[22] *Id.*

[23] Penned by former Sandiganbayan Special Division Presiding Justice and Chairperson (now Supreme Court Associate Justice) Diosdado M. Peralta and concurred in by Sandiganbayan Associate Justices Francisco H. Villaruz, Jr. and Rodolfo A. Ponferrada, *rollo*, p. 84.

Thus, the Sandiganbayan ruled that the subject IMA Trust Account was ripe for forfeiture after the conviction of former President Estrada in the plunder case had become final and executory. The dispositive portion of its Resolution reads:

> WHEREFORE, in the light of the foregoing, Mr. Edgardo Urieta, SB Chief Judicial Officer, Security and Sheriff Services, this Court, is hereby directed to issue another NOTICE TO DELIVER to Banco De Oro Unibank, Inc. (formerly BDO-EPCIB, Inc.) for the latter to deliver/remit to this Court the amount of ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND (₱189,700,000.00) PESOS, inclusive of interest and income earned, covered by IMA Trust Account No. 101-78056-1 in the name of Jose Velarde, within fifteen (15) days from receipt thereof.[24]

On 11 October 2008, the Commissioner of Internal Revenue (CIR), as well as Wellex, filed a Motion for Reconsideration (MR) of the 24 September 2008 Resolution of the Sandiganbayan.[25]

On 02 April 2009, the Special Division of the Sandiganbayan promulgated a Resolution[26] denying the MRs filed by the CIR and petitioner Wellex. In denying the MR of the CIR, the Sandiganbayan ruled that the former's right to forfeit the subject IMA Trust Account was anchored on the Decision convicting former President Estrada under the Plunder Law and had already become final and executory. It ruled that the CIR's claim over the IMA Trust Account rested on flimsy grounds, because the assessment issued to the spouses Estrada over an alleged deficiency in their income tax payment was not yet final. Hence, it concluded that the Constructive Distraint could not defeat the court's preferential right to forfeit the assets of the subject IMA Trust Account, which was included in the Decision on the plunder case.[27]

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[24] *Id.* at 84-85.

[25] *Rollo*, pp. 339-379.

[26] *Id.* at 86, penned by former Sandiganbayan Special Division Justice Francisco H. Villaruz, Jr. and concurred in by Associate Justices Rodolfo A. Ponferrada and Ma. Cristina G. Cortes-Estrada.

[27] *Id.* at 94.

The Sandiganbayan also denied the MR of Wellex. It ruled that petitioner failed to rebut the 28 May 2008 BDO Certification, stating that the latter had not yet settled its loan obligation to Equitable-PCIBank (now BDO). The Sandiganbayan considered the claim of Wellex — that the latter had already settled its loan obligation to the owner of the account — to have been significantly contradicted by petitioner's (a) failure to rebut the said BDO Certification and (b) express admission that then Equitable-PCIBank was the creditor in the loan transaction for which the shares were used as collateral.[28] Hence, the Sandiganbayan dismissed petitioner's Opposition to the Notice To Deliver issued against BDO for the delivery or remittance of the ₱189,700,000, inclusive of interests and income earned under IMA Trust Account No. 101-78056-1 under the name of Jose Velarde. The court even suggested that, for Wellex to retrieve the mortgaged Waterfront shares of stock, petitioner should pay its outstanding loan obligation to BDO, so that the latter could remit the payment to the Sandiganbayan.[29]

Hence, the present Petition before this Court.

THE ISSUES

The following are the issues proffered by petitioner for resolution:

I. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE RESOLUTION DATED 24 SEPTEMBER 2008 AND THE RESOLUTION DATED 02 APRIL 2009, BOTH OF WHICH UNDULY EXPANDED THE COVERAGE OF THE 12 SEPTEMBER 2007 DECISION IN CRIMINAL CASE NO. 26558.

II. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THE FUND IN THE IMA ACCOUNT WAS TRACEABLE TO THE ₱189.7

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[28] *Id.* at 90.

[29] *Id.*

MILLION ILL-GOTTEN WEALTH DEPOSITED IN THE JOSE VELARDE ACCOUNT.

A. THE IMA ACCOUNT WAS SOURCED FROM PLACEMENT ACCOUNT NO. 0160-62501-5.

B. THE PHP500 MILLION FUND IN THE IMA ACCOUNT, WHICH WAS LOANED TO PETITIONER, WAS NOT SOURCED FROM THE PHP189.7 MILLION ILL-GOTTEN COMMISSION SUBJECT OF THE FORFEITURE.

Our Ruling

We **DENY** the Petition of Wellex Group for lack of merit.

The 12 September 2007 Decision of the Sandiganbayan in Criminal Case No. 26558 convicted former President Estrada of the crime of plunder under Republic Act (R.A.) No. 7080, as amended. In convicting him in the plunder case the court unmasked him as the beneficial owner of the Jose Velarde accounts adjudged as ill-gotten wealth. It was also established during the trial of that case that the ₱500 million lent to herein petitioner came from the former President and was coursed through the said trust account. This fact is supported by documentary as well as the testimonial evidence coming from the former President himself.

Petitioner does not dispute the loan that was granted to them by then Equitable PCI-Bank (now BDO) in the amount of ₱500 million. The loan is evidenced by a Promissory Note and a Chattel Mortgage dated 4 February 2000 executed between herein petitioner as "Borrower" and then Equitable PCI-Bank as "Lender."[30] The loan transaction was also admitted by Wellex through its legal counsel's letter dated 05 November 2008, when it formally demanded the return of the Waterfront and Wellex shares.[31]

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[30] *Id.* at 110.

[31] *Id.* at 122-123.

The 12 September 2007 Decision of the Sandiganbayan in the plunder case highlighted the testimony of former President Estrada with regard to the circumstances surrounding the ₱500 million loan to herein petitioner. It traced the source of the funding to IMA Trust Account No. 101-78056-1 in the name of Jose Velarde, who turned out to be the former President. The Sandiganbayan held as follows:

The evidence of the Defense shows that prior to February 4, 2000, the account balance of S/A 0160-62501-5 of Jose Velarde was ₱142,763,773.67. (Exh. 127-O) There was therefore not enough funds in the account to transfer to the Trust Account. Thus, the Debit-Credit Authority could not be implemented.

Subsequently, a credit memo for ₱506,416,666.66 was issued in favor of the said Jose Velarde S/A 0160-62501-5 account. As per the testimony of defense witness, Beatriz Bagsit, the amount of ₱506,416,666.66 represented the principal and interest of a preterminated placement of S/A 0160-62501-5. The placement was not in the name of Dichaves but in the name of an account number, *i.e*. Account No. 0160-62501-5 and behind that account is Jose Velarde. [TSN, April 18, 2005, p. 37] Eventually the ₱500,000,000.00 was withdrawn from the savings account in exchange for an MC payable to trust. [*Ibid*. pp. 30, 31]

Consequently, while the funding for the ₱500,000,000.00 did not come via the debit-credit authority, nonetheless, **the funding of the ₱500,000,000.00 came from S/A 0160-62501-5 of Jose Velarde**.

Moreover, the debit-credit authority was not implemented because Bagsit kept the debit-credit authority and did not give it to anybody. [TSN, April 13, 2005, p. 116]

Neither does the non-implementation of the Debit-Credit Authority which FPres. Estrada signed as Jose Velarde disprove the fact that FPres. Estrada admitted that S/A 0160-62501-5 in the name of Jose Velarde is his account when he admitted affixing his signature on the Debit-Credit Authority as Jose Velarde.

The so-called "internal arrangements" with the bank, involved the use of S/A 0160-62501-5 which had been in existence since August 26, 1999 as the funding source of the ₱500,000,000.00 to be placed in the Trust account for lending to Gatchalian. The fact that the ₱500,000,000.00 funding was not effected by

a debit-credit transaction but by a withdrawal of ₱500,000,000.00 from the said S/A 0160-62501-5 proves that the money lent to Gatchalian was the personal money of FPres. Estrada through the Jose Velarde account of which he is the owner. As explained by FPres. Estrada, "William Gatchalian is a big businessman. ***Isang malaking negosyante at siya po ay may ari ng Wellex group of companies at siya rin po ay isa sa tumulong sa aming partido noong nakaraang 1998 presidential election*****."** [TSN, May 24, 2006, p. 23]

Pres. Estrada further testified: *"Hindi lang po dahil doon sa internal arrangement. Hindi lang po dahil gusto kong tulungan si Mr. William Gatchalian kundi higit po sa lahat ay nakita ko ang kapakanan noong mahigit na tatlong libong (3000) empleyado na kung sakaling hindi mapapautang si Mr. William Gatchalian, maaring magsara ang kanyang mga kumpanya at yong mga taong, mahigit tatlong libong (3,000) empleyado kasama na yong kanilang mga pamilya ay mawawalan ng trabaho. AT INISIP KO RING NA WALA NAMING (SIC) GOVERNMENT FUNDS NA INVOLVE KAYA HINDI NA PO AKO NAGDALAWANG ISIP NA PIRMAHAN KO."*

Moreover, as pointed out by the Prosecution, there was no need for the internal arrangement since the loan to Gatchalian could have been extended by EPCIB directly considering that Gatchalian had put up sufficient collateral for the loan.

From the foregoing, the ineluctable conclusion is that the so-called internal arrangement which allegedly prompted FPres. Estrada to sign the various documents presented to him by Clarissa Ocampo is a futile attempt to escape the consequence of his admission that he signed as Jose Velarde which leads to the legal and indisputable conclusion that FPres. Estrada is the owner of the Jose Velarde Accounts.[32] (Emphasis supplied and citations omitted)

From the above findings, it is clear that the funding for the loan to Wellex was sourced from Savings Account No. 0160-62501-5 and coursed through the IMA Trust Account. This savings account was under the name of Jose Velarde and was forfeited by the government after being adjudged as ill-gotten. The trust account can then be traced or linked to an account

[32] *Id.* at 184-187.

that was part of the web of accounts considered by the Sandiganbayan as ill-gotten.

The crux of the problem is whether the Sandiganbayan unduly expanded the scope of its 12 September 2007 Decision when it issued the Resolutions that specified the forfeiture of the assets of the subject IMA Trust Account, including the Waterfront and Wellex shares owned by petitioner.

We rule in the negative and **affirm** these Resolutions dated 24 September 2008 and 02 April 2009 issued by the Sandiganbayan issued in Criminal Case No. 26558.

When petitioner Wellex contracted the loan from then Equitable PCI-Bank, the former voluntarily constituted a chattel mortgage over its Waterfront shares, with the subsequent addition of the subject Wellex shares as added security for the loan obligation. Thus, the Wellex loan and the Chattel Mortgage, which were constituted over the Wellex and Waterfront shares of stock, became the asset of the aforementioned IMA Trust Account. In this case, the loan transaction between Wellex and Equitable PCI-Bank, as Investment Manager of the IMA Trust Account, constitutes the principal contract; and the Chattel Mortgage over the subject shares of stock constitutes the accessory contract.

It was established during the trial of the plunder case that the source of funding for the loan extended to Wellex was former President Estrada, who had in turn sourced the fund from S/A 0160-62501-5 and coursed it through IMA Trust Account 101-78056-1. After his conviction for the crime of plunder, the IMA Trust Account under the name of Jose Velarde was forfeited. As a consequence, all assets and receivables of the said trust account were also included in the forfeiture, which was without any legal basis.

Section 2 of R.A. 7080, as amended, provides for the forfeiture of the wealth proven to be ill-gotten, as well its interests, thus:

SECTION 2. Definition of the Crime of Plunder; Penalties. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business

associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. **The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.** (Emphasis supplied)

There is no dispute that the subject shares of stock were mortgaged by petitioner Wellex as security for its loan. These shares being the subject of a contract that was accessory to the Wellex loan and being an asset of the forfeited IMA Trust Account, the said shares necessarily follow the fate of the trust account and are forfeited as well. However, the forfeiture of the said trust account, together with all its assets and receivables, does not affect the validity of the loan transaction between BDO the creditor and Wellex the debtor. The loan continues to be valid despite the forfeiture by the government of the IMA Trust Account and is considered as an asset. Consequently, the forfeiture had the effect of subrogating the state to the rights of the trust account as creditor.

We note that even at this point, Wellex generally alleges that it has paid its loan obligation directly to its principal or creditor without proffering any proof of that payment. Also, petitioner does not reveal the identity of its alleged principal or creditor to which the former made its payment to extinguish its loan obligation relevant to this case. These matters render petitioner's claim of payment highly doubtful. Thus, the Sandiganbayan was in point when it stated in its 28 January 2008 Resolution in Criminal Case No. 26558 that the Decision dated 12 September 2007 included forfeiture as a penalty. In its assailed 02 April 2008

Resolution, it proceeded from the preceding legal premises when it made a suggestion to petitioner regarding the latter's intent to retrieve the shares subject of this Petition, *viz*:

> If Wellex wants to retrieve the collaterals it gave to BDO, it should pay its outstanding loan to BDO and from the proceeds of the payment, BDO should remit to the Court the amount of ₱189,000,000.00 inclusive of interest and income earned.[33]

Wellex tries to convince this Court that the source of the funding for the former's loan was the personal funds of the former President; thus, these funds should not have been forfeited. Petitioner details in its Petition how the ₱500 million was sourced and eventually lent to it.[34] We are, however, not persuaded by its arguments.

We agree with Wellex that the 12 September 2007 Decision of the Sandiganbayan in Criminal Case No. 26558 has become final and executory. As a consequence, the findings of fact and legal conclusion of the said Decision — that the ₱500 million was coursed through the Jose Velarde account adjudged as ill-gotten — are now immutable and unalterable. In addition, petitioner waived its right to correct whatever error it perceived in the assailed Resolutions, when it failed to submit its memorandum in Criminal Case No. 26558 to settle the validity of the BIR's claim over the IMA Trust Account.[35]

Petitioner also argues that since the dispositive portion of the 12 September 2007 Decision in Criminal Case No. 26558 does not explicitly mention the IMA Trust Account, its inclusion in the assailed Resolutions unduly expands the Decision. We do not find merit in this argument.

Forfeiture in a criminal case is considered *in personam,* similar to a money judgment that runs against a defendant until it is

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[33] *Id.* at 90.

[34] *Id.* at 59.

[35] *Id.* at 82.

fully satisfied.[36] This criminal forfeiture is considered part of the criminal proceedings against the defendant, rather than a separate proceeding against the property itself.[37] The scope of criminal forfeiture by the government includes any property, real or personal, involved in the crime or traceable to the property. The term "involved in" has consistently been interpreted broadly by courts to include any property involved in, used to commit, or used to facilitate the crime.[38]

Petitioner's interpretation of Section 2 of R.A. 7080 is narrow and rigid and defeats rather than serves the ends of justice in plunder cases. Section 2 of R.A. 7080 mandates the court to forfeit not only the ill-gotten wealth, interests earned, and other incomes and assets, but also the properties and shares of stock derived from the deposit or investment. The Sandiganbayan Decision imposed the penalty of forfeiture when it convicted the former President Estrada of the crime of plunder. It is beyond cavil that it found the subject IMA Trust Account traceable to the accounts declared to be ill-gotten by the former President. Thus, to rigidly construe the mandate of Section 2 of R.A. 7080, as petitioner would want us to do, is to render the Plunder Law inutile.

In its Resolution dated 28 January 2008 (in Criminal Case No. 26558 from which the assailed Resolutions subject of this Petition originated), the Sandiganbayan correctly laid the basis of its Order of forfeiture as follows:

> The provision of Section 2 must be interpreted in its entirety and cannot be confined to words and phrases which are taken out of context. The trunk of the tree of forfeiture under Section 2 is ill-gotten wealth and the branches of the ill-gotten wealth are the interests, incomes, assets, properties and shares of stocks derived from or traceable to the deposit or investment of such ill-gotten wealth.

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[36] *U.S. v. Delco Wire*, 772 F. Supp. 1511 (1991).

[37] *U.S. v. Long*, 654 F. 2d 911, 916 (3rd Cir. 1981) as cited in *U.S. v. Delco Wire*.

[38] *U.S. v. Schlesinger*, 396 F. Supp. 2d 267 (2005).

Interpreted otherwise, what should be forfeited are assets in whatever form that are derived or can be traced to the ill-gotten wealth as defined under sub-pars. 1-6, par. (d), Section 1 of the Plunder Law. Should Assets (sic) not derived, nor traceable to the ill-gotten wealth be forfeited in favor of the State, such would result in deprivation of property without due process of law.

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No less than Movant had admitted that while the Decision of the Court includes forfeiture of a specific sum, the Plunder Law limits this only to property derived or traceable to the instruments or proceeds of the crime.

Not only does the Plunder Law authorize the forfeiture of the ill-gotten wealth as well as any asset acquired with the use of the ill-gotten wealth, Section 6 likewise authorizes the forfeiture of these ill-gotten wealth and any assets acquired therefrom even if they are in the possession of other persons. Thus, Section 6 provides:

> "Section 6. *Prescription of Crimes* – The crime punishable under this Act shall prescribe in twenty (20) years. However, the rights of the State to receive properties unlawfully acquired by public officers from them or from their nominees or transferees shall not be barred by prescription, laches, or estoppel."[39]

Even petitioner admits that the amount of 506,416,666.66 was deposited to S/A 0160-62501-5 via a credit memo, and that 500 million was subsequently withdrawn from the said savings account, deposited to IMA Trust Account No. 101-78056-1, and then loaned to petitioner. The Sandiganbayan made a categorical finding that former President Estrada was the real and beneficial owner of S/A 0160-62501-5 in the name of Jose Velarde.

Grave abuse of discretion has been defined as such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The abuse of discretion must be so patent and

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[39] Sandiganbayan records (Criminal Case No. 26558), Vol. 59, pp. 248-250.

gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[40] We do not find this situation present in this case to merit the nullification of the assailed Resolutions.

It is beyond doubt that IMA Trust Account No. 101-78056-1 and its assets were traceable to the account adjudged as ill-gotten. As such, the trust account and its assets were indeed within the scope of the forfeiture Order issued by the Sandiganbayan in the plunder case against the former President. Thus, it did not commit grave abuse of discretion when it ordered the forfeiture of the trust account in BDO, including the assets and receiveables thereof.

WHEREFORE, we **DISMISS** the Petition of Wellex for lack of merit and **AFFIRM** the Resolutions dated 24 September 2008 and 02 April 2009 promulgated by the Sandiganbayan (Special Division) in Criminal Case No. 26558, *People of the Philippines v. Joseph Ejercito Estrada.*

SO ORDERED.

Brion (Acting Chairperson), Villarama, Jr.,[*] *Perez,* and *Reyes, JJ.,* concur.

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[40] *Francisco v. Desierto*, G.R. No. 154117, 02 October 2009, 602 SCRA 50.

[*] Designated as additional member per Raffle dated 25 June 2012 in lieu of Senior Associate Justice Antonio T. Carpio who recused himself from the case due to prior inhibition in related plunder cases.

SECOND DIVISION

[G.R. No. 193665. June 25, 2012]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO BOSI *y* DANAO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** In deciding this case, we are guided by the three principles which courts should take into account when reviewing rape cases, namely: (1) an accusation for rape is easy to make, difficult to prove, and even more difficult to disprove; (2) in view of the intrinsic nature of the crime, where only two persons are usually involved, the testimony of the complainant must be scrutinized with utmost caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense. Because of these guiding principles, we are confronted with one core issue: the credibility of the victim.

2. **ID.; ID.; THE LACK OF RESISTANCE IS IMMATERIAL WHEN THE ACCUSED IS THE FATHER OR IS CLOSELY RELATED TO THE VICTIM; MORAL ASCENDANCY AND INFLUENCE SUBSTITUTES PHYSICAL VIOLENCE OR INTIMIDATION.—** Of course, the accused-appellant belabored the issues of AAA's lack of resistance and the absence in her testimony of an allegation that the accused-appellant used a weapon to make her submit to his desires. However, the same must fail because not all victims react in the same manner and that the absence of the use of weapon is immaterial since, as put forward by the Office of the Solicitor General, "(The lack of) resistance is immaterial when the accused is the father or is closely related to the victim, the moral ascendancy and influence substitutes physical violence or intimidation."

3. **ID.; ID.; MERE DISCIPLINARY CHASTISEMENT DOES NOT SUFFICE FOR A DAUGHTER TO ACCUSE HER FATHER AND INVENT CHARGES OF RAPE WHICH WOULD BRING HUMILIATION TO THE VICTIM AND HER**

FAMILY AND LOVED ONES IF THE SAME DID NOT REALLY HAPPEN.— The accused-appellant also argued that AAA charged her own father of rape because she begrudged him for his tyrannical ways. However, we agree with the RTC and the CA when they said that mere disciplinary chastisement does not suffice for a daughter to accuse her father and invent charges of rape which would bring shame and humiliation to the victim and to her family and loved ones if the same did not really happen. In our view, we cannot simply ignore the consistent and unwavering testimony of AAA pointing to her father as her rapist. Finally, our moral fiber must have truly deteriorated with fathers raping their own children. For a Christian nation like ours, such bestial act should never be tolerated. Some would argue that for the sake of the family the child must forgive her father-tormentor. But in the eyes of the law, a crime is a crime and justice dictates that fathers who rape their children deserve no place in our society.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREOF IS BEST DECIDED BY TRIAL COURTS.—** Time and again, we have held that when at issue is the credibility of the victim, we give great weight to the trial court's assessment. In fact, the trial court's finding of facts is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Our reason is that the trial court had the full opportunity to observe directly the witnesses' deportment and manner of testifying. It is in a better position than the appellate court to properly evaluate testimonial evidence. In the instant case, both the RTC and the CA recognized the credibility and believability of AAA's testimony. They both gave credence to the testimony of AAA who narrated her ordeal in a straightforward, convincing, and consistent manner, interrupted only by her convulsive sobbing. We cannot but do the same, considering that both the RTC and the CA found AAA's testimony credible and believable.

5. **ID.; ID.; ID.; IN RAPE CASES, NEGATIVE EVIDENCE CANNOT PREVAIL OVER THE POSITIVE ASSERTIONS OF THE COMPLAINANT.—** Indeed, AAA's brother Santiago testified that his father could have not raped her because he would have heard it. Moreover, Santiago did not categorically say that no rape happened. Rather, he only claimed that since

he was at the other room he could have heard whatever happened at the other room where the rape occurred. Not because Santiago did not hear anything and the victim did not shout, no rape has ever happened. As correctly pointed out by the RTC, defense witness Santiago's testimony deserves scant consideration because negative evidence cannot prevail over the positive assertions of the private complainant. An evidence is negative when the witness states that he did not see or know the occurrence. In this case, what Santiago declared in the RTC is that he did not hear anything, but such testimony does not negate the positive assertion of AAA that she was raped. Thus, "[b]etween the positive assertions of the [victim] and the negative averments of the [appellant], the former indisputably deserve more credence and are entitled to greater evidentiary weight. Furthermore, we agree with both the RTC and the CA that lust is no respecter of time and precinct and known to happen in most unlikely places. Indeed, rape can either happen in populated area or in the privacy of a room.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J.*:

We resolve the appeal filed by Ricardo Bosi *y* Danao (accused-appellant) from the Decision[1] dated December 23, 2009 of the Court of Appeals (CA) in CA-G.R. CR HC No. 03226.

Antecedent Facts

The victim (AAA) testified that on November 2, 2001, at about 10:00 o'clock in the evening, AAA went to bed to sleep beside her younger sister. While sleeping, AAA's father and

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[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Portia Aliño-Hormachuelos and Magdangal M. De Leon, concurring; *rollo*, pp. 2-12.

mother woke her up so that she could transfer to the *sala* where her parents and siblings were sleeping. AAA heeded her father's command out of fear. AAA then slept again but was awakened when she felt her father pulling down her shorts and panty. AAA tried to push him and kicked him while accused-appellant held her hand; finally, accused-appellant went on top of her, kissed her and inserted his penis inside her vagina. AAA succumbed to her father's bestial desire out of fear that the latter might hurt her mother and her siblings. Subsequently, accused-appellant tried to rape AAA again at about 5:00 o'clock in the morning but did not succeed. AAA reported the crime to the Department of Social Welfare and Development (DSWD) the following morning, accompanied by her aunt Raquel Bosi, the sister of the accused-appellant.[2]

Accused-appellant was subsequently charged with violation of Article 266-A, No. 1(a) of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353 or the Anti-Rape Law of 1997, which was docketed as Criminal Case No. 9711. The Information states as follows:

"That on or about November 02, 2001, and for sometime subsequent thereto, in the Municipality of Iguig, Cagayan, and within the jurisdiction of this Honorable Court, the said accused RICARDO BOSI *y* DANAO, father of the complainant, [AAA], a woman twenty four (24) years of age thus, have [sic] moral ascendancy over the aforesaid complainant, with lewd design, and by the use of force[,] threat and intimidation, did, then and there willfully, unlawfully and feloniously kiss, caress the private parts of the complainant and thereafter have sexual intercourse with the herein complainant, [AAA], his own daughter a woman twenty four (24) years of age, against her will.

Contrary to law."[3]

During trial, aside from the testimony of AAA, the prosecution also offered as part of their evidence: (a) the medico-legal certificate

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[2] CA *rollo*, pp. 14-17.

[3] *Id.*

issued by Dr. Ma. Vida Lappay-Fuguiao, Medical Officer III of Cagayan Valley Medical Center (CVMC) in Tuguegarao City, and (b) the sworn statement AAA gave to the Iguig Police.[4]

Meanwhile, the accused-appellant in his defense simply denied the accusation against him. He claimed that AAA charged him with rape because he slapped her when she eloped with her boyfriend and because he asked her to stop her studies for one year. He alleged that his daughter even warned him that he would have his comeuppance. He insisted that he could have not raped his daughter because they were then sleeping with AAA's mother and siblings. The defense also presented the accused-appellant's son, Santiago Bosi (Santiago), who testified that his father could not have raped his sister because his mother and siblings were sleeping with her and their father. Aside from the accused-appellant and Santiago's testimonies, the defense also offered the counter-affidavit which was submitted during the preliminary investigation.[5]

The Regional Trial Court (RTC) Ruling

After weighing the evidence adduced by both sides, the RTC found the accused-appellant guilty. It gave credence to the testimony of AAA who narrated her ordeal in a straightforward, convincing, and consistent manner, interrupted only by her convulsive sobbing. It disbelieved the accused-appellant's alibi that his daughter charged him with rape because he disciplined her; it also did not give much weight to the accused-appellant's argument that he could have not raped AAA because he and AAA slept together with AAA's mother and siblings. The trial court found the accused-appellant's denial as simply self-serving and inherently weak, especially without a strong evidence of non-accountability. Finally, the RTC held that defense witness Santiago's testimony deserves scant consideration because negative evidence cannot prevail over the positive assertions of private complainant AAA. The RTC ratiocinated that lust is no respecter

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

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

of time and precinct and known to happen in most unlikely places. The accused-appellant was sentenced to suffer the penalty of imprisonment of *reclusion perpetua* and to indemnify the victim in the amount of ₱50,000.00 by way of civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.[6]

The CA Ruling

The CA affirmed the ruling of the RTC, explaining that when the credibility of the victim is put in issue, as in this case, it will adhere to the well-entrenched rule that the findings of the trial court on credibility of witnesses are entitled to great weight on appeal unless cogent reasons are presented necessitating a reexamination, if not disturbance, of the same; the reason being that the former is in a better and unique position of hearing first hand the witnesses and observing their deportment, conduct and attitude. It also agreed with the RTC in not giving credence to accused-appellant's argument that he could have not raped his daughter since there were other members of the family sleeping in the *sala*. The CA reechoed the RTC's ruling that lust is no respecter of time and precinct and known to happen in most unlikely places. It also did not agree with the accused-appellant's argument that AAA did not show resistance. It ratiocinated that rape victims show no uniform reaction. Finally, the CA also disagreed with the accused-appellant's allegation that AAA was motivated by ill-will in filing the case because it has been found that mere disciplinary chastisement is not strong enough reason for daughters in a Filipino family to invent charges that would bring shame and humiliation to the victim and to her family and loved ones.[7]

Issues

Considering that accused-appellant Ricardo Bosi and plaintiff-appellee People of the Philippines adopted their respective briefs

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[6] *Id.* at 18-22.

[7] *Id.* at 93-97.

before the CA, we now rule on the matter based on the issues[8] which the accused-appellant raised in his brief before the CA, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PRIVATE COMPLAINANT'S VERSION DESPITE ITS IMPROBABILITY AND HER ILL FEELINGS TOWARDS [THE] ACCUSED-APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN PRONOUNCING THE GUILT OF THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT WITH MORAL CERTAINTY.[9]

Our Ruling

We dismiss the appeal.

After a careful review of the records of this case, we see no reason to reverse or modify the findings of the RTC, especially because the CA has affirmed the same.

The accused-appellant claims that the trial court gravely erred in giving credence to AAA's version despite its improbability and her ill-feelings towards him. He alleges that he could have not raped his daughter because at that time he and AAA were sleeping with his wife and his other children. He also argues that AAA never testified that he used a weapon to compel her to submit to his desires. Rather, AAA's only justification for her silence was her unfounded fear that the accused-appellant might harm her mother and siblings, considering her father's domineering and tyrannical ways.

In deciding this case, we are guided by the three principles which courts should take into account when reviewing rape

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[8] *Id.* at 35.

[9] *Id.*

cases, namely: (1) an accusation for rape is easy to make, difficult to prove, and even more difficult to disprove; (2) in view of the intrinsic nature of the crime, where only two persons are usually involved, the testimony of the complainant must be scrutinized with utmost caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense.[10] Because of these guiding principles, we are confronted with one core issue: the credibility of the victim.

Time and again, we have held that when at issue is the credibility of the victim, we give great weight to the trial court's assessment. In fact, the trial court's finding of facts is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Our reason is that the trial court had the full opportunity to observe directly the witnesses' deportment and manner of testifying. It is in a better position than the appellate court to properly evaluate testimonial evidence.[11]

In the instant case, both the RTC and the CA recognized the credibility and believability of AAA's testimony. They both gave credence to the testimony of AAA who narrated her ordeal in a straightforward, convincing, and consistent manner, interrupted only by her convulsive sobbing. We cannot but do the same, considering that both the RTC and the CA found AAA's testimony credible and believable. Indeed, AAA's brother Santiago testified that his father could have not raped her because he would have heard it. Moreover, Santiago did not categorically say that no rape happened. Rather, he only claimed that since he was at the other room he could have heard whatever happened at the other room where the rape occurred. Not because Santiago did not hear anything and the victim did not shout, no rape has ever happened. As correctly pointed out by the RTC, defense witness Santiago's testimony deserves scant consideration because

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[10] *People v. Ben Rubio*, G.R. No. 195239, March 7, 2012.

[11] *Id.*

negative evidence cannot prevail over the positive assertions of the private complainant. An evidence is negative when the witness states that he did not see or know the occurrence.[12] In this case, what Santiago declared in the RTC is that he did not hear anything, but such testimony does not negate the positive assertion of AAA that she was raped. Thus, "[b]etween the positive assertions of the [victim] and the negative averments of the [appellant], the former indisputably deserve more credence and are entitled to greater evidentiary weight.[13] Furthermore, we agree with both the RTC and the CA that lust is no respecter of time and precinct and known to happen in most unlikely places. Indeed, rape can either happen in populated area or in the privacy of a room.

Of course, the accused-appellant belabored the issues of AAA's lack of resistance and the absence in her testimony of an allegation that the accused-appellant used a weapon to make her submit to his desires. However, the same must fail because not all victims react in the same manner[14] and that the absence of the use of weapon is immaterial since, as put forward by the Office of the Solicitor General, "(The lack of) resistance is immaterial when the accused is the father or is closely related to the victim, the moral ascendancy and influence substitutes physical violence or intimidation."[15]

The accused-appellant also argued that AAA charged her own father of rape because she begrudged him for his tyrannical ways. However, we agree with the RTC and the CA when they said that mere disciplinary chastisement does not suffice for a daughter to accuse her father and invent charges of rape which would bring shame and humiliation to the victim and to her

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[12] *People v. Queliza*, 344 Phil. 561, 573 (1997).

[13] *People v. Paterno Sarmiento Samandre*, G.R. No. 181497, February 22, 2012.

[14] *People v. Noveras*, G.R. No. 171349, April 27, 2007, 522 SCRA 777.

[15] CA *rollo*, p. 70, citing *People v. Abella*, G.R. No. 131847, September 22, 1999, 315 SCRA 36.

family and loved ones if the same did not really happen. In our view, we cannot simply ignore the consistent and unwavering testimony of AAA pointing to her father as her rapist.

Finally, our moral fiber must have truly deteriorated with fathers raping their own children. For a Christian nation like ours, such bestial act should never be tolerated. Some would argue that for the sake of the family the child must forgive her father-tormentor. But in the eyes of the law, a crime is a crime and justice dictates that fathers who rape their children deserve no place in our society.

WHEREFORE, premises considered, the Decision dated December 23, 2009 of the Court of Appeals in CA-G.R. CR No. HC-03226 is hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 120744-46. June 25, 2012]

SALVADOR YAPYUCO *y* ENRIQUEZ, *petitioner, vs.* **HONORABLE SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. No. 122677. June 25, 2012]

MARIO D. REYES, ANDRES S. REYES and VIRGILIO A. MANGUERRA, *petitioners, vs.* **HONORABLE SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. No. 122776. June 25, 2012]

GERVACIO B. CUNANAN, JR. and ERNESTO PUNO, *petitioners, vs.* **HONORABLE SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ADMISSIONS AND CONFESSIONS; IF A DECLARANT OR ADMITTER REPEATS IN COURT HIS EXTRAJUDICIAL ADMISSION DURING THE TRIAL AND THE OTHER ACCUSED IS ACCORDED THE OPPORTUNITY TO CROSS-EXAMINE THE ADMITTER, THE ADMISSION IS NOW ADMISSIBLE AGAINST BOTH ACCUSED AS IT IS TRANSPOSED INTO A JUDICIAL ADMISSION.—** The extrajudicial confession or admission of one accused is admissible only against said accused, but is inadmissible against the other accused. But if the declarant or admitter repeats in court his extrajudicial admission, as Yapyuco did in this case, during the trial and the other accused is accorded the opportunity to cross-examine the admitter, the admission is admissible against both accused because then, it is transposed into a judicial admission. It is thus perplexing why, despite the extrajudicial statements of Cunanan, Puno and Yapyuco, as well as the latter's testimony implicating them in the incident, they still had chosen to waive their right to present evidence when, in fact, they could have shown detailed proof of their participation or non-participation in the offenses charged. We, therefore, reject their claim that they had been denied due process in this regard, as they opted not to testify and be cross-examined by the prosecution as to the truthfulness in their affidavits and, accordingly, disprove the inculpatory admissions of their co-accused.

2. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; FULFILLMENT OF A DUTY OR LAWFUL EXERCISE OF A RIGHT OR OFFICE; IT MUST BE SHOWN THAT THE ACTS OF THE ACCUSED RELATIVE TO THE CRIME CHARGED WERE INDEED LAWFULLY OR DULY PERFORMED.—** The availability of the justifying circumstance of fulfillment of duty or lawful exercise of a right or office under Article 11 (5) of the Revised

Penal Code rests on proof that (a) the accused acted in the performance of his duty or in the lawful exercise of his right or office, and (b) the injury caused or the offense committed is the necessary consequence of the due performance of such duty or the lawful exercise of such right or office. The justification is based on the complete absence of intent and negligence on the part of the accused, inasmuch as guilt of a felony connotes that it was committed with criminal intent or with fault or negligence. Where invoked, this ground for non-liability amounts to an acknowledgment that the accused has caused the injury or has committed the offense charged for which, however, he may not be penalized because the resulting injury or offense is a necessary consequence of the due performance of his duty or the lawful exercise of his right or office. Thus, it must be shown that the acts of the accused relative to the crime charged were indeed lawfully or duly performed; the burden necessarily shifts on him to prove such hypothesis.

3. **ID.; ID.; ID.; ID.; THE REQUISITES FOR JUSTIFICATION BY REASON OF FULFILLMENT OF A DUTY OR LAWFUL EXERCISE OF A RIGHT OR OFFICE DOES NOT OBTAIN IN CASE AT BAR; NO MATERIAL EVIDENCE TO SHOW THAT THE ACCUSED WERE PLACED IN REAL MORTAL DANGER IN THE PRESENCE OF THE VICTIMS.—** We find that the requisites for justification under Article 11 (5) of the Revised Penal Code do not obtain in this case. The undisputed presence of all the accused at the *situs* of the incident is a legitimate law enforcement operation. No objection is strong enough to defeat the claim that all of them — who were either police and *barangay* officers or CHDF members tasked with the maintenance of peace and order — were bound to, as they did, respond to information of a suspected rebel infiltration in the locality. Theirs, therefore, is the specific duty to identify the occupants of their suspect vehicle and search for firearms inside it to validate the information they had received; they may even effect a bloodless arrest should they find cause to believe that their suspects had just committed, were committing or were bound to commit a crime. While, it may certainly be argued that rebellion is a continuing offense, it is interesting that nothing in the evidence suggests that the accused were acting under an official order to open fire at or kill the suspects

under any and all circumstances. Even more telling is the absence of reference to the victims having launched such aggression as would threaten the safety of any one of the accused, or having exhibited such defiance of authority that would have instigated the accused, particularly those armed, to embark on a violent attack with their firearms in self-defense. In fact, no material evidence was presented at the trial to show that the accused were placed in real mortal danger in the presence of the victims, except maybe their bare suspicion that the suspects were armed and were probably prepared to conduct hostilities.

4. **ID.; ID.; ID.; ID.; THE RULES OF ENGAGEMENT DOES NOT REQUIRE THAT A LAW ENFORCER SHOULD IMMEDIATELY DRAW OR FIRE HIS WEAPON IF THE PERSON TO BE ACCOSTED DOES NOT HEED HIS CALL.—** But whether or not the passengers of the subject jeepney were NPA members and whether or not they were at the time armed, are immaterial in the present inquiry inasmuch as they do not stand as accused in the prosecution at hand. Besides, even assuming that they were as the accused believed them to be, the actuations of these responding law enforcers must inevitably be ranged against reasonable expectations that arise in the legitimate course of performance of policing duties. The rules of engagement, of which every law enforcer must be thoroughly knowledgeable and for which he must always exercise the highest caution, do not require that he should immediately draw or fire his weapon if the person to be accosted does not heed his call. Pursuit without danger should be his next move, and not vengeance for personal feelings or a damaged pride. Police work requires nothing more than the lawful apprehension of suspects, since the completion of the process pertains to other government officers or agencies.

5. **ID.; ID.; ID.; ID.; A LAW ENFORCER IS NEVER JUSTIFIED IN USING UNNECESSARY FORCE IN TREATING THE OFFENDER WITH WANTON VIOLENCE, OR IN RESORTING TO DANGEROUS MEANS WHEN THE ARREST COULD BE EFFECTED OTHERWISE.—** A law enforcer in the performance of duty is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm. *United States v. Campo* has laid down the rule that in the performance

of his duty, an agent of the authorities is not authorized to use force, except in an extreme case when he is attacked or is the subject of resistance, and finds no other means to comply with his duty or cause himself to be respected and obeyed by the offender. In case injury or death results from the exercise of such force, the same could be justified in inflicting the injury or causing the death of the offender if the officer had used necessary force. He is, however, never justified in using unnecessary force or in treating the offender with wanton violence, or in resorting to dangerous means when the arrest could be effected otherwise.

6. **ID.; ID.; ID.; ID.; ONLY ABSOLUTE NECESSITY JUSTIFIES THE USE OF FORCE.—** Lawlessness is to be dealt with according to the law. Only absolute necessity justifies the use of force, and it is incumbent on herein petitioners to prove such necessity. We find, however, that petitioners failed in that respect. Although the employment of powerful firearms does not necessarily connote unnecessary force, petitioners in this case do not seem to have been confronted with the rational necessity to open fire at the moving jeepney occupied by the victims. No explanation is offered why they, in that instant, were inclined for a violent attack at their suspects except perhaps their over-anxiety or impatience or simply their careless disposition to take no chances. Clearly, they exceeded the fulfillment of police duties the moment they actualized such resolve, thereby inflicting Licup with a mortal bullet wound, causing injury to Villanueva and exposing the rest of the passengers of the jeepney to grave danger to life and limb – all of which could not have been the necessary consequence of the fulfillment of their duties.

7. **ID.; ID.; ID.; ID.; THE INVOCATION OF THE CONCEPT OF "MISTAKE OF FACT" FACES CERTAIN FAILURE.—** We find that the invocation of the concept of mistake of fact faces certain failure. In the context of criminal law, a "mistake of fact" is a misapprehension of a fact which, if true, would have justified the act or omission which is the subject of the prosecution. Generally, a reasonable mistake of fact is a defense to a charge of crime where it negates the intent component of the crime. It may be a defense even if the offense charged requires proof of only general intent. The inquiry is into the mistaken belief of the defendant, and it does not look at all to

the belief or state of mind of any other person. A proper invocation of this defense requires (a) that the mistake be honest and reasonable; (b) that it be a matter of fact; and (c) that it negate the culpability required to commit the crime or the existence of the mental state which the statute prescribes with respect to an element of the offense.

8. **ID.; ID.; HOMICIDE; REQUISITES OF THE CRIME.—** The prosecution is burdened to prove *corpus delicti* beyond reasonable doubt either by direct evidence or by circumstantial or presumptive evidence. *Corpus delicti* consists of two things: first, the criminal act and second, defendant's agency in the commission of the act. In homicide (by *dolo*) as well as in murder cases, the prosecution must prove: (a) the death of the party alleged to be dead; (b) that the death was produced by the criminal act of some other than the deceased and was not the result of accident, natural cause or suicide; and (c) that defendant committed the criminal act or was in some way criminally responsible for the act which produced the death.

9. **ID.; ID.; ID.; ID.; HOMICIDE MAY BE COMMITTED EVEN IF THERE IS NO INTENT TO KILL; INTENT TO KILL IS CRUCIAL ONLY TO A FINDING OF FRUSTRATED AND ATTEMPTED HOMICIDE.—** In other words, proof of homicide or murder requires incontrovertible evidence, direct or circumstantial, that the victim was deliberately killed (with malice), that is, with intent to kill. Such evidence may consist in the use of weapons by the malefactors, the nature, location and number of wounds sustained by the victim and the words uttered by the malefactors before, at the time or immediately after the killing of the victim. If the victim dies because of a deliberate act of the malefactors, intent to kill is conclusively presumed. In such case, even if there is no intent to kill, the crime is homicide because with respect to crimes of personal violence, the penal law looks particularly to the material results following the unlawful act and holds the aggressor responsible for all the consequences thereof. Evidence of intent to kill is crucial only to a finding of frustrated and attempted homicide, as the same is an essential element of these offenses, and thus must be proved with the same degree of certainty as that required of the other elements of said offenses.

10. **ID.; ID.; ID.; ID.; MOTIVE IS NOT AN ELEMENT OF A CRIME.—** Yet whether such claims suffice to demonstrate ill motives evades relevance and materiality. Motive is generally held to be immaterial inasmuch as it is not an element of a crime. It gains significance when the commission of a crime is established by evidence purely circumstantial or otherwise inconclusive. The question of motive is important in cases where there is doubt as to whether the defendant is or is not the person who committed the act, but when there is no doubt that the defendant was the one who caused the death of the deceased, it is not so important to know the reason for the deed.

11. **ID.; ID.; ID.; ID.; THE CIRCUMSTANCES OF THE SHOOTING BREED NO OTHER INFERENCE THAN THAT THE FIRING WAS DELIBERATE AND NOT ATTRIBUTABLE TO SHEER ACCIDENT OR MERE LACK OF SKILL.—** Judging by the location of the bullet holes on the subject jeepney and the firearms employed, the likelihood of the passenger next to the driver — and in fact even the driver himself — of being hit and injured or even killed is great to say the least, certain to be precise. This, we find to be consistent with the uniform claim of petitioners that the impulse to fire directly at the jeepney came when it occurred to them that it was proceeding to evade their authority. And in instances like this, their natural and logical impulse was to debilitate the vehicle by firing upon the tires thereof, or to debilitate the driver and hence put the vehicle to a halt. The evidence we found on the jeepney suggests that petitioners' actuations leaned towards the latter. This demonstrates the clear intent of petitioners to bring forth death on Licup who was seated on the passenger side and to Villanueva who was occupying the wheel, together with all the consequences arising from their deed. The circumstances of the shooting breed no other inference than that the firing was deliberate and not attributable to sheer accident or mere lack of skill.

12. **ID.; ID.; ID.; ID.; THE KILLING BEING INTENTIONAL AND NOT ACCIDENTAL, THE CRIMES COMMITTED COULD NOT MERELY BE CONSIDERED CRIMINAL NEGLIGENCE.—** The crimes committed in these cases are not merely criminal negligence, the killing being intentional and not accidental. In criminal negligence, the injury caused to another should be unintentional, it being the incident of

another act performed without malice. *People v. Guillen* and *People v. Nanquil* declare that a deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence. And in *People v. Castillo,* we held that there can be no frustrated homicide through reckless negligence inasmuch as reckless negligence implies lack of intent to kill, and without intent to kill the crime of frustrated homicide cannot exist.

13. **ID.; ID.; ID.; ID.; HOMICIDE AND ATTEMPTED HOMICIDE; COMMITTED IN CASE AT BAR.—** The Sandiganbayan correctly found that petitioners are guilty as co-principals in the crimes of homicide and attempted homicide only, respectively for the death of Licup and for the non-fatal injuries sustained by Villanueva, and that they deserve an acquittal together with the other accused, of the charge of attempted murder with respect to the unharmed victims. The allegation of evident premeditation has not been proved beyond reasonable doubt because the evidence is consistent with the fact that the urge to kill had materialized in the minds of petitioners as instantaneously as they perceived their suspects to be attempting flight and evading arrest. The same is true with treachery, inasmuch as there is no clear and indubitable proof that the mode of attack was consciously and deliberately adopted by petitioners.

14. **ID.; ID.; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; DOES NOT REQUIRE AN AGREEMENT FOR AN APPRECIABLE PERIOD PRIOR TO THE OCCURRENCE.—** That petitioners by their acts exhibited conspiracy, as correctly found by the Sandiganbayan, likewise militates against their claim of reckless imprudence. Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a felony and decide to commit it. Conspiracy need not be proven by direct evidence. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design. Conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other were, in fact, connected and cooperative, indicating a closeness

of personal association and a concurrence of sentiment. Conspiracy once found, continues until the object of it has been accomplished and unless abandoned or broken up. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. Conspiracy to exist does not require an agreement for an appreciable period prior to the occurrence. From the legal viewpoint, conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution. The instant case requires no proof of any previous agreement among petitioners that they were really bent on a violent attack upon their suspects. While it is far-fetched to conclude that conspiracy arose from the moment petitioners, or all of the accused for that matter, had converged and strategically posted themselves at the place appointed by Pamintuan, we nevertheless find that petitioners had been ignited by the common impulse not to let their suspect jeepney flee and evade their authority when it suddenly occurred to them that the vehicle was attempting to escape as it supposedly accelerated despite the signal for it to stop and submit to them.

APPEARANCES OF COUNSEL

Estelito P. Mendoza for petitioners in G.R. No. 122677.
Ponciano Carreon for petitioner in G.R. Nos. 120744-46.
Restituto M. David for petitioners in G.R. No. 122776.

D E C I S I O N

PERALTA, *J*.:[*]

Law enforcers thrust their lives in unimaginable zones of peril. Yet resort to wanton violence is never justified when their duty could be performed otherwise. A "shoot first, think later" disposition occupies no decent place in a civilized society. Never has homicide or murder been a function of law enforcement. The public peace is never predicated on the cost of human life.

[*] Acting Chairperson, per Special Order No. 1228 dated June 6, 2012

These are petitions for review on *certiorari* under Rule 45 of the Rules of Court assailing the June 30, 1995 Decision[1] of the Sandiganbayan in Criminal Case Nos. 16612, 16613 and 16614 — cases for murder, frustrated murder and multiple counts of attempted murder, respectively. The cases are predicated on a shooting incident on April 5, 1988 in Barangay Quebiawan, San Fernando, Pampanga which caused the death of Leodevince Licup (Licup) and injured Noel Villanueva (Villanueva). Accused were petitioners Salvador Yapyuco, Jr. (Yapyuco) and Generoso Cunanan, Jr. (Cunanan) and Ernesto Puno (Puno) who were members of the Integrated National Police (INP)[2] stationed at the Sindalan Substation in San Fernando, Pampanga; Jose Pamintuan (Pamintuan) and Mario Reyes, who were barangay captains of Quebiawan and Del Carmen, respectively; Ernesto Puno, Andres Reyes and Virgilio Manguerra (Manguerra), Carlos David, Ruben Lugtu, Moises Lacson (Lacson), Renato Yu, Jaime Pabalan (Pabalan) and Carlos David (David), who were either members of the Civil Home Defense Force (CHDF) or civilian volunteer officers in Barangays Quebiawan, Del Carmen and Telebastagan. They were all charged with murder, multiple attempted murder and frustrated murder in three Informations, the inculpatory portions of which read:

Criminal Case No. 16612:

That on or about the 5th day of April 1988, in Barangay Quebiawan, San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then policemen, Brgy. Captains, Brgy. Tanod and members of the Civil Home Defense Force (CHDF), respectively, confederating and mutually helping one another, and while responding to information about the presence of armed men in said *barangay* and conducting surveillance thereof, thus committing the offense in relation to their office, did then and there, with treachery and evident premeditation,

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[1] Penned by Associate Justice Romeo M. Escareal (Chairman), with Associate Justices Minita V. Chico-Nazario and Roberto M. Lagman, concurring; *rollo* (G.R. Nos. 120744-46), pp. 7-80.

[2] Now known as the *Philippine National Police*.

willfully, unlawfully and feloniously, and with deliberate intent to take the life of Leodevince S. Licup, attack the latter with automatic weapons by firing directly at the green Toyota Tamaraw jitney ridden by Leodevince S. Licup and inflicting multiple gunshot wounds which are necessarily mortal on the different parts of the body, thereby causing the direct and immediate death of the latter.

CONTRARY TO LAW.[3]

Criminal Case No. 16613:

That on or about the 5th day of April 1988, in Barangay Quebiawan, San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then policemen, Brgy. Captains, Brgy. Tanod and members of the Civil Home Defense Force (CHDF), respectively, confederating and mutually helping one another, and while responding to information about the presence of armed men in said *barangay* and conducting surveillance thereof, thus committing the offense in relation to their office, did then and there, with treachery and evident premeditation, willfully, unlawfully and feloniously, and with intent to kill, attack Eduardo S. Flores, Alejandro R. de Vera, Restituto G. Calma and Raul V. Panlican with automatic weapons by firing directly at the green Toyota Tamaraw jitney ridden by said Eduardo S. Flores, Alejandro R. de Vera, Restituto G. Calma and Raul V. Panlican, having commenced the commission of murder directly by overt acts of execution which should produce the murder by reason of some cause or accident other than their own spontaneous desistance.

CONTRARY TO LAW.[4]

Criminal Case No. 16614:

That on or about the 5th day of April 1988, in Barangay Quebiawan, San Fernando, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, being then policemen, Brgy. Captains, Brgy. Tanod and members of the Civil Home Defense Force (CHDF), respectively, confederating and mutually helping one another, and while responding to information about the presence of armed men in said *barangay* and conducting

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

[4] Records, Vol. 5, pp. 1-2.

surveillance thereof, thus committing the offense in relation to their office, did then and there, with treachery and evident premeditation, willfully, unlawfully and feloniously, and with intent of taking the life of Noel C. Villanueva, attack the latter with automatic weapons by firing directly at the green Toyota Tamaraw jitney driven by said Noel C. Villanueva and inflicting multiple gunshot wounds which are necessarily mortal and having performed all the acts which would have produced the crime of murder, but which did not, by reason of causes independent of the defendants' will, namely, the able and timely medical assistance given to said Noel C. Villanueva, which prevented his death.

CONTRARY TO LAW.[5]

Hailed to court on April 30, 1991 after having voluntarily surrendered to the authorities,[6] the accused — except Pabalan who died earlier on June 12, 1990,[7] and Yapyuco who was then allegedly indisposed[8] — entered individual pleas of not guilty.[9] A month later, Yapyuco voluntarily surrendered to the authorities, and at his arraignment likewise entered a negative plea.[10] In the meantime, Mario Reyes, Andres Reyes, David, Lugtu, Lacson, Yu and Manguerra jointly filed a Motion for Bail relative to Criminal Case No. 16612.[11] Said motion was heard on the premise, as previously agreed upon by both the prosecution and the defense, that these cases would be jointly tried and that the evidence adduced at said hearing would automatically constitute evidence at the trial on the merits.[12]

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[5] Records, Vol. 6, pp. 1-2

[6] Records, Vol. 1, p. 46.

[7] Accordingly, the charges against him were dismissed. See April 30, 1991 Order, *id.* at 108. TSN, April 30, 1991, pp. 3-5.

[8] April 30, 1991 Order, records, vol. 1, pp. 107-108; TSN, April 30, 1991, pp. 12-14. See also records, vol. 1, pp 191-197.

[9] Records, Vol. 1, pp. 96-105.

[10] *Id.* at 307.

[11] Records, Vol. 1, pp. 52-55.

[12] Resolution dated May 10, 1991, records, vol. 1, pp. 198-205.

On May 10, 1991, the Sandiganbayan granted bail in Criminal Case No. 16612.[13] Yapyuco likewise applied for bail on May 15, 1991 and the same was also granted on May 21, 1991.[14] Pamintuan died on November 21, 1992,[15] and accordingly, the charges against him were dismissed.

At the July 4, 1991 pre-trial conference, the remaining accused waived the pre-trial inquest.[16] Hence, joint trial on the merits ensued and picked up from where the presentation of evidence left off at the hearing on the bail applications.

The prosecution established that in the evening of April 5, 1988, Villanueva, Flores, Calma, De Vera, Panlican and Licup were at the residence of Salangsang as guests at the barrio fiesta celebrations between 5:00 and 7:30 p.m.. The company decided to leave at around 7:30 p.m., shortly after the religious procession had passed. As they were all inebriated, Salangsang reminded Villanueva, who was on the wheel, to drive carefully and watch out for potholes and open canals on the road. With Licup in the passenger seat and the rest of his companions at the back of his Tamaraw jeepney, Villanueva allegedly proceeded at 5-10 kph with headlights dimmed. Suddenly, as they were approaching a curve on the road, they met a burst of gunfire and instantly, Villanueva and Licup were both wounded and bleeding profusely.[17]

Both Flores and Villanueva, contrary to what the defense would claim, allegedly did not see any one on the road flag them down.[18] In open court, Flores executed a sketch[19] depicting

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[13] *Id.* at 205.

[14] *Id.* at. 300-308.

[15] See certificate of Death, records, Vol. II, p. 707; see also Manifestation dated December 11, 1992, *id.* at 703-704.

[16] Records, Vol. 1, p. 388.

[17] TSN, April 30, 1991, pp. 27-30, 32-34, 37-40, 42-50, 52-53; TSN, July 5, 1991, pp. 20-22.

[18] *Id.*; *Id.*; TSN, May 2, 1991, pp. 25-26

[19] Exhibits “L”, “L-1” to “L-5”.

the relative location of the Tamaraw jeepney on the road, the residence of Salangsang where they had come from and the house situated on the right side of the road right after the curve where the jeepney had taken a left turn; he identified said house to be that of a certain Lenlen Naron where the gunmen allegedly took post and opened fire at him and his companions. He could not tell how many firearms were used. He recounted that after the shooting, he, unaware that Licup and Villanueva were wounded, jumped out of the jeepney when he saw from behind them Pamintuan emerging from the yard of Naron's house. Frantic and shaken, he instantaneously introduced himself and his companions to be employees of San Miguel Corporation but instead, Pamintuan reproved them for not stopping when flagged. At this point, he was distracted when Villanueva cried out and told him to summon Salangsang for help as he (Villanueva) and Licup were wounded. He dashed back to Salangsang's house as instructed and, returning to the scene, he observed that petitioner Yu was also there, and Villanueva and Licup were being loaded into a Sarao jeepney to be taken to the hospital.[20] This was corroborated by Villanueva who stated that as soon as the firing had ceased, two armed men, together with Pamintuan, approached them and transferred him and Licup to another jeepney and taken to the nearby St. Francis Hospital.[21]

Flores remembered that there were two sudden bursts of gunfire which very rapidly succeeded each other, and that they were given no warning shot at all contrary to what the defense would say.[22] He professed that he, together with his co-passengers, were also aboard the Sarao jeepney on its way to the hospital and inside it he observed two men, each holding long firearms, seated beside the driver. He continued that as soon as he and his companions had been dropped off at the hospital, the driver

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[20] TSN, May 2, 1991, pp. 6-13, 15-17-19, 22-25, 26-29, 45-46, 52-53; TSN, July 5, 1991, pp. 38-46; 48-49;

[21] TSN, April 30, 1991, pp. 27-30, 32-34, 37-40, 42-50, 52-53; TSN, July 5, 1991, pp. 20-22;

[22] TSN, May 2, 1991, pp. 25-26.

of the Sarao jeepney immediately drove off together with his two armed companions.[23] He further narrated that the day after the shooting, he brought Licup to the Makati Medical Center where the latter expired on April 7, 1988.[24] He claimed that all the accused in the case had not been known to him prior to the incident, except for Pamintuan whom he identified to be his wife's uncle and with whom he denied having had any rift nor with the other accused for that matter, which would have otherwise inspired ill motives. [25] He claimed the bullet holes on the Tamaraw jeepney were on the passenger side and that there were no other bullet holes at the back or in any other portion of the vehicle.[26]

Salangsang, also an electrician at the San Miguel Corporation plant, affirmed the presence of his companions at his residence on the subject date and time, and corroborated Villanueva's and Flores' narration of the events immediately preceding the shooting. He recounted that after seeing off his guests shortly after the procession had passed his house and reminding them to proceed carefully on the pothole-studded roads, he was alarmed when moments later, he heard a volley of gunfire from a distance which was shortly followed by Flores' frantic call for help. He immediately proceeded to the scene on his bicycle and saw Pamintuan by the lamppost just outside the gate of Naron's house where, inside, he noticed a congregation of more or less six people whom he could not recognize.[27] At this point, he witnessed Licup and Villanueva being loaded into another jeepney occupied by three men who appeared to be in uniform. He then retrieved the keys of the Tamaraw jeepney from Villanueva and decided to deliver it to his mother's house, but before driving off, he allegedly caught a glance of Mario Reyes on the wheel

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[23] *Id.* at 31-32, 44-45, 51.

[24] *Id.* at 37 and 55.

[25] *Id.* at 16.

[26] *Id.* at 57-59.

[27] TSN, July 23, 1991, pp. 38-41; TSN, May 3, 1991, pp. 4-10, 18, 27, 29.

of an owner-type jeepney idling in front of the ill-fated Tamaraw; it was the same jeepney which he remembered to be that frequently used by Yapyuco in patrolling the *barangay*. He claimed he spent the night at his mother's house and in the morning, a policeman came looking for him with whom, however, he was not able to talk.[28]

Salangsang observed that the scene of the incident was dark because the electric post in front of Naron's house was strangely not lit when he arrived, and that none of the neighboring houses was illuminated. He admitted his uncertainty as to whether it was Yapyuco's group or the group of Pamintuan that brought his injured companions to the hospital, but he could tell with certainty that it was the Sarao jeepney previously identified by Villanueva and Flores that brought his injured companions to the hospital.[29]

Daisy Dabor, forensic chemist at the Philippine National Police Crime Laboratory in Camp Olivas, affirmed that she had previously examined the firearms suspected to have been used by petitioners in the shooting and found them positive for gunpowder residue. She could not, however, determine exactly when the firearms were discharged; neither could she tell how many firearms were discharged that night nor the relative positions of the gunmen. She admitted having declined to administer paraffin test on petitioners and on the other accused because the opportunity therefor came only 72 hours after the incident. She affirmed having also examined the Tamaraw jeepney and found eleven (11) bullet holes on it, most of which had punctured the door at the passenger side of the vehicle at oblique and perpendicular directions. She explained, rather inconclusively, that the bullets that hit at an angle might have been fired while the jeepney was either at a standstill or moving forward in a straight line, or gradually making a turn at the curve on the road.[30] Additionally, Silvestre Lapitan, administrative and supply

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[28] *Id.* at 17-20, 24-26, 41-47; *id.* at 10-14, 18-23.

[29] TSN, May 3, 1991, pp. 14-15.

[30] TSN, July 24, 1991, pp. 38-40, 47-55; TSN, November 26, 1991, pp. 4-8, 10-14, 19-20. See Technical Report No. PI-032-88, Exhibit "J".

officer of the INP-Pampanga Provincial Command tasked with the issuance of firearms and ammunitions to members of the local police force and CHDF and CVO members, identified in court the memorandum receipts for the firearms he had issued to Mario Reyes, Andres Reyes, Manguerra, Pabalan and Yapyuco.[31]

Dr. Pedro Solis, Jr., medico-legal consultant at the Makati Medical Center, examined the injuries of Villanueva and Licup on April 6, 1988. He recovered multiple metal shrapnel from the occipital region of Villanueva's head as well as from the posterior aspect of his chest; he noted nothing serious in these wounds in that the incapacity would last between 10 and 30 days only. He also located a bullet wound on the front lateral portion of the right thigh, and he theorized that this wound would be caused by a firearm discharged in front of the victim, assuming the assailant and the victim were both standing upright on the ground and the firearm was fired from the level of the assailant's waist; but if the victim was seated, the position of his thigh must be horizontal so that with the shot coming from his front, the trajectory of the bullet would be upward. He hypothesized that if the shot would come behind Villanueva, the bullet would enter the thigh of the seated victim and exit at a lower level.[32]

With respect to Licup, Dr. Solis declared he was still alive when examined. On the patient, he noted a lacerated wound at the right temporal region of the head — one consistent with being hit by a hard and blunt object and not a bullet. He noted three (3) gunshot wounds the locations of which suggested that Licup was upright when fired upon from the front: one is a through-and-through wound in the middle lateral aspect of the middle portion of the right leg; another, through-and-through

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[31] TSN, April 30, 1991, pp. 17-19. See Memorandum Receipts, Exhibits D, E, F, G, H.

[32] TSN, October 22, 1991, pp. 7, 10-11, 13-20, 42-43, 49-50. Dr. Pedro Solis appears to have authored a book on legal Medicine in 1964. See Medico-legal Report dated April 6, 1988, Exhibit I.

wound at the middle portion of the right forearm; and third one, a wound in the abdomen which critically and fatally involved the stomach and the intestines. He hypothesized that if Licup was seated in the passenger seat as claimed, his right leg must have been exposed and the assailant must have been in front of him holding the gun slightly higher than the level of the bullet entry in the leg. He found that the wound in the abdomen had entered from the left side and crossed over to and exited at the right, which suggested that the gunman must have been positioned at Licup's left side. He explained that if this wound had been inflicted ahead of that in the forearm, then the former must have been fired after Licup had changed his position as a reaction to the first bullet that hit him. He said that the wound on the leg must have been caused by a bullet fired at the victim's back and hit the jeepney at a downward angle without hitting any hard surface prior.[33]

Dr. Solis believed that the wound on Licup's right forearm must have been caused by a bullet fired from the front but slightly obliquely to the right of the victim. Hypothesizing, he held the improbability of Licup being hit on the abdomen, considering that he might have changed position following the infliction of the other wounds, unless there was more than one assailant who fired multiple shots from either side of the Tamaraw jeepney; however, he proceeded to rule out the possibility of Licup having changed position especially if the gunfire was delivered very rapidly. He could not tell which of Licup's three wounds was first inflicted, yet it could be that the bullet to the abdomen was delivered ahead of the others because it would have caused Licup to lean forward and stoop down with his head lying low and steady.[34]

Finally, Atty. Victor Bartolome, hearing officer at the National Police Commission (NAPOLCOM) affirmed that the accused police officers Yapyuco, Cunanan and Puno had been

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[33] TSN, October 22, 1991, pp. 21-23, 26-28, 30-34, 37-42, 50-53.

[34] *Id.* at 44-48.

administratively charged with and tried for gross misconduct as a consequence of the subject shooting incident and that he had in fact conducted investigations thereon sometime in 1989 and 1990 which culminated in their dismissal from service.[35] Dolly Porqueriño, stenographer at the NAPOLCOM, testified that at the hearing of the administrative case, Yapyuco authenticated the report on the shooting incident dated April 5, 1988 which he had previously prepared at his office. This, according to her, together with the sketch showing the relative position of the responding law enforcers and the Tamaraw jeepney at the scene of the incident, had been forwarded to the NAPOLCOM Central Office for consideration.[36] The Sandiganbayan, in fact, subpoenaed these documents together with the joint counter-affidavits which had been submitted in that case by Yapyuco, Cunanan and Puno.

Of all the accused, only Yapyuco took the stand for the defense. He identified himself as the commander of the Sindalan Police Substation in San Fernando, Pampanga and the superior officer of petitioners Cunanan and Puno and of the accused Yu whose jurisdiction included Barangays Quebiawan and Telebastagan. He narrated that in the afternoon of April 5, 1988, he and his men were investigating a physical injuries case when Yu suddenly received a summon for police assistance from David, who supposedly was instructed by Pamintuan, concerning a reported presence of armed NPA members in Quebiawan. Yapyuco allegedly called on their main station in San Fernando for reinforcement but at the time no additional men could be dispatched. Hence, he decided to respond and instructed his men to put on their uniforms and bring their M-16 rifles with them.[37]

Yapyuco continued that at the place appointed, he and his group met with Pamintuan who told him that he had earlier

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[35] TSN, October 7, 1991, pp. 12, 14-15.

[36] TSN, October 25, 1991, pp. 17-44.

[37] TSN, September 15, 1993, pp. 5-12; TSN, November 8, 1993, p. 10.

spotted four (4) men carrying long firearms. As if sizing up their collective strength, Pamintuan allegedly intimated that he and barangay captain Mario Reyes of nearby Del Carmen had also brought in a number of armed men and that there were likewise Cafgu members convened at the residence of Naron. Moments later, Pamintuan announced the approach of his suspects, hence Yapyuco, Cunanan and Puno took post in the middle of the road at the curve where the Tamaraw jeepney conveying the victims would make an inevitable turn. As the jeepney came much closer, Pamintuan announced that it was the target vehicle, so he, with Cunanan and Puno behind him, allegedly flagged it down and signaled for it to stop. He claimed that instead of stopping, the jeepney accelerated and swerved to its left. This allegedly inspired him, and his fellow police officers Cunanan and Puno,[38] to fire warning shots but the jeepney continued pacing forward, hence they were impelled to fire at the tires thereof and instantaneously, gunshots allegedly came bursting from the direction of Naron's house directly at the subject jeepney.[39]

Yapyuco recalled that one of the occupants of the jeepney then alighted and exclaimed at Pamintuan that they were San Miguel Corporation employees. Holding their fire, Yapyuco and his men then immediately searched the vehicle but found no firearms but instead, two injured passengers whom they loaded into his jeepney and delivered to nearby St. Francis Hospital. From there he and his men returned to the scene supposedly to investigate and look for the people who fired directly at the

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[38] Memorandum of Cunanan and Puno filed with the Sandiganbayan, *rollo* (G.R. No. 122776), p. 126.

[39] TSN, September 15, 1993, pp. 13-15, 18-21; TSN, November 8, 1993, pp. 3, 5, 12, 23-25, 31. See also Joint Counter Affidavit of Cunanan and Puno, dated July 20, 1988, in which they stated that their "team was forced to fire at the said vehicle" when it did not heed the supposed warning shots, Exhibit "A". In their earlier Joint Affidavit dated April 5, 1988, Yapyuco, Cunanan and Puno stated that after firing warning shots in the air, the subject jeepney accelerated its speed which "constrained (them) to fire directly to (sic) the said fleeing vehicle, Exhibit "O".

jeepney. They found no one; the Tamaraw jeepney was likewise gone.[40]

Yapyuco explained that the peace and order situation in Barangay Quebiawan at the time was in bad shape, as in fact there were several law enforcement officers in the area who had been ambushed supposedly by rebel elements,[41] and that he frequently patrolled the barangay on account of reported sightings of unidentified armed men therein.[42] That night, he said, his group which responded to the scene were twelve (12) in all, comprised of Cunanan and Puno from the Sindalan Police Substation, [43] the team composed of Pamintuan and his men, as well as the team headed by Captain Mario Reyes. He admitted that all of them, including himself, were armed.[44] He denied that they had committed an ambuscade because otherwise, all the occupants of the Tamaraw jeepney would have been killed.[45] He said that the shots which directly hit the passenger door of the jeepney did not come from him or from his fellow police officers but rather from Cafgu members assembled in the residence of Naron, inasmuch as said shots were fired only when the jeepney had gone past the spot on the road where they were assembled.[46]

Furthermore, Yapyuco professed that he had not communicated with any one of the accused after the incident because he was at the time very confused; yet he did know that his co-accused had already been investigated by the main police

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[40] TSN, September 15, 1993, pp. 22-23; TSN, November 8, 1993, pp. 6-7, 10-11, 21-23.

[41] *Id.* at 23-25; *Id.* at 4.

[42] TSN, November 8, 1993, p. 12, 15-16.

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

[44] TSN, September 15, 1993, p. 23; TSN, November 8, 1993, pp. 7-8, 10-11, 20.

[45] TSN, November 8, 1993, p. 5.

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

station in San Fernando, but the inquiries did not include himself, Cunanan and Puno.[47] He admitted an administrative case against him, Cunanan and Puno at the close of which they had been ordered dismissed from service; yet on appeal, the decision was reversed and they were exonerated. He likewise alluded to an investigation independently conducted by their station commander, S/Supt. Rolando Cinco.[48]

S/Supt Rolando Cinco, then Station Commander of the INP in San Fernando, Pampanga acknowledged the volatility of the peace and order situation in his jurisdiction, where members of the police force had fallen victims of ambuscade by lawless elements. He said that he himself has actually conducted investigations on the Pamintuan report that rebel elements had been trying to infiltrate the employment force of San Miguel Corporation plant, and that he has accordingly conducted "clearing operations" in sugarcane plantations in the *barangay*. He intimated that days prior to the incident, Yapyuco's team had already been alerted of the presence of NPA members in the area. Corroborating Yapyuco's declaration, he confessed having investigated the shooting incident and making a report on it in which, curiously, was supposedly attached Pamintuan's statement referring to Flores as being "married to a resident of Barangay Quebiawan" and found after surveillance to be "frequently visited by NPA members." He affirmed having found that guns were indeed fired that night and that the chief investigator was able to gather bullet shells from the scene.[49]

Cunanan and Puno did not take the witness stand but adopted the testimony of Yapyuco as well as the latter's documentary evidence.[50] Mario Reyes, Andres Reyes, Lugtu, Lacson, Yu and Manguera, waived their right to present evidence and submitted their memorandum as told.[51]

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[47] *Id.* at 21-23.

[48] TSN, September 15, 1993, pp. 26-29.

[49] TSN, November 22, 1993, pp. 26-36, 40-43, 46-47.

[50] See Order dated April 6, 1994, records, Vol. II, p. 955.

[51] See Manifestation and Motion dated May 6, 1993, *id.* at 759-761, and Resolution dated June 1, 1993, *id.* at 763-764.

The Sandiganbayan reduced the basic issue to whether the accused had acted in the regular and lawful performance of their duties in the maintenance of peace and order either as *barangay* officials and as members of the police and the CHDF, and hence, could take shelter in the justifying circumstance provided in Article 11 (5) of the Revised Penal Code; or whether they had deliberately ambushed the victims with the intent of killing them.[52] With the evidence in hand, it found Yapyuco, Cunanan, Puno, Manguera and Mario and Andres Reyes guilty as co-principals in the separate offense of homicide for the eventual death of Licup (instead of murder as charged in Criminal Case No. 16612) and of attempted homicide for the injury sustained by Villanueva (instead of frustrated murder as charged in Criminal Case No. 16614), and acquitted the rest in those cases. It acquitted all of them of attempted murder charged in Criminal Case No. 16613 in respect of Flores, Panlican, De Vera and Calma. The dispositive portion of the June 30, 1995 Joint Decision reads:

WHEREFORE, judgment is hereby rendered as follows:

I. In Crim. Case No. 16612, accused Salvador Yapyuco *y* Enriquez, Generoso Cunanan, Jr. *y* Basco, Ernesto Puno *y* Tungol, Mario Reyes *y* David, Andres Reyes *y* Salangsang and Virgilio Manguerra *y* Adona are hereby found GUILTY beyond reasonable doubt as co-principals in the offense of Homicide, as defined and penalized under Article 249 of the Revised Penal Code, and crediting all of them with the mitigating circumstance of voluntary surrender, without any aggravating circumstance present or proven, each of said accused is hereby sentenced to suffer an indeterminate penalty ranging from SIX (6) YEARS and ONE (1) DAY of *prision correccional,* as the minimum, to TWELVE (12) YEARS and ONE (1) DAY of *reclusion temporal,* as the maximum; to indemnify, jointly and severally, the heirs of the deceased victim Leodevince Licup in the amounts of ₱77,000.00 as actual damages and ₱600,000.00 as moral/exemplary damages, and to pay their proportionate shares of the costs of said action.

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[52] *Rollo* (G.R. Nos. 120744-46), p. 55.

II. In Crim. Case No. 16613, for insufficiency of evidence, all the accused charged in the information, namely, Salvador Yapyuco *y* Enriquez, Generoso Cunanan, Jr. *y* Basco, Ernesto Puno *y* Tungol, Mario Reyes *y* David, Carlos David *y* Bañez, Ruben Lugtu *y* Lacson, Moises Lacson *y* Adona, Renato Yu *y* Barrera, Andres Reyes *y* Salangsang and Virgilio Manguerra *y* Adona are hereby acquitted of the offense of Multiple Attempted Murder charged therein, with costs *de oficio.*

III. In Crim. Case No. 16614, accused Salvador Yapyuco *y* Enriquez, Generoso Cunanan, Jr. *y* Basco, Ernesto Puno *y* Tungol, Mario Reyes *y* David, Andres Reyes *y* Salangsang and Virgilio Manguerra *y* Adona are hereby found GUILTY beyond reasonable doubt as co-principals in the offense Attempted Homicide, as defined and penalized under Article 249, in relation to Article 6, paragraph 3, both of the Revised Penal Code, and crediting them with the mitigating circumstance of voluntary surrender, without any aggravating circumstance present or proven, each of said accused is hereby sentenced to suffer an indeterminate penalty ranging from SIX (6) MONTHS and ONE (1) DAY of *prision correccional* as the minimum, to SIX (6) YEARS and ONE (1) DAY of *prision mayor* as the maximum; to indemnify, jointly and severally, the offended party Noel Villanueva in the amount of ₱51,700.00 as actual and compensatory damages, plus ₱120,000.00 as moral/exemplary damages, and to pay their proportionate share of the costs of said action.

SO ORDERED.[53]

The Sandiganbayan declared that the shootout which caused injuries to Villanueva and which brought the eventual death of Licup has been committed by petitioners herein willfully under the guise of maintaining peace and order;[54] that the acts performed by them preparatory to the shooting, which ensured the execution of their evil plan without risk to themselves, demonstrate a clear intent to kill the occupants of the subject vehicle; that the

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[53] *Id.* at 77-79.

[54] *Id.* at 56-57.

fact they had by collective action deliberately and consciously intended to inflict harm and injury and had voluntarily performed those acts negates their defense of lawful performance of official duty;[55] that the theory of mistaken belief could not likewise benefit petitioners because there was supposedly no showing that they had sufficient basis or probable cause to rely fully on Pamintuan's report that the victims were armed NPA members, and they have not been able by evidence to preclude ulterior motives or gross inexcusable negligence when they acted as they did;[56] that there was insufficient or total absence of factual basis to assume that the occupants of the jeepney were members of the NPA or criminals for that matter; and that the shooting incident could not have been the product of a well-planned and well-coordinated police operation but was the result of either a hidden agenda concocted by Barangay Captains Mario Reyes and Pamintuan, or a hasty and amateurish attempt to gain commendation.[57]

These findings obtain context principally from the open court statements of prosecution witnesses Villanueva, Flores and Salangsang, particularly on the circumstances prior to the subject incident. The Sandiganbayan pointed out that the Tamaraw jeepney would have indeed stopped if it had truly been flagged down as claimed by Yapyuco especially since — as it turned out after the search of the vehicle — they had no firearms with them, and hence, they had nothing to be scared of.[58] It observed that while Salangsang and Flores had been *bona fide* residents of Barangay Quebiawan, then it would be impossible for Pamintuan, barangay captain no less, not to have known them and the location of their houses which were not far from the scene of the incident; so much so that the presence of the victims and of the Tamaraw jeepney in Salangsang's house that evening

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[55] *Id.* at 64-66.

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

[57] *Id.* at 64-65.

[58] *Id.* at 61.

could not have possibly escaped his notice. In this regard, it noted that Pamintuan's Sworn Statement dated April 11, 1988 did not sufficiently explain his suspicions as to the identities of the victims as well as his apparent certainty on the identity and whereabouts of the subject Tamaraw jeepney.[59] It surmised how the defense, especially Yapyuco in his testimony, could have failed to explain why a large group of armed men — which allegedly included Cafgu members from neighboring *barangays* — were assembled at the house of Naron that night, and how petitioners were able to identify the Tamaraw jeepney to be the target vehicle. From this, it inferred that petitioners had already known that their suspect vehicle would be coming from the direction of Salangsang's house — such knowledge is supposedly evident first, in the manner by which they advantageously positioned themselves at the scene to afford a direct line of fire at the target vehicle, and second, in the fact that the house of Naron, the neighboring houses and the electric post referred to by prosecution witnesses were deliberately not lit that night.[60]

The Sandiganbayan also drew information from Flores' sketch depicting the position of the Tamaraw jeepney and the assailants on the road, and concluded that judging by the bullet holes on the right side of the jeepney and by the declarations of Dr. Solis respecting the trajectory of the bullets that hit Villanueva and Licup, the assailants were inside the yard of Naron's residence and the shots were fired at the jeepney while it was slowly moving past them. It also gave weight to the testimony and the report of Dabor telling that the service firearms of petitioners had been tested and found to be positive of gunpowder residue, therefore indicating that they had indeed been discharged.[61]

The Sandiganbayan summed up what it found to be overwhelming circumstantial evidence pointing to the culpability of petitioners: the nature and location of the bullet holes on the

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[59] *Id.* at 58.

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

[61] *Id.* at 60-63.

jeepney and the gunshot wounds on the victims, as well as the trajectory of the bullets that caused such damage and injuries; particularly, the number, location and trajectory of the bullets that hit the front passenger side of the jeepney; the strategic placement of the accused on the right side of the street and inside the front yard of Naron's house; the deliberate shutting off of the lights in the nearby houses and the lamp post; and the positive ballistic findings on the firearms of petitioners.[62]

This evidentiary resumé, according to the Sandiganbayan, not only fortified petitioners' admission that they did discharge their firearms, but also provided a predicate to its conclusion that petitioners conspired with one another to achieve a common purpose, design and objective to harm the unarmed and innocent victims. Thus, since there was no conclusive proof of who among the several accused had actually fired the gunshots that injured Villanueva and fatally wounded Licup, the Sandiganbayan imposed collective responsibility on all those who were shown to have discharged their firearms that night — petitioners herein.[63] Interestingly, it was speculated that the manner by which the accused collectively and individually acted prior or subsequent to or contemporaneously with the shooting indicated that they were either drunk or that some, if not all of them, had a grudge against the employees of San Miguel Corporation;[64] and that on the basis of the self-serving evidence adduced by the defense, there could possibly have been a massive cover-up of the incident by Philippine Constabulary and INP authorities in Pampanga as well as by the NAPOLCOM.[65] It likewise found very consequential the fact that the other accused had chosen not to take the witness stand; this, supposedly because it was incumbent upon them to individually explain their participation in the shooting in view of the weight of the prosecution evidence, their invocation

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[62] *Id.* at 73-74.

[63] *Id.* at 74-75.

[64] *Id.* at 64-65.

[65] *Id.* at 69.

of the justifying circumstance of lawful performance of official duty and the declaration of some of them in their affidavits to the effect that they had been deployed that evening in the front yard of Naron's residence from which the volley of gunfire was discharged as admitted by Yapyuco himself.[66]

As to the nature of the offenses committed, the Sandiganbayan found that the qualifying circumstance of treachery has not been proved because first, it was supposedly not shown how the aggression commenced and how the acts causing injury to Villanueva and fatally injuring Licup began and developed, and second, this circumstance must be supported by proof of a deliberate and conscious adoption of the mode of attack and cannot be drawn from mere suppositions or from circumstances immediately preceding the aggression. The same finding holds true for evident premeditation because between the time Yapyuco received the summons for assistance from Pamintuan through David and the time he and his men responded at the scene, there was found to be no sufficient time to allow for the materialization of all the elements of that circumstance.[67]

Finally as to damages, Villanueva had testified that his injury required leave from work for 60 days which were all charged against his accumulated leave credits;[68] that he was earning ₱8,350.00 monthly;[69] and that he had spent ₱35,000.00 for the repair of his Tamaraw jeepney.[70] Also, Teodoro Licup had stated that his family had spent ₱18,000.00 for the funeral of his son, ₱28,000.00 during the wake, ₱11,000.00 for the funeral plot and ₱20,000.00 in attorney's fees for the prosecution of these cases.[71] He also submitted a certification from San Miguel

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[66] *Id.* at 68-69.

[67] *Id.* at 71-73.

[68] Exhibit "X".

[69] TSN, July 5, 1991, pp. 7-9, 27.

[70] *Id.* at 11-12, 17.

[71] TSN, January 9, 1991, pp. 4-12.

Corporation reflecting the income of his deceased son.[72] On these bases, the Sandiganbayan ordered petitioners, jointly and severally, to indemnify (a) Villanueva ₱51,700.00 as actual and compensatory damages and ₱120,000.00 as moral/exemplary damages, plus the proportionate costs of the action, and (b) the heirs of deceased Licup in the amount of ₱77,000.00 as actual damages and ₱600,000.00 as moral/exemplary damages, plus the proportionate costs of the action.

Petitioners' motion for reconsideration was denied; hence, the present recourse.

In G.R. Nos. 120744-46, Yapyuco disputes the Sandiganbayan's finding of conspiracy and labels the same to be conjectural. He points out that the court *a quo* has not clearly established that he had by positive acts intended to participate in any criminal object in common with the other accused, and that his participation in a supposed common criminal object has not been proved beyond reasonable doubt. He believes the finding is belied by Flores and Villanueva, who saw him at the scene only after the shooting incident when the wounded passengers were taken to the hospital on his jeepney.[73] He also points out the uncertainty in the Sandiganbayan's declaration that the incident could not have been the product of a well-planned police operation, but rather was the result of either a hidden agenda concocted against the victims by the *barangay* officials involved or an amateurish attempt on their part to earn commendation. He theorizes that, if it were the latter alternative, then he could hardly be found guilty of homicide or frustrated homicide but rather of reckless imprudence resulting in homicide and frustrated homicide.[74] He laments that, assuming *arguendo* that the injuries sustained by the victims were caused by his warning shots, he must nevertheless be exonerated because he responded to the scene of the incident as a *bona fide* member

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[72] Exhibit "FF".

[73] *Rollo* (G.R. Nos. 120744-46), p. 96.

[74] *Id.* at 93-95.

of the police force and, hence, his presence at the scene of the incident was in line with the fulfillment of his duty as he was in fact in the lawful performance thereof — a fact which has been affirmed by the NAPOLCOM *en banc* when it dismissed on appeal the complaint for gross misconduct against him, Cunanan and Puno.[75] He also invokes the concept of mistake of fact and attributes to Pamintuan the responsibility why he, as well as the other accused in these cases, had entertained the belief that the suspects were armed rebel elements.[76]

In G.R. No. 122677, petitioners Manguerra, Mario Reyes and Andres Reyes claim that the Sandiganbayan has not proved their guilt beyond reasonable doubt, and the assailed decision was based on acts the evidence for which has been adduced at a separate trial but erroneously attributed to them. They explain that there were two sets of accused, in the case: *one*, the police officers comprised of Yapyuco, Cunanan and Puno and, *two*, the *barangay* officials and CHDFs comprised of David, Lugtu, Lacson, Yu and themselves who had waived the presentation of evidence. They question their conviction of the charges *vis-a-vis* the acquittal of David, Lugtu, Lacson and Yu who, like them, were barangay officials and had waived their right to present evidence in their behalf. They emphasize in this regard that all accused *barangay* officials and CHDFs did not participate in the presentation of the evidence by the accused police officers and, hence, the finding that they too had fired upon the Tamaraw jeepney is hardly based on an established fact.[77] Also, they believe that the findings of fact by the Sandiganbayan were based on inadmissible evidence, specifically on evidence rejected by the court itself and those presented in a separate trial. They label the assailed decision to be speculative, conjectural and suspicious and, hence, antithetical to the quantum of evidence required in a criminal prosecution.[78] Finally, they lament that

[75] *Id.* at 108.

[76] *Id.* at 103.

[77] *Rollo* (G.R. No. 122677), pp. 57-65.

[78] *Id.* at 75-81.

the finding of conspiracy has no basis in evidence and that the prosecution has not even shown that they were with the other accused at the scene of the incident or that they were among those who fired at the victims, and neither were they identified as among the perpetrators of the crime.[79]

In G.R. No. 122776, Cunanan and Puno likewise dispute the finding of conspiracy. They claim that judging by the uncertainty in the conclusion of the Sandiganbayan as to whether the incident was the result of a legitimate police operation or a careless plot designed by the accused to obtain commendation, conspiracy has not been proved beyond reasonable doubt. This, because they believe the prosecution has not, as far as both of them are concerned, shown that they had ever been part of such malicious design to commit an ambuscade as that alluded to in the assailed decision. They advance that as police officers, they merely followed orders from their commander, Yapyuco, but were not privy to the conversation among the latter, David and Pamintuan, moments before the shooting. They posit they could hardly be assumed to have had community of criminal design with the rest of the accused.[80] They affirm Yapyuco's statement that they fired warning shots *at* the subject jeepney,[81] but only after it had passed the place where they were posted and only after it failed to stop when flagged down as it then became apparent that it was going to speed away — as supposedly shown by bullet holes on the chassis and not on the rear portion of the jeepney. They also harp on the absence of proof of ill motives that would have otherwise urged them to commit the crimes charged, especially since none of the victims had been personally or even remotely known to either of them. That they were not intending to commit a crime is, they believe, shown by the fact that they did not directly aim their rifles at the passengers of the jeepney and that in fact, they immediately

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[79] *Id.* at 82-89.

[80] *Rollo* (G.R. No. 122776), pp. 101-103.

[81] *Id.*

held their fire when Flores identified themselves as employees of San Miguel Corporation. They conceded that if killing was their intent, then they could have easily fired at the victims directly.[82]

Commenting on these petitions, the Office of the Special Prosecutor stands by the finding of conspiracy as established by the fact that all accused, some of them armed, had assembled themselves and awaited the suspect vehicle as though having previously known that it would be coming from Salangsang's residence. It posits that the manner by which the jeepney was fired upon demonstrates a community of purpose and design to commit the crimes charged.[83] It believes that criminal intent is discernible from the posts the accused had chosen to take on the road that would give them a direct line of fire at the target — as shown by the trajectories of the bullets that hit the Tamaraw jeepney.[84] This intent was supposedly realized when after the volley of gunfire, both Flores and Licup were wounded and the latter died as a supervening consequence.[85] It refutes the invocation of lawful performance of duty, mainly because there was no factual basis to support the belief of the accused that the occupants were members of the NPA, as indeed they have not shown that they had previously verified the whereabouts of the suspect vehicle. But while it recognizes that the accused had merely responded to the call of duty when summoned by Pamintuan through David, it is convinced that they had exceeded the performance thereof when they fired upon the Tamaraw jeepney occupied, as it turned out, by innocent individuals instead.[86]

As to the contention of Mario Reyes, Andres Reyes and Manguerra that the evidence adduced before the Sandiganbayan as well the findings based thereon should not be binding on

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[82] *Id.* at 104-106.

[83] *Id.* at 223-225.

[84] *Id.* at 226-227.

[85] *Id.* at 227-228.

[86] *Id.* at 228-230.

them, the OSP explains that said petitioners, together with Pamintuan, David, Lugtu, Lacson and Yu, had previously withdrawn their motion for separate trial and as directed later on submitted the case for decision as to them with the filing of their memorandum. It asserts there was no denial of due process to said petitioners in view of their agreement for the reproduction of the evidence on the motion for bail at the trial proper as well as by their manifestation to forego with the presentation of their own evidence. The right to present witnesses is waivable. Also, where an accused is jointly tried and testifies in court, the testimony binds the other accused, especially where the latter has failed to register his objection thereto.[87]

The decision on review apparently is laden with conclusions and inferences that seem to rest on loose predicates. Yet we have pored over the records of the case and found that evidence nonetheless exists to support the penultimate finding of guilt beyond reasonable doubt.

I.

It is as much undisputed as it is borne by the records that petitioners were at the *situs* of the incident on the date and time alleged in the Informations. Yapyuco, in his testimony — which was adopted by Cunanan and Puno — as well as Manguerra, Mario Reyes and Andres Reyes in their affidavits which had been offered in evidence by the prosecution,[88] explained that their presence at the scene was in response to the information relayed by Pamintuan through David that armed rebel elements on board a vehicle described to be that occupied by the victims were reportedly spotted in Barangay Quebiawan. It is on the basis of this suspicion that petitioners now appeal to justification under Article 11 (5) of the Revised Penal Code and under the concept of mistake of fact. Petitioners admit that it was not by accident or mistake but by deliberation that the shooting transpired when it became apparent that the suspect vehicle was attempting

[87] *Rollo* (G.R. No. 122677), pp. 230-232.

[88] See note 50 and Exhibits "A", "B", "C", "N" and "O".

to flee, yet contention arises as to whether or not there was intention to harm or even kill the passengers aboard, and who among them had discharged the bullets that caused the eventual death of Licup and injured Villanueva.

The first duty of the prosecution is not to present the crime but to identify the criminal.[89] To this end, the prosecution in these cases offered in evidence the joint counter-affidavit[90] of Andres Reyes and Manguerra; the counter-affidavit[91] of Mario Reyes; the joint counter-affidavit[92] of Cunanan and Puno; the counter-affidavit[93] of Yapyuco; and the joint counter-affidavit[94] of Yapyuco, Cunanan and Puno executed immediately after the incident in question. In brief, Cunanan and Puno stated therein that "[their] team was forced to fire at the said vehicle" when it accelerated after warning shots were fired in air and when it ignored Yapyuco's signal for it to stop;[95] in their earlier affidavit they, together with Yapyuco, declared that they were "constrained x x x to fire directly to (sic) the said fleeing vehicle."[96] Yapyuco's open court declaration, which was adopted by Cunanan and Puno, is that he twice discharged his firearm: first, to give warning to the subject jeepney after it allegedly failed to stop when flagged down and second, at the tires thereof when it came clear that it was trying to escape.[97] He suggested — substantiating the implication in his affidavit that it was "the

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[89] *People v. Esmale*, G.R. Nos. 102981-82, April 21, 1995, 243 SCRA 578, 592.

[90] Co-executed by deceased Pabalan, dated September 28, 1988, Exhibit "N".

[91] Dated September 28, 1988, Exhibit "C".

[92] Dated July 20, 1988, Exhibit "A".

[93] Dated July 20, 1988, Exhibit "B".

[94] Dated April 5, 1988, Exhibit "O".

[95] Exhibits "A-1," "O," "B" and "B-1".

[96] Exhibit "O".

[97] See notes 38 and 39.

whole team [which fired] at the fleeing vehicle"[98] — that the bullets which hit the passenger side of the ill-fated jeepney could have come only from the CHDFs posted inside the yard of Naron where Manguerra, Mario Reyes and Andres Reyes admitted having taken post while awaiting the arrival of the suspect vehicle.[99]

Mario Reyes and Andres Reyes, relying on their affidavits, declared that it was only Manguerra from their group who discharged a firearm but only into the air to give warning shots,[100] and that it was the "policemen [who] directly fired upon" the jeepney.[101] Manguerra himself shared this statement.[102] Yet these accounts do not sit well with the physical evidence found in the bullet holes on the passenger door of the jeepney which Dabor, in both her report and testimony, described to have come from bullets sprayed from perpendicular and oblique directions. This evidence in fact supports Yapyuco's claim that he, Cunanan and Puno did fire directly at the jeepney after it had made a right turn and had already moved past them such that the line of fire to the passengers thereof would be at an oblique angle from behind. It also bolsters his claim that, almost simultaneously, gunshots came bursting after the jeepney has passed the spot where he, Cunanan and Puno had taken post, and when the vehicle was already right in front of the yard of Naron's house sitting on the right side of the road after the curve and where Manguerra, Mario Reyes and Andres Reyes were positioned, such that the line of fire would be direct and perpendicular to it.[103]

While Dabor's ballistics findings are open to challenge for being inconclusive as to who among the accused actually

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[98] Exhibit "B-1".

[99] See notes 38 and 39. See also Exhibits "B" and "C".

[100] Exhibit "C".

[101] Exhibit "N".

[102] *Id.*

[103] See notes 30, 38 and 39. Refer also to the sketch of Yapyuco and Flores depicting the relative location of the Tamaraw jeepney at the scene of the incident.

discharged their firearms that night, her report pertaining to the examination of the ill-fated Tamaraw jeepney affirms the irreducible fact that the CHDFs posted within the yard of Naron's house had indeed sprayed bullets at the said vehicle. Manguerra, Mario Reyes and Andres Reyes seek to insulate themselves by arguing that such finding cannot be applied to them as it is evidence adduced in a separate trial. But as the OSP noted, they may not evade the effect of their having withdrawn their motion for separate trial, their agreement to a joint trial of the cases, and the binding effect on them of the testimony of their co-accused, Yapyuco.[104]

Indeed, the extrajudicial confession or admission of one accused is admissible only against said accused, but is inadmissible against the other accused. But if the declarant or admitter repeats in court his extrajudicial admission, as Yapyuco did in this case, during the trial and the other accused is accorded the opportunity to cross-examine the admitter, the admission is admissible against both accused because then, it is transposed into a judicial admission.[105] It is thus perplexing why, despite the extrajudicial statements of Cunanan, Puno and Yapyuco, as well as the latter's testimony implicating them in the incident, they still had chosen to waive their right to present evidence when, in fact, they could have shown detailed proof of their participation or non-participation in the offenses charged. We, therefore, reject their claim that they had been denied due process in this regard, as they opted not to testify and be cross-examined by the prosecution as to the truthfulness in their affidavits and, accordingly, disprove the inculpatory admissions of their co-accused.

II.

The availability of the justifying circumstance of fulfillment of duty or lawful exercise of a right or office under Article 11 (5) of the Revised Penal Code rests on proof that (a) the accused

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[104] *Rollo* (G.R. No. 122677), pp. 230-232.

[105] *People v. Panida*, G.R. Nos. 127125 and 138952, July 6, 1999, 310 SCRA 66; *People v. Buntag*, 471 Phil. 82, 95 (2004).

acted in the performance of his duty or in the lawful exercise of his right or office, and (b) the injury caused or the offense committed is the necessary consequence of the due performance of such duty or the lawful exercise of such right or office.[106] The justification is based on the complete absence of intent and negligence on the part of the accused, inasmuch as guilt of a felony connotes that it was committed with criminal intent or with fault or negligence.[107] Where invoked, this ground for non-liability amounts to an acknowledgment that the accused has caused the injury or has committed the offense charged for which, however, he may not be penalized because the resulting injury or offense is a necessary consequence of the due performance of his duty or the lawful exercise of his right or office. Thus, it must be shown that the acts of the accused relative to the crime charged were indeed lawfully or duly performed; the burden necessarily shifts on him to prove such hypothesis.

We find that the requisites for justification under Article 11 (5) of the Revised Penal Code do not obtain in this case.

The undisputed presence of all the accused at the *situs* of the incident is a legitimate law enforcement operation. No objection is strong enough to defeat the claim that all of them — who were either police and *barangay* officers or CHDF members tasked with the maintenance of peace and order — were bound to, as they did, respond to information of a suspected rebel infiltration in the locality. Theirs, therefore, is the specific duty to identify the occupants of their suspect vehicle and search for firearms inside it to validate the information they had received;

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[106] See *People v. Oanis*, 74 Phil. 257, 262-263 (1943); *People v. Pajenado*, G.R. No. L-26458, January 30, 1976, 69 SCRA 172, 177; *Baxinela v. People*, 520 Phil. 202, 214-215; *People v. Belbes*, 389 Phil. 500, 508-509 (2000); *People v. Ulep*, G.R. No. 132547, September 20, 2000, 340 SCRA 688, 699; *Cabanlig v. Sandiganbayan*, G.R. No. 148431, July 28, 2005, 464 SCRA 324, 333.

[107] *People v. Fallorina*, G.R. No. 137347, March 4, 2004, 424 SCRA 655, 665, applying Article 3 of the Revised Penal Code.

they may even effect a bloodless arrest should they find cause to believe that their suspects had just committed, were committing or were bound to commit a crime. While, it may certainly be argued that rebellion is a continuing offense, it is interesting that nothing in the evidence suggests that the accused were acting under an official order to open fire at or kill the suspects under any and all circumstances. Even more telling is the absence of reference to the victims having launched such aggression as would threaten the safety of any one of the accused, or having exhibited such defiance of authority that would have instigated the accused, particularly those armed, to embark on a violent attack with their firearms in self-defense. In fact, no material evidence was presented at the trial to show that the accused were placed in real mortal danger in the presence of the victims, except maybe their bare suspicion that the suspects were armed and were probably prepared to conduct hostilities.

But whether or not the passengers of the subject jeepney were NPA members and whether or not they were at the time armed, are immaterial in the present inquiry inasmuch as they do not stand as accused in the prosecution at hand. Besides, even assuming that they were as the accused believed them to be, the actuations of these responding law enforcers must inevitably be ranged against reasonable expectations that arise in the legitimate course of performance of policing duties. The rules of engagement, of which every law enforcer must be thoroughly knowledgeable and for which he must always exercise the highest caution, do not require that he should immediately draw or fire his weapon if the person to be accosted does not heed his call. Pursuit without danger should be his next move, and not vengeance for personal feelings or a damaged pride. Police work requires nothing more than the lawful apprehension of suspects, since the completion of the process pertains to other government officers or agencies.[108]

A law enforcer in the performance of duty is justified in using such force as is reasonably necessary to secure and detain

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[108] *People v. Tan*, G.R. Nos. 116200-02. June 21, 2001, 359 SCRA 283, 297-298.

the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm.[109] *United States v. Campo*[110] has laid down the rule that in the performance of his duty, an agent of the authorities is not authorized to use force, except in an extreme case when he is attacked or is the subject of resistance, and finds no other means to comply with his duty or cause himself to be respected and obeyed by the offender. In case injury or death results from the exercise of such force, the same could be justified in inflicting the injury or causing the death of the offender if the officer had used necessary force.[111] He is, however, never justified in using unnecessary force or in treating the offender with wanton violence, or in resorting to dangerous means when the arrest could be effected otherwise.[112] *People v. Ulep*[113] teaches that –

> The right to kill an offender is not absolute, and may be used only as a last resort, and under circumstances indicating that the offender cannot otherwise be taken without bloodshed. The law does not clothe police officers with authority to arbitrarily judge the necessity to kill. It may be true that police officers sometimes find themselves in a dilemma when pressured by a situation where an immediate and decisive, but legal, action is needed. However, it must be stressed that the judgment and discretion of police officers in the performance of their duties must be exercised neither capriciously nor oppressively, but within reasonable limits. In the absence of a clear and legal provision to the contrary, they must act in conformity with the dictates of a sound discretion, and within the spirit and purpose of the law. We cannot countenance trigger-happy law enforcement officers who indiscriminately employ force and violence upon the persons they are apprehending. They must always bear in mind that although they are dealing with criminal elements against

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[109] *People v. Oanis*, *supra* note 106, at 262.

[110] 10 Phil. 97, 99-100 (1908).

[111] *United States v. Mojica*, 42 Phil. 784, 787 (1922).

[112] *People v. Oanis*, *supra* note 106, at 262.

[113] *Supra* note 106.

whom society must be protected, these criminals are also human beings with human rights.[114]

Thus, in *People v. Tabag,*[115] where members of the Davao CHDF had killed four members of a family in their home because of suspicions that they were NPA members, and the accused sought exoneration by invoking among others the justifying circumstance in Article 11 (5) of the Revised Penal Code, the Court in dismissing the claim and holding them liable for murder said, thus:

> In no way can Sarenas claim the privileges under paragraphs 5 and 6, Article 11 of the Revised Penal Code, for the massacre of the Magdasals can by no means be considered as done in the fulfillment of a duty or in the lawful exercise of an office or in obedience to an order issued by a superior for some lawful purpose. **Other than "suspicion," there is no evidence that Welbino Magdasal, Sr., his wife Wendelyn, and their children were members of the NPA. And even if they were members of the NPA, they were entitled to due process of law.** On that fateful night, they were peacefully resting in their humble home expecting for the dawn of another uncertain day. Clearly, therefore, nothing justified the sudden and unprovoked attack, at nighttime, on the Magdasals. The massacre was nothing but a merciless vigilante-style execution.[116]

Petitioners rationalize their election to aim their fire directly at the jeepney by claiming that it failed to heed the first round of warning shots as well as the signal for it to stop and instead tried to flee. While it is possible that the jeepney had been flagged down but because it was pacing the dark road with its headlights dimmed missed petitioners' signal to stop, and compound to it the admitted fact that the passengers thereof were drunk from the party they had just been to,[117] still, we

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[114] *People v. Ulep*, *supra* note 106, at 700.

[115] 335 Phil. 579 (1997).

[116] *Id.* at 597. (Emphasis has been supplied.)

[117] See note 17.

find incomprehensible petitioners' quick resolve to use their firearms when in fact there was at least one other vehicle at the scene — the Sarao jeepney owned by Yapyuco — which they could actually have used to pursue their suspects whom they supposedly perceived to be in flight.

Lawlessness is to be dealt with according to the law. Only absolute necessity justifies the use of force, and it is incumbent on herein petitioners to prove such necessity. We find, however, that petitioners failed in that respect. Although the employment of powerful firearms does not necessarily connote unnecessary force, petitioners in this case do not seem to have been confronted with the rational necessity to open fire at the moving jeepney occupied by the victims. No explanation is offered why they, in that instant, were inclined for a violent attack at their suspects except perhaps their over-anxiety or impatience or simply their careless disposition to take no chances. Clearly, they exceeded the fulfillment of police duties the moment they actualized such resolve, thereby inflicting Licup with a mortal bullet wound, causing injury to Villanueva and exposing the rest of the passengers of the jeepney to grave danger to life and limb — all of which could not have been the necessary consequence of the fulfillment of their duties.

III.

At this juncture, we find that the invocation of the concept of mistake of fact faces certain failure. In the context of criminal law, a "mistake of fact" is a misapprehension of a fact which, if true, would have justified the act or omission which is the subject of the prosecution.[118] Generally, a reasonable mistake of fact is a defense to a charge of crime where it negates the intent component of the crime.[119] It may be a defense even if the offense charged requires proof of only general intent.[120]

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[118] 21 Am Jur 2d, $152, p. 232, citing *Turner v. State*, 210 Ga. App. 303, 436 S.E.2d 229.

[119] *Id.*, citing *U.S. v. Vasarajs*, 908 F.2d 443 and *People v. Nash,* 282 Ill. App. 3d 982, 218 Ill. Dec. 410, 669 N.E.2d 353.

[120] *Id.*, citing *Com. V. Simcock*, 31 Mass. App. Ct. 184, 575 N.E.2d 1137.

The inquiry is into the mistaken belief of the defendant,[121] and it does not look at all to the belief or state of mind of any other person.[122] A proper invocation of this defense requires (a) that the mistake be honest and reasonable;[123] (b) that it be a matter of fact;[124] and (c) that it negate the culpability required to commit the crime[125] or the existence of the mental state which the statute prescribes with respect to an element of the offense.[126]

The leading authority in mistake of fact as ground for non-liability is found in *United States v. Ah Chong,*[127] but in that setting, the principle was treated as a function of self-defense where the physical circumstances of the case had mentally manifested to the accused an aggression which it was his instinct to repel. There, the accused, fearful of bad elements, was woken by the sound of his bedroom door being broken open and, receiving no response from the intruder after having demanded identification, believed that a robber had broken in. He threatened to kill the intruder but at that moment he was struck by a chair which he had placed against the door and, perceiving that he was under

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[121] *Id.*, citing *Johnson v. State*, 734 S.W.2d 199

[122] *Id.*

[123] *Id.* at 233, citing *U.S. v. Buchannan*, 115 F.3d 445; *People v. Reed*, 53 Cal. App. 4th 389. Generally, ignorance or mistake of fact constitutes a defense to a criminal charge only if it is not superinduced by fault or negligence of party doing the charged act. (*Crawford v. State*, 267 Ga. 543, 480 S.E.2d 573). For a mistake of fact to negate a mental state required to establish a criminal offense, the mistake must be reasonable, and the act, to be justified, must be taken under a bona fide mistaken belief (*Cheser v. Com.*, 904 S.W.2d 239).

[124] *Id.* at 233, citing *Potter v. State*, 684 N.E.2d 1127. If a mistake arises not from ignorance of law, but from ignorance of an independently determined legal status or condition that is one of the operative facts of a crime, such a mistake is one of fact (*U.S. v. Lopez-Lima*, 738 F.Supp. 1404).

[125] *Id.* at 233, citing *Potter v. State*, 684 N.E.2d 1127; *Miller v. State*, 815S.W.2d 582.

[126] *Id.* at 233, citing *Jones v. State*, 263 Ga. 835, 439 S.E.2d 645.

[127] 15 Phil. 488 (1910).

attack, seized a knife and fatally stabbed the intruder who turned out to be his roommate. Charged with homicide, he was acquitted because of his honest mistake of fact. Finding that the accused had no evil intent to commit the charge, the Court explained:

x x x The maxim here is *Ignorantia facti excusat* ("Ignorance or mistake in point of fact is, in all cases of supposed offense, a sufficient excuse").

Since evil intent is in general an inseparable element in every crime, any such mistake of fact as shows the act committed to have proceeded from no sort of evil in the mind necessarily relieves the actor from criminal liability, provided always there is no fault or negligence on his part and as laid down by Baron Parke, "The guilt of the accused must depend on the circumstances as they appear to him." x x x

If, in language not uncommon in the cases, one has reasonable cause to believe the existence of facts which will justify a killing — or, in terms more nicely in accord with the principles on which the rule is founded, if without fault or carelessness he does not believe them — he is legally guiltless of homicide; though he mistook the facts, and so the life of an innocent person is unfortunately extinguished. In other words, and **with reference to the right of self-defense** and the not quite harmonious authorities, **it is the doctrine of reason, and sufficiently sustained in adjudication,** that notwithstanding some decisions apparently adverse, **whenever a man undertakes self-defense, he is justified in acting on the facts as they appear to him. If, without fault or carelessness, he is misled concerning them, and defends himself correctly according to what he thus supposes the facts to be, the law will not punish him though they are in truth otherwise, and he has really no occasion for the extreme measure**. x x x[128]

Besides, as held in *People v. Oanis*[129] and *Baxinela v. People,*[130] the justification of an act, which is otherwise criminal on the basis of a mistake of fact, must preclude negligence or

[128] *Id.* at 500-501. (Emphasis supplied.)

[129] *Supra* note 106.

[130] *Supra* note 106.

bad faith on the part of the accused.[131] Thus, *Ah Chong* further explained that —

> The question then squarely presents itself, whether in this jurisdiction one can be held criminally responsible who, by reason of a mistake as to the facts, does an act for which he would be exempt from criminal liability if the facts were as he supposed them to be, but which would constitute the crime of homicide or assassination if the actor had known the true state of the facts at the time when he committed the act. To this question we think there can be but one answer, and we hold that under such circumstances there is no criminal liability, provided always that the alleged ignorance or mistake of fact was not due to negligence or bad faith.[132]

IV.

This brings us to whether the guilt of petitioners for homicide and frustrated homicide has been established beyond cavil of doubt. The precept in all criminal cases is that the prosecution is bound by the invariable requisite of establishing the guilt of the accused beyond reasonable doubt. The prosecution must rely on the strength of its own evidence and not on the evidence of the accused. The weakness of the defense of the accused does not relieve the prosecution of its responsibility of proving guilt beyond reasonable doubt.[133] By reasonable doubt is meant that doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt.[134] The overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains reasonable doubt as to his guilt.[135]

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[131] *People v. Oanis*, *supra* note 106, at 264; *Baxinela v. People*, *supra* note 106, at 215.

[132] *United States v. Ah Chong*, *supra* note 127, at 493.

[133] *People v. Crispin,* G.R. No. 128360, March 2, 2000, 327 SCRA 167, 179; *People v. Calica*, G.R. No. 139178, April 14, 2004, 427 SCRA 336, 362.

[134] *People v. Dramayo,* G.R. No. L-21325, October 29, 1971, 42 SCRA 59, 64; *People v. Calica*, *supra*, at 347.

[135] *People v. Gamer,* G.R. No. 115984, February 29, 2000, 326 SCRA 660, 674.

The prosecution is burdened to prove *corpus delicti* beyond reasonable doubt either by direct evidence or by circumstantial or presumptive evidence.[136] *Corpus delicti* consists of two things: first, the criminal act and second, defendant's agency in the commission of the act.[137] In homicide (by *dolo*) as well as in murder cases, the prosecution must prove: (a) the death of the party alleged to be dead; (b) that the death was produced by the criminal act of some other than the deceased and was not the result of accident, natural cause or suicide; and (c) that defendant committed the criminal act or was in some way criminally responsible for the act which produced the death. In other words, proof of homicide or murder requires incontrovertible evidence, direct or circumstantial, that the victim was deliberately killed (with malice), that is, with intent to kill. Such evidence may consist in the use of weapons by the malefactors, the nature, location and number of wounds sustained by the victim and the words uttered by the malefactors before, at the time or immediately after the killing of the victim. If the victim dies because of a deliberate act of the malefactors, intent to kill is conclusively presumed.[138] In such case, even if there is no intent to kill, the crime is homicide because with respect to crimes of personal violence, the penal law looks particularly to the material results following the unlawful act and holds the aggressor responsible for all the consequences thereof.[139] Evidence of intent to kill is crucial only to a finding of frustrated and attempted homicide, as the same is an essential element of these offenses, and thus must be proved with the same degree of certainty as that required of the other elements of said offenses.[140]

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[136] *People v. Delim*, G.R. No. 142773, January 28, 2003, 396 SCRA 386, 400, citing *People v. Fulinara,* G.R. No. 88326, August 3, 1995, 247 SCRA 28.

[137] *Gay v. State*, 60 Southwestern Reporter, 771 (1901).

[138] *People v. Delim*, *supra* note 136, at 400.

[139] *United States v. Gloria*, 3 Phil. 333 (1903-1904).

[140] *Mondragon v. People*, G.R. No. L-17666, June 30, 1966, 17 SCRA 476, 480-481; See also Reyes, Luis B., *Revised Penal Code*, Book II, 15th ed (2001), p. 470.

The records disclose no ill motives attributed to petitioners by the prosecution. It is interesting that, in negating the allegation that they had by their acts intended to kill the occupants of the jeepney, petitioners turn to their co-accused Pamintuan, whose picture depicted in the defense evidence is certainly an ugly one: petitioners' affidavits as well as Yapyuco's testimony are replete with suggestions that it was Pamintuan alone who harbored the motive to ambush the suspects as it was he who their (petitioners') minds that which they later on conceded to be a mistaken belief as to the identity of the suspects. Cinco, for one, stated in court that Pamintuan had once reported to him that Flores, a relative of his (Pamintuan), was frequently meeting with NPA members and that the San Miguel Corporation plant where the victims were employed was being penetrated by NPA members. He also affirmed Yapyuco's claim that there had been a number of ambuscades launched against members of law enforcement in Quebiawan and in the neighboring areas supposedly by NPA members at around the time of the incident. But as the Sandiganbayan pointed out, it is unfortunate that Pamintuan had died during the pendency of these cases even before his opportunity to testify in court emerged.[141]

Yet whether such claims suffice to demonstrate ill motives evades relevance and materiality. Motive is generally held to be immaterial inasmuch as it is not an element of a crime. It gains significance when the commission of a crime is established by evidence purely circumstantial or otherwise inconclusive.[142] The question of motive is important in cases where there is doubt as to whether the defendant is or is not the person who committed the act, but when there is no doubt that the defendant was the one who caused the death of the deceased, it is not so important to know the reason for the deed.[143]

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[141] *Rollo* (G.R. Nos. 120744-46), pp. 67-68.

[142] See *Crisostomo v. Sandiganbayan*, 495 Phil. 718, 745 (2005), citing *People v. Flores*, 389 Phil. 532 (2000).

[143] *People v. Ramirez*, 104 Phil. 720, 726 (1958).

In the instant case, petitioners, without abandoning their claim that they did not intend to kill anyone of the victims, admit having willfully discharged their service firearms; and the manner by which the bullets concentrated on the passenger side of the jeepney permits no other conclusion than that the shots were intended for the persons lying along the line of fire. We do not doubt that instances abound where the discharge of a firearm at another is not in itself sufficient to sustain a finding of intention to kill, and that there are instances where the attendant circumstances conclusively establish that the discharge was not in fact animated by intent to kill. Yet the rule is that in ascertaining the intention with which a specific act is committed, it is always proper and necessary to look not merely to the act itself but to all the attendant circumstances so far as they develop in the evidence.[144]

The firearms used by petitioners were either M16 rifle, .30 caliber garand rifle and .30 caliber carbine.[145] While the use of these weapons does not always amount to unnecessary force, they are nevertheless inherently lethal in nature. At the level the bullets were fired and hit the jeepney, it is not difficult to imagine the possibility of the passengers thereof being hit and even killed. It must be stressed that the subject jeepney was fired upon while it was pacing the road and at that moment, it is not as much too difficult to aim and target the tires thereof as it is to imagine the peril to which its passengers would be exposed even assuming that the gunfire was aimed at the tires — especially considering that petitioners do not appear to be mere rookie law enforcers or unskilled neophytes in encounters with lawless elements in the streets.

Thus, judging by the location of the bullet holes on the subject jeepney and the firearms employed, the likelihood of the passenger next to the driver — and in fact even the driver himself — of being hit and injured or even killed is great to say the least,

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[144] *United States v. Montenegro*, 15 Phil. 1, 6 (1910).

[145] Exhibits "U", "U-0", "U-1", "U-2", "W", "W-1" and "W-2".

certain to be precise. This, we find to be consistent with the uniform claim of petitioners that the impulse to fire directly at the jeepney came when it occurred to them that it was proceeding to evade their authority. And in instances like this, their natural and logical impulse was to debilitate the vehicle by firing upon the tires thereof, or to debilitate the driver and hence put the vehicle to a halt. The evidence we found on the jeepney suggests that petitioners' actuations leaned towards the latter.

This demonstrates the clear intent of petitioners to bring forth death on Licup who was seated on the passenger side and to Villanueva who was occupying the wheel, together with all the consequences arising from their deed. The circumstances of the shooting breed no other inference than that the firing was deliberate and not attributable to sheer accident or mere lack of skill. Thus, *Cupps v. State*[146] tells that:

> This rule that every person is presumed to contemplate the ordinary and natural consequences of his own acts, is applied even in capital cases. **Because men generally act deliberately and by the determination of their own will, and not from the impulse of blind passion, the law presumes that every man always thus acts, until the contrary appears**. Therefore, **when one man is found to have killed another, if the circumstances of the homicide do not of themselves show that it was not intended, but was accidental, it is presumed that the death of the deceased was designed by the slayer; and the burden of proof is on him to show that it was otherwise.**

V.

Verily, the shooting incident subject of these petitions was actualized with the deliberate intent of killing Licup and Villanueva, hence we dismiss Yapyuco's alternative claim in G.R. No. 120744 that he and his co-petitioners must be found guilty merely of reckless imprudence resulting in homicide and frustrated homicide. Here is why:

First, the crimes committed in these cases are not merely criminal negligence, the killing being intentional and not accidental.

[146] 97 Northwestern Reporter, 210 (1903). (Emphasis supplied.)

In criminal negligence, the injury caused to another should be unintentional, it being the incident of another act performed without malice.[147] *People v. Guillen*[148] and *People v. Nanquil*[149] declare that a deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence. And in *People v. Castillo,*[150] we held that that there can be no frustrated homicide through reckless negligence inasmuch as reckless negligence implies lack of intent to kill, and without intent to kill the crime of frustrated homicide cannot exist.

Second, that petitioners by their acts exhibited conspiracy, as correctly found by the Sandiganbayan, likewise militates against their claim of reckless imprudence.

Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a felony and decide to commit it. Conspiracy need not be proven by direct evidence. It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design. Conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment. Conspiracy once found, continues until the object of it has been accomplished and unless abandoned or broken up. To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[151]

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[147] *People v. Oanis*, *supra* note 106, at 262.

[148] 47 O.G. 3433, 3440.

[149] 43 Phil. 232 (1922).

[150] 42 O.G. 1914, 1921.

[151] *People v. Bisda*, G.R. No. 140895, July 17, 2003, 406 SCRA 454, 473.

Conspiracy to exist does not require an agreement for an appreciable period prior to the occurrence. From the legal viewpoint, conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution.[152] The instant case requires no proof of any previous agreement among petitioners that they were really bent on a violent attack upon their suspects. While it is far-fetched to conclude that conspiracy arose from the moment petitioners, or all of the accused for that matter, had converged and strategically posted themselves at the place appointed by Pamintuan, we nevertheless find that petitioners had been ignited by the common impulse not to let their suspect jeepney flee and evade their authority when it suddenly occurred to them that the vehicle was attempting to escape as it supposedly accelerated despite the signal for it to stop and submit to them. As aforesaid, at that point, petitioners were confronted with the convenient yet irrational option to take no chances by preventing the jeepney's supposed escape even if it meant killing the driver thereof. It appears that such was their common purpose. And by their concerted action of almost simultaneously opening fire at the jeepney from the posts they had deliberately taken around the immediate environment of the suspects, conveniently affording an opportunity to target the driver, they did achieve their object as shown by the concentration of bullet entries on the passenger side of the jeepney at angular and perpendicular trajectories. Indeed, there is no definitive proof that tells which of all the accused had discharged their weapons that night and which directly caused the injuries sustained by Villanueva and fatally wounded Licup, yet we adopt the Sandiganbayan's conclusion that since only herein petitioners were shown to have been in possession of their service firearms that night and had fired the same, they should be held collectively responsible

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[152] *U.S. v. Ancheta*, 1 Phil. 165 (1901-1903); *U.S. v. Santos*, 2 Phil. 453, 456 (1903); *People v. Mandagay and Taquiawan*, 46 Phil. 838, 840 (1923); *People v. Agbuya,* 57 Phil. 238, 242 (1932); *People v. Ibañez*, 77 Phil. 664; *People v. Macabuhay,* 46 O.G. 5469; *People v. San Luis*, 86 Phil. 485, 497 (1950); *People v. Dima Binasing*, 98 Phil. 902, 908 (1956).

for the consequences of the subject law enforcement operation which had gone terribly wrong.[153]

VI.

The Sandiganbayan correctly found that petitioners are guilty as co-principals in the crimes of homicide and attempted homicide only, respectively for the death of Licup and for the non-fatal injuries sustained by Villanueva, and that they deserve an acquittal together with the other accused, of the charge of attempted murder with respect to the unharmed victims.[154] The allegation of evident premeditation has not been proved beyond reasonable doubt because the evidence is consistent with the fact that the urge to kill had materialized in the minds of petitioners as instantaneously as they perceived their suspects to be attempting flight and evading arrest. The same is true with treachery, inasmuch as there is no clear and indubitable proof that the mode of attack was consciously and deliberately adopted by petitioners.

Homicide, under Article 249 of the Revised Penal Code, is punished by *reclusion temporal* whereas an attempt thereof, under Article 250 in relation to Article 51, warrants a penalty lower by two degrees than that prescribed for principals in a consummated homicide. Petitioners in these cases are entitled to the ordinary mitigating circumstance of voluntary surrender, and there being no aggravating circumstance proved and applying the Indeterminate Sentence Law, the Sandiganbayan has properly fixed in Criminal Case No. 16612 the range of the penalty from six (6) years and one (1) day, but should have denominated the same as *prision mayor,* not *prision correccional,* to twelve (12) years and one (1) day of *reclusion temporal*.

However, upon the finding that petitioners in Criminal Case No. 16614 had committed attempted homicide, a modification

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[153] *Rollo* (G.R. Nos. 120744-46), p. 75, citing *People v. Toling*, G.R. No. L-27097, January 17, 1975, 62 SCRA 17 and *People v. Tamani*, G.R. Nos. L-22160 and L-22161, January 21, 1974, 55 SCRA 153.

[154] Namely, Eduardo Flores, Raul Panlican, Alejandro De Vera and Restituto Calma.

of the penalty is in order. The penalty of attempted homicide is two (2) degrees lower to that of a consummated homicide, which is *prision correccional*. Taking into account the mitigating circumstance of voluntary surrender, the maximum of the indeterminate sentence to be meted out on petitioners is within the minimum period of *prision correccional,* which is six (6) months and one (1) day to two (2) years and four (4) months of *prision correccional*, whereas the minimum of the sentence, which under the Indeterminate Sentence Law must be within the range of the penalty next lower to that prescribed for the offense, which is one (1) month and one (1) day to six (6) months of *arresto mayor.*

We likewise modify the award of damages in these cases, in accordance with prevailing jurisprudence, and order herein petitioners, jointly and severally, to indemnify the heirs of Leodevince Licup in the amount of ₱77,000.00 as actual damages and ₱50,000.00 in moral damages. With respect to Noel Villanueva, petitioners are likewise bound to pay, jointly and severally, the amount of ₱51,700.00 as actual and compensatory damages and ₱20,000.00 as moral damages. The award of exemplary damages should be deleted, there being no aggravating circumstance that attended the commission of the crimes.

WHEREFORE, the instant petitions are **DENIED**. The joint decision of the Sandiganbayan in Criminal Case Nos. 16612, 16613 and 16614, dated June 27, 1995, are hereby **AFFIRMED** with the following **MODIFICATIONS**:

(a) In Criminal Case No. 16612, petitioners are sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor,* as the minimum, to twelve (12) years and one (1) day of *reclusion temporal,* as the maximum; in Criminal Case No. 16614, the indeterminate sentence is hereby modified to Two (2) years and four (4) months of *prision correccional,* as the maximum, and Six (6) months of *arresto mayor,* as the minimum.

(b) Petitioners are **DIRECTED** to indemnify, jointly and severally, the heirs of Leodevince Licup in the amount of

₱77,000.00 as actual damages, ₱50,000.00 in moral damages, as well as Noel Villanueva, in the amount of ₱51,700.00 as actual and compensatory damages, and ₱20,000.00 as moral damages.

SO ORDERED.

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

EN BANC

[A.M. No. SCC-10-13-P. June 26, 2012]

LOURDES CLAVITE-VIDAL, DIRECTOR IV, REGION 10, CIVIL SERVICE COMMISSION, *complainant, vs.* **NORAIDA A. AGUAM, COURT STENOGRAPHER I, SHARI'A CIRCUIT COURT, GANASSI-BINIDAYAN-BAGAYAWAN, LANAO DEL SUR,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DISHONESTY; RESPONDENT'S REPRESENTATION THAT SHE HERSELF TOOK THE CIVIL SERVICE EXAMINATION WHEN IN FACT SOMEBODY ELSE TOOK IT FOR HER CONSTITUTES DISHONESTY.—** The fact of impersonation was proven with certainty. Judge Balindong observed upon approaching Aguam during a hearing that she is not the person whose picture was

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[**] 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.

attached to the Picture Seat Plan. This finding debunks Aguam's claim that she attached her high school picture on the Picture Seat Plan. The records also validate Judge Balindong's finding that Aguam's specimen signatures written on a piece of paper are starkly different from Aguam's supposed signature on the Picture Seat Plan. Then there is the discernible difference in Aguam's handwriting and signature on the Personal Data Sheet and the impersonator's handwriting and signature on the Picture Seat Plan. Taken together, the evidence leads to no other conclusion than that somebody else took the examination using Aguam's identity. We also affirm Judge Balindong's opinion that for Aguam to assert that she herself took and passed the examination when in fact somebody else took it for her constitutes dishonesty.

2. **ID.; ID.; ID.; EVERY EMPLOYEE IN THE JUDICIARY SHOULD BE AN EXAMPLE OF INTEGRITY, UPRIGHTNESS AND HONESTY.—** It must be stressed that every employee of the Judiciary should be an example of integrity, uprightness and honesty. Like any public servant, she must exhibit the highest sense of honesty and integrity not only in the performance of her official duties but also in her personal and private dealings with other people, to preserve the court's good name and standing. The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court personnel have been 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 courts of justice. Here, Aguam failed to meet these stringent standards set for a judicial employee and does not therefore deserve to remain with the Judiciary.

3. **ID.; ID.; ID.; DISMISSAL FROM SERVICE IS THE PROPER PENALTY THAT SHOULD BE IMPOSED ON EMPLOYEES FOUND GUILTY OF DISHONESTY.—** We have consistently held that the proper penalty to be imposed on employees found guilty of an offense of this nature is dismissal from the service. In *Cruz v. Civil Service Commission*, *Civil Service Commission v. Sta. Ana*, and *Concerned Citizen v. Dominga Nawen Abad*, we dismissed the employees found guilty of similar offenses. In *Cruz*, Zenaida Paitim masqueraded as Gilda Cruz and took the Civil Service examination in behalf of Cruz. We said that

both Paitim and Cruz merited the penalty of dismissal. In *Sta. Ana*, somebody else took the Civil Service examination for Sta. Ana. We dismissed Sta. Ana for dishonesty. In *Abad*, the evidence disproved Abad's claim that she personally took the examination. We held that for Abad to assert that she herself took the examination when in fact somebody else took it for her constitutes dishonesty. Thus, we dismissed Abad for her offense. We find no reason to deviate from our consistent rulings. Under Section 52(A)(1) of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is a grave offense punishable by dismissal for the first offense. Under Section 58(a) of the same rules, the penalty of dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service. The OCA properly excluded forfeiture of accrued leave credits, pursuant to our ruling in *Sta. Ana* and *Abad*.

APPEARANCES OF COUNSEL

Ansary M. Alauya for respondent.

R E S O L U T I O N

***PER CURIAM*:**

We resolve another case of impersonation in taking a Civil Service examination. The Office of the Court Administrator (OCA) agreed with the Investigating Judge that respondent court stenographer Noraida A. Aguam is guilty of dishonesty and should be dismissed from the service.

First, the antecedent facts and the result of the investigation.

In a letter[1] dated August 13, 2009, Director IV Lourdes Clavite-Vidal of the Civil Service Commission (CSC) referred to the OCA for appropriate action the records of respondent Aguam. Director Vidal stated that a person purporting to be Aguam

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[1] *Rollo*, p. 2.

took the Career Service Subprofessional[2] examination held on December 1, 1996 at Room No. 5, City Central School, Cagayan de Oro City, and got a grade of 80% in the examination. But upon verification of Aguam's eligibility, the CSC found that Aguam's picture and handwriting on her January 14, 1997 Personal Data Sheet differ from those on the Picture Seat Plan during the examination.

Our esteemed colleague, Mr. Justice Jose P. Perez, in his capacity as then Court Administrator, required Aguam to file her comment to Director Vidal's letter.[3]

In her comment[4] dated January 19, 2010, Aguam said that she personally took and passed the aforesaid examination. Aguam claimed that her picture on the Picture Seat Plan is an old picture taken when she was still in high school and single, while her picture on the Personal Data Sheet was taken after giving birth to four children and suffering another miscarriage. Aguam also claimed that the signatures on the two documents are hers and were not made by two different persons. Her signature on the Picture Seat Plan was signed under pressure during the examination. On the other hand, she signed the Personal Data Sheet without pressure and having the leisure of time.

The case was then referred to Judge Rasad G. Balindong for investigation. After due proceedings, Judge Balindong submitted his investigation report finding Aguam guilty of serious dishonesty and recommending Aguam's dismissal from the service. Judge Balindong said that during the May 24, 2011 hearing, he approached Aguam to observe her physically and compare her face with the pictures on the Picture Seat Plan and Personal Data Sheet. Judge Balindong found that the picture on the Personal Data Sheet is that of Aguam while the one on the Picture Seat Plan is not hers.[5] Judge Balindong also found that Aguam's

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[2] *Id.* at 14.

[3] *Id.* at 20.

[4] *Id.* at 22-23.

[5] *Id.* at 217.

specimen signatures submitted before him were different from Aguam's purported signature on the Picture Seat Plan. Judge Balindong concluded that the signature on the Picture Seat Plan and the one on the Personal Data Sheet were written by two different persons.[6] Judge Balindong opined that Aguam's representation that she herself took the examination when in fact somebody else took it for her constitutes dishonesty.[7]

In its own evaluation report[8] dated November 29, 2011, the OCA concurred with the findings of Judge Balindong and recommended that:

> **IN VIEW OF THE FOREGOING**, we respectfully submit for the consideration of the Honorable Court the recommendation that Noraida A. Aguam, Court Stenographer I, Shari'a Circuit Court Ganassi-Binidayan-[B]agayawan, Lanao del Sur, be found **GUILTY** of the administrative offense of **DISHONESTY** and be **DISMISSED** from the service, with the accessory penalties of perpetual disqualification from government service and forfeiture of all retirement benefits except leave credits already accrued.[9]

We agree that Aguam is indeed guilty of dishonesty.

The fact of impersonation was proven with certainty. Judge Balindong observed upon approaching Aguam during a hearing that she is not the person whose picture was attached to the Picture Seat Plan. This finding debunks Aguam's claim that she attached her high school picture on the Picture Seat Plan. The records also validate Judge Balindong's finding that Aguam's specimen signatures written on a piece of paper[10] are starkly different from Aguam's supposed signature on the Picture Seat Plan.[11] Then there is the discernible difference in Aguam's

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[6] *Id.*

[7] *Id.* at 218.

[8] *Id.* at 337-342.

[9] *Id.* at 342.

[10] *Id.* at 154.

[11] *Id.* at 119.

handwriting and signature on the Personal Data Sheet[12] and the impersonator's handwriting and signature on the Picture Seat Plan. Taken together, the evidence leads to no other conclusion than that somebody else took the examination using Aguam's identity.

We also affirm Judge Balindong's opinion that for Aguam to assert that she herself took and passed the examination when in fact somebody else took it for her constitutes dishonesty.[13]

It must be stressed that every employee of the Judiciary should be an example of integrity, uprightness and honesty. Like any public servant, she must exhibit the highest sense of honesty and integrity not only in the performance of her official duties but also in her personal and private dealings with other people, to preserve the court's good name and standing. The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court personnel have been 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 courts of justice.[14] Here, Aguam failed to meet these stringent standards set for a judicial employee and does not therefore deserve to remain with the Judiciary.

Relatedly, we have consistently held that the proper penalty to be imposed on employees found guilty of an offense of this nature is dismissal from the service. In *Cruz v. Civil Service Commission*,[15] *Civil Service Commission v. Sta. Ana*,[16] and

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[12] *Id.* at 115-116.

[13] See *Concerned Citizen v. Dominga Nawen Abad*, A.M. No. P-11-2907, January 31, 2012, p. 3 and *Civil Service Commission v. Sta. Ana*, A.M. No. P-03-1696, April 30, 2003, 402 SCRA 49, 56.

[14] *Id.* at 4; *id.* at 56-57.

[15] G.R. No. 144464, November 27, 2001, 370 SCRA 650.

[16] *Supra* note 13.

Concerned Citizen v. Dominga Nawen Abad,[17] we dismissed the employees found guilty of similar offenses. In *Cruz*, Zenaida Paitim masqueraded as Gilda Cruz and took the Civil Service examination in behalf of Cruz. We said that both Paitim and Cruz merited the penalty of dismissal.[18] In *Sta. Ana*, somebody else took the Civil Service examination for Sta. Ana. We dismissed Sta. Ana for dishonesty.[19] In *Abad*, the evidence disproved Abad's claim that she personally took the examination. We held that for Abad to assert that she herself took the examination when in fact somebody else took it for her constitutes dishonesty. Thus, we dismissed Abad for her offense.[20] We find no reason to deviate from our consistent rulings. Under Section 52(A)(1) of the Uniform Rules on Administrative Cases in the Civil Service, dishonesty is a grave offense punishable by dismissal for the first offense. Under Section 58(a) of the same rules, the penalty of dismissal carries with it cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service. The OCA properly excluded forfeiture of accrued leave credits, pursuant to our ruling in *Sta. Ana* and *Abad*.[21]

WHEREFORE, we find respondent Noraida A. Aguam, Court Stenographer I, Shari'a Circuit Court, Ganassi-Binidayan-Bagayawan, Lanao del Sur, **LIABLE** for dishonesty. She is hereby **DISMISSED** from the service with cancellation of eligibility, forfeiture of all her retirement benefits except her accrued leave credits, and with perpetual disqualification for reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

This Resolution is immediately **EXECUTORY**.

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[17] *Supra* note 13.

[18] *Supra* note 15 at 655.

[19] *Supra* note 13 at 56-57.

[20] *Supra* note 13 at 3-5.

[21] *Id.* at 4; *supra* note 13 at 57.

SO ORDERED.

Carpio (Senior Associate Justice), Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr. and *Perez, JJ.,* no part.

Mendoza, J., on official leave.

EN BANC

[A.M. No. RTJ-10-2216. June 26, 2012]
(Formerly A.M. OCA I.P.I. No. 08-2788-RTJ)

STATE PROSECUTORS II JOSEF ALBERT T. COMILANG and MA. VICTORIA SUÑEGA-LAGMAN, *complainants, vs.* **JUDGE MEDEL ARNALDO B. BELEN, REGIONAL TRIAL COURT, BRANCH 36, CALAMBA CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; INDIRECT CONTEMPT; MAY BE INITIATED *MOTU PROPRIO* BY THE COURT THROUGH AN ORDER OR ANY OTHER FORMAL CHARGE REQUIRING THE RESPONDENT TO SHOW CAUSE WHY HE SHOULD NOT BE PUNISHED FOR CONTEMPT.— Indirect contempt proceedings, therefore, may be initiated only in two ways: (1) *motu proprio* by the court through an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt; or (2) by a verified petition and upon compliance with the requirements for initiatory pleadings.

In the second instance, the verified petition for contempt shall be docketed, heard and decided separately unless the court in its discretion orders the contempt charge, which arose out of or related to the principal action, to be consolidated with the main action for joint hearing and decision. In this case, the contempt charge was commenced not through a verified petition, but by Judge Belen *motu proprio* through the issuance of an order requiring State Prosecutor Comilang to show cause why he should not be cited for indirect contempt. As such, the requirements of the rules that the verified petition for contempt be docketed, heard and decided separately *or* consolidated with the principal action find no application. Consequently, Judge Belen was justified in not directing the contempt charge against State Prosecutor Comilang to be docketed separately or consolidated with the principal action, *i.e.*, the *Estacio Case*.

2. **ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; RESPONDENT JUDGE BLATANTLY VIOLATED THE INJUNCTIVE WRIT ISSUED BY THE COURT OF APPEALS.—** Judge Belen blatantly violated the injunctive writ issued by the CA enjoining the implementation of his May 30, 2005 Order and December 12, 2005 Decision in CA-G.R. SP No. 94069. A preliminary injunction is a provisional remedy, an adjunct to the main case subject to the latter's outcome. Its sole objective is to preserve the *status quo* until the court hears fully the merits of the case. Its primary purpose is not to correct a wrong already consummated, or to redress an injury already sustained, or to punish wrongful acts already committed, but to preserve and protect the rights of the litigants during the pendency of the case. The *status quo* should be that existing *ante litem motam* or at the time of the filing of the case. x x x As aptly pointed out by the OCA, the CA's disquisition is clear and categorical. In complete disobedience to the said Resolution, however, Judge Belen proceeded to issue (1) the September 6, 2007 Order requiring State Prosecutor Comilang to explain his refusal to file the supersedeas bond and to require his presence in court on September 26, 2007, as well as to explain why he should not be cited for indirect contempt; (2) the September 26, 2007 Order seeking State Prosecutor Comilang's explanation for his defiance of the *subpoena* requiring his presence at the

hearing of even date, and directing, once again, his attendance at the next hearing on October 1, 2007 and to explain once more why he should not be cited for indirect contempt; and (3) the October 1, 2007 Order finding State Prosecutor Comilang guilty of indirect contempt and sentencing him to pay a fine of ₱30,000.00 and to suffer two days' imprisonment. Hence, in requiring State Prosecutor Comilang to explain his non-filing of a supersedeas bond, in issuing *subpoenas* to compel his attendance before court hearings relative to the contempt proceedings, and finally, in finding him guilty of indirect contempt for his non-compliance with the issued *subpoenas*, Judge Belen effectively defeated the *status quo* which the writ of preliminary injunction aimed to preserve.

3. **JUDICIAL ETHICS; JUDGES; EXPECTED TO EXHIBIT MORE THAN JUST A CURSORY ACQUAINTANCE WITH STATUTES AND PROCEDURAL LAWS; THEY MUST KNOW THE LAWS AND APPLY THEM PROPERLY IN GOOD FAITH AS JUDICIAL COMPETENCE REQUIRES NO LESS.—** In the case of *Pesayco v. Layague,* the Court succinctly explained: No less than the Code of Judicial conduct mandates that a judge shall be faithful to the laws and maintain professional competence. Indeed, competence is a mark of a good judge. A judge must be acquainted with legal norms and precepts as well as with procedural rules. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court the duty to be proficient in the law. Unfamiliarity with the Rules of Court is a sign of incompetence. Basic rules of procedure must be at the palm of a judge's hands. Thus, this Court has consistently held that a judge is presumed to know the law and when the law is so elementary, not to be aware of it constitutes gross ignorance of the law. Verily, failure to follow basic legal commands embodied in the law and the Rules constitutes gross ignorance of the law, from which no one is excused, and surely not a judge. This is because judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less. Moreover, refusal

to honor an injunctive order of a higher court constitutes contempt, as in this case, where Judge Belen, in contumaciously defying the injunctive order issued by the CA in CA-G.R. SP No. 94069, was found guilty of indirect contempt in CA-G.R. SP No. 101081.

4. **ID.; ID.; GROSS IGNORANCE OF THE LAW; OBSTINATE DISREGARD OF BASIC AND ESTABLISHED RULE OF LAW OR PROCEDURE AMOUNTS TO INEXCUSABLE ABUSE OF AUTHORITY AND GROSS IGNORANCE OF THE LAW.—** Judge Belen's actuations, therefore, cannot be considered as mere errors of judgment that can be easily brushed aside. Obstinate disregard of basic and established rule of law or procedure amounts to inexcusable abuse of authority and gross ignorance of the law. Likewise, citing State Prosecutor Comilang for indirect contempt notwithstanding the effectivity of the CA-issued writ of injunction demonstrated his vexatious attitude and bad faith towards the former, for which he must be held accountable and subjected to disciplinary action.

5. **ID.; ID.; RESPONDENT JUDGE'S PREVIOUS ADMINISTRATIVE CASES CONSIDERED IN IMPOSING THE SUPREME PENALTY OF DISMISSAL FROM OFFICE.—** In imposing the proper penalty, the Court takes note of Judge Belen's previous administrative cases where he was penalized. x x x Our conception of good judges has been, and is, of men who have a mastery of the principles of law, who discharge their duties in accordance with law. Hence, with the foregoing disquisitions and Judge Belen's previous infractions, which are all of serious nature and for which he had been severely warned, the Court therefore adopts the recommendation of the OCA to mete the ultimate penalty of dismissal against Judge Belen for grave abuse of authority and gross ignorance of the law. The Court can no longer afford to be lenient in this case, lest it give the public the impression that incompetence and repeated offenders are tolerated in the judiciary.

D E C I S I O N

***PER CURIAM*:**

Before the Court is an administrative complaint filed by State Prosecutors Josef Albert T. Comilang (State Prosecutor Comilang) and Ma. Victoria Suñega-Lagman (State Prosecutor Lagman) against respondent Judge Arnaldo Medel B. Belen (Judge Belen) of the Regional Trial Court (RTC) of Calamba City, Branch 36, for manifest partiality and bias, evident bad faith, inexcusable abuse of authority, and gross ignorance of the law.

The Facts

State Prosecutor Comilang, by virtue of Office of the Regional State Prosecutor (ORSP) Order No. 05-07 dated February 7, 2005, was designated to assist the Office of the City Prosecutor of Calamba City in the prosecution of cases. On February 16, 2005, he appeared before Judge Belen of the RTC of Calamba City, Branch 36, manifesting his inability to appear on Thursdays because of his inquest duties in the Provincial Prosecutor's Office of Laguna. Thus, on February 21, 2005, he moved that all cases scheduled for hearing on February 24, 2005 before Judge Belen be deferred because he was set to appear for preliminary investigation in the Provincial Prosecutor's Office on the same day.

Instead of granting the motion, Judge Belen issued his February 24, 2005 Order in Criminal Case No. 12654-2003-C entitled *People of the Philippines v. Jenelyn Estacio* ("*Estacio Case*") requiring him to (1) explain why he did not inform the court of his previously-scheduled preliminary investigation and (2) pay a fine of ₱500.00 for the cancellation of all the scheduled hearings.

In response, State Prosecutor Comilang filed his Explanation with Motion for Reconsideration, followed by a Reiterative Supplemental Motion for Reconsideration with Early Resolution. On May 30, 2005, Judge Belen directed him to explain why he should not be cited for contempt for the unsubstantiated, callous and reckless charges extant in his Reiterative Supplemental Motion,

and to pay the postponement fee in the amount of ₱1,200.00 for the 12 postponed cases during the February 17, 2005 hearing.

In his comment/explanation, State Prosecutor Comilang explained that the contents of his Reiterative Supplemental Motion were based on "his personal belief made in good faith and with grain of truth." Nonetheless, Judge Belen rendered a Decision dated December 12, 2005 finding State Prosecutor Comilang liable for contempt of court and for payment of ₱20,000.00 as penalty. His motion for reconsideration having been denied on February 16, 2006, he filed a motion to post a supersedeas bond to stay the execution of the said Decision, which Judge Belen granted and fixed in the amount of ₱20,000.00.

On April 12, 2006, State Prosecutor Comilang filed with the Court of Appeals (CA) a petition for *certiorari* and prohibition with prayer for temporary restraining order and/or writ of preliminary injunction docketed as CA-G.R. SP No. 94069 assailing Judge Belen's May 30, 2005 Order and December 12, 2005 Decision in the *Estacio Case*. On April 24, 2006, the CA issued a temporary restraining order (TRO)[1] enjoining Judge Belen from executing and enforcing his assailed Order and Decision for a period of 60 days, which was subsequently extended with the issuance of a writ of preliminary injunction.[2]

Notwithstanding the TRO, Judge Belen issued an Order[3] on September 6, 2007 requiring State Prosecutor Comilang to explain his refusal to file the supersedeas bond and to appear on September 26, 2007 to explain why he should not be cited indirect contempt of court. In his Compliance,[4] State Prosecutor Comilang cited the CA's injunctive writ putting on hold all actions of the RTC relative to its May 30, 2005 Order and December 12, 2005 Decision during the pendency of CA-G.R. SP No. 94069. He

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

[2] *Id.* at 12.

[3] *Id.* at 13.

[4] *Id.* at 15-19.

also manifested[5] that he was waiving his appearance on the scheduled hearing for the indirect contempt charge against him.

Nevertheless, Judge Belen issued an Order[6] dated September 26, 2007 directing State Prosecutor Comilang to explain his defiance of the *subpoena* and why he should not be cited for indirect contempt. Judge Belen likewise ordered the Branch Clerk of Court to issue a *subpoena* for him to appear in the October 1, 2007 hearing regarding his failure to comply with previously-issued *subpoenas* on September 18, 2007, and on October 8, 2007 for the hearing on the non-filing of his supersedeas bond. State Prosecutor Comilang moved[7] to quash the *subpoenas* for having been issued without jurisdiction and in defiance to the lawful order of the CA, and for the inhibition of Judge Belen.

In an Order[8] dated October 1, 2007, Judge Belen denied the motion to quash *subpoenas,* held State Prosecutor Comilang guilty of indirect contempt of court for his failure to obey a duly served *subpoena,* and sentenced him to pay a fine of ₱30,000.00 and to suffer two days' imprisonment. He was also required to post a supersedeas bond amounting to ₱30,000.00 to stay the execution of the December 12, 2005 Decision.[9]

Aggrieved, State Prosecutor Comilang filed a complaint-affidavit[10] on October 18, 2007 before the Office of the Court Administrator (OCA) charging Judge Belen with manifest partiality and malice, evident bad faith, inexcusable abuse of authority, and gross ignorance of the law in issuing the show cause orders, *subpoenas* and contempt citations, in grave defiance to the injunctive writ issued by the CA. State Prosecutor Comilang

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[5] *Id.* at 22.

[6] *Id.* at 23-24.

[7] *Id.* at 27-30.

[8] *Id.* at 97-100.

[9] Order dated October 1, 2007, *id.* at 31–34.

[10] *Id.* at 1-6.

alleged that Judge Belen's acts were intended to harass, oppress, persecute, intimidate, annoy, vex and coerce him, and to place him in a disadvantageous and compromising position, as he was prosecuting the libel case instituted by herein complainant State Prosecutor Lagman against Judge Belen when he was still a practicing lawyer, docketed as Criminal Case No. 15332-SP and pending before Branch 32 of the RTC of San Pablo City. This libel case eventually became the basis for Administrative Case No. 6687 for disbarment against Judge Belen.

To further show Judge Belen's flagrant violation of his oath of office, State Prosecutors Comilang and Lagman jointly filed a letter-complaint[11] dated September 28, 2007 addressed to the Office of the Chief Justice, which the OCA treated as a supplemental complaint. They averred that State Prosecutor Jorge Baculi, who found probable cause to indict Judge Belen with libel in Criminal Case No. 15332-SP, was also harassed and oppressed by Judge Belen with his baseless and malicious citation for contempt and with the use of foul, unethical and insulting statements.

The Action and Recommendation of the OCA

The OCA directed Judge Belen to comment on State Prosecutors Comilang and Lagman's charges against him.

In his Joint Comment[12] dated March 7, 2008, Judge Belen claimed that the allegations against him are factually misplaced and jurisprudentially unmeritorious, as his assailed orders were issued in accordance with the Rules of Court and settled jurisprudence. He explained that the writ of preliminary injunction issued by the CA only enjoined him from enforcing, executing and implementing the May 30, 2005 Order and December 12, 2005 Decision, but it never prohibited him from asking State Prosecutor Comilang to explain his failure to comply with the order requiring the posting of supersedeas bond to defer the

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[11] *Id.* at 42-51.

[12] *Id.* at 108-118.

implementation of the mentioned judgment, in accordance with Section 11, Rule 71 of the Rules of Court. He thus prayed for the dismissal of the instant administrative complaint, claiming to have discharged his judicial functions not in a gross, deliberate and malicious manner.

In its Report[13] dated November 27, 2009, the OCA found Judge Belen to have violated Section 4, Rule 71 of the Rules of Court by failing to separately docket or consolidate with the principal case (the *Estacio Case*) the indirect contempt charge against State Prosecutor Comilang. It also found Judge Belen to have blatantly violated the injunctive writ of the CA when he issued the orders requiring State Prosecutor Comilang to explain why he failed to post a supersedeas bond which, given the antecedents of his administrative cases, showed manifest bias and partiality tantamount to bad faith and grave abuse of authority.

Judge Belen was likewise found to have violated the following provisions of the Code of Judicial Conduct:

> Canon 2 – A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES
>
> Rule 2.01 – A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.
>
> Canon 3 – A JUDGE SHOULD PERFORM OFFICIAL DUTIES HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE ADJUDICATIVE RESPONSIBILITIES
>
> Rule 3.01 – A judge shall be faithful to the law and maintain professional competence.

Thus, the OCA recommended, *inter alia*, that Judge Belen be adjudged guilty of manifest bias and partiality, grave abuse of authority and gross ignorance of the law and accordingly, be dismissed from the service with forfeiture of all benefits except accrued leave credits, if any, and with prejudice to reemployment

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[13] *Id.* at 152-163.

in the government or any subdivision, agency or instrumentality thereof, including government-owned and controlled corporations and government financial institutions.

The Issue

The sole issue to be resolved by the Court is whether Judge Belen's actuations showed manifest partiality and bias, evident bad faith, grave abuse of authority and gross ignorance of the law warranting his dismissal from service as RTC Judge of Branch 36, Calamba City.

The Ruling of the Court

After a careful evaluation of the records of the instant case, the Court concurs with the findings and recommendations of the OCA, but only in part.

Section 4, Rule 71 of the Rules of Court provides:

> Section 4. *How proceedings commenced.* — Proceedings for indirect contempt **may be initiated *motu proprio* by the court against which the contempt was committed by an order** or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.
>
> In all other cases, **charges for indirect contempt shall be commenced by a verified petition** with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court**, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.** (Emphasis supplied)

Indirect contempt proceedings, therefore, may be initiated only in two ways: (1) *motu proprio* by the court through an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt; or (2) by a verified petition and upon compliance with the

requirements for initiatory pleadings.[14] In the second instance, the verified petition for contempt shall be docketed, heard and decided separately unless the court in its discretion orders the contempt charge, which arose out of or related to the principal action, to be consolidated with the main action for joint hearing and decision.

In this case, the contempt charge was commenced not through a verified petition, but by Judge Belen *motu proprio* through the issuance of an order requiring State Prosecutor Comilang to show cause why he should not be cited for indirect contempt. As such, the requirements of the rules that the verified petition for contempt be docketed, heard and decided separately *or* consolidated with the principal action find no application. Consequently, Judge Belen was justified in not directing the contempt charge against State Prosecutor Comilang to be docketed separately or consolidated with the principal action, *i.e.*, the *Estacio Case*.

However, Judge Belen blatantly violated the injunctive writ issued by the CA enjoining the implementation of his May 30, 2005 Order and December 12, 2005 Decision in CA-G.R. SP No. 94069.

A preliminary injunction is a provisional remedy, an adjunct to the main case subject to the latter's outcome. Its sole objective is to preserve the *status quo* until the court hears fully the merits of the case. Its primary purpose is not to correct a wrong already consummated, or to redress an injury already sustained, or to punish wrongful acts already committed, but to preserve and protect the rights of the litigants during the pendency of the case.[15] The *status quo* should be that existing *ante litem motam* or at the time of the filing of the case.[16]

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[14] *Regalado v. Go*, G.R. No. 167988, February 6, 2007, 514 SCRA 616, 629.

[15] *Bustamante v. Court of Appeals,* G.R. No. 126371, April 17, 2002, 381 SCRA 171.

[16] *Maunlad Homes, Inc. vs. Union Bank of the Philippines*, G.R. No. 179898, December 23, 2008, 575 SCRA 336, 343.

The CA's Resolution[17] dated July 12, 2006 states in part:

In order not to render the issues in this case moot and academic, We had in our Resolution of April 24, 2006 granted a Temporary Restraining Order for 60 days from notice directing the respondent Judge to refrain from executing his order of May 30, 2005 and decision of December 12, 2005 declaring petitioner in contempt of court and ordering him to pay a postponement fee of ₱1,200 and penalty of ₱20,000. Considering that the TRO is about to expire, for the same reasons provided under Section 3(b) and (c) Rule 58 of the Rules of Court, let a writ of preliminary injunction issue, to be effective during the pendency of this case, ordering the respondent Judge to refrain from enforcing his disputed issuances of May 30, 2005 and December 12, 2005. The petitioner is exempted from posting the bond, since no private interests are affected in this case.

As aptly pointed out by the OCA, the CA's disquisition is clear and categorical. In complete disobedience to the said Resolution, however, Judge Belen proceeded to issue (1) the September 6, 2007 Order[18] requiring State Prosecutor Comilang to explain his refusal to file the supersedeas bond and to require his presence in court on September 26, 2007, as well as to explain why he should not be cited for indirect contempt; (2) the September 26, 2007 Order[19] seeking State Prosecutor Comilang's explanation for his defiance of the *subpoena* requiring his presence at the hearing of even date, and directing, once again, his attendance at the next hearing on October 1, 2007 and to explain once more why he should not be cited for indirect contempt; and (3) the October 1, 2007 Order[20] finding State Prosecutor Comilang guilty of indirect contempt and sentencing him to pay a fine of ₱30,000.00 and to suffer two days' imprisonment.

Hence, in requiring State Prosecutor Comilang to explain his non-filing of a supersedeas bond, in issuing *subpoenas* to compel

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[17] *Rollo,* p.73.

[18] *Supra* note 3.

[19] *Supra* note 6.

[20] *Supra* note 8.

his attendance before court hearings relative to the contempt proceedings, and finally, in finding him guilty of indirect contempt for his non-compliance with the issued *subpoenas*, Judge Belen effectively defeated the *status quo* which the writ of preliminary injunction aimed to preserve.

In the case of *Pesayco v. Layague,*[21] the Court succinctly explained:

> No less than the Code of Judicial conduct mandates that a judge shall be faithful to the laws and maintain professional competence. Indeed, competence is a mark of a good judge. A judge must be acquainted with legal norms and precepts as well as with procedural rules. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Such is gross ignorance of the law. One who accepts the exalted position of a judge owes the public and the court the duty to be proficient in the law. Unfamiliarity with the Rules of Court is a sign of incompetence. Basic rules of procedure must be at the palm of a judge's hands.
>
> Thus, this Court has consistently held that a judge is presumed to know the law and when the law is so elementary, not to be aware of it constitutes gross ignorance of the law. Verily, failure to follow basic legal commands embodied in the law and the Rules constitutes gross ignorance of the law, from which no one is excused, and surely not a judge.[22]

This is because judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less.[23] Moreover, refusal to honor an injunctive order of a higher court constitutes contempt,[24] as in this case, where Judge Belen, in contumaciously defying the injunctive order issued by the CA in CA-G.R. SP No. 94069,

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[21] A.M. No. RTJ-04-1889, December 22, 2004, 447 SCRA 450, 459.

[22] Citations omitted.

[23] *Atty. Bautista v. Judge Causapin,* A.M. No. RTJ-07-2044, June 22, 2011.

[24] *Ysasi v. Fernandez,* G.R. No. L-28593, December 16, 1968, 26 SCRA 393.

was found guilty of indirect contempt in CA-G.R. SP No. 101081.[25]

Judge Belen's actuations, therefore, cannot be considered as mere errors of judgment that can be easily brushed aside. Obstinate disregard of basic and established rule of law or procedure amounts to inexcusable abuse of authority and gross ignorance of the law. Likewise, citing State Prosecutor Comilang for indirect contempt notwithstanding the effectivity of the CA-issued writ of injunction demonstrated his vexatious attitude and bad faith towards the former, for which he must be held accountable and subjected to disciplinary action.

Accordingly, in imposing the proper penalty, the Court takes note of Judge Belen's previous administrative cases where he was penalized in the following manner:

Docket No.	**Case Title**	**Charge**	**Penalty**
A.M. No. RTJ-08-2119	*Mane v. Judge Belen*[26]	Conduct Unbecoming of a Judge	Reprimand, with warning that a repetition of the same or similar acts shall merit a more serious penalty
A.M. No. RTJ-09-2176	*Baculi v. Judge Belen*[27]	Gross Ignorance of the Law	Suspended for 6 months without salary and other benefits, with stern warning that a repetition of the same or similar acts shall merit a more serious penalty
A.M. No. RTJ-10-2242	*Correa v.Judge Belen*[28]	Conduct Unbecoming of a Judge	Fined for PhP10,000.00 with stern warning that a repetition of the same or similar acts shall merit a more serious penalty

[25] *Rollo,* pp. 143–150.

[26] *Atty. Melvin Mane v. Judge Medel Arnaldo Belen,* A.M. No. RTJ-08-2119, June 30, 2008, 556 SCRA 555.

[27] *Prosecutor Baculi v. Judge Medel Arnaldo Belen,* A.M. No. RTJ-09-2176, April 20, 2009, 586 SCRA 69.

[28] *Atty. Raul L. Correa vs. Judge Medel Arnaldo Belen,* A.M. No. RTJ-10-2242, August 6, 2010, 627 SCRA 13.

A.M. No. RTJ-08-2139	*Belen v. Judge Belen*[29]	Violation of Section 4 of Canon 1 and Section 1 of Canon 4 of the New Code of Judicial Conduct	Fined for PhP11,000 with stern warning that a repetition of the same or similar acts shall merit a more serious penalty

Our conception of good judges has been, and is, of men who have a mastery of the principles of law, who discharge their duties in accordance with law.[30] Hence, with the foregoing disquisitions and Judge Belen's previous infractions, which are all of serious nature and for which he had been severely warned, the Court therefore adopts the recommendation of the OCA to mete the ultimate penalty of dismissal against Judge Belen for grave abuse of authority and gross ignorance of the law. The Court can no longer afford to be lenient in this case, lest it give the public the impression that incompetence and repeated offenders are tolerated in the judiciary.[31]

WHEREFORE, respondent Judge Medel Arnaldo B. Belen, having been found guilty of grave abuse of authority and gross ignorance of the law, is **DISMISSED** from the service, with forfeiture of all benefits except accrued leave credits, if any, and with prejudice to reemployment in the government or any subdivision, agency or instrumentality thereof, including government-owned and controlled corporations and government financial institutions. He shall forthwith **CEASE** and **DESIST** from performing any official act or function appurtenant to his office upon service on him of this Decision.

Let a copy of this Decision be attached to the records of Judge Medel Arnaldo B. Belen with the Court.

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[29] *Michael Belen vs. Judge Medel Arnaldo Belen,* A.M. No. RTJ-08-2139, August 9, 2010, 627 SCRA 1.

[30] *Imelda R. Marcos v. Judge Fernando Vil Pamintuan,* A.M. No. RTJ-07-2062, January 18, 2011, citing *Borromeo v. Mariano,* 41 Phil. 322, 333 (1921).

[31] *Marcos v. Judge Pamintuan, supra.*

SO ORDERED.

Carpio (Senior Associate Justice), Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Perez, J., no part. Acted on matters concerning the Judge, as Court Adm.

Mendoza, J., on wellness leave.

EN BANC

[G.R. No. 139930. June 26, 2012]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **EDUARDO M. COJUANGCO, JR., JUAN PONCE ENRILE, MARIA CLARA LOBREGAT, JOSE ELEAZAR, JR., JOSE CONCEPCION, ROLANDO P. DELA CUESTA, EMMANUEL M. ALMEDA, HERMENEGILDO C. ZAYCO, NARCISO M. PINEDA, IÑAKI R. MENDEZONA, DANILO S. URSUA, TEODORO D. REGALA, VICTOR P. LAZATIN, ELEAZAR B. REYES, EDUARDO U. ESCUETA, LEO J. PALMA, DOUGLAS LU YM, SIGFREDO VELOSO and JAIME GANDIAGA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ALTHOUGH FILED UNDER RULE 45 THE COURT WILL TREAT THE INSTANT PETITION AS ONE FILED UNDER RULE 65 OF THE RULES OF COURT SINCE A READING OF ITS CONTENTS REVEALS THAT PETITIONER IMPUTES GRAVE ABUSE OF DISCRETION AND

REVERSIBLE JURISDICTIONAL ERROR TO THE OMBUDSMAN FOR DISMISSING THE COMPLAINT.— Preliminarily, the Court notes that what Republic of the Philippines (petitioner) filed in this case is a petition for review on *certiorari* under Rule 45. But the remedy from an adverse resolution of the Office of the Ombudsman in a preliminary investigation is a special civil action of *certiorari* under Rule 65. Still, the Court will treat this petition as one filed under Rule 65 since a reading of its contents reveals that petitioner imputes grave abuse of discretion and reversible jurisdictional error to the Ombudsman for dismissing the complaint. The Court has previously treated differently labeled actions as special civil actions for *certiorari* under Rule 65 for acceptable reasons such as justice, equity, and fair play.

2. **POLITICAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; SECTION 15, ARTICLE XI OF THE 1987 CONSTITUTION APPLIES ONLY TO CIVIL ACTIONS FOR RECOVERY OF ILL-GOTTEN WEALTH NOT TO CRIMINAL CASES SUCH AS THE COMPLAINT IN CASE AT BAR.—** As to the main issue, petitioner maintains that, although the charge against respondents was for violation of the Anti-Graft and Corrupt Practices Act, its prosecution relates to its efforts to recover the ill-gotten wealth of former President Ferdinand Marcos and of his family and cronies. Section 15, Article XI of the 1987 Constitution provides that the right of the State to recover properties unlawfully acquired by public officials or employees is not barred by prescription, laches, or estoppel. But the Court has already settled in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* that Section 15, Article XI of the 1987 Constitution applies only to civil actions for recovery of ill-gotten wealth, not to criminal cases such as the complaint against respondents in OMB-0-90-2810. Thus, the prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth contemplated in Section 15, Article XI of the 1987 Constitution may be barred by prescription.

3. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); SINCE THE ACTS COMPLAINED OF WERE COMMITTED BEFORE THE**

ENACTMENT OF BATAS PAMBANSA (B.P.) BLG. 195 (PROVIDING 15 YEARS PRESCRIPTIVE PERIOD), THE PRESCRIPTIVE PERIOD FOR SUCH ACTS IS 10 YEARS AS PROVIDED IN SECTION 11 OF R.A. 3019, AS ORIGINALLY ENACTED.— Section 11 of R.A. 3019 now provides that the offenses committed under that law prescribes in 15 years. Prior to its amendment by Batas Pambansa (B.P.) Blg. 195 on March 16, 1982, however, the prescriptive period for offenses punishable under R.A. 3019 was only 10 years. Since the acts complained of were committed before the enactment of B.P. 195, the prescriptive period for such acts is 10 years as provided in Section 11 of R.A. 3019, as originally enacted.

4. ID.; ID.; R.A. 3019, BEING A SPECIAL LAW, THE 10-YEAR PRESCRIPTIVE PERIOD SHOULD BE COMPUTED IN ACCORDANCE WITH SECTION 2 OF ACT 3326; TWO RULES FOR DETERMINING WHEN THE PRESCRIPTIVE PERIOD SHALL BEGIN TO RUN UNDER ACT 3326.— Now R.A. 3019 being a special law, the 10-year prescriptive period should be computed in accordance with Section 2 of Act 3326, which provides: **Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.** The above-mentioned section provides two rules for determining when the prescriptive period shall begin to run: *first*, from the day of the commission of the violation of the law, if such commission is known; and *second*, from its discovery, if not then known, and the institution of judicial proceedings for its investigation and punishment.

5. ID.; ID.; THE CIRCUMSTANCES IN THE PROSECUTION OF CASES OF BEHEST LOANS WHERE THE PRESCRIPTIVE PERIOD IS RECKONED FROM THE DISCOVERY OF THE LOANS DOES NOT OBTAIN IN CASE AT BAR WHERE TRANSACTION INVOLVED IS NOT A LOAN BUT AN INVESTMENT; REASONS.— In the prosecution of cases of behest loans, the Court reckoned the prescriptive period from the discovery of such loans. The reason for this is that the government, as aggrieved party, could not

have known that those loans existed when they were made. Both parties to such loans supposedly conspired to perpetrate fraud against the government. They could only have been discovered after the 1986 EDSA Revolution when the people ousted President Marcos from office. And, prior to that date, no person would have dared question the legality or propriety of the loans. Those circumstances do not obtain in this case. For one thing, what is questioned here is not the grant of behest loans that, by their nature, could be concealed from the public eye by the simple expedient of suppressing their documentations. What is rather involved here is UCPB's investment in UNICOM, which corporation is allegedly owned by respondent Cojuangco, supposedly a Marcos crony. That investment does not, however, appear to have been withheld from the curious or from those who were minded to know like banks or competing businesses. Indeed, the OSG made no allegation that respondent members of the board of directors of UCPB connived with UNICOM to suppress public knowledge of the investment. Besides, the transaction left the confines of the UCPB and UNICOM board rooms when UNICOM applied with the SEC, the publicly-accessible government clearing house for increases in corporate capitalization, to accommodate UCPB's investment. Changes in shareholdings are reflected in the General Information Sheets that corporations have been mandated to submit annually to the SEC. These are available to anyone upon request. The OSG makes no allegation that the SEC denied public access to UCPB's investment in UNICOM during martial law at the President's or anyone else's instance. Indeed, no accusation of this kind has ever been hurled at the SEC with reference to corporate transactions of whatever kind during martial law since even that regime had a stake in keeping intact the integrity of the SEC as an instrumentality of investments in the Philippines.

6. **ID.; ID.; PETITIONER REPUBLIC HAD KNOWN OF THE INVESTMENT IT NOW QUESTIONS FOR A SUFFICIENTLY LONG TIME YET IT LET THOSE FOUR YEARS OF THE REMAINING PERIOD OF PRESCRIPTION RUN ITS COURSE BEFORE BRINGING THE PROPER ACTION.—** And, granted that the feint-hearted might not have the courage to question the UCPB investment into UNICOM during martial law, the second element—that the action could not have been instituted during the 10-year

period because of martial law—does not apply to this case. The last day for filing the action was, at the latest, on February 8, 1990, about four years after martial law ended. Petitioner had known of the investment it now questions for a sufficiently long time yet it let those four years of the remaining period of prescription run its course before bringing the proper action.

7. **ID.; EXTINCTION OF CRIMINAL LIABILITY; PRESCRIPTION; PRESCRIPTION OF ACTIONS IS A VALUED RULE IN ALL CIVILIZED STATES SINCE IT IS A RULE OF FAIRNESS.—** Prescription of actions is a valued rule in all civilized states from the beginning of organized society. It is a rule of fairness since, without it, the plaintiff can postpone the filing of his action to the point of depriving the defendant, through the passage of time, of access to defense witnesses who would have died or left to live elsewhere, or to documents that would have been discarded or could no longer be located. Moreover, the memories of witnesses are eroded by time. There is an absolute need in the interest of fairness to bar actions that have taken the plaintiffs too long to file in court.

CONCURRING OPINION

BERSAMIN, *J.*:

1. **CRIMINAL LAW; EXTINCTION OF CRIMINAL LIABILITY; PRESCRIPTION; THE FILING IN THE SECURITIES AND EXCHANGE COMMISSION (SEC) AND THE SUBSEQUENT APPROVAL BY THE COMMISSION OF THE AMENDED ARTICLES OF INCORPORATION ON FEBRUARY 8, 1990 INDUBITABLY CONSUMMATED THE UNLAWFUL TRANSACTION ALLEGED IN THE INFORMATION; RECKONING THE PRESCRIPTIVE PERIOD FROM FEBRUARY 8, 1980 IS WARRANTED BY THE RECORDS.—** The issue of when to reckon the commission of the offense charged is not difficult to determine. I disagree that the commission of the offense should be reckoned from the filing of the 1980 General Information Sheet (GIS). Instead, I find it more logical to reckon the commission of the offense to the filing of the Amended Articles of Incorporation on February 8, 1980 in the Securities and

Exchange Commission (SEC). Indeed, the Certificate of Increase of Capital Stock that UNICOM filed on September 17, 1979 involved the affected shareholdings. The second page of the certificate clearly showed that UCPB had subscribed to 4,000,000 no-par value shares worth ₱495 million. The certificate is significant because it reflected the very same shareholdings that respondents allegedly diluted by increasing UNICOM's capital stock from 10 million to one billion shares. Although it did not reflect the subject investment of UCPB, the Amended Articles of Incorporation filed on February 8, 1980 is indisputably the only trustworthy evidence that proved the dilution. I note that the State itself presented the Amended Articles of Incorporation to establish its allegations because the Amended Articles of Incorporation showed that UNICOM had increased its capital stock to ₱1,000,000,000.00, divided as follows: 500,000,000 Class "A" voting common shares; 400,000,000 Class "B" voting common shares; and 100,000,000 Class "C" non-voting common shares, **all having a par value of ₱1.00 per share**. The filing in the SEC and the subsequent approval by the SEC of the Amended Articles of Incorporation on February 8, 1980 **indubitably consummated** the unlawful transaction alleged in the information. Reckoning the prescription period from February 8, 1980 was really warranted by the records.

2. **ID.; ID.; ID.; SECTION 2 OF ACT NO. 3326 (AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN) IS THE APPLICABLE RULE FOR COMPUTING THE PRESCRIPTIVE PERIOD OF A VIOLATION OF REPUBLIC ACT NO. 3019; APPLYING SAID LAW IN CASE AT BAR, THERE WAS, THEREFORE, NO INTERRUPTION IN THE PRESCRIPTIVE PERIOD EVEN ASSUMING THAT RESPONDENT HAD BEEN ABSENT FROM THE COUNTRY FROM 1986 TO 1991.—** As to whether or not the criminal action prescribed as to Eduardo M. Cojuangco, Jr. because his supposed absence from the country in the period from 1986 to 1991 had interrupted the running of the period of prescription, I respectfully submit

that there was no interruption even assuming that said respondent had truly been absent from the country in that period. The applicable rule for computing the prescriptive period of a violation of Republic Act No. 3019 is Act No. 3326 (*An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run*). The relevant provision is Section 2, which states: Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment. **The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.** It is noticeable that Section 2, *supra*, does not state the effect on the prescriptive period of an accused's absence from the country.

3. **ID.; ID.; ID.; THE OMISSION BY THE LEGISLATURE FROM ACT 3326 OF THE EFFECT ON THE RUNNING OF THE PRESCRIPTIVE PERIOD OF THE ABSENCE OF THE ACCUSED FROM THE COUNTRY WAS AN INADVERTENT DRAFTING ERROR ON THE PART OF THE LEGISLATURE WHICH DOES NOT GIVE THE COURT THE LICENSE TO APPLY ARTICLE 91 OF THE REVISED PENAL CODE AT WILL TO SUPPLY THE OMISSION; A *CASUS OMISSUS* DOES NOT JUSTIFY JUDICIAL LEGISLATION, MOST ESPECIALLY IN RESPECT OF STATUTES DEFINING AND PUNISHING CRIMINAL OFFENSES.—** I cannot accept the Minority's insistence. I certainly doubt that the omission by the Legislature from Act No. 3326 of the effect on the running of the prescriptive period of the absence of the accused from the country was an inadvertent drafting error on the part of the Legislature. As such, the omission does not give to the Court the license to apply Article 91 of the *Revised Penal Code* at will in order to supply the omission. *Casus omissus pro habendus est*. A person, object, or thing omitted from an enumeration in a statute must be held to have been intentionally omitted. It is settled that if cases should arise for which Congress has made no provision, the courts cannot supply the omission.

A *casus omissus* does not justify judicial legislation, most particularly in respect of statutes defining and punishing criminal offenses.

4. **ID.; ID.; ID.; THE SILENCE OF ACT NO. 3326 ON THE EFFECT OF THE ABSENCE OF THE ACCUSED FROM THE COUNTRY AS A CLEAR AND UNDENIABLE LEGISLATIVE STATEMENT THAT SUCH ABSENCE DOES NOT INTERRUPT THE RUNNING OF THE PRESCRIPTIVE PERIOD FOR VIOLATIONS OF SPECIAL PENAL LAWS.—** Bearing in mind that prescription is a matter of positive legislation and cannot be established by mere implications or deductions, I construe the silence of Act No. 3326 on the effect of the absence of the accused from the country as a **clear and undeniable legislative statement** that such absence does not interrupt the running of the prescriptive period for violations of special penal laws. In *Romualdez v. Marcelo*, the Court clearly declared so, holding that Section 2, *supra*, was: xxx conspicuously silent as to whether the absence of the offender from the Philippines bars the running of the prescriptive period. The silence of the law can only be interpreted to mean that Section 2 of Act No. 3326 did not intend such an interruption of the prescription unlike the explicit mandate of Article 91. Thus, as previously held: "Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of the interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission." **This construction entirely precludes the application of Article 91 of the *Revised Penal Code* even in a suppletory manner.**

5. **ID.; ID.; ID.; APPLYING SECTION 2 OF ACT NO. 3326, THE PRESCRIPTIVE PERIOD FOR CRIMINAL VIOLATIONS OF R.A. NO. 3019 IS TOLLED ONLY WHEN**

THE OFFICE OF THE OMBUDSMAN EITHER RECEIVES A COMPLAINT, OR INITIATES ITS OWN INVESTIGATION OF THE VIOLATIONS.— Section 2 of Act No. 3326 expressly provides only one instance in which the prescriptive period is interrupted, *that is*, when criminal proceedings are instituted against the guilty person. In that regard, the filing of the complaint for purposes of preliminary investigation interrupts the period of prescription. Hence, the prescriptive period for criminal violations of R.A. No. 3019 is tolled only when the Office of the Ombudsman either receives a complaint, or initiates its own investigation of the violations.

6. **ID.; ID.; ID.; WHEN THE OFFENSE HAS NOT BEEN CONCEALED, SUCH AS WHEN IT IS EVIDENCED BY PUBLIC DOCUMENTS OR IS A MATTER OF PUBLIC RECORD OPEN TO INSPECTION, THE STATE WILL NOT BE PERMITTED TO PLEAD IGNORANCE OF THE ACT OF THE ACCUSED IN ORDER TO EVADE THE OPERATION OF THE STATUTE OF LIMITATIONS.—** I cannot subscribe to the Minority's submission that the period of prescription should run from the date of discovery instead of the date of the commission of the offense. The transaction in question was evidenced by public instruments and records. **There is good authority for the view that when the offense has not been concealed, such as when it is evidenced by public documents or is a matter of public record open to inspection, the State will not be permitted to plead ignorance of the act of the accused in order to evade the operation of the Statute of Limitations**. Nor may we presume a connivance among respondents from the fact that the boards of directors of UNICOM and UCPB had interlocking members who might have effectively concealed the transaction from the public in order to justify the reckoning from the date of discovery. As Justice Abad's Majority Opinion sufficiently indicates, this case was not like a criminal prosecution based on the secretive granting of behest loans as to which reckoning the period from the date of discovery of the offense would be justified. The transaction in question had already left the boardrooms of both UCPB and UNICOM when the SEC approved the increase in capitalization. In *People v. Sandiganbayan*, the Court applied the date-of-commission rule as the start of the reckoning because the illegal transaction involved had passed

the hands of several public officials. Here, the fact that the increased capitalization was approved and certified by no less than the SEC, the government agency established to protect both domestic and foreign investments and the public, called for the use of the date-of-commission rule.

7. **ID.; ID.; ID.; IN THE INTERPRETATION OF THE LAW ON PRESCRIPTION OF CRIMES, THAT WHICH IS MOST FAVORABLE TO THE ACCUSED IS TO BE ADOPTED; AS BETWEEN SECTION 2 OF REPUBLIC ACT NO. 3326 AND ARTICLE 91 OF THE REVISED PENAL CODE, THE FORMER IS CONTROLLING DUE TO ITS BEING MORE FAVORABLE TO THE ACCUSED.—** I need to remind that in the interpretation of the law on prescription of crimes, that which is most favorable to the accused is to be adopted. As between Section 2 of Republic Act No. 3326 and Article 91 of the *Revised Penal Code*, therefore, the former is controlling due to its being more favorable to the accused. This interpretation also accords most with the nature of prescription 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. More than being an act of grace, prescription, as a statute of limitation, is equivalent to an act of amnesty, which shall begin to run upon the commission of the offense rather than upon the discovery of the offense.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

1. **CRIMINAL LAW; EXTINCTION OF CRIMINAL LIABILITY; PRESCRIPTION; SINCE R.A. 3019 IS A SPECIAL LAW, THE APPLICABLE LAW FOR THE COMPUTATION OF PRESCRIPTIVE PERIOD IS SECTION 2 OF ACT NO. 3326 (AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN).—** Since RA 3019

is a special penal law, the applicable law for the computation of the prescriptive period is Section 2, Act No. 3326. x x x Applied to the present case, the *ponencia* considers **February 8, 1980** as the point when the 10-year prescriptive period began to run, as it was at this time that the Securities and Exchange Commission (*SEC*) issued to Unicom the **Certificate of Filing of the Amended Articles of Incorporation (*AAOI*)**, which reflected the increase in Unicom's capitalization, as well as the conversion and classification of its shares. The *ponencia* considered the filing of the AAOI with a public office as the equivalent of the "discovery" of the crime because the document supposedly evidencing the acts charged then became accessible to the public, thus providing it with sufficient notice. Since ten years lapsed from the time the crime charged was deemed "discovered" on February 8, 1980 up to time when the complaint was filed with the Ombudsman on March 1, 1990, the *ponencia* concluded that the criminal charge had already prescribed and, therefore, it found the Ombudsman's dismissal of the complaint proper.

2. **ID.; ID.; ID.; SINCE THE GRAVAMEN OF THE CRIME PENALIZED UNDER SECTION 3(e) OF R.A. 3019 IS THE UNDUE INJURY CAUSED TO THE GOVERNMENT, THE PROPER PERIOD TO RECON THE RUNNING OF THE PRESCRIPTIVE PERIOD SHOULD BE FROM THE FILING OF UNICOM'S GENERAL INFORMATION SHEET (GIS) FOR 1980, IT WAS ONLY AT THIS POINT THAT THE PUBLIC COULD BE DEEMED TO HAVE CONSTRUCTIVE NOTICE OF THE ACTS CONSTITUTING THE CRIME**.— I agree with the *ponencia*'s explanation, but only to the extent that the filing of Unicom's AAOI with the SEC provided the public constructive notice of the *increase of its capitalization* and the *conversion of its shares*. **The disclosure of these facts in the AAOI alone, however, did not establish or at least give reasonable notice to the public of any undue injury to the government** that constitutes the crime penalized under Section 3(e) of RA 3019. The gravamen of the crime penalized under Section 3(e) of RA 3019 is the **undue injury caused to the government**, which, in the present case is allegedly the **dilution of UCPB's investment in Unicom's shares of stock** when Unicom increased its

capitalization from 10 million shares to 1 billion shares and converted the shares into three difference classes. The undue injury could be discovered only upon the filing, not of the AAOI on February 8, 1980 (which does not contain a listing of the shareholders and the amount of their shareholdings), but of Unicom's General Information Sheet (*GIS*) for 1980. Notably, the AAOI does not contain a listing of the corporation's shareholders and the amount of their shareholdings; these are matters properly reported and reflected instead in the corporation's GIS – a matter the *ponencia* recognized when it declared that "[c]hanges in shareholdings are reflected in the **GIS** that corporations have been mandated to submit annually to the SEC." **The alleged undue injury to the public through the dilution of United Coconut Planters Bank's (*UCPB*'s) investment in Unicom's shares of stock would thus be "discovered" only upon a review of Unicom's GIS for 1980** (the year when the increase of capital stock was approved), whose filing does not necessarily coincide with the filing of the AAOI. It was only at this point that the public could be deemed to have constructive notice of the acts constituting the crime. Thus, **the proper period to reckon the running of the prescriptive period should be from the filing of Unicom's GIS for 1980**, which date would definitely be later than February 8, 1980.

3. **ID.; ID.; ID.; THE SURROUNDING CIRCUMSTANCES AND THE INTERLOCKING MEMBERS OF THE BOARD OF DIRECTORS OF THE TWO CORPORATIONS PROVIDE REASONABLE GROUND TO PRESUME THE EXISTENCE OF CONNIVANCE; SAID FACTORS MAKE IT LIGHTLY THAT THE QUESTIONED TRANSACTION WAS INDEED "WITHHELD FROM THE CURIOUS OR FROM THOSE WHO WERE MINDED TO KNOW."—** Although by nature, a difference exists between the grant of behest loans and UCPB's investments in Unicom's shares of stock, both **transactions nonetheless involve public funds** (*i.e.*, coconut levy funds) **and are evidenced by public instruments and records**. Indeed, even if these transactions are of public record (hence, presumably of public knowledge), the Court declared that the principle in *Domingo* should still apply: the running of the prescriptive period should be computed from the presumed discovery (*i.e.*, after the February 1986 Revolution) of the crime

and not from the day of such commission. The lack of allegation that the members of the board of directors of UCPB connived with Unicom to suppress public knowledge of the investment is rendered unnecessary by the fact that majority of the board of directors of UCPB also served as board of directors of Unicom during the relevant period. x x x The surrounding circumstances and the interlocking members of the board of directors of the two corporations provide reasonable ground to presume the existence of connivance. These factors make it likely that the questioned transaction was indeed "withheld from the curious or from those who were minded to know."

4. **ID.; ID.; ID.; THE COMBINED APPLICATION OF ACT NO. 3326 AND ARTICLE 91 OF THE REVISED PENAL CODE DICTATES THAT THE 10-YEAR PERIOD TO FILE CHARGES FOR VIOLATION OF R.A. 3019 SHOULD NOT RUN WHEN THE OFFENDER WAS ABSENT FROM THE PHILIPPINES.—** The second paragraph of Section 2, Act No. 3326 is silent on the effect of the offender's absence from the country on the running of the prescriptive period. The law simply states that – Sec. 2. x x x **The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy**. The silence of the law, however, does not preclude the suppletory application of Article 91 of the Revised Penal Code (*RPC*). Article 91 of the RPC provides that "[t]he term of prescription shall not run when the offender is absent from the Philippine Archipelago." The suppletory application of Article 91 of the RPC is authorized and even *mandated* under Article 10 of the same Code, which states: Art. 10. *Offenses not subject to the provisions of this Code.* – Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. **This Code *shall* be supplementary to such laws, unless the latter should *specifically provide* the contrary**. The only instance when the application of the RPC to special penal laws (like RA 3019) is barred is when the special penal law itself should ***specifically provide the contrary***. The silence of Act No. 3326 and RA 3019, however, cannot be construed as specifically providing terms contrary to Article 91 of the RPC. The combined application of these provisions, therefore, dictates that **the**

10-year period to file charges for violation of RA 3019 should not run when the offender was absent from the Philippines. Otherwise stated, **the offender's absence from the country's jurisdiction interrupts the running of the prescriptive period, and shall begin to run again only upon his return.**

5. **ID.; ID.; ID.; THE SUPPLETORY APPLICATION OF ARTICLE 91 OF THE REVISED PENAL CODE IS MANDATED BY THE LAW ITSELF WHICH PRECLUDES THE APPLICATION OF STATUTORY RULES OF CONSTRUCTION, WHICH ARE USED ONLY WHEN THE LAW IS AMBIGUOUS.—** The suppletory application of Article 91 of the RPC is mandated by the law itself. Indeed, the law's express command precludes the application of statutory rules of construction, which are used only when the law is ambiguous. Assuming there was an ambiguity, the liberal construction of penal laws in favor of the accused is not the only factor in the interpretation of criminal laws: A [liberal construction] should not be permitted to defeat the intent, policy, and purpose of the statute. The court should consider the spirit and reason of a statute where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the law, for [liberal construction] of a criminal statute does not mean such construction as to deprive it of the meaning intended.

6. **ID.; ID.; ID.; TO LITERALLY CONSTRUE ACT NO. 3326'S SILENCE ON THE EFFECT OF THE ACCUSED'S ABSENCE FROM OUR JURISDICTION AS NOT INTERRUPTING THE RUNNING OF THE PRESCRIPTIVE PERIOD IS DISCRIMINATORY AND GOES AGAINST PUBLIC INTEREST.—** To literally construe Act No. 3326's silence on the effect of the accused's absence from our jurisdiction as not interrupting the running of the prescriptive period is **discriminatory and goes against public interest**. I agree with Justice Antonio T. Carpio's explanation in his dissent in *Romualdez v. Hon. Marcelo*: **The accused should not have the sole discretion of preventing his own prosecution by the simple expedient of escaping from the State's jurisdiction.** x x x. An accused cannot acquire legal immunity

by being a fugitive from the State's jurisdiction. **To allow an accused to prevent his prosecution by simply leaving this jurisdiction unjustifiably tilts the balance of criminal justice in favor of the accused to the detriment of the State's ability to investigate and prosecute crimes.** In this age of cheap and accessible global travel, this Court should not encourage individuals facing investigation or prosecution for violation of special laws to leave Philippine jurisdiction to sit-out abroad the prescriptive period. Accordingly, **the charge – insofar as it involves respondent Eduardo M. Cojuangco, Jr. – was filed <u>within</u> the prescriptive period.** He was absent from the country from 1986 to 1991. Hence, the filing of the charge on March 1, 1990 was well within the 10-year prescriptive period, even assuming it began to run on February 8, 1980.

SEPARATE DISSENTING OPINION

PERLAS-BERNABE, *J.*:

CRIMINAL LAW; EXTINCTION OF CRIMINAL LIABILITY; PRESCRIPTION; SHOULD BE RECKONED FROM THE ISSUANCE OF THEN PRESIDENT CORAZON C. AQUINO OF EXECUTIVE ORDER NO. 1 (CREATING THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT) ON FEBRUARY 28, 1986, WHICH ADMITTEDLY SPURRED THE INVESTIGATION ON THE SUBJECT UNICOM INVESTMENT; IT WAS ONLY AT THAT TIME WHEN THE RIGHT OF THE THEN PEOPLE'S GOVERNMENT TO INVESTIGATE AND PROSECUTE THE ERRANT PUBLIC OFFICIALS OR THOSE CLOSELY ASSOCIATED WITH THE MARCOSES ACCRUED.— The mere filing of the subject documents with the SEC could not have imparted "knowledge" or made the government aware that UCPB's investment, for and in behalf of the coconut farmers, had been dissipated by ₱95,000,000.00 and that respondent-incorporators were unduly benefited by the increase in their investment from ₱5,000,000.00 to ₱100,000,000.00. For knowledge of a transaction is not equivalent to knowledge of

an *anomalous* transaction, absent any apparent irregularity that could have raised any suspicion against an otherwise regular commercial transaction. Accordingly, prescription should be reckoned from the issuance of then President Corazon C. Aquino of Executive Order No. 1 (Creating the Presidential Commission on Good Government) on **February 28, 1986,** which admittedly spurred the investigation on the subject UNICOM investment. It must be pointed out that respondents' questioned act occurred during the height of the Marcos regime which was toppled by the EDSA revolution in 1986. It was therefore only at that time when the right of the then people's government to investigate and prosecute the errant public officials or those closely associated with the Marcoses accrued. Consequently, the filing of the resultant complaint on March 1, 1990, 4 years after the issuance of EO No. 1, was well within the 10-year prescriptive period.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Dela Cuesta De Las Alas & Tantuico for Rolando Dela Cuesta.

Diño Borja Sabaria Factoran & Tadena Law Offices for Danilo S. Ursua.

Estelito P. Mendoza for Eduardo M. Cojuangco, Jr.

Ponce Enrile Reyes & Manalastas for Juan Ponce Enrile and Eleazar B. Reyes.

Angara Abello Concepcion Regala & Cruz for Teodoro Regala, Victor Lazatin and Eduardo Escueta.

Ubano Ancheta Sianghio & Lozada for the Heirs of the Late Maria Clara L. Lobregat.

D E C I S I O N

ABAD, *J.*:

This case, which involves another attempt of the government to recover ill-gotten wealth acquired during the Marcos era, resolves the issue of prescription.

The Facts and the Case

On April 25, 1977 respondents Teodoro D. Regala, Victor P. Lazatin, Eleazar B. Reyes, Eduardo U. Escueta and Leo J. Palma incorporated the United Coconut Oil Mills, Inc. (UNICOM)[1] with an authorized capital stock of ₱100 million divided into one million shares with a par value of ₱100 per share. The incorporators subscribed to 200,000 shares worth ₱20 million and paid ₱5 million.

On September 26, 1978 UNICOM amended its capitalization by (1) increasing its authorized capital stock to three million shares without par value; (2) converting the original subscription of 200,000 to one million shares without par value and deemed fully paid for and non-assessable by applying the ₱5 million already paid; and (3) waiving and abandoning the subscription receivables of ₱15 million.[2]

On August 29, 1979 the Board of Directors of the United Coconut Planters Bank (UCPB) composed of respondents Eduardo M. Cojuangco, Jr., Juan Ponce Enrile, Maria Clara L. Lobregat, Jose R. Eleazar, Jr., Jose C. Concepcion, Rolando P. Dela Cuesta, Emmanuel M. Almeda, Hermenegildo C. Zayco, Narciso M. Pineda, Iñaki R. Mendezona, and Danilo S. Ursua approved Resolution 247-79 authorizing UCPB, the Administrator of the Coconut Industry Investment Fund (CII Fund), to invest not more than ₱500 million from the fund in the equity of UNICOM for the benefit of the coconut farmers.[3]

On September 4, 1979 UNICOM increased its authorized capital stock to 10 million shares without par value. The Certificate of Increase of Capital Stock stated that the incorporators held one million shares without par value and that UCPB subscribed to 4 million shares worth ₱495 million.[4]

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[1] *Rollo*, pp. 51-60. It was registered with the Securities and Exchange Commission (SEC) on April 26, 1977.

[2] *Id.* at 61-72. It was registered with the SEC on September 28, 1978 as evidenced by the Certificate of Filing of Amended Articles of Incorporation.

[3] *Id.* at 73-78.

[4] *Id.* at 79-83.

On September 18, 1979 a new set of UNICOM directors, composed of respondents Eduardo M. Cojuangco, Jr., Juan Ponce Enrile, Maria Clara L. Lobregat, Jose R. Eleazar, Jr., Jose Concepcion, Emmanuel M. Almeda, Iñaki R. Mendezona, Teodoro D. Regala, Douglas Lu Ym, Sigfredo Veloso, and Jaime Gandiaga, approved another amendment to UNICOM's capitalization. This increased its authorized capital stock to one billion shares divided into 500 million Class "A" voting common shares, 400 million Class "B" voting common shares, and 100 million Class "C" non-voting common shares, all with a par value of ₱1 per share. The paid-up subscriptions of 5 million shares without par value (consisting of one million shares for the incorporators and 4 million shares for UCPB) were then converted to 500 million Class "A" voting common shares at the ratio of 100 Class "A" voting common shares for every one without par value share.[5]

About 10 years later or on March 1, 1990 the Office of the Solicitor General (OSG) filed a complaint for violation of Section 3(e) of Republic Act (R.A.) 3019[6] against respondents, the 1979 members of the UCPB board of directors, before the Presidential Commission on Good Government (PCGG). The OSG alleged that UCPB's investment in UNICOM was manifestly and grossly disadvantageous to the government since UNICOM

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[5] *Id.* at 84-102. It was registered with the SEC on February 8, 1980 as evidenced by the Certificate of Filing of Amended Articles of Incorporation.

[6] Anti-Graft and Corrupt Practices Act. Approved on August 17, 1960.

Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(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.

had a capitalization of only ₱5 million and it had no track record of operation. In the process of conversion to voting common shares, the government's ₱495 million investment was reduced by ₱95 million which was credited to UNICOM's incorporators. The PCGG subsequently referred the complaint to the Office of the Ombudsman in OMB-0-90-2810 in line with the ruling in *Cojuangco, Jr. v. Presidential Commission on Good Government*,[7] which disqualified the PCGG from conducting the preliminary investigation in the case.

About nine years later or on March 15, 1999 the Office of the Special Prosecutor (OSP) issued a Memorandum,[8] stating that although it found sufficient basis to indict respondents for violation of Section 3(e) of R.A. 3019, the action has already prescribed. Respondents amended UNICOM's capitalization a third time on September 18, 1979, giving the incorporators unwarranted benefits by increasing their 1 million shares to 100 million shares without cost to them. But, since UNICOM filed its Certificate of Filing of Amended Articles of Incorporation with the Securities and Exchange Commission (SEC) on February 8, 1980, making public respondents' acts as board of directors, the period of prescription began to run at that time and ended on February 8, 1990. Thus, the crime already prescribed when the OSG filed the complaint with the PCGG for preliminary investigation on March 1, 1990.

In a Memorandum[9] dated May 14, 1999, the Office of the Ombudsman approved the OSP's recommendation for dismissal of the complaint. It additionally ruled that UCPB's subscription to the shares of stock of UNICOM on September 18, 1979 was the proper point at which the prescription of the action began to run since respondents' act of investing into UNICOM was consummated on that date. It could not be said that the investment was a continuing act. The giving of undue

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[7] G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

[8] *Rollo*, pp. 43-47.

[9] *Id.* at 39-42.

benefit to the incorporators prescribed 10 years later on September 18, 1989. Notably, when the crime was committed in 1979 the prescriptive period for it had not yet been amended. The original provision of Section 11 of R.A. 3019 provided for prescription of 10 years. Thus, the OSG filed its complaint out of time.

The OSG filed a motion for reconsideration on the Office of the Ombudsman's action but the latter denied the same;[10] hence, this petition.

Meanwhile, the Court ordered the dismissal of the case against respondent Maria Clara L. Lobregat in view of her death on January 2, 2004.[11]

The Issue Presented

The pivotal issue in this case is whether or not respondents' alleged violation of Section 3(e) of R.A. 3019 already prescribed.

The Court's Ruling

Preliminarily, the Court notes that what Republic of the Philippines (petitioner) filed in this case is a petition for review on *certiorari* under Rule 45. But the remedy from an adverse resolution of the Office of the Ombudsman in a preliminary investigation is a special civil action of *certiorari* under Rule 65.[12] Still, the Court will treat this petition as one filed under Rule 65 since a reading of its contents reveals that petitioner imputes grave abuse of discretion and reversible jurisdictional error to the Ombudsman for dismissing the complaint. The Court has previously treated differently labeled actions as special civil actions for *certiorari* under Rule 65 for acceptable reasons such as justice, equity, and fair play.[13]

As to the main issue, petitioner maintains that, although the charge against respondents was for violation of the Anti-Graft

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[10] *Id.* at 48-50.

[11] *Id.* at 877-879.

[12] *Presidential Commission on Good Government v. Desierto*, G.R. No. 139296, November 23, 2007, 538 SCRA 207, 212-213.

[13] *Id.* at 213.

and Corrupt Practices Act, its prosecution relates to its efforts to recover the ill-gotten wealth of former President Ferdinand Marcos and of his family and cronies. Section 15, Article XI of the 1987 Constitution provides that the right of the State to recover properties unlawfully acquired by public officials or employees is not barred by prescription, laches, or estoppel.

But the Court has already settled in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*[14] that Section 15, Article XI of the 1987 Constitution applies only to civil actions for recovery of ill-gotten wealth, not to criminal cases such as the complaint against respondents in OMB-0-90-2810. Thus, the prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth contemplated in Section 15, Article XI of the 1987 Constitution may be barred by prescription.[15]

Notably, Section 11 of R.A. 3019 now provides that the offenses committed under that law prescribes in 15 years. Prior to its amendment by Batas Pambansa (B.P.) Blg. 195 on March 16, 1982, however, the prescriptive period for offenses punishable under R.A. 3019 was only 10 years.[16] Since the acts complained of were committed before the enactment of B.P. 195, the prescriptive period for such acts is 10 years as provided in Section 11 of R.A. 3019, as originally enacted.[17]

Now R.A. 3019 being a special law, the 10-year prescriptive period should be computed in accordance with Section 2 of Act 3326,[18] which provides:

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[14] 375 Phil. 697 (1999).

[15] *Id.* at 296.

[16] *People v. Pacificador*, 406 Phil. 774, 782 (2001).

[17] *Romualdez v. Marcelo*, G.R. Nos. 165510-33, July 28, 2006, 497 SCRA 89, 100.

[18] An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances, and to Provide When Prescription Shall Begin to Run. Approved on December 4, 1926.

Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The above-mentioned section provides two rules for determining when the prescriptive period shall begin to run: *first*, from the day of the commission of the violation of the law, if such commission is known; and *second*, from its discovery, if not then known, and the institution of judicial proceedings for its investigation and punishment.[19]

Petitioner points out that, assuming the offense charged is subject to prescription, the same began to run only from the date it was discovered, namely, after the 1986 EDSA Revolution. Thus, the charge could be filed as late as 1996.

In the prosecution of cases of behest loans, the Court reckoned the prescriptive period from the discovery of such loans. The reason for this is that the government, as aggrieved party, could not have known that those loans existed when they were made. Both parties to such loans supposedly conspired to perpetrate fraud against the government. They could only have been discovered after the 1986 EDSA Revolution when the people ousted President Marcos from office. And, prior to that date, no person would have dared question the legality or propriety of the loans.[20]

Those circumstances do not obtain in this case. For one thing, what is questioned here is not the grant of behest loans that, by their nature, could be concealed from the public eye by the simple expedient of suppressing their documentations. What is rather involved here is UCPB's investment in UNICOM, which

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[19] *Presidential Commission on Good Government v. Desierto*, 484 Phil. 53, 60 (2004).

[20] *Republic of the Philippines v. Desierto*, 438 Phil. 201, 212 (2002); see also *Republic v. Desierto*, 416 Phil. 59, 77-78 (2001); *Romualdez v. Sandiganbayan*, 479 Phil. 265, 294 (2004).

corporation is allegedly owned by respondent Cojuangco, supposedly a Marcos crony. That investment does not, however, appear to have been withheld from the curious or from those who were minded to know like banks or competing businesses. Indeed, the OSG made no allegation that respondent members of the board of directors of UCPB connived with UNICOM to suppress public knowledge of the investment.

Besides, the transaction left the confines of the UCPB and UNICOM board rooms when UNICOM applied with the SEC, the publicly-accessible government clearing house for increases in corporate capitalization, to accommodate UCPB's investment. Changes in shareholdings are reflected in the General Information Sheets that corporations have been mandated to submit annually to the SEC. These are available to anyone upon request.

The OSG makes no allegation that the SEC denied public access to UCPB's investment in UNICOM during martial law at the President's or anyone else's instance. Indeed, no accusation of this kind has ever been hurled at the SEC with reference to corporate transactions of whatever kind during martial law since even that regime had a stake in keeping intact the integrity of the SEC as an instrumentality of investments in the Philippines.

And, granted that the feint-hearted might not have the courage to question the UCPB investment into UNICOM during martial law, the second element—that the action could not have been instituted during the 10-year period because of martial law—does not apply to this case. The last day for filing the action was, at the latest, on February 8, 1990, about four years after martial law ended. Petitioner had known of the investment it now questions for a sufficiently long time yet it let those four years of the remaining period of prescription run its course before bringing the proper action.

Prescription of actions is a valued rule in all civilized states from the beginning of organized society. It is a rule of fairness since, without it, the plaintiff can postpone the filing of his action to the point of depriving the defendant, through the passage of time, of access to defense witnesses who would have died

or left to live elsewhere, or to documents that would have been discarded or could no longer be located. Moreover, the memories of witnesses are eroded by time. There is an absolute need in the interest of fairness to bar actions that have taken the plaintiffs too long to file in court.

Respondents claim that, in any event, the complaint against them failed to show probable cause. They point out that, prior to the third amendment of UNICOM's capitalization, the stated value of the one million shares without par value, which belonged to its incorporators, was ₱5 million. When these shares were converted to 5 million shares with par value, the total par value of such shares remained at ₱5 million. But, the action having prescribed, there is no point in discussing the existence of probable cause against the respondents for violation of Section 3(e) of R.A. 3019.

WHEREFORE, the Court **DENIES** the petition and **AFFIRMS** the Memorandum dated May 14, 1999 of the Office of the Ombudsman that dismissed on the ground of prescription the subject charge of violation of Section 3(e) of R.A. 3019 against respondents Eduardo M. Cojuangco, Jr., Juan Ponce Enrile, Jose R. Eleazar, Jr., Jose C. Concepcion, Rolando P. Dela Cuesta, Emmanuel M. Almeda, Hermenegildo C. Zayco, Narciso M. Pineda, Iñaki R. Mendezona, Danilo S. Ursua, Teodoro D. Regala, Victor P. Lazatin, Eleazar B. Reyes, Eduardo U. Escueta, Leo J. Palma, Douglas Lu Ym, Sigfredo Veloso, and Jaime Gandiaga.

SO ORDERED.

Del Castillo, Villarama, Jr., Perez, and *Reyes, JJ.,* concur.

Bersamin, J., please see concurring opinion.

Brion, J., please see concurring and dissenting opinion.

Sereno, J., joins *J*. Bernabe; she dissents.

Perlas-Bernabe, J., please see separate dissenting opinion.

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

Velasco, Jr. and *Peralta, JJ.,* no part.

Leonardo-de Castro, J., no part due to participation in related cases in the Sandiganbayan.

Mendoza, J., on official leave.

CONCURRING OPINION

BERSAMIN, *J.*:

I **CONCUR** with the Majority Opinion written by Justice Abad. Like him, I find and hold that the State already lost the right to prosecute respondents for violating Section 3(e) of Republic Act No. 3019 by February 8, 1990, or ten years *after* UNICOM filed its Amended Articles of Incorporation.

Respondents were charged with violating Section 3 (e) of Republic Act No. 3019 for allegedly watering down the ₱495 million worth of no-par value stocks in UNICOM by United Coconut Planters Bank (UCPB) with funds taken from the Coconut Industry Investment Fund (CIIF). But the offense charged clearly prescribed upon the lapse of ten years from the date of its commission on February 8, 1980, the prescriptive period applicable to the offense charged.[1]

The issue of when to reckon the commission of the offense charged is not difficult to determine. I disagree that the commission of the offense should be reckoned from the filing of the 1980 General Information Sheet (GIS). Instead, I find it more logical to reckon the commission of the offense to the filing of the Amended Articles of Incorporation on February 8, 1980 in the Securities and Exchange Commission (SEC). Indeed, the Certificate of Increase of Capital Stock that UNICOM filed on September 17, 1979 involved the affected shareholdings.[2] The

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[1] Prior to March 16, 1982, the applicable prescriptive period for all offenses punishable under Republic Act No. 3019 was ten years (Section 11 of Republic Act No. 3019). *Batas Pambansa Blg*. 195 (which took effect upon its approval on March 16, 1982) raised the period of prescription to fifteen years.

[2] *Rollo*, pp. 80-83.

second page of the certificate clearly showed that UCPB had subscribed to 4,000,000 no-par value shares worth ₱495 million.[3] The certificate is significant because it reflected the very same shareholdings that respondents allegedly diluted by increasing UNICOM's capital stock from 10 million to one billion shares.

Although it did not reflect the subject investment of UCPB, the Amended Articles of Incorporation filed on February 8, 1980 is indisputably the only trustworthy evidence that proved the dilution. I note that the State itself presented the Amended Articles of Incorporation to establish its allegations because the Amended Articles of Incorporation showed that UNICOM had increased its capital stock to ₱1,000,000,000.00, divided as follows: 500,000,000 Class "A" voting common shares; 400,000,000 Class "B" voting common shares; and 100,000,000 Class "C" non-voting common shares, **all having a par value of ₱1.00 per share**.[4] The filing in the SEC and the subsequent approval by the SEC of the Amended Articles of Incorporation on February 8, 1980 **indubitably consummated** the unlawful transaction alleged in the information. Reckoning the prescription period from February 8, 1980 was really warranted by the records.

As to whether or not the criminal action prescribed as to Eduardo M. Cojuangco, Jr. because his supposed absence from the country in the period from 1986 to 1991 had interrupted the running of the period of prescription, I respectfully submit that there was no interruption even assuming that said respondent had truly been absent from the country in that period.

The applicable rule for computing the prescriptive period of a violation of Republic Act No. 3019 is Act No. 3326 (*An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run*).[5] The relevant provision is Section 2, which states:

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[3] *Id.*, p. 81.

[4] *Rollo*, p. 92.

[5] *Republic v. Desierto*, G.R. No. 136506, August 23, 2001, 363 SCRA 585, 597-598; *Domingo v. Sandiganbayan*, G.R. No. 109376, January 20, 2000, 322 SCRA 655, 663.

Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

It is noticeable that Section 2, *supra*, does not state the effect on the prescriptive period of an accused's absence from the country.

Yet, the Minority insist that respondent Cojuangco, Jr.'s purported absence from the country interrupted the running of the prescriptive period, citing Article 91 of the *Revised Penal Code*, which pertinently provides that "[t]he term of prescription shall not run when the offender is absent from the Philippine Archipelago." The Minority justify their insistence by relying on Article 10 of the *Revised Penal Code* that declares the *Revised Penal Code* to be supplementary to special laws unless such special laws should specially provide the contrary.

I cannot accept the Minority's insistence. I certainly doubt that the omission by the Legislature from Act No. 3326 of the effect on the running of the prescriptive period of the absence of the accused from the country was an inadvertent drafting error on the part of the Legislature. As such, the omission does not give to the Court the license to apply Article 91 of the *Revised Penal Code* at will in order to supply the omission. *Casus omissus pro habendus est*. A person, object, or thing omitted from an enumeration in a statute must be held to have been intentionally omitted.[6] It is settled that if cases should arise for which Congress has made no provision, the courts

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[6] *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, G.R. No. 169435, February 27, 2008, 547 SCRA 71, 94; *Commission on Audit of the Province of Cebu v. Province of Cebu*, G.R. No. 141386, November 29, 2001, 371 SCRA 196, 205.

cannot supply the omission.[7] A *casus omissus* does not justify judicial legislation,[8] most particularly in respect of statutes defining and punishing criminal offenses.[9]

Bearing in mind that prescription is a matter of positive legislation and cannot be established by mere implications or deductions,[10] I construe the silence of Act No. 3326 on the effect of the absence of the accused from the country as a **clear and undeniable legislative statement** that such absence does not interrupt the running of the prescriptive period for violations of special penal laws. In *Romualdez v. Marcelo*,[11] the Court clearly declared so, holding that Section 2, *supra*, was:

xxx conspicuously silent as to whether the absence of the offender from the Philippines bars the running of the prescriptive period. The silence of the law can only be interpreted to mean that Section 2 of Act No. 3326 did not intend such an interruption of the prescription unlike the explicit mandate of Article 91. Thus, as previously held:

> "Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of the interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think

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[7] *Del Monte Mining Co. v. Last Chance Mining Co.*, 171 U.S. 55, 66 (1898).

[8] *Ebert v. Poston*, 266 U.S. 548, 543 (1925).

[9] Black, *Handbook on the Construction and Interpretation of Laws* (2008), p. 59 citing *Broadhead v. Holdsworth*, L.R. 2 Ex. Div. 321 and *State v. Peters*, 37 La. Ann. 730.

[10] *Hermanos v. Dela Riva*, G.R. No. L-19827, April 6, 1923.

[11] G.R. Nos. 165510-33, July 28, 2006, 497 SCRA 89.

should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission."[12]

This construction entirely precludes the application of Article 91 of the *Revised Penal Code* even in a suppletory manner.

Section 2 of Act No. 3326 expressly provides only one instance in which the prescriptive period is interrupted, *that is*, when criminal proceedings are instituted against the guilty person.[13] In that regard, the filing of the complaint for purposes of preliminary investigation interrupts the period of prescription.[14] Hence, the prescriptive period for criminal violations of R.A. No. 3019 is tolled only when the Office of the Ombudsman either receives a complaint, or initiates its own investigation of the violations.[15]

Herein, the running of the 10-year prescriptive period was tolled only when the Office of the Ombudsman actually received the complaint filed by the Office of the Solicitor General. Although the records do not bear the date of receipt by the Office of the Ombudsman, I am nonetheless sure that the date was definitely not March 1, 1990, when the complaint was wrongly filed with the Presidential Commission on Good Government (PCGG). Rather, the date could only be *after* October 2, 1990, when the Court promulgated the decision in *Cojuangco, Jr. v. Presidential Commission on Good Government,*[16] simply because that decision was what caused the PCGG to transfer the wrongly-filed complaint

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[12] Quoting *Canet v. Decena*, G.R. No. 155344, January 20, 2004, 420 SCRA 388, 394.

[13] See *People v. Romualdez*, G.R. No. 166510, April 29, 2009, 587 SCRA 123; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 130817, August 22, 2001, 363 SCRA 489.

[14] *Sanrio Company Limited v. Lim,* G.R. No. 168662, February 19, 2008, 546 SCRA 303; *Brillante v. Court of Appeals*, G.R. Nos. 118757 & 121571, October 19, 2004, 440 SCRA 541.

[15] *People v. Romualdez*, G.R. No. 166510, April 29, 2009, 587 SCRA 123, 134.

[16] G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

to the Office of the Ombudsman in order to commence the criminal prosecution.[17] To recall, the Court said in *Cojuangco, Jr. v. Presidential Commission on Good Government* that it would be more in the interest of a just and fair administration of justice if the PCGG was prohibited from conducting a preliminary investigation and instead to just allow the Office of the Ombudsman to investigate and take appropriate action.[18] Yet, by that time (*i.e*., October 2, 1990), prescription had already set in (as of February 8, 1990).

I cannot subscribe to the Minority's submission that the period of prescription should run from the date of discovery instead of the date of the commission of the offense.

The transaction in question was evidenced by public instruments and records. **There is good authority for the view that when the offense has not been concealed, such as when it is evidenced by public documents or is a matter of public record open to inspection, the State will not be permitted to plead ignorance of the act of the accused in order to evade the operation of the Statute of Limitations**.[19] Nor may we presume a connivance among respondents from the fact that the boards of directors of UNICOM and UCPB had interlocking members who might have effectively concealed the transaction from the public in order to justify the reckoning from the date of discovery. As Justice Abad's Majority Opinion sufficiently indicates, this case was not like a criminal prosecution based on the secretive granting of behest loans as to which reckoning the period from the date of discovery of the offense would be justified. The transaction in question had already left the boardrooms of both UCPB and UNICOM when the SEC approved the increase in capitalization. In *People v. Sandiganbayan*,[20] the Court applied the date-of-commission rule

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

[18] *Supra*, note 16, at p. 257.

[19] I Feria & Gregorio, *Comments on the Revised Penal Code*, 1958 First Edition, pp. 666-667, citing *People v. Dinsay*, 40 O.G. No. 18, 63.

[20] G.R. No. 101724, July 3, 1992, 211 SCRA 241, 246-247.

as the start of the reckoning because the illegal transaction involved had passed the hands of several public officials. Here, the fact that the increased capitalization was approved and certified by no less than the SEC, the government agency established to protect both domestic and foreign investments and the public,[21] called for the use of the date-of-commission rule.

Having interlocking directors between UNICOM and UCPB was insignificant considering that the transaction in question was not done only within the two corporations, but involved the participation of the SEC, a third party with the express duty to ensure the legality of corporate transactions like increased capitalization.

Lastly, I need to remind that in the interpretation of the law on prescription of crimes, that which is most favorable to the accused is to be adopted.[22] As between Section 2 of Republic Act No. 3326 and Article 91 of the *Revised Penal Code*, therefore, the former is controlling due to its being more favorable to the accused. This interpretation also accords most with the nature of prescription 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.[23] More than being an act of grace, prescription, as a statute of limitation, is equivalent to an act of amnesty, which shall begin to run upon the commission of the offense rather than upon the discovery of the offense.[24]

I **VOTE** to deny the petition.

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[21] See P.D. No. 902-A.

[22] *People v. Reyes,* G.R. Nos. 74226-27, July 27, 1989, 175 SCRA 597, 608-609.

[23] *Bergado v. Court of Appeals*, G.R. No. 84051, May 19, 1989, 173 SCRA 497, 503; *Sinaon v. Soroñgon*, G.R. No. 59879, May 13, 1985, 136 SCRA 407, 410.

[24] *People v. Sandiganbayan*, G.R. No. 101724, July 3, 1992, 211 SCRA 241, 247.

CONCURRING AND DISSENTING OPINION

BRION, *J*.:

I concur with the majority except on the question of prescription with respect to respondent Eduardo M. Conjuangco, Jr.

The primary issue in this case with respect to respondent Eduardo M. Cojuangco is on the question of **whether the right of the State to prosecute the respondents for violation of Section 3(e) of Republic Act No. (*RA*) 3019**[1] or the Anti-Graft and Corrupt Practices Act has prescribed. Corollary to this issue are the questions -

a. **when the prescriptive period provided by law should begin to run; and**

b. **whether the prescriptive period should be tolled or interrupted when the offender is outside the country's jurisdiction.**

The case of *Domingo v. Sandiganbayan*[2] instructs us that, in resolving the issue of prescription of the offense charged, the following should be considered:

1. the period of prescription for the offense charged;
2. the time the period of prescription starts to run; and
3. the time the prescriptive period was interrupted.

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[1] Section 3. *Corrupt practices of public officers*. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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.

[2] 379 Phil. 708, 717 (2000).

The period of prescription for the offense charged

Prior to its amendment by *Batas Pambansa Bilang* 195 in 1982 and insofar as it applies to the facts of this case, Section 11 of RA 3019 provided for a **10-year prescriptive period** for all offenses punishable under it.[3] Any criminal proceeding for violation of RA 3019, initiated after the 10-year period, is barred and the State forfeits its power to prosecute and penalize the offender.

The time the period of prescription starts to run

Since RA 3019 is a special penal law, the applicable law for the computation of the prescriptive period is Section 2, Act No. 3326:[4]

> Sec. 2. **Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment.**
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. [emphasis supplied].

Applied to the present case, the *ponencia* considers **February 8, 1980** as the point when the 10-year prescriptive period began to run, as it was at this time that the Securities and Exchange Commission (*SEC*) issued to Unicom the **Certificate of Filing of the Amended Articles of Incorporation (*AAOI*)**, which reflected the increase in Unicom's capitalization, as well as the conversion and classification of its shares. The *ponencia* considered the filing of the AAOI with a public office as the equivalent of the "discovery" of the crime because the document supposedly evidencing the acts charged then became accessible

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[3] As amended by *Batas Pambansa Bilang* 195 on March 16, 1982, the period of prescription is now 15 years.

[4] An Act To Establish Periods Of Prescription For Violations Penalized By Special Acts And Municipal Ordinances And To Provide When Prescription Shall Begin To Run.

to the public, thus providing it with sufficient notice. Since ten years lapsed from the time the crime charged was deemed "discovered" on February 8, 1980 up to time when the complaint was filed with the Ombudsman on March 1, 1990, the *ponencia* concluded that the criminal charge had already prescribed and, therefore, it found the Ombudsman's dismissal of the complaint proper.

I agree with the *ponencia*'s explanation, but only to the extent that the filing of Unicom's AAOI with the SEC provided the public constructive notice of the *increase of its capitalization* and the *conversion of its shares*. **The disclosure of these facts in the AAOI alone, however, did not establish or at least give reasonable notice to the public of any undue injury to the government** that constitutes the crime penalized under Section 3(e) of RA 3019.

The gravamen of the crime penalized under Section 3(e) of RA 3019 is the **undue injury caused to the government**, which, in the present case is allegedly the **dilution of UCPB's investment in Unicom's shares of stock** when Unicom increased its capitalization from 10 million shares to 1 billion shares and converted the shares into three difference classes. The undue injury could be discovered only upon the filing, not of the AAOI on February 8, 1980 (which does not contain a listing of the shareholders and the amount of their shareholdings), but of Unicom's General Information Sheet (*GIS*) for 1980. Notably, the AAOI does not contain a listing of the corporation's shareholders and the amount of their shareholdings;[5] these are matters properly reported and reflected instead in the corporation's GIS — a matter the *ponencia* recognized when it declared that "[c]hanges in shareholdings are reflected in the **GIS** that corporations have been mandated to submit annually to the SEC."[6]

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[5] Only the shareholdings of the original incorporators are stated in the AAOI.

[6] Report for Deliberation, p. 5.

The alleged undue injury to the public through the dilution of United Coconut Planters Bank's (*UCPB*'s) investment in Unicom's shares of stock would thus be "discovered" only upon a review of Unicom's GIS for 1980 (the year when the increase of capital stock was approved), whose filing does not necessarily coincide with the filing of the AAOI. It was only at this point that the public could be deemed to have constructive notice of the acts constituting the crime. Thus, **the proper period to reckon the running of the prescriptive period should be from the filing of Unicom's GIS for 1980**, which date would definitely be later than February 8, 1980.

Section 2 of Act No. 3326 provides for two instances when the prescriptive period shall begin to run — from the date of the commission of the crime, and, if not known, from the date of its discovery. Although the violation of Section 3(e), RA 3019 appears to have been consummated and completed by February 8, 1980, insofar as the public is concerned, the crime could have only been discovered when Unicom's GIS for 1980 was filed. The public would have access to the documents bearing the pertinent facts constituting the crime upon the filing of Unicom's GIS for 1980; only then could the public have known of the undue injury caused to the government.

In his concurring opinion, Justice Bersamin states that the transaction subject of the criminal charge was evidenced by the Certificate of Increase of Capital Stock filed on September 17, 1979 and the AAOI filed on February 8, 1980, both of which are public records under the SEC's custody. Hence, he posits that the illegal transaction was made known to the public as soon as these documents were filed, and the prescription period began to run on those dates.

However, I find the Certificate of Increase of Capital Stock filed on September 17, 1979 immaterial because it does not pertain to the increase of capitalization of September 18, 1979, which supposedly caused the dilution of UCPB's shares. From 1978 to 1979, Unicom increased its capitalization thrice: (1) in 1978, from 1 million shares to 3 million shares with par value of ₱100 per share; (2) on September 4, 1979, from 3 million

to 10 million shares, without par value; and (3) on September 18, 1979, from 10 million to 1 billion shares, divided into three classes. The Certificate of Increase of Capital Stock dated September 17, 1979 only reflected the September 4, 1979 increase and did not document the assailed dilution of shares caused by the September 18, 1979 increase.

Jurisprudence has in fact set a much later date when to reckon the running of the prescriptive period of crimes punished under RA 3019, committed by the cohorts and cronies of the deposed President Ferdinand Marcos during Martial Law. **The circumstances prevailing at the time of the questioned transaction do not provide reasonable opportunity for anyone curious and bold enough to assail the cronies' acts**. The Court thus declared in *Domingo v. Sandiganbayan*[7] that —

> [I]t was well-nigh impossible for the government, the aggrieved party, to have known the violations committed at the time the questioned transactions were made because both parties to the transactions were allegedly in conspiracy to perpetrate fraud against the government. **The alleged anomalous transactions could only have been discovered after the February 1986 Revolution** when one of the original respondents, then President Ferdinand Marcos, was ousted from office. **Prior to said date, no person would have dared to question the legality or propriety of those transactions.** Hence, the counting of the prescriptive period would commence from the date of discovery of the offense, which could have been between February 1986 after the EDSA Revolution and 26 May 1987 when the initiatory complaint was filed. [Emphases ours.]

The *ponencia* sought to exempt the present case from the application of the principle settled in *Domingo* by contending that the questioned transaction in the present case does not involve the grant of behest loans that was the subject of *Domingo* and similar cases.[8] To the *ponencia*, "the grant of behest loans,

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[7] *Supra* note 2, at 718-719.

[8] See *Presidential Ad Hoc Committee v. Hon. Desierto*, 375 Phil. 697 (1999). See also *Rep. of the Philippines v. Hon. Desierto*, 416 Phil. 59 (2001); and *Republic of the Philippines v. Hon. Desierto*, 438 Phil. 201 (2002).

by their nature, could be concealed from the public eye[.]" The investment questioned in the present case, on the other hand, "does not appear x x x to have been withheld from the curious x x x [since] no allegation that the SEC denied public access to UCPB's investment in Unicom during martial law at the President's or anyone else's instance." The *ponencia* also observed that there was "no allegation that the respondent members of the board of directors of UCPB connived with Unicom to suppress public knowledge of the investment."

I disagree.

Although by nature, a difference exists between the grant of behest loans and UCPB's investments in Unicom's shares of stock, both **transactions nonetheless involve public funds** (*i.e.*, coconut levy funds) **and are evidenced by public instruments and records**. Indeed, even if these transactions are of public record (hence, presumably of public knowledge), the Court declared that the principle in *Domingo* should still apply: the running of the prescriptive period should be computed from the presumed discovery (*i.e.*, after the February 1986 Revolution) of the crime and not from the day of such commission.[9]

The lack of allegation that the members of the board of directors of UCPB connived with Unicom to suppress public knowledge of the investment is rendered unnecessary by the fact that majority of the board of directors of UCPB also served as board of directors of Unicom during the relevant period:

UCPB **Board of Directors as of August 29, 1979**	**UNICOM** **Board of Directors as of September 18, 1979**
1. Eduardo M. Cojuangco, Jr.	**1. Eduardo M. Cojuangco, Jr.**
2. Juan Ponce Enrile	**2. Juan Ponce Enrile**
3. Maria Clara L. Lobregat	**3. Maria Clara L. Lobregat**

[9] *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto*, 519 Phil. 15 (2006).

4. Jose R. Eleazar, Jr.	**4. Jose R. Eleazar, Jr.**
5. Jose C. Concepcion	**5. Jose C. Concepcion**
6. Emmanuel M. Almeda	**6. Emmanuel M. Almeda**
7. Inaki R. Mendezona	**7. Inaki R. Mendezona**
8. Rolando P. Dela Cuesta	8. Teodoro D. Regala
9. Hermenegildo C. Zayco	9. Douglas Lu Ym
10. Narciso M. Pineda	10. Sigfredo Veloso
11. Danilo S. Ursua	11. Jaime Gandianga

The surrounding circumstances and the interlocking members of the board of directors of the two corporations provide reasonable ground to presume the existence of connivance. These factors make it likely that the questioned transaction was indeed "withheld from the curious or from those who were minded to know."

The time the prescriptive period was interrupted

A matter of significant consideration in the resolution of this case but has been glaringly omitted from the discussion of the facts is the publicly-known fact[10] that from 1986 to 1991,

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[10] *New-old UCPB boss alarms coco farmers; Exec linked to Eduardo Cojuangco Jr. takes over bank Tuesday*, Philippine Daily Inquirer, November 14, 2011, http://newsinfo.inquirer.net/93943/new-old-ucpb-boss-alarms-coco-farmers:

In 1983, while he was UCPB president, Cojuangco, Mr. Aquino's uncle and a major financial supporter during his run for the presidency last year, acquired the SMC shares for ₱2 billion.

The shares were sequestered by Corazon Aquino, the President's mother, in a bid to recover ill-gotten wealth after the Edsa People Power Revolution **in 1986 forced the dictator into exile in Hawaii, along with Cojuangco.**

The businessman returned in November 1991, seven months before the end of the first Aquino administration. He denounced the "frivolity and baselessness" of the charges against him and vowed to vindicate himself in courts.

respondent Eduardo Cojuangco, Jr. was "absent from Philippine Archipelago."[11]

Notably, the second paragraph of Section 2, Act No. 3326 is silent on the effect of the offender's absence from the country on the running of the prescriptive period. The law simply states that —

Sec. 2. x x x

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

The silence of the law, however, does not preclude the suppletory application of Article 91 of the Revised Penal Code (*RPC*). Article 91 of the RPC provides that "[t]he term of prescription shall not run when the offender is absent from the Philippine Archipelago." The suppletory application of Article 91 of the RPC is authorized and even *mandated* under Article 10 of the same Code, which states:

Art. 10. *Offenses not subject to the provisions of this Code.* — Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. **This Code *shall* be supplementary to such laws, unless the latter should *specifically provide* the contrary**. [Emphasis ours.]

The only instance when the application of the RPC to special penal laws (like RA 3019) is barred is when the special penal law itself should ***specifically provide the contrary***. The silence of Act No. 3326 and RA 3019, however, cannot be construed as specifically providing terms contrary to Article 91 of the RPC.

The combined application of these provisions, therefore, dictates that **the 10-year period to file charges for violation of**

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[11] Under Section 2, Rule 129 of the Rules of Court, a court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

RA 3019 should not run when the offender was absent from the Philippines. Otherwise stated, **the offender's absence from the country's jurisdiction interrupts the running of the prescriptive period, and shall begin to run again only upon his return.**

Does the application of Article 91 of the RPC to violation of special penal laws violate the rule that penal laws should be construed strictly against the state and liberally in favor of the accused? I do not believe so.

As already mentioned, the suppletory application of Article 91 of the RPC is mandated by the law itself. Indeed, the law's express command precludes the application of statutory rules of construction, which are used only when the law is ambiguous.[12] Assuming there was an ambiguity, the liberal construction of penal laws in favor of the accused is not the only factor in the interpretation of criminal laws:

> A [liberal construction] should not be permitted to defeat the intent, policy, and purpose of the statute. The court should consider the spirit and reason of a statute where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the law, for [liberal construction] of a criminal statute does not mean such construction as to deprive it of the meaning intended.[13]

More importantly, to literally construe Act No. 3326's silence on the effect of the accused's absence from our jurisdiction as not interrupting the running of the prescriptive period is **discriminatory and goes against public interest**. I agree with Justice Antonio T. Carpio's explanation in his dissent in *Romualdez v. Hon. Marcelo*:[14]

> **The accused should not have the sole discretion of preventing his own prosecution by the simple expedient of escaping from**

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[12] Ruben Agpalo, *Statutory Construction* (Third Edition), p. 227, citing *United States v. Go Chico*, 14 Phil. 128 (1909).

[13] *Id.* at 230, citing *People v. Manantan*, 115 Phil. 657 (1962); and *People v. Gatchalian*, 104 Phil. 664 (1958).

[14] 529 Phil. 90 (2006).

the State's jurisdiction. x x x. An accused cannot acquire legal immunity by being a fugitive from the State's jurisdiction.

To allow an accused to prevent his prosecution by simply leaving this jurisdiction unjustifiably tilts the balance of criminal justice in favor of the accused to the detriment of the State's ability to investigate and prosecute crimes. In this age of cheap and accessible global travel, this Court should not encourage individuals facing investigation or prosecution for violation of special laws to leave Philippine jurisdiction to sit-out abroad the prescriptive period.[15] [Emphases ours.]

Accordingly, **the charge – insofar as it involves respondent Eduardo M. Cojuangco, Jr. – was filed <u>within</u> the prescriptive period.** He was absent from the country from 1986 to 1991. Hence, the filing of the charge on March 1, 1990 was well within the 10-year prescriptive period, even assuming it began to run on February 8, 1980.

SEPARATE DISSENTING OPINION

PERLAS-BERNABE, *J*p

I respectfully submit that the purported violation of Section 3 (e) of Republic Act No. 3019 for which the respondents are charged has not prescribed.

The subject offense was allegedly committed in 1979, hence, the applicable law on prescription is Section 11 of RA 3019 which provides for a 10-year prescriptive period[1] for all violations of its provisions.

In computing the prescriptive period for violations of special laws, Section 2 of Act 3326[2] provides:

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[15] *Id.* at 119.

[1] Amended by *Batas Pambansa Blg*. 195 on March 16, 1982 which now provides for a prescriptive period of 15 years.

[2] "AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN."

Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

The *ponencia* is of the considered view that prescription should be reckoned from **February 8, 1980,** the date United Coconut Oil Mills, Inc. (UNICOM) registered its *THIRD* Amended Articles of Incorporation with the Securities and Exchange Commission (SEC). The amendment reflected the increase in the capital stock of UNICOM from 10,000,000 shares without par value to one billion shares (₱1,000,000,000) divided into: (a) 500,000,000 Class "A" voting common shares; (b) 400,000,000 Class "B" voting common shares; and (c) 100,000,000 Class "C" non-voting common shares, all with par value of ₱1.00 per share. Since the changes in UNICOM's corporate structure had been recorded in a publicly accessible government agency without any "allegation that respondent members of the board of directors of UCPB (United Coconut Planters Bank) connived with UNICOM to suppress public knowledge of the investment," the ponencia reckoned the prescriptive period from the said date of registration and concluded that when the complaint was filed on March 1, 1990, the 10-year prescriptive period had already lapsed.

I disagree.

A close examination of UNICOM's *third* amended articles of incorporation reveals merely the following: (a) the increase in its capital stock to 1 billion shares or its equivalent of 1 billion pesos (₱1,000,000,000.00); (b) its division into (i) 500,000,000 Class "A" voting common shares; (ii) 400,000,000 Class "B" voting common shares; and (iii) 100,000,000 Class "C" non-voting common shares, all with par value of ₱1.00 per share; and (c) the conversion of the paid-up subscription of

its 5,000,000 no par value shares [3] into fully paid 500,000,000 Class "A" voting common shares, "at the ratio of 100 Class 'A' voting shares for every one (1) no par value share."[4]

Notably, the said amendments were couched in general terms without any reference to the specific shareholdings of UNICOM's investors. Particularly, UCPB, the extent of and/or loss in its investment were not reflected nor can be discerned in the subject amended articles. Thus, even with the knowledge of its registration, no apparent violation can be perceived.

Neither did the submission by UNICOM of the required annual General Information Sheet create suspicion of any wrongdoing on the part of the respondents because it only contained the corporation's present capital structure without any comparative data of previous stockholdings.

Hence, the mere filing of the subject documents with the SEC could not have imparted "knowledge" or made the government aware that UCPB's investment, for and in behalf of the coconut farmers, had been dissipated by ₱95,000,000.00 and that respondent-incorporators were unduly benefited by the increase in their investment from ₱5,000,000.00 to ₱100,000,000.00. For knowledge of a transaction is not equivalent to knowledge of an *anomalous* transaction, absent any apparent irregularity that could have raised any suspicion against an otherwise regular commercial transaction.

Accordingly, prescription should be reckoned from the issuance of then President Corazon C. Aquino of Executive Order No. 1 (Creating the Presidential Commission on Good Government) on **February 28, 1986**, which admittedly spurred the investigation on the subject UNICOM investment. It must be pointed out that respondents' questioned act occurred during the height of the Marcos regime which was toppled by the EDSA revolution

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[3] As provided in its September 17, 1979 Certificate of Increase in Capital Stock, *rollo*, pp. 79-82.

[4] *Id.* at 97.

in 1986. It was therefore only at that time when the right of the then people's government to investigate and prosecute the errant public officials or those closely associated with the Marcoses accrued. Consequently, the filing of the resultant complaint on March 1, 1990, 4 years after the issuance of EO No. 1, was well within the 10-year prescriptive period.

I therefore vote to **GRANT** the instant petition.

EN BANC

[G.R. No. 192474. June 26, 2012]

ROMEO M. JALOSJOS, JR., *petitioner, vs.* **THE COMMISSION ON ELECTIONS and DAN ERASMO, SR.,** *respondents.*

[G.R. No. 192704. June 26, 2012]

DAN ERASMO, SR., *petitioner, vs.* **ROMEO M. JALOSJOS, JR. and HON. COMMISSION ON ELECTIONS,** *respondents.*

[G.R. No. 193566. June 26, 2012.]

DAN ERASMO, SR., *petitioner, vs.* **ROMEO M. JALOSJOS, JR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS; HAS NO POWER TO RESOLVE CONTEST RELATING TO THE ELECTION RETURNS, AND

QUALIFICATIONS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND THE SENATE WHICH THE CONSTITUTION VESTS SOLELY UPON THE APPROPRIATE ELECTORAL TRIBUNAL OF THE SENATE OR THE HOUSE OF REPRESENTATIVES.— While the Constitution vests in the COMELEC the power to decide all questions affecting elections, such power is not without limitation. It does not extend to contests relating to the election, returns, and qualifications of members of the House of Representatives and the Senate. The Constitution vests the resolution of these contests solely upon the appropriate Electoral Tribunal of the Senate or the House of Representatives. The Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins. The proclamation of a congressional candidate following the election divests COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET. Here, when the COMELEC *En Banc* issued its order dated June 3, 2010, Jalosjos had already been proclaimed on May 13, 2010 as winner in the election. Thus, the COMELEC acted without jurisdiction when it still passed upon the issue of his qualification and declared him ineligible for the office of Representative of the Second District of Zamboanga Sibugay.

2. **ID.; ID.; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); WITH THE FACT OF PETITIONER'S PROCLAMATION AND ASSUMPTION OF OFFICE, ANY ISSUE REGARDING HIS QUALIFICATION FOR THE SAME, LIKE HIS ALLEGED LACK OF REQUIRED RESIDENCE, WAS SOLELY FOR THE TRIBUNAL TO CONSIDER AND DECIDE.—** The fact is that on election day of 2010 the COMELEC *En Banc* had as yet to resolve Erasmo's appeal from the Second Division's dismissal of the disqualification case against Jalosjos. Thus, there then existed no final judgment deleting Jalosjos' name from the list of candidates for the congressional seat he sought. The last standing official action in his case before election day was the ruling of the COMELEC's Second Division that allowed his name to stay on that list. Meantime, the COMELEC *En Banc* did not issue any order suspending his proclamation pending its final resolution of his case. With the fact of his proclamation and

assumption of office, any issue regarding his qualification for the same, like his alleged lack of the required residence, was solely for the HRET to consider and decide. Consequently, the Court holds in G.R. 192474 that the COMELEC *En Banc* exceeded its jurisdiction in declaring Jalosjos ineligible for the position of representative for the Second District of Zamboanga Sibugay, which he won in the elections, since it had ceased to have jurisdiction over his case. Necessarily, Erasmo's petitions (G.R. 192704 and G.R. 193566) questioning the validity of the registration of Jalosjos as a voter and the COMELEC's failure to annul his proclamation also fail. The Court cannot usurp the power vested by the Constitution solely on the HRET.

APPEARANCES OF COUNSEL

Romulo B. Macalintal and *Edgardo Carlo L. Vistan* for Romeo M. Jalosjos, Jr.

E.O. Gana and Partners and *Quirino G. Esguerra, Jr.* for Dan Erasmo, Sr.

D E C I S I O N

ABAD, *J.*:

These cases reiterate the demarcation line between the jurisdiction of the Commission on Elections (COMELEC) and the House of Representatives Electoral Tribunal (HRET).

The Facts and the Case

In May 2007 Romeo M. Jalosjos, Jr., petitioner in G.R. 192474, ran for Mayor of Tampilisan, Zamboanga del Norte, and won. While serving as Tampilisan Mayor, he bought a residential house and lot in Barangay Veterans Village, Ipil, Zamboanga Sibugay and renovated and furnished the same. In September 2008 he began occupying the house.

After eight months or on May 6, 2009 Jalosjos applied with the Election Registration Board (ERB) of Ipil, Zamboanga Sibugay, for the transfer of his voter's registration record to Precinct 0051F

of Barangay Veterans Village. Dan Erasmo, Sr., respondent in G.R. 192474, opposed the application.[1] After due proceedings, the ERB approved Jalosjos' application and denied Erasmo's opposition.[2]

Undeterred, Erasmo filed a petition to exclude Jalosjos from the list of registered voters of Precinct 0051F before the 1st Municipal Circuit Trial Court of Ipil-Tungawan-R.T. Lim (MCTC).[3] After hearing, the MCTC rendered judgment on August 14, 2009, excluding Jalosjos from the list of registered voters in question. The MCTC found that Jalosjos did not abandon his domicile in Tampilisan since he continued even then to serve as its Mayor. Jalosjos appealed[4] his case to the Regional Trial Court (RTC) of Pagadian City[5] which affirmed the MCTC Decision on September 11, 2009.

Jalosjos elevated the matter to the Court of Appeals (CA) through a petition for *certiorari* with an application for the issuance of a writ of preliminary injunction.[6] On November 26, 2009 the CA granted his application and enjoined the courts below from enforcing their decisions, with the result that his name was reinstated in the Barangay Veterans Village's voters list pending the resolution of the petition.

On November 28, 2009 Jalosjos filed his Certificate of Candidacy (COC) for the position of Representative of the Second District of Zamboanga Sibugay for the May 10, 2010 National Elections. This prompted Erasmo to file a petition to deny due

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[1] Docketed as Case 0901.

[2] Resolution dated July 31, 2009.

[3] Docketed as Election Case 590.

[4] Docketed as Election Case 0006-2K9.

[5] Initially, the appeal was filed before the Regional Trial Court of Ipil, Zamboanga Sibugay, however, the appeal was transferred to the RTC of Pagadian City after the inhibition of the Presiding Judge of RTC Ipil, Zamboanga Sibugay.

[6] Docketed as CA-G.R. SP 03179-MIN.

course to or cancel his COC before the COMELEC,[7] claiming that Jalosjos made material misrepresentations in that COC when he indicated in it that he resided in Ipil, Zamboanga Sibugay. But the Second Division of the COMELEC issued a joint resolution, dismissing Erasmo's petitions for insufficiency in form and substance.[8]

While Erasmo's motion for reconsideration was pending before the COMELEC *En Banc*, the May 10, 2010 elections took place, resulting in Jalosjos' winning the elections for Representative of the Second District of Zamboanga Sibugay. He was proclaimed winner on May 13, 2010.[9]

Meantime, on June 2, 2010 the CA rendered judgment in the voter's exclusion case before it,[10] holding that the lower courts erred in excluding Jalosjos from the voters list of Barangay Veterans Village in Ipil since he was qualified under the Constitution and Republic Act 8189[11] to vote in that place. Erasmo filed a petition for review of the CA decision before this Court in G.R. 193566.

Back to the COMELEC, on June 3, 2010 the *En Banc* granted Erasmo's motion for reconsideration and declared Jalosjos ineligible to seek election as Representative of the Second District of Zamboanga Sibugay. It held that Jalosjos did not satisfy the residency requirement since, by continuing to hold the position of Mayor of Tampilisan, Zamboanga Del Norte, he should be deemed not to have transferred his residence from that place to Barangay Veterans Village in Ipil, Zamboanga Sibugay.

Both Jalosjos and Erasmo came up to this Court on *certiorari*. In G.R. 192474, Jalosjos challenges the COMELEC's finding

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[7] Docketed as SPA 09-114(DC).

[8] Joint Resolution of the Second Division of the COMELEC dated February 23, 2010.

[9] *Rollo* (G.R. No. 192474), p. 436.

[10] Decision dated June 2, 2010. Erasmo's motion for reconsideration was also denied by the CA in its Resolution dated August 10, 2010.

[11] *The Voters Registration Act of 1996*.

that he did not meet the residency requirement and its denial of his right to due process, citing *Roces v. House of Representatives Electoral Tribunal*.[12] In G.R. 192704, Erasmo assails the COMELEC En Banc's failure to annul Jalosjos' proclamation as elected Representative of the Second District of Zamboanga Sibugay despite his declared ineligibility.

Subsequently, the Court ordered the consolidation of the three related petitions.[13] In its comment,[14] the Office of the Solicitor General (OSG) sought the dismissal of Erasmo's petitions and the grant of that of Jalosjos since all such petitions deal with the latter's qualifications as proclaimed Representative of the district mentioned. The OSG claims that under Section 17, Article VI of the 1987 Constitution, jurisdiction over this issue lies with the HRET.

Threshold Issue Presented

The threshold issue presented is whether or not the Supreme Court has jurisdiction at this time to pass upon the question of Jalosjos' residency qualification for running for the position of Representative of the Second District of Zamboanga Sibugay considering that he has been proclaimed winner in the election and has assumed the discharge of that office.

The Court's Ruling

While the Constitution vests in the COMELEC the power to decide all questions affecting elections,[15] such power is not without limitation. It does not extend to contests relating to the election, returns, and qualifications of members of the House of Representatives and the Senate. The Constitution vests the

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[12] 506 Phil. 654 (2005).

[13] Resolutions dated July 20, 2010 and December 13, 2010.

[14] Comment dated October 11, 2010. *Rollo* (G.R. No. 192474), pp. 638-653.

[15] CONSTITUTION (1987), Art. IX (B), Sec. 2, par. (3).

resolution of these contests solely upon the appropriate Electoral Tribunal of the Senate or the House of Representatives.[16]

The Court has already settled the question of when the jurisdiction of the COMELEC ends and when that of the HRET begins. The proclamation of a congressional candidate following the election divests COMELEC of jurisdiction over disputes relating to the election, returns, and qualifications of the proclaimed Representative in favor of the HRET.[17]

Here, when the COMELEC *En Banc* issued its order dated June 3, 2010, Jalosjos had already been proclaimed on May 13, 2010 as winner in the election.[18] Thus, the COMELEC acted without jurisdiction when it still passed upon the issue of his qualification and declared him ineligible for the office of Representative of the Second District of Zamboanga Sibugay.

It is of course argued, as the COMELEC law department insisted, that the proclamation of Jalosjos was an exception to the above-stated rule.[19] Since the COMELEC declared him ineligible to run for that office, necessarily, his proclamation was void following the ruling in *Codilla, Sr. v. De Venecia*.[20] For Erasmo, the COMELEC still has jurisdiction to issue its June 3, 2010 order based on Section 6 of Republic Act 6646. Section 6 provides:

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[16] *Id.* at Art. VI, Sec. 17.

[17] *Planas v. Commission on Elections*, 519 Phil. 506, 512 (2006). See also *Vinzons-Chato v. Commission on Elections*, G.R. No. 172131, April 2, 2007, 520 SCRA 166, 178; *Perez v. Commission on Elections*, 375 Phil. 1106, 1115-1116 (1999), cited in Agpalo, R., *Philippine Political Law*, 2005 ed.

[18] *Rollo* (G.R. No. 192474), p. 436.

[19] In *Mutuc v. Commission on Elections*, 130 Phil. 663, 672 (1968), the Court held that: It is indeed true that **after proclamation** the usual remedy of **any party** aggrieved in an election is to be found in an **election protest**. **But that is so only on the assumption that there has been a valid proclamation. Where as in the case at bar the proclamation itself is illegal, the assumption of office cannot in any way affect the basic issues.** (Emphasis supplied)

[20] 442 Phil. 139 (2002).

Section 6. *Effects of Disqualification Case*. Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong.

Here, however, the fact is that on election day of 2010 the COMELEC *En Banc* had as yet to resolve Erasmo's appeal from the Second Division's dismissal of the disqualification case against Jalosjos. Thus, there then existed no final judgment deleting Jalosjos' name from the list of candidates for the congressional seat he sought. The last standing official action in his case before election day was the ruling of the COMELEC's Second Division that allowed his name to stay on that list. Meantime, the COMELEC *En Banc* did not issue any order suspending his proclamation pending its final resolution of his case. With the fact of his proclamation and assumption of office, any issue regarding his qualification for the same, like his alleged lack of the required residence, was solely for the HRET to consider and decide. [21]

Consequently, the Court holds in G.R. 192474 that the COMELEC *En Banc* exceeded its jurisdiction in declaring Jalosjos ineligible for the position of representative for the Second District of Zamboanga Sibugay, which he won in the elections, since it had ceased to have jurisdiction over his case. Necessarily, Erasmo's petitions (G.R. 192704 and G.R. 193566) questioning the validity of the registration of Jalosjos as a voter and the COMELEC's failure to annul his proclamation also fail. The

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[21] *Perez v. Commission on Elections*, *supra* note 17.

Court cannot usurp the power vested by the Constitution solely on the HRET.[22]

WHEREFORE, the Court **GRANTS** the petition in G.R. 192474, **REVERSES** *and* **SETS ASIDE** the respondent Commission on Elections En Banc's order dated June 3, 2010, and **REINSTATES** the Commission's Second Division resolution dated February 23, 2010 in SPA 09-114(DC), entitled *Dan Erasmo, Sr. v. Romeo Jalosjos Jr.* Further, the Court **DISMISSES** the petitions in G.R. 192704 and G.R. 193566 for lack of jurisdiction over the issues they raise.

SO ORDERED.

Carpio (Senior Associate Justice), Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Mendoza, J., on official leave.

EN BANC

[G.R. No. 193808. June 26, 2012]

LUIS K. LOKIN, JR. and TERESITA F. PLANAS, *petitioners, vs.* **COMMISSION ON ELECTIONS (COMELEC), CITIZENS' BATTLE AGAINST CORRUPTION PARTY LIST represented by VIRGINIA S. JOSE, SHERWIN N. TUGNA, and CINCHONA CRUZ-GONZALES,** *respondents.*

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[22] *Id.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; REVIEW OF JUDGMENTS AND FINAL ORDERS OR RESOLUTIONS OF THE COMMISSION ON ELECTIONS AND THE COMMISSION ON AUDIT; THE PETITION SHALL BE FILED WITHIN 30 DAYS FROM NOTICE OF THE JUDGMENT OR FINAL ORDER OR RESOLUTION SOUGHT TO BE REVIEWED.— This Court denies the petition for being filed outside the requisite period.** The review by this Court of judgments and final orders of the COMELEC is governed specifically by Rule 64 of the Rules of Court. x x x The exception referred to in Section 2 of this Rules refers precisely to the immediately succeeding provision, Section 3 thereof, which provides for the allowable period within which to file petitions for *certiorari* from judgments of both the COMELEC and the Commission on Audit. Thus, while Rule 64 refers to the same remedy of *certiorari* as the general rule in Rule 65, they cannot be equated, as they provide for different reglementary periods. Rule 65 provides for a period of 60 days from notice of judgment sought to be assailed in the Supreme Court, while Section 3 expressly provides for only 30 days. Petitioner received a copy of the first assailed Resolution on 12 July 2010. Upon the Motion for Reconsideration filed by petitioners on 15 July 2010, the COMELEC *en banc* issued the second assailed Resolution on 31 August 2010. This *per curiam* Resolution was received by petitioners on 1 September 2010. Thus, pursuant to Section 3 above, deducting the three days it took petitioners to file the Motion for Reconsideration, they has a remaining period of 27 days or until 28 September 2010 within which to file the Petition for *Certiorari* with this Court. However, petitioners filed the present Petition only on 1 October 2010, clearly outside the required period. In *Pates v. Commission on Elections* and *Domingo v. Commission on Elections,* we have established that the fresh-period rule used in Rule 65 does not similarly apply to the timeliness of petitions under Rule 64. In *Pates*, this Court dismissed the Petition for *Certiorari* on the sole ground that it was belatedly filed.
2. **POLITICAL LAW; ELECTION LAWS; COMMISSION ON ELECTIONS (COMELEC); COMELEC'S JURISDICTION**

TO SETTLE THE STRUGGLE FOR LEADERSHIP WITHIN THE PARTY IS WELL ESTABLISHED; THE POWER TO RULE UPON QUESTIONS OF PARTY IDENTITY AND LEADERSHIP IS EXERCISED BY THE COMELEC AS AN INCIDENT TO ITS ENFORCEMENT POWERS.— The COMELEC's jurisdiction to settle the struggle for leadership within the party is well established. This singular power to rule upon questions of party identity and leadership is exercised by the COMELEC as an incident to its enforcement powers. In *Laban ng Demokratikong Pilipino v. Commission on Elections*, the Court held: x x x **A candidate misrepresenting himself or herself to be a party's candidate, therefore, not only misappropriates the party's name and prestige but foists a deception upon the electorate, who may unwittingly cast its ballot for him or her on the mistaken belief that he or she stands for the party's principles. To prevent this occurrence, the COMELEC has the power and the duty to step in and enforce the law not only to protect the party but, more importantly, the electorate, in line with the Commission's broad constitutional mandate to ensure orderly elections.** Similar to the present case, *Laban* delved into the issue of leadership for the purpose of determining which officer or member was the duly authorized representative tasked with filing the Certificate of Nomination, pursuant to its Constitution and by laws. x x x In the 2010 case *Atienza v. Commission on Elections*, it was expressly settled that the COMELEC possessed the authority to resolve intra-party disputes as a necessary tributary of its constitutionally mandated power to enforce election laws and register political parties. The Court therein cited *Kalaw v. Commission on Elections* and *Palmares v. Commission on Elections*, which uniformly upheld the COMELEC'S jurisdiction over intra-party disputes.

3. **ID.; ID.; PARTY-LIST SYSTEM LAW; THE LAW VESTS THE COMELEC WITH JURISDICTION OVER THE NOMINATION OF PARTY-LIST REPRESENTATIVES AND PRESCRIBING THE QUALIFICATIONS OF EACH NOMINEE.—** Matters regarding the nomination of party-list representatives, as well as their individual qualifications, are outlined in the Party-List System Law. Sections 8 and 9 thereof. x x x By virtue of the aforesaid mandate of the Party-List Law vesting the COMELEC with jurisdiction over the nomination

of party-list representatives and prescribing the qualifications of each nominee, the COMELEC promulgated its "Rules on Disqualification Cases Against Nominees of Party-List Groups/ Organizations Participating in the 10 May 2010 Automated National and Local Elections."

4. **ID.; ID.; THE COMELEC CORRECTLY FOUND THAT PIA DERLA'S AUTHORITY AS "ACTING SECRETARY GENERAL" WAS AN UNSUBSTANTIATED ALLEGATION DEVOID OF ANY SUPPORTING EVIDENCE; DERLA IS NOT EVEN A MEMBER OF THE PARTY-LIST, AND THUS A VIRTUAL STRANGER AND CLEARLY NOT QUALIFIED TO ATTEST TO PETITIONERS AS NOMINEES, OR CERTIFY THEIR NOMINATION TO THE COMELEC.—** Contrary to petitioners' stance, no grave abuse of discretion is attributable to the COMELEC First Division and the COMELEC *en banc*. The tribunal correctly found that Pia Derla's alleged authority as "acting secretary-general" was an unsubstantiated allegation devoid of any supporting evidence. Petitioners did not submit any documentary evidence that Derla was a member of CIBAC, let alone the representative authorized by the party to submit its Certificate of Nomination. x x x Pia Derla, who is not even a member of CIBAC, is thus a virtual stranger to the party-list, and clearly not qualified to attest to petitioners as CIBAC nominees, or certify their nomination to the COMELEC. Petitioners cannot use their registration with the SEC as a substitute for the evidentiary requirement to show that the nominees, including Derla, are bona fide members of the party. Petitioners Planas and Lokin, Jr. have not even presented evidence proving the affiliation of the so-called Board of Trustees to the CIBAC Sectoral Party that is registered with COMELEC. Petitioners cannot draw authority from the Board of Trustees of the SEC-registered entity, because the Constitution of CIBAC expressly mandates that it is the National Council, as the governing body of CIBAC, that has the power to formulate the policies, plans, and programs of the Party, and to issue decisions and resolutions binding on party members and officers. Contrary to petitioners' allegations, the National Council of CIBAC has not become defunct, and has certainly not been replaced by the Board of Trustees of the SEC-registered entity. The COMELEC carefully perused the documents of the organization and outlined the process

followed by the National Council before it complied with its task of choosing the party's nominees. This was based on the "Minutes of Meeting of CIBAC Party-List National Council" held on 12 November 2009, which respondents attached to their Memorandum.

APPEARANCES OF COUNSEL

Alma Kristina O. Alobba and *Kristine Joy R. Diaz* for petitioners.

The Solicitor General for public respondent.

Siguion Reyna Montecillo & Ongsiako for private respondents.

D E C I S I O N

SERENO, *J.*:

The present petition having been filed beyond the reglementary period, Rule 64 of the Rules of Court compels a dismissal on this basis alone. Despite petitioner's inexplicable disregard of basic concepts, this Court deems it appropriate to reiterate the specific procedure for the review of judgments made by the Commission on Elections (COMELEC) as laid down in Rule 64, and how it is differentiated from the more general remedy afforded by Rule 65.

On 5 July 2010, the COMELEC First Division issued a Resolution[1] expunging the Certificate of Nomination which included herein petitioners as representatives of the party-list group known as Citizens' Battle Against Corruption (CIBAC). The COMELEC *en banc* affirmed the said Resolution, prompting Luis Lokin, Jr. and Teresita F. Planas to file the present Petition for *Certiorari*. Petitioners allege grave abuse of discretion on the part of the COMELEC in issuing both Resolutions, praying that they be recognized as the legitimate

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[1] Penned by Commissioner Armando C. Velasco, concurred in by Presiding Commissioner Rene V. Sarmiento and Commissioner Gregorio T. Larrazabal in SPA No. 10-014 (DCN), *rollo,* pp. 66-75.

nominees of CIBAC party-list, and that petitioner Lokin, Jr. be proclaimed as the CIBAC party-list representative to the House of Representatives.

Respondent CIBAC party-list is a multi-sectoral party registered[2] under Republic Act No. (R.A.) 7941, otherwise known as the Party- List System Act. As stated in its constitution and by laws, the platform of CIBAC is to fight graft and corruption and to promote ethical conduct in the country's public service.[3] Under the leadership of the National Council, its highest policymaking and governing body, the party participated in the 2001, 2004, and 2007 elections.[4] On 20 November 2009, two different entities, both purporting to represent CIBAC, submitted to the COMELEC a "Manifestation of Intent to Participate in the Party-List System of Representation in the May 10, 2010 Elections." The first Manifestation[5] was signed by a certain Pia B. Derla, who claimed to be the party's acting secretary-general. At 1:30 p.m. of the same day, another Manifestation[6] was submitted by herein respondents Cinchona Cruz-Gonzales and Virginia Jose as the party's vice-president and secretary-general, respectively.

On 15 January 2010, the COMELEC issued Resolution No. 8744[7] giving due course to CIBAC's Manifestation, "**WITHOUT PREJUDICE …TO the determination which**

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[2] Petition for Registration as Sectoral Organization Under the Party List System, attached as Annex A to the Comment, *rollo,* p. 397.

[3] Annex A-1 of the Comment, *rollo,* p. 403.

[4] Comment, p. 5, *rollo,* p. 356.

[5] Annex L of the Petition, *rollo,* p. 153.

[6] Annex B of the Comment, *rollo,* p. 432.

[7] *In the Matter of the Manifestations of Intent to Participate Under the Party-List System of Representation in Connection with the May 10, 2010 Automated National and Local Elections,* COMELEC Resolution No. 8744, 15 January 2010. Available at http://comelec.files.wordpress.com/2010/01/com_res_8744.pdf (Visited 24 April 2012).

of the two factions of the registered party-list/coalitions/ sectoral organizations which filed two (2) manifestations of intent to participate is the official representative of said party-list/coalitions/sectoral organizations xxx."[8]

On 19 January 2010, respondents, led by President and Chairperson Emmanuel Joel J. Villanueva, submitted the Certificate of Nomination[9] of CIBAC to the COMELEC Law Department. The nomination was certified by Villanueva and Virginia S. Jose. On 26 March 2010, Pia Derla submitted a second Certificate of Nomination,[10] which included petitioners Luis Lokin, Jr. and Teresita Planas as party-list nominees. Derla affixed to the certification her signature as "acting secretary-general" of CIBAC.

Claiming that the nomination of petitioners Lokin, Jr. and Planas was unauthorized, respondents filed with the COMELEC a "Petition to Expunge From The Records And/Or For Disqualification," seeking to nullify the Certificate filed by Derla. Respondents contended that Derla had misrepresented herself as "acting secretary-general," when she was not even a member of CIBAC; that the Certificate of Nomination and other documents she submitted were unauthorized by the party and therefore invalid; and that it was Villanueva who was duly authorized to file the Certificate of Nomination on its behalf.[11]

In the Resolution dated 5 July 2010, the COMELEC First Division granted the Petition, ordered the Certificate filed by Derla to be expunged from the records, and declared respondents' faction as the true nominees of CIBAC.[12] Upon Motion for Reconsideration separately filed by the adverse parties, the

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[8] *Id.* at 25.

[9] Attached as Annex C to the Comment, *rollo,* p. 437.

[10] Attached as Annex M to the Petition, *rollo,* p. 155.

[11] "Petition to Expunge From The Records And/Or For Disqualification," filed on 31 March 2010, *rollo,* p. 164.

[12] *Rollo,* p. 74.

COMELEC *en banc* affirmed the Division's findings. In a *per curiam* Resolution dated 31 August 2010,[13] the Commission reiterated that Pia Derla was unable to prove her authority to file the said Certificate, whereas respondents presented overwhelming evidence that Villanueva deputized CIBAC Secretary General Virginia Jose to submit the Certificate of Nomination pursuant to CIBAC's Constitution and bylaws.

Petitioners now seek recourse with this Court in accordance with Rules 64 and 65 of the Rules of Court, raising these issues: I) Whether the authority of Secretary General Virginia Jose to file the party's Certificate of Nomination is an intra-corporate matter, exclusively cognizable by special commercial courts, and over which the COMELEC has no jurisdiction; and II) Whether the COMELEC erred in granting the Petition for Disqualification and recognizing respondents as the properly authorized nominees of CIBAC party-list.

As earlier stated, **this Court denies the petition for being filed outside the requisite period.** The review by this Court of judgments and final orders of the COMELEC is governed specifically by Rule 64 of the Rules of Court, which states:

> Sec. 1. Scope. This rule shall govern the review of judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.
>
> Sec. 2. Mode of review. A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

The exception referred to in Section 2 of this Rule refers precisely to the immediately succeeding provision, Section 3 thereof,[14] which provides for the allowable period within which to file petitions for *certiorari* from judgments of both the

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[13] *Per Curiam* Resolution, *rollo,* pp. 76-84.

[14] *Pates v. Commission on Elections,* G.R. No. 184915, 30 June 2009, 591 SCRA 481.

COMELEC and the Commission on Audit. Thus, while Rule 64 refers to the same remedy of *certiorari* as the general rule in Rule 65, they cannot be equated, as they provide for different reglementary periods.[15] Rule 65 provides for a period of 60 days from notice of judgment sought to be assailed in the Supreme Court, while Section 3 expressly provides for only 30 days, *viz*:

> SEC. 3. *Time to file petition.*—The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. **The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period,** but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Petitioner received a copy of the first assailed Resolution on 12 July 2010. Upon the Motion for Reconsideration filed by petitioners on 15 July 2010, the COMELEC *en banc* issued the second assailed Resolution on 31 August 2010. This *per curiam* Resolution was received by petitioners on 1 September 2010.[16] Thus, pursuant to Section 3 above, deducting the three days it took petitioners to file the Motion for Reconsideration, they had a remaining period of 27 days or until 28 September 2010 within which to file the Petition for *Certiorari* with this Court.

However, petitioners filed the present Petition only on 1 October 2010, clearly outside the required period. In *Pates v. Commission on Elections* and *Domingo v. Commission on Elections,*[17] we have established that the fresh-period rule used in Rule 65 does not similarly apply to the timeliness of petitions under Rule 64. In *Pates,* this Court dismissed the Petition for

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[15] *Id.* at 486.

[16] *Rollo,* p. 9.

[17] 372 Phil. 188 (1999).

Certiorari on the sole ground that it was belatedly filed, reasoning thus:

x x x. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. There have been some instances wherein this Court allowed a relaxation in the application of the rules, but this flexibility was "never intended to forge a bastion for erring litigants to violate the rules with impunity."

x x x x x x x x x

Under this unique nature of the exceptions, a party asking for the suspension of the Rules of Court comes to us with the heavy burden of proving that he deserves to be accorded exceptional treatment. Every plea for a liberal construction of the Rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction.

x x x x x x x x x

x x x. Section 3, Article IX-C of the Constitution expressly requires that the COMELEC's rules of procedure should expedite the disposition of election cases. This Court labors under the same command, as our proceedings are in fact the constitutional extension of cases that start with the COMELEC.

Based on these considerations, we do not find convenience and uniformity to be reasons sufficiently compelling to modify the required period for the filing of petitions for *certiorari* under Rule 64. **While the petitioner is correct in his historical data about the Court's treatment of the periods for the filing of the different modes of review, he misses out on the reason why the period under Section 3, Rule 64 has been retained. The reason, as made clear above, is constitutionally-based and is no less than the importance our Constitution accords to the prompt determination of election results.**[18] x x x. (Emphasis supplied, footnotes omitted.)

In this case, petitioners do not even attempt to explain why the Petition was filed out of time. Clearly, they are aware of

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[18] *Supra* note 14 at 487-489.

the applicable period for filing, as they themselves invoke the remedy under Rule 64 in conjunction with Rule 65. Hence, there is no acceptable reason for their failure to comply with the proper procedure. But even if this Court were to apply liberality and take cognizance of the late Petition, the arguments therein are flawed. ***The COMELEC has jurisdiction over cases pertaining to party leadership and the nomination of party-list representatives.***

Petitioners contend that the COMELEC never should have taken cognizance of respondents' Petition to Expunge and/or for Disqualification. They have reached this conclusion by characterizing the present matter as an intra-corporate dispute and, thus, cognizable only by special commercial courts, particularly the designated commercial court in this case, the Regional Trial Court in Pasig City.[19] Pia Derla purportedly filed the Certificate of Nomination pursuant to the authority granted by the Board of Trustees of the "CIBAC Foundation, Inc.," the non-stock entity that is registered with the Securities and Exchange Commission (SEC).[20]

Thus, petitioners insist that the group that participated in the party-list system in the 2004 and 2007 elections was the SEC-registered entity, and not the National Council, which had allegedly become defunct since 2003. That was the year when CIBAC Foundation, Inc. was established and registered with the SEC.[21] On the other hand, respondents counter that the foundation was established solely for the purpose of acting as CIBAC's legal and financial arm, as provided by the party's Constitution and bylaws. It was never intended to substitute for, or oust CIBAC, the party-list itself.[22]

Even as petitioners insisted on the purely intra-corporate nature of the conflict between "CIBAC Foundation" and the CIBAC

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[19] Petition, *rollo,* p. 51.

[20] *Id.* at 18.

[21] *Id.* at 19.

[22] Comment, *rollo,* p. 356.

Sectoral Party, they submitted their Certificate of Nomination and Manifestation of Intent to participate in the party-list elections. Precisely, petitioners were seeking the COMELEC's approval of their eligibility to participate in the upcoming party-list elections. In effect, they invoke its authority under the Party-List System Act.[23] Contrary to their stance that the present dispute stemmed from an intra-corporate matter, their submissions even recognize the COMELEC's constitutional power to enforce and administer all laws relative to the conduct of an election, plebiscite, initiative, referendum, and recall.[24] More specifically, as one of its constitutional functions, the COMELEC is also tasked to "register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government."[25]

In any case, the COMELEC's jurisdiction to settle the struggle for leadership within the party is well established. This singular power to rule upon questions of party identity and leadership is exercised by the COMELEC as an incident to its enforcement powers. In *Laban ng Demokratikong Pilipino v. Commission on Elections,*[26] the Court held:

> x x x. Corollary to the right of a political party "to identify the people who constitute the association and to select a standard bearer who best represents the party's ideologies and preference" is the right to exclude persons in its association and to not lend its name and prestige to those which it deems undeserving to represent its ideals. A certificate of candidacy makes known to the COMELEC that the person therein mentioned has been nominated by a duly authorized political group empowered to act and that it reflects accurately the sentiment of the nominating body. A candidate's political party affiliation is also printed followed by his or her name in the

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[23] Republic Act No. 7941, An Act Providing For The Election of Party-List Representatives Through The Party-List System, And Appropriating Funds Therefor, enacted on 3 March 1995.

[24] 1987 Constitution, Art. IX-C, Sec. 2, par. 2.

[25] *Id.* at par. 5.

[26] 468 Phil. 70 (2004).

certified list of candidates. **A candidate misrepresenting himself or herself to be a party's candidate, therefore, not only misappropriates the party's name and prestige but foists a deception upon the electorate, who may unwittingly cast its ballot for him or her on the mistaken belief that he or she stands for the party's principles. To prevent this occurrence, the COMELEC has the power and the duty to step in and enforce the law not only to protect the party but, more importantly, the electorate, in line with the Commission's broad constitutional mandate to ensure orderly elections.**[27] (Emphasis supplied.)

Similar to the present case, *Laban* delved into the issue of leadership for the purpose of determining which officer or member was the duly authorized representative tasked with filing the Certificate of Nomination, pursuant to its Constitution and bylaws, to wit:

The only issue in this case, as defined by the COMELEC itself, is who as between the Party Chairman and the Secretary General has the authority to sign certificates of candidacy of the official candidates of the party. Indeed, the petitioners' *Manifestation* and *Petition* before the COMELEC merely asked the Commission to recognize only those certificates of candidacy signed by petitioner Sen. Angara or his authorized representative, and no other.[28]

In the 2010 case *Atienza v. Commission on Elections,*[29] it was expressly settled that the COMELEC possessed the authority to resolve intra-party disputes as a necessary tributary of its constitutionally mandated power to enforce election laws and register political parties. The Court therein cited *Kalaw v. Commission on Elections* and *Palmares v. Commission on Elections,* which uniformly upheld the COMELEC's jurisdiction over intra-party disputes:

The COMELEC's jurisdiction over intra-party leadership disputes has already been settled by the Court. The Court ruled in *Kalaw v.*

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[27] *Id.* at 84.

[28] *Id.* at 84-85.

[29] G.R. No. 188920, 16 February 2010, 612 SCRA 761.

Commission on Elections that the COMELEC's powers and functions under Section 2, Article IX-C of the Constitution, "include the ascertainment of the identity of the political party and its legitimate officers responsible for its acts." The Court also declared in another case that the COMELEC's power to register political parties necessarily involved the determination of the persons who must act on its behalf. Thus, the COMELEC may resolve an intra-party leadership dispute, in a proper case brought before it, as an incident of its power to register political parties.[30]

Furthermore, matters regarding the nomination of party-list representatives, as well as their individual qualifications, are outlined in the Party-List System Law. Sections 8 and 9 thereof state:

Sec. 8. *Nomination of Party-List Representatives*. Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate for any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned.

Sec. 9. *Qualifications of Party-List Nominees.* No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1)year immediately preceding the day of the election, able to read and write, a bona fide member of the party or organization which he seeks to represent

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[30] *Id.* at 778-779.

for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.

By virtue of the aforesaid mandate of the Party-List Law vesting the COMELEC with jurisdiction over the nomination of party-list representatives and prescribing the qualifications of each nominee, the COMELEC promulgated its "Rules on Disqualification Cases Against Nominees of Party-List Groups/ Organizations Participating in the 10 May 2010 Automated National and Local Elections."[31] Adopting the same qualifications of party-list nominees listed above, Section 6 of these Rules also required that:

The party-list group and the nominees must submit documentary evidence in consonance with the Constitution, R.A. 7941 and other laws to duly prove that the nominees truly belong to the marginalized and underrepresented sector/s, the sectoral party, organization, political party or coalition they seek to represent, which may include but not limited to the following:

a. Track record of the party-list group/organization showing active participation of the nominee/s in the undertakings of the party-list group/organization for the advancement of the marginalized and underrepresented sector/s, the sectoral party, organization, political party or coalition they seek to represent;

b. Proofs that the nominee/s truly adheres to the advocacies of the party-list group/organizations (prior declarations, speeches, written articles, and such other positive actions on the part of the nominee/s showing his/her adherence to the advocacies of the party-list group/organizations);

c. Certification that the nominee/s is/are a bona fide member of the party-list group/ organization for at least ninety (90) days prior to the election; and

d. In case of a party-list group/organization seeking representation of the marginalized and underrepresented sector/s, proof that the nominee/s is not only an advocate of the party-list/ organization but is/are also a bona fide member/s of said marginalized and underrepresented sector.

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[31] Promulgated on 25 March 2010.

The Law Department shall require party-list group and nominees to submit the foregoing documentary evidence if not complied with prior to the effectivity of this resolution not later than three (3) days from the last day of filing of the list of nominees.

Contrary to petitioners' stance, no grave abuse of discretion is attributable to the COMELEC First Division and the COMELEC *en banc.* The tribunal correctly found that Pia Derla's alleged authority as "acting secretary-general" was an unsubstantiated allegation devoid of any supporting evidence. Petitioners did not submit any documentary evidence that Derla was a member of CIBAC, let alone the representative authorized by the party to submit its Certificate of Nomination.[32] The COMELEC ruled:

A careful perusal of the records readily shows that Pia B. Derla, who has signed and submitted, as the purported Acting Secretary General of CIBAC, the Certificates of Nomination of Respondents, has no authority to do so. Despite Respondents' repeated claim that Ms. Derla is a member and officer of CIBAC, they have not presented any proof in support of the same. We are at a loss as to the manner by which Ms. Derla has assumed the post, and We see nothing but Respondents' claims and writings/certifications by Ms. Derla herself that point to that alleged fact. Surely, We cannot rely on these submissions, as they are the very definition of self-serving declarations.

On the other hand…We cannot help but be convinced that it was Emmanuel Joel J. Villanueva, as the Party President and Chairman, who had been given the sole authority, at least for the 10 May 2010 Elections, to submit the list of nominees for the Party. The records would show that, in accordance with the Party's Constitution and by-laws, its National Council, the highest policymaking and governing body of the Party, met on 12 November 2009 and there being a quorum, then proceeded to elect its new set of officers, which included Mr. Villanueva as both Party President and Party Chairman, and Virginia S. Jose as Party Secretary General. During the same meeting, the Party's New Electoral Congress, which as per the CIBAC's Constitution and By-Laws, was also composed of the National Council

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[32] Resolution dated 5 July 2010, issued by the COMELEC First Division, *rollo,* p. 69.

Members and had the task of choosing the nominees for the Party in the Party-List Elections, unanimously ruled to delegate to the Party President such latter function. This set of facts, which had not been belied by concrete contrary evidence, weighed heavily against Respondents and favorably for Petitioner.[33]

Pia Derla, who is not even a member of CIBAC, is thus a virtual stranger to the party-list, and clearly not qualified to attest to petitioners as CIBAC nominees, or certify their nomination to the COMELEC. Petitioners cannot use their registration with the SEC as a substitute for the evidentiary requirement to show that the nominees, including Derla, are bona fide members of the party. Petitioners Planas and Lokin, Jr. have not even presented evidence proving the affiliation of the so-called Board of Trustees to the CIBAC Sectoral Party that is registered with COMELEC.

Petitioners cannot draw authority from the Board of Trustees of the SEC-registered entity, because the Constitution of CIBAC expressly mandates that it is the National Council, as the governing body of CIBAC, that has the power to formulate the policies, plans, and programs of the Party, and to issue decisions and resolutions binding on party members and officers.[34] Contrary to petitioners' allegations, the National Council of CIBAC has not become defunct, and has certainly not been replaced by the Board of Trustees of the SEC-registered entity. The COMELEC carefully perused the documents of the organization and outlined the process followed by the National Council before it complied with its task of choosing the party's nominees. This was based on the "Minutes of Meeting of CIBAC Party-List National Council" held on 12 November 2009, which respondents attached to their Memorandum.[35]

For its part, the COMELEC *en banc* also enumerated the documentary evidence that further bolstered respondents' claim

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[33] *Id.* at 70.

[34] Constitution and By-Laws of the CIBAC, Article VIII on the National Council, *rollo,* p. 411.

[35] *Rollo,* p. 72.

that it is Chairman Villanueva and Secretary General Virginia Jose who were duly authorized to submit the Certificate of Nomination to the COMELEC.[36] These include:

a. The Joint Affidavit of Resolutions of the CIBAC National Council and the National Electoral Congress of CIBAC dated 12 November 2009;

b. Certificate of Deputization and Delegation of Authority issued to CIBAC Secretary-General Virginia S. Jose by the CIBAC President;

c. Constitution and By-Laws of CIBAC as annexed to its Petition for Registration as Sectoral Organization Under the Party-List System filed by CIBAC on 13 November 2000; and

d. Manifestation dated 8 January 2010 by CIBAC's Secretary General Virginia S. Jose providing the official list of officers of CIBAC.[37]

WHEREFORE, finding no grave abuse of discretion on the part of the COMELEC in issuing the assailed Resolutions, the instant Petition is **DISMISSED**. This Court **AFFIRMS** the judgment of the COMELEC expunging from its records the Certificate of Nomination filed on 26 March 2010 by Pia B. Derla. The nominees, as listed in the Certificate of Nomination filed on 19 January 2010 by Emmanuel Joel J. Villanueva, President and Chairman of Citizens' Battle Against Corruption (CIBAC) Party List, are recognized as the legitimate nominees of the said party.

SO ORDERED.

Carpio (Senior Associate Justice), Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Reyes, and *Perlas-Bernabe, JJ.,* concur.

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

Mendoza, J., on leave.

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[36] *Id.* at 79.

[37] COMELEC Records, Vol. 4, pp. 40-99, 153-159, 363-422, as cited in the Resolution of the COMELEC *en banc.*

EN BANC

[G.R. No. 196870. June 26, 2012]

BORACAY FOUNDATION, INC., *petitioner, vs.* **THE PROVINCE OF AKLAN, represented by GOVERNOR CARLITO S. MARQUEZ, THE PHILIPPINE RECLAMATION AUTHORITY, and THE DENR-EMB (REGION VI),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ISSUES; THE CONTENTS OF THE TWO RESOLUTIONS SUBMITTED BY RESPONDENT PROVINCE DO NOT SUPPORT ITS CONCLUSION THAT THE SUBSEQUENT FAVORABLE ENDORSEMENT OF THE LOCAL GOVERNMENT UNITS (LGU's) HAD ALREADY ADDRESSED ALL THE ISSUES RAISED AND RENDERED THE INSTANT PETITION MOOT AND ACADEMIC.—** The *Sangguniang Bayan* of Malay obviously imposed explicit conditions for respondent Province to comply with on pain of revocation of its endorsement of the project, including the need to conduct a comprehensive study on the environmental impact of the reclamation project, which is the heart of the petition before us. Therefore, the contents of the two resolutions submitted by respondent Province do not support its conclusion that the subsequent favorable endorsement of the LGUs had already addressed all the issues raised and rendered the instant petition moot and academic.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; MAY BE DISREGARDED WHEN IT DOES NOT PROVIDE A PLAIN, SPEEDY AND ADEQUATE REMEDY.—** We do not agree with respondents' appreciation of the applicability of the rule on exhaustion of administrative remedies in this case. We are reminded of our ruling in *Pagara v. Court of Appeals*, which summarized our earlier decisions on the procedural requirement of exhaustion of administrative remedies, to wit: **The rule regarding exhaustion of administrative remedies**

is not a hard and fast rule. It is not applicable (1) where the question in dispute is purely a legal one, or (2) where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction; or (3) where the respondent is a department secretary, whose acts as an alter ego of the President bear the implied or assumed approval of the latter, unless actually disapproved by him, or **(4) where there are circumstances indicating the urgency of judicial intervention**, **-** Gonzales *vs.* Hechanova, L-21897, October 22, 1963, 9 SCRA 230; Abaya *vs.* Villegas, L-25641, December 17, 1966, 18 SCRA; Mitra *vs.* Subido, L-21691, September 15, 1967, 21 SCRA 127. **Said principle may also be disregarded when it does not provide a plain, speedy and adequate remedy**, (Cipriano *vs.* Marcelino, 43 SCRA 291), when there is no due process observed (Villanos *vs.* Subido, 45 SCRA 299), **or where the protestant has no other recourse** (Sta. Maria *vs.* Lopez, 31 SCRA 637).

3. ID.; ID.; PETITIONER WAS NEVER MADE A PARTY TO THE PROCEEDINGS BEFORE RESPONDENT DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ENVIRONMENTAL MANAGEMENT BUREAU (DENR-EMB), REGIONAL OFFICE VI (DENR-EMB RVI); THE PRINCIPLE IS APPLICABLE IF THE PERSON OR ENTITY CHARGED WITH THE DUTY TO EXHAUST THE ADMINISTRATIVE REMEDY OF APPEAL TO THE APPROPRIATE GOVERNMENT AGENCY HAS BEEN A PARTY IN THE PROCEEDINGS WHEREIN THE DECISION TO BE APPEALED WAS RENDERED.— As petitioner correctly pointed out, the appeal provided for under Section 6 of DENR DAO 2003-30 is only applicable, based on the first sentence thereof, if the person or entity charged with the duty to exhaust the administrative remedy of appeal to the appropriate government agency has been a party or has been made a party in the proceedings wherein the decision to be appealed was rendered. **It has been established by the facts that petitioner was never made a party to the proceedings before respondent DENR-EMB RVI**. Petitioner was only informed that the project had already been approved after the ECC was already granted. Not being a party to the said proceedings, it does not appear that petitioner was officially furnished a copy of the decision, from which the 15-day period

to appeal should be reckoned, and which would warrant the application of Section 6, Article II of DENR DAO 2003-30. Although petitioner was not a party to the proceedings where the decision to issue an ECC was rendered, it stands to be aggrieved by the decision, because it claims that the reclamation of land on the Caticlan side would unavoidably adversely affect the Boracay side, where petitioner's members own establishments engaged in the tourism trade. As noted earlier, petitioner contends that the declared objective of the reclamation project is to exploit Boracay's tourism trade because the project is intended to enhance support services thereto; however, this objective would not be achieved since the white-sand beaches for which Boracay is famous might be negatively affected by the project. Petitioner's conclusion is that respondent Province, aided and abetted by respondents PRA and DENR-EMB RVI, ignored the spirit and letter of our environmental laws, and should thus be compelled to perform their duties under said laws.

4. **POLITICAL LAW; ADMINISTRATIVE LAW; ENVIRONMENTAL LAWS; REVISED PROCEDURAL MANUAL FOR DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) ADMINISTRATIVE ORDER NO. 30 SERIES OF 2003 (DENR DAO 2003-30); ENVIRONMENTAL IMPACT ASSESSMENT (EIA); DEFINED; THE EIA PROCESS MUST HAVE BEEN ABLE TO PREDICT THE LIKELY IMPACT OF THE RECLAMATION PROJECT TO THE ENVIRONMENT AND TO PREVENT ANY HARM THAT MAY OTHERWISE BE CAUSED.—** The very definition of an EIA points to what was most likely neglected by respondent Province as project proponent, and what was in turn overlooked by respondent DENR-EMB RVI, for it is defined as follows: An [EIA] is a 'process that involves **predicting** and evaluating the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate **preventive,** mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare. Thus, the EIA process must have been able to **predict** the likely impact of the reclamation project

to the environment and to **prevent** any harm that may otherwise be caused.

5. **ID.; ID.; ID.; ID.; THE EIA REPORT SUBMITTED BY RESPONDENT PROVINCE SHOULD AT THE VERY LEAST PREDICT THE IMPACT THAT THE CONSTRUCTION OF THE NEW BUILDINGS ON THE RECLAIMED LAND WOULD HAVE ON THE SURROUNDING ENVIRONMENT; ANY IMPACT ON THE BORACAY SIDE CANNOT BE TOTALLY IGNORED, AS CATICLAN AND BORACAY ARE SEPARATED ONLY BY A NARROW STRAIT.—** The project now before us involves reclamation of land that is **more than five times the size of the original** reclaimed land. Furthermore, the area prior to construction merely contained a jetty port, whereas the proposed expansion, as described in the EPRMP submitted by respondent Province to respondent DENR-EMB RVI involves so much more. x x x As may be gleaned from the breakdown of the 2.64 hectares as described by respondent Province above, a significant portion of the reclaimed area would be devoted to the construction of a commercial building, and the area to be utilized for the expansion of the jetty port consists of a mere 3,000 square meters (sq. m). To be true to its definition, the EIA report submitted by respondent Province should at the very least predict the impact that the construction of the new buildings on the reclaimed land would have on the surrounding environment. These new constructions and their environmental effects were not covered by the old studies that respondent Province previously submitted for the construction of the original jetty port in 1999, and which it re-submitted in its application for ECC in this alleged expansion, instead of conducting updated and more comprehensive studies. Any impact on the Boracay side cannot be totally ignored, as Caticlan and Boracay are separated only by a narrow strait. This becomes more imperative because of the significant contributions of Boracay's white-sand beach to the country's tourism trade, which requires respondent Province to **proceed with utmost caution** in implementing projects within its vicinity.

6. **ID.; ID.; ID.; ID.; THE COURT REQUIRED RESPONDENT DENR-EMB RVI TO COMPLETE ITS STUDY AND SUBMIT A REPORT THAT WILL ESTABLISH TO THE COURT WHY THE ENVIRONMENTAL COMPLIANCE**

CERTIFICATE (ECC) IT ISSUED FOR THE SUBJECT PROJECT SHOULD NOT BE CANCELLED.— The Court chooses to remand these matters to respondent DENR-EMB RVI for it to make a proper study, and if it should find necessary, to require respondent Province to address these environmental issues raised by petitioner and submit the correct EIA report as required by the project's specifications. The Court requires respondent DENR-EMB RVI to complete its study and submit a report within a non-extendible period of three months. Respondent DENR-EMB RVI should establish to the Court in said report why the ECC it issued for the subject project should not be canceled.

7. ID.; ID.; ID.; ID.; IN CASES REQUIRING PUBLIC CONSULTATIONS, THE SAME SHOULD BE INITIATED EARLY SO THAT CONCERNS OF STAKEHOLDERS COULD BE TAKEN IN CONSIDERATION IN THE EIA STUDY.— Moreover, DENR DAO 2003-30 provides: x x x **Proponents should initiate public consultations early in order to ensure that environmentally relevant concerns of stakeholders are taken into consideration in the EIA study and the formulation of the management plan**. All public consultations and public hearings conducted during the EIA process are to be documented. The public hearing/consultation Process report shall be validated by the EMB/EMB RD and shall constitute part of the records of the EIA process. In essence, the above-quoted rule shows that in cases requiring public consultations, the same should be initiated early so that concerns of stakeholders could be taken into consideration in the EIA study. In this case, respondent Province had already filed its ECC application before it met with the local government units of Malay and Caticlan.

8. ID.; ID.; LOCAL GOVERNMENT CODE; NATIONAL PROJECT THAT AFFECTS THE ENVIRONMENTAL AND ECOLOGICAL BALANCE OF LOCAL COMMUNITIES REQUIRES PRIOR CONSULTATION WITH THE AFFECTED LOCAL COMMUNITIES AND PRIOR APPROVAL OF THE PROJECT BY THE APPROPRIATE *SANGGUNIAN*.— The Local Government Code establishes the duties of **national** government agencies in the maintenance of ecological balance, and requires them to secure *prior public consultation and approval* of **local** government units for the

projects described therein. In the case before us, the national agency involved is respondent PRA. Even if the project proponent is the local government of Aklan, it is respondent PRA which authorized the reclamation, being the exclusive agency of the government to undertake reclamation nationwide. Hence, it was necessary for respondent Province to go through respondent PRA and to execute a MOA, wherein respondent PRA's authority to reclaim was delegated to respondent Province. Respondent DENR-EMB RVI, regional office of the DENR, is also a national government institution which is tasked with the issuance of the ECC that is a prerequisite to projects covered by environmental laws such as the one at bar. This project can be classified as a national project that affects the environmental and ecological balance of local communities, and is covered by the requirements found in Sections 26 and 27 of the Local Government Code. x x x In *Lina, Jr. v. Paño*, we held that Section 27 of the Local Government Code applies only to "national programs and/or projects which are to be implemented in a particular local community" and that it should be read in conjunction with Section 26. x x x **Under the Local Government Code, therefore, two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior *consultation* with the affected local communities, and prior *approval* of the project by the appropriate *sanggunian*. Absent either of these mandatory requirements, the project's implementation is illegal**. **Based on the above, therefore, *prior* consultations and *prior* approval are required by law to have been conducted and secured by the respondent Province.** Accordingly, the information dissemination conducted months after the ECC had already been issued was insufficient to comply with this requirement under the Local Government Code. Had they been conducted properly, the prior public consultation should have considered the ecological or environmental concerns of the stakeholders and studied measures alternative to the project, to avoid or minimize adverse environmental impact or damage. In fact, respondent Province once tried to obtain the favorable endorsement of the *Sangguniang Bayan* of Malay, but this was denied by the latter.

9. **ID.; ID.; ID.; STATUTES; PRINCIPLE OF HIERARCHY OF LAWS; A MEMORANDUM CIRCULAR CANNOT PREVAIL OVER THE LOCAL GOVERNMENT CODE.—** The claim of respondent DENR-EMB RVI is that no permits and/or clearances from National Government Agencies (NGAs) and LGUs are required pursuant to the DENR Memorandum Circular No. 2007-08. However, we still find that the LGC requirements of consultation and approval apply in this case. This is because a Memorandum Circular cannot prevail over the Local Government Code, which is a statute and which enjoys greater weight under our hierarchy of laws.

10. **ID.; ID.; ID.; THE LACK OF PRIOR PUBLIC CONSULTATION AND APPROVAL IS NOT CORRECTED BY THE SUBSEQUENT ENDORSEMENT OF THE RECLAMATION PROJECT BY THE *SANGGUNIANG BARANGAY* OF CATICLAN AND THE *SANGGUNIANG BAYAN* OF THE MUNICIPALITY OF MALAY.—** Subsequent to the information campaign of respondent Province, the Municipality of Malay and the *Liga ng mga Barangay-Malay* Chapter still opposed the project. Thus, when respondent Province commenced the implementation project, it violated Section 27 of the LGC, which clearly enunciates that "[no] project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2(c) and 26 hereof are complied with, and prior approval of the *sanggunian* concerned is obtained." The lack of **prior** public consultation and approval is not corrected by the subsequent endorsement of the reclamation project by the *Sangguniang Barangay* of Caticlan on **February 13, 2012**, and the *Sangguniang Bayan* of the Municipality of Malay on **February 28, 2012**, which were both undoubtedly achieved at the urging and insistence of respondent Province. As we have established above, the respective resolutions issued by the LGUs concerned did not render this petition moot and academic.

11. **ID.; ID.; ID.; THE PROTECTION OF THE ENVIRONMENT AND THE PROMOTION OF TOURISM ARE MATTERS OF NATIONAL SIGNIFICANCE.—** It is clear that both petitioner and respondent Province are interested in the promotion of tourism in Boracay and the protection of the environment, lest they kill the proverbial hen that lays the golden egg. At the beginning of this decision, we mentioned that there

are common goals of national significance that are very apparent from both the petitioner's and the respondents' respective pleadings and memoranda. The parties are evidently in accord in seeking to uphold the mandate found in Article II, Declaration of Principles and State Policies, of the 1987 Constitution, which we quote below: SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. x x x SECTION 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments. The protection of the environment in accordance with the aforesaid constitutional mandate is the aim, among others, of Presidential Decree No. 1586, "Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and For Other Purposes," which declared in its first Section that it is "**the policy of the State to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection**." The parties undoubtedly too agree as to the importance of promoting tourism, pursuant to Section 2 of Republic Act No. 9593, or "The Tourism Act of 2009," which reads: SECTION 2. *Declaration of Policy*. — **The State declares tourism as an indispensable element of the national economy and an industry of national interest and importance**, which must be harnessed as an engine of socioeconomic growth and cultural affirmation to generate investment, foreign exchange and employment, and to continue to mold an enhanced sense of national pride for all Filipinos.

12. **ID.; ID.; ID.; THE PRIMORDIAL ROLE OF LOCAL GOVERNMENT UNITS UNDER THE CONSTITUTION AND THE LOCAL GOVERNMENT CODE OF 1991 IN THE SUBJECT MATTER OF THE PRESENT CASE IS UNQUESTIONABLE.—** The primordial role of local government units under the Constitution and the Local Government Code of 1991 in the subject matter of this case is also unquestionable. The Local Government Code of 1991 (Republic Act No. 7160) pertinently provides: Section 2. *Declaration of Policy*. — (a) **It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local**

autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. x x x As shown by the above provisions of our laws and rules, the speedy and smooth resolution of these issues would benefit all the parties. Thus, respondent Province's cooperation with respondent DENR-EMB RVI in the Court-mandated review of the proper classification and environmental impact of the reclamation project is of utmost importance.

APPEARANCES OF COUNSEL

Roque and Butuyan Law Offices for petitioner.
Jonathan P. Bulos for Environmental Management Bureau (DENR).
Office of the Government Corporate Counsel for Philippine Reclamation Authority.
Lee T. Manares and *Maya Bien Mayor-Tolentino* for Province of Aklan.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In resolving this controversy, the Court took into consideration that all the parties involved share common goals in pursuit of certain primordial State policies and principles that are enshrined in the Constitution and pertinent laws, such as the protection of the environment, the empowerment of the local government units, the promotion of tourism, and the encouragement of the participation of the private sector. The Court seeks to reconcile the respective roles, duties and responsibilities of the petitioner and respondents in achieving these shared goals within the context of our Constitution, laws and regulations.

Nature of the Case

This is an original petition for the issuance of an Environmental Protection Order in the nature of a continuing *mandamus* under

A.M. No. 09-6-8-SC, otherwise known as the Rules of Procedure for Environmental Cases, promulgated on April 29, 2010.

The Parties

Petitioner Boracay Foundation, Inc. (petitioner) is a duly registered, non-stock domestic corporation. Its primary purpose is "to foster a united, concerted and environment-conscious development of Boracay Island, thereby preserving and maintaining its culture, natural beauty and ecological balance, marking the island as the crown jewel of Philippine tourism, a prime tourist destination in Asia and the whole world."[1] It counts among its members at least sixty (60) owners and representatives of resorts, hotels, restaurants, and similar institutions; at least five community organizations; and several environmentally-conscious residents and advocates.[2]

Respondent Province of Aklan (respondent Province) is a political subdivision of the government created pursuant to Republic Act No. 1414, represented by Honorable Carlito S. Marquez, the Provincial Governor (Governor Marquez).

Respondent Philippine Reclamation Authority (respondent PRA), formerly called the Public Estates Authority (PEA), is a government entity created by Presidential Decree No. 1084,[3] which states that one of the purposes for which respondent PRA was created was to reclaim land, including foreshore and submerged areas. PEA eventually became the lead agency primarily responsible for all reclamation projects in the country under Executive Order No. 525, series of 1979. In June 2006, the President of the Philippines issued Executive Order No. 543, delegating the power "to approve reclamation projects to PRA through its governing Board, subject to compliance with existing laws and rules and further subject to the condition that reclamation contracts to be executed with any person or entity (must) go through public bidding."[4]

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[1] *Rollo,* p. 1032.

[2] *Id.* at 1032-1033.

[3] *Id.* at 1114.

[4] *Id.* at 238-239.

Respondent Department of Environment and Natural Resources — Environmental Management Bureau (DENR-EMB), Regional Office VI (respondent DENR-EMB RVI), is the government agency in the Western Visayas Region authorized to issue environmental compliance certificates regarding projects that require the environment's protection and management in the region.[5]

Summary of Antecedent Facts

Boracay Island (Boracay), a tropical paradise located in the Western Visayas region of the Philippines and one of the country's most popular tourist destinations, was declared a tourist zone and marine reserve in 1973 under Presidential Proclamation No. 1801.[6] The island comprises the *barangays* of Manoc-manoc, Balabag, and Yapak, all within the municipality of Malay, in the province of Aklan.[7]

Petitioner describes Boracay as follows:

> Boracay is well-known for its distinctive powdery white-sand beaches which are the product of the unique ecosystem dynamics of the area. The island itself is known to come from the uplifted remnants of an ancient reef platform. Its beaches, the sandy land strip between the water and the area currently occupied by numerous establishments, is the primary draw for domestic and international tourists for its color, texture and other unique characteristics. Needless to state, it is the premier domestic and international tourist destination in the Philippines.[8]

More than a decade ago, respondent Province built the Caticlan Jetty Port and Passenger Terminal at Barangay Caticlan to be the main gateway to Boracay. It also built the corresponding Cagban Jetty Port and Passenger Terminal to be the receiving

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[5] *Id.*

[6] *Id.* at 4.

[7] Excerpt from http://www.boracayisland.org/aboutboracay.php, last accessed on January 12, 2012.

[8] *Rollo*, p. 5.

end for tourists in Boracay. Respondent Province operates both ports "to provide structural facilities suited for locals, tourists and guests and to provide safety and security measures."[9]

In 2005, Boracay 2010 Summit was held and participated in by representatives from national government agencies, local government units (LGUs), and the private sector. Petitioner was one of the organizers and participants thereto. The Summit aimed "to re-establish a common vision of all stakeholders to ensure the conservation, restoration, and preservation of Boracay Island" and "to develop an action plan that [would allow] all sectors to work in concert among and with each other for the long term benefit and sustainability of the island and the community."[10] The Summit yielded a Terminal Report[11] stating that the participants had shared their dream of having world-class land, water and air infrastructure, as well as given their observations that government support was lacking, infrastructure was poor, and, more importantly, the influx of tourists to Boracay was increasing. The Report showed that there was a need to expand the port facilities at Caticlan due to congestion in the holding area of the existing port, caused by inadequate facilities, thus tourists suffered long queues while waiting for the boat ride going to the island.[12]

Respondent Province claimed that tourist arrivals to Boracay reached approximately 649,559 in 2009 and 779,666 in 2010, and this was expected to reach a record of 1 million tourist arrivals in the years to come. Thus, respondent Province conceptualized the expansion of the port facilities at Barangay Caticlan.[13]

The *Sangguniang Barangay* of Caticlan, Malay Municipality, issued **Resolution No. 13, s. 2008**[14] on April 25, 2008 stating

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[9] *Id.* at 400.

[10] *Id.* at 400-401.

[11] *Id.* at 444-467.

[12] *Id.* at 401.

[13] *Id.*

[14] *Id.* at 45.

that it had learned that respondent Province had filed an application with the DENR for a foreshore lease of areas along the shorelines of Barangay Caticlan, and manifesting its strong opposition to said application, as the proposed foreshore lease practically covered almost all the coastlines of said *barangay*, thereby technically diminishing its territorial jurisdiction, once granted, and depriving its constituents of their statutory right of preference in the development and utilization of the natural resources within its jurisdiction. The resolution further stated that respondent Province did not conduct any consultations with the *Sangguniang Barangay* of Caticlan regarding the proposed foreshore lease, which failure the *Sanggunian* considered as an act of bad faith on the part of respondent Province.[15]

On November 20, 2008, the *Sangguniang Panlalawigan* of respondent Province approved **Resolution No. 2008-369**,[16] formally authorizing Governor Marquez to enter into negotiations towards the possibility of effecting self-liquidating and income-producing development and livelihood projects to be financed through bonds, debentures, securities, collaterals, notes or other obligations as provided under Section 299 of the Local Government Code, with the following priority projects: (a) renovation/rehabilitation of the Caticlan/Cagban Passenger Terminal Buildings and Jetty Ports; and (b) reclamation of a portion of Caticlan foreshore for commercial purposes.[17] This step was taken as respondent Province's existing jetty port and passenger terminal was funded through bond flotation, which was successfully redeemed and paid ahead of the target date. This was allegedly cited as one of the LGU's Best Practices wherein respondent Province was given the appropriate commendation.[18]

Respondent Province included the proposed expansion of the port facilities at Barangay Caticlan in its 2009 Annual

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[15] *Id.*

[16] *Id.* at 43-44.

[17] *Id.* at 44.

[18] *Id.* at 402.

Investment Plan,[19] envisioned as its project site the area adjacent to the existing jetty port, and identified additional areas along the coastline of Barangay Caticlan as the site for future project expansion.[20]

Governor Marquez sent a letter to respondent PRA on March 12, 2009[21] expressing the interest of respondent Province to reclaim about **2.64 hectares** of land along the foreshores of Barangay Caticlan, Municipality of Malay, Province of Aklan.

Sometime in April 2009, respondent Province entered into an agreement with the Financial Advisor/Consultant that won in the bidding process held a month before, to conduct the necessary feasibility study of the proposed project for the Renovation/Rehabilitation of the Caticlan Passenger Terminal Building and Jetty Port, Enhancement and Recovery of Old Caticlan Coastline, and Reclamation of a Portion of Foreshore for Commercial Purposes (**the Marina Project**), in Malay, Aklan.[22]

Subsequently, on May 7, 2009, the *Sangguniang Panlalawigan* of respondent Province issued **Resolution No. 2009–110**,[23] which **authorized Governor Marquez to file an application to reclaim the 2.64 hectares of foreshore area in Caticlan, Malay, Aklan with respondent PRA**.

Sometime in July 2009, the Financial Advisor/Consultant came up with a feasibility study which focused on the land reclamation of 2.64 hectares by way of beach enhancement and recovery of the old Caticlan coastline for the rehabilitation and expansion of the existing jetty port, and for its future plans — the construction of commercial building and wellness center. The financial component of the said study was Two Hundred Sixty Million

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[19] *Id.* at 468-525.

[20] *Id.* at 402.

[21] *Id.* at 528.

[22] *Id.* at 403.

[23] *Id.* at 529-530.

Pesos (₱260,000,000.00). Its suggested financing scheme was bond flotation.[24]

Meanwhile, the *Sangguniang Bayan* of the Municipality of Malay expressed its strong opposition to the intended foreshore lease application, through **Resolution No. 044**,[25] approved on July 22, 2009, manifesting therein that respondent Province's foreshore lease application was for business enterprise purposes for its benefit, at the expense of the local government of Malay, which by statutory provisions was the rightful entity "to develop, utilize and reap benefits from the natural resources found within its jurisdiction."[26]

In August 2009, a Preliminary Geohazard Assessment[27] for the enhancement/expansion of the existing Caticlan Jetty Port and Passenger Terminal through beach zone restoration and Protective Marina Developments in Caticlan, Malay, Aklan was completed.

Thereafter, Governor Marquez submitted an **Environmental Performance Report and Monitoring Program (EPRMP)**[28] to DENR-EMB RVI, which he had attached to his letter[29] dated September 19, 2009, as an initial step for securing an Environmental Compliance Certificate (ECC). The letter reads in part:

> **With the project expected to start its construction implementation next month**, the province hereby assures your good office that it will give preferential attention to and shall comply with whatever comments that you may have on this EPRMP.[30] (Emphasis added.)

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[24] *Id.* at 403.

[25] *Id.* at 46-47.

[26] *Id.*

[27] *Id.* at 531-561.

[28] *Id.* at 49-140.

[29] *Id.* at 48.

[30] *Id.*

Respondent Province was then authorized to issue "Caticlan Super Marina Bonds" for the purpose of funding the renovation of the Caticlan Jetty Port and Passenger Terminal Building, and the reclamation of a portion of the foreshore lease area for commercial purposes in Malay, Aklan through **Provincial Ordinance No. 2009-013**, approved on September 10, 2009. The said ordinance authorized Governor Marquez to negotiate, sign and execute agreements in relation to the issuance of the Caticlan Super Marina Bonds in the amount not exceeding ₱260,000,000.00.[31]

Subsequently, the *Sangguniang Panlalawigan* of the Province of Aklan issued **Provincial Ordinance No. 2009-015**[32] on October 1, 2009, amending Provincial Ordinance No. 2009-013, authorizing the bond flotation of the Province of Aklan through Governor Marquez to fund the Marina Project and appropriate the entire proceeds of said bonds for the project, and further authorizing Governor Marquez to negotiate, sign and execute contracts or agreements pertinent to the transaction.[33]

Within the same month of October 2009, respondent Province deliberated on the possible expansion from its original proposed reclamation area of 2.64 hectares to forty (40) hectares in order to maximize the utilization of its resources and as a response to the findings of the Preliminary Geohazard Assessment study which showed that the recession and retreat of the shoreline caused by coastal erosion and scouring should be the first major concern in the project site and nearby coastal area. The study likewise indicated the vulnerability of the coastal zone within the proposed project site and the nearby coastal area due to the effects of sea level rise and climate change which will greatly affect the social, economic, and environmental situation of Caticlan and nearby Malay coastal communities.[34]

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[31] *Id.* at 8.

[32] *Id.* at 562-567.

[33] *Id.* at 404-405.

[34] *Id.* at 405.

In his letter dated October 22, 2009 addressed to respondent PRA, Governor Marquez wrote:

> With our substantial compliance with the requirements under Administrative Order No. 2007-2 relative to our request to PRA for approval of the reclamation of the [proposed Beach Zone Restoration and Protection Marine Development in Barangays Caticlan and Manoc-Manoc] and as a result of our discussion during the [meeting with the respondent PRA on October 12, 2009], may we respectfully submit a **revised Reclamation Project Description embodying certain revisions/changes in the size and location of the areas to be reclaimed.** x x x.
>
> On another note, we are pleased to inform your Office that the bond flotation we have secured with the Local Government Unit Guarantee Corporation (LGUGC) has been finally approved last October 14, 2009. This will pave the way for the implementation of said project. Briefly, the Province has been recognized by the Bureau of Local Government Finance (BLGF) for its capability to meet its loan obligations. x x x.
>
> With the continued increase of tourists coming to Boracay through Caticlan, the Province is venturing into such development project with the end in view of protection and/or restoring certain segments of the shoreline in Barangays Caticlan (Caticlan side) and Manoc—manoc (Boracay side) which, as reported by experts, has been experiencing tremendous coastal erosion.
>
> For the project to be self-liquidating, however, we will be developing the reclaimed land for commercial and tourism-related facilities and for other complementary uses.[35] (Emphasis ours.)

Then, on November 19, 2009, the *Sangguniang Panlalawigan* enacted **Resolution No. 2009-299**[36] authorizing Governor Marquez to enter into a Memorandum of Agreement (MOA) with respondent PRA in the implementation of the Beach Zone Restoration and Protection Marina Development Project, **which shall reclaim a total of 40 hectares** in the areas adjacent to

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[35] *Id.* at 568-569.

[36] *Id.* at 576-577.

the jetty ports at Barangay Caticlan and Barangay Manoc-manoc. The *Sangguniang Panlalawigan* approved the terms and conditions of the necessary agreements for the implementation of the bond flotation of respondent Province to fund the renovation/ rehabilitation of the existing jetty port by way of enhancement and recovery of the Old Caticlan shoreline through reclamation of an area of **2.64 hectares** in the amount of ₱260,000,000.00 on December 1, 2009.[37]

Respondent Province gave an initial presentation of the project with consultation to the *Sangguniang Bayan* of Malay[38] on December 9, 2009.

Respondent PRA approved the reclamation project on April 20, 2010 in its Resolution No. 4094 and authorized its General Manager/Chief Executive Officer (CEO) to enter into a MOA with respondent Province for the implementation of the reclamation project.[39]

On April 27, 2010, DENR-EMB RVI issued to respondent Province **ECC-R6-1003-096-7100** (the questioned ECC) for Phase 1 of the Reclamation Project to the extent of **2.64 hectares** to be done along the Caticlan side beside the existing jetty port.[40]

On May 17, 2010, respondent Province entered into a MOA[41] with respondent PRA. Under Article III, the Project was described therein as follows:

> The proposed **Aklan Beach Zone Restoration and Protection Marina Development Project** involves the reclamation and development of approximately **forty (40) hectares** of foreshore and offshore areas of the Municipality of Malay x x x.

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[37] *Id.* at 406-407.

[38] *Id.* at 578-587.

[39] *Id.* at 156.

[40] *Id.* at 169-174.

[41] *Id.* at 594-604.

The land use development of the reclamation project shall be for commercial, recreational and institutional and other applicable uses.[42] (Emphases supplied).

It was at this point that respondent Province deemed it necessary to conduct a series of what it calls "information — education campaigns," which provided the venue for interaction and dialogue with the public, particularly the *Barangay* and Municipal officials of the Municipality of Malay, the residents of Barangay Caticlan and Boracay, the stakeholders, and the non-governmental organizations (NGOs). The details of the campaign are summarized as follows:[43]

a. June 17, 2010 at Casa Pilar Beach Resort, Boracay Island, Malay, Aklan;[44]

b. July 28, 2010 at Caticlan Jetty Port and Passenger Terminal;[45]

c. July 31, 2010 at Barangay Caticlan Plaza;[46]

d. September 15, 2010 at the Office of the Provincial Governor with Municipal Mayor of Malay – Mayor John P. Yap;[47]

e. October 12, 2010 at the Office of the Provincial Governor with the Provincial Development Council Executive Committee;[48] and

f. October 29, 2010 at the Office of the Provincial Governor with Officials of LGU-Malay and Petitioner.[49]

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[42] *Id.* at 596.

[43] *Id.* at 407-408.

[44] *Id.* at 605-609.

[45] *Id.* at 610-614.

[46] *Id.* at 615-621.

[47] *Id.* at 622-623.

[48] *Id.* at 624-626.

[49] *Id.* at 627-629.

Petitioner claims that during the "public consultation meeting" belatedly called by respondent Province on June 17, 2010, respondent Province presented the Reclamation Project and only then detailed the actions that it had already undertaken, particularly: the issuance of the Caticlan Super Marina Bonds; the execution of the MOA with respondent PRA; the alleged conduct of an Environmental Impact Assessment (EIA) study for the reclamation project; and the **expansion of the project** to **forty (40) hectares** from **2.64 hectares**.[50]

In **Resolution No. 046**, Series of 2010, adopted on June 23, 2010, the Malay Municipality reiterated its strong opposition to respondent Province's project and **denied** its request for a favorable endorsement of the Marina Project.[51]

The Malay Municipality subsequently issued **Resolution No. 016,** Series of 2010, adopted on August 3, 2010, to request respondent PRA "not to grant reclamation permit and notice to proceed to the Marina Project of the [respondent] Provincial Government of Aklan located at Caticlan, Malay, Aklan."[52]

In a letter[53] dated October 12, 2010, petitioner informed respondent PRA of its opposition to the reclamation project, primarily for the reason that, based on the opinion of Dr. Porfirio M. Aliño, an expert from the University of the Philippines Marine Science Institute (UPMSI), which he rendered based on the documents submitted by respondent Province to obtain the ECC, a full EIA study is required to assess the reclamation project's likelihood of rendering critical and lasting effect on Boracay considering the proximity in distance, geographical location, current and wind direction, and many other environmental considerations in the area. Petitioner noted that said documents had failed to deal with coastal erosion concerns in Boracay. It also noted

[50] *Id.* at 9-10.

[51] *Id.* at 175.

[52] *Id.* at 176.

[53] *Id.* at 178-182.

that respondent Province failed to comply with certain mandatory provisions of the Local Government Code, particularly, those requiring the project proponent to conduct consultations with stakeholders.

Petitioner likewise transmitted its **Resolution No. 001, Series of 2010**, registering its opposition to the reclamation project to respondent Province, respondent PRA, respondent DENR-EMB, the National Economic Development Authority Region VI, the Malay Municipality, and other concerned entities.[54]

Petitioner alleges that despite the Malay Municipality's denial of respondent Province's request for a favorable endorsement, as well as the strong opposition manifested both by Barangay Caticlan and petitioner as an NGO, respondent Province still continued with the implementation of the Reclamation Project.[55]

On July 26, 2010, the *Sangguniang Panlalawigan* of respondent Province **set aside Resolution No. 046, s. 2010, of the Municipality of Malay** and manifested its support for the implementation of the aforesaid project through its **Resolution No. 2010-022**.[56]

On July 27, 2010, the MOA was confirmed by respondent PRA Board of Directors under its **Resolution No. 4130**. Respondent PRA wrote to respondent Province on October 19, 2010, informing the latter to **proceed with the reclamation and development of phase 1 of site 1 of its proposed project**. Respondent PRA attached to said letter its Evaluation Report dated October 18, 2010.[57]

Petitioner likewise received a copy of respondent PRA's letter dated October 19, 2010, which authorized respondent Province to proceed with phase 1 of the reclamation project, subject to

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[54] *Id.* at 183-185.

[55] *Id.* at 11.

[56] *Id.* at 630-631.

[57] *Id.* at 155-156.

compliance with the requirements of its Evaluation Report. The reclamation project was described as:

> "[A] seafront development involving reclamation of an aggregate area of more or less, **forty (40) hectares** in two (2) separate sites both in Malay Municipality, Aklan Province. **Site 1 is in Brgy. Caticlan with a total area of 36.82 hectares and Site 2 in Brgy. Manoc-Manoc, Boracay Island with a total area of 3.18 hectares.** Sites 1 and 2 are on the opposite sides of Tabon Strait, about 1,200 meters apart. x x x."[58] (Emphases added.)

The *Sangguniang Panlalawigan* of Aklan, through **Resolution No. 2010-034**,[59] addressed the apprehensions of petitioner embodied in its Resolution No. 001, s. 2010, and supported the implementation of the project. Said resolution stated that the apprehensions of petitioner with regard to the economic, social and political negative impacts of the projects were mere perceptions and generalities and were not anchored on definite scientific, social and political studies.

In the meantime, a study was commissioned by the Philippine Chamber of Commerce and Industry-Boracay (PCCI-Boracay), funded by the **Department of Tourism (DOT)** with the assistance of, among others, petitioner. The study was conducted in November 2010 by several marine biologists/experts from the Marine Environmental Resources Foundation (MERF) of the UPMSI. The study was intended to determine the potential impact of a reclamation project in the hydrodynamics of the strait and on the coastal erosion patterns in the southern coast of Boracay Island and along the coast of Caticlan.[60]

After noting the objections of the respective LGUs of Caticlan and Malay, as well as the apprehensions of petitioner, respondent Province issued a notice to the contractor on December 1, 2010 to commence with the construction of the project.[61]

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[58] *Id.* at 156.

[59] *Id.* at 632-634.

[60] *Id.* at 186-202.

[61] *Id.* at 409.

On April 4, 2011, the *Sangguniang Panlalawigan* of Aklan, through its Committee on Cooperatives, Food, Agriculture, and Environmental Protection and the Committee on Tourism, Trade, Industry and Commerce, conducted a joint committee hearing wherein the study undertaken by the MERF-UPMSI was discussed.[62] In attendance were Mr. Ariel Abriam, President of PCCI-Boracay, representatives from the Provincial Government, and Dr. Cesar Villanoy, a professor from the UPMSI. Dr. Villanoy said that the subject project, consisting of **2.64 hectares,** would only have *insignificant* effect on the hydrodynamics of the strait traversing the coastline of Barangay Caticlan and Boracay, hence, there was a *distant possibility* that it would affect the Boracay coastline, which includes the famous white-sand beach of the island.[63]

Thus, on April 6, 2011, the *Sangguniang Panlalawigan* of Aklan enacted **Resolution No. 2011-065**[64] noting the report on the survey of the channel between Caticlan and Boracay conducted by the UPMSI in relation to the effects of the ongoing reclamation to Boracay beaches, and stating that Dr. Villanoy had admitted that nowhere in their study was it pointed out that there would be an adverse effect on the white-sand beach of Boracay.

During the First Quarter Regular Meeting of the Regional Development Council, Region VI (RDC-VI) on April 16, 2011, it approved and supported the subject project (covering 2.64 hectares) through **RDC-VI Resolution No. VI-26, series of 2011**.[65]

Subsequently, Mr. Abriam sent a letter to Governor Marquez dated April 25, 2011 stating that the study conducted by the UPMSI confirms that the water flow across the Caticlan-Boracay

[62] *Id.* at 635-652.

[63] *Id.* at 409-410.

[64] *Id.* at 656-658.

[65] *Id.* at 660-661.

channel is primarily tide-driven, therefore, the marine scientists believe that the 2.64-hectare project of respondent Province would not significantly affect the flow in the channel and would unlikely impact the Boracay beaches. Based on this, PCCI-Boracay stated that it was not opposing the 2.64-hectare Caticlan reclamation project on environmental grounds.[66]

On June 1, 2011, petitioner filed the instant Petition for Environmental Protection Order/Issuance of the Writ of Continuing *Mandamus*. On June 7, 2011, this Court issued a **Temporary Environmental Protection Order (TEPO)** and ordered the respondents to file their respective comments to the petition.[67]

After receiving a copy of the TEPO on June 9, 2011, respondent Province immediately issued an order to the Provincial Engineering Office and the concerned contractor to cease and desist from conducting any construction activities until further orders from this Court.

The petition is premised on the following grounds:

I.

THE RESPONDENT PROVINCE, PROPONENT OF THE RECLAMATION PROJECT, FAILED TO COMPLY WITH RELEVANT RULES AND REGULATIONS IN THE ACQUISITION OF AN ECC.

A. THE RECLAMATION PROJECT IS CO-LOCATED WITHIN ENVIRONMENTALLY CRITICAL AREAS REQUIRING THE PERFORMANCE OF A FULL, OR PROGRAMMATIC, ENVIRONMENTAL IMPACT ASSESSMENT.

B. RESPONDENT PROVINCE FAILED TO OBTAIN THE FAVORABLE ENDORSEMENT OF THE LGU CONCERNED.

C. RESPONDENT PROVINCE FAILED TO CONDUCT THE REQUIRED CONSULTATION PROCEDURES AS REQUIRED BY THE LOCAL GOVERNMENT CODE.

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[66] *Id.* at 653-654.

[67] *Id.* at 222-223.

D. RESPONDENT PROVINCE FAILED TO PERFORM A FULL ENVIRONMENTAL IMPACT ASSESSMENT AS REQUIRED BY LAW AND RELEVANT REGULATIONS.

II.

THE RECLAMATION OF LAND BORDERING THE STRAIT BETWEEN CATICLAN AND BORACAY SHALL ADVERSELY AFFECT THE FRAIL ECOLOGICAL BALANCE OF THE AREA.[68]

Petitioner objects to respondent Province's classification of the reclamation project as single instead of co-located, as "non-environmentally critical," and as a mere "rehabilitation" of the existing jetty port. Petitioner points out that the reclamation project is on two sites (which are situated on the opposite sides of Tabon Strait, about 1,200 meters apart):

· 36.82 hectares – Site 1, in Bgy. Caticlan

· 3.18 hectares – Site 2, in Manoc-manoc, Boracay Island[69]

Phase 1, which was started in December 2010 without the necessary permits,[70] is located on the Caticlan side of a narrow strait separating mainland Aklan from Boracay. In the implementation of the project, respondent Province obtained only an ECC to conduct Phase 1, instead of an ECC on the entire 40 hectares. Thus, petitioner argues that respondent Province abused and exploited the **Revised Procedural Manual** for **DENR Administrative Order No. 30, Series of 2003 (DENR DAO 2003-30)**[71] relating to the acquisition of an ECC by:

1. Declaring the reclamation project under "**Group II Projects-Non-ECP (environmentally critical project) in ECA (environmentally critical area) based on the type and size of the area**," and

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[68] *Id.* at 13.

[69] *Id.* at 12.

[70] *Id.*

[71] The Implementing Rules and Regulations of Presidential Decree No. 1586, which established The Philippine Environment Impact Statement System (PEISS).

2. Failing to declare the reclamation project as a co-located project application which would have required the Province to submit a **Programmatic Environmental Impact Statement (PEIS)**[72] or **Programmatic Environmental [Performance] Report Management Plan (PE[P]RMP)**.[73] (Emphases ours.)

Petitioner further alleges that the Revised Procedural Manual (on which the classification above is based, which merely requires an Environmental Impact Statement [EIS] for Group II projects) is patently *ultra vires*, and respondent DENR-EMB RVI committed grave abuse of discretion because the laws on EIS, namely, Presidential Decree Nos. 1151 and 1586, as well as Presidential Proclamation No. 2146, clearly indicate that projects in environmentally critical areas are to be immediately considered environmentally critical. **Petitioner complains that respondent Province applied for an ECC only for Phase 1; hence, unlawfully evading the requirement that co-located projects**[74] **within Environmentally Critical Areas (ECAs) must submit a PEIS and/or a PEPRMP**.

Petitioner argues that respondent Province fraudulently classified and misrepresented the project as a Non-ECP in an ECA, and as a single project instead of a co-located one. The impact assessment allegedly performed gives a patently erroneous

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[72] Programmatic Environmental Impact Statement (PEIS) - documentation of comprehensive studies on environmental baseline conditions of a contiguous area. It also includes an assessment of the carrying capacity of the area to absorb impacts from co-located projects such as those in industrial estates or economic zones (ecozones). (DENR DAO 2003-30, Section 3[v].)

[73] *Rollo*, p. 15; Programmatic Environmental Performance Report and Management Plan (PEPRMP) - documentation of actual cumulative environmental impacts of co-located projects with proposals for expansion. The PEPRMP should also describe the effectiveness of current environmental mitigation measures and plans for performance improvement. (DENR DAO 2003-30, Section 3[w].)

[74] Projects or series of similar projects or a project subdivided to several phases and/or stages by the same proponent located in contiguous areas. (DENR DAO 2003-30, Section 3[b].)

and wrongly-premised appraisal of the possible environmental impact of the reclamation project. Petitioner contends that respondent Province's choice of classification was designed to avoid a comprehensive impact assessment of the reclamation project.

Petitioner further contends that respondent DENR-EMB RVI willfully and deliberately disregarded its duty to ensure that the environment is protected from harmful developmental projects because it allegedly performed only a cursory and superficial review of the documents submitted by the respondent Province for an ECC, failing to note that all the information and data used by respondent Province in its application for the ECC were all dated and not current, as data was gathered in the late 1990s for the ECC issued in 1999 for the first jetty port. Thus, petitioner alleges that respondent DENR-EMB RVI ignored the environmental impact to Boracay, which involves changes in the structure of the coastline that could contribute to the changes in the characteristics of the sand in the beaches of both Caticlan and Boracay.

Petitioner insists that reclamation of land at the Caticlan side will unavoidably adversely affect the Boracay side and notes that the declared objective of the reclamation project is for the exploitation of Boracay's tourist trade, since the project is intended to enhance support services thereto. But, petitioner argues, the primary reason for Boracay's popularity is its white-sand beaches which will be negatively affected by the project.

Petitioner alleges that respondent PRA had required respondent Province to obtain the favorable endorsement of the LGUs of Barangay Caticlan and Malay Municipality pursuant to the consultation procedures as required by the Local Government Code.[75] Petitioner asserts that the reclamation project is in violation not only of laws on EIS but also of the Local Government Code as respondent Province failed to enter into proper consultations with the concerned LGUs. In fact, the *Liga ng*

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[75] *Rollo*, pp. 167-168.

mga Barangay-Malay Chapter also expressed strong opposition against the project.[76]

Petitioner cites Sections 26 and 27 of the Local Government Code, which require consultations if the project or program may cause pollution, climactic change, depletion of non-renewable resources, *etc*. According to petitioner, respondent Province ignored the LGUs' opposition expressed as early as 2008. Not only that, respondent Province belatedly called for public "consultation meetings" on June 17 and July 28, 2010, after an ECC had already been issued and the MOA between respondents PRA and Province had already been executed. As the petitioner saw it, these were not consultations but mere "project presentations."

Petitioner claims that respondent Province, aided and abetted by respondents PRA and DENR-EMB, ignored the spirit and letter of the Revised Procedural Manual, intended to implement the various regulations governing the Environmental Impact Assessments (EIAs) to ensure that developmental projects are in line with sustainable development of natural resources. The project was conceptualized without considering alternatives.

Further, as to its allegation that respondent Province failed to perform a full EIA, petitioner argues that while it is true that as of now, only the Caticlan side has been issued an ECC, the entire project involves the Boracay side, which should have been considered a co-located project. **Petitioner claims that any project involving Boracay requires a full EIA since it is an ECA**. Phase 1 of the project will affect Boracay and Caticlan as they are separated only by a narrow strait; thus, it should be considered an ECP. Therefore, the ECC and permit issued must be invalidated and cancelled.

Petitioner contends that a study shows that the flow of the water through a narrower channel due to the reclamation project will likely divert sand transport off the southwest part of Boracay, whereas the characteristic coast of the Caticlan side of the strait

[76] *Id.* at 25.

indicate stronger sediment transport.[77] The white-sand beaches of Boracay and its surrounding marine environment depend upon the natural flow of the adjacent waters.

Regarding its claim that the reclamation of land bordering the strait between Caticlan and Boracay shall adversely affect the frail ecological balance of the area, petitioner submits that while the study conducted by the MERF-UPMSI only considers the impact of the reclamation project on the land, it is undeniable that it will also adversely affect the already frail ecological balance of the area. The effect of the project would have been properly assessed if the proper EIA had been performed prior to any implementation of the project.

According to petitioner, respondent Province's intended purposes do not prevail over its duty and obligation to protect the environment. Petitioner believes that rehabilitation of the Jetty Port may be done through other means.

In its **Comment**[78] dated June 21, 2011, respondent Province claimed that application for reclamation of **40 hectares** is advantageous to the Provincial Government considering that its filing fee would only cost Php20,000.00 plus Value Added Tax (VAT) which is also the minimum fee as prescribed under Section 4.2 of Administrative Order No. 2007-2.[79]

Respondent Province considers the instant petition to be premature; thus, it must necessarily fail for lack of cause of action due to the failure of petitioner to fully exhaust the available administrative remedies even before seeking judicial relief. According to respondent Province, the petition primarily assailed the decision of respondent DENR-EMB RVI in granting the ECC for the subject project consisting of **2.64 hectares** and sought the cancellation of the ECC for alleged failure of

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[77] *Id.* at 30.

[78] *Id.* at 396-443.

[79] IRR of E.O. No. 532 dated June 24, 2006, entitled "Delegating to the [respondent PRA] the Power to Approve Reclamation Projects."

respondent Province to submit proper documentation as required for its issuance. Hence, the grounds relied upon by petitioner can be addressed within the confines of administrative processes provided by law.

Respondent Province believes that under Section 5.4.3 of DENR Administrative Order No. 2003-30 (DAO 2003-30),[80] the issuance of an ECC[81] is an official decision of DENR-EMB RVI on the application of a project proponent.[82] It cites **Section 6 of DENR DAO 2003-30**, which provides for a remedy available to the party aggrieved by the final decision on the proponent's ECC applications.

Respondent Province argues that the instant petition is anchored on a wrong premise that results to petitioner's unfounded fears and baseless apprehensions. It is respondent Province's contention that its 2.64-hectare reclamation project is considered as a "stand alone project," separate and independent from the approved area of 40 hectares. Thus, petitioner should have observed the difference between the "future development plan" of respondent Province from its "actual project" being undertaken.[83]

Respondent Province clearly does not dispute the fact that it revised its original application to respondent PRA from 2.64 hectares to 40 hectares. However, it claims that such revision is part of its **future plan**, and implementation thereof is "still subject to availability of funds, independent scientific environmental study, separate application of ECC and notice to proceed to be issued by respondent PRA."[84]

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[80] Implementing Rules and Regulations for the Philippine Environmental Impact Statement System.

[81] An ECC shall contain the scope and limitations of the approved activities, as well as conditions to ensure compliance with the Environmental Management Plan.

[82] *Rollo*, pp. 414-415.

[83] *Id.* at 418.

[84] *Id.*

Respondent Province goes on to claim that "[p]etitioner's version of the Caticlan jetty port expansion project is a bigger project which is still at the conceptualization stage. Although this project was described in the **Notice to Proceed** issued by respondent PRA to have two phases, 36.82 hectares in Caticlan and 3.18 hectares in Boracay [Island,] it is totally different from the [ongoing] Caticlan jetty port expansion project."[85]

Respondent Province says that the Accomplishment Report[86] of its Engineering Office would attest that the actual project consists of 2.64 hectares only, as originally planned and conceptualized, which was even reduced to 2.2 hectares due to some construction and design modifications.

Thus, respondent Province alleges that from its standpoint, its capability to reclaim is limited to 2.64 hectares only, based on respondent PRA's Evaluation Report[87] dated October 18, 2010, which was in turn the basis of the issuance of the Notice to Proceed dated October 19, 2010, because the project's financial component is ₱260,000,000.00 only. Said Evaluation Report indicates that the implementation of the other phases of the project including site 2, which consists of the other portions of the 40-hectare area that includes a portion in Boracay, is still within the 10-year period and will depend largely on the availability of funds of respondent Province.[88]

So, even if respondent PRA approved an area that would total up to 40 hectares, it was divided into phases in order to determine the period of its implementation. Each phase was separate and independent because the source of funds was also separate. The required documents and requirements were also specific for each phase. The entire approved area of 40 hectares could be implemented within a period of 10 years but this would depend solely on the availability of funds.[89]

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[85] *Id.*

[86] *Id.* at 662-682.

[87] *Id.* at 156-165.

[88] *Id.* at 419.

[89] *Id.*

As far as respondent Province understands it, additional reclamations not covered by the ECC, which only approved 2.64 hectares, should undergo another EIA. If respondent Province intends to commence the construction on the other component of the 40 hectares, then it agrees that it is mandated to secure a new ECC.[90]

Respondent Province admits that it dreamt of a 40-hectare project, even if it had originally planned and was at present only financially equipped and legally compliant to undertake 2.64 hectares of the project, and only as an expansion of its old jetty port.[91]

Respondent Province claims that it has complied with all the necessary requirements for securing an ECC. On the issue that the reclamation project is within an ECA requiring the performance of a full or programmatic EIA, respondent Province reiterates that the idea of expanding the area to 40 hectares is only a future plan. It only secured an ECC for 2.64 hectares, based on the limits of its funding and authority. From the beginning, its intention was to rehabilitate and expand the existing jetty port terminal to accommodate an increasing projected traffic. The subject project is specifically classified under DENR DAO 2003-30 on its Project Grouping Matrix for Determination of EIA Report Type considered as Minor Reclamation Projects falling under Group II — Non ECP in an ECA. Whether 2.64 or 40 hectares in area, the subject project falls within this classification.

Consequently, respondent Province claims that petitioner erred in considering the ongoing reclamation project at Caticlan, Malay, Aklan, as co-located within an ECA.

Respondent Province, likewise argues that the 2.64-hectare project is not a component of the approved 40-hectare area as it is originally planned for the expansion site of the existing

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[90] *Id.* at 420.

[91] *Id.*

Caticlan jetty port. At present, it has no definite conceptual construction plan of the said portion in Boracay and it has no financial allocation to initiate any project on the said Boracay portion.

Furthermore, respondent Province contends that the present project is located in Caticlan while the alleged component that falls within an ECA is in Boracay. Considering its geographical location, the two sites cannot be considered as a contiguous area for the reason that it is separated by a body of water — a strait that traverses between the mainland Panay wherein Caticlan is located and Boracay. Hence, it is erroneous to consider the two sites as a co-located project within an ECA. Being a "stand alone project" and an expansion of the existing jetty port, respondent DENR-EMB RVI had required respondent Province to perform an EPRMP to secure an ECC as sanctioned by Item No. 8(b), page 7 of DENR DAO 2003-30.

Respondent Province contends that even if, granting for the sake of argument, it had erroneously categorized its project as Non-ECP in an ECA, this was not a final determination. Respondent DENR-EMB RVI, which was the administrator of the EIS system, had the final decision on this matter. Under DENR DAO 2003-30, an application for ECC, even for a Category B2 project where an EPRMP is conducted, shall be subjected to a review process. Respondent DENR-EMB RVI had the authority to deny said application. Its Regional Director could either issue an ECC for the project or deny the application. He may also require a more comprehensive EIA study. The Regional Director issued the ECC based on the EPRMP submitted by respondent Province and after the same went through the EIA review process.

Thus, respondent Province concludes that petitioner's allegation of this being a "co-located project" is premature if not baseless as the bigger reclamation project is still on the conceptualization stage. Both respondents PRA and Province are yet to complete studies and feasibility studies to embark on another project.

Respondent Province claims that an ocular survey of the reclamation project revealed that it had worked within the limits of the ECC.[92]

With regard to petitioner's allegation that respondent Province failed to get the favorable endorsement of the concerned LGUs in violation of the Local Government Code, respondent Province contends that consultation *vis-à-vis* the favorable endorsement from the concerned LGUs as contemplated under the Local Government Code are merely tools to seek advice and not a power clothed upon the LGUs to unilaterally approve or disapprove any government projects. Furthermore, such endorsement is not necessary for projects falling under Category B2 unless required by the DENR-EMB RVI, under Section 5.3 of DENR DAO 2003-30.

Moreover, **DENR Memorandum Circular No. 08-2007** no longer requires the issuance of permits and certifications as a pre-requisite for the issuance of an ECC. Respondent Province claims to have conducted consultative activities with LGUs in connection with Sections 26 and 27 of the Local Government Code. The vehement and staunch objections of both the *Sangguniang Barangay* of Caticlan and the *Sangguniang Bayan* of Malay, according to respondent Province, were not rooted on its perceived impact upon the people and the community in terms of environmental or ecological balance, but due to an alleged conflict with their "principal position to develop, utilize and reap benefits from the natural resources found within its jurisdiction."[93] Respondent Province argues that these concerns are not within the purview of the Local Government Code. Furthermore, the Preliminary Geohazard Assessment Report and EPRMP as well as *Sangguniang Panlalawigan* Resolution Nos. 2010-022 and 2010-034 should address any environmental issue they may raise.

Respondent Province posits that the spirit and intent of Sections 26 and 27 of the Local Government Code is to create

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[92] *Id.* at 683-688.

[93] *Id.* at 430.

an avenue for parties, the proponent and the LGU concerned, to come up with a tool in harmonizing its views and concerns about the project. The duty to consult does not automatically require adherence to the opinions during the consultation process. It is allegedly not within the provisions to give the full authority to the LGU concerned to unilaterally approve or disapprove the project in the guise of requiring the proponent of securing its favorable endorsement. In this case, petitioner is calling a halt to the project without providing an alternative resolution to harmonize its position and that of respondent Province.

Respondent Province claims that the EPRMP[94] would reveal that:

> [T]he area fronting the project site is practically composed of sand. Dead coral communities may be found along the vicinity. Thus, fish life at the project site is quite scarce due to the absence of marine support systems like the sea grass beds and coral reefs.
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> x x x [T]here is no coral cover at the existing Caticlan jetty port. [From] the deepest point of jetty to the shallowest point, there was no more coral patch and the substrate is sandy. It is of public knowledge that the said foreshore area is being utilized by the residents ever since as berthing or anchorage site of their motorized banca. There will be no possibility of any coral development therein because of its continuous utilization. Likewise, the activity of the strait that traverses between the main land Caticlan and Boracay Island would also be a factor of the coral development. Corals [may] only be formed within the area if there is scientific human intervention, which is absent up to the present.

In light of the foregoing premise, it casts serious doubt on petitioner's allegations pertaining to the environmental effects of Respondent-LGU's 2.64 hectares reclamation project. The alleged environmental impact of the subject project to the beaches of Boracay Island remains unconfirmed. Petitioner had unsuccessfully proven

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[94] The EPRMP was based on the study conducted by the Bureau of Fisheries and Aquatic Resources (BFAR) dated **August 27, 1999** (The Observations on the Floor Bottom and its Marine Resources at the Proposed Jetty Ports at Caticlan and Manok-manok, Boracay, Aklan). (*Rollo*, pp. 433-434.)

that the project would cause imminent, grave and irreparable injury to the community.[95]

Respondent Province prayed for the dissolution of the TEPO, claiming that the rules provide that the TEPO may be dissolved if it appears after hearing that its issuance or continuance would cause irreparable damage to the party or person enjoined, while the applicant may be fully compensated for such damages as he may suffer and subject to the posting of a sufficient bond by the party or person enjoined. Respondent Province contends that the TEPO would cause irreparable damage in two aspects:

a. Financial dislocation and probable bankruptcy; and

b. Grave and imminent danger to safety and health of inhabitants of immediate area, including tourists and passengers serviced by the jetty port, brought about by the abrupt cessation of development works.

As regards financial dislocation, the arguments of respondent Province are summarized below:

1. This project is financed by bonds which the respondent Province had issued to its creditors as the financing scheme in funding the present project is by way of credit financing through bond flotation.

2. The funds are financed by a Guarantee Bank – getting payment from bonds, being sold to investors, which in turn would be paid by the income that the project would realize or incur upon its completion.

3. While the project is under construction, respondent Province is appropriating a portion of its Internal Revenue Allotment (IRA) budget from the 20% development fund to defray the interest and principal amortization due to the Guarantee Bank.

4. The respondent Province's IRA, regular income, and/or such other revenues or funds, as may be permitted by law, are being used as security for the payment of the said loan used for the project's construction.

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[95] *Rollo*, pp. 433-434.

5. The inability of the subject project to earn revenues as projected upon completion will compel the Province to shoulder the full amount of the obligation, starting from year 2012.
6. Respondent province is mandated to assign its IRA, regular income and/or such other revenues or funds as permitted by law; if project is stopped, detriment of the public welfare and its constituents.[96]

As to the second ground for the dissolution of the TEPO, respondent Province argues:

1. Non-compliance with the guidelines of the ECC may result to environmental hazards most especially that reclaimed land if not properly secured may be eroded into the sea.
2. The construction has accomplished 65.26 percent of the project. The embankment that was deposited on the project has no proper concrete wave protection that might be washed out in the event that a strong typhoon or big waves may occur affecting the strait and the properties along the project site. It is already the rainy season and there is a big possibility of typhoon occurrence.
3. If said incident occurs, the aggregates of the embankment that had been washed out might be transferred to the adjoining properties which could affect its natural environmental state.
4. It might result to the total alteration of the physical landscape of the area attributing to environmental disturbance.
5. The lack of proper concrete wave protection or revetment would cause the total erosion of the embankment that has been dumped on the accomplished area.[97]

Respondent Province claims that petitioner will not stand to suffer immediate, grave and irreparable injury or damage from the ongoing project. The petitioner's perceived fear of environmental destruction brought about by its erroneous

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[96] *Id.* at 436-437.

[97] *Id.* at 438.

appreciation of available data is unfounded and does not translate into a matter of extreme urgency. Thus, under the Rules of Procedure on Environmental Cases, the TEPO may be dissolved.

Respondent PRA filed its **Comment**[98] on June 22, 2011. It alleges that on June 24, 2006, Executive Order No. 543 delegated the power "to approve reclamation projects to respondent PRA through its governing Board, subject to compliance with existing laws and rules and further subject to the condition that reclamation contracts to be executed with any person or entity (must) go through public bidding."

Section 4 of respondent PRA's Administrative Order No. 2007-2 provides for the approval process and procedures for various reclamation projects to be undertaken. Respondent PRA prepared an Evaluation Report on November 5, 2009[99] regarding Aklan's proposal to increase its project to 40 hectares.

Respondent PRA contends that it was only after respondent Province had complied with the requirements under the law that respondent PRA, through its Board of Directors, approved the proposed project under its **Board Resolution No. 4094**.[100] In the same Resolution, respondent PRA Board authorized the General Manager/CEO to execute a MOA with the Aklan provincial government to implement the reclamation project under certain conditions.

The issue for respondent PRA was whether or not it approved the respondent Province's 2.64-hectare reclamation project proposal in willful disregard of alleged "numerous irregularities" as claimed by petitioner.[101]

Respondent PRA claims that its approval of the Aklan Reclamation Project was in accordance with law and its rules. Indeed, it issued the notice to proceed only after Aklan had

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[98] *Id.* at 237-252.

[99] *Id.* at 285-294.

[100] *Id.* at 295-296.

[101] *Id.* at 243.

complied with all the requirements imposed by existing laws and regulations. It further contends that the 40 hectares involved in this project remains a plan insofar as respondent PRA is concerned. **What has been approved for reclamation by respondent PRA thus far is only the 2.64-hectare reclamation project**. Respondent PRA reiterates that it approved this reclamation project after extensively reviewing the legal, technical, financial, environmental, and operational aspects of the proposed reclamation.[102]

One of the conditions that respondent PRA Board imposed before approving the Aklan project was that no reclamation work could be started until respondent PRA has approved the detailed engineering plans/methodology, design and specifications of the reclamation. Part of the required submissions to respondent PRA includes the drainage design as approved by the Public Works Department and the ECC as issued by the DENR, all of which the Aklan government must submit to respondent PRA before starting any reclamation works.[103] Under Article IV(B)(3) of the MOA between respondent PRA and Aklan, the latter is required to submit, apart from the ECC, the following requirements for respondent PRA's review and approval, as basis for the issuance of a Notice to Proceed (NTP) for Reclamation Works:

(a) Land-form plan with technical description of the metes and bounds of the same land-form;

(b) Final master development and land use plan for the project;

(c) Detailed engineering studies, detailed engineering design, plans and specification for reclamation works, reclamation plans and methodology, plans for the sources of fill materials;

(d) Drainage plan *vis-a-vis* the land-form approved by DPWH Regional Office to include a cost effective and efficient drainage system as may be required based on the results of the studies;

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[102] *Id.* at 243-244.

[103] *Id.* at 244.

(e) Detailed project cost estimates and quantity take-off per items of work of the rawland reclamation components, e.g. reclamation containment structures and soil consolidation;

(f) Organizational chart of the construction arm, manning table, equipment schedule for the project; and,

(g) Project timetable (PERT/CPM) for the entire project construction period.[104]

In fact, respondent PRA further required respondent Province under Article IV (B)(24) of the MOA to strictly comply with all conditions of the DENR-EMB-issued ECC "*and/or comply with pertinent local and international commitments of the Republic of the Philippines to ensure environmental protection*."[105]

In its August 11, 2010 letter,[106] respondent PRA referred for respondent Province's appropriate action petitioner's Resolution 001, series of 2010 and Resolution 46, series of 2010, of the *Sangguniang Bayan* of Malay. Governor Marquez wrote respondent PRA[107] on September 16, 2010 informing it that respondent Province had already met with the different officials of Malay, furnishing respondent PRA with the copies of the minutes of such meetings/presentations. Governor Marquez also assured respondent PRA that it had complied with the consultation requirements as far as Malay was concerned.

Respondent PRA claims that in evaluating respondent Province's project and in issuing the necessary NTP for Phase 1 of Site 1 (2.64 hectares) of the Caticlan Jetty Port expansion and modernization, respondent PRA gave considerable weight to all pertinent issuances, especially the ECC issued by DENR-EMB RVI.[108] Respondent PRA stresses that its earlier approval of the 40-hectare reclamation project under its Resolution

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[104] *Id.* at 245.

[105] *Id.* Emphasis in the original.

[106] *Id.* at 328-329.

[107] *Id.* at 330-331.

[108] *Id.* at 247.

No. 4094, series of 2010, still requires a second level of compliance requirements from the proponent. Respondent Province could not possibly begin its reclamation works since respondent PRA had yet to issue an NTP in its favor.

Respondent PRA alleges that prior to the issuance of the NTP to respondent Province for Phase 1 of Site 1, it required the submission of the following pre-construction documents:

(a) Land-Form Plan (with technical description);

(b) Site Development Plan/Land Use Plan including,

  (i) sewer and drainage systems and

  (ii) waste water treatment;

(c) Engineering Studies and Engineering Design;

(d) Reclamation Methodology;

(e) Sources of Fill Materials, and,

(f) The ECC.[109]

Respondent PRA claims that it was only after the evaluation of the above submissions that it issued to respondent Province the NTP, limited to the 2.64-hectare reclamation project. Respondent PRA even emphasized in its evaluation report that should respondent Province pursue the other phases of its project, it would still require the submission of an ECC for each succeeding phases before the start of any reclamation works.[110]

Respondent PRA, being the national government's arm in regulating and coordinating all reclamation projects in the Philippines — a mandate conferred by law — manifests that it is incumbent upon it, in the exercise of its regulatory functions, to diligently evaluate, based on its technical competencies, all reclamation projects submitted to it for approval. Once the reclamation project's requirements set forth by law and related

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[109] *Id.*

[110] *Id.*

rules have been complied with, respondent PRA is mandated to approve the same. Respondent PRA claims, "[w]ith all the foregoing rigorous and detailed requirements submitted and complied with by Aklan, and the attendant careful and meticulous technical and legal evaluation by respondent PRA, it cannot be argued that the reclamation permit it issued to Aklan is 'founded upon numerous irregularities;' as recklessly and baselessly imputed by BFI."[111]

In its **Comment**[112] dated July 1, 2011, respondent DENR-EMB RVI asserts that its act of issuing the ECC certifies that the project had undergone the proper EIA process by assessing, among others, the direct and indirect impact of the project on the biophysical and human environment and ensuring that these impacts are addressed by appropriate environmental protection and enhancement measures, pursuant to Presidential Decree No. 1586, the Revised Procedural Manual for DENR DAO 2003-30, and the existing rules and regulations.[113]

Respondent DENR-EMB RVI stresses that the declaration in 1978 of several islands, which includes Boracay as tourist zone and marine reserve under Proclamation No. 1801, has no relevance to the expansion project of Caticlan Jetty Port and Passenger Terminal for the very reason that the project is not located in the Island of Boracay, being located in Barangay Caticlan, Malay, which is not a part of mainland Panay. It admits that the site of the subject jetty port falls within the ECA under Proclamation No. 2146 (1981), being within the category of a water body. This was why respondent Province had faithfully secured an ECC pursuant to the Revised Procedural Manual for DENR DAO 2003-30 by submitting the necessary documents as contained in the EPRMP on March 19, 2010, which were the bases in granting ECC No. R6-1003-096-7100 (amended) on April 27, 2010 for the expansion of Caticlan Jetty Port and Passenger Terminal, covering 2.64 hectares.[114]

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[111] *Id.* at 248.

[112] *Id.* at 731-746.

[113] *Id.* at 732.

[114] *Id.*

Respondent DENR-EMB RVI claims that the issues raised by the LGUs of Caticlan and Malay had been considered by the DENR-Provincial Environment and Natural Resources Office (PENRO), Aklan in the issuance of the **Order**[115] dated January 26, 2010, disregarding the claim of the Municipality of Malay, Aklan of a portion of the foreshore land in Caticlan covered by the application of the Province of Aklan; and another Order of Rejection dated February 5, 2010 of the two foreshore applications, namely FLA No. 060412-43A and FLA No. 060412-43B, of the Province of Aklan.[116]

Respondent DENR-EMB RVI contends that the supporting documents attached to the EPRMP for the issuance of an ECC were merely for the expansion and modernization of the old jetty port in Barangay Caticlan covering 2.64 hectares, and not the 40-hectare reclamation project in Barangay Caticlan and Boracay. The previous letter of respondent Province dated October 14, 2009 addressed to DENR-EMB RVI Regional Executive Director, would show that the reclamation project will cover approximately 2.6 hectares.[117] This application for ECC was not officially accepted due to lack of requirements or documents.

Although petitioner insists that the project involves 40 hectares in two sites, respondent DENR-EMB RVI looked at the documents submitted by respondent Province and saw that the subject area covered by the ECC application and subsequently granted with ECC-R6-1003-096-7100 consists only of 2.64 hectares; hence, respondent DENR-EMB RVI could not comment on the excess area.[118]

Respondent DENR-EMB RVI admits that as regards the classification of the 2.64-hectare reclamation project under "Non ECP in ECA," this does not fall within the definition

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[115] *Id.* at 845.

[116] *Id.* at 846.

[117] *Id.* at 847.

[118] *Id.* at 737.

of a co-located project because the subject project is merely an expansion of the old Caticlan Jetty Port, which had a previously issued ECC (ECC No. 0699-1012-171 on October 12, 1999). Thus, only an EPRMP, not a PEIS or PEPRMP, is required.[119]

Respondent Province submitted to respondent DENR-EMB RVI the following documents contained in the EPRMP:

a. The Observations on the Floor Bottom and its Marine Resources at the Proposed Jetty Ports at Caticlan and Manok-manok, Boracay, Aklan, conducted in 1999 by the Bureau of Fisheries Aquatic Resources (BFAR) Central Office, particularly in Caticlan site, and

b. The Study conducted by Dr. Ricarte S. Javelosa, Ph. D, Mines and Geosciences Bureau (MGB), Central Office and Engr. Roger Esto, Provincial Planning and Development Office (PPDO), Aklan in 2009 entitled "Preliminary Geo-hazard Assessment for the Enhancement of the Existing Caticlan Jetty Port Terminal through Beach Zone Restoration and Protective Marina Development in Malay, Aklan."

Respondent DENR-EMB RVI claims that the above two scientific studies were enough for it to arrive at a best professional judgment to issue an amended ECC for the Aklan Marina Project covering 2.64 hectares.[120] Furthermore, to confirm that the 2.64-hectare reclamation has no significant negative impact with the surrounding environment particularly in Boracay, a more recent study was conducted, and respondent DENR-EMB RVI alleges that "[i]t is very important to highlight that the input data in the [MERF- UPMSI] study utilized the [40-hectare] reclamation and [200-meter] width seaward using the tidal and wave modelling."[121] The study showed that the reclamation of 2.64 hectares had no effect to the hydrodynamics of the strait between Barangay Caticlan and Boracay.

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[119] *Id.*

[120] *Id.* at 739.

[121] *Id.* at 739-740.

Respondent DENR-EMB RVI affirms that no permits and/or clearances from National Government Agencies (NGAs) and LGUs are required pursuant to the DENR Memorandum Circular No. 2007-08, entitled "Simplifying the Requirements of ECC or CNC Applications;" that the EPRMP was evaluated and processed based on the Revised Procedural Manual for DENR DAO 2003-30 which resulted to the issuance of ECC-R6-1003-096-7100; and that the ECC is not a permit *per se* but a planning tool for LGUs to consider in its decision whether or not to issue a local permit.[122]

Respondent DENR-EMB RVI concludes that in filing this case, petitioner had bypassed and deprived the DENR Secretary of the opportunity to review and/or reverse the decision of his subordinate office, EMB RVI pursuant to the Revised Procedural Manual for DENR DAO 2003-30. There is no "extreme urgency that necessitates the granting of *Mandamus* or issuance of TEPO that put to balance between the life and death of the petitioner or present grave or irreparable damage to environment."[123]

After receiving the above Comments from all the respondents, the Court set the case for oral arguments on September 13, 2011.

Meanwhile, on September 8, 2011, respondent Province filed a **Manifestation and Motion**[124] praying for the dismissal of the petition, as the province was no longer pursuing the implementation of the succeeding phases of the project due to its inability to comply with Article IV B.2(3) of the MOA; hence, the issues and fears expressed by petitioner had become moot. Respondent Province alleges that the petition is "premised on a serious misappreciation of the real extent of the contested reclamation project" as certainly the ECC covered only a total of 2,691 square meters located in Barangay Caticlan, Malay, Aklan; and although the MOA spoke of 40 hectares, respondent

[122] *Id.* at 742.

[123] *Id.* at 744-745.

[124] *Id.* at 999-1004.

Province's submission of documents to respondent PRA pertaining to said area was but the first of a two-step process of approval. Respondent Province claims that its failure to comply with the documentary requirements of respondent PRA within the period provided, or 120 working days from the effectivity of the MOA, indicated its waiver to pursue the remainder of the project.[125] Respondent Province further manifested:

Confirming this in a letter dated 12 August 2011,[126] Governor Marquez informed respondent PRA that the Province of Aklan is no longer "pursuing the implementation of the succeeding phases of the project with a total area of 37.4 hectares for our inability to comply with Article IV B.2 (3) of the MOA; hence, the existing MOA will cover only the project area of 2.64 hectares."

In his reply-letter dated August 22, 2011,[127] **[respondent] PRA General Manager informed Governor Marquez that the**

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[125] *Id.* at 999-1001.

[126] *Id.* at 1008. Attached as Annex "1" is the following letter dated August 12, 2011 from Governor Marquez to Peter Anthony A. Abaya, General Manager and CEO of respondent PRA:

This refers to our [MOA] dated May 17, 2010 which, among others, required the Province of Aklan to submit requirements within [120] days from effectivity of the said MOA for review and approval by the [respondent] PRA as basis for the issuance of [NTP] for reclamation works pertaining to the remaining phases of the project consisting of about 37.4 hectares, more or less.

In this connection, please be informed that we are no longer pursuing the implementation of the succeeding phases of the project with a total area of 37.4 hectares for our inability to comply with Article IV B.2 (3) of the MOA; hence, our existing MOA will cover only the project area of 2.64 hectares.

[127] *Id.* at 1009. Annex 2: letter from Abaya dated August 22, 2011, quoted below:

Based on our regular monitoring of the Project, the [respondent] PRA has likewise noted that the Province has not complied with the requirements for the other phases of the Project within the period provided under the MOA. Considering that the period within which to comply with the said provision of the MOA had already lapsed and that you acknowledged your inability to comply with the same, kindly be informed that the Aklan Beach Zone Restoration and Protection Marina Development Project will now be confined to the reclamation and development of the 2.64 hectares, more or less. Our Board of Directors, in its meeting of August 18, 2011, has given us authority to confirm your position.

[respondent] PRA Board of Directors has given [respondent] PRA the authority to confirm the position of the Province of Aklan that the "Aklan Beach Zone Restoration and Protection Marine Development Project will now be confined to the reclamation and development of the 2.64 hectares, more or less.

It is undisputed from the start that the coverage of the Project is in fact limited to 2.64 hectares, as evidenced by the NTP issued by respondent PRA. The recent exchange of correspondence between respondents Province of Aklan and [respondent] PRA further confirms the intent of the parties all along. Hence, the Project subject of the petition, without doubt, covers only 2.64 and not 40 hectares as feared. This completely changes the extent of the Project and, consequently, moots the issues and fears expressed by the petitioner.[128] (Emphasis supplied.)

Based on the above contentions, respondent Province prays that the petition be dismissed as no further justiciable controversy exists since the feared adverse effect to Boracay Island's ecology had become academic all together.[129]

The Court heard the parties' oral arguments on September 13, 2011 and gave the latter twenty (20) days thereafter to file their respective memoranda.

Respondent Province filed another **Manifestation and Motion**,[130] which the Court received on April 2, 2012 stating that:

1. it had submitted the required documents and studies to respondent DENR-EMB RVI before an ECC was issued in its favor;
2. it had substantially complied with the requirements provided under PRA Administrative Order 2007-2, which compliance caused respondent PRA's Board to approve the reclamation project; and

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[128] *Id.* at 1002-1004.

[129] *Id.* at 1004.

[130] *Rollo*, pp. 1295-1304.

3. it had conducted a series of "consultative [presentations]" relative to the reclamation project before the LGU of Malay Municipality, the Barangay Officials of Caticlan, and stakeholders of Boracay Island.

Respondent Province further manifested that the **Barangay Council of Caticlan**, Malay, Aklan enacted on February 13, 2012 **Resolution No. 003**, series of 2012, entitled "Resolution Favorably Endorsing the 2.6 Hectares Reclamation/MARINA Project of the Aklan Provincial Government at Caticlan Coastline"[131] and that the ***Sangguniang Bayan* of the Municipality of Malay**, Aklan enacted **Resolution No. 020**, series of 2012, entitled "Resolution Endorsing the 2.6 Hectares Reclamation Project of the Provincial Government of Aklan Located at Barangay Caticlan, Malay, Aklan."[132]

Respondent Province claims that its compliance with the requirements of respondents DENR-EMB RVI and PRA that led to the approval of the reclamation project by the said government agencies, as well as the recent enactments of the Barangay Council of Caticlan and the *Sangguniang Bayan* of the Municipality of Malay favorably endorsing the said project, had "categorically addressed all the issues raised by the Petitioner in its Petition dated June 1, 2011." Respondent Province prays as follows:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that after due proceedings, the following be rendered:

1. The Temporary Environmental Protection Order (TEPO) it issued on June 7, 2011 **be lifted/dissolved.**

2. The instant petition **be dismissed for being moot and academic.**

3. Respondent Province of Aklan prays for such other reliefs that are just and equitable under the premises. (Emphases in the original.)

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[131] *Id.* at 1299.

[132] *Id.* at 1301-1302.

ISSUES

The Court will now resolve the following issues:

I. Whether or not the petition should be dismissed for having been rendered moot and academic

II. Whether or not the petition is premature because petitioner failed to exhaust administrative remedies before filing this case

III. Whether or not respondent Province failed to perform a full EIA as required by laws and regulations based on the scope and classification of the project

IV. Whether or not respondent Province complied with all the requirements under the pertinent laws and regulations

V. Whether or not there was proper, timely, and sufficient public consultation for the project

DISCUSSION

On the issue of whether or not the Petition should be dismissed for having been rendered moot and academic

Respondent Province claims in its Manifestation and Motion filed on April 2, 2012 that with the alleged favorable endorsement of the reclamation project by the *Sangguniang Barangay* of Caticlan and the *Sangguniang Bayan* of the Municipality of Malay, all the issues raised by petitioner had already been addressed, and this petition should be dismissed for being moot and academic.

On the contrary, a close reading of the two LGUs' respective resolutions would reveal that they are not sufficient to render the petition moot and academic, as there are explicit conditions imposed that must be complied with by respondent Province. In Resolution No. 003, series of 2012, of the *Sangguniang Barangay* of Caticlan it is stated that "any vertical structures to

be constructed shall be subject for *barangay* endorsement."[133] Clearly, what the *barangay* endorsed was the reclamation only, and not the entire project that includes the construction of a commercial building and wellness center, and other tourism-related facilities. Petitioner's objections, as may be recalled, pertain not only to the reclamation *per se*, but also to the building to be constructed and the entire project's perceived ill effects to the surrounding environment.

Resolution No. 020, series of 2012, of the *Sangguniang Bayan* of Malay[134] is even more specific. It reads in part:

> ***WHEREAS***, noble it seems the reclamation project to the effect that it will generate scores of benefits for the Local Government of Malay in terms of income and employment for its constituents, but the fact cannot be denied that **the project will take its toll on the environment especially on the nearby fragile island of Boracay and the fact also remains that the project will eventually displace the local transportation operators/cooperatives**;
>
> ***WHEREAS***, considering the sensitivity of the project, this Honorable Body through the Committee where this matter was referred conducted several consultations/committee hearings with concerned departments and the private sector specifically Boracay Foundation, Inc. and they are **one in its belief that this Local Government Unit has never been against development so long as compliance with the law and proper procedures have been observed and that paramount consideration have been given to the environment lest we disturb the balance of nature to the end that progress will be brought to naught**;
>
> ***WHEREAS,*** time and again, to ensure a healthy intergovernmental relations, this August Body requires no less than transparency and faithful commitment from the Provincial Government of Aklan in the process of going through these improvements in the Municipality because it once fell prey to infidelities in matters of governance;
>
> ***WHEREAS,* as a condition for the grant of this endorsement and to address all issues and concerns, this Honorable Council**

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[133] *Id.* at 1299.

[134] *Id.* at 1301-1302.

necessitates a sincere commitment from the Provincial Government of Aklan to the end that:

1. To allocate an office space to LGU-Malay within the building in the reclaimed area;
2. To convene the Cagban and Caticlan Jetty Port Management Board before the resumption of the reclamation project;
3. That the reclamation project shall be limited only to 2.6 hectares in Barangay Caticlan and not beyond;
4. That the local transportation operators/cooperatives will not be displaced; and
5. **The Provincial Government of Aklan conduct a simultaneous comprehensive study on the environmental impact of the reclamation project especially during Habagat and Amihan seasons and put in place as early as possible mitigating measures on the effect of the project to the environment.**

WHEREAS, having presented these stipulations, **failure to comply herewith will leave this August Body no choice but to revoke this endorsement, hence faithful compliance of the commitment of the Provincial Government is highly appealed for[.]**[135] (Emphases added.)

The *Sangguniang Bayan* of Malay obviously imposed explicit conditions for respondent Province to comply with on pain of revocation of its endorsement of the project, including the need to conduct a comprehensive study on the environmental impact of the reclamation project, which is the heart of the petition before us. Therefore, the contents of the two resolutions submitted by respondent Province do not support its conclusion that the subsequent favorable endorsement of the LGUs had already addressed all the issues raised and rendered the instant petition moot and academic.

On the issue of failure to exhaust administrative remedies

Respondents, in essence, argue that the present petition should be dismissed for petitioner's failure to exhaust administrative

[135] *Id.*

remedies and even to observe the hierarchy of courts. Furthermore, as the petition questions the issuance of the ECC and the NTP, this involves factual and technical verification, which are more properly within the expertise of the concerned government agencies.

Respondents anchor their argument on Section 6, Article II of DENR DAO 2003-30, which provides:

Section 6. Appeal

Any party aggrieved by the final decision on the ECC / CNC applications may, within 15 days from receipt of such decision, file an appeal on the following grounds:

a. Grave abuse of discretion on the part of the deciding authority, or
b. Serious errors in the review findings.

The DENR may adopt alternative conflict/dispute resolution procedures as a means to settle grievances between proponents and aggrieved parties to avert unnecessary legal action. Frivolous appeals shall not be countenanced.

The proponent or any stakeholder may file an appeal to the following:

Deciding Authority	**Where to file the appeal**
EMB Regional Office Director	Office of the EMB Director
EMB Central Office Director	Office of the DENR Secretary
DENR Secretary	Office of the President

(Emphases supplied.)

Respondents argue that since there is an administrative appeal provided for, then petitioner is duty bound to observe the same and may not be granted recourse to the regular courts for its failure to do so.

We do not agree with respondents' appreciation of the applicability of the rule on exhaustion of administrative remedies in this case. We are reminded of our ruling in *Pagara v. Court of Appeals*,[136] which summarized our earlier decisions on the

[136] 325 Phil. 66 (1996).

procedural requirement of exhaustion of administrative remedies, to wit:

The rule regarding exhaustion of administrative remedies is not a hard and fast rule. It is not applicable (1) where the question in dispute is purely a legal one, or (2) where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction; or (3) where the respondent is a department secretary, whose acts as an alter ego of the President bear the implied or assumed approval of the latter, unless actually disapproved by him, or **(4) where there are circumstances indicating the urgency of judicial intervention**, **—** *Gonzales vs. Hechanova*, L-21897, October 22, 1963, 9 SCRA 230; *Abaya vs. Villegas*, L-25641, December 17, 1966, 18 SCRA; *Mitra vs. Subido*, L-21691, September 15, 1967, 21 SCRA 127.

Said principle may also be disregarded when it does not provide a plain, speedy and adequate remedy, (*Cipriano vs. Marcelino*, 43 SCRA 291), when there is no due process observed (*Villanos vs. Subido*, 45 SCRA 299), **or where the protestant has no other recourse** (*Sta. Maria vs. Lopez*, 31 SCRA 637).[137] (Emphases supplied.)

As petitioner correctly pointed out, the appeal provided for under Section 6 of DENR DAO 2003-30 is only applicable, based on the first sentence thereof, if the person or entity charged with the duty to exhaust the administrative remedy of appeal to the appropriate government agency has been a party or has been made a party in the proceedings wherein the decision to be appealed was rendered. **It has been established by the facts that petitioner was never made a party to the proceedings before respondent DENR-EMB RVI**. Petitioner was only informed that the project had already been approved after the ECC was already granted.[138] Not being a party to the said proceedings, it does not appear that petitioner was officially furnished a copy of the decision, from which the 15-day period to appeal should be reckoned, and which would warrant the application of Section 6, Article II of DENR DAO 2003-30.

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[137] *Id.* at 81.

[138] *Rollo,* pp. 1058-1059.

Although petitioner was not a party to the proceedings where the decision to issue an ECC was rendered, it stands to be aggrieved by the decision,[139] because it claims that the reclamation of land on the Caticlan side would unavoidably adversely affect the Boracay side, where petitioner's members own establishments engaged in the tourism trade. As noted earlier, petitioner contends that the declared objective of the reclamation project is to exploit Boracay's tourism trade because the project is intended to enhance support services thereto; however, this objective would not be achieved since the white-sand beaches for which Boracay is famous might be negatively affected by the project. Petitioner's conclusion is that respondent Province, aided and abetted by respondents PRA and DENR-EMB RVI, ignored the spirit and letter of our environmental laws, and should thus be compelled to perform their duties under said laws.

The new Rules of Procedure for Environmental Cases, A.M. No. 09-6-8-SC, provides a relief for petitioner under the writ of continuing *mandamus*, which is a special civil action that may be availed of "to compel the performance of an act specifically enjoined by law"[140] and which provides for the issuance of a TEPO "as an auxiliary remedy prior to the issuance of the writ itself."[141] The Rationale of the said Rules explains the writ in this wise:

> Environmental law highlights the shift in the focal-point from the initiation of regulation by Congress to the implementation of regulatory programs by the appropriate government agencies.
>
> **Thus, a government agency's inaction, if any, has serious implications on the future of environmental law enforcement. Private individuals, to the extent that they seek to change the scope of the regulatory process, will have to rely on such agencies to take the initial incentives, which may require a judicial component. Accordingly, questions regarding the propriety of an agency's action or inaction will need to be analyzed.**

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[139] *Id.* at 1056-1057.

[140] Annotation to the Rules of Procedure for Environmental Cases, p. 45.

[141] *Id.*

This point is emphasized in the availability of the remedy of the writ of *mandamus*, which allows for the enforcement of the conduct of the tasks to which the writ pertains: **the performance of a legal duty**.[142] (Emphases added.)

The writ of continuing *mandamus* "permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision" and, in order to do this, "the court may compel the submission of compliance reports from the respondent government agencies as well as avail of other means to monitor compliance with its decision."[143]

According to petitioner, respondent Province acted pursuant to a MOA with respondent PRA that was conditioned upon, among others, a properly-secured ECC from respondent DENR-EMB RVI. For this reason, petitioner seeks to compel respondent Province to comply with certain environmental laws, rules, and procedures that it claims were either circumvented or ignored. Hence, we find that the petition was appropriately filed with this Court under Rule 8, Section 1, A.M. No. 09-6-8-SC, which reads:

SECTION 1. *Petition for continuing mandamus*. — When any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty, attaching thereto supporting evidence, specifying that the petition concerns an environmental law, rule or regulation, and praying that judgment be rendered commanding the respondent to do an act or series of acts until the judgment is fully satisfied, and to pay damages sustained by the petitioner by reason

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[142] Rationale to the Rules of Procedure for Environmental Cases, p. 76.

[143] Annotation to the Rules of Procedure for Environmental Cases, p. 45.

of the malicious neglect to perform the duties of the respondent, under the law, rules or regulations. The petition shall also contain a sworn certification of non-forum shopping.

SECTION 2. *Where to file the petition.*—The petition shall be filed with the Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred or with the Court of Appeals or the Supreme Court.

Petitioner had three options where to file this case under the rule: the Regional Trial Court exercising jurisdiction over the territory where the actionable neglect or omission occurred, the Court of Appeals, or this Court.

Petitioner had no other plain, speedy, or adequate remedy in the ordinary course of law to determine the questions of unique national and local importance raised here that pertain to laws and rules for environmental protection, thus it was justified in coming to this Court.

Having resolved the procedural issue, we now move to the substantive issues.

On the issues of whether, based on the scope and classification of the project, a full EIA is required by laws and regulations, and whether respondent Province complied with all the requirements under the pertinent laws and regulations

Petitioner's arguments on this issue hinges upon its claim that the reclamation project is misclassified as a single project when in fact it is co-located. Petitioner also questions the classification made by respondent Province that the reclamation project is merely an expansion of the existing jetty port, when the project descriptions embodied in the different documents filed by respondent Province describe commercial establishments to be built, among others, to raise revenues for the LGU; thus, it should have been classified as a new project. Petitioner likewise cries foul to the manner by which respondent Province allegedly

circumvented the documentary requirements of the DENR—EMB RVI by the act of connecting the reclamation project with its previous project in 1999 and claiming that the new project is a mere expansion of the previous one.

As previously discussed, respondent Province filed a Manifestation and Motion stating that the ECC issued by respondent DENR-EMB RVI covered an area of 2,691 square meters in Caticlan, and its application for reclamation of 40 hectares with respondent PRA was conditioned on its submission of specific documents within 120 days. Respondent Province claims that its failure to comply with said condition indicated its waiver to pursue the succeeding phases of the reclamation project and that the subject matter of this case had thus been limited to 2.64 hectares. Respondent PRA, for its part, declared through its General Manager that the "Aklan Beach Zone Restoration and Protection Marine Development Project will now be confined to the reclamation and development of the 2.64 hectares, more or less."[144]

The Court notes such manifestation of respondent Province. Assuming, however, that the area involved in the subject reclamation project has been limited to 2.64 hectares, this case has not become moot and academic, as alleged by respondents, because the Court still has to check whether respondents had complied with all applicable environmental laws, rules, and regulations pertaining to the actual reclamation project.

We recognize at this point that the DENR is the government agency vested with delegated powers to review and evaluate all EIA reports, and to grant or deny ECCs to project proponents.[145] It is the DENR that has the duty to implement the EIS system. It appears, however, that respondent DENR-EMB RVI's evaluation of this reclamation project was problematic, based on the valid questions raised by petitioner.

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[144] *Rollo,* p. 1009.

[145] REVISED PROCEDURAL MANUAL for DAO 2003-30, Sec. 1.9, p. 8.

Being the administrator of the EIS System, respondent DENR-EMB RVI's submissions bear great weight in this case. However, the following are the issues that put in question the wisdom of respondent DENR-EMB RVI in issuing the ECC:

1. Its approval of respondent Province's classification of the project as a mere expansion of the existing jetty port in Caticlan, instead of classifying it as a **new project**;
2. Its classification of the reclamation project as a **single** instead of a **co-located** project;
3. The lack of *prior* public consultations and approval of local government agencies; and
4. The lack of comprehensive studies regarding the impact of the reclamation project to the environment.

The above issues as raised put in question the sufficiency of the evaluation of the project by respondent DENR-EMB RVI.

Nature of the project

The first question must be answered by respondent DENR—EMB RVI as the agency with the expertise and authority to state whether this is a new project, subject to the more rigorous environmental impact study requested by petitioner, or it is a mere expansion of the existing jetty port facility.

The second issue refers to the classification of the project by respondent Province, approved by respondent DENR-EMB RVI, as single instead of co-located. Under the Revised Procedural Manual, the **"Summary List of Additional Non-Environmentally—Critical Project (NECP) Types in ECAs Classified under Group II" (Table I-2)** lists "buildings, storage facilities and other structures" as a separate item from "transport terminal facilities." This creates the question of whether this project should be considered as consisting of more than one type of activity, and should more properly be classified as "co-located," under the following definition from the same Manual, which reads:

f) **Group IV (Co-located Projects in either ECA or NECA)**: **A co-located project is a group of single projects, under**

> **one or more proponents/locators, which are located in a contiguous area and managed by one administrator, who is also the ECC applicant**. The co-located project may be an economic zone or industrial park, or a mix of projects within a catchment, watershed or river basin, or any other geographical, political or economic unit of area. Since the location or threshold of specific projects within the contiguous area will yet be derived from the EIA process based on the carrying capacity of the project environment, the nature of the project is called "programmatic." (Emphasis added.)

Respondent DENR-EMB RVI should conduct a thorough and detailed evaluation of the project to address the question of whether this could be deemed as a group of single projects (transport terminal facility, building, *etc.*) in a contiguous area managed by respondent Province, or as a single project.

The third item in the above enumeration will be discussed as a separate issue.

The answer to the fourth question depends on the final classification of the project under items 1 and 3 above because the type of EIA study required under the Revised Procedural Manual depends on such classification.

The very definition of an EIA points to what was most likely neglected by respondent Province as project proponent, and what was in turn overlooked by respondent DENR-EMB RVI, for it is defined as follows:

> An [EIA] is a 'process that involves **predicting** and evaluating the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate **preventive,** mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare.[146] (Emphases supplied.)

Thus, the EIA process must have been able to **predict** the likely impact of the reclamation project to the environment and to **prevent** any harm that may otherwise be caused.

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[146] *Id.*, Sec. 1.2, p. 1.

The project now before us involves reclamation of land that is **more than five times the size of the original** reclaimed land. Furthermore, the area prior to construction merely contained a jetty port, whereas the proposed expansion, as described in the EPRMP submitted by respondent Province to respondent DENR-EMB RVI involves so much more, and we quote:

> The expansion project will be constructed at the north side of the existing jetty port and terminal that will have a total area of 2.64 hectares, more or less, after reclamation. The Phase 1 of the project construction costing around ₱260 million includes the following:
>
> 1. **Reclamation - 3,000 sq m (expansion of jetty port)**
> 2. **Reclamation - 13,500 sq m (buildable area)**
> 3. **Terminal annex building - 250 sq m**
> 4. **2-storey commercial building – 2,500 sq m (1,750 sq m of leasable space)**
> 5. **Health and wellness center**
> 6. **Access road - 12 m (wide)**
> 7. **Parking, perimeter fences, lighting and water treatment sewerage system**
> 8. **Rehabilitation of existing jetty port and terminal**
>
> x x x x x x x x x
>
> The succeeding phases of the project will consist of [further] reclamation, completion of the commercial center building, bay walk commercial strip, staff building, ferry terminal, a cable car system and wharf marina. This will entail an additional estimated cost of ₱785 million bringing the total investment requirement to about ₱1.0 billion.[147] (Emphases added.)

As may be gleaned from the breakdown of the 2.64 hectares as described by respondent Province above, a significant portion of the reclaimed area would be devoted to the construction of a commercial building, and the area to be utilized for the expansion

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[147] *Rollo*, pp. 57-58.

of the jetty port consists of a mere 3,000 square meters (sq. m). To be true to its definition, the EIA report submitted by respondent Province should at the very least predict the impact that the construction of the new buildings on the reclaimed land would have on the surrounding environment. These new constructions and their environmental effects were not covered by the old studies that respondent Province previously submitted for the construction of the original jetty port in 1999, and which it re-submitted in its application for ECC in this alleged expansion, instead of conducting updated and more comprehensive studies.

Any impact on the Boracay side cannot be totally ignored, as Caticlan and Boracay are separated only by a narrow strait. This becomes more imperative because of the significant contributions of Boracay's white-sand beach to the country's tourism trade, which requires respondent Province to **proceed with utmost caution** in implementing projects within its vicinity.

We had occasion to emphasize the duty of local government units to ensure the quality of the environment under Presidential Decree No. 1586 in *Republic of the Philippines v. The City of Davao*,[148] wherein we held:

> Section 15 of Republic Act 7160, otherwise known as the Local Government Code, defines a local government unit as a body politic and corporate endowed with powers to be exercised by it in conformity with law. As such, it performs dual functions, governmental and proprietary. Governmental functions are those that concern the health, safety and the advancement of the public good or welfare as affecting the public generally. Proprietary functions are those that seek to obtain special corporate benefits or earn pecuniary profit and intended for private advantage and benefit. When exercising governmental powers and performing governmental duties, an LGU is an agency of the national government. When engaged in corporate activities, it acts as an agent of the community in the administration of local affairs.
>
> **Found in Section 16 of the Local Government Code is the duty of the LGUs to promote the people's right to a balanced**

[148] 437 Phil. 525 (2002).

ecology. Pursuant to this, an LGU, like the City of Davao, can not claim exemption from the coverage of PD 1586. As a body politic endowed with governmental functions, an LGU has the duty to ensure the quality of the environment, which is the very same objective of PD 1586.

x x x x x x x x x

Section 4 of PD 1586 clearly states that "no person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative." The Civil Code defines a person as either natural or juridical. **The state and its political subdivisions, *i.e.*, the local government units are juridical persons. Undoubtedly therefore, local government units are not excluded from the coverage of PD 1586.**

Lastly, very clear in Section 1 of PD 1586 that said law intends to implement the policy of the state to achieve a balance between socio-economic development and environmental protection, which are the twin goals of sustainable development. The above-quoted first paragraph of the Whereas clause stresses that **this can only be possible if we adopt a comprehensive and integrated environmental protection program where all the sectors of the community are involved, *i.e.*, the government and the private sectors. The local government units, as part of the machinery of the government, cannot therefore be deemed as outside the scope of the EIS system**.[149] (Emphases supplied.)

The Court chooses to remand these matters to respondent DENR-EMB RVI for it to make a proper study, and if it should find necessary, to require respondent Province to address these environmental issues raised by petitioner and submit the correct EIA report as required by the project's specifications. The Court requires respondent DENR-EMB RVI to complete its study and submit a report within a non-extendible period of three months. Respondent DENR-EMB RVI should establish to the Court in said report why the ECC it issued for the subject project should not be canceled.

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[149] *Id.* at 531-533.

Lack of prior public consultation

The Local Government Code establishes the duties of **national** government agencies in the maintenance of ecological balance, and requires them to secure *prior public consultation and approval* of **local** government units for the projects described therein.

In the case before us, the national agency involved is respondent PRA. Even if the project proponent is the local government of Aklan, it is respondent PRA which authorized the reclamation, being the exclusive agency of the government to undertake reclamation nationwide. Hence, it was necessary for respondent Province to go through respondent PRA and to execute a MOA, wherein respondent PRA's authority to reclaim was delegated to respondent Province. Respondent DENR-EMB RVI, regional office of the DENR, is also a national government institution which is tasked with the issuance of the ECC that is a prerequisite to projects covered by environmental laws such as the one at bar.

This project can be classified as a national project that affects the environmental and ecological balance of local communities, and is covered by the requirements found in the Local Government Code provisions that are quoted below:

Section 26. ***Duty of National Government Agencies in the Maintenance of Ecological Balance.*** — It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

Section 27. ***Prior Consultations Required***. — No project or program shall be implemented by government authorities unless the

consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

In *Lina, Jr. v. Paño*,[150] we held that Section 27 of the Local Government Code applies only to "national programs and/or projects which are to be implemented in a particular local community"[151] and that it should be read in conjunction with Section 26. We held further in this manner:

> Thus, the projects and programs mentioned in Section 27 should be interpreted to mean projects and programs whose effects are among those enumerated in Section 26 and 27, to wit, those that: (1) **may cause pollution**; (2) may bring about climatic change; (3) may cause the depletion of non-renewable resources; (4) may result in loss of crop land, range-land, or forest cover; (5) may eradicate certain animal or plant species from the face of the planet; and (6) other projects or programs that may call for the eviction of a particular group of people residing in the locality where these will be implemented. Obviously, none of these effects will be produced by the introduction of lotto in the province of Laguna.[152] (Emphasis added.)

During the oral arguments held on September 13, 2011, it was established that this project as described above falls under Section 26 because the commercial establishments to be built on phase 1, as described in the EPRMP quoted above, could cause pollution as it could generate garbage, sewage, and possible toxic fuel discharge.[153]

Our ruling in *Province of Rizal v. Executive Secretary*[154] is instructive:

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[150] 416 Phil. 438 (2001).

[151] *Id.* at 449.

[152] *Id.* at 450.

[153] TSN, September 13, 2011, p. 109. *See* pp. 109-133.

[154] 513 Phil. 557 (2005).

We reiterated this doctrine in the recent case of *Bangus Fry Fisherfolk v. Lanzanas*, where we held that there was no statutory requirement for the *sangguniang bayan* of Puerto Galera to approve the construction of a mooring facility, as Sections 26 and 27 are inapplicable to projects which are not environmentally critical.

Moreover, Section 447, which enumerates the powers, duties and functions of the municipality, grants the *sangguniang bayan* the power to, among other things, "enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of th(e) Code." These include:

(1) Approving ordinances and passing resolutions to protect the environment and impose appropriate penalties for acts which endanger the environment, such as dynamite fishing and other forms of destructive fishing, illegal logging and smuggling of logs, smuggling of natural resources products and of endangered species of flora and fauna, slash and burn farming, and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance; [Section 447 (1)(vi)]

(2) Prescribing reasonable limits and restraints on the use of property within the jurisdiction of the municipality, adopting a comprehensive land use plan for the municipality, reclassifying land within the jurisdiction of the city, subject to the pertinent provisions of this Code, enacting integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations; establishing fire limits or zones, particularly in populous centers; and regulating the construction, repair or modification of buildings within said fire limits or zones in accordance with the provisions of this Code; [Section 447 (2)(vi-ix)]

(3) Approving ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, …providing for the establishment, maintenance, protection, and conservation of communal forests and watersheds, tree parks, greenbelts, mangroves, and other similar forest development projects

> …and, subject to existing laws, establishing and providing for the maintenance, repair and operation of an efficient waterworks system to supply water for the inhabitants and purifying the source of the water supply; regulating the construction, maintenance, repair and use of hydrants, pumps, cisterns and reservoirs; protecting the purity and quantity of the water supply of the municipality and, for this purpose, extending the coverage of appropriate ordinances over all territory within the drainage area of said water supply and within one hundred (100) meters of the reservoir, conduit, canal, aqueduct, pumping station, or watershed used in connection with the water service; and regulating the consumption, use or wastage of water." [Section 447 (5)(i) & (vii)]

Under the Local Government Code, therefore, two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior *consultation* with the affected local communities, and prior *approval* of the project by the appropriate *sanggunian*. Absent either of these mandatory requirements, the project's implementation is illegal.[155] (Emphasis added.)

Based on the above, therefore, *prior* consultations and *prior* approval are required by law to have been conducted and secured by the respondent Province. Accordingly, the information dissemination conducted months after the ECC had already been issued was insufficient to comply with this requirement under the Local Government Code. Had they been conducted properly, the prior public consultation should have considered the ecological or environmental concerns of the stakeholders and studied measures alternative to the project, to avoid or minimize adverse environmental impact or damage. In fact, respondent Province once tried to obtain the favorable endorsement of the *Sangguniang Bayan* of Malay, but this was denied by the latter.

Moreover, DENR DAO 2003-30 provides:

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[155] *Id.* at 590-592.

5.3 Public Hearing / Consultation Requirements

For projects under Category A-1, the conduct of public hearing as part of the EIS review is mandatory unless otherwise determined by EMB. For all other undertakings, a public hearing is not mandatory unless specifically required by EMB.

Proponents should initiate public consultations early in order to ensure that environmentally relevant concerns of stakeholders are taken into consideration in the EIA study and the formulation of the management plan. All public consultations and public hearings conducted during the EIA process are to be documented. The public hearing/consultation Process report shall be validated by the EMB/ EMB RD and shall constitute part of the records of the EIA process. (Emphasis supplied.)

In essence, the above-quoted rule shows that in cases requiring public consultations, the same should be initiated early so that concerns of stakeholders could be taken into consideration in the EIA study. In this case, respondent Province had already filed its ECC application before it met with the local government units of Malay and Caticlan.

The claim of respondent DENR-EMB RVI is that no permits and/or clearances from National Government Agencies (NGAs) and LGUs are required pursuant to the DENR Memorandum Circular No. 2007-08. However, we still find that the LGC requirements of consultation and approval apply in this case. This is because a Memorandum Circular cannot prevail over the Local Government Code, which is a statute and which enjoys greater weight under our hierarchy of laws.

Subsequent to the information campaign of respondent Province, the Municipality of Malay and the *Liga ng mga Barangay*-Malay Chapter still opposed the project. Thus, when respondent Province commenced the implementation project, it violated Section 27 of the LGC, which clearly enunciates that "[no] project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2(c) and 26 hereof are complied with, and prior approval of the *sanggunian* concerned is obtained."

The lack of ***prior*** public consultation and approval is not corrected by the subsequent endorsement of the reclamation project by the *Sangguniang Barangay* of Caticlan on **February 13, 2012,** and the *Sangguniang Bayan* of the Municipality of Malay on **February 28, 2012**, which were both undoubtedly achieved at the urging and insistence of respondent Province. As we have established above, the respective resolutions issued by the LGUs concerned did not render this petition moot and academic.

It is clear that both petitioner and respondent Province are interested in the promotion of tourism in Boracay and the protection of the environment, lest they kill the proverbial hen that lays the golden egg. At the beginning of this decision, we mentioned that there are common goals of national significance that are very apparent from both the petitioner's and the respondents' respective pleadings and memoranda.

The parties are evidently in accord in seeking to uphold the mandate found in Article II, Declaration of Principles and State Policies, of the 1987 Constitution, which we quote below:

> SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.
>
> x x x x x x x x x
>
> SECTION 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

The protection of the environment in accordance with the aforesaid constitutional mandate is the aim, among others, of Presidential Decree No. 1586, "Establishing an Environmental Impact Statement System, Including Other Environmental Management Related Measures and For Other Purposes," which declared in its first Section that it is "**the policy of the State to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection**."

The parties undoubtedly too agree as to the importance of promoting tourism, pursuant to Section 2 of Republic Act No. 9593, or "The Tourism Act of 2009," which reads:

SECTION 2. *Declaration of Policy*. — **The State declares tourism as an indispensable element of the national economy and an industry of national interest and importance**, which must be harnessed as an engine of socioeconomic growth and cultural affirmation to generate investment, foreign exchange and employment, and to continue to mold an enhanced sense of national pride for all Filipinos. (Emphasis ours.)

The primordial role of local government units under the Constitution and the Local Government Code of 1991 in the subject matter of this case is also unquestionable. The Local Government Code of 1991 (Republic Act No. 7160) pertinently provides:

Section 2. *Declaration of Policy*. — (a) **It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals.** Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby **local government units shall be given more powers, authority, responsibilities, and resources.** The process of decentralization shall proceed from the national government to the local government units.[156] (Emphases ours.)

As shown by the above provisions of our laws and rules, the speedy and smooth resolution of these issues would benefit all the parties. Thus, respondent Province's cooperation with respondent DENR-EMB RVI in the Court-mandated review of the proper classification and environmental impact of the reclamation project is of utmost importance.

WHEREFORE, premises considered, the petition is hereby **PARTIALLY GRANTED**. **The TEPO issued by this Court**

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[156] Book I, Title One.

is hereby converted into a writ of continuing *mandamus* specifically as follows:

1. **Respondent Department of Environment and Natural Resources-Environmental Management Bureau Regional Office VI shall revisit and review the following matters:**

   a. **its classification of the reclamation project as a single instead of a co-located project;**

   b. **its approval of respondent Province's classification of the project as a mere expansion of the existing jetty port in Caticlan, instead of classifying it as a new project; and**

   c. **the impact of the reclamation project to the environment based on new, updated, and comprehensive studies, which should forthwith be ordered by respondent DENR-EMB RVI.**

2. **Respondent Province of Aklan shall perform the following:**

   a. **fully cooperate with respondent DENR-EMB RVI in its review of the reclamation project proposal and submit to the latter the appropriate report and study; and**

   b. **secure approvals from local government units and hold proper consultations with non-governmental organizations and other stakeholders and sectors concerned as required by Section 27 in relation to Section 26 of the Local Government Code.**

3. **Respondent Philippine Reclamation Authority shall closely monitor the submission by respondent Province of the requirements to be issued by respondent DENR-EMB RVI in connection to the environmental concerns raised by petitioner, and**

shall coordinate with respondent Province in modifying the MOA, if necessary, based on the findings of respondent DENR-EMB RVI.

4. **The petitioner Boracay Foundation, Inc. and the respondents The Province of Aklan, represented by Governor Carlito S. Marquez, The Philippine Reclamation Authority, and The DENR-EMB (Region VI) are mandated to submit their respective reports to this Court regarding their compliance with the requirements set forth in this Decision no later than three (3) months from the date of promulgation of this Decision.**

5. **In the meantime, the respondents, their concerned contractor/s, and/or their agents, representatives or persons acting in their place or stead, shall immediately cease and desist from continuing the implementation of the project covered by ECC-R6-1003-096-7100 until further orders from this Court. For this purpose, the respondents shall report within five (5) days to this Court the status of the project as of their receipt of this Decision, copy furnished the petitioner.**

This Decision is immediately executory.

SO ORDERED.

Carpio (Senior Associate Justice), Velasco, Jr., Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Sereno, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Mendoza, J., on official leave.

THIRD DIVISION

[A.M. No. P-12-3061. June 27, 2012]
(Formerly OCA-IPI No. 08-3022-P)

ATTY. EDWARD ANTHONY B. RAMOS, *complainant, vs.* **REYNALDO S. TEVES, Clerk of Court III, Municipal Trial Court in Cities, Branch 4, Cebu City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT; HAVE NO AUTHORITY TO PASS UPON THE SUBSTANTIVE OR FORMAL CORRECTNESS OF PLEADINGS AND MOTIONS THAT PARTIES FILE WITH THE COURT.—** Clearly Teves erred in refusing to receive Atty. Ramos' motion on the ground that it did not bear proof of service on the defendant. Unless specifically provided by the rules, clerks of court have no authority to pass upon the substantive or formal correctness of pleadings and motions that parties file with the court. Compliance with the rules is the responsibility of the parties and their counsels. And whether these conform to the rules concerning substance and form is an issue that only the judge of the court has authority to determine. The duty of clerks of courts to receive pleadings, motions, and other court-bound papers is purely ministerial. Although they may on inspection advise the parties or their counsels of possible defects in the documents they want to file, which may be regarded as part of public service, they cannot upon insistence of the filing party refuse to receive the same.

2. **ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; DISCOURTESY; RESPONDENT CLERK OF COURT DENIED THE COUNSEL THE COURTESY OF LETTING THE PRESIDING JUDGE DECIDE THE ISSUE BETWEEN HIM AND THE COUNSEL.—** The charge against branch clerk of court Teves is that he was arrogant and discourteous in refusing to receive Atty. Ramos' motion despite the latter's explanation, as a lawyer, that a copy of the same did not have to be served on the defendant. Actually, neither Atty. Ramos nor Judge

Andrino claims that Teves used foul language. The latter just stubbornly stood his ground. Still, Teves was discourteous. Canon IV, Section 2 of the Code of Conduct for Court Personnel provides that "court personnel shall carry out their responsibilities as public servants in as courteous a manner as possible." Atty. Ramos was counsel in a case before Teves' branch. He was an officer of the court who expressed a desire to have the presiding judge, to whom he addressed his motion, see and consider the same. Teves arrogated onto himself the power to decide with finality that the presiding judge was not to be bothered with that motion. He denied Atty. Ramos the courtesy of letting the presiding judge decide the issue between him and the lawyer. As succinctly held in *Macalua v. Tiu, Jr.*, an employee of the judiciary is expected to accord respect for the person and right of others at all times, and his every act and word should be characterized by prudence, restraint, courtesy and dignity. These are absent in this case.

3. **ID.; ID.; ALTHOUGH RESPONDENT'S SUBSEQUENT ADMINISTRATIVE CASES COULD NOT BE CONSIDERED IN CASE AT BAR, STILL THOSE CASES SHOW HIS PROPENSITY FOR MISBEHAVIOR.—** Civil Service Resolution 99-1936 classifies discourtesy in the course of official duties as a light offense, the penalty for which is reprimand for the first offense, suspension of 1-30 days for the second offense, and dismissal for the third offense. The record shows that Teves had previously been administratively charged with grave abuse of authority and gross discourtesy in OCA-IPI 08-2981-P. Although the Court dismissed the charge for lack of merit on November 18, 2009, it reminded him to be more circumspect in dealing with litigants and their counsel. In two consolidated administrative cases, one for grave misconduct and immorality and the other for insubordination, the Court meted out on Teves the penalty of suspension for six months in its resolution of October 5, 2011. The Court of course decided these cases and warned Teves to change his ways more than a year after the September 8, 2008 incident with Atty. Ramos. Consequently, it could not be said that he ignored with respect to that incident the warnings given him in the subsequently decided cases. Still those cases show Teves' propensity for misbehavior.

D E C I S I O N

ABAD, *J*.:

This case is about the clerk of court's discretion in refusing to receive a pleading or motion that he believes has not complied with the requirements of the rules.

The Facts and the Case

On August 15, 2008 Atty. Edward Anthony B. Ramos filed a complaint for money in his client's behalf before the Municipal Trial Court in Cities (MTCC) of Cebu City, Branch 4, in which complaint he sought the *ex parte* issuance of a writ of preliminary attachment.

Since the MTCC already served summons on the defendant but did not yet act on his *ex parte* request for preliminary attachment, Atty. Ramos went to Branch 4 on September 8, 2008 to personally file an urgent *ex parte* motion to resolve the pending incident. But respondent Reynaldo S. Teves, the branch clerk of court, refused to receive the motion for the reason that it did not bear proof of service on the defendant. Atty. Ramos explained that *ex parte* motions did not require such service. A heated argument between Atty. Ramos and Teves ensued, prompting the presiding judge who heard it to intervene and direct the clerk in charge of civil cases to receive the *ex parte* motion.

On November 24, 2008 Atty. Ramos charged Teves before the Office of the Court Administrator (OCA) with arrogance and discourtesy in refusing to receive his motion despite his explanation and a reading of Section 1, Rule 57 of the Rules of Court and Justice Oscar Herrera's commentary on the Rules of Court relative to *ex parte* motions.

In his comment, Teves claimed that he was neither arrogant nor discourteous and that his argument with Atty. Ramos had been cordial and professional. Citing Rule 19 of the Rules of Court, Teves asserted that he acted correctly in refusing to accept Atty. Ramos' "non pro forma" motion for failure to

furnish the adverse party with a copy of the notice of hearing. Teves claimed that he could not just accept pro forma pleadings because these would burden the court with having to decide matters based on a technicality, resulting in delay and clogging of the dockets. Teves added that while the clerk of court has the ministerial duty to receive pleadings, he is not precluded from requiring the complainant to furnish the adverse party with a copy especially his litigious motion as prescribed under Rules 13 and 15.

The Court referred the case to Cebu City MTCC Executive Judge Oscar D. Andrino for investigation, report and recommendation.[1] In his report, Judge Andrino found Teves arrogant, discourteous, and rude in refusing to receive the motion and recommended the imposition of one month and one day suspension on him with a warning of a stiffer penalty in case of repetition of similar acts.

Issue Presented

The issue in this case is whether or not the branch clerk of court may refuse to receive a pleading that does not conform with the requirements of the Rules of Court.

Ruling of the Court

Clearly Teves erred in refusing to receive Atty. Ramos' motion on the ground that it did not bear proof of service on the defendant. Unless specifically provided by the rules, clerks of court have no authority to pass upon the substantive or formal correctness of pleadings and motions that parties file with the court. Compliance with the rules is the responsibility of the parties and their counsels. And whether these conform to the rules concerning substance and form is an issue that only the judge of the court has authority to determine.

The duty of clerks of courts to receive pleadings, motions, and other court-bound papers is purely ministerial. Although they may on inspection advise the parties or their counsels of

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[1] Resolution dated February 16, 2011.

possible defects in the documents they want to file, which may be regarded as part of public service, they cannot upon insistence of the filing party refuse to receive the same.

The charge against branch clerk of court Teves is that he was arrogant and discourteous in refusing to receive Atty. Ramos' motion despite the latter's explanation, as a lawyer, that a copy of the same did not have to be served on the defendant. Actually, neither Atty. Ramos nor Judge Andrino claims that Teves used foul language. The latter just stubbornly stood his ground.

Still, Teves was discourteous. Canon IV, Section 2 of the Code of Conduct for Court Personnel provides that "court personnel shall carry out their responsibilities as public servants in as courteous a manner as possible." Atty. Ramos was counsel in a case before Teves' branch. He was an officer of the court who expressed a desire to have the presiding judge, to whom he addressed his motion, see and consider the same. Teves arrogated onto himself the power to decide with finality that the presiding judge was not to be bothered with that motion. He denied Atty. Ramos the courtesy of letting the presiding judge decide the issue between him and the lawyer.

As succinctly held in *Macalua v. Tiu, Jr.*,[2] an employee of the judiciary is expected to accord respect for the person and right of others at all times, and his every act and word should be characterized by prudence, restraint, courtesy and dignity. These are absent in this case.

Civil Service Resolution 99-1936 classifies discourtesy in the course of official duties as a light offense, the penalty for which is reprimand for the first offense, suspension of 1-30 days for the second offense, and dismissal for the third offense.

The record shows that Teves had previously been administratively charged with grave abuse of authority and gross discourtesy in OCA-IPI 08-2981-P. Although the Court dismissed the charge for lack of merit on November 18, 2009, it reminded

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[2] 341 Phil. 317, 323 (1997).

him to be more circumspect in dealing with litigants and their counsel.

In two consolidated administrative cases, one for grave misconduct and immorality and the other for insubordination,[3] the Court meted out on Teves the penalty of suspension for six months in its resolution of October 5, 2011. The Court of course decided these cases and warned Teves to change his ways more than a year after the September 8, 2008 incident with Atty. Ramos. Consequently, it could not be said that he ignored with respect to that incident the warnings given him in the subsequently decided cases.

Still those cases show Teves' propensity for misbehavior.

ACCORDINGLY, the Court **IMPOSES** on Reynaldo S. Teves, Branch Clerk of Court of Municipal Trial Court in Cities, Cebu City, the penalty of 30 days suspension with **WARNING** that a repetition of the same or a similar offense will be dealt with more severely. The suspension is immediately executory upon respondent's receipt of this resolution.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,[*] and *Perlas-Bernabe, JJ.,* concur.

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[3] Docketed as A.M. P-09-2724 and A.M. OCA-IPI 09-3301-P.

[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 1241 dated June 14, 2012.

FIRST DIVISION

[G.R. Nos. 155322-29. June 27, 2012]

BASES CONVERSION DEVELOPMENT AUTHORITY, *petitioner, vs.* **PROVINCIAL AGRARIAN REFORM OFFICER OF PAMPANGA, REGISTER OF DEEDS OF ANGELES CITY, BENJAMIN POY LORENZO, LAVERNIE POY LORENZO, DIOSDADO DE GUZMAN, ROSEMARY ENG TAY TAN, LEANDRO DE GUZMAN, BENJAMIN G. LORENZO, ANTONIO MANALO, and SOCORRO DE GUZMAN,** *respondents.*

SYLLABUS

REMEDIAL LAW; JURISDICTION; THE ACTION FILED BY PETITIONER IS COGNIZABLE BY REGULAR COURTS; FOR THE CASE TO FALL WITHIN THE AMBIT OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD'S (DARAB) JURISDICTION, THE ISSUE MUST BE ONE THAT INVOLVES AN AGRARIAN DISPUTE, WHICH IS NOT ATTENDANT IN CASE AT BAR.— This Court agrees with the BCDA for this case to fall within the ambit of DARAB's jurisdiction, the issue must be one that involves an agrarian dispute, which is not attendant in the instant case. It is a basic rule that jurisdiction is determined by the allegations in the complaint. The BCDA's complaints did not contain any allegation that would, even in the slightest, imply that the issue to be resolved in this case involved an agrarian dispute. In the action filed by the BCDA, the issue to be resolved was who between the BCDA and the private respondents and their purported predecessors-in-interest, have a valid title over the subject properties in light of the relevant facts and applicable laws. The case thus involves a controversy relating to the ownership of the subject properties, which is beyond the scope of the phrase "agrarian dispute." The RTC, therefore, gravely erred when it dismissed the complaints on the grounds that they were prematurely filed. The action filed by the BCDA was cognizable by regular courts.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Odgie C. Cayabyab for respondents.

D E C I S I O N

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

This is a petition for review on *certiorari*[1] to reverse the September 24, 2002 Order[2] of the Regional Trial Court (RTC) of Angeles City, Branch 58, in Civil Case Nos. 10362, 10363, 10364, 10376, 10377, 10378, 10379, and 10380.

Petitioner Bases Conversion Development Authority (BCDA) is a government owned and controlled corporation (GOCC) created under Republic Act No. 7227 or the Bases Conversion and Development Act of 1992,[3] as amended by Republic Act No. 7917.[4]

The respondents are the Provincial Agrarian Reform Officer (PARO) of Pampanga, as the government official responsible for approving and issuing the Certificates of Land Ownership Awards (CLOAs) involved in this case; the Register of Deeds of Pampanga (Register of Deeds), as the government official who has custody of all the original copies of the Certificates of Title subject of this petition; and Benjamin Poy Lorenzo, Lavernie Poy Lorenzo, Diosdado de Guzman, Rosemary Eng Tay Tan, Leandro de Guzman, Benjamin G. Lorenzo, Antonio Manalo,

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

[1] RULES OF COURT, Rule 45.

[2] *Rollo*, pp. 30-34.

[3] An Act Accelerating the Conversion of Military Reservations Into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes.

[4] An Act Amending Section 8 of Republic Act Numbered Seventy-Two Hundred and Twenty-Seven, Otherwise Known as the Bases Conversion and Development Act of 1992, Providing for the Distribution of Proceeds from the Sale of Portions of Metro Manila Military Camps, and For Other Purposes.

and Socorro de Guzman (private respondents) as the private individuals who were awarded the CLOAs.[5]

Pursuant to the national policy of accelerating the sound and balanced conversion of the Clark and Subic military reservations and their extensions into alternative productive uses for the promotion of economic and social development of Central Luzon and the entire country in general,[6] the BCDA was created[7] with the following purposes:

(a) To own, hold and/or administer the military reservations of John Hay Air Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station, Mt. Sta. Rita Station (Hermosa, Bataan) and those portions of Metro Manila military camps which may be transferred to it by the President;

(b) To adopt, prepare and implement a comprehensive and detailed development plan embodying a list of projects including but not limited to those provided in the Legislative-Executive Bases Council (LEBC) framework plan for the sound and balanced conversion of the Clark and Subic military reservations and their extensions consistent with ecological and environmental standards, into other productive uses to promote the economic and social development of Central Luzon in particular and the country in general;

(c) To encourage the active participation of the private sector in transforming the Clark and Subic military reservations and their extensions into other productive uses;

(d) To serve as the holding company of subsidiary companies created pursuant to Section 16 of this Act and to invest in Special Economic Zones declared under Sections 12 and 15 of this Act;

(e) To manage and operate through private sector companies developmental projects outside the jurisdiction of subsidiary

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[5] *Rollo*, pp. 15-16.

[6] REPUBLIC ACT No. 7227, Sec. 1.

[7] *Id.* at Sec. 2.

companies and Special Economic Zones declared by presidential proclamations and established under this Act;

(f) To establish a mechanism in coordination with the appropriate local government units to effect meaningful consultation regarding the plans, programs and projects within the regions where such plans, programs and/or project development are part of the conversion of the Clark and Subic military reservations and their extensions and the surrounding communities as envisioned in this Act; and

(g) To plan, program and undertake the readjustment, relocation, or resettlement of population within the Clark and Subic military reservations and their extensions as may be deemed necessary and beneficial by the Conversion Authority, in coordination with the appropriate government agencies and local government units.[8]

On April 3, 1993, Executive Order No. 80[9] was issued, authorizing the establishment of the Clark Development Corporation (CDC) to act as the operating and implementing arm of the BCDA with regard to the management of the Clark Special Economic Zone (CSEZ).[10]

On the same day, then President Fidel V. Ramos likewise issued Proclamation No. 163,[11] creating and designating the areas covered by the CSEZ as those "consisting of the Clark military reservations, including the Clark Air Base proper and portions of the Clark reverted baselands, and excluding the areas covered by previous Presidential Proclamations, the areas turned over to the Department of Agrarian Reform (DAR), and the

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[8] *Id.* at Sec. 4.

[9] Authorizing the Establishment of the Clark Development Corporation as the Implementing Arm of the Bases Conversion and Development Authority for the Clark Special Economic Zone, and Directing all Heads of Departments, Bureaus, Offices, Agencies and Instrumentalities of Government to Support the Program.

[10] EXECUTIVE ORDER No. 80, Sec. 1.

[11] Creating and Designating the Area covered by the Clark Special Economic Zone and Transferring these Lands to the Bases Conversion and Development Authority Pursuant to Republic Act No. 7227.

areas in the reverted baselands for military use."[12] Under Section 2 of Proclamation No. 163, these lands were transferred to the BCDA, which shall determine how to utilize and dispose of such lands.

As such, the BCDA became the owner of these lands, as registered in the name of the Republic of the Philippines, and covered by Transfer Certificate of Title (TCT) Nos. 18247-R[13] and 18257-R.[14]

On March 31, 2000, CDC, the Land Registration Authority (LRA), the Bureau of Local Government Finance (BLGF), and the Department of Environment and Natural Resources (DENR) Region III, entered into a Memorandum of Agreement (MOA),[15] wherein they created a CSEZ Technical Research Committee to conduct a technical research of properties within CSEZ covered by patents and certificates of title, applications for patent and title registration, property surveys, and tax declarations and payments.[16] The objective was to identify various levels of ownership claims as reflected in the official records of the concerned agencies.[17]

The CSEZ Technical Research Committee discovered that titles over parcels of land within the CSEZ, which had just been transferred to the BCDA, had already been issued in the names of private individuals, to wit:

Certificate of Land Ownership Award

A property within CSEZ Main Zone near the Friendship Gate, covered by a title in the name of the Republic of the Philippines, was later partially cancelled due to the issuance of Nine (9) [C]ertificates of

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[12] PROCLAMATION NO. 163, Sec. 1.

[13] *Rollo*, p. 38.

[14] *Id.* at 39.

[15] Records, pp. 34-42.

[16] *Id.* at 36.

[17] *Rollo*, p. 17.

Land Ownership Award (CLOA) from the Department of Agrarian Reform dated June 19, 1998. Property is covered by TCT No. 18257 and TCT No. 18247, in the name of the Republic of the Philippines. This lot is equivalent to Lot 857-A of Angeles Cadastre, BSD 10204 portion of Lot 857. The following CLOA's with a total area of 3[1,]891 hectares were inscribed at the back of the title as encumbrances[:]

CLOA No.	**NAME**	**TCT No.**	**AREA (sq. m)**
00477828	Benjamin Poy Lorenzo	329	13,693
00559057	Rosemary Eng Tay Tan	394	23,982
00477832	Diosdado O. de Guzman	321	608
00477833	Antonio M. Manalo	322	919
00477834	Benjamin G. Lorenzo	323	1,769
00477823	Leandro de Guzman	324	2000
00477824	Socorro de Guzman	325	20,825
00477825	Leandro de Guzman	326	20,825
00477826	Benjamin Poy Lorenzo	327	8,009
00477827	Lavernie Poy Lorenzo	328	2,612
00477829	Lavernie Poy Lorenzo	330	164[18]

In view of the findings, the BCDA filed separate Complaints for Cancellation of Title[19] against the private respondents, the PARO, and the Register of Deeds of Angeles City, Pampanga. These cases were docketed as Civil Case Nos. 10362, 10363, 10364, 10376, 10377, 10378, 10379, and 10380.[20] In its complaints, the BCDA alleged that since the properties (subject properties) were outside those allocated to DAR, and were already

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

[19] *Id.* at 53-107.

[20] Against Benjamin Poy Lorenzo, Lavernie Poy Lorenzo, Diosdado De Guzman, Rosemary Eng Tay Tan, Leandro de Guzman, Benjamin G. Lorenzo, Antonio M. Manalo Socorro De Guzman, respectively.

titled in the name of the Republic of the Philippines then transferred to the BCDA, they could not be the subject of an award by the PARO. The BCDA added that the subject properties, which had already been transferred to it, were reserved by the Philippine government as part of the Clark military reservations in accordance with the 1947 Military Bases Agreement between the Philippines and the United States of America.[21] Moreover, the BCDA claimed that the approval and issuance of CLOAs by the PARO, which became the bases for the TCTs issued to private respondents, were null and void in view of the fact that these subject properties were already titled in the name of the Republic of the Philippines under TCT Nos. 18247-R[22] and 18257-R,[23] issued on February 11, 1958, and were derivative titles of Original Certificate of Title (OCT) issued earlier.[24]

In their separate Motions to Dismiss,[25] the private respondents and the PARO moved for the dismissal of the complaints based on the following grounds:

1. That the Honorable [RTC] with due respect lacks jurisdiction over the subject matter and the nature of the action in the instant case.

2. That the [BCDA] has no cause or causes of action against the private defendant and public defendant PARO.[26]

The respondents argued that since the subject properties, which were part of the landholdings of the National Housing Authority, were awarded to the private respondents as the *bona fide* and *de jure* farmer-beneficiaries under Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988,

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[21] *Rollo*, p. 57.

[22] *Id.* at 38.

[23] *Id.* at 39.

[24] *Id.* at 58.

[25] *Id.* at 108-171.

[26] *Id.* at 108.

jurisdiction over the cancellation of their titles fall under the DAR through its Adjudication Board known as the Department of Agrarian Reform Adjudication Board (DARAB).[27]

The BCDA, commenting[28] on the Motions to Dismiss, averred that it was erroneous to state that the DARAB had jurisdiction over the cases as they do not involve an agrarian reform issue.

On September 24, 2002, the RTC issued one Order/ Resolution[29] dismissing the eight cases, without prejudice, for being prematurely filed.

The RTC, in dismissing the cases, declared that while it had jurisdiction to cancel CLOAs, questions on the legality of their issuance should be addressed to the DARAB. The RTC added:

> Evident on the allegations in the complaint that plaintiff BCDA impugned the validity of the issuances of the subject CLOAs to private respondents and questioned the act of public respondent PARO to be beyond of its authority in awarding the subject parcels of land to said respondents on the ground that the subject parcels of land are outside the areas allocated to the Department of Agrarian Reform to be distributed to farmer-beneficiaries and that the same is registered in the name of the Republic of the Philippines. These allegations alone had divested this court from acquiring jurisdiction over the subject matter of the cases, much less to decide and delve into the issue of the legality of the issuances of the subject CLOAs, which original jurisdiction is vested with an administrative tribunal (DARAB).
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> x x x x x x x x x
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> This Court believes that it is the Department of Agrarian Reform which is vested with exclusive jurisdiction to try and decide the instant controversy. It is not a simple cancellation of registration of title as the same involves agrarian reform issues. x x x.[30]

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[27] *Id.* at 109-110.

[28] *Id.* at 172-203.

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

[30] *Id.* at 33.

Aggrieved, the BCDA elevated its cause to this Court. However, before this Court could resolve the petition, private respondent Benjamin Poy Lorenzo, on February 23, 2004, filed a Motion to Cite the Petitioner in Contempt of Court[31] for certifying before two branches of the RTC in Angeles City, wherein it filed eminent domain cases against him[32] and Lavernie Poy Lorenzo,[33] that it has not commenced any other action before this Court.

Opposing the motion, the BCDA argued that the complaints for expropriation involve issues that are completely different from the one posed in this petition. Moreover, the BCDA said, it had no intention at all to mislead the RTCs of Angeles City as it mentioned, in both complaints for expropriation, that the private respondents' titles were subject to pending complaints at the RTC for Cancellation of Title. The BCDA went on to point out Benjamin Poy Lorenzo's improper initiation of a contempt proceeding, as it was done through a mere motion instead of a verified petition.[34]

Issue

The resolution of this petition boils down to the determination of the following lone issue as presented by the BCDA:

THE SOLE ISSUE SUBMITTED FOR THE RESOLUTION OF THIS HONORABLE SUPREME COURT IS WHETHER THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB), HAS JURISDICTION OVER THE CASE AS RULED BY THE HON. RTC JUDGE PHILBERT ITURALDE, OR THE REGIONAL TRIAL COURT.[35]

The BCDA asseverates that for the case to fall within the ambit of DARAB's jurisdiction, there must exist a tenancy

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[31] *Id.* at 233-235.

[32] *Id.* at 255-264.

[33] *Id.* at 245-254.

[34] *Id.* at 238-241.

[35] *Id.* at 21.

relationship between the parties. The BCDA believes that since it had no tenurial relationship with the private respondents, it should not submit itself to the jurisdiction of the DARAB. The BCDA further contends that under Sections 78 and 112 of the Land Registration Act, the RTC has the authority to decide petitions for cancellation of titles. Corollarily, the BCDA claims, since the TCTs of the private respondents, as holders of CLOAs, were issued by the Register of Deeds, these titles are governed by the Torrens system, which is under the exclusive jurisdiction of the RTC.[36]

In their Comment,[37] the private respondents reiterated their position that under Section 50 of Republic Act No. 6657, and Section 1, Rule II of the DARAB New Rules of Procedure, the jurisdiction over their cases falls under the DARAB.

Anent the Motion to Cite the BCDA in Contempt

This Court, at the outset, would like to resolve Benjamin Poy Lorenzo's motion to cite the BCDA in contempt, for allegedly certifying before the RTCs in Angeles City, that it had not commenced a similar action before the Supreme Court. Since the alleged misconduct falls under indirect contempt, proceedings should be initiated either *motu proprio* by order of or a formal charge by the offended court, or by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned.[38]

It is clear that Benjamin Poy Lorenzo has missed out on all of the above requirements. Moreover, as the BCDA has shown, it did not hide the fact that it had commenced a separate action involving his lot before RTC Branch 58 of Angeles City. In fact, the BCDA mentioned it both in its Complaint for

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[36] *Id.* at 22-24.

[37] *Id.* at 209-212.

[38] RULES OF COURT, Rule 71, Sec. 4.

Expropriation[39] and in its Verification and Certification as to Non-Forum Shopping.[40] This Court is, therefore, denying the motion of Benjamin Poy Lorenzo and will not belabor the point that such is not in keeping with the rules and jurisprudence.

This Court's Ruling on the Main Issue

This case properly falls within the jurisdiction of the RTC.

Rule II, Section 1 of the Revised Rules of Procedure of the DARAB provides:

> **Section 1.** ***Primary, Original and Appellate Jurisdiction***. — The Agrarian Reform Adjudication Board shall have primary jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes, cases, controversies, and matters or incidents involving the implementation of the Comprehensive Agrarian Reform Program under Republic Act No. 6657, Executive Order Nos. 229, 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.

Under Section 3(d) of Republic Act No. 6657 an "agrarian dispute" is defined as follows:

> (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 this Act 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.

This Court agrees with the BCDA for this case to fall within the ambit of DARAB's jurisdiction, the issue must be one that

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[39] *Rollo*, p. 299.

[40] *Id.* at 306.

involves an agrarian dispute, which is not attendant in the instant case.[41]

It is a basic rule that jurisdiction is determined by the allegations in the complaint.[42] The BCDA's complaints did not contain any allegation that would, even in the slightest, imply that the issue to be resolved in this case involved an agrarian dispute. In the action filed by the BCDA, the issue to be resolved was who between the BCDA and the private respondents and their purported predecessors-in-interest, have a valid title over the subject properties in light of the relevant facts and applicable laws. The case thus involves a controversy relating to the ownership of the subject properties, which is beyond the scope of the phrase "agrarian dispute."[43]

The RTC, therefore, gravely erred when it dismissed the complaints on the grounds that they were prematurely filed. The action filed by the BCDA was cognizable by regular courts.

WHEREFORE, the petition is hereby **GRANTED**. The Order/ Resolution of the Regional Trial Court, Branch 58 of Angeles City dated September 24, 2002 is **REVERSED and SET ASIDE**. Said court is **ORDERED** to assume jurisdiction over Civil Case Nos. 10362, 10363, 10364, 10376, 10377, 10378, 10379, and 10380 and conduct further proceedings in said cases.

SO ORDERED.

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

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[41] *Id.* at 22.

[42] *Agbulos v. Gutierrez*, G.R. No. 176530, June 16, 2009, 589 SCRA 313, 318.

[43] *Almuete v. Andres*, 421 Phil. 522, 529 (2001).

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

SECOND DIVISION

[G.R. No. 155996. June 27, 2012]

PCGG CHAIRMAN MAGDANGAL B. ELMA and PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioners, vs.* **REINER JACOBI, CRISPIN REYES, MA. MERCEDITAS N. GUTIERREZ, in her capacity as Undersecretary of the Department of Justice,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL THE DEPARTMENT OF JUSTICE'S DETERMINATION OF PROBABLE CAUSE.—** Memorandum Circular No. 58 of the Office of the President bars an appeal from the decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases *via* a petition for review, *except* for those involving offenses punishable by *reclusion perpetua* to death. Therefore, a party aggrieved by the DOJ's resolution — affirming or reversing the finding of the investigating prosecutor in a preliminary investigation involving an offense not punishable by *reclusion perpetua* to death — cannot appeal to the Office of the President and is left without any plain, speedy and adequate remedy in the ordinary course of the law. This leaves a *certiorari* petition as the only remedial avenue left. However, the petitioner must allege and show that the DOJ acted with grave abuse of discretion in granting or denying the petition for review.
2. **ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE IS AN EXECUTIVE FUNCTION.—** The necessary component of the Executive's power to faithfully execute the laws of the land is the State's self-preserving power to prosecute violators of its penal laws. This responsibility is primarily lodged with the DOJ, as the principal law agency of the government. The prosecutor has the discretionary authority to determine whether facts and circumstances exist meriting reasonable belief that a person has committed a crime. The question of whether or not to dismiss a criminal

complaint is necessarily dependent on the sound discretion of the investigating prosecutor and, ultimately, of the Secretary (or Undersecretary acting for the Secretary) of Justice. Who to charge with what crime or none at all is basically the prosecutor's call. Accordingly, the Court has consistently adopted the policy of non—interference in the conduct of preliminary investigations, and to leave the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause. Courts cannot order the prosecution of one against whom the prosecutor has not found a *prima facie* case; as a rule, courts, too, cannot substitute their own judgment for that of the Executive.

3. **ID.; ID.; ID.; ID.; REQUIREMENTS BEFORE JUDICIAL INTRUSION THROUGH EXTRAORDINARY REMEDY OF *CERTIORARI* MAY BE ALLOWED; NOT PRESENT IN CASE AT BAR.—** [T]he prosecutor may err or may even abuse the discretion lodged in him by law. This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of *certiorari*. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained. All these, the petitioner failed to establish.

4. **ID.; ID.; ID.; PROBABLE CAUSE; EXPLAINED.—** For purposes of filing an information in court, probable cause refers to facts and circumstances sufficient to engender a well—founded belief that a crime has been committed and that the respondents probably committed it. To guide the prosecutor's determination, a finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused; the quantum of proof to establish its existence is less than the evidence that would justify conviction, but it demands

more than bare suspicion. No definitive basis to determine probable cause has been established, except to consider the attendant facts and circumstances according to the prosecutor's best lights. No law or rule states that probable cause requires a specific kind of evidence. No formula or fixed rule for its determination exists. Probable cause is determined in the light of conditions obtaining in a given situation. In going through the process, the prosecutor should carefully calibrate the issues of facts presented to him to the end that his finding would always be consistent with the clear dictates of reason.

5. ID.; ID.; ID.; ID.; WHERE THE POSSESSION AND USE OF A FALSIFIED DOCUMENT WAS SUFFICIENTLY EXPLAINED BY RESPONDENTS, DISREGARDING THE PREVIOUS FINDING OF THE EXISTENCE OF PROBABLE CAUSE DOES NOT CONSTITUTE GRAVE ABUSE OF DISCRETION.— Atty. Reyes does not seriously dispute the application of the presumption of authorship as to him since he was in possession, and made use, of the forged De Guzman letter, but offers an explanation on the circumstances of such possession and use. On the other hand, the petitioners dispute the adequacy of his explanation and impute grave abuse of discretion on the part of Usec. Gutierrez for surmising that the De Guzman letter "must have been 'doctored' in the PCGG." What constitutes satisfactory explanation from the possessor and user of a forged document must be adjudged on a case to case basis, consistent with the twin-purposes of a preliminary investigation — *viz*: *first,* to protect the State from having to conduct useless and expensive trials; and *second*, to protect the respondent from the inconvenience, expense and burden of defending himself in a formal trial, unless a competent officer shall have first ascertained the probability of his guilt. Since the determination of probable cause lies within the prosecutor's discretion, the soundness of the explanation (to rebut the *prima facie* case created by the presumption of authorship) is likewise left to the prosecutor's discretion. Unless his determination amounted to a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion, courts must defer to the prosecutor's finding. We do not find grave abuse of discretion in the present case. x x x Usec. Gutierrez simply found Atty. Reyes' explanation — that the De Guzman letter was handed to him by Director Daniel — consistent with the premise of her assumption and sufficient to disregard the DOJ's previous finding of probable cause. x x x

The petitioners place too much reliance on the findings contained in the first resolution, blurring their view of the function of a motion for reconsideration. It is precisely the office of a motion for reconsideration to give an agency making a quasi-judicial determination an opportunity to correct any error it may have committed through a misapprehension of facts or misappreciation of the evidence, leading to a reversible conclusion at the administrative level. The petitioners have not shown that in arriving at the assailed resolutions (which sustained the prosecutor's reversal of the first and second resolutions), Usec. Gutierrez gravely abused her discretion which would warrant a corrective action from the Court.

6. **ID.; ID.; ID.; ID.; FINDINGS OF THE DOJ UNDERSECRETARY OF LACK OF PROBABLE CAUSE FOR KNOWINGLY INTRODUCING A FALSIFIED DOCUMENT MUST BE RESPECTED.—** Neither does probable cause exist against the respondents for the crime of introducing a falsified document in a judicial proceeding, punished under the last paragraph of Article 172 of the Revised Penal Code. The accused's knowledge of the falsity of the document, which he introduced in a judicial proceeding, is one of the elements of this crime. In the present case, not an iota of evidence was presented to show the respondents' knowledge of the falsity of the De Guzman letter at the time it was annexed to the Sandiganbayan petition. On this point *alone*, the petitioners' reliance on *Choa v. Judge Chiongson* is misplaced. Given all the extant circumstances of the case, coupled with the immediate withdrawal of the De Guzman letter, the resulting credit given by Usec. Gutierrez to the respondents' defense-explanations must be respected.

APPEARANCES OF COUNSEL

Garrido and Associates Law Offices for Reiner Jacobi.
Manuel T. Imbong for Crispin T. Reyes.

D E C I S I O N

BRION, *J*.:

Before the Court is a petition for *certiorari* under Rule 65 filed by the Presidential Commission on Good Government

(*PCGG*) and its former Chairman Magdangal Elma[1] (*petitioners*) questioning the resolutions, dated July 17, 2002[2] and September 20, 2002,[3] of then Undersecretary of Justice Ma. Merceditas N. Gutierrez. The assailed resolutions dismissed the petitioners' petition for review, denied the petitioners' motion for reconsideration and ultimately ruled that no probable cause for falsification and use of falsified document existed against Atty. Crispin Reyes and Reiner Jacobi (*respondents*).

ANTECEDENTS

The records show that on two occasions - evidenced by the December 22, 1988 and May 6, 1991 letters[4] - then PCGG Commissioner, and later Chairman, David M. Castro, purportedly acting for the PCGG, agreed to pay Jacobi a fee of ten percent (10%) of any amount actually recovered and legally turned over to the Republic of the Philippines from the ill-gotten wealth of Ferdinand E. Marcos and/or his family, associates, subordinates and cronies, based on the information and evidence that Jacobi would furnish the PCGG. Chairman Castro sent another letter dated December 19, 1991 to Jacobi confirming "that actual recovery [of] the Kloten gold account managed by Union Bank of Switzerland (*UBS*) subject of [Jacobi's] information and other efforts done will be properly compensated as previously committed."[5] We shall collectively refer to these letters as "PCGG letters."

A few years later, a similar letter dated August 27, 1998 (*De Guzman letter*) was sent by the new PCGG Chairman, Felix M. de Guzman, to Jacobi, confirming the PCGG's promise (as contained in the PCGG letters) to pay Jacobi and his intelligence group a 10% fee for the US$13.2 billion ill-gotten wealth of

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[1] Chairman Elma files the present petition in his capacity as former Chairman of the PCGG. He was appointed as PCGG Chairman on October 30, 1998; *rollo*, p. 141.

[2] Records, pp. 996-1000.

[3] *Id.* at 1109.

[4] *Rollo*, pp. 344-345; Records, pp. 785-786.

[5] *Rollo*, pp. 163, 189; Records, p. 784.

Former President Ferdinand E. Marcos, his family, trustee or fronts in UBS still/now being claimed and recovered by the Philippine Government. The De Guzman letter reads in full:[6]

27 August 1998

Mr. Reiner Jacobi
c/o Business Center
JW Marriott Hotel, Hong Kong

Care: Counsel Crispin T. Reyes

Dear Mr. Jacobi:

I refer to the letters dated 22 December 1988, 6 May 1991 and 19 December 1991 addressed to you from Mr. David M. Castro, former Chairman of the PCGG, copy (sic) for ready reference.

I hereby confirm the agreement of the PCGG to pay you/your group a ten (10%) percent fee of the US$13.2 Billions ill-gotten wealth, unexplained or hidden deposits/assets of former President Ferdinand E. Marcos, his family, trustees or fronts in Union Bank of Switzerland, still/now being claimed and recovered by the Philippine government which is being assisted/facilitated/realized by their identification as a result of the findings, information and evidence supplied by you/your group to the PCGG that is otherwise not known to the Commission from other sources nor previously and voluntarily disclosed by the Marcoses, their trustees, associates or cronies.

Very truly yours,
FOR THE COMMISSION:

[Signed]
FELIX M. DE GUZMAN [Countersigned by Director Danilo Daniel]
Chairman

FMG/lai[7]
d01[8]

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[6] Records, p. 779.

[7] "lai" is the printed initial of Lilia Yanga, Secretary of Chairman De Guzman; *rollo*, p. 240.

[8] *Id.* at 194.

a. The Sandiganbayan petition

On March 8, 1999, the respondents filed with the Sandiganbayan a verified Petition for *Mandamus*, Prohibition and *Certiorari* (with Prayer for a Writ of Preliminary Mandatory and Prohibitory Injunction)[9] (*Sandiganbayan petition*) against the petitioners (docketed as Civil Case No. 006). **Atty. Reyes acted as Jacobi's counsel. Jacobi did not sign or verify the petition**.

The contents of the PCGG letters and the De Guzman letter, among others, were substantially reproduced in the Sandiganbayan petition and were attached as annexes. (**The De Guzman letter was attached as Annex E)**. Likewise attached (as Annex G), was a June 24, 1998 letter from PCGG Chairman Magtanggol Gunigundo (*Gunigundo letter*), seeking judicial assistance from the Swiss Ministry of Justice and the Police of Switzerland regarding Marcos-related accounts in UBS.[10]

The Sandiganbayan petition began with the alleged commitment of the PCGG to Jacobi (and his group, including Atty. Reyes[11]) — as contained in the PCGG letters and the De Guzman letter. It also cited the reports[12] submitted by Jacobi's group to the PCGG detailing their ill-gotten- wealth-recovery efforts and services, as well as their follow-up letters[13] to the government to press for the UBS account. They alleged that due to their persistence, the PCGG (through Chairman Gunigundo and Chairman De Guzman) made an official request[14] to the Swiss Ministry of Justice to freeze the US$13.2 billion UBS account (as of August 25, 1998[15]) in the name of Irene Marcos Araneta,

[9] *Id.* at 158-185.

[10] *Id.* at 198.

[11] *Id.* at 160.

[12] *Id.* at 190-193, 217-219; Records, pp. 754-756, 780, 783.

[13] *Rollo*, pp. 199, 205-209, 212-213, 232.

[14] Through Philippine Ambassador to Switzerland Tomas Syquia.

[15] *Rollo*, p. 166.

alias "I. Araneta" (*UBS account*).[16] They claimed that the UBS itself admitted the existence of this account, and only denied that the account is owned in any way by the Marcoses.[17]

The Sandiganbayan petition also strongly questioned[18] Chairman Elma's appointment and reappointment of two Swiss "Trojan Horses" lawyers (Peter Cosandey and Martin Kurer) who had been allegedly blocking the government's efforts to recover the UBS account by secretly working for the UBS.[19] It alleged that Chairman Elma was working with these Swiss lawyers to frustrate the PCGG and its recovery efforts. Specifically, it alleged that:

> In not revoking the re-appointment of Martin Kurer as PCGG lawyer despite the honest and sincere suggestions, pleadings and demands by [Atty. Reyes]; in not pursuing the great efforts of the Philippine government through Ambassador Tomas T. Syquia to have the account frozen; in appointing, allowing and in fact abetting Martin Kurer who is associated (sic) and conspiring with Peter Cosandey in blocking the recovery of said account; [Chairman Elma] has shown beyond reasonable doubt that he has a personal agenda and is unusually interested in protecting [the UBS account] for another person or persons, other than the Filipino people.[20]

The Sandiganbayan petition prayed:

> AFTER NOTICE AND HEARING, to declare the re-appointment of Swiss lawyer Martin Kurer and Peter Cosandey as having been issued in grave abuse of discretion and highly prejudicial to the interests of the Philippine Government and the Filipino people and therefore null and void; to order [Chairman Elma and PCGG] to perform their mandated duty to recover [the UBS account] for the Filipino people; and to sentence [Chairman Elma] to pay [Atty. Reyes and Jacobi] actual damages that may be proved during the trial; x x x

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[16] Pursuant to the International Mutual Assistance in Criminal Matters.

[17] *Rollo*, pp. 167, 192-193, 196-197.

[18] *Id.* at 222-226, 230-231; Records, pp. 742-743, 747-751.

[19] *Rollo*, pp. 217-219.

[20] *Id.* at 181-182.

On March 15, 1999, Atty. Reyes, through the Anti-Graft League of the Philippines, Inc. (*AGLP*), filed a complaint with a similar thrust against Chairman Elma with the Office of the Ombudsman (*Ombudsman complaint*).[21] Atty. Reyes attached the Sandiganbayan petition (**together with its annexes**) to this complaint.[22] Atty. Reyes alleged that Chairman Elma's (i) reappointment of Martin Kurer, despite official information that he had been secretly working for UBS, and (ii) failure to follow-up the PCGG's previous official requests to the Swiss authorities were obvious violations of the provisions of Republic Act No. 3019.[23]

Later, Atty. Reyes filed an Urgent Manifestation[24] with the Sandiganbayan, **withdrawing the De Guzman letter and the Gunigundo letter as annexes of the Sandiganbayan petition**. A similar manifestation was filed with the Office of the Ombudsman regarding the Ombudsman complaint.[25] Atty. Reyes explained that he had been prompted to withdraw these letters after he learned of reports questioning the authenticity of these documents. **Atty. Reyes asserted that Jacobi had nothing to do with the preparation nor with the attachment of these letters** to the Sandiganbayan petition and to the Ombudsman complaint; thus —

> Annex "E" of the [Sandiganbayan Petition] is [the De Guzman letter] which was previously shown to [Chairman de Guzman] by [Atty. Reyes] before it was used as an annex and he stated that the statements therein appear to be in the document he has signed. x x x
>
> [*Jacobi*] *had absolutely nothing to do about this Annex "E"*
>
> x x x x x x x x x
>
> At any rate, this questionable document is merely a restatement of PCGG Chairman Castro's commitment to Mr. Jacobi which is

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[21] Docketed as Ombudsman Case No. CPL-99-0883. *Id.* at 251-262; Records, pp. 711-722.

[22] *Rollo*, p. 253.

[23] *Id.* at 251-262.

[24] *Id.* at 274-276.

[25] *Id.* at 278.

still perfectly binding and enforceable xxx and, further, it is absolutely immaterial to the main issue in this case.

Hence, this document marked Annex "E" of the [Sandiganbayan Petition] should be withdrawn, as it is now hereby withdrawn xxx, from the records of this case.

Further, [Atty.] Reyes has also carefully examined… Annex "G" of the [Sandiganbayan] Petition. He asked first for a copy of this document sent to Ambassador Syquia in Switzerland but he was informed that there is no copy in PCGG records. Afterwards, a copy of the document was provided by a PCGG insider and this is now marked as Annex "G"… *Again,* [*Jacobi*] *had nothing to do with this document marked as Annex "G"*.

[Atty.] Reyes has also carefully examined this document and found that while the statements therein appear authentic, however, upon closer examination, it seems that the signature thereunder is not the signature in the original signed by [Chairman Gunigundo] x x x.

Hence, this Annex "G" should be likewise withdrawn…

x x x x x x x x x

If [respondents], particularly counsel Reyes, had known from the very beginning that these documents are questionable and not trustworthy, of course, they will never use them in this case for purposes of recovering Marcos UBS account of $13.2 Billions (sic) by PCGG for the people of the Philippines.

And whenever there is anything wrong or questionable, [respondents] will not hesitate to and will immediately inform the [Sandiganbayan] accordingly, as, in fact, they are doing now, and it is their desire to deal with all candor, fairly and honestly, with [the Sandiganbayan] and all courts of the land. [italics in the original]

b. The PCGG's reaction

The attachment, as annexes, of the De Guzman letter to the Sandiganbayan petition and to the Ombudsman complaint elicited a legal response from the PCGG. Based on the affidavits executed by Chairman De Guzman, Director Danilo Daniel[26] of the Finance and Administration Department of the PCGG,[27] and Lilia

[26] *Id.* at 241.

[27] *Id.* at 305.

Yanga,[28] what appears as their signatures and initials at the bottom of the De Guzman letter actually pertain to their signatures and initials affixed to *another* letter (dated *August 25, 1998*) sent by Chairman De Guzman to the Philippine Ambassador to Switzerland, Tomas Syquia.[29] This August 25, 1998 letter, however, had nothing to do with any contingency agreement with Jacobi and/or Atty. Reyes. Lourdes Magno,[30] a Records Officer, and Sisa Lopez[31] also executed affidavits stating that the PCGG has no record of the De Guzman letter. All of these affiants were then PCGG employees.

In a March 17, 1999 resolution (*PCGG resolution*),[32] the PCGG stated that the De Guzman letter does not exist in its records.[33] Chairman De Guzman himself denied any participation in the preparation of this letter, and said:[34]

In connection with Civil Case No. 006 xxx the declaration of Director Danilo R.B. Daniel that **the contents [of the De Guzman letter] is not authentic is hereby confirmed it appearing that the records of the PCGG** bearing on the alleged letter indicates that the signature of the undersigned and the initials of Dir. Daniel written thereof refers to a letter addressed to Ambassador Tomas Syquia dated August 25, 1998 and not to the [De Guzman letter addressed] to Mr. Jacobi. [emphasis added]

The PCGG resolution also stated that a Swiss official[35] already denied the existence of the US$13.2 billion UBS account claimed

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[28] *Id.* at 240.

[29] *Id.* at 153, 250.

[30] *Id.* at 242.

[31] *Id.* at 243.

[32] *Id.* at 151-156. The PCGG Commissioners who approved the resolution were the following: Alexander Gesmundo, Antonio Rosales, Antonio Merelos and Jorge Sarmiento.

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

[34] *Id.* at 239.

[35] Referring to Examining Magistrate Dieter Jann (Office of District Attorney IV for the Canton of Zurich, in charge of the International Mutual Assistance in Criminal Matters). *Id.* at 153.

by Jacobi. Ultimately, the PCGG resolved to (i) declare Jacobi's arrangement with then Chairman Castro as non-binding and inexistent, and (ii) authorize Chairman Elma to file appropriate civil and criminal charges against the respondents.[36]

In a March 16, 1999 report of the National Bureau of Investigation (NBI), the latter confirmed that the De Guzman letter was a falsified document as the questioned signatures and entries therein "were lifted/extracted probably from the original and/or xerox copy"[37] of the August 25, 1998 letter addressed to Ambassador Syquia.

c. Criminal Complaint

On March 22, 1999, Chairman Elma filed an affidavit-complaint[38] with the Department of Justice (*DOJ*), charging the respondents with falsification and with use of falsified document (under Article 171, paragraph 2 and Article 172, paragraphs. 1 and 3 of the Revised Penal Code). The petitioners attached to the complaint the NBI report and the affidavits of the PCGG employees.[39]

On April 5, 1999,[40] Atty. Reyes and the AGLP filed a criminal complaint with the Office of the Ombudsman against Director Daniel (*Daniel Complaint*) for his alleged "traitorous mission for [UBS] and [the] Marcoses against the interest of the Philippine government."[41] The complaint stated the following particulars surrounding the Gunigundo letter and the De Guzman letter:

> Atty. Reyes also informed [Dir. Daniel] that [Atty. Reyes] requested [the] PCGG record section for a copy of [the Gunigundo letter]… but he was told they had no copy in their records.

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

[37] *Id.* at 248.

[38] Docketed as I.S. No. 99-445. *Id.* at 141-149; Records, pp. 825-832.

[39] *Rollo*, p. 9.

[40] *Id.* at 467.

[41] *Id.* at 286.

And regarding the missing [De Guzman] letter, the statement in the affidavits of [the PCGG employees] that there is neither a copy of Chairman de Guzman's letter… is not surprising and confirms [that] important documents are usually missing.

x x x x x x x x x

Further, about middle of September, 1998, Atty. Reyes again visited [Dir. Daniel] xxx and xxx inquired about [the] Gunigundo letter… and the [De Guzman] letter… to Reiner Jacobi [which] merely restated what former PCGG Chairman David Castro committed to Reiner Jacobi. The PCGG record section said it has no copy. And xxx [Dir. Daniel] said that he will check his records and give copies if available in his file.

Some days thereafter, again [Atty. Reyes] visited [Dir.] Daniel and he gave me xerox copy of [the] Gunigundo letter… (marked Annex "G" [of the Sandiganbayan] Petition…) xxx and [Chairman] De Guzman's letter… (marked Annex "E" [of the Sandiganbayan] Petition…

I never knew then that xxx [Dir.] Daniel has been working for the Marcoses and UBS in conspiracy with Swiss "Trojan Horse" Martin Kurer against the Philippine government. And I learned about it only recently. Hence, before I did not bother to check the trustworthiness of these documents which he gave me and which I believed all along to be authentic until my attention was called by negative press reports on this [De Guzman letter].

But, on the very day I read negative press reports on the authenticity of [Chairman] De Guzman's letter xxx, I realized that the two documents (Gunigundo's letter of June 24th and De Guzman's letter of Aug. 27th) given to me by [Dir.] Daniel must have been falsified. x x x

Accordingly, on the same day, Atty. Reyes formally withdrew these two documents marked Annexes "E" and "G" of the PETITION in Sandiganbayan Case No. 006 xxx from the record of the case.[42]

Atty. Reyes imputed the falsification to Director Daniel and claimed good faith in annexing the De Guzman letter to the Sandiganbayan petition; thus —

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[42] *Id.* at 284-286.

[Dir. Daniel] had the means and opportunity to create the [De Guzman letter] which confirmed PCGG's contingency fee agreement with Jacobi. [Dir.] Daniel had initialed the letter dated August 25, 1998. It has subsequently been discovered by the NBI that the signatures and initialing of the genuine letter dated 25 August 1998 have been transposed onto the forged [De Guzman] letter.

<u>Because [Dir.] Daniel had access to the letter dated 25 August 1998, he was in the best position to forge the [De Guzman] letter</u>. The NBI has stated that the [De Guzman] letter… was a very crude forgery. Indeed, it is now clear that this was such a crude forgery that it was designed to be discovered. Likewise, [Dir.] Daniel had access to Gunigundo's letter of June 19, 1996, hence, he was also in the best position to forge said [Gunigundo] letter of June 24, 1998 which is also a crude forgery.

x x x x x x x x x

In contrast, Jacobi and Reyes have no motive in creating a forged contingency fee agreement because Jacobi already has a binding agreement with the Philippine government. Indeed, their subsequent conduct contradicts any suggestion of guilty knowledge. In good faith, they attached the [De Guzman letter] in their Petition filed against Chairman Elma and the PCGG with the Sandiganbayan wherein recovery of $13.2 Billion from UBS is the main issue. It is ludicrous to suggest that Jacobi and Reyes would create a crude forgery and then produce it in contentious court proceedings when such a forgery is unnecessary to their case and is easily discoverable. Verily, the obvious forger is [Dir.] Daniel of the PCGG.[43]

Atty. Reyes filed his counter-affidavit,[44] adopting the explanation and allegations contained in his Urgent Manifestation and in the Daniel Complaint in pleading for the dismissal of the criminal case.

For his part, Jacobi, through Atty. Cynthia Peñalosa, denied any participation in the falsification of the De Guzman letter. He explained:

8. I was informed by [Atty. Reyes] at the time that I received a copy of [the De Guzman letter] that that letter had been given to

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[43] *Id.* at 286-288.

[44] *Id.* at 519-520, 452-465.

[him] by [Dir.] Daniel. The obvious forger is no other than PCGG insider [Dir.] Daniel x x x.[45]

Jacobi added that he and Atty. Reyes have no reason or motive to forge the letter since he already had an existing contingency fee agreement with the PCGG/Philippine government. Jacobi attached an affidavit of Chairman Castro confirming the veracity of the PCGG letters.[46] Jacobi stated that the petitioners' complaint ignored his work history with the PCGG and the consistency of his conduct with the agreement he entered into with the Philippine government.

Chairman Elma and the PCGG countered that the respondents' withdrawal of the falsified letter cannot extinguish the offenses already committed. The petitioners refuted the respondents' allegation that Director Daniel was the source of the De Guzman letter per Director Daniel's affidavit, to wit:

> I am not in a position to give [Atty. Reyes] the falsified [De Guzman] letter xxx to Reiner Jacobi as <u>I do not have a copy of said letter</u>.
>
> I strongly dispute Jacobi's statement that "the obvious forger is no other that (sic) the PCGG insider Danilo Daniel who furnished Attorney Crispin T. Reyes the letter in question." This is absolutely false and baseless. As I have stated above, I had no participation at all in this spurious letter. If I participated in this proceeding, why do I need to falsify it. Why not just give them a genuine copy of the letter.[47] (underlining added)

d. The DOJ's initial finding: existence of probable cause

In a June 25, 1999 resolution (*first resolution*), Senior State Prosecutor Jude Romano found probable cause against the respondents on the basis of two legal presumptions — that (i) the possessor and user of a falsified document is the forger;

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[45] *Id.* at 271.

[46] *Id.* at 270, 341-344, 462. Jacobi also adopted all the allegations in the Urgent Manifestation dated March 19, 1999 filed by Atty. Reyes with the Sandiganbayan and the Office of the Ombudsman. (*Id.* at 271.)

[47] *Id.* at 409.

and (ii) whoever stands to benefit from the forgery is the author thereof - which the respondents failed to overthrow. Thus, he recommended the filing of the corresponding information whose dispositive portion stated;[48] thus -

> WHEREFORE, premises considered, it is respectfully recommended that informations for Falsification and Use of Falsified Documents under Article 172 (1) in relation to Article 171(2) and Article 172 par. 3 of the Revised Penal Code, respectively, be filed against respondents xxx and another information for Use of Falsified Document under Article 172 par. 3 xxx be filed against [Atty. Reyes].

Prosecutor Romano rejected Jacobi's claim (that he had nothing to do with the forged letter or with its attachment as annex to the Sandiganbayan petition), on the ground that the act of Atty. Reyes, as Jacobi's counsel in the Sandiganbayan petition, bound him as client.[49]

Atty. Reyes seasonably **moved for reconsideration** of the first resolution,[50] alleging that neither of the presumptions relied upon by Prosecutor Romano applies.[51] **Jacobi, through Atty. Peñalosa, received his copy of the first resolution on June 30, 1999**.[52]

d1. The procedural complications.

On **July 13, 1999**,[53] the Padilla, Jimenez, Kintanar and Asuncion law firm (*Padilla law firm*) filed its *Entry of Appearance with Omnibus Motion*[54] for Jacobi, requesting for additional

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[48] *Id.* at 466-470.

[49] *Id.* at 470.

[50] On July 12, 1999. *Id.* at 472-476, 1273; Records, p. 573.

[51] Petitioners filed an Opposition to Atty. Reyes' Motion for Reconsideration (Records, pp. 382-395).

[52] *Rollo*, pp. 10, 483.

[53] *Id.* at 10.

[54] Dated July 12, 1999. Petitioners filed an Opposition to the Entry of Appearance (Records, pp. 377-381), calling the attention of the Prosecutor that (i) Jacobi had already filed an unverified Petition for Review of the first

time to file an appropriate pleading.[55] The Entry of Appearance attached the June 29, 1999 letter of Jacobi to Atty. Alexander Padilla (*Padilla letter*) of the Padilla law firm, retaining the latter as his "attorney to deal with the DOJ."[56] The Padilla letter stated that Jacobi has attached a copy of his June 29, 1999 letter to Atty. Peñalosa (*Peñalosa letter*). **Jacobi did not state the contents of the Peñalosa letter and neither was a copy of the Peñalosa letter actually attached to the Entry of Appearance**.

On **<u>July 15, 1999</u>** - the last day to avail of a remedy from the first resolution - **Jacobi, through Atty. Peñalosa**, **filed an *unverified* petition for review**[57] **with the DOJ Secretary**. With this development, the petitioners opposed the Padilla law firm's earlier request for additional period (to file appropriate pleading).[58] The petitioners' opposition notwithstanding, Prosecutor Romano granted the Padilla law firm's requests "in the interest of justice" in a July 15, 1999 order.[59] Accordingly, on **July 29, 1999**,[60] **Jacobi (through the Padilla law firm) moved for the reconsideration of the first resolution** (*first MR*).[61]

Meanwhile, in a **<u>July 19, 1999</u> manifestation**, Jacobi, through the Padilla law firm, stated that "only [the Padilla law firm is] authorized to represent [Jacobi] and that any and all other pleadings and documentations filed or submitted by any other person and

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resolution (*id.* at 379) through Atty. Peñalosa and (ii) since Atty. Peñalosa has not withdrawn her appearance then she is presumed to be the lead counsel for Jacobi whose filing of a petition for review barred Jacobi from availing a different relief from a different counsel.

[55] *Rollo*, pp. 480-481.

[56] Records, p. 562.

[57] *Rollo*, pp. 483-498.

[58] *Id.* at 662-664.

[59] Records, pp. 375-376.

[60] *Rollo*, p. 701.

[61] *Id.* at 668-676.

counsel, purportedly in and for his behalf, are manifestly not authorized."[62]

In a January 25, 2000 order (*second resolution*), Prosecutor Romano resolved[63] **to deny** **Jacobi's first MR**, reasoning as follows:

Records show that on July 13, 1999, [Atty. Padilla] filed an Entry of Appearance with Omnibus Motion manifesting that he is entering his appearance as counsel for [Jacobi]. xxx

Subsequently, on July 29, 1999, Atty. Padilla filed a Motion for Reconsideration. A perusal of the records however reveal[s] that a Petition for Review was filed before the Secretary of Justice by Atty. Cynthia Peñalosa in behalf of [Jacobi] on July 15, 1999. It further appears that no withdrawal of appearance as counsel or a withdrawal of the Petition was ever filed by said counsel. **Thus, Atty. Peñalosa remains to be a counsel on record of [Jacobi]** with Atty. Padilla as co-counsel.

Considering that the respondent has filed a Petition for Review of the [first resolution] that is the subject of the Motion for Reconsideration, the undersigned **in deference to the Secretary of Justice** is constrained to deny the Motion for Reconsideration. [emphases added]

Earlier however (or on January 10, 2000), then Secretary of Justice Serafin Cuevas also resolved **to dismiss** **Jacobi's unverified petition for review** (*Cuevas resolution*) for Jacobi's failure to "submit a verification of the petition signed by [Jacobi] himself."[64]

On March 7, 2000,[65] the Sanidad Abaya Te Viterbo Enriquez and Tan law firm (*Sanidad law firm*) filed an Entry of Appearance as "sole and principal counsel"[66] for Jacobi. **The Sanidad law**

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[62] *Id.* at 645.

[63] *Id.* at 691.

[64] *Id.* at 689.

[65] *Id.* at 70.

[66] *Id.* at 693.

firm attached two facsimile letters of Jacobi: one is dated March 3, 2000,[67] addressed to Prosecutor Romano/Chief State Prosecutor Jovencito Zuño; and the other is dated June 29, 1999[68] (which is actually the Peñalosa letter, supposedly attached to the Padilla law firm's Entry of Appearance) addressed to Atty. Peñalosa. Both letters attest to "the lack of authority of Atty. Peñalosa to represent and take action [for Jacobi] **as of [June 29, 1999]**"[69] — or before the unverified petition for review was filed. These facsimile letters do not bear the actual date of their transmission.[70]

The Sanidad law firm moved for the reconsideration[71] (*second MR*) of the second resolution, arguing that Prosecutor Romano erred in refusing to recognize that Atty. Peñalosa had already been validly discharged upon the subsequent unqualified appearance of the Padilla law firm well before the unverified petition for review was filed. It cites in support the Padilla law firm's July 19, 1999 Manifestation.[72]

In a March 6, 2001 resolution (*third resolution*), Chief State Prosecutor Jovencito Zuño (i) approved the recommendation of Prosecutor Romano to **grant Jacobi's second MR and Atty. Reyes' pending motion for reconsideration**, and (ii) dismissed the complaint against the respondents.[73] Since both the second resolution (denying Jacobi's first MR) and the Cuevas resolution (denying Jacobi's unverified petition for review) were not based on the merits, the prosecutors considered Jacobi's second MR "in the interest of justice." The prosecutors observed:

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[67] *Id.* at 695.

[68] *Id.* at 696.

[69] *Id.* at 697.

[70] The Sanidad law firm also filed a pleading, withdrawing the unverified petition for review filed by Atty. Peñalosa; *id.* at 687.

[71] Dated March 7, 2000.

[72] *Rollo*, pp. 701-704.

[73] *Id.* at 98-103; Records, pp. 870-875.

[The De Guzman letter] merely confirms the agreement between the PCGG and Jacobi's group…. The [De Guzman letter] was annexed to [the Sandiganbayan petition] [which] specifically prayed "for the revocation of the re-appointment of Swiss lawyers and representatives in Switzerland x x x and to continue, push through and follow up the previous government efforts and take such appropriate actions called for. x x x

As can be gleaned from the above, the subject letter is not necessary for the successful resolution of the case. As explained, its annexation to the petition is a surplusage for even without it, the action was sufficient. There is no logical reason for the respondents to falsify the subject letter knowing fully well that no benefit would accrue in their favor. It would be different if the action filed was for the collection of the stipulated 10% fee. The subject letter then becomes very material as it serves as proof of their right to the fees.[74]

In the meantime, Atty. Peñalosa withdrew[75] as Jacobi's counsel. She attached to her Notice of Withdrawal her letters-explanation to Jacobi, disproving her alleged lack of authority to file the unverified petition for review. In one of her letters, Atty. Peñalosa explained:

You [referring to Jacobi] know… **that despite the [Peñalosa letter] (which was faxed to me <u>after</u> I received a copy of the adverse DOJ Resolution…)** You repeatedly requested me to proceed… and to immediately inform [Atty. Padilla] that it was [you who gave] me authority to prepare/submit the necessary papers. I then informed [Atty. Padilla] of your decision. Nevertheless… I told [Atty. Padilla that] I could withdraw from [the] case so he can enter his appearance and make the necessary legal moves. [Atty. Padilla] said [that] he did not know about your DOJ case and that he was busy and that I just go ahead with your request that I proceed with the preparation/submission of the papers.

x x x x x x x x x

On July 15, 1999 which was the last day for the filing of the petition [for review with the DOJ], I asked you again if we were

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[74] *Id.* at 101.

[75] Through a Notice of Withdrawal/Manifestation dated April 6, 2000; *rollo*, pp. 706-707.

to proceed and your decision [was] that I file it. Even Dr. David Chaikin, your lawyer, who was with you at that time and whom you consulted, advised me to proceed. So, the petition was filed.[76] (Emphases added)

The petitioners moved for reconsideration[77] of the third resolution but its motion was denied in a January 9, 2002 resolution.[78] Prosecutors Romano and Zuño rejected the petitioners' argument that the dismissal of Atty. Peñalosa's petition for review bars a reconsideration of the second resolution.

It should be noted that the [third resolution] treats, not only of [Jacobi's] motion for reconsideration, but likewise that of [Atty. Reyes] which was [seasonably] filed. x x x

Therefore, insofar as the Motion for Reconsideration filed by [Atty. Reyes] is concerned, the same is still pending and had to be resolved. It is of record that [Atty. Reyes] never filed a petition for review of the [first resolution]. Hence the [Cuevas petition] dismissing on a mere technicality the Petition for review filed by Atty. Peñalosa, alleged counsel [of Jacobi], did not affect the pending Motion for Reconsideration filed by [Atty. Reyes] and did not bar the undersigned from acting thereon.

Insofar as the Motion for Reconsideration filed by [Jacobi] is concerned, the same had to be resolved principally in the interest of justice x x x.

This case involves the same facts and the same issues for both [Jacobi and Atty. Reyes] such that injustice could occur should there be two different decisions. x x x

xxx [the] dismissal [of the petition for review] never affected the Motion for reconsideration filed by [Atty. Reyes] then pending with the undersigned for resolution. Certainly, the resolution of this motion was within the jurisdiction/authority of the undersigned and the Chief State Prosecutor whose resolution is subject of reconsideration. x x x[79] [emphasis supplied]

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[76] *Id.* at 708-709.

[77] *Id.* at 111-138; Records, pp. 835-862.

[78] *Rollo*, pp. 105-109; Records, pp. 864-868.

[79] *Rollo*, pp. 106-108.

e. The DOJ's present finding: No probable cause

On April 29, 2002, the PCGG filed a petition for review[80] with the DOJ Secretary.[81] Usec. Gutierrez, acting "for the Secretary of Justice" Hernando Perez, denied the petition for review on the ground that no *prima facie* case exists against the respondents. With the denial[82] of the petitioners' motion for reconsideration,[83] the petitioners went directly to this Court on a petition for *certiorari*.

THE PETITIONERS' POSITION

The petitioners claim that Usec. Gutierrez gravely abused her discretion when she sustained the impropriety of (i) Jacobi's simultaneous resort to two different remedies — filing a petition for review and a motion for reconsideration — through two different counsels[84] and (ii) filing a second motion for reconsideration of an adverse resolution through another counsel.[85] Jacobi's first and second MRs were "purposely devised… to make it appear that Atty. Peñalosa was not authorized to file the unverified petition for review."[86]

The petitioners also claim that the alleged termination of Atty. Peñalosa's services surfaced only when — as late as March 2000 — the Sanidad law firm attached to Jacobi's second MR a copy of the Peñalosa letter. The petitioners argue that nothing in the records of the case would show that Jacobi terminated Atty. Peñalosa's services at any time *before* she filed the unverified

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[80] *Id.* at 56-92; Records, pp. 882-918.

[81] Atty. Reyes filed his Comment to the Petition for Review; records, pp. 956-979. In turn, the petitioners filed their Reply; records, pp. 980-991.

[82] *Rollo*, p. 54.

[83] *Id.* at 713-734; Records, pp. 1085-1107. The petitioners' Motion for Reconsideration was Opposed by Atty. Reyes (Records, pp. 1058-1081).

[84] *Rollo*, p. 1026.

[85] *Id.* at 1018-1019, 1028-1029.

[86] *Id.* at 23.

petition for review. The Padilla law firm's (i) Entry of Appearance and (ii) July 19, 1999 manifestation, as well as the Padilla letter attached to these, are silent about the alleged termination of Atty. Peñalosa. These documents **do not** contain the Peñalosa letter which supposedly evidences Jacobi's termination of Atty. Peñalosa's services.[87] At any rate, the Padilla and the Peñalosa letters are of dubious authenticity because they do not contain the actual date of transmittal by Jacobi to their addressees, as would normally appear at the top edge of a faxed document.[88]

The petitioners assert that Atty. Peñalosa was Jacobi's counsel at the time she filed the unverified petition for review, citing Prosecutor Romano's observation in the second resolution and Atty. Peñalosa's letters-explanation, attached to her Notice of Withdrawal.[89] The petitioners likewise claim that since Atty. Peñalosa remained Jacobi's counsel at the time she filed the petition for review, then the filing of the first and second MRs by the Padilla law firm and by the Sanidad law firm, respectively, is highly improper.

The petitioners add that Usec. Gutierrez gravely abused her discretion when she sustained Prosecutor Romano and Prosecutor Zuño's grant of Jacobi's second MR, which effectively (albeit without authority) overturned the Cuevas resolution,[90] instead of maintaining respect to the appellate authority of then Secretary Cuevas.

On the issue of probable cause, the petitioners reiterate the findings in the first resolution that the respondents' defense of "lack of knowledge [of the forgery] is self-serving and is better ventilated in a full blown trial."[91] Relying on the presumption that the holder of a forged document is presumed to be the

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[87] *Id.* at 1021-1022.

[88] *Id.* at 25-27.

[89] *Id.* at 1019-1021.

[90] *Id.* at 1033.

[91] *Id.* at 36; 469.

forger thereof, the petitioners assert that the respondents failed to rebut this presumption with credible evidence. Since the Sandiganbayan petition seeks to compel the petitioners (as respondents in Civil Case No. 006) to recover the UBS account, the Sandiganbayan petition was actually an action to compel recognition of the respondents' alleged 10% finder's fee as confirmed in the De Guzman letter.[92]

Citing *Choa v. Judge Chiongson*,[93] the petitioners add that the withdrawal of the' De Guzman letter from the Sandiganbayan petition and the Ombudsman complaint cannot negate the criminal liability that the respondents had already incurred. Criminal liability for knowingly introducing a falsified document in court is incurred once the document is submitted to the court through its attachment to the complaint.[94] The respondents cannot likewise claim good faith in withdrawing the De Guzman letter since the withdrawal was made after Chairman De Guzman denied any participation in the forged letter and after the NBI confirmed the falsification.[95]

THE RESPONDENTS' POSITION

The respondents question the propriety of the petitioners' resort to a *certiorari* petition instead of a petition for review under Rule 43;[96] they posit that even assuming the remedy of *certiorari* is proper, the petition is insufficient in form and substance due to the petitioners' failure to (i) implead the DOJ in their petition[97] and (ii) to observe the doctrine of hierarchy of courts.[98]

Contrary to the petitioners' remonstration, the assailed resolutions of Usec. Gutierrez were actually issued for Secretary

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[92] *Id.* at 1039.

[93] 323 Phil. 438 (1996).

[94] *Rollo*, p. 1041.

[95] *Id.* at 1042.

[96] *Id.* at 954-956, 1278.

[97] *Id.* at 952, 1327.

[98] *Id.* at 958, 1289.

of Justice Hernando Perez, and therefore, Usec. Gutierrez did not reverse the Cuevas resolution.[99] The respondents assert that the petitioners cannot compel the prosecutor to proceed with the case after finding that no probable cause exists against the respondents since the determination of probable cause involves an exercise of discretion.[100]

The respondents add that the petitioners' failure to present the original of the allegedly forged document is fatal to their accusations of forgery. At any rate, the presumption of authorship, relied upon by the petitioners, is inapplicable to and rebutted by Jacobi and Atty. Reyes, respectively: *first*, the presumption cannot apply to Jacobi, who was never in possession of the De Guzman letter; he had no participation in the preparation of the Sandiganbayan petition and he did not even verify it; and *second*, Atty. Reyes sufficiently explained how he came into possession of the De Guzman letter.[101]

ISSUES

1. Whether *certiorari* under Rule 65 is the proper remedy to question the DOJ's determination of probable cause.
    a. If it is, where should the petition be filed.
2. Whether the DOJ committed grave abuse of discretion.
    a. In effectively allowing Jacobi to (i) simultaneously avail of the remedy of a petition for review and a motion for reconsideration, and (ii) file a second motion for reconsideration.
    b. In finding that no probable cause for falsification and use of falsified document exists against the respondents?

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[99] *Id.* at 965.

[100] *Id.* at 959-962; 1290.

[101] *Id.* at 792.

OUR RULING

The petition lacks merit.

Before going into the substance of the petition, we shall first resolve the procedural questions the respondents raised.

I. Procedural aspects

a. Rule 65 is the proper remedy to assail the DOJ's determination of the presence or absence of probable cause

The respondents claim that a petition for review under Rule 43 is the proper remedy in questioning the assailed DOJ resolutions.

The respondents are mistaken.

By weighing the evidence submitted by the parties in a preliminary investigation and by making an independent assessment thereof, an investigating prosecutor is, to that extent, performing functions of a quasi-judicial nature in the conduct of a preliminary investigation. However, since he does not make a determination of the rights of any party in the proceeding, or pronounce the respondent's guilt or innocence (thus limiting his action to the determination of probable cause to file an information in court),[102] an investigating prosecutor's function still lacks the element of adjudication[103] essential to an appeal under Rule 43.

Additionally, there is a "compelling reason" to conclude that the DOJ's exclusion from the enumeration of quasi-judicial agencies in Rule 43 of the Rules of Court is deliberate. In *Orosa v. Roa*,[104] we observed:

> There is compelling reason to believe, however, that the exclusion of the DOJ from the list is deliberate, being in consonance with the

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[102] *Bautista v. Court of Appeals*, 413 Phil. 159, 168-169 (2001).

[103] *Santiago, Jr., etc. v. Bautista, et al.*, 143 Phil. 209, 219 (1970).

[104] 527 Phil. 347, 353-354 (2006).

constitutional power of control lodged in the President over executive departments, bureaus and offices. This power of control, which even Congress cannot limit, let alone withdraw, means the power of the Chief Executive to review, alter, modify, nullify, or set aside what a subordinate, *e.g.*, members of the Cabinet and heads of line agencies, had done in the performance of their duties and to substitute the judgment of the former for that of the latter.

Being thus under the control of the President, the Secretary of Justice, or, to be precise, his decision is subject to review of the former. In fine, recourse from the decision of the Secretary of Justice should be to the President, instead of the CA, under the established principle of exhaustion of administrative remedies. x x x. Notably, Section 1 x x x of Rule 43 includes the **Office of the President** in the agencies named therein, thereby accentuating the fact that appeals from rulings of department heads must first be taken to and resolved by that office before any appellate recourse may be resorted to. [citations omitted, emphasis ours]

However, Memorandum Circular No. 58[105] of the Office of the President bars an appeal from the decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases *via* a petition for review, *except* for those involving offenses punishable by *reclusion perpetua* to death.[106] Therefore, a party aggrieved by the DOJ's resolution - affirming or reversing the finding of the investigating prosecutor in a preliminary investigation involving an offense not punishable by *reclusion perpetua* to death - cannot appeal to the Office of the President and is left without any plain, speedy and adequate remedy in the ordinary course of the law. This leaves a *certiorari* petition as the only remedial avenue left.[107] However, the petitioner must allege

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[105] REITERATING AND CLARIFYING THE GUIDELINES SET FORTH IN MEMORANDUM CIRCULAR NO. 1266 (4 NOVEMBER 1983) CONCERNING THE REVIEW BY THE OFFICE OF THE PRESIDENT OF RESOLUTIONS ISSUED BY THE SECRETARY OF JUSTICE CONCERNING PRELIMINARY INVESTIGATIONS OF CRIMINAL CASES.

[106] The death penalty is abolished by Republic Act No. 9346.

[107] *Alcaraz v. Gonzalez*, G.R. No. 164715, September 20, 2006, 502 SCRA 518, 529.

and show that the DOJ acted with grave abuse of discretion in granting or denying the petition for review.

We also reject the respondents' allegation that the present petition suffers from a fatal procedural defect for failure to implead the DOJ (or its appropriate official) as an indispensable party.

Unlike a Rule 45 petition, one filed under Rule 65 petition requires the petitioner to implead as public respondent the official or agency[108] whose exercise of a judicial or quasi-judicial function is allegedly tainted with grave abuse of discretion.[109] Contrary to the respondents' assertion, the petition for *certiorari* filed by the petitioners with the Court impleaded Usec. Gutierrez,

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[108] RULES OF COURT, Rule 65, Section 5 reads:

SEC. 5. *Respondents and costs in certain cases.* — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents. [underscoring supplied]

[109] *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, 479 Phil. 768, 780-781 (2004), compared a Rule 45 petition with a Rule 65 petition as to the manner of filing, as follows:

As to the Manner of Filing. Over an appeal, the CA exercises its appellate jurisdiction and power of review. Over a *certiorari*, the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts. An appeal is thus a continuation of the original suit, while a petition for *certiorari* is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. The parties to an appeal are the original parties to the action. In contrast, the parties to a petition for *certiorari* are the aggrieved party (who thereby becomes the petitioner) against the lower court or quasi-judicial agency, and the prevailing parties (the public and the private respondents, respectively. [underscoring supplied, citations omitted]

who, as then Justice Undersecretary, issued the assailed resolutions "for the Secretary of Justice." While the DOJ did not formally enter its appearance in this case, or file any comment or memoranda, the records show that the Court issued resolutions, addressed to the DOJ as a party, to submit the appropriate responsive pleadings.[110] As an extraordinary remedy, Rule 65 of the Rules of Court does not require that summons be issued to the respondent; the service upon him of an order to file its Comment or Memorandum is sufficient.[111]

b. The doctrine of hierarchy of courts not inflexible

Conceding the remedial propriety of the present petition, the respondents nevertheless assert that under the doctrine of

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[110] The Court's January 13, 2003 and March 7, 2005 resolution, requiring the parties to submit a Comment and Memorandum included the Secretary of Justice; *rollo*, pp. 738, 932-933.

[111] Sections 6 and 8 of Rule 65 of the Rules of Court read:

SEC. 6. ***Order to comment.*** — If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

In petitions for *certiorari* before the Supreme Court and the Court of Appeals, the provisions of Section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.

SEC. 8. ***Proceedings after comment is filed.*** — After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If, after such hearing or filing of memoranda or upon the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled.

However, the court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. [emphases ours]

hierarchy of courts, the present petition should have been filed with the Court of Appeals (CA), which has concurrent jurisdiction with the Supreme Court to issue the extra-ordinary writ of *certiorari*.

We agree with the respondents.

In *Vergara, Sr. v. Judge Suelto*,[112] the Court laid down the judicial policy expressly disallowing a direct recourse to this Court because it is a court of *last* resort. The Court stressed that "[w]here the issuance of an extraordinary writ is also within the competence of [another court], it [must be in that court] that the specific action for the writ's procurement must be presented." The rationale behind the policy arises from the necessity of preventing (i) inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and (ii) further overcrowding of the Court's docket.[113]

People v. Cuaresma[114] and subsequent jurisprudence later reaffirmed this policy, stating that a direct invocation of the Court's original jurisdiction may be allowed only if there are s**pecial and important reasons clearly and specifically set out in the petition** or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction.[115]

In the present case, the petitioners have not advanced any special and important reason or reasons why direct recourse to this Court should be allowed, considering the availability of a *certiorari* petition with the CA; nor do we find exceptional and compelling circumstances in the present petition to apply the

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[112] *Gelindon v. De la Rama*, G.R. No. 105072, December 9, 1993, 228 SCRA 322; 240 Phil. 719, 733 (1987).

[113] *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633; and *People v. Cuaresma*, 254 Phil. 418, 427 (1989).

[114] *Supra*.

[115] *Santiago v. Vasquez*, *supra* note 113.

exception to the judicial policy.[116] However, if only to avoid further delay – by leniently reading the petition, and assuming import to, the allegation that the respondents falsified a document that forms part of the PCGG's official records of its correspondence with a Philippine diplomatic official - we deem it of practical necessity to resolve the case on its merits.[117]

c. Grave abuse of discretion: procedural aspect of the DOJ's determination of lack of probable cause

The petitioners argue that since Atty. Peñalosa was still Jacobi's counsel of record at the time she filed the unverified petition for review, Jacobi could not disown the act of his counsel by simply availing of another remedy through another counsel. Consequently, the dismissal of Jacobi's unverified petition for review - albeit on a technical ground — rendered the first resolution as the final determination of the existence of probable cause against the respondents.

The mere filing of a notice of appearance of a new counsel does not automatically give rise to the presumption that the present counsel of record has already been substituted or that his authority has been withdrawn. Therefore, absent a formal withdrawal of appearance filed by Atty. Peñalosa, the Padilla law firm is considered merely as a collaborating counsel and its entry of appearance does remove from Atty. Peñalosa the authority to file, when she did, the petition for review with the DOJ.[118] Even Jacobi impliedly admitted that Atty. Peñalosa was still his counsel at the time she filed the petition for review by not addressing the issue of her authority to file it and by conveniently choosing to keep silent (thus impliedly agreeing with) regarding her account of the filing of the petition.

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[116] *Lacson Hermanas, Inc. v. Heirs of Ignacio*, 500 Phil. 673, 676-677 (2005).

[117] *Ferdinand A. Cruz v. Judge Henrick E. Gingoyon [Deceased], et al.*, G.R. No. 170404, September 28, 2011.

[118] *San Miguel Corporation v. Pontillas*, G.R. No. 155178, May 7, 2008, 554 SCRA 50, 58.

Contrary to the petitioners' claim, records bear out that the Padilla law firm had attached the Peñalosa letter to its July 19, 1999 manifestation, showing that Jacobi already terminated Atty. Peñalosa's services as of June 29, 1999 (or before the unverified petition for review was filed). However, since this Manifestation was filed with the DOJ only on July 20, 1999,[119] Atty. Peñalosa's earlier filing of the petition for review cannot be considered unauthorized. While the filing of this July 19, 1999 manifestation would have the effect of discharging Atty. Peñalosa,[120] it cannot undo her act which was valid and effective at the time it was done.[121]

All things considered, the factual peculiarities of this case do not lead us to adopt the petitioners' position.

Under Department Circular No. 70 of the DOJ,[122] an aggrieved party may appeal the resolution of the city or provincial prosecutor to the Secretary of Justice upon receipt either of the questioned resolution or of the denial of a motion for reconsideration of the questioned resolution. Logically, the filing of a petition for

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[119] Records, pp. 322-324.

[120] See *Bacarro v. CA (Fifth Division), et al.*, 147 Phil. 35, 41 (1971).

[121] In *Mobil Oil Philippines, Inc. v. Court of First Instance of Rizal, Branch VI*, G.R. No. L-40457, May 8, 1992, 208 SCRA 523, 528, the Court ruled that lawyers have "the *exclusive management of the procedural aspect* of the litigation including the enforcement of the rights and remedies of their client." See also Rule 19.03 of the Code of Professional Responsibility.

As between the Court and the adverse party, the rule is that the severance of the relation of an attorney and a client is not effective until a notice of discharge by the client or a manifestation clearly indicating the purpose is filed with the court and a copy thereof served upon the adverse party (Ruben E. Agpalo, *Legal and Judicial Ethics*, p. 352, 2002 ed.).

[122] Section 3 of the 2000 National Prosecution Service Rule on Appeal

SECTION 3. Period to appeal. The appeal shall be taken within fifteen (15) days from receipt of the resolution, or of the denial of the motion for reconsideration/reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed.

review is deemed a waiver of the more expedient remedy of asking for reconsideration from the investigating prosecutor.

Notwithstanding the irregularity that would result in availing two remedies in succession, Prosecutor Romano granted Jacobi's request (through the Padilla law firm) for an additional period within which to file an appropriate pleading, glossing over the petition for review filed on the same date (July 15, 1999) with the Secretary of Justice. Accordingly, Jacobi filed his first MR on July 29, 1999, through the Padilla law firm.

Upon discovery of Jacobi's previously filed petition for review, Prosecutor Romano refused to entertain Jacobi's first MR "in deference to the Secretary of Justice."[123] (Unfortunately, the then Secretary of Justice subsequently denied Jacobi's petition for review based solely on a procedural defect, *i.e.*, Jacobi failed to verify the petition).

A significant point that should be appreciated at this juncture is that Atty. Reyes himself had a validly filed motion for reconsideration since he had been alleged to be not only a lawyer, but a co-conspirator of Jacobi in the offenses sought to be charged. It must be considered, too, that the petitioners' accusations against the respondents arose from the same set of disputed (and undisputed) facts whose resolution, for purposes of determination of probable cause, could not be considered independently of one another. The prosecutors apparently forgot about Atty. Reyes' motion for reconsideration when they recognized the petition for review Jacobi earlier filed and in ruling on Jacobi's first MR.

From this perspective, Prosecutor Zuño's March 6, 2001 ruling on Jacobi's second MR and on Atty. Reyes' first MR cannot be appreciated as grave abuse of discretion. While it seemingly violated established rules of procedure, it provided ample justification therefor — the avoidance of possibility of two conflicting rulings on two motions treating of the same inseparable subject matter.

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[123] *Rollo,* p. 691.

We remind the petitioners that when the technical rules of procedure desert its proper office as an aid to justice and becomes a great hindrance to the attainment of justice, its invocation deserves the least consideration from this Court. Rules of procedure must yield, when proper and under justifiable causes and/or circumstances (as what has been done in the present case), in the interest of substantial justice.

In these lights, we cannot likewise agree with the petitioners' remonstrations that Usec. Gutierrez improperly overruled the resolution of former Secretary Cuevas. As the respondents pointedly countered, the assailed resolutions were issued by Usec. Gutierrez "for the Secretary of Justice," who at the time was no longer Secretary Cuevas.[124] Absent any allegation and proof of any acquired vested right, the discretion exercised by a former alter-ego cannot tie the hands of his successor in office since cabinet secretaries are mere projections of the Chief Executive himself.[125]

With the procedural issues cleared, we now resolve the ultimate issue of whether probable cause exists to charge the respondents with falsification and use of falsified documents.

II. Substantive aspect

a. Determination of probable cause, an executive function

The necessary component of the Executive's power to faithfully execute the laws of the land is the State's self-preserving power to prosecute violators of its penal laws. This responsibility is primarily lodged with the DOJ, as the principal law agency of the government.[126] The prosecutor has the discretionary authority to determine whether facts and circumstances exist meriting

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[124] *Id.* at 965.

[125] See *Malayan Integrated Industries Corp. v. Court of Appeals*, G.R. No. 101469, September 4, 1992, 213 SCRA 640, 651.

[126] Book IV, Title III, Chapter 1, Section 1, Administrative Code of 1987.

reasonable belief that a person has committed a crime. The question of whether or not to dismiss a criminal complaint is necessarily dependent on the sound discretion of the investigating prosecutor and, ultimately, of the Secretary (or Undersecretary acting for the Secretary) of Justice.[127] Who to charge with what crime or none at all is basically the prosecutor's call.

Accordingly, the Court has consistently adopted the policy of non-interference in the conduct of preliminary investigations, and to leave the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause.[128] Courts cannot order the prosecution of one against whom the prosecutor has not found a *prima facie* case; as a rule, courts, too, cannot substitute their own judgment for that of the Executive.[129]

In fact, the prosecutor may err or may even abuse the discretion lodged in him by law. This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of *certiorari*. To justify judicial intrusion into what is fundamentally the domain of the Executive,[130] the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal

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[127] *D.M. Consunji v. Esguerra*, 328 Phil. 1168, 1184 (1996); *Aguirre v. Secretary, Department of Justice*, G.R. No. 170723, March 3, 2008, 547 SCRA 431, 452-453; and *First Women's Credit Corporation v. Baybay*, G.R. No. 166888, January 31, 2007, 513 SCRA 637, 645-646.

[128] *First Women's Credit Corporation v. Baybay*, *supra*; and *Chan v. Secretary of Justice*, G.R. No. 147065, March 14, 2008, 548 SCRA 337, 349-350.

[129] *Alcaraz v. Gonzalez*, *supra* note 107, at 529.

[130] *Aguirre v. Secretary of the Department of Justice*, *supra* note 127, at 453.

to perform the duty enjoined or to act in contemplation of law,[131] before judicial relief from a discretionary prosecutorial action may be obtained. All these, the petitioner failed to establish.

b. Lack of probable cause for falsification

For purposes of filing an information in court, probable cause refers to facts and circumstances sufficient to engender a well — founded belief that a crime has been committed and that the respondents probably committed it. To guide the prosecutor's determination, a finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused; the quantum of proof to establish its existence is less than the evidence that would justify conviction, but it demands more than bare suspicion.[132]

No definitive basis to determine probable cause has been established, except to consider the attendant facts and circumstances according to the prosecutor's best lights.[133] No law or rule states that probable cause requires a specific kind of evidence. No formula or fixed rule for its determination exists. Probable cause is determined in the light of conditions obtaining in a given situation.[134] In going through the process, the prosecutor should carefully calibrate the issues of facts presented to him to the end that his finding would always be consistent with the clear dictates of reason.[135]

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[131] *Marcelo G. Ganaden, et al. v. Honorable Office of the Ombudsman, et al.*, G.R. Nos. 169359-61, June 1, 2011.

[132] *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, April 23, 2010, 619 SCRA 141, 148-149.

[133] *Metropolitan Bank and Trust Co. (Metrobank), represented by Rosella A. Santiago v. Antonio O. Tobias III*, G.R. No. 177780, January 25, 2012.

[134] *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550, 567 (2004).

[135] *Metropolitan Bank and Trust Co, (Metrobank),represented by Rosella A. Santigo v. Antonio O. Tobias III*, *supra* note 133.

In the present case, the petitioners rely on the jurisprudential presumption that a holder of a forged document is himself the forger, and should be charged under Article 171, paragraph 2[136] and Article 172, paragraphs 1 and 3[137] of the Revised Penal Code.

I. The presumption's roots in jurisprudence

In the 1906 case of *U.S. v. Castillo,*[138] the Court laid down the rule that the utterance or use of a forged instrument, when unexplained, is strong evidence tending to establish that the user himself (or herself) either forged the instrument or caused it to be forged. In this case, the accused merely denied ever presenting the forged check to the complainant or receiving the amount it represented; the Court found no merit in these denials. In *People v. De Lara*[139] (a 1924 case), the Court again applied

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[136] Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prision mayor* and a fine not to exceed ₱5,000 xxx shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

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2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate[.]

[137] Art. 172. *Falsification by private individual and use of falsified documents.* — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000 xxx shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

x x x x x x x x x

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

[138] 6 Phil. 453, 455 (1906).

[139] 45 Phil. 754, 759 (1924).

the presumption after finding the explanation of the accused – on how he came into possession of checks that were subsequently encashed – to be "unusual and unreasonable as to carry conviction."[140]

In *People v. Domingo* (1926),[141] the Court applied the presumption because a few days after the certificate of title (over a property) was loaned to the accused, a forged deed of sale covering the property was executed by two alleged vendors. The Court ruled that the failure of the accused to explain what she did with the certificate of title loaned to her could only lead to the inference that she placed the certificate of title in the hands of her confederates as without the certificate, the forgery could not have been accomplished.

In *People v. Astudillo* (1934),[142] the Court clarified[143] that for the presumption to apply, the use of the forged document must be accompanied by these circumstances: the use is so closely connected in time with the forgery,[144] or the user may be proved to have the capacity to undertake the forgery, or such close connection with the forgers to create a reasonable

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[140] *Ibid.*

[141] G.R. No. L-24086, March 25, 1926, 49 Phil. 28, 33 (1926).

[142] 60 Phil. 338, 346 (1934).

[143] Citing Wharton's *Criminal Law* as follows:

Does the uttering of a forged instrument by a particular person justify a jury in convicting such a person of forgery? This question, if nakedly put, must, like the kindred one as to the proof larceny by evidence of possession of stolen goods, be answered in the negative. The defendant is presumed to be innocent until otherwise proved. In larceny this presumption is overcome by proof that the possession is so recent that it becomes difficult to conceive how the defendant could have [gotten] the property without being in some way concerned in the stealing. So it is with the uttering. The uttering may be so closely connected in time with the forging, the utterer may be proved to have such capacity for forging, or such close connection with the forgers that it becomes, when so accomplished, probable proof of complicity in the forgery.

[144] See also *People v. Sendaydiego,* 171 Phil. 114, 134-135 (1978); and *People v. De Lara*, *supra* note 139, at 760.

link. These additional circumstances have been loosely applied in subsequent cases.

In *Alarcon v. Court of Appeals* (1967),[145] the Court applied the presumption after considering the "patent irregularity in the transaction"[146] and the "extraordinary interest" of the accused in the property covered by the forged document/s in holding that "no reasonable and fair[-]minded man" would say that the accused had no knowledge of the falsification. *Sarep v. Sandiganbayan* (1989 case),[147] gave occasion for the ruling that since the accused was the only person who stood to benefit by the falsification of the document found in his possession, the presumption of authorship of the falsification applies in the absence of contrary convincing proof by the accused.[148]

In the more recent (1992) *Caubang v. People*,[149] the accused — who claimed to have the authority to transact (in behalf of an entity) with a government agency in Manila — attempted to overthrow the presumption of authorship against him by alleging intervening circumstances from the time he arrived in Manila until the transaction with the government agency was made. The accused claimed the he did not carry the forged document when he arrived in Manila and that third persons (including a "fixer") actually transacted with the government. Allegedly, these claims disproved that he had any knowledge or inference in the making of the submitted forged document. Rejecting this claim, the Court ruled that:

> [U]tilizing a fixer as part of the scenario becomes a convenient ploy to divert the mind of the court from the more plausible inference that the accused-petitioner engineered the spurious [document].

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[145] No. L-21846, March 31, 1967, 19 SCRA 688, 690; and *Pecho v. Sandiganbayan*, G.R. No. 111399, November 14, 1994, 238 SCRA 116, 138.

[146] See also *Castillo v. Sandiganbayan*, 235 Phil. 428 (1987).

[147] 258 Phil. 229, 238 (1989).

[148] *Maliwat v. CA*, 326 Phil. 732 (1996); and *Recebido v. People*, 400 Phil. 752 (2000).

[149] G.R. No. 62634, June 26, 1992, 210 SCRA 377.

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Even if the allegation that some other person [did the transaction] was true, the accused-petitioner would still be subjected to the same conclusion.

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Having been the one responsible for the filing of the registration papers, including the means he felt necessary to accomplish the registration, the accused must likewise be accountable therefor. As the authorized representative, he is deemed to have been the one in custody or possession, or at least the one who has gotten hold even for a short while, of the papers which included the [falsified document]. That he knew of the execution of the statement is a possibility not too difficult to imagine under the circumstances.

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The [submission] of the previously inexistent document [with the government] subjects the accused-petitioner to the inference that he *used* it as part of the registration papers. In the absence of a credible and satisfactory explanation of how the document came into being and then filed with the [government agency], the accused is presumed to be the forger [.][150] (italics supplied)

In *Dava v. People* (1991),[151] involving an accused who misrepresented to his friend that he had no driver's license and thereafter induced his friend to deal with "fixers" so that he could have a driver's license, the Court ruled that the "patent irregularity"[152] that attended the procurement of the license cannot escape the conclusion that the accused knew that the license he obtained was fake and that he acted as a principal by inducement in the falsification of the license.

The above case law instructs us that if a person had in his possession (actual or constructive) a falsified document and made use of it, taking advantage of it and/or profiting from

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[150] *Id.* at 389-391.

[151] 279 Phil. 65 (1991).

[152] *Id.* at 78.

such use, the *presumption* that he authored the falsification also applies.[153]

These cited cases, however, already involve a determination of the *guilt or innocence* of an accused, requiring the application of the rigid standard of moral certainty. In a preliminary investigation that merely inquires into the probability of guilt of a respondent, no reason exists why the same presumption cannot apply *mutatis mutandis*, taking into account the different level of certainty demanded.

Where the evidence before the investigating prosecutor jibes with the factual premises[154] necessary for the application of the presumption of authorship, a *prima facie*[155] case for falsification under Article 171 of the Revised Penal Code is created. Correspondingly, the legal presumption gives rise to the necessity for the presentation of contrary evidence by the party (against whom the presumption applies) to overcome the *prima facie* case established;[156] otherwise, the existence of probable cause cannot be disputed.[157]

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[153] See *People v. Sendaydiego*, *supra* note 144; *People v. Caragao*, 141 Phil. 660 (1969); *Rural Bank of Silay, Inc. v. Atty. Pilla*, 403 Phil. 1 (2001); *Serrano v. Court of Appeals,* 452 Phil. 801 (2003); and *Pacasum v. People*, G.R. No. 180314, April 16, 2009, 585 SCRA 616.

[154] *Revised Rules on Evidence,* Oscar M. Herrera, 1999 ed. p. 39.

[155] *Prima facie* evidence is defined as "Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence." (*Wa-acon v. People*, G.R. No. 164575, December 6, 2006, 510 SCRA 429, 438, citing H. Black, *et al.*, *BLACK'S LAW DICTIONARY* 1190 (6th ed., 1990).

[156] The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, thereby which, if no contrary proof is offered, will prevail. *Lastrilla v. Granda*, 516 Phil. 667, 668 (2006). See also *Metropolitan Bank and Trust Co, (Metrobank),represented by Rosella A. Santigo v. Antonio O. Tobias III*, *supra* note 133.

[157] Probable cause, however, should not be confused with a *prima facie* case. *Cometa v. Court of Appeals* 378 Phil. 1187, 1196 (1999) teaches:

Based on these standards, the twin-issue we confront is whether the presumption applies and whether the facts giving rise to it have been adequately rebutted by the respondents.

ii. The legal presumption does not apply to Jacobi

Jacobi argues that the presumption of authorship does not apply to him because he never became a possessor or holder of the De Guzman letter.

The De Guzman letter shows that Jacobi was its intended addressee although it was sent in "care" of Jacobi's then counsel, Atty. Reyes. Unlike the PCGG letters, whose authenticity the petitioners do not dispute, the De Guzman letter recognized Atty. Reyes as Jacobi's counsel in his dealing with the PCGG. The petitioners do not dispute, too, Atty. Reyes' representation to the PCGG as Jacobi's counsel in several correspondences he had sent, confirming that he had been acting in such capacity.

The relation of an attorney and a client is in many respects one of agency and the general rules of ordinary agency apply.

Prima facie evidence requires a degree or quantum of proof greater than probable cause. "[It] denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain a prosecution or establish the facts, as to counterbalance the presumption of innocence and ***warrant the conviction*** of the accused." On the other hand, probable cause for the filing of an information merely means "reasonable ground for belief in the existence of facts warranting the proceedings complained of, or an apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe that the accused person has committed the crime." What is needed ***to bring an action*** in court is *simply* probable cause, not *prima facie* evidence. In the terminology of the Rules of Criminal Procedure, what is required for bringing a criminal action is only such evidence as is sufficient to "engender a well founded belief as to the facts of the commission of a crime and the respondent's probable guilt thereof."

Accordingly, the inapplicability of the presumption of authorship (and, consequently, the lack of a *prima facie* case) in the preliminary investigation does not completely foreclose a finding of probable cause for falsification. However, it may be too difficult to establish even probable cause because of the secrecy in which the crime is generally done.

The extent of authority of a lawyer, when acting on behalf of his client outside of court, is measured by the same test applied to an ordinary agent.[158] Accordingly, even if we go by Atty. Reyes' account of how the De Guzman letter surfaced, Jacobi, at least, had constructive possession of the De Guzman letter. Being a mere extension of the personality of the principal (client), the agent's (lawyer's) possession is considered that of the principal's.[159]

However, possession of the falsified letter is not enough to trigger the application of the presumption of authorship; the use of the document[160] and the existence of any of the circumstances previously discussed is still necessary.

In the present case, Jacobi's use of the De Guzman letter is placed in doubt considering (i) that he was not in the country when the Sandiganbayan petition - containing the De Guzman letter — was filed, and (ii) the absence of his signature in the Sandiganbayan petition and in its verification. There is also a seven-month interval between the date of the De Guzman letter and the filing of the Sandiganbayan petition. Cognizant of these facts, the petitioners theorized that Jacobi and Atty. Reyes acted in conspiracy in coming up with a falsified De Guzman letter.[161] The petitioners claim that the attachment of the De Guzman letter to the respondents' Sandiganbayan petition was precisely aimed at compelling the PCGG to recognize Jacobi's (and his group's) 10% contingent fee arrangement with the PCGG and, ultimately, recovering it in the same action.

The petitioners' claim fails to persuade us. The petitioners ignore the professional relationship existing between Jacobi and

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[158] *Uytengsu III v. Atty. Baduel,* 514 Phil. 1, 10 (2005).

[159] *Doles v. Angeles*, 525 Phil. 673, 689 (2006); and *Eurotech Industrial Technologies, Inc. v. Cuizon*, G.R. No. 167552, April 23, 2007, 521 SCRA 584, 592-593.

[160] See *Serrano v. Court of Appeals*, *supra* note 153; and *People v. Caragao*, *supra* note 153.

[161] *Rollo*, p. 39.

Atty. Reyes at the time the Sandiganbayan petition was filed. The existence of this relationship necessarily calls for a different appreciation of the facts established during the preliminary investigation than it would if no such relationship existed. Under Rule 138[162] of the Rules of Court, matters of ordinary judicial procedure are within the exclusive authority of the attorney. These include such questions as what action or pleading to file, what should be the theory of the case, and how the claim (or defense) may be proved and those affecting the sufficiency, relevancy and materiality of certain pieces of evidence.[163] The annexation of the De Guzman letter in the Sandiganbayan petition and the Ombudsman complaint falls within these matters. Even Atty. Reyes himself explained that Jacobi had no participation in the preparation of the Sandiganbayan petition, much less in the attachment as annex of the De Guzman letter.[164]

Without determining the *validity* of Jacobi's supposed arrangement with the PCGG, a reading of the Sandiganbayan petition does not support the petitioner's theory of conspiracy. In filing the Sandiganbayan petition, the respondents seek to compel the petitioners to perform their duty to recover the ill-gotten wealth of the Marcoses. With or without the agreement, the performance of this duty is a tasked imposed by law on the PCGG; the performance of this duty is what the Sandiganbayan petition speaks of in plain terms.

Then, too, the DOJ found nothing to support the petitioners' allegation of conspiracy or of inducement on Jacobi's part. Likewise, the Court cannot find any reason why the respondents should file the Sandiganbayan petition to compel the petitioners to recognize their alleged contingent fee arrangement. To begin with, the records do not show that the petitioners ever disputed the validity of this arrangement — as evidenced likewise by the PCGG letters, which[165] are of similar import as the De Guzman

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[162] Section 23.

[163] *Province of Bulacan v. Court of Appeals*, 359 Phil. 779, 791-792.

[164] Atty. Reyes' Urgent Manifestation; *rollo*, p. 274.

[165] While the petitioners claim that the PCGG letters are unauthorized by the PCGG *en banc*, they do not question their authenticity (PCGG Resolution No. 99-E-017); *id.* at 152.

letter and whose *authenticity* the petitioners impliedly admitted *at the time* the respondents filed the Sandiganbayan petition.

Yet again, the existence of several letters and reports made by the respondents to the PCGG, regarding the UBS account and the respondents' activities in connection therewith, shows that the PCGG was at least aware of the respondents' efforts to assist in the recovery efforts of the government, in general, and of the PCGG, in particular. Therefore, forging a letter that would simply be evidence of an implied agreement for those services hardly makes any sense.[166]

Considering the inapplicability of the presumption of authorship and the dearth of evidence to support the allegation of conspiracy, much less of evidence directly imputing the forgery of the De Guzman letter to Jacobi, we find no grave abuse of discretion on the part of the DOJ in absolving him.

iii. The presumption in forgery was sufficiently explained by Atty. Reyes

Atty. Reyes does not seriously dispute the application of the presumption of authorship[167] as to him since he was in possession, and made use, of the forged De Guzman letter, but offers an explanation on the circumstances of such possession and use. On the other hand, the petitioners dispute the adequacy of his explanation and impute grave abuse of discretion on the part of

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[166] While motive is not reasonable basis in determining probable cause, the absence thereof further obviates the probability of guilt for falsification (*Torres, Jr. v. Sps. Drs. Aguinaldo*, 500 Phil. 365 (2005). See also *Rañon v. CA, et al.*, 220 Phil. 171, 179 (1985).

[167] Atty. Reyes raised arguments precluding the application of the presumption — (i) the De Guzman letter is not a document within the meaning of Article 172 of the Revised Penal Code; and (ii) there was no counterfeiting or imitating of signature as the signatures were merely lifted or extracted from another letter, per the NBI report. Considering the limited scope of a *certiorari* petition and the fundamentally executive function of determining probable cause in a preliminary investigation, the resolution of these arguments is uncalled for in the present case.

Usec. Gutierrez for surmising that the De Guzman letter "must have been 'doctored' in the PCGG."[168]

What constitutes satisfactory explanation from the possessor and user of a forged document must be adjudged on a case to case basis, consistent with the twin-purposes of a preliminary investigation[169] - *viz*: *first,* to protect the State from having to conduct useless and expensive trials; and *second*, to protect the respondent from the inconvenience, expense and burden of defending himself in a formal trial, unless a competent officer shall have first ascertained the probability of his guilt.[170] Since the determination of probable cause lies within the prosecutor's discretion, the soundness of the explanation (to rebut the *prima facie* case created by the presumption of authorship) is likewise left to the prosecutor's discretion. Unless his determination amounted to a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion, courts must defer to the prosecutor's finding.

We do not find grave abuse of discretion in the present case. By capitalizing on Usec. Gutierrez's assumption that the questioned letter must have been "doctored" in the PCGG, the petitioners turned a blind eye to the assumption's factual premise. We quote Usec. Gutierrez's discussion on this point, thus -

> We have perused the NBI report; and our attention is caught by the statement therein that the "typewritten name and signature of FELIX M. DE GUZMAN, the typewritten entries 'Chairman', 'FMG/ lai', 'dol', and the handwritten entries '5c Records', '8/27' were lifted/extracted probably from the original and/or xerox copy from the original of a typewritten letter addressed to the Hon. Tomas L. Syquia, Philippine Ambassador to Switzerland dated 25 August 1998."
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> **<u>Since it is the PCGG that has the only copy of Chairman De Guzman's letter to Ambassador Syquia (except of course the</u>**

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[168] *Rollo*, p. 51.

[169] *Metropolitan Bank and Trust Co, (Metrobank),represented by Rosella A. Santigo v. Antonio O. Tobias III*, *supra* note 133.

[170] *Tandoc v. Judge Resultan*, 256 Phil. 485, 492 (1989); and *Venus v. Hon. Desierto*, 358 Phil. 675, 699-700 (1998).

Ambassador) in its files bearing the same distinguishing entries from where the [De Guzman] letter was "lifted/extracted", we cannot see our way clear how the falsification can be attributed to respondent Reyes. It is more credible that the questioned letter must have been "doctored" in the PCGG, which is the repository of all official communications of former Chairman De Guzman, and passed to [Atty. Reyes] who accepted the same not knowing its falsity.[171] (Emphasis added.)

In short, Usec. Gutierrez simply found Atty. Reyes' explanation — that the De Guzman letter was handed to him by Director Daniel — consistent with the premise of her assumption and sufficient to disregard the DOJ's previous finding of probable cause.

Additionally, we observe that along with the De Guzman letter, Atty. Reyes also withdrew the Gunigundo letter from the Sandiganbayan petition because of the questionable authenticity of the signature it carried. When Atty. Reyes tried to obtain a copy of this letter from the PCGG, he was informed that the PCGG had no copy of this letter. Interestingly, the absence of a copy of the De Guzman letter in the PCGG's records was the core of the statements in the affidavits of the PCGG employees, attached to support the petitioners' complaint.[172]

The petitioners place too much reliance on the findings contained in the first resolution, blurring their view of the function of a motion for reconsideration. It is precisely the office of a motion for reconsideration[173] to give an agency making a quasi-judicial determination an opportunity to correct any error

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[171] *Rollo*, pp. 48-53.

[172] Records, pp. 585, 664.

[173] Section 3 of the 2000 National Prosecution Service Rule on Appeal (DOJ Circular No. 70) provides:

SECTION 3. Period to appeal. The appeal shall be taken within fifteen (15) days from receipt of the resolution, or of the denial of the motion for reconsideration/reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed.

it may have committed through a misapprehension of facts or misappreciation of the evidence,[174] leading to a reversible conclusion at the administrative level. The petitioners have not shown that in arriving at the assailed resolutions (which sustained the prosecutor's reversal of the first and second resolutions), Usec. Gutierrez gravely abused her discretion which would warrant a corrective action from the Court.

c. Lack of probable cause for knowingly introducing a falsified document

Neither does probable cause exist against the respondents for the crime of introducing a falsified document in a judicial proceeding, punished under the last paragraph of Article 172 of the Revised Penal Code. The accused's knowledge of the falsity of the document, which he introduced in a judicial proceeding, is one of the elements[175] of this crime. In the present case, not an iota of evidence was presented to show the respondents' knowledge of the falsity of the De Guzman letter at the time it was annexed to the Sandiganbayan petition. On this point *alone*, the petitioners' reliance on *Choa v. Judge Chiongson*[176] is misplaced.

Given all the extant circumstances of the case, coupled with the immediate withdrawal of the De Guzman letter, the

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[174] *Ramientas v. Atty. Reyala*, 529 Phil. 128, 133 (2006), citing *Halimao v. Villanueva*, 323 Phil. 1, 8 (1996); *Sony Music Entertainment (Philippines), Inc. v. Judge Español*,, 493 Phil. 507, 523 (2005).

[175] The elements of the crime of knowingly introducing a falsified document in a judicial proceedings are as follows:

1. That the offender knew that a document was falsified by another person.

2. That the false document is embraced in Article 171 or in any subdivisions Nos. 1 or 2 of Article 172.

3. That he introduced said document in evidence in any judicial proceeding. (Luis B. Reyes, *The Revised Penal Code, Criminal Law,* Book II, 2008 ed., p. 232.)

[176] *Supra* note 93.

resulting credit given by Usec. Gutierrez to the respondents' defense-explanations must be respected.

d. The PCGG's role in the governmental scheme vis-à-vis the Court's general policy of non-interference

As a final observation, we draw attention to the fact that the PCGG is a unique legal creature with a unique mandate. It was created by President Corazon Aquino pursuant to her extraordinary legislative powers after she declared a revolutionary government. The PCGG's charter, Executive Order (*E.O.*) No. 1, was the very first executive order she issued. E.O. No.1 created the PCGG and charged it with the task of assisting the President in the "recovery of all ill-gotten wealth" accumulated by former President Marcos, his relatives and cronies. To accomplish its "gigantic task of recovering the plundered wealth of the nation,"[177] E.O. No. 1 granted the PCGG ample powers and authority.[178]

In no time, the President issued E.O. No. 2,[179] authorizing the PCGG "to request and appeal to foreign governments" where the ill-gotten wealth might be found "to freeze them and otherwise prevent their transfer, conveyance, encumbrance, concealment or liquidation" in the meantime that the legality of their acquisition was determined. Indeed, the recovery of this "ill-gotten wealth" of former President Marcos, his relatives and cronies is not only a matter of right but the paramount duty of the government.

Viewed from the uniqueness of the PCGG's creation and role, on one hand, and the general policy of the Courts not to

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[177] *PCGG v. Judge Peña*, 243 Phil. 93, 107 (1988).

[178] Section 3, EO No. 1 (1986).

[179] March 12, 1986. REGARDING THE FUNDS, MONEYS, ASSETS, AND PROPERTIES ILLEGALLY ACQUIRED OR MISAPPROPRIATED BY FORMER PRESIDENT FERDINAND MARCOS, MRS. IMELDA ROMUALDEZ MARCOS, THEIR CLOSE RELATIVES, SUBORDINATES, BUSINESS ASSOCIATES, DUMMIES, AGENTS, OR NOMINEES.

interfere with the prosecutor's evaluation of the sufficiency of evidence that would establish probable cause, on the other hand, we find it unfortunate, if not disturbing, how the respondents' documented efforts to assist the PCGG in the recovery of the ill-gotten wealth (given the staggering amount involved particularly in the UBS account) and how the concerns they raised that allegedly hamper the government's efforts, would end up as a legal warfare between two camps supposedly on the same side.

The seriousness of Atty. Reyes' allegations of irregularities[180] should have served as a warning signal to the PCGG which carries a critical role in our people's remedial efforts in addressing the causes that gave rise to the EDSA revolution. The PCGG's success, if any and if at all, cannot be downplayed. To be sure, the PCGG's silence in the face of these accusations (except to characterize the respondents' defensive assaults as an "undeserved gibe"[181]) raises a lot of unanswered questions and appears to justify the allegations of political motivation behind the criminal charges against the respondents.

In sum, under the circumstances and the other observations made, the Court cannot but rule that the petitioners failed to establish the existence of grave abuse of discretion justifying judicial interference.

WHEREFORE, we hereby **DISMISS** the petition.

SO ORDERED.

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

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[180] See Atty. Reyes' Comment (to the Petition for Review filed by the petitioners with the DOJ); *rollo*, pp. 963-972.

[181] Records, p. 991.

THIRD DIVISION

[G.R. No. 156869. June 27, 2012]

POLYFOAM CHEMICAL CORP., *petitioner, vs.* **ELISA S. CHEN,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENT, EXPLAINED.—** A summary judgment is resorted to in order to expedite the disposition of a case, it appearing from the pleadings, depositions, admissions, and affidavits of record that no genuine question or issue of fact exists in such case When the facts as pleaded are uncontested, there is no genuine issue as to the facts, and summary judgment is warranted. In contrast, when the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial. The presence of a genuine issue of fact, as distinguished from a sham, fictitious, contrived, or false claim, requires the presentation of evidence.

2. **ID.; EVIDENCE; ADMISSIONS; WHERE RESPONDENT'S ANSWER TO THE COMPLAINT CONSTITUTES SUBSTANTIAL ADMISSION OF PLAINTIFF'S CLAIM.—** It is clear from Polyfoam's complaint that its cause of action referred to Chen's failure to pay for her purchases from April 1 to August 27, 1992 totaling ₱929,137.07. Chen claims on the other hand that, as her Annex "6" showed, her purchases during that period amounted to only ₱654,301.02. Annex "6" also showed, however, that she received goods worth ₱270,816.33 in the subsequent months of September and October 1992, which amount when added to the April-August account of ₱654,301.02 totals ₱925,117.35. The question is whether her admission that she owed ₱270,816.33 for the September and October deliveries in addition to ₱654,301.02 for the July and August deliveries, totaling ₱925,117.35, constitutes substantial admission of Polyfoam's claim to the extent of the latter amount. The CA points out that Chen merely clarified in her Annex "6" that her total indebtedness to Polyfoam included ₱126,078.88 incurred from September 4 to 30, 1992

and ₱144,737.45 from October 1 to 16, 1992. The CA adds that, although she owed these additional amounts, they obviously were not part of the debt that Polyfoam sought to collect in the case. She indicated these additional amounts in the statement of account, Annex "6", to show that the complaint did not cover them. But, Polyfoam's cause of action consists in Chen's failure to pay its due obligations totaling ₱929,137.07 covering the value of the goods it delivered to her, not any lesser amount. Any error in specifying the particular months in 1992 when these obligations were incurred does not affect the cause of action since Chen does not invoke prescription in her defense. Besides, Polyfoam's complaint qualified the period when the obligations were incurred, stating in paragraph 4 that "during the period from April 1, 1992 to August 27, 1992, **approximately**, defendant purchased and received, on credit, from plaintiff various foam products with a total value of ₱929,137.07." The term "approximately," referring to the period of the transactions, allowed for some error. Consequently, the statement can be read to embrace unpaid deliveries made in the immediately succeeding months of September and October 1992. Chen's Annex "6", which she said reflected the "truth" regarding her obligations, is an admission that she owed Polyfoam the total of ₱925,117.35 stated in that document, a sum within the latter's actual claim of ₱929,137.07.

APPEARANCES OF COUNSEL

Cabochan Reyes & Capones Law Offices for petitioner.
Pete Quirino-Quadra for respondent.

D E C I S I O N

ABAD, *J*.:

This case is about allegations in the complaint that are deemed admitted by the answer and on which basis a judgment on the pleadings may be had.

The Facts and the Case

On January 19, 1993 petitioner Polyfoam Chemical Corporation (Polyfoam) filed a collection suit against respondent Elisa Chen (Chen) before the Regional Trial Court (RTC) of Quezon City in Civil Case Q-93-14499. Subsequently, the RTC consolidated this case with Civil Case Q-93-14500, *Mayer Velvet Manufacturing Corp. v. Elisa Chen*, also a collection suit, apparently because the plaintiffs were sister companies simultaneously transacting business with Chen. The present action is concerned only with the claims in the first case.

Polyfoam sought in its complaint the payment of ₱929,137.07 worth of foam products that it sold to Chen from April 1 to August 27, 1992. It also sought the issuance of a writ of preliminary attachment against Chen. On January 29, 1993 the RTC granted the motion.

While admitting the purchase of substantial quantities of foam products from Polyfoam, Chen claimed that the figure was wrong, citing a summary of her purchases attached to her answer. She claimed receiving only ₱654,301.02 during the period mentioned in the complaint.

On July 16, 1996 Polyfoam filed a motion for summary judgment on the ground that Chen's answer did not tender a genuine issue of fact. The RTC granted the motion. On March 20, 1997 it rendered a summary judgment, ordering Chen to pay Polyfoam the sum of ₱925,117.35.

On Chen's appeal in CA-GR CV 55741, the Court of Appeals (CA) rendered judgment on August 12, 2002, modifying the RTC decision by limiting the amount of the summary judgment against Chen to only ₱654,301.02, which amount the CA said Chen admitted owing to Polyfoam in her answer. The CA ordered the case remanded to the lower court for further proceedings.

The Issue Presented

The sole issue presented in this case is whether or not the CA erred in ruling that the summary judgment against Chen should be limited to ₱654,301.02.

The Ruling of the Court

A summary judgment is resorted to in order to expedite the disposition of a case, it appearing from the pleadings, depositions, admissions, and affidavits of record that no genuine question or issue of fact exists in such case.[1] When the facts as pleaded are uncontested, there is no genuine issue as to the facts, and summary judgment is warranted. In contrast, when the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial. The presence of a genuine issue of fact, as distinguished from a sham, fictitious, contrived, or false claim, requires the presentation of evidence.[2]

Polyfoam alleged in its complaint that it manufactured, sold, and distributed foam products and other upholstery materials; that from April 1 to August 27, 1992, approximately, it sold to Chen ₱929,137.07 worth of foam products;[3] that in partial payment for the goods she received, Chen issued 23 checks to Polyfoam, totaling ₱534,470.00; that these checks were dishonored for the reason that the bank account on which they were drawn had been closed; that the rest of the goods valued at ₱394,667.07 were not covered by checks; and that the total sum of ₱929,137.07 were due but remained unpaid despite repeated demands.[4]

In her consolidated answer insofar as relevant to the issue in this case, Chen denied that her purchases from April 1 to August 27, 1992 from Polyfoam amounts to ₱929,137.07.[5] She pointed out that her obligations to Polyfoam are "as reflected in the accounting and reconciliation of Accounts found in her Annex '6'."[6]

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[1] *Republic of the Philippines v. Sandiganbayan*, 461 Phil. 598, 608 (2003).

[2] *Cotabato Timberland Co., Inc. v. C. Alcantara and Sons, Inc.*, G.R. No. 145469, May 28, 2004, 430 SCRA 227, 233, citing *Evadel Realty and Development Corporation v. Spouses Soriano*, 409 Phil. 450, 461 (2001).

[3] *Rollo*, p. 41.

[4] *Id.* at 43.

[5] *Id.* at 49.

[6] Records, p. 157.

Under these "Accounts," her purchases from April 1 to August 27, 1992, the period stated in the complaint, amounted to only ₱654,301.02. Chen also claimed having made substantial payments to Polyfoam. She had since 1983 been religious in paying her obligations but her store and all her goods were gutted by fire on August 28, 1992, resulting in delayed payments.

It is clear from Polyfoam's complaint that its cause of action referred to Chen's failure to pay for her purchases from April 1 to August 27, 1992 totaling ₱929,137.07. Chen claims on the other hand that, as her Annex "6" showed, her purchases during that period amounted to only ₱654,301.02. Annex "6" also showed, however, that she received goods worth ₱270,816.33 in the subsequent months of September and October 1992, which amount when added to the April-August account of ₱654,301.02 totals ₱925,117.35.

The question is whether her admission that she owed ₱270,816.33 for the September and October deliveries in addition to ₱654,301.02 for the July and August deliveries, totaling ₱925,117.35, constitutes substantial admission of Polyfoam's claim to the extent of the latter amount.

The CA points out that Chen merely clarified in her Annex "6" that her total indebtedness to Polyfoam included ₱126,078.88 incurred from September 4 to 30, 1992 and ₱144,737.45 from October 1 to 16, 1992. The CA adds that, although she owed these additional amounts, they obviously were not part of the debt that Polyfoam sought to collect in the case. She indicated these additional amounts in the statement of account, Annex "6," to show that the complaint did not cover them.

But, Polyfoam's cause of action consists in Chen's failure to pay its due obligations totaling ₱929,137.07 covering the value of the goods it delivered to her, not any lesser amount. Any error in specifying the particular months in 1992 when these obligations were incurred does not affect the cause of action since Chen does not invoke prescription in her defense.

Besides, Polyfoam's complaint qualified the period when the obligations were incurred, stating in paragraph 4 that "during

the period from April 1, 1992 to August 27, 1992, **approximately**, defendant purchased and received, on credit, from plaintiff various foam products with a total value of ₱929,137.07." The term "approximately," referring to the period of the transactions, allowed for some error. Consequently, the statement can be read to embrace unpaid deliveries made in the immediately succeeding months of September and October 1992.

Chen's Annex "6", which she said reflected the "truth" regarding her obligations, is an admission that she owed Polyfoam the total of ₱925,117.35 stated in that document, a sum within the latter's actual claim of ₱929,137.07.

WHEREFORE, the Court **GRANTS** the petition, **SETS ASIDE** the Court of Appeals decision in CA-G.R. CV 55741 dated August 12, 2002, and **REINSTATES** the decision of the Regional Trial Court of Quezon City in Civil Case Q-93-14499 dated March 20, 1997. Elisa Chen is ordered to pay Polyfoam Chemical Corporation the amount of ₱929,137.07 with legal interest of 6% *per annum* from the time of the filing of the complaint on January 19, 1993 and 12% *per annum* from the time this Court's decision attains finality until their full satisfaction.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, del Castillo,[*] and *Perlas-Bernabe, JJ.,* concur.

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[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 1241-B dated June 14, 2012.

FIRST DIVISION

[G.R. No. 158891. June 27, 2012]

PABLO P. GARCIA, *petitioner, vs.* **YOLANDA VALDEZ VILLAR,** *respondent.*

SYLLABUS

1. **CIVIL LAW; MORTGAGE; DOUBLE MORTGAGE; THE SECOND MORTGAGE AND THE SALE OF THE SAME PROPERTY TO THE FIRST MORTGAGEE ARE BOTH VALID.—** At the onset, this Court would like to address the validity of the second mortgage to Garcia and the sale of the subject property to Villar. We agree with the Court of Appeals that both are valid under the terms and conditions of the Deed of Real Estate Mortgage executed by Galas and Villar. While it is true that the annotation of the first mortgage to Villar on Galas's TCT contained a restriction on further encumbrances without the mortgagee's prior consent, this restriction was nowhere to be found in the Deed of Real Estate Mortgage. As this Deed became the basis for the annotation on Galas's title, its terms and conditions take precedence over the standard, stamped annotation placed on her title. If it were the intention of the parties to impose such restriction, they would have and should have stipulated such in the Deed of Real Estate Mortgage itself. Neither did this Deed proscribe the sale or alienation of the subject property during the life of the mortgages. Garcia's insistence that Villar should have judicially or extrajudicially foreclosed the mortgage to satisfy Galas's debt is misplaced. The Deed of Real Estate Mortgage merely provided for the options Villar may undertake in case Galas or Pingol fail to pay their loan. Nowhere was it stated in the Deed that Galas could not opt to sell the subject property to Villar, or to any other person. Such stipulation would have been void anyway, as it is not allowed under Article 2130 of the Civil Code[.]

2. **ID.; ID.; ID.; SALE OF THE PROPERTY TO THE FIRST MORTGAGEE DID NOT VIOLATE THE PROHIBITION ON *PACTUM COMMISSORIUM*.—** Villar's purchase of the subject property did not violate the prohibition on *pactum commissorium*. The power of attorney provision above did not

provide that the ownership over the subject property would automatically pass to Villar upon Galas's failure to pay the loan on time. What it granted was the mere appointment of Villar as attorney-in-fact, with authority to sell or otherwise dispose of the subject property, and to apply the proceeds to the payment of the loan. This provision is customary in mortgage contracts, and is in conformity with Article 2087 of the Civil Code[.] x x x Galas's decision to eventually sell the subject property to Villar for an additional ₱1,500,000.00 was well within the scope of her rights as the owner of the subject property. The subject property was transferred to Villar by virtue of another and separate contract, which is the Deed of Sale. Garcia never alleged that the transfer of the subject property to Villar was automatic upon Galas's failure to discharge her debt, or that the sale was simulated to cover up such automatic transfer.

3. **ID.; ID.; ID.; THE SECOND MORTGAGEE MAY STILL FORECLOSE THE PROPERTY ALTHOUGH IT WAS ALREADY SOLD TO THE FIRST MORTGAGEE; EFFECTS.—** [A] mortgage is a real right, which follows the property, even after subsequent transfers by the mortgagor." A registered mortgage lien is considered inseparable from the property inasmuch as it is a right in *rem*." The sale or transfer of the mortgaged property cannot affect or release the mortgage; thus the purchaser or transferee is necessarily bound to acknowledge and respect the encumbrance. In fact, under Article 2129 of the Civil Code, the mortgage on the property may still be foreclosed despite the transfer[.] x x x While we agree with Garcia that since the second mortgage, of which he is the mortgagee, has not yet been discharged, we find that said mortgage subsists and is still enforceable. However, Villar, in buying the subject property with notice that it was mortgaged, only undertook to pay such mortgage or allow the subject property to be sold upon failure of the mortgage creditor to obtain payment from the principal debtor once the debt matures. Villar did not obligate herself to replace the debtor in the principal obligation, and could not do so in law without the creditor's consent. x x x Therefore, the obligation to pay the mortgage indebtedness remains with the original debtors Galas and Pingol. x x x Garcia has no cause of action against Villar in the absence of evidence to show that the second mortgage

executed in favor of Garcia has been violated by his debtors, Galas and Pingol, *i.e.*, specifically that Garcia has made a demand on said debtors for the payment of the obligation secured by the second mortgage and they have failed to pay.

APPEARANCES OF COUNSEL

Renato U. Galimba for petitioner.
Wilfredo D. Tafalla for respondent.

D E C I S I O N

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

This is a petition for review on *certiorari*[1] of the February 27, 2003 Decision[2] and July 2, 2003 Resolution[3] of the Court of Appeals in **CA-G.R. SP No. 72714**, which reversed the May 27, 2002 Decision[4] of the Regional Trial Court (RTC), Branch 92 of Quezon City in Civil Case No. Q-99-39139.

Lourdes V. Galas (Galas) was the original owner of a piece of property (subject property) located at Malindang St., Quezon City, covered by Transfer Certificate of Title (TCT) No. RT-67970(253279).[5]

On July 6, 1993, Galas, with her daughter, Ophelia G. Pingol (Pingol), as co-maker, mortgaged the subject property to Yolanda Valdez Villar (Villar) as security for a loan in the amount of Two Million Two Hundred Thousand Pesos (₱2,200,000.00).[6]

On October 10, 1994, Galas, again with Pingol as her co-maker, mortgaged the same subject property to Pablo P.

[*] Acting Chairperson, per Special Order No. 1226 dated May 30, 2012

[1] 1997 RULES OF COURT, Rule 45.

[2] *Rollo*, pp. 9-17; penned by Associate Justice Marina L. Buzon with Associate Justices Josefina Guevara-Salonga and Danilo B. Pine, concurring.

[3] *Id.* at 23-24.

[4] Records, pp. 93-96.

[5] *Id.* at 9-10.

[6] *Id.* at 11-15.

Garcia (Garcia) to secure her loan of One Million Eight Hundred Thousand Pesos (₱1,800,000.00).[7]

Both mortgages were annotated at the back of TCT No. RT-67970 (253279), to wit:

REAL ESTATE MORTGAGE

Entry No. 6537/T-RT-67970(253279) MORTGAGE — In favor of Yolanda Valdez Villar m/to Jaime Villar to guarantee a principal obligation in the sum of ₱2,200,000- mortgagee's consent necessary in case of subsequent encumbrance or alienation of the property; Other conditions set forth in Doc. No. 97, Book No. VI, Page No. 20 of the Not. Pub. of Diana P. Magpantay

Date of Instrument: 7-6-93
Date of Inscription: 7-7-93

SECOND REAL ESTATE MORTGAGE

Entry No. 821/T-RT-67970(253279) MORTGAGE – In favor of Pablo Garcia m/to Isabela Garcia to guarantee a principal obligation in the sum of ₱1,800,000.00 mortgagee's consent necessary in case of subsequent encumbrance or alienation of the property; Other conditions set forth in Doc. No. 08, Book No. VII, Page No. 03 of the Not. Pub. of Azucena Espejo Lozada

Date of Instrument: 10/10/94
Date of Inscription: 10/11/94
LRC Consulta No. 169[8]

On November 21, 1996, Galas sold the subject property to Villar for One Million Five Hundred Thousand Pesos (₱1,500,000.00), and declared in the Deed of Sale[9] that such property was "free and clear of all liens and encumbrances of any kind whatsoever."[10]

On December 3, 1996, the Deed of Sale was registered and, consequently, TCT No. RT-67970(253279) was cancelled and

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

[8] *Id.* at 10 (dorsal side).

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

[10] *Id.* at 19.

TCT No. N-168361[11] was issued in the name of Villar. Both Villar's and Garcia's mortgages were carried over and annotated at the back of Villar's new TCT.[12]

On October 27, 1999, Garcia filed a Petition for *Mandamus* with Damages[13] against Villar before the RTC, Branch 92 of Quezon City. Garcia subsequently amended his petition to a Complaint for Foreclosure of Real Estate Mortgage with Damages.[14] Garcia alleged that when Villar purchased the subject property, she acted in bad faith and with malice as she knowingly and willfully disregarded the provisions on laws on judicial and extrajudicial foreclosure of mortgaged property. Garcia further claimed that when Villar purchased the subject property, Galas was relieved of her contractual obligation and the characters of creditor and debtor were merged in the person of Villar. Therefore, Garcia argued, he, as the second mortgagee, was subrogated to Villar's original status as first mortgagee, which is the creditor with the right to foreclose. Garcia further asserted that he had demanded payment from Villar,[15] whose refusal compelled him to incur expenses in filing an action in court.[16]

Villar, in her Answer,[17] claimed that the complaint stated no cause of action and that the second mortgage was done in bad faith as it was without her consent and knowledge. Villar alleged that she only discovered the second mortgage when she had the Deed of Sale registered. Villar blamed Garcia for the controversy as he accepted the second mortgage without prior consent from her. She averred that there could be no subrogation as the assignment of credit was done with neither her knowledge

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[11] *Id.* at 21.

[12] *Id.* at 21 (dorsal side).

[13] *Id.* at 3-8.

[14] *Id.* at 31.

[15] *Id.* at 72-73.

[16] *Id.* at 31.

[17] *Id.* at 38-41.

nor prior consent. Villar added that Garcia should seek recourse against Galas and Pingol, with whom he had privity insofar as the second mortgage of property is concerned.

On May 23, 2000, the RTC issued a Pre-Trial Order[18] wherein the parties agreed on the following facts and issue:

STIPULATIONS OF FACTS/ADMISSIONS

The following are admitted:

1. the defendant admits the second mortgage annotated at the back of TCT No. RT-67970 of Lourdes V. Galas with the qualification that the existence of said mortgage was discovered only in 1996 after the sale;
2. the defendant admits the existence of the annotation of the second mortgage at the back of the title despite the transfer of the title in the name of the defendant;
3. the plaintiff admits that defendant Yolanda Valdez Villar is the first mortgagee;
4. the plaintiff admits that the first mortgage was annotated at the back of the title of the mortgagor Lourdes V. Galas; and
5. the plaintiff admits that by virtue of the deed of sale the title of the property was transferred from the previous owner in favor of defendant Yolanda Valdez Villar.

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ISSUE

Whether or not the plaintiff, at this point in time, could judicially foreclose the property in question.

On June 8, 2000, upon Garcia's manifestation, in open court, of his intention to file a Motion for Summary Judgment,[19] the RTC issued an Order[20] directing the parties to simultaneously file their respective memoranda within 20 days.

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[18] *Id.* at 61-63.

[19] *Id.* at 65.

[20] *Id.* at 66.

On June 26, 2000, Garcia filed a Motion for Summary Judgment with Affidavit of Merit[21] on the grounds that there was no genuine issue as to any of the material facts of the case and that he was entitled to a judgment as a matter of law.

On June 28, 2000, Garcia filed his Memorandum[22] in support of his Motion for Summary Judgment and in compliance with the RTC's June 8, 2000 Order. Garcia alleged that his equity of redemption had not yet been claimed since Villar did not foreclose the mortgaged property to satisfy her claim.

On August 13, 2000, Villar filed an Urgent *Ex-Parte* Motion for Extension of Time to File Her Memorandum.[23] This, however, was denied[24] by the RTC in view of Garcia's Opposition.[25]

On May 27, 2002, the RTC rendered its Decision, the dispositive portion of which reads:

> **WHEREFORE,** the foregoing premises considered, judgment is hereby rendered in favor of the plaintiff Pablo P. Garcia and against the defendant Yolanda V. Villar, who is ordered to pay to the former within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from entry of judgment, the sum of ₱1,800,000.00 plus legal interest from October 27, 1999 and upon failure of the defendant to pay the said amount within the prescribed period, the property subject matter of the 2nd Real Estate Mortgage dated October 10, 1994 shall, upon motion of the plaintiff, be sold at public auction in the manner and under the provisions of Rules 39 and 68 of the 1997 Revised Rules of Civil Procedure and other regulations governing sale of real estate under execution in order to satisfy the judgment in this case. The defendant is further ordered to pay costs.[26]

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[21] *Id.* at 67-68.

[22] *Id.* at 75-80.

[23] *Id.* at 84.

[24] *Id.* at 85.

[25] *Id.* at 81-83.

[26] *Id.* at 95-96.

The RTC declared that the direct sale of the subject property to Villar, the first mortgagee, could not operate to deprive Garcia of his right as a second mortgagee. The RTC said that upon Galas's failure to pay her obligation, Villar should have foreclosed the subject property pursuant to Act No. 3135 as amended, to provide junior mortgagees like Garcia, the opportunity to satisfy their claims from the residue, if any, of the foreclosure sale proceeds. This, the RTC added, would have resulted in the extinguishment of the mortgages.[27]

The RTC held that the second mortgage constituted in Garcia's favor had not been discharged, and that Villar, as the new registered owner of the subject property with a subsisting mortgage, was liable for it.[28]

Villar appealed[29] this Decision to the Court of Appeals based on the arguments that Garcia had no valid cause of action against her; that he was in bad faith when he entered into a contract of mortgage with Galas, in light of the restriction imposed by the first mortgage; and that Garcia, as the one who gave the occasion for the commission of fraud, should suffer. Villar further asseverated that the second mortgage is a void and inexistent contract considering that its cause or object is contrary to law, moral, good customs, and public order or public policy, insofar as she was concerned.[30]

Garcia, in his Memorandum,[31] reiterated his position that his equity of redemption remained "unforeclosed" since Villar did not institute foreclosure proceedings. Garcia added that "the mortgage, until discharged, follows the property to whomever it may be transferred no matter how many times over it changes hands as long as the annotation is carried over."[32]

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[27] *Id.* at 94.

[28] *Id.* at 95.

[29] *Id.* at 98.

[30] CA *rollo*, pp. 17-18.

[31] *Id.* at 10-14.

[32] *Id.* at 12-13.

The Court of Appeals reversed the RTC in a Decision dated February 27, 2003, to wit:

WHEREFORE, the decision appealed from is **REVERSED** and another one entered **DISMISSING** the complaint for judicial foreclosure of real estate mortgage with damages.[33]

The Court of Appeals declared that Galas was free to mortgage the subject property even without Villar's consent as the restriction that the mortgagee's consent was necessary in case of a subsequent encumbrance was absent in the Deed of Real Estate Mortgage. In the same vein, the Court of Appeals said that the sale of the subject property to Villar was valid as it found nothing in the records that would show that Galas violated the Deed of Real Estate Mortgage prior to the sale.[34]

In dismissing the complaint for judicial foreclosure of real estate mortgage with damages, the Court of Appeals held that Garcia had no cause of action against Villar "in the absence of evidence showing that the second mortgage executed in his favor by Lourdes V. Galas [had] been violated and that he [had] made a demand on the latter for the payment of the obligation secured by said mortgage prior to the institution of his complaint against Villar."[35]

On March 20, 2003, Garcia filed a Motion for Reconsideration[36] on the ground that the Court of Appeals failed to resolve the main issue of the case, which was whether or not Garcia, as the second mortgagee, could still foreclose the mortgage after the subject property had been sold by Galas, the mortgage debtor, to Villar, the mortgage creditor.

This motion was denied for lack of merit by the Court of Appeals in its July 2, 2003 Resolution.

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[33] *Rollo*, p. 17.

[34] *Id.* at 14.

[35] *Id.* at 17.

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

Garcia is now before this Court, with the same arguments he posited before the lower courts. In his Memorandum,[37] he added that the Deed of Real Estate Mortgage contained a stipulation, which is violative of the prohibition on *pactum commissorium*.

Issues

The crux of the controversy before us boils down to the propriety of Garcia's demand upon Villar to either pay Galas's debt of ₱1,800,000.00, or to judicially foreclose the subject property to satisfy the aforesaid debt. This Court will, however, address the following issues *in seriatim*:

1. Whether or not the second mortgage to Garcia was valid;
2. Whether or not the sale of the subject property to Villar was valid;
3. Whether or not the sale of the subject property to Villar was in violation of the prohibition on *pactum commissorium*;
4. Whether or not Garcia's action for foreclosure of mortgage on the subject property can prosper.

Discussion

Validity of second mortgage to Garcia and sale of subject property to Villar

At the onset, this Court would like to address the validity of the second mortgage to Garcia and the sale of the subject property to Villar. We agree with the Court of Appeals that both are valid under the terms and conditions of the Deed of Real Estate Mortgage executed by Galas and Villar.

While it is true that the annotation of the first mortgage to Villar on Galas's TCT contained a restriction on further encumbrances without the mortgagee's prior consent, this

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[37] *Id.* at 99-102.

restriction was nowhere to be found in the Deed of Real Estate Mortgage. As this Deed became the basis for the annotation on Galas's title, its terms and conditions take precedence over the standard, stamped annotation placed on her title. If it were the intention of the parties to impose such restriction, they would have and should have stipulated such in the Deed of Real Estate Mortgage itself.

Neither did this Deed proscribe the sale or alienation of the subject property during the life of the mortgages. Garcia's insistence that Villar should have judicially or extrajudicially foreclosed the mortgage to satisfy Galas's debt is misplaced. The Deed of Real Estate Mortgage merely provided for the options Villar may undertake in case Galas or Pingol fail to pay their loan. Nowhere was it stated in the Deed that Galas could not opt to sell the subject property to Villar, or to any other person. Such stipulation would have been void anyway, as it is not allowed under Article 2130 of the Civil Code, to wit:

Art. 2130. A stipulation forbidding the owner from alienating the immovable mortgaged shall be void.

Prohibition on pactum commissorium

Garcia claims that the stipulation appointing Villar, the mortgagee, as the mortgagor's attorney-in-fact, to sell the property in case of default in the payment of the loan, is in violation of the prohibition on *pactum commissorium*, as stated under Article 2088 of the Civil Code, *viz*:

Art. 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

The power of attorney provision in the Deed of Real Estate Mortgage reads:

5. **Power of Attorney of MORTGAGEE.** — Effective upon the breach of any condition of this Mortgage, and in addition to the remedies herein stipulated, the MORTGAGEE is likewise appointed attorney-in-fact of the MORTGAGOR with full power and authority to take actual possession of the mortgaged properties, to sell, lease

any of the mortgaged properties, to collect rents, to execute deeds of sale, lease, or agreement that may be deemed convenient, to make repairs or improvements on the mortgaged properties and to pay the same, and perform any other act which the MORTGAGEE may deem convenient for the proper administration of the mortgaged properties. The payment of any expenses advanced by the MORTGAGEE in connection with the purpose indicated herein is also secured by this Mortgage. Any amount received from the sale, disposal or administration abovementioned maybe applied by assessments and other incidental expenses and obligations and to the payment of original indebtedness including interest and penalties thereon. The power herein granted shall not be revoked during the life of this Mortgage and all acts which may be executed by the MORTGAGEE by virtue of said power are hereby ratified.[38]

The following are the elements of *pactum commissorium*:

(1) There should be a property mortgaged by way of security for the payment of the principal obligation; and

(2) There should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.[39]

Villar's purchase of the subject property did not violate the prohibition on *pactum commissorium*. The power of attorney provision above did not provide that the ownership over the subject property would automatically pass to Villar upon Galas's failure to pay the loan on time. What it granted was the mere appointment of Villar as attorney-in-fact, with authority to sell or otherwise dispose of the subject property, and to apply the proceeds to the payment of the loan.[40] This provision is customary in mortgage contracts, and is in conformity with Article 2087 of the Civil Code, which reads:

Art. 2087. It is also of the essence of these contracts that when the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor.

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[38] Records, pp. 13-14.

[39] *Development Bank of the Philippines v. Court of Appeals*, 348 Phil. 15, 31 (1998).

[40] *Id.* at 29.

Galas's decision to eventually sell the subject property to Villar for an additional ₱1,500,000.00 was well within the scope of her rights as the owner of the subject property. The subject property was transferred to Villar by virtue of another and separate contract, which is the Deed of Sale. Garcia never alleged that the transfer of the subject property to Villar was automatic upon Galas's failure to discharge her debt, or that the sale was simulated to cover up such automatic transfer.

Propriety of Garcia's action for foreclosure of mortgage

The real nature of a mortgage is described in Article 2126 of the Civil Code, to wit:

> **Art. 2126.** The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.

Simply put, a mortgage is a real right, which follows the property, even after subsequent transfers by the mortgagor. "A registered mortgage lien is considered inseparable from the property inasmuch as it is a right in *rem*."[41]

The sale or transfer of the mortgaged property cannot affect or release the mortgage; thus the purchaser or transferee is necessarily bound to acknowledge and respect the encumbrance.[42] In fact, under Article 2129 of the Civil Code, the mortgage on the property may still be foreclosed despite the transfer, *viz*:

> **Art. 2129.** The creditor may claim from a third person in possession of the mortgaged property, the payment of the part of the credit secured by the property which said third person possesses, in terms and with the formalities which the law establishes.

While we agree with Garcia that since the second mortgage, of which he is the mortgagee, has not yet been discharged, we

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[41] *Philippine National Bank v. RBL Enterprises, Inc.,* G.R. No. 149569, May 28, 2004, 430 SCRA 299, 307.

[42] *Ganzon v. Inserto*, 208 Phil. 630, 637 (1983).

find that said mortgage subsists and is still enforceable. However, Villar, in buying the subject property with notice that it was mortgaged, only undertook to pay such mortgage or allow the subject property to be sold upon failure of the mortgage creditor to obtain payment from the principal debtor once the debt matures. Villar did not obligate herself to replace the debtor in the principal obligation, and could not do so in law without the creditor's consent.[43] Article 1293 of the Civil Code provides:

> **Art. 1293.** Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in Articles 1236 and 1237.

Therefore, the obligation to pay the mortgage indebtedness remains with the original debtors Galas and Pingol.[44] The case of *E.C. McCullough & Co. v. Veloso and Serna*[45] is square on this point:

> The effects of a transfer of a mortgaged property to a third person are well determined by the Civil Code. According to Article 1879[46] of this Code, the creditor may demand of the third person in possession of the property mortgaged payment of such part of the debt, as is secured by the property in his possession, in the manner and form established by the law. The Mortgage Law in force at the promulgation of the Civil Code and referred to in the latter, provided, among other things, that the debtor should not pay the debt upon its maturity after judicial or notarial demand, for payment has been made by the creditor upon him. (Art. 135 of the Mortgage Law of the Philippines of 1889.) According to this, the obligation of the new possessor to pay the debt originated only from the right of the creditor to demand payment of him, it being necessary that a demand for payment should have previously been made upon the debtor and the latter should have

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[43] *Rodriguez v. Reyes*, 147 Phil. 176, 183 (1971).

[44] *Id.*

[45] 46 Phil. 1 (1924).

[46] NEW CIVIL CODE, now Art. 2129.

failed to pay. And even if these requirements were complied with, still the third possessor might abandon the property mortgaged, and in that case it is considered to be in the possession of the debtor. (Art. 136 of the same law.) This clearly shows that the spirit of the Civil Code is to let the obligation of the debtor to pay the debt stand although the property mortgaged to secure the payment of said debt may have been transferred to a third person. While the Mortgage Law of 1893 eliminated these provisions, it contained nothing indicating any change in the spirit of the law in this respect. Article 129 of this law, which provides the substitution of the debtor by the third person in possession of the property, for the purposes of the giving of notice, does not show this change and has reference to a case where the action is directed only against the property burdened with the mortgage. (Art. 168 of the Regulation.)[47]

This pronouncement was reiterated in *Rodriguez v. Reyes*[48] wherein this Court, even before quoting the same above portion in *E.C. McCullough & Co. v. Veloso and Serna*, held:

We find the stand of petitioners-appellants to be unmeritorious and untenable. The maxim "*caveat emptor*" applies only to execution sales, and this was not one such. The mere fact that the purchaser of an immovable has notice that the acquired realty is encumbered with a mortgage does not render him liable for the payment of the debt guaranteed by the mortgage, in the absence of stipulation or condition that he is to assume payment of the mortgage debt. The reason is plain: the mortgage is merely an encumbrance on the property, entitling the mortgagee to have the property foreclosed, *i.e.*, sold, in case the principal obligor does not pay the mortgage debt, and apply the proceeds of the sale to the satisfaction of his credit. Mortgage is merely an accessory undertaking for the convenience and security of the mortgage creditor, and exists independently of the obligation to pay the debt secured by it. The mortgagee, if he is so minded, can waive the mortgage security and proceed to collect the principal debt by personal action against the original mortgagor.[49]

In view of the foregoing, Garcia has no cause of action against Villar in the absence of evidence to show that the second mortgage

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[47] *E.C. McCullough & Co. v. Veloso and Serna, supra* note 45 at 4-5.

[48] *Supra* note 43.

[49] *Id.* at 182-183.

executed in favor of Garcia has been violated by his debtors, Galas and Pingol, *i.e.*, specifically that Garcia has made a demand on said debtors for the payment of the obligation secured by the second mortgage and they have failed to pay.

WHEREFORE, this Court hereby **AFFIRMS** the February 27, 2003 Decision and March 8, 2003 Resolution of the Court of Appeals in **CA-G.R. SP No. 72714**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 159709. June 27, 2012]

HEIRS OF SERVANDO FRANCO, *petitioners, vs.* **SPOUSES VERONICA AND DANILO GONZALES,** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS; EXTINGUISHMENT OF; NOVATION; EXPLAINED.—** A novation arises when there is a substitution of an obligation by a subsequent one that extinguishes the first, either by changing the object or the principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor. For a valid novation to take place, there must be, therefore: (*a*) a previous valid obligation; (*b*) an agreement of the parties to make a new contract; (*c*) an extinguishment of the old contract; and (*d*) a valid new contract. In short, the new

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

obligation extinguishes the prior agreement only when the substitution is unequivocally declared, *or* the old and the new obligations are incompatible on every point. A compromise of a final judgment operates as a novation of the judgment obligation upon compliance with either of these two conditions. x x x To be clear, novation is not presumed. This means that the parties to a contract should expressly agree to abrogate the old contract in favor of a new one. In the absence of the express agreement, the old and the new obligations must be incompatible on every point. x x x There is incompatibility when the two obligations cannot stand together, each one having its independent existence. If the two obligations cannot stand together, the latter obligation novates the first. Changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must affect any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change is merely modificatory in nature and insufficient to extinguish the original obligation.

2. ID.; ID.; ID.; ID.; NOVATION DID NOT TRANSPIRE WHERE NO IRRECONCILABLE INCOMPATIBILITY EXISTED BETWEEN THE RECEIPT AND THE PROMISSORY NOTE.— [T]he issuance of the receipt created no new obligation. Instead, the respondents only thereby recognized the original obligation by stating in the receipt that the ₱400,000.00 was "partial payment of loan" and by referring to "the promissory note subject of the case in imposing the interest." The *loan* mentioned in the receipt was still the same loan involving the ₱500,000.00 extended to Servando. Advertence to the interest stipulated in the promissory note indicated that the contract still subsisted, not replaced and extinguished, as the petitioners claim. The receipt dated February 5, 1992 was only the proof of Servando's payment of his obligation as confirmed by the decision of the RTC. It did not establish the novation of his agreement with the respondents. Indeed, the Court has ruled that an obligation to pay a sum of money is not novated by an instrument that expressly recognizes the old, or changes only the terms of payment, or adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one. A new contract that is a mere reiteration, acknowledgment or ratification of the old contract with slight modifications or alterations as to the cause or object or

principal conditions can stand together with the former one, and there can be no incompatibility between them. Moreover, a creditor's acceptance of payment after demand does not operate as a modification of the original contract.

3. **ID.; ID.; SOLIDARY OBLIGATION; WHERE A PARTY REMAINS TO BE A SOLIDARY DEBTOR AGAINST WHOM THE ENTIRE OBLIGATION MIGHT BE ENFORCED.—** Worth noting is that Servando's liability was joint and solidary with his co-debtors. In a solidary obligation, the creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The choice to determine against whom the collection is enforced belongs to the creditor until the obligation is fully satisfied. Thus, the obligation was being enforced against Servando, who, in order to escape liability, should have presented evidence to prove that his obligation had already been cancelled by the new obligation or that another debtor had assumed his place. In case of change in the person of the debtor, the substitution must be clear and express, and made with the consent of the creditor. Yet, these circumstances did not obtain herein, proving precisely that Servando remained a solidary debtor against whom the entire or part of the obligation might be enforced.

APPEARANCES OF COUNSEL

De Mesa Zaballero & Partners Law Offices for petitioners.
Leopoldo Sta. Maria for respondents.

D E C I S I O N

BERSAMIN, *J.*:

There is novation when there is an irreconcilable incompatibility between the old and the new obligations. There is no novation in case of only slight modifications; hence, the old obligation prevails.

The petitioners challenge the decision promulgated on March 19, 2003,[1] whereby the Court of Appeals (CA) upheld the issuance of a writ of execution by the Regional Trial Court (RTC), Branch 16, in Malolos, Bulacan.

Antecedents

The Court adopts the following summary of the antecedents rendered by the Court in *Medel v. Court of Appeals,*[2] the case from which this case originated, to wit:

On November 7, 1985, Servando Franco and Leticia Medel (hereafter Servando and Leticia) obtained a loan from Veronica R. Gonzales (hereafter Veronica), who was engaged in the money lending business under the name "Gonzales Credit Enterprises", in the amount of ₱50,000.00, payable in two months. Veronica gave only the amount of ₱47,000.00, to the borrowers, as she retained ₱3,000.00, as advance interest for one month at 6% per month. Servado and Leticia executed a promissory note for ₱50,000.00, to evidence the loan, payable on January 7, 1986.

On November 19, 1985, Servando and Leticia obtained from Veronica another loan in the amount of ₱90,000.00, payable in two months, at 6% interest per month. They executed a promissory note to evidence the loan, maturing on January 19, 1986. They received only ₱84,000.00, out of the proceeds of the loan.

On maturity of the two promissory notes, the borrowers failed to pay the indebtedness.

On June 11, 1986, Servando and Leticia secured from Veronica still another loan in the amount of ₱300,000.00, maturing in one month, secured by a real estate mortgage over a property belonging to Leticia Makalintal Yaptinchay, who issued a special power of attorney in favor of Leticia Medel, authorizing her to execute the mortgage. Servando and Leticia executed a promissory note in favor of Veronica to pay the sum of ₱300,000.00, after a month, or on

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[1] *Rollo*, pp. 103-110; penned by Associate Justice Bernardo P. Abesamis (retired), with Associate Justice Juan Q. Enriquez, Jr. (retired) and Associate Justice Edgardo F. Sundiam (deceased) concurring.

[2] G.R. No. 131622, November 27, 1998, 299 SCRA 481.

July 11, 1986. However, only the sum of ₱275,000.00, was given to them out of the proceeds of the loan.

Like the previous loans, Servando and Medel failed to pay the third loan on maturity.

On July 23, 1986, Servando and Leticia with the latter's husband, Dr. Rafael Medel, consolidated all their previous unpaid loans totaling ₱440,000.00, and sought from Veronica another loan in the amount of ₱60,000.00, bringing their indebtedness to a total of ₱500,000.00, payable on August 23, 1986. They executed a promissory note, reading as follows:

"Baliwag, Bulacan July 23, 1986

"Maturity Date August 23, 1986

"₱500,000.00

"FOR VALUE RECEIVED, I/WE jointly and severally promise to pay to the order of VERONICA R. GONZALES doing business in the business style of GONZALES CREDIT ENTERPRISES, Filipino, of legal age, married to Danilo G. Gonzales, Jr., of Baliwag Bulacan, the sum of PESOS .... FIVE HUNDRED THOUSAND ..... (₱500,000.00) Philippine Currency with interest thereon at the rate of 5.5 PER CENT per month plus 2% service charge per annum from date hereof until fully paid according to the amortization schedule contained herein. (Underscoring supplied)

"Payment will be made in full at the maturity date.

"Should I/WE fail to pay any amortization or portion hereof when due, all the other installments together with all interest accrued shall immediately be due and payable and I/WE hereby agree to pay an additional amount equivalent to one per cent (1%) per month of the amount due and demandable as penalty charges in the form of liquidated damages until fully paid; and the further sum of TWENTY FIVE PER CENT (25%) thereof in full, without deductions as Attorney's Fee whether actually incurred or not, of the total amount due and demandable, exclusive of costs and judicial or extra judicial expenses. (Underscoring supplied)

"I, WE further agree that in the event the present rate of interest on loan is increased by law or the Central Bank of the

Philippines, the holder shall have the option to apply and collect the increased interest charges without notice although the original interest have already been collected wholly or partially unless the contrary is required by law.

"It is also a special condition of this contract that the parties herein agree that the amount of peso-obligation under this agreement is based on the present value of peso, and if there be any change in the value thereof, due to extraordinary inflation or deflation, or any other cause or reason, then the peso-obligation herein contracted shall be adjusted in accordance with the value of the peso then prevailing at the time of the complete fulfillment of obligation.

"Demand and notice of dishonor waived. Holder may accept partial payments and grant renewals of this note or extension of payments, reserving rights against each and all indorsers and all parties to this note.

"IN CASE OF JUDICIAL Execution of this obligation, or any part of it, the debtors waive all his/their rights under the provisions of Section 12, Rule 39, of the Revised Rules of Court."

On maturity of the loan, the borrowers failed to pay the indebtedness of ₱500,000.00, plus interests and penalties, evidenced by the above-quoted promissory note.

On February 20, 1990, Veronica R. Gonzales, joined by her husband Danilo G. Gonzales, filed with the Regional Trial Court of Bulacan, Branch 16, at Malolos, Bulacan, a complaint for collection of the full amount of the loan including interests and other charges.

In his answer to the complaint filed with the trial court on April 5, 1990, defendant Servando alleged that he did not obtain any loan from the plaintiffs; that it was defendants Leticia and Dr. Rafael Medel who borrowed from the plaintiffs the sum of ₱500,000.00, and actually received the amount and benefited therefrom; that the loan was secured by a real estate mortgage executed in favor of the plaintiffs, and that he (Servando Franco) signed the promissory note only as a witness.

In their separate answer filed on April 10,1990, defendants Leticia and Rafael Medel alleged that the loan was the transaction of Leticia Yaptinchay, who executed a mortgage in favor of the plaintiffs over

a parcel of real estate situated in San Juan, Batangas; that the interest rate is excessive at 5.5% per month with additional service charge of 2% per annum, and penalty charge of 1% per month; that the stipulation for attorney's fees of 25% of the amount due is unconscionable, illegal and excessive, and that substantial payments made were applied to interest, penalties and other charges.

After due trial, the lower court declared that the due execution and genuineness of the four promissory notes had been duly proved, and ruled that although the Usury Law had been repealed, the interest charged by the plaintiffs on the loans was unconscionable and "revolting to the conscience". Hence, the trial court applied "the provision of the New [Civil] Code" that the "legal rate of interest for loan or forbearance of money, goods or credit is 12% per annum."

Accordingly, on December 9, 1991, the trial court rendered judgment, the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, judgment is hereby rendered, as follows:
>
> "1. Ordering the defendants Servando Franco and Leticia Medel, jointly and severally, to pay plaintiffs the amount of ₱47,000.00 plus 12% interest per annum from November 7, 1985 and 1% per month as penalty, until the entire amount is paid in full.
>
> "2. Ordering the defendants Servando Franco and Leticia Y. Medel to plaintiffs, jointly and severally the amount of ₱84,000.00 with 12% interest per annum and 1% per cent per month as penalty from November 19,1985 until the whole amount is fully paid;
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> "3. Ordering the defendants to pay the plaintiffs, jointly and severally, the amount of ₱285,000.00 plus 12% interest per annum and 1% per month as penalty from July 11, 1986, until the whole amount is fully paid;
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> "4. Ordering the defendants to pay plaintiffs, jointly and severally, the amount of ₱50,000.00 as attorney's fees;
>
> "5. All counterclaims are hereby dismissed.
>
> "With costs against the defendants."

In due time, both plaintiffs and defendants appealed to the Court of Appeals.

In their appeal, plaintiffs-appellants argued that the promissory note, which consolidated all the unpaid loans of the defendants, is the law that governs the parties. They further argued that Circular No. 416 of the Central Bank prescribing the rate of interest for loans or forbearance of money, goods or credit at 12% per annum, applies only in the absence of a stipulation on interest rate, but not when the parties agreed thereon.

The Court of Appeals sustained the plaintiffs-appellants' contention. It ruled that "the Usury Law having become 'legally inexistent' with the promulgation by the Central Bank in 1982 of Circular No. 905, the lender and borrower could agree on any interest that may be charged on the loan". The Court of Appeals further held that "the imposition of 'an additional amount equivalent to 1% per month of the amount due and demandable as penalty charges in the form of liquidated damages until fully paid' was allowed by law."

Accordingly, on March 21, 1997, the Court of Appeals promulgated it decision reversing that of the Regional Trial Court, disposing as follows:

> "WHEREFORE, the appealed judgment is hereby MODIFIED such that defendants are hereby ordered to pay the plaintiffs the sum of ₱500,000.00, plus 5.5% per month interest and 2% service charge per annum effective July 23, 1986, plus 1% per month of the total amount due and demandable as penalty charges effective August 24, 1986, until the entire amount is fully paid.
>
> "The award to the plaintiffs of ₱50,000.00 as attorney's fees is affirmed. And so is the imposition of costs against the defendants.
>
> "SO ORDERED."

On April 15, 1997, defendants-appellants filed a motion for reconsideration of the said decision. By resolution dated November 25, 1997, the Court of Appeals denied the motion.[3]

On review, the Court in *Medel v. Court of Appeals* struck down as void the stipulation on the interest for being iniquitous or unconscionable, and revived the judgment of the RTC rendered on December 9, 1991, *viz*:

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[3] *Id.*, pp. 483-488.

WHEREFORE, the Court hereby REVERSES and SETS ASIDE the decision of the Court of Appeals promulgated on March 21, 1997, and its resolution dated November 25, 1997. Instead, we render judgment REVIVING and AFFIRMING the decision dated December 9, 1991, of the Regional Trial Court of Bulacan, Branch 16, Malolos, Bulacan, in Civil Case No. 134-M-90, involving the same parties.

No pronouncement as to costs in this instance.

SO ORDERED.[4]

Upon the finality of the decision in *Medel v. Court of Appeals*, the respondents moved for execution.[5] Servando Franco opposed,[6] claiming that he and the respondents had agreed to fix the entire obligation at ₱775,000.00.[7] According to Servando, their agreement, which was allegedly embodied in a receipt dated February 5, 1992,[8] whereby he made an initial payment of ₱400,000.00 and promised to pay the balance of ₱375,000.00 on February 29, 1992, superseded the July 23, 1986 promissory note.

The RTC granted the motion for execution over Servando's opposition, thus:

There is no doubt that the decision dated December 9, 1991 had already been affirmed and had already become final and executory. Thus, in accordance with Sec. 1 of Rule 39 of the 1997 Rules of Civil Procedure, execution shall issue as a matter of right. It has likewise been ruled that a judgment which has acquired finality becomes immutable and unalterable and hence may no longer be modified at any respect except only to correct clerical errors or mistakes (Korean Airlines Co. Ltd. vs. C.A., 247 SCRA 599). In this respect, the decision deserves to be respected.

The argument about the modification of the contract or non-participation of defendant Servando Franco in the proceedings on

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[4] *Id.*, p. 490.

[5] Records, pp. 202-204.

[6] *Id.*, pp. 211-218.

[7] *Rollo*, pp. 5-6

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

appeal on the alleged belief that the payment he made had already absolved him from liability is of no moment. Primarily, the decision was for him and Leticia Medel to pay the plaintiffs jointly and severally the amounts stated in the Decision. In other words, the liability of the defendants thereunder is solidary. Based on this aspect alone, the new defense raised by defendant Franco is unavailing.

WHEREFORE, in the light of all the foregoing, the Court hereby grants the Motion for Execution of Judgment.

Accordingly, let a writ of execution be issued for implementation by the Deputy Sheriff of this Court.

SO ORDERED.[9]

On March 8, 2001, the RTC issued the writ of execution.[10]

Servando moved for reconsideration,[11] but the RTC denied his motion.[12]

On March 19, 2003, the CA affirmed the RTC through its assailed decision, ruling that the execution was proper because of Servando's failure to comply with the terms of the compromise agreement, stating:[13]

Petitioner cannot deny the fact that there was no full compliance with the tenor of the compromise agreement. Private respondents on their part did not disregard the payments made by the petitioner. They even offered that whatever payments made by petitioner, it can be deducted from the principal obligation including interest. However, private respondents posit that the payments made cannot alter, modify or revoke the decision of the Supreme Court in the instant case.

In the case of *Prudence Realty and Development Corporation vs. Court of Appeals*, the Supreme Court ruled that:

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[9] Records, pp. 238-239.

[10] *Id.,* pp. 240-241.

[11] *Id.,* pp. 245-253.

[12] *Id.,* pp. 316-317.

[13] *Rollo*, pp. 108-109.

> "When the terms of the compromise judgment is violated, the aggrieved party must move for its execution, not its invalidation."

It is clear from the aforementioned jurisprudence that even if there is a compromise agreement and the terms have been violated, the aggrieved party, such as the private respondents, has the right to move for the issuance of a writ of execution of the final judgment subject of the compromise agreement.

Moreover, under the circumstances of this case, petitioner does not stand to suffer any harm or prejudice for the simple reason that what has been asked by private respondents to be the subject of a writ of execution is only the balance of petitioner's obligation after deducting the payments made on the basis of the compromise agreement.

WHEREFORE, premises considered, the instant petition is hereby DENIED DUE COURSE and consequently DISMISSED for lack of merit.

SO ORDERED.

His motion for reconsideration having been denied,[14] Servando appealed. He was eventually substituted by his heirs, now the petitioners herein, on account of his intervening death. The substitution was pursuant to the resolution dated June 15, 2005.[15]

Issue

The petitioners submit that the CA erred in ruling that:

I

THE 9 DECEMBER 1991 DECISION OF BRANCH 16 OF THE REGIONAL TRIAL COURT OF MALOLOS, BULACAN WAS NOT NOVATED BY THE COMPROMISE AGREEMENT BETWEEN THE PARTIES ON 5 FEBRUARY 1992.

II

THE LIABILITY OF THE PETITIONER TO RESPONDENTS SHOULD BE BASED ON THE DECEMBER 1991 DECISION OF

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[14] CA *rollo*, p. 246.

[15] *Rollo*, p. 181.

BRANCH 16 OF THE REGIONAL TRIAL COURT OF MALOLOS, BULACAN AND NOT ON THE COMPROMISE AGREEMENT EXECUTED IN 1992.

The petitioners insist that the RTC could not validly enforce a judgment based on a promissory note that had been already novated; that the promissory note had been impliedly novated when the principal obligation of ₱500,000.00 had been fixed at ₱750,000.00, and the maturity date had been extended from August 23, 1986 to February 29, 1992.

In contrast, the respondents aver that the petitioners seek to alter, modify or revoke the final and executory decision of the Court; that novation did not take place because there was no complete incompatibility between the promissory note and the memorandum receipt; that Servando's previous payment would be deducted from the total liability of the debtors based on the RTC's decision.

Issue

Was there a novation of the August 23, 1986 promissory note when respondent Veronica Gonzales issued the February 5, 1992 receipt?

Ruling

The petition lacks merits.

I

Novation did not transpire because no irreconcilable incompatibility existed between the promissory note and the receipt

To buttress their claim of novation, the petitioners rely on the receipt issued on February 5, 1992 by respondent Veronica whereby Servando's obligation was fixed at ₱750,000.00. They insist that even the maturity date was extended until February 29, 1992. Such changes, they assert, were incompatible with those of the original agreement under the promissory note.

The petitioners' assertion is wrong.

A novation arises when there is a substitution of an obligation by a subsequent one that extinguishes the first, either by changing the object or the principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor.[16] For a valid novation to take place, there must be, therefore: (*a*) a previous valid obligation; (*b*) an agreement of the parties to make a new contract; (*c*) an extinguishment of the old contract; and (*d*) a valid new contract.[17] In short, the new obligation extinguishes the prior agreement only when the substitution is unequivocally declared, *or* the old and the new obligations are incompatible on every point. A compromise of a final judgment operates as a novation of the judgment obligation upon compliance with either of these two conditions.[18]

The receipt dated February 5, 1992, excerpted below, did not create a new obligation incompatible with the old one under the promissory note, *viz*:

February 5, 1992

Received from SERVANDO FRANCO BPI Manager's Check No. 001700 in the amount of ₱400,00.00 as partial payment of loan. Balance of ₱375,000.00 to be paid on or before FEBRUARY 29, 1992. In case of default an interest will be charged as stipulated in the promissory note subject of this case.

(Sgd)
V. Gonzalez[19]

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[16] *Foundation Specialists, Inc. v. Betonval Ready Concrete, Inc.*, G.R. No. 170674, August 24, 2009, 596 SCRA 697, 706-707.

[17] *Valenzuela v. Kalayaan Development & Industrial Corporation*, G.R. No. 163244, June 22, 2009, 590 SCRA 380, 391; *Bautista v. Pilar Development Corporation*, G.R. No. 135046, August 17, 1999, 312 SCRA 611, 618.

[18] *Magbanua v. Uy*, G.R. No. 161003, May 6, 2005, 458 SCRA 184, 197.

[19] *Rollo*, p. 20.

To be clear, novation is not presumed. This means that the parties to a contract should expressly agree to abrogate the old contract in favor of a new one. In the absence of the express agreement, the old and the new obligations must be incompatible on every point.[20] According to *California Bus Lines, Inc. v. State Investment House, Inc.*:[21]

The extinguishment of the old obligation by the new one is a necessary element of novation which may be effected either expressly or impliedly. The term "expressly" means that the contracting parties incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts. While there is really no hard and fast rule to determine what might constitute to be a sufficient change that can bring about novation, the touchstone for contrariety, however, would be an irreconcilable incompatibility between the old and the new obligations.

There is incompatibility when the two obligations cannot stand together, each one having its independent existence. If the two obligations cannot stand together, the latter obligation novates the first.[22] Changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must affect any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change is merely modificatory in nature and insufficient to extinguish the original obligation.[23]

In light of the foregoing, the issuance of the receipt created no new obligation. Instead, the respondents only thereby

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[20] *Valenzuela v. Kalayaan Development & Industrial Corporation*, *supra*, note 17, pp. 390-391.

[21] G.R. No. 147950, December 11, 2003, 418 SCRA 297, 309-310.

[22] *Valenzuela v. Kalayaan Development & Industrial Corporation*, *supra*, note 17; *California Bus Lines, Inc. v. State Investment House, Inc.*, *supra*, note 21; *Kwong v. Gargantos*, G.R. No. 152984, November 22, 2006, 507 SCRA 540, 548.

[23] *Transpacific Battery Corporation v. Security Bank & Trust Co.*, G.R. No. 173565, May 8, 2009, 587 SCRA 536, 546.

recognized the original obligation by stating in the receipt that the ₱400,000.00 was "partial payment of loan" and by referring to "the promissory note subject of the case in imposing the interest." The *loan* mentioned in the receipt was still the same loan involving the ₱500,000.00 extended to Servando. Advertence to the interest stipulated in the promissory note indicated that the contract still subsisted, not replaced and extinguished, as the petitioners claim.

The receipt dated February 5, 1992 was only the proof of Servando's payment of his obligation as confirmed by the decision of the RTC. It did not establish the novation of his agreement with the respondents. Indeed, the Court has ruled that an obligation to pay a sum of money is not novated by an instrument that expressly recognizes the old, or changes only the terms of payment, or adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one.[24] A new contract that is a mere reiteration, acknowledgment or ratification of the old contract with slight modifications or alterations as to the cause or object or principal conditions can stand together with the former one, and there can be no incompatibility between them.[25] Moreover, a creditor's acceptance of payment after demand does not operate as a modification of the original contract.[26]

Worth noting is that Servando's liability was joint and solidary with his co-debtors. In a solidary obligation, the creditor may proceed against any one of the solidary debtors or some or all of them simultaneously.[27] The choice to determine against whom the collection is enforced belongs to the creditor until the obligation

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[24] *Aguilar v. Manila Banking Corporation*, G.R. No. 157911, September 19, 2006, 502 SCRA 354; *Spouses Reyes v. BPI Family Savings Bank, Inc.*, G.R. Nos. 149840-41, March 31, 2006, 486 SCRA 276.

[25] Jurado, *Comments and Jurisprudence on Obligations and Contracts* (2002 ed.), p. 331.

[26] *Valenzuela v. Kalayaan Development & Industrial Corporation*, *supra*, note 17.

[27] Article 1216, Civil Code.

is fully satisfied.[28] Thus, the obligation was being enforced against Servando, who, in order to escape liability, should have presented evidence to prove that his obligation had already been cancelled by the new obligation or that another debtor had assumed his place. In case of change in the person of the debtor, the substitution must be clear and express,[29] and made with the consent of the creditor.[30] Yet, these circumstances did not obtain herein, proving precisely that Servando remained a solidary debtor against whom the entire or part of the obligation might be enforced.

Lastly, the extension of the maturity date did not constitute a novation of the previous agreement. It is settled that an extension of the term or period of the maturity date does not result in novation.[31]

II

Total liability to be reduced by ₱400,000.00

The petitioners argue that Servando's remaining liability amounted to only ₱375,000.00, the balance indicated in the February 5, 1992 receipt. Accordingly, the balance was not yet due because the respondents did not yet make a demand for payment.

The petitioners cannot be upheld.

The balance of ₱375,000.00 was premised on the taking place of a novation. However, as found now, novation did not take place. Accordingly, Servando's obligation, being solidary, remained to be that decreed in the December 9, 1991 decision

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[28] *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244, 276; *Inciong, Jr. v. Court of Appeals,* G.R. No. 96405, June 26, 1996, 257 SCRA 578, 588.

[29] *Garcia v. Llamas*, G.R. No. 154127, December 8, 2003, 417 SCRA 292, 302.

[30] Article 1293, Civil Code.

[31] *California Bus Lines, Inc. v. State Investment House, Inc.*, *supra*, note 21; *Garcia, Jr. v. Court of Appeals*, G.R. No. 80201, November 20, 1990, 191 SCRA 493, 502.

of the RTC, inclusive of interests, less the amount of ₱400,000.00 that was meanwhile paid by him.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals promulgated on March 19, 2003; **ORDERS** the Regional Trial Court, Branch 16, in Malolos, Bulacan to proceed with the execution based on its decision rendered on December 9, 1991, deducting the amount of ₱400,000.00 already paid by the late Servando Franco; and **DIRECTS** the petitioners to pay the costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 166758. June 27, 2012]

MANILA ELECTRIC COMPANY, represented by MANOLO C. FERNANDO, *petitioner, vs.* **VICENTE ATILANO, NAZAAR LUIS, JOCELYN DELA DINGCO, SHARON SEE VICENTE, and JOHN DOES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; RESOLUTION OF THE PROSECUTOR AND/OR JUSTICE SECRETARY ON DETERMINATION OF PROBABLE CAUSE IS EXCLUDED FROM THE REQUIREMENT OF THE CONSTITUTION AND THE ADMINISTRATIVE CODE TO STATE THE FACTS AND THE LAW IN A DECISION.—** MERALCO failed to note that Section 14, Article VIII of the Constitution refers to "courts," thereby excluding the DOJ

Secretary and prosecutors who are not members of the Judiciary. x x x In explaining the inapplicability of Section 4, Article VIII of the Constitution to DOJ resolutions, the Court said that the DOJ is not a quasi-judicial body and the action of the Secretary of Justice in reviewing a prosecutor's order or resolution via appeal or petition for review cannot be considered a quasi-judicial proceeding. x x x The public prosecutor exercises investigative powers in the conduct of preliminary investigation to determine whether, based on the evidence presented to him, he should take further action by filing a criminal complaint in court. In doing so, he does not adjudicate upon the rights, obligations or liabilities of the parties before him. Since the power exercised by the public prosecutor in this instance is merely investigative or inquisitorial, it is subject to a different standard in terms of stating the facts and the law in its determinations. This is also true in the case of the DOJ Secretary exercising her review powers over decisions of public prosecutors. Thus, it is sufficient that in denying a petition for review of a resolution of a prosecutor, the DOJ resolution state the law upon which it is based. We rule, therefore, that the DOJ resolution satisfactorily complied with constitutional and legal requirements when it stated its legal basis for denying MERALCO's petition for review which is Section 7 of Department Circular No. 70, which authorizes the Secretary of Justice to dismiss a petition outright if he finds it to be patently without merit or manifestly intended for delay, or when the issues raised therein are too insubstantial to require consideration.

2. **ID.; ID.; ID.; DETERMINATION OF PROBABLE CAUSE IS AN EXECUTIVE FUNCTION.—** "[T]he determination of probable cause for the filing of an information in court is an executive function which pertains at the first instance to the public prosecutor and then to the Secretary of Justice." As a rule, in the absence of any grave abuse of discretion, "[c]ourts are not empowered to substitute their own judgment for that of the executive branch"; the public prosecutor alone determines the sufficiency of evidence that will establish probable cause in filing a criminal information and courts will not interfere with his findings unless grave abuse of discretion can be shown.

3. **ID.; ID.; ID.; THE PROSECUTOR'S DETERMINATION THAT NO PROBABLE CAUSE EXISTED TO JUSTIFY THE**

FILING OF ESTAFA IS UPHELD AS THE EVIDENCE OF MISAPPROPRIATION, CONVERSION, OR DECEIT IS LACKING.— The records show that **MERALCO failed to prove that the respondents indeed misappropriated or converted its investments**. As the handling prosecutor found, aside from the Minutes of the June 8, 2000 Meeting, **MERALCO did not present any evidence that would prove that MERALCO indeed gave specific instructions for CIPI to invest only in GS or CPs of the Lopez Group**. x x x Absent any proof of specific instructions, CIPI cannot be said to have misappropriated or diverted MERALCO's investments. x x x We agree with the prosecutor's finding that aside from its allegations, MERALCO failed to present any evidence showing that any of the respondents made any fraudulent misrepresentations or false statements prior to or simultaneously with the delivery of MERALCO's funds to CIPI. Finally, apart from its sweeping allegation that the respondents misappropriated or converted its money placements, the handling prosecutor found that MERALCO failed to establish, by evidence, the particular role or actual participation of each respondent in the alleged criminal act. Neither was it shown that they assented to its commission. "It is basic that only corporate officers shown to have participated in the alleged anomalous acts may be held criminally liable."

APPEARANCES OF COUNSEL

Maria Zarah Villanueva-Castro, Romel M. Gorospe and *Ricardo T. Martinez, Jr.* for petitioner.

Jim Francisco L. Asuncion for Sharon See Vicente.

Rivera Santos & Maranan for Vincente Atilano.

Napoleon F. Segundera, Jr. for Jocelyn Dela Dingco.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by petitioner Manila Electric Company (*MERALCO*) challenging

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[1] Filed under Rule 45 of the Revised Rules of Court; *rollo*, pp. 22-79.

the decision[2] and the resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 84248.

The Facts

Petitioner MERALCO is a domestic corporation doing business as an electric utility, and represented herein by its Senior Manager and Head of Treasury Operations Group, Manolo C. Fernando. Respondents are, at the time material to this case, officers of Corporate Investments Philippines, Inc. (*CIPI*) – a duly licensed investment house engaged in securities brokerage, dealership and underwriting services: Vicente Atilano (President); Nazaar Luis (Vice-President and General Counsel); Jocelyn dela Dingco (First Vice-President, Funds Management Group); Sharon See Vicente (Assistant Manager, Funds Management Group); and several "John Does" who are unidentified employees and officers of CIPI.

On April 16, 2001, MERALCO filed a complaint for *estafa,* under Article 315, paragraphs 1(a), 1(b) and 2(a) of the Revised Penal Code, against the respondents. MERALCO alleged that in 1993, MERALCO started investing in commercial papers (*CPs*) through CIPI. As of May 2000, MERALCO's investment with CIPI already amounted to ₱75,000,000.00. At various points in time, MERALCO delivered funds to the respondents for investment in CPs and government securities (*GS*). Sometime in May 2000, respondent Atilano, who was at that time the President of CIPI, conveyed to Manuel Lopez, MERALCO's President, that CIPI was facing liquidity problems. Lopez agreed to extend help to CIPI by placing investments through CIPI, on the condition that CIPI would secure these investments with GS and CPs issued by the Lopez Group of Companies (*Lopez Group*). Pursuant to this agreement, Fernando, who was at that time the Head of MERALCO's Treasury Operations Group,

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[2] Dated September 29, 2004; penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), and concurred in by Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao. *Id.* at 87-108.

[3] Dated January 18, 2005; *id.* at 111.

and respondent Vicente, who was the Assistant Manager of CIPI's Funds Management Group, allegedly entered into the following transactions:

Date	Amount Invested	Term	Securities
May 30, 2000	₱20,000,000.00	30 days	GS and CPs of Lopez Group
May 31, 2000	₱45,000,000.00	30 days	CPs of Rockwell and Benpres Corporation

MERALCO further alleged that it informed CIPI of its requirement to have the above-listed securities delivered to it within twenty-four (24) hours after the transaction, which CIPI failed to deliver despite repeated demands. Contrary to its specific instructions, MERALCO alleged that CIPI diverted MERALCO's funds by placing the investments in CIPI's own promissory notes (*PNs*) and in CPs of companies that are not members of the Lopez Group such as the investment of MERALCO's funds amounting to ₱10,000,000.00 in Pilipino Telephone Corporation CPs.

On June 8, 2000, following CIPI's alleged failure to deliver the subject securities within the period agreed upon, Fernando instructed Manolo Carpio and another staff of MERALCO's Treasury Operations Group to proceed to CIPI's office and demand the proper documentation of the subject transactions. Fernando followed his staff and met with respondent Luis who was at that time the Vice-President and General Counsel of CIPI. According to Fernando, respondent Atilano called him during the meeting to reiterate CIPI's liquidity problems, and to assure him that it was only temporary. He said that respondent Atilano promised to correct the irregularities committed by CIPI by making changes in MERALCO's investment portfolio. MERALCO said that the proposed changes in its investment portfolio, as promised by respondent Atilano, are reflected in the Minutes of the June 8, 2000 Meeting, as follows:

1. For its investments, MERALCO shall accept only Government Securities (GS) and Commercial Papers (CPs) of any Lopez Group company as security.

2. As an interim arrangement, MERALCO will accept CIPI's Promissory Notes detailed as follows for investments that are presently without security:

   Promissory Note No. 10010 in the amount of Pesos 18,000,000 + interest

   Promissory Note No. 10011 in the amount of Pesos 45,000,000 + interest

3. That this interim arrangement shall be regularized by replacing the aforementioned Promissory Notes detailed in Item #2 above with any security stated in item number (1) above.

4. That Confirmation of Sale No. 29145 covered by securities: PILTEL COMMERCIAL PAPER with a price of Pesos 10,000,000.00 shall likewise be replaced with securities acceptable to MERALCO as mentioned in item number (1) above.

5. That CIPI shall effect the changes stated in item numbers (3) and (4) above not later than 12:00 NN of 9 June 2000.[4]

The Minutes were signed by respondent Luis and they indicated that the meeting was attended by Fernando, Felix C. de Guzman, Manolo D. Carpio and Malou M. Manlugon, on MERALCO's part, and by respondents Luis and Dela Dingco on CIPI's part. However, notwithstanding the agreed deadline of June 9, 2000, CIPI allegedly failed to fulfill its undertaking.

Thus, MERALCO argued that the respondents should be held liable for *estafa* under Article 315, paragraphs 1(a), 1(b) and 2(a) of the Revised Penal Code for falsely pretending that they possess power, influence and qualifications to buy CPs of the Lopez Group and/or GS as agreed upon. MERALCO averred that it entrusted the subject investments to CIPI because of CIPI's commitment to comply with the condition that the

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[4] *Id.* at 190.

investments would be secured by GS and/or CPs issued by a Lopez Group company. MERALCO maintained that by substituting the required securities with PNs of CIPI and CPs of non-Lopez Group companies, the respondents are guilty of converting and misappropriating the subject funds to the prejudice of MERALCO.

In a resolution dated February 20, 2002, Prosecutor Dennis R. Pastrana dismissed MERALCO's complaint for insufficiency of evidence. According to Prosecutor Pastrana, the evidence presented by MERALCO failed to establish that the respondents committed any act that would constitute *estafa* under Article 315, paragraphs 1(a), 1(b) and 2(a) of the Revised Penal Code.

Prosecutor Pastrana said that there is no clear proof that the respondents misappropriated or converted MERALCO's funds — the core element in the offense of *estafa*. He also found that MERALCO failed to prove the indispensable element of deceit as the evidence showed that respondent Atilano revealed CIPI's liquidity problems to MERALCO even before the latter placed its investment through CIPI.

Prosecutor Pastrana noted that considering the amount of money that MERALCO invested, there was no documentary evidence to show any specific instruction for CIPI to invest the funds only in GS or CPs of the Lopez Group. MERALCO merely relied on the Minutes of the June 8, 2000 Meeting to prove that MERALCO indeed made such an instruction.

Thus, Prosecutor Pastrana concluded that the transaction between MERALCO and CIPI was a money market transaction partaking of a loan transaction whose nonpayment does not give rise to any criminal liability for *estafa* through misappropriation or conversion. Prosecutor Pastrana ruled that in a money market placement, the remedy of an unpaid investor (MERALCO) is to institute a civil action for recovery against the middleman or dealer (CIPI) and not a criminal action, such as the present recourse.

MERALCO moved to reconsider Prosecutor Pastrana's resolution but the latter denied the motion in a resolution dated

May 8, 2002. On June 3, 2002, MERALCO filed a petition for review before the Department of Justice (*DOJ*).

On December 17, 2002, then DOJ Secretary Ma. Merceditas N. Gutierrez dismissed the petition in accordance with Section 12(c), in relation to Section 7, of Department Circular No. 70.[5] The Secretary of Justice ruled that after carefully examining the petition and its attachments, she found no error on the part of the handling prosecutor that would warrant a reversal of the challenged resolution. The DOJ resolution further ruled that the challenged resolution was in accord with the evidence and the law on the matter.

The DOJ resolution also noted MERALCO's failure to submit a legible true copy of the confirmation of sale dated May 30, 2000 which was attached as Annex "2" of respondent Vicente's counter-affidavit, in violation of Section 5[6] of Department Circular No. 70.

MERALCO filed a motion for reconsideration of said resolution but the same was denied in a resolution dated March 26, 2004.

Thereupon, on May 31, 2004, MERALCO filed a petition for *certiorari* with the CA under Rule 65 of the Rules of Court

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[5] 2000 NPS Rule on Appeal dated July 3, 2000

Section 7. Action on the petition- The Secretary of Justice may dismiss the petition outright if he finds the same to be patently without merit or manifestly intended for delay, or when the issues raised therein are too unsubstantial to require consideration.

Section 12. Disposition of the appeal. The Secretary may reverse, affirm or modify the appealed resolution. He may, *motu proprio* or upon motion, dismiss the petition for review on any of the following grounds:

x x x x x x x x x

c) That there is no showing of any reversible error[.]

[6] Section 5. Contents of petition. –

x x x x x x x x x

The petition shall be accompanied by legible duplicate original or certified true copy of the resolution appealed from together with legible true copies of the complaint, affidavits/sworn statements and other evidence submitted by the parties during the preliminary investigation/reinvestigation.

to question the December 17, 2002 and March 26, 2004 resolutions of the DOJ.

In its decision dated September 29, 2004, the CA dismissed MERALCO's petition and affirmed the resolutions of the Secretary of Justice. It noted that the DOJ Minute Resolution was not invalidated by the fact that it contained no further discussion of the factual and legal issues because the reviewing authority expressed full concurrence with the findings and conclusions made by the prosecutor.

The CA further ruled that the relationship between MERALCO and CIPI is that of a creditor and debtor and, therefore, the remedy available to MERALCO is to file a civil case for recovery and not a criminal case for *estafa*, citing *Sesbreno v. CA*.[7]

When the CA denied MERALCO's motion for reconsideration, the latter filed the instant petition.

The Petition

MERALCO argues that (1) the DOJ Resolution violated the requirements laid down under Section 14, Article VIII of the Constitution, Section 14, Chapter III, Book VII of the Administrative Code of 1987 and the jurisprudential pronouncements of this Court on the matter; (2) the said resolution violated the jurisprudential stricture against applying technicalities to frustrate the ends of justice when it dismissed MERALCO's petition for failing to attach an annex of an annex; and (3) the CA erred in affirming the resolution of the handling prosecutor dismissing the complaint for *estafa* against respondents herein.

The Issues

The issues for this Court's determination are: ***first***, whether the DOJ Resolution dated December 17, 2002 complied with the constitutional requirement laid down in Section 14, Article VIII of the 1987 Constitution[8] and the requirement in Section 14,

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[7] 310 Phil. 671 (1995).

[8] Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

Chapter III, Book VII of the Administrative Code of 1987[9]; and ***second***, whether or not this Court can disturb the determination of probable cause made by the public prosecutor in the case.

Our Ruling

We find the petition unmeritorious.

A. The December 17, 2002 DOJ resolution complied with the requirement of the Constitution and the Administrative Code of 1987

The December 17, 2002 DOJ resolution was issued in accordance with Section 12(c), in relation to Section 7, of Department Circular No. 70, dated July 3, 2000, which authorizes the Secretary of Justice to dismiss a petition outright if he finds it to be patently without merit or manifestly intended for delay, or when the issues raised therein are too insubstantial to require consideration.

In dismissing MERALCO's petition for review of the resolution of the Office of the City Prosecutor of Pasig City, the Secretary of Justice ruled that after carefully examining the petition and its attachments, no error on the part of the handling prosecutor was found to have been committed which would warrant a reversal of the challenged resolution. Thus, the December 17, 2002 DOJ resolution concluded that the challenged resolution was in accord with the evidence and the law on the matter.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

[9] Section 14. *Decision.* – Every decision rendered by the agency in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based. The agency shall decide each case within thirty (30) days following its submission. The parties shall be notified of the decision personally or by registered mail addressed to their counsel of record, if any, or to them.

MERALCO considers the December 17, 2002 DOJ resolution invalid because of the absence of any statement of facts and law upon which it is based, as required under Section 14, Article VIII of the Constitution and Section 14, Chapter III, Book VII of the Administrative Code of 1987. MERALCO claims that the requirement to state the facts and the law in a decision is a mandatory requirement and the DOJ is not exempt from complying with the same.

In arguing as it did, MERALCO failed to note that Section 14, Article VIII of the Constitution refers to "courts," thereby excluding the DOJ Secretary and prosecutors who are not members of the Judiciary. In *Odchigue-Bondoc v. Tan Tiong Bio*,[10] we ruled that "*Section 4, Article VIII of the Constitution does not x x x extend to resolutions issued by the DOJ Secretary*." In explaining the inapplicability of Section 4, Article VIII of the Constitution to DOJ resolutions, the Court said that the DOJ is not a quasi-judicial body and the action of the Secretary of Justice in reviewing a prosecutor's order or resolution via appeal or petition for review cannot be considered a quasi-judicial proceeding.

This is reiterated in our ruling in *Spouses Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City,*[11] where we pointed out that a preliminary investigation is not a quasi-judicial proceeding, and the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause. A quasi-judicial agency performs adjudicatory functions when its awards determine the rights of parties, and its decisions have the same effect as a judgment of a court.[12] "[This] is not the case when a public prosecutor conducts a preliminary

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[10] G.R. No. 186652, October 6, 2010, 632 SCRA 457, 463, citing *Spouses Balangauan v. Court of Appeals, Special Nineteenth Division, Cebu City,* G.R. No. 174350, August 13, 2008, 562 SCRA 184.

[11] *Supra.*

[12] *Id.* at 204.

investigation to determine probable cause to file an information against a person charged with a criminal offense, or when the Secretary of Justice [reviews] the former's order[s] or resolutions" on determination of probable cause.[13]

In *Odchigue-Bondoc,* we ruled that when the public prosecutor conducts preliminary investigation, he thereby exercises *investigative* or *inquisitorial powers*. Investigative or inquisitorial powers include the powers of an administrative body to inspect the records and premises, and investigate the activities of persons or entities coming under his jurisdiction, or to secure, or to require the disclosure of information by means of accounts, records, reports, statements, testimony of witnesses, and production of documents.[14] This power is distinguished from judicial adjudication which signifies the exercise of power and authority to adjudicate upon the rights and obligations of concerned parties.[15] Indeed, it is the exercise of investigatory powers which sets a public prosecutor apart from the court.

The public prosecutor exercises investigative powers in the conduct of preliminary investigation to determine whether, based on the evidence presented to him, he should take further action by filing a criminal complaint in court. In doing so, he does not adjudicate upon the rights, obligations or liabilities of the parties before him. Since the power exercised by the public prosecutor in this instance is merely investigative or inquisitorial, it is subject to a different standard in terms of stating the facts and the law in its determinations. This is also true in the case of the DOJ Secretary exercising her review powers over decisions of public prosecutors. Thus, it is sufficient that in denying a petition for review of a resolution of a prosecutor, the DOJ resolution state the law upon which it is based.

We rule, therefore, that the DOJ resolution satisfactorily complied with constitutional and legal requirements when it stated

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[13] *Ibid.*

[14] Hector S. de Leon & Hector M. de Leon, Jr., *Administrative Law: Text and Cases,* 5th Edition (2005), p. 66.

[15] *Id.* at 67.

its legal basis for denying MERALCO's petition for review which is Section 7 of Department Circular No. 70, which authorizes the Secretary of Justice to dismiss a petition outright if he finds it to be patently without merit or manifestly intended for delay, or when the issues raised therein are too insubstantial to require consideration.

The DOJ resolution noted that MERALCO failed to submit a legible true copy of the confirmation of sale dated May 30, 2000 and considered the omission in violation of Section 5[16] of Department Circular No. 70. MERALCO assails the dismissal on this ground as an overly technical application of the rules and claims that it frustrated the ends of substantial justice. We note, however, that the failure to attach the document was not the sole reason of the DOJ's denial of MERALCO's petition for review. As mentioned, the DOJ resolution dismissed the petition primarily because the prosecutor's resolution is in accord with the evidence and the law on the matter.

At this point, it becomes unnecessary to decide the legality of Section 7 of DOJ Department Circular No. 70 allowing the outright dismissal of MERALCO's petition for review. It is basic that this Court will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other ground.[17]

Also, DOJ Department Circular No. 70 is an enactment of an executive department of the government and is designed for the expeditious and efficient administration of justice; before it was enacted, it is presumed to have been carefully studied and determined to be constitutional.[18] Lest we be misunderstood,

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[16] Section 5. Contents of petition. – x x x

x x x   x x x   x x x

The petition shall be accompanied by legible duplicate original or certified true copy of the resolution appealed from together with legible true copies of the complaint, affidavits/sworn statements and other evidence submitted by the parties during the preliminary investigation/reinvestigation.

[17] *Laurel v. Garcia*, G.R. Nos. 92013 and 92047, July 25, 1990, 187 SCRA 797.

[18] Isagani A. Cruz, *Constitutional Law* (2007), p. 31.

we do not hereby evade our duty; in the absence of any grave abuse of discretion, we merely accord respect to the basic constitutional principle of separation of powers, which has long guided our system of government.

B. The determination of probable cause for the filing of an information in court is an executive function

"[T]he determination of probable cause for the filing of an information in court is an executive function which pertains at the first instance to the public prosecutor and then to the Secretary of Justice."[19] As a rule, in the absence of any grave abuse of discretion, "[c]ourts are not empowered to substitute their own judgment for that of the executive branch";[20] the public prosecutor alone determines the sufficiency of evidence that will establish probable cause in filing a criminal information and courts will not interfere with his findings unless grave abuse of discretion can be shown.[21]

This notwithstanding, we have examined the records and found no error in the public prosecutor's determination that no probable cause existed to justify the filing of a criminal complaint.

The respondents are being charged with *estafa* under Article 315, paragraphs 1(a), 1(b) and 2(a) of the Revised Penal Code. To be held liable for *estafa* under Article 315, paragraph 1(b) of the Revised Penal Code[22] (*estafa* by conversion or misappropriation), the following elements must concur:

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[19] *Cruzvale, Inc. v. Eduque*, G.R. Nos. 172785-86, June 18, 2009, 589 SCRA 534, 545.

[20] *Ibid.*

[21] *Sanrio Company Limited v. Lim*, G.R. No. 168662, February 19, 2008, 546 SCRA 303, 312-313.

[22] Article 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

(1) that money, goods, or other personal properties are received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;

(2) that there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt;

(3) that such misappropriation or conversion or denial is to the prejudice of another; and

(4) that there is a demand made by the offended party on the offender.[23]

The records show that **MERALCO failed to prove that the respondents indeed misappropriated or converted its investments**. As the handling prosecutor found, aside from the Minutes of the June 8, 2000 Meeting, **MERALCO did not present any evidence that would prove that MERALCO indeed gave specific instructions for CIPI to invest only in GS or CPs of the Lopez Group**.

According to the CA, the said Minutes do not have any probative value for being hearsay because they attest to the existence of an agreement purportedly entered into between respondent Atilano and Lopez whose testimony was never presented in evidence. While respondent Atilano explicitly denied having received any specific instructions from MERALCO on how its investments would be placed, MERALCO failed to present any contrary evidence. MERALCO could have presented in evidence the testimony of Lopez to prove that he gave specific

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x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[23] *Libuit v. People*, 506 Phil. 591, 597 (2005).

instructions to CIPI to place its investments only in GS or CPs of the Lopez Group, but it failed to do so.

Absent any proof of specific instructions, CIPI cannot be said to have misappropriated or diverted MERALCO's investments. We take note that in money market transactions, *the dealer is given discretion on where investments are to be placed,* absent any agreement with or instruction from the investor to place the investments in specific securities.

Money market transactions may be conducted in various ways. One instance is when an investor enters into an investment contract with a dealer under terms that oblige the dealer to place investments only in designated securities. Another is when there is no stipulation for placement on designated securities; thus, the dealer is given discretion to choose the placement of the investment made. Under the first situation, a dealer who deviates from the specified instruction may be exposed to civil and criminal prosecution; in contrast, the second situation may only give rise to a civil action for recovery of the amount invested.

On the other hand, to be held liable under Article 315, paragraph 2(a) of the Revised Penal Code[24] (*estafa* by means of deceit), the following elements must concur:

(a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions;

(b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud;

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[24] Art. 315. x x x

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

(c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and

(d) that, as a result thereof, the offended party suffered damage.[25]

MERALCO argued that the respondents are guilty of falsely pretending that they possess power, influence and qualifications to buy GS and CPs of the Lopez Group, to induce MERALCO to part with its investment. We rule that the argument has no basis precisely because no evidence exists showing that CIPI made false representations regarding its capacity to deal with MERALCO's investments. In fact, the records will show that respondent Atilano disclosed CIPI's liquidity problems to MERALCO even before MERALCO placed its investment. We agree with the prosecutor's finding that aside from its allegations, MERALCO failed to present any evidence showing that any of the respondents made any fraudulent misrepresentations or false statements prior to or simultaneously with the delivery of MERALCO's funds to CIPI.

Finally, apart from its sweeping allegation that the respondents misappropriated or converted its money placements, the handling prosecutor found that MERALCO failed to establish, by evidence, the particular role or actual participation of each respondent in the alleged criminal act. Neither was it shown that they assented to its commission. "It is basic that only corporate officers shown to have participated in the alleged anomalous acts may be held criminally liable."[26]

WHEREFORE, the petition is **DENIED**. The decision dated September 29, 2004 and the resolution dated January 18, 2005 of the Court of Appeals are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

[25] *Sy v. People*, G.R. No. 183879, April 14, 2010, 618 SCRA 264, 271.

[26] *Cruzvale, Inc. v. Eduque*, *supra* note 19, at 546.

SECOND DIVISION

[G.R. No. 170509. June 27, 2012]

VIEGELY SAMELO, represented by Attorney-in-Fact CRISTINA SAMELO, *petitioner, vs.* **MANOTOK SERVICES, INC., allegedly represented by PERPETUA BOCANEGRA (deceased),** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; LEASE; AN IMPLIED NEW LEASE OR *TACITA RECONDUCCION* IS CREATED UPON LESSOR'S FAILURE TO GIVE LESSEE A NOTICE TO VACATE AFTER THE EXPIRATION OF THE LEASE CONTRACT.—** It bears emphasis that the respondent did not give the petitioner a notice to vacate upon the expiration of the lease contract in December 1997 (the notice to vacate was sent only on August 5, 1998), and the latter continued enjoying the subject premises for more than 15 days, without objection from the respondent. By the inaction of the respondent as lessor, there can be no inference that it intended to discontinue the lease contract. An implied new lease was therefore created pursuant to Article 1670 of the Civil Code x x x "An implied new lease or *tacita reconduccion* will set in when the following requisites are found to exist: a) the term of the original contract of lease has expired; b) the lessor has not given the lessee a notice to vacate; and c) the lessee continued enjoying the thing leased for fifteen days with the acquiescence of the lessor." As earlier discussed, all these requisites have been fulfilled in the present case.
2. **ID.; ID.; ID.; ID.; *TACITA RECONDUCCION* IS ABORTED WHEN LESSOR SENT A NOTICE TO VACATE.—** When the respondent sent a notice to vacate to the petitioner on August 5, 1998, the *tacita reconduccion* was aborted, and the contract is deemed to have expired at the end of that month. "[A] notice to vacate constitutes an express act on the part of the lessor that it no longer consents to the continued occupation by the lessee of its property." After such notice, the lessee's right

to continue in possession ceases and her possession becomes one of detainer.

3. **ID.; ID.; ID.; LESSEE IS ESTOPPED FROM CONTESTING THE LESSOR'S TITLE.—** The Rules of Court protects the respondent, as lessor, from being questioned by the petitioner, as lessee, regarding its title or better right of possession over the subject premises. Section 2(b), Rule 131 of the Rules of Court states that the tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them. Article 1436 of the Civil Code likewise states that a lessee or a bailee is estopped from asserting title to the thing leased or received, as against the lessor or bailor. These provisions bar the petitioner from contesting the respondent's title over the subject premises. "The juridical relationship between x x x [a] lessor and x x x [a lessee] carries with it a recognition of the lessor's title. As [lessee, the petitioner is] estopped [from denying the] landlord's title, or to assert a better title not only in [herself], but also in some third person while [she remains] in possession of the subject premises and until [she surrenders] possession to the landlord. This estoppel applies even though the lessor had no title at the time the relation of [the] lessor and [the] lessee was created, and may be asserted not only by the original lessor, but also by those who succeed to his title." Once a contact of lease is shown to exist between the parties, the lessee cannot by any proof, however strong, overturn the conclusive presumption that the lessor has a valid title to or a better right of possession to the subject premises than the lessee.

4. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; WHERE ISSUE OF OWNERSHIP NEED NOT BE RESOLVED TO DETERMINE POSSESSION.—** [W]e hold that no need exists to resolve the issue of ownership in this case, since it is not required to determine the issue of possession; the execution of the lease contract between the petitioner, as lessee, and the respondent, as lessor, belies the former's claim of ownership. We reiterate that the fact of the lease and the expiration of its term are the only elements in an action for unlawful detainer. "The defense of ownership does not change the summary nature of [this] action. x x x. Although a wrongful possessor may at times be upheld by the courts, this is merely temporary and solely for the maintenance

of public order. The question of ownership is to be settled in the proper court and in a proper action."

5. ID.; ID.; ID.; INTEREST ON RENTALS DUE, IMPOSED.— [T]he petitioner is liable to pay interest by way of damages for her failure to pay the rentals due for the use of the subject premises. We reiterate that the respondent's extrajudicial demand on the petitioner was made on August 5, 1998. Thus, from this date, the rentals due from the petitioner shall earn interest at 6% per annum, until the judgment in this case becomes final and executory. After the finality of judgment, and until full payment of the rentals and interests due, the legal rate of interest to be imposed shall be 12%.

APPEARANCES OF COUNSEL

Reynaldo R. Princesa for petitioner.
Danilo M. Caranzo for respondent.

D E C I S I O N

BRION, *J*.:

Before us is the petition for review on *certiorari*[1] filed by Viegely Samelo (*petitioner*), represented by her attorney-in-fact Cristina Samelo, to challenge the decision dated June 21, 2005[2] and the resolution dated November 10, 2005[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 85664.

Background Facts

Manotok Services, Inc. (*respondent*) alleged that it is the administrator of a parcel of land known as Lot 9-A, Block 2913, situated at 2882 Dagupan Extension, Tondo, Manila. On January

[1] Under Rule 45 of the Revised Rules of Court; *rollo*, pp. 11-19.

[2] *Id.* at 24-32; penned by Associate Justice Rosmari D. Carandang, and concurred in by Associate Justices Remedios A. Salazar-Fernando and Monina Arevalo-Zenarosa.

[3] *Id.* at 34-37.

31, 1997, the respondent entered into a contract with the petitioner for the lease of a portion of Lot 9-A, Block 2913, described as Lot 4, Block 15 (*subject premises*). The lease contract was for a period of one (1) year, with a monthly rental of ₱3,960.00. After the expiration of the lease contract on December 31, 1997, the petitioner continued occupying the subject premises without paying the rent.[4] On August 5, 1998, the respondent, thru its President Rosa Manotok, sent a letter to the petitioner demanding that she vacate the subject premises and pay compensation for its use and occupancy.[5] The petitioner, however, refused to heed these demands.

On November 18, 1998, the respondent filed a complaint for unlawful detainer against the petitioner before the Metropolitan Trial Court (*MeTC*), Branch 3, Manila.[6] The case was docketed as Civil Case No. 161588-CV. The respondent prayed, among others, that the petitioner and those claiming rights under her be ordered to vacate the subject premises, and to pay compensation for its use and occupancy.

In her answer, the petitioner alleged that the respondent had no right to collect rentals because the subject premises are located inside the property of the Philippine National Railways (*PNR*). She also added that the respondent had no certificate of title over the subject premises. The petitioner further claimed that her signature in the contract of lease was obtained through the respondent's misrepresentation. She likewise maintained that she is now the owner of the subject premises as she had been in possession since 1944.[7]

The MeTC Ruling

The MeTC, in its judgment[8] of March 28, 2002, decided in favor of the respondent, and ordered the petitioner to vacate

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[4] *Id.* at 53-55.

[5] *Id.* at 60.

[6] *Supra* note 4.

[7] *Rollo*, pp. 61-63.

[8] Dated March 28, 2002; *id.* at 50-52.

the subject premises and to deliver their peaceful possession to the respondent. The MeTC held that the only issue to be resolved in an unlawful detainer case is physical possession or possession *de facto*, and that the respondent had established its right of possession over the subject premises. It added that the petitioner's right under the lease contract already ceased upon the expiration of the said contract. It further ruled that the petitioner is already estopped from questioning the right of the respondent over the subject premises when she entered into a contract of lease with the respondent. The dispositive portion of the MeTC judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered for the plaintiff and against defendant, ordering the latter and all persons claiming rights under her:

1. To vacate the premises located at 2882 Dagupan Extension, Tondo, Manila, and deliver the peaceful possession thereof to the plaintiff[;]
2. To pay plaintiff the sum of ₱40,075.20 as compensation for the use and occupancy of the premises from January 1, 1998 to August 30, 1998, plus ₱4,554.00 a month starting September 1, 1998, until defendant and all person[s] claiming rights under her to finally vacate the premises[;]
3. To pay plaintiff the sum of ₱5,000.00 for and as attorney's fees; and
4. To pay the cost of suit.[9]

The RTC Decision

The petitioner filed an appeal[10] with the Regional Trial Court (*RTC*), Branch 50, Manila. The RTC, in its decision[11] of July 1, 2004, set aside the MeTC's decision, and dismissed the complaint for unlawful detainer. The RTC held, among others, that the

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[9] *Id.* at 52.

[10] Docketed as Civil Case No. 02-103656.

[11] *Rollo,* pp. 44-49.

respondent had no right to collect rentals as it failed to show that it had authority to administer the subject premises and to enter into a contract of lease with the petitioner. It also ruled that the subject premises, which were formerly owned by the PNR, are now owned by the petitioner by virtue of her possession and stay in the premises since 1944.

The CA Decision

Aggrieved by the reversal, the respondent filed a petition for review with the CA, docketed as CA-G.R. SP No. 85664.[12] The CA, in its decision of June 21, 2005, reversed and set aside the RTC decision, and reinstated the MeTC judgment. The CA held that the petitioner is now estopped from questioning the right of the respondent over the subject property. It explained that in an action involving the possession of the subject premises, a tenant cannot controvert the title of his landlord or assert any rights adverse to that title, without first delivering to the landlord the premises acquired by virtue of the agreement between themselves. The appellate court added that the petitioner cannot claim that she repudiated the lease contract, in the absence of any unequivocal acts of repudiation.

The CA further held that the only issue in an ejectment suit is physical or material possession, although the trial courts may provisionally resolve the issue of ownership for the sole purpose of determining the issue of possession. It explained that the issue of ownership is not required to determine the issue of possession since the petitioner tacitly admitted that she is a lessee of the subject premises.[13]

The petitioner moved to reconsider this decision, but the CA denied her motion in its resolution dated November 10, 2005.[14]

In presenting her case before this Court, the petitioner argued that the CA erred in ruling that a tenant is not permitted to

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[12] *Id.* at 187-203.

[13] *Supra* note 2.

[14] *Supra* note 3.

deny the title of his landlord. She maintained that the respondent is not the owner or administrator of the subject premises, and insisted that she had been in possession of the land in question since 1944. She further added that she repudiated the lease contract by filing a case for fraudulent misrepresentation, intimidation, annulment of lease contract, and quieting of title with injunction before another court.[15]

The Court's Ruling

We find the petition **unmeritorious**.

Respondent has a better right of possession over the subject premises

"An action for unlawful detainer exists when a person unlawfully withholds possession of any land or building against or from a lessor, vendor, vendee or other persons, after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied."[16] "The only issue to be resolved in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties involved."[17] "Thus, when the relationship of lessor and lessee is established in an unlawful detainer case, any attempt of the parties to inject the question of ownership into the case is futile, except insofar as it might throw light on the right of possession."[18]

In the present case, it is undisputed that the petitioner and the respondent entered into a contract of lease. We note in this regard that in her *answer with affirmative defenses and counterclaim* before the MeTC, the petitioner did not deny that she signed the lease contract (although she maintained that

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[15] *Supra* note 1, at 15.

[16] *Racaza v. Gozum*, 523 Phil. 694, 707 (2006).

[17] *Mendoza v. Court of Appeals*, 492 Phil. 261, 265 (2005).

[18] *Eastern Shipping Lines, Inc. v. Court of Appeals*, 424 Phil. 544, 554 (2002).

her signature was obtained through the respondent's misrepresentations). Under the lease contract, the petitioner obligated herself to pay a monthly rental to the respondent in the amount of ₱3,960.00. The lease period was for one year, commencing on January 1, 1997 and expiring on December 31, 1997. It bears emphasis that the respondent did not give the petitioner a notice to vacate upon the expiration of the lease contract in December 1997 (the notice to vacate was sent only on August 5, 1998), and the latter continued enjoying the subject premises for more than 15 days, without objection from the respondent. By the inaction of the respondent as lessor, there can be no inference that it intended to discontinue the lease contract.[19] An implied new lease was therefore created pursuant to Article 1670 of the Civil Code, which expressly provides:

Article 1670. If at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived.

"An implied new lease or *tacita reconduccion* will set in when the following requisites are found to exist: a) the term of the original contract of lease has expired; b) the lessor has not given the lessee a notice to vacate; and c) the lessee continued enjoying the thing leased for fifteen days with the acquiescence of the lessor."[20] As earlier discussed, all these requisites have been fulfilled in the present case.

Article 1687 of the Civil Code on implied new lease provides:

Article 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual;

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[19] See *Bowe v. Court of Appeals*, G.R. No. 95771, March 19, 1993, 220 SCRA 158, 166. In this case, the Court also ruled that an express notice to vacate must be made within the statutory 15-day period.

[20] *Paterno v. Court of Appeals*, 339 Phil. 154, 160-161 (1997).

from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily.

Since the rent was paid on a monthly basis, the period of lease is considered to be from month to month, in accordance with Article 1687 of the Civil Code. "[A] lease from month to month is considered to be one with a definite period which expires at the end of each month **upon a demand to vacate by the lessor**."[21] When the respondent sent a notice to vacate to the petitioner on August 5, 1998, the *tacita reconduccion* was aborted, and the contract is deemed to have expired at the end of that month. "[A] notice to vacate constitutes an express act on the part of the lessor that it no longer consents to the continued occupation by the lessee of its property."[22] After such notice, the lessee's right to continue in possession ceases and her possession becomes one of detainer.[23]

Estoppel of tenant

We find no merit in the petitioner's allegation that the respondent had no authority to lease the subject premises because the latter failed to prove that it is its owner or administrator.

The Rules of Court protects the respondent, as lessor, from being questioned by the petitioner, as lessee, regarding its title or better right of possession over the subject premises. Section 2(b), Rule 131 of the Rules of Court states that the tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them. Article 1436 of the Civil Code likewise states that a lessee or a bailee is estopped from asserting title to the thing leased or received, as against the lessor or bailor.

These provisions bar the petitioner from contesting the respondent's title over the subject premises. "The juridical

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[21] *Arquelada v. Philippine Veterans Bank*, 385 Phil. 1200, 1219 (2000).

[22] *Tagbilaran Integrated Settlers Assoc. (TISA), Inc. v. Court of Appeals*, 486 Phil. 386, 394 (2004).

[23] See *Lim v. Court of Appeals*, G.R. Nos. 84154-55, July 28, 1990, 188 SCRA 23, 36.

relationship between x x x [a] lessor and x x x [a lessee] carries with it a recognition of the lessor's title. As [lessee, the petitioner is] estopped [from denying the] landlord's title, or to assert a better title not only in [herself], but also in some third person while [she remains] in possession of the subject premises and until [she surrenders] possession to the landlord. This estoppel applies even though the lessor had no title at the time the relation of [the] lessor and [the] lessee was created, and may be asserted not only by the original lessor, but also by those who succeed to his title."[24] Once a contact of lease is shown to exist between the parties, the lessee cannot by any proof, however strong, overturn the conclusive presumption that the lessor has a valid title to or a better right of possession to the subject premises than the lessee.

The Court thus explained in *Tamio v. Ticson*:[25]

> Indeed, the relation of lessor and lessee does not depend on the former's title but on the agreement between the parties, followed by the possession of the premises by the lessee under such agreement. As long as the latter remains in undisturbed possession, it is immaterial whether the lessor has a valid title — or any title at all — at the time the relationship was entered into. [citations omitted]

The issue of ownership

We are likewise unpersuaded by the petitioner's claim that she has "acquired possessory rights leading to ownership"[26] over the subject premises, having been in possession thereof since 1944. We emphasize that aside from her self-serving allegation, the petitioner did not present any documentary evidence to substantiate her claim that she stayed on the subject premises since 1944. That the petitioner presented certificates of title of the Manila Railroad Company over certain properties in Tondo,

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[24] *Century Savings Bank v. Samonte*, G.R. No. 176212, October 20, 2010, 634 SCRA 261, 277.

[25] 485 Phil. 434, 444 (2004).

[26] *Rollo*, p. 61.

Manila, which allegedly cover the subject premises, is of no moment. One cannot recognize the right of another, and at the same time claim adverse possession which can ripen to ownership, thru acquisitive prescription. "For prescription to set in, the possession must be adverse, continuous, public, and to the exclusion of [others]."[27] Significantly, the RTC decision failed to state its basis for concluding that the petitioner stayed in the subject premises since 1944.

At any rate, we hold that no need exists to resolve the issue of ownership in this case, since it is not required to determine the issue of possession; the execution of the lease contract between the petitioner, as lessee, and the respondent, as lessor, belies the former's claim of ownership. We reiterate that the fact of the lease and the expiration of its term are the only elements in an action for unlawful detainer. "The defense of ownership does not change the summary nature of [this] action. x x x. Although a wrongful possessor may at times be upheld by the courts, this is merely temporary and solely for the maintenance of public order. The question of ownership is to be settled in the proper court and in a proper action."[28]

Interest on rentals due

Additionally, the petitioner is liable to pay interest by way of damages for her failure to pay the rentals due for the use of the subject premises.[29] We reiterate that the respondent's extrajudicial demand on the petitioner was made on August 5, 1998. Thus, from this date, the rentals due from the petitioner shall earn interest at 6% per annum, until the judgment in this case becomes final and executory. After the finality of judgment, and until full payment of the rentals and interests due, the legal rate of interest to be imposed shall be 12%.

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[27] *Corpuz v. Padilla*, Nos. L-18099 and L-18136, July 31, 1962, 5 SCRA 814, 820.

[28] *Ocampo v. Tirona*, 495 Phil. 55, 66-67 (2005).

[29] See *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78.

WHEREFORE, in light of all the foregoing, we **DENY** the petition. The decision and the resolution of the Court of Appeals dated June 21, 2005 and November 10, 2005, respectively, in CA-G.R. SP No. 85664 are **AFFIRMED** with the **MODIFICATION** that the unpaid rentals shall earn a corresponding interest of six percent (6%) per annum, to be computed from August 5, 1998 until the finality of this decision. After this decision becomes final and executory, the rate of legal interest shall be computed at twelve percent (12%) per annum from such finality until its satisfaction.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 171209. June 27, 2012]

SPS. AMBROSIO DECALENG (substituted by his heirs)[1] **and JULIA "WANAY" DECALENG,** *petitioners, vs.* **BISHOP OF THE MISSIONARY DISTRICT OF THE PHILIPPINE ISLANDS OF PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES OF AMERICA, otherwise known as THE PHILIPPINE EPISCOPAL CHURCH, represented by RT. REV. ROBERT LEE O. LONGID, BISHOP OF THE EPISCOPAL DIOCESE OF NORTHERN PHILIPPINES, and REV. HENRY HAKCHOLNA,** *respondents.*

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[1] Per January 25, 1994 Order of the RTC, Bontoc, Mt. Province. The heirs are the children of spouses Ambrosio Decaleng and Julia "Wanay" Decaleng, namely: Mercedez D. Fonite, Elizabeth D. Tzoganatous, Esther D. Tongbaban, Nora D. Sumcad, Mary D. Capuyan, Nellie D. Dagacan, Mariano Decaleng, and Beverly D. Bawing. (Records, p. 190.)

[UDK-13672. June 27, 2012]

PATRICIO OBONAN BANIAGA, MARIA BAYANG, MAGDALENA RIMANDO, PRISCA BACAGAN, MALIDOM BAGNI, MONICO BACAGAN, PATRICK BAWING, JAMES OMAWENG, CADAWENG LOPEZ, JUDITH MILLER, AGNES BADONGEN, TOBYED SOLANG, ADELA ANGWAY, ROSE BAYAO, THOMAS KIWANG, JULIA DECALENG, LUIS GANGA, CHRISTINA GIAKAW, GUITELEN OLAT, DOMINGA MAGUEN, MARIANO GUITELEN, THERESA SALAO, FELIPE MANODON, JOHN BATNAG, BIAG TAMBIAC, SAGOLO PADANG, CADIOGAN TOLEYAN, BETTY BINAYONG, EDUARDO GUITELEN, PABLO AGPAD, ESTEBAN CAPUYAN, PURITA ANGWAY, POLAT BOSAING, EDUARDO LIZARDO, DILIGEN ALIBAN, MARY B. TUDLONG, PAIT CAPUYAN, HERMINIA BACAGAN, SEVERINO DAGACAN, MARTHA BACAGAN, MICHAEL SAUYEN, PASITENG GAYAGAY, HAZEL S. FAGYAN, ARCHIE S. SUMEDCA, ELIZA BAGINWET, AND BONIFACIO LOPEZ, *petitioners, vs.* **PHILIPPINE EPISCOPAL CHURCH, represented by RT. REV. ROBERT O. LONGID,** *respondent.*

SYLLABUS

1. **CIVIL LAW; PROPERTY; OWNERSHIP; *ACCION REINVINDICATORIA;* REQUISITES, PROVEN IN CASE AT BAR.—** An *accion reinvindicatoria* is an action to recover ownership over real property. Article 434 of the New Civil Code provides that to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two things: first, the identity of the land claimed by describing the location, area, and boundaries thereof; and second, his title thereto. The Court finds that PEC-EDNP was able to successfully prove both requisites by preponderance of evidence, both documentary and testimonial. The identity of the properties over which PEC-EDNP asserts ownership is

well-established. The Ken-geka property is covered by Certificate of Title No. 1, while the Ken-gedeng property is identified as Lot 3 of Survey Plan PSU-118424. The location, area, and boundaries of said properties were verified by relocation surveys conducted in 1947, 1968, 1987, 1991 and 1993. PEC-EDNP likewise proved its title to the Ken-geka and Ken-gedeng properties. The Ken-geka property was registered in the name of the U.S. Episcopal Church under Certificate of Title No. 1 issued on February 18, 1915. It was conveyed by the U.S. Episcopal Church to PEC through a Deed of Donation dated April 24, 1974.

2. **ID.; ID.; ID.; ID.; SEEKING THE DISMISSAL OF A COMPLAINT FOR *ACCION PUBLICIANA* AND *ACCION REINVINDICATORIA* WITHOUT PRAYING FOR ANNULMENT OR CANCELLATION OF THE TITLE CONSTITUTES A COLLATERAL ATTACK ON THE TITLE WHICH IS NOT ALLOWED.—** [T]he original complaint filed by PEC-EDNP before the RTC is for *accion publiciana* and *accion reinvindicatoria* (for recovery of possession and ownership) of the Ken-geka and Ken-gedeng properties. In said complaint, PEC-EDNP alleged ownership of the Ken-geka property as evidenced by Certificate of Title No. 1. In their defense, the spouses Decaleng raised issues as to the validity of Certificate of Title No. 1 (by asserting in their Answer that Certificate of Title No. 1 covered an area much larger than that actually owned by PEC-EDNP), and as to the existence of Certificate of Title No. 1 (by presenting Mountain Province Register of Deeds Dailay-Papa's certification that Certificate of Title No. 1 does not appear in the record of registered titles). Nevertheless, the spouses Decaleng only sought the dismissal of the complaint of PEC-EDNP, plus the grant of their counterclaim for the payment of moral damages, exemplary damages, litigation expenses, and attorney's fees; and they conspicuously did not pray for the annulment or cancellation of Certificate of Title No. 1. Evidently, the spouses Decaleng's attack on the validity, as well as the existence of Certificate of Title No. 1 is only incidental to their defense against the *accion publiciana* and *accion reinvindicatoria* instituted by PEC-EDNP, hence, merely collateral.

APPEARANCES OF COUNSEL

Agranzamendez Liceralde Gallardo & Associates for petitioners.

Floyd P. Lalwet for respondents.

D E C I S I O N

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

Pending action before the Court is G.R. No. 171209, a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated August 26, 2005 and Resolution[3] dated January 18, 2006 of the Court of Appeals in CA-G.R. CV No. 49978.

The Bishop of the Missionary District of the Philippine Islands of the Protestant Episcopal Church in the United States of America, otherwise known as the Philippine Episcopal Church (PEC), is a religious corporation duly organized and registered under the laws of the Republic of the Philippines, performing mission work in over 500 communities throughout the country. The PEC was previously comprised of five dioceses, namely: Episcopal Diocese of Northern Philippines (EDNP), Episcopal Diocese of Northern Luzon, Episcopal Diocese of North Central Philippines, Episcopal Diocese of Central Philippines, and Episcopal Diocese of Southern Philippines. PEC-EDNP, which has canonical jurisdiction over the provinces of Mountain Province, Ifugao, Isabela, Quirino, Aurora, and Quezon, exercises missionary, pastoral, and administrative oversight of St. Mary the Virgin Parish in the municipality of Sagada, Mountain Province.[4]

On February 18, 1992, PEC-EDNP filed before the Regional Trial Court (RTC) of Bontoc, Mountain Province, Branch 36,

[*] Acting Chairperson, per Special Order No. 1226 dated May 30, 2012

[2] *Rollo* (G.R. No. 171209), pp. 54-74; penned by Associate Justice Lucas P. Bersamin (now a member of this Court) with Associate Justices Andres B. Reyes, Jr. and Celia C. Librea-Leagogo, concurring.

[3] *Id.* at 93-95.

[4] *Id.* at 280.

a Complaint for *Accion Reinvindicatoria* and *Accion Publiciana* against Ambrosio Decaleng and Fabian Lopez (Lopez), docketed as Civil Case No. 797.

PEC-EDNP alleged that it is the owner of two parcels of land in the Municipality of Sagada, located in areas commonly known as Ken-geka and Ken-gedeng.

According to PEC-EDNP, the Ken-geka property is covered by Certificate of Title No. 1[5] of the Register of Deeds of Mountain Province, issued on February 18, 1915, in the name of The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States (U.S. Episcopal Church). According to Certificate of Title No. 1, the U.S. Episcopal Church acquired the Ken-geka property by virtue of a sales patent issued by the Governor-General of the Philippine Islands also on February 18, 1915, in accordance with Section 122 of Act No. 496,[6] otherwise known as the Land Registration Act. The Ken-geka property has an area of 34 hectares, 24 ares, and 60 centares, with the following technical description:

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[5] Records, p. 7; Annex A.

[6] SEC. 122. Whenever public lands in the Philippine Islands belonging to the Government of the United States or to the Government of the Philippine Islands are alienated, granted, or conveyed to persons or to public or private corporations, the same shall be brought forthwith under the operation of this Act and shall become registered lands. It shall be the duty of the official issuing the instrument of alienation, grant, or conveyance in behalf of the Government to cause such instrument, before its delivery to the grantee, to be filed with the register of deeds for the province where the land lies and to be there registered like other deeds and conveyances, whereupon a certificate shall be entered as in other cases of registered land, and an owner's duplicate certificate issued to the grantee. The deed, grant, or instrument of conveyance from the Government to the grantee shall not take effect as a conveyance or bind the land, but shall operate as a contract between the Government and the grantee and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the lands, and in all cases under this Act registration shall be made in the office of the register of deeds for the province where the land lies. The fees for registration shall be paid by the grantee. After due registration and issue of the certificate and owner's duplicate such land shall be registered land for all purposes under this Act.

Beginning at point marked 1 on plan Pi-115, N. 68º 48'W. 339.1 m. from Pulpit, a Mon. 7 cm. marked B. L. cross at top of limestone cliff, thence N. 79º O6'E. 484.Om. to point 2; S. 6º 21'E. 651.0m. to point 3; S. 72º 55'W. 609.6m. to point 4; N. 15º 15'E, 369.9m to point 5; N. 4º 59'W. 153.1m. to point 6; N. 51º 11'W. 87.9m to point 7; N. 6º 37'E. 171.0m. to point 1, point of beginning.

Bounded on all sides by public lands. Bearings true. Variation 0º 25'E. points referred to marked on plan Pi-115. Surveyed March 18-19, 1907. Approved November 27, 1907. Containing an area of thirty-four hectares, twenty-four ares, and sixty centares x x x.[7]

PEC-EDNP asserted that the U.S. Episcopal Church donated the Ken-geka property, among other real properties, to the PEC by virtue of a Deed of Donation[8] executed on April 24, 1974. Around the second quarter of 1989, Ambrosio Decaleng entered and cultivated a portion of about 1,635 square meters of the Ken-geka property despite the protestations of PEC-EDNP representatives.[9]

The Ken-gedeng property is described in the complaint as:

A certain parcel of land situated at sitio Poblacion, Sagada, Mt. Province, bounded on the North by Tomas Muting & Kapiz Bacolong; South by Mission Compound, East by Bartolome Gambican; and on the West by Nicolas Imperial and Lizardo Adriano with an area of 20[,]692 sq. meters more or less and declared for taxation purposes under Tax Declaration No. 6306 in the name of the Domestic and Foreign Missionary Society of the Protestant Church of the United States of America.[10]

It is more particularly identified as Lot 3 in Survey Plan PSU-118424, to wit:

Beginning at a point marked "1" on plan, being N. 18 deg. 19'E., 11477.37 m. from B.L.L.M. 1, Mpal. Dist. of Bauko, Mt. Province;

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[7] Records, p. 9; Annex B.

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

[9] *Id.* at 2.

[10] *Id.* at 3.

thence N. 65 deg. 01' E., 101.21 m. to point 2;
thence N. 0 deg. 51' E., 39.07 m. to point 3;
thence N. 50 deg. 39' E., 148.20 m. to point 4;
thence S. 54 deg. 10' E., 86.03 m. to point 5;
thence S. 18 deg. 07' E., 57.58 m. to point 6;
thence S. 18 deg. 02' E., 13.82 m. to point 7;
thence S. 79 deg. 06' W., 304.36 m. to the point of

beginning, containing an area of TWENTY THOUSAND SIX HUNDRED NINETY-TWO SQUARE METERS (20,692 sq. m.) more or less.

Bounded on the NE., by property of Bartolome Gambican; on the SE., by property of The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America; on the S., by property of Nicolas Imperial & Adriano Lizardo (joint owners); and on the NW., by properties of Nicolas Imperial & Adriano Lizardo (joint owners) and Tomas Moting, Kapiz, Baculong, Bayang, Apaling & Benito Gawaeng (joint owners).

All points referred to are indicated on the plan and marked on the ground as follows: points 1, 2, 3, 4, 5, and 7, by P.L.S. cyl. Conc. Mons; and point 6, by "X" on stone mon.[11]

PEC-EDNP averred that it and its predecessors-in-interest occupied the Ken-gedeng property openly, adversely, continuously, and notoriously in *en concepto de dueño* since the American Missionaries arrived in the Mountain Province in 1901. PEC-EDNP and its predecessors-in-interest have introduced valuable improvements on the Ken-gedeng property through the years. The Ken-gedeng property was surveyed on August 22, 1947 and said survey was approved by the Director of Lands on June 15, 1948. During the first quarter of 1987, Ambrosio Decaleng illegally and forcibly entered two portions of the Ken-gedeng property, one measuring 1,650 square meters (Portion 1) and the other 419.50 square meters (Portion 2). Ambrosio Decaleng, despite the vehement objections and conciliatory attitude of PEC-EDNP, cut several matured pine

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[11] *Id.* at 103.

trees within the aforementioned portions of the Ken-gedeng property, removed the fence and two monuments found therein, and cultivated and planted the same with plants of economic value. Ambrosio Decaleng made matters worse by selling Portion 2 of the Ken-gedeng property to Fabian Lopez. Lopez went ahead and purchased Portion 2 despite the warning of PEC-EDNP.[12]

PEC-EDNP contended that Ambrosio Decaleng and Lopez refused to vacate the portions of Ken-geka and Ken-gedeng properties that they are occupying. Ambrosio Decaleng and Lopez claimed to be the owners of said portions, but PEC-EDNP maintained that such claim is illegal and baseless in fact and in law. PEC-EDNP likewise challenged the sale of Portion 2 of Ken-gedeng by Ambrosio Decaleng to Lopez for being unlawful and void.

PEC-EDNP thus prayed of the RTC to render judgment:

A) To declare the [PEC-EDNP] as the true and real owner of the aforesaid properties and for [Ambrosio Decaleng and Lopez] to perpetually desist from claiming ownership over the respective portion being occupied by them;

B) To order [Ambrosio Decaleng and Lopez] to refrain from entering the property of [PEC-EDNP] subject of this case;

C) To order [Ambrosio Decaleng and Lopez] to vacate the premises of the subject portions of the aforedescribed land being illegally occupied by them;

D) To order [Ambrosio Decaleng and Lopez] to pay the [PEC—EDNP] the amount of ₱20,000.00 as actual damages, ₱15,000.00 as attorney's fee, plus ₱500.00 as appearance pay of counsel every time this case is called for hearing and ₱10,000.00 as necessary expenses of litigation;

E) To issue a temporary restraining order directing [Ambrosio Decaleng and Lopez] to desist from continuing to expand their aforesaid illegal occupation and to unlawfully enter the property subject of this case and thereafter to make it permanent; and

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[12] *Id.* at 3-4.

F) To sentence [Ambrosio Decaleng and Lopez] to pay the cost of the suit;

G) Finally [PEC-EDNP] prays for such other measures of reliefs and remedies just and equitable in the premises.[13]

Before Ambrosio Decaleng and Lopez could file their answer to the complaint of PEC-EDNP, the RTC issued an Order[14] dated March 20, 1992, suspending further proceedings in Civil Case No. 797 until the parties have conducted a relocation survey of the properties in question, as agreed upon in open court. The RTC issued another Order[15] of even date requesting the Community Environment and Natural Resources Office-Department of Environment and Natural Resources (CENRO-DENR), Sabangan, Mountain Province, to provide said trial court with a Geodetic Engineer to help in the re-survey of the area subject of the case.

Ambrosio Decaleng and Lopez filed their Answer[16] on April 27, 1992. They stated in their Answer that Certificate of Title No. 1 was inaccurate and depicted a parcel of land much bigger than that generally believed to be owned by PEC-EDNP; that the properties occupied by Ambrosio Decaleng were outside the properties of PEC-EDNP; that Ambrosio Decaleng received the property in Ken-geka, and his wife, Julia Wanay Decaleng, received the property in Ken-gedeng, from their parents as their inheritance on the occasion of their marriage in accordance with the local custom of *ay-yeng* or *liw-liwa*; that Ambrosio Decaleng and Julia Wanay Decaleng (spouses Decaleng) and their predecessors-in-interest had been in possession of the subject properties continuously, actually, notoriously, publicly, adversely, and in the concept of an owner, since time immemorial, or at least, certainly for more than 50 years; that the spouses Decaleng

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[13] *Id.* at 5-6.

[14] *Id.* at 26.

[15] *Id.* at 27.

[16] *Id.* at 33-38.

had been in peaceful and undisturbed possession of the subject properties until PEC-EDNP surreptitiously moved the existing perimeter fence and encroached upon 240 square meters of their properties; and that Lopez was a mere tenant of the spouses Decaleng who worked on Portion 2 of the Ken—gedeng property. Consequently, Ambrosio Decaleng and Lopez sought the dismissal of the complaint of PEC-EDNP and the payment by PEC—EDNP in their favor of ₱50,000.00 as reimbursement of litigation expenses and attorney's fees, ₱100,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

The relocation survey ordered by the RTC was conducted on September 17, 1992.

On February 12, 1993, PEC-EDNP filed a Motion to Admit Amended Complaint alleging:

> 1. That when defendant Ambrosio Decaleng filed his answer, he alleged that subject portions of the properties are owned by his wife, Julia "Wanay" Decaleng;
>
> 2. That after the verification survey was conducted on September 17, 1992, it came to the knowledge of [PEC-EDNP] that other parties are making adverse claim of ownership over subject properties; as in fact, some of them requested the surveyor hired by [Ambrosio Decaleng and Lopez] to survey portions of the properties owned by [PEC-EDNP] which they respectively claim to be owned by them.[17]

The RTC admitted the amended complaint of PEC-EDNP in the Order[18] dated February 16, 1993. As a result, Julia Wanay Decaleng, Florentina Madadsec (Madadsec), Dominga D. Maguen (Maguen), and Patrick Bawing (Bawing) were impleaded as additional defendants and summoned to answer the amended complaint.[19]

The spouses Decaleng and Lopez jointly filed their Answer to Amended Complaint[20] on March 1, 1993, essentially reiterating

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[17] *Id.* at 81.

[18] *Id.* at 105.

[19] *Id.* at 106.

[20] *Id.* at 110-117.

the allegations in the earlier Answer filed by Ambrosio Decaleng and Lopez, but increasing their claim for reimbursement of litigation expenses to ₱85,000.00. Maguen filed her Answer to Summons/ Complaint[21] on March 2, 1993, in which she wrote that she was not interested to appear before the RTC for her deceased father, Kapis, from whom she inherited one of the lots that bound the PEC-EDNP property; and that PEC-EDNP should have pursued its complaint a long time ago when the concerned "boundary owners" were still alive. Madadsec and Bawing did not submit any answer but the RTC, in an Order[22] dated April 27, 1993, denied the Motion to Declare Defendants in Default[23] filed by PEC-EDNP and ruled that the Answer to Amended Complaint of spouses Decaleng and Lopez shall be deemed to also be the answer of Madadsec and Bawing.

After trial, the RTC rendered its Decision[24] on January 20, 1995 finding that:

> The documentary and testimonial evidence as a whole, adduced by the [PEC-EDNP] on whose side the onus probandi lies, do not adequately and reliably support by greater weight of credibility, the [proponent's] causes of action, vis-à-vis, the counter-vailing proof proffered by the defensive party (Article 434, New Civil Code; Rule 131, Sec. 1 and Rule 133, Sec. 1, Revised Rules on Evidence).
>
> *De consequente*, the plaintiff Church is determined not the owner of those three (3) parcels of land situated at Sitio Ken-geka and Sitio Ken-gedeng, Sagada, Mt. Province identified as the bone of contention in this suit. And that said Church has no right of possession of the subject parcels better than that of the defendants who are the present *de facto* possessors (Art. 433 and Art. 541, NCC). Corollarily, the former can neither recover ownership, which said right it never had from the very beginning, of the lots in question from the latter; nor possessions thereof, by the same token, either

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[21] *Id.* at 118.

[22] *Id.* at 146-147.

[23] *Id.* at 121.

[24] *Id.* at 241-256.

as an element of, or independent of ownership (Art. 428, Par. 2, NCC; Tuazon v. Jaime, CA-GR 26538-R, Feb.16, 1963; Lopez v. Franco, 26-786-R, May 27, 1961).

Re that 1,635 square meters lot at Ken-geka (Exhs. "C-1" and "C-2"), the mere supposed xerox copy of a reputed OCT No. 1 purportedly including the portion within its borders, allegedly registered in the name of the plaintiff Church (Exh. "A"), does not reasonably confirm the fact of its absolute ownership of the said portion (Reyes vs Borbon, 50 Phil. 79). Neither does the purported xerox copy of a putative deed of donation (Exh. "B"), sans the original, substantially show that said plaintiff acquired dominion over that particular parcel in issue via gratuitous grant as a mode of acquiring ownership (Art. 712, Par. 2, NCC; Paras, Civil Code, Vol. II, 1981 Ed., (b) p. 92). By itself, the plaintiff's survey plans of the premises coupled with its unpaid tax declarations (Exhs. "BB", "CC", "E", "F" and "G") is insufficient and inc[onc]lusive to prove ownership ad/ or possession of the proponent of the subject area (Acuña vs City of Manila, [9] Phil. 225; Dadivas vs Bunayon, 54 Phil. 632). While it appears that the Church is the possessor for almost a century of the greater part of that tract of land embraced in its survey plan of P1-115 (Exh. "C"), it cannot be deemed to be in constructive possession of that portion now in question, considering that said plaintiff never materially occupied or exercised control over the same and that it has been in the adverse possession of the Decalengs for quite sometime (Art. 531, NCC; Rosales vs Director of Lands, 51 Phil 502). In effect, dominion over the portion have not passed to the plaintiff by operation of law by virtue of long and actual possession as a title or a mode of acquiring ownership (Art. 712, Par. 2, NCC; Nolan v. Jalandoni, 23 Phil. 299).

Anent those two (2) separate parcels at Ken-gedeng (Exhs. "D-2", "D-3", "D-4", "D-5"), the survey plans and tax declarations in the name of the plaintiff and predecessors in interest (Exhs. "X", "DD", "G", "H", "I") do not by themselves confer dominion of the proponent over the afore-mentioned parcels, albeit the same are included within the coverage of the documents. To be sure, the Church is the exclusive and continuous possessor, probably since 1902, of the south-eastern portion of the surveyed area where its building are erected and the surroundings thereof improved (Exhs. "X", "X-1" to "X-6"). This fact in conjunction with its said survey plans and tax declarations may prove ownership of the plaintiff of the premises mentioned (Alamo vs Ignacio, L-16434, Feb. 28, 1962).

It cannot however be presumed, much less adjudged that the Church has constructive possession of the subject two separate parcels absent any showing that it materially occupied, and exercised control over said parcels at any given time in the same manner as it developed the rest of the portions within the plans and tax declarations. Not to mention the fact that the former lots have been all along in the adverse possession of the defendants. Hence, by law, the plaintiff Church did not acquire ownership and/or possession of those disputed lots at Ken-gedeng.

Penultimately, the counterclaim for damages interposed by the defensive party is denied for lack of merit and on the principle that no penalty should be attached on the right to litigate (Art. 2217, NCC; Ramos vs. Ramos, 61 SCRA 284)[25]

The *fallo* of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in accordance with the prayer of the defendants, viz:

I. Dismissing the instant suit;

II. Ordering the plaintiff to pay attorney's fees and litigation expense in the reasonable sum of ₱120,000.00; and to pay the costs.[26]

The PEC-ENDP filed a Motion for Reconsideration of the aforementioned Decision on February 21, 1995 but the RTC denied said motion in an Order[27] dated May 11, 1995.

PEC-EDNP filed an appeal before the Court of Appeals which was docketed as CA-G.R. CV No. 49978.

While the case was pending before the Court of Appeals, Atty. Paul P. Sagayo, Jr. (Sagayo) and Atty. Floyd P. Lalwet (Lalwet) entered their appearance as counsels for PEC-EDNP on March 28, 1996. In the Notice of Appearance[28] and subsequent

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[25] *Id.* at 254-256.

[26] *Id.* at 256.

[27] *Id.* at 285.

[28] CA *rollo*, pp. 12-13.

pleadings[29] filed by Attys. Sagayo and Lalwet, they included the following names as defendants: Simeon Dapliyan (Dapliyan), Gayagay,[30] Nicolas Imperial (Imperial), Juana Ullocan (Ullocan), and Mary Tudlong (Tudlong).

The Court of Appeals rendered its Decision on August 26, 2005, overturning the appealed RTC Decision because it was based on misplaced premises and contrary to law and jurisprudence. The Court of Appeals declared PEC-EDNP the true and real owner of the Ken-geka and Ken-gedeng properties.

The dispositive portion of the appellate court's Decision reads:

> **WHEREFORE,** the judgment dated January 20, 1995 of the Regional Trial Court, Branch 16, Mountain Province is **REVERSED** and another one is **ENTERED**, as follows:
>
> (1) Declaring the plaintiff as the true and real owner of the properties subject of this controversy, namely, the parcel of land covered by Original Certificate of Title No. 1 and Lot 3 covered by Survey Plan PSU-118424; and
>
> (2) Ordering the defendants and all persons claiming under them to vacate the premises and surrender the peaceful possession thereof to the plaintiff or its duly authorized representative; and to refrain from further encroaching upon the plaintiff's properties.
>
> Costs to be paid by the defendants.[31]

Spouses Decaleng and Lopez timely filed a Motion for Reconsideration of the foregoing Decision but it was denied by the appellate court in a Resolution[32] dated January 18, 2006. The spouses Decaleng (sans Lopez) then sought recourse before this Court via the instant Petition for Review on *Certiorari*, docketed as G.R. No. 171209.

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[29] *Id.* at 14-61, 62-64, and 66-68.

[30] One name only.

[31] *Rollo* (G.R. No. 171209), p. 73.

[32] *Id.* at 93-95.

Meanwhile, in a letter[33] dated February 12, 2006, addressed to then Supreme Court Justice Artemio V. Panganiban, through Assistant Court Administrator and Chief Public Information Officer Ismael G. Khan, Jr., Dapliyan, Gayagay, Imperial, Ullocan, and Tudlong questioned the Court of Appeals Decision dated August 26, 2005 in CA-G.R. CV No. 49978, specifically, their inclusion as party defendants in said case; and prayed that the same Decision be considered null and void.[34] In addition, a Petition (Re: Our lots in Sagada, Mountain Province, Philippines, subject matter of CA- G.R. CV No. 49978, entitled Philippine Episcopal Church represented by Rt. Rev. Robert O. Longid vs. Spouses Ambrosio Decaleng and Julia Wanay Decaleng, *et al*.) dated February 24, 2006, signed by 40 residents of Sagada,[35] Mountain Province, including Julia Wanay Decaleng, Maguen, Bawing, Gayagay, and Tudlong, likewise challenged the Decision dated August 26, 2005 of the Court of Appeals in CA-G.R. CV No. 49978 for awarding to PEC-EDNP their ancestral properties.[36] The letter dated February 12, 2006 and Petition dated February 24, 2006 were jointly docketed as UDK-13672 as they lack (1) proof of service and affidavit of service; (2) verification and certification on non-forum shopping; and (3) payment of docket fees.

In a Resolution[37] dated July 17, 2006, the Court resolved to consolidate UDK-13672 with G.R. No. 171209 considering that both cases assail the same Court of Appeals Decision; that Julia Wanay Decaleng is one of the signatories in UDK-13672 and at the same time, one of the petitioners in G.R. No. 171209; and five of the signatories of the Petition dated February 24,

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[33] They were those who were included as defendants-appellants when the case was on appeal before the Court of Appeals.

[34] *Rollo* (UDK-13672), pp. 8-9.

[35] Although 46 petitioners were named in the Petition, only 40 actually signed the same.

[36] *Rollo* (UDK-13672), pp. 4-5.

[37] *Id.* at 49.

2006 in UDK-13672 were defendants-appellees in the assailed Decision of the Court of Appeals.

However, in a Resolution[38] dated September 11, 2006, the Court already resolved to note without action the letter dated February 12, 2006 and Petition dated February 24, 2006 in UDK-13672.

Therefore, only the spouses Decaleng's Petition in G.R. No. 171209 is still pending action by this Court.

In their Petition, the spouses Decaleng made the following assignment of errors:

1. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE SUPPOSED ORIGINAL CERTIFICATE OF TITLE NO. 1, NOTWITHSTANDING THE FINDING OF THE TRIAL COURT THAT IT DOES NOT EXIST AND IS, AT BEST, FICTITIOUS;

2. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT RESPONDENT HAS ESTABLISHED ITS OWNERSHIP AND POSSESSION OVER THE LOTS IN DISPUTE, NOTWITHSTANDING THE FINDING OF THE TRIAL COURT THAT SAID LOTS WERE POSSESSED AND OCCUPIED BY THE PETITIONERS AND THEIR PREDECESSORS IN INTEREST;

3. THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO APPLY THE DOCTRINE LAID DOWN IN CARINO VS. INSULAR GOVERNMENT, 41 PHIL 935, AND OTHER RELATED CASES IN FAVOR OF THE PETITIONERS.[39]

Prefatorily, it is already a well-established rule that the Court, in the exercise of its power of review under Rule 45 of the Rules of Court, is not a trier of facts and does not normally embark on a re-examination of the evidence presented by the contending parties during the trial of the case, considering that the findings of facts of the Court of Appeals are conclusive and

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[38] *Id.* at 51.

[39] *Rollo* (G.R. No. 171209), pp. 5-36.

binding on the Court.[40] This rule, however, admits of exceptions as recognized by jurisprudence, to wit:

> (1) [W]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[41]

The case at bar falls under one of the exceptions, as the factual conclusions of the RTC and the Court of Appeals are in conflict with each other. Thus, the Court must necessarily return to the evidence on record and make its own evaluation thereof.

An *accion reinvindicatoria* is an action to recover ownership over real property.[42] Article 434 of the New Civil Code provides that to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two things: first, the identity of the land claimed by describing the location, area, and boundaries thereof; and second, his title thereto.[43]

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[40] *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.*, 525 Phil. 436 (2006).

[41] *Id.* at 459.

[42] *Evadel Realty and Development Corporation v. Spouses Soriano*, 409 Phil. 450, 461 (2001).

[43] *Spouses Hutchison v. Buscas*, 498 Phil. 276, 262 (2005).

The Court finds that PEC-EDNP was able to successfully prove both requisites by preponderance of evidence, both documentary and testimonial.

The identity of the properties over which PEC-EDNP asserts ownership is well-established. The Ken-geka property is covered by Certificate of Title No. 1, while the Ken-gedeng property is identified as Lot 3 of Survey Plan PSU-118424. The location, area, and boundaries of said properties were verified by relocation surveys conducted in 1947,[44] 1968,[45] 1987,[46] 1991[47] and 1993.[48]

PEC-EDNP likewise proved its title to the Ken-geka and Ken-gedeng properties. The Ken-geka property was registered in the name of the U.S. Episcopal Church under Certificate of Title No. 1 issued on February 18, 1915. It was conveyed by the U.S. Episcopal Church to PEC through a Deed of Donation dated April 24, 1974. It was declared by the U.S. Episcopal Church and PEC-EDNP for real property tax purposes under Tax Declaration Nos. 6307, 14326, and A-11179.[49] Although not yet covered by any certificate of title, the Ken-gedeng property had been occupied under claim of title (*en concepto de dueño*) by PEC-EDNP and its predecessor-in-interest, the U.S. Episcopal Church, since the latter's arrival in 1901. It was declared by the U.S. Episcopal Church and PEC-EDNP for real property tax purposes under Tax Declaration Nos. 14325 and 6306.[50] PEC-EDNP's officers, priests, and employees, as well as the Sagada residents testified as to actual possession by PEC-EDNP of the Ken-geka and Ken-gedeng properties by the introduction of improvements such as permanent buildings, pine trees, fruit trees, and vegetable gardens thereon.

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[44] Records, p. 16; Annex E.

[45] *Id.* at 15; Annex D.

[46] Testimony of Lorenzo Agagen; TSN, January 12, 1993, pp. 3-7.

[47] Testimony of Paul Sapaen; TSN, November 9, 1992, p. 28.

[48] Testimony of Fred Yamashita; TSN, April 29, 1993, pp. 22-23.

[49] Records, pp. 125-127; Exhibits E, F and G.

[50] *Id.* at 128-129; Exhibits H and I.

The Court quotes with approval the following observations of the Court of Appeals in its Decision dated August 26, 2005:

> The plaintiff established its ownership and possession of the contested lots through the various documents under and in the name of its predecessor-in-interest, the [U.S. Episcopal Church], specifically: deed of donation; approved plat of sales survey; and the approved survey plan and owner's copies of Tax Declaration Nos. 6307, 14326, A-11179, 14325 and 6306. In contrast, the defendants mainly relied on the supposed non-existence of OCT No. 1 that rested solely on the certification of Atty. Dulay-Papa of the Registry of Deeds-Mountain Province.
>
> We consider the testimonial and documentary evidence of the plaintiff sufficient, clear and competent in establishing its absolute ownership and actual possession of the disputed areas which were within its properties. The survey plans, prepared upon the request of the plaintiff, were approved by the Director of Lands, which, standing alone, might not be conclusive proofs of ownership, but were already proof that the plaintiff had taken steps to assert and protect its ownership and possession of the premises. Being public documents, such survey plans were entitled to great weight and credence as "evidence of the facts which gave rise to their execution." Moreover, the plaintiff's tax declarations, although not proof of ownership, were strong evidence of ownership for being coupled with possession for a period sufficient for prescription. In sum, the plaintiff's documentary evidence was overwhelming.
>
> The plaintiff's testimonial evidence was equally formidable, because it was provided by witnesses who were very knowledgeable and reliable. Fr. Arthur Bosaing had resided in the property for almost 26 years, such that his testimony that the disputed parcels were inside the mission lot where a building and other improvements of the plaintiff were found might not be disputed. Retired Bishop Robert Lee O. Longid attested that he and his father had lived from 1928 to 1931 in a building called the Fox House, which was located near the portion being claimed by the Decalengs. Even defendant Julia Decaleng admitted on cross-examination that there was a building owned by the plaintiff in one of the disputed lots. She was referring to the plaintiff's building known as Doctor's Quarters which was then occupied by Fr. Bosaing.

It is apt to observe that actual possession of an owner did not need to be the actual and physical possession and occupation of every inch or portion of the property. That is an impossibility. Constructive possession is sufficient, for, according to *Ramos v. Director of Lands*: "The claimant has color of title; he acted in good faith; and he has had open, peaceable, and notorious possession of a portion of the property, sufficient to apprise the community and the world that the land was for his enjoyment. (See Arts. 446, 448, Civil Code.) Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession. x x x"[51]

The spouses Decaleng attempt to raise doubts as to the title of PEC-EDNP over the Ken-geka property by insisting that (1) PEC-EDNP failed to present the original copies of Certificate of Title No. 1 and the Deed of Donation dated April 24, 1974 during the trial before the RTC; and (2) Certificate of Title No. 1 does not exist based on the Certification dated July 20, 1992 of Register of Deeds Angela Dailay-Papa (Dailay-Papa) of the Mountain Province.

It is worthy to point out that PEC-EDNP presented and marked the photocopies of Certificate of Title No. 1 and the Deed of Donation dated April 24, 1974 in the course of the testimony of Rev. Henry Hakcholna on June 10, 1993 before the RTC. Even though the defense counsel stated for the record the defense's position that Certificate of Title No. 1 is non-existent, he did not make any objection to the presentation and marking of the photocopies of Certificate of Title No. 1 and the Deed of Donation dated April 24, 1974 by PEC-EDNP, and even admitted that said photocopies appear to be faithful reproductions of the "purported" original documents.[52]

Relevant herein is the pronouncement of the Court in *Caraan v. Court of Appeals*,[53] wherein it accepted in evidence a mere photocopy of the document:

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[51] *Rollo* (G.R. No. 171209), pp. 68-70.

[52] TSN, June 10, 1993, pp. 5-6.

[53] 511 Phil. 162 (2005).

Petitioners' asseveration that TCT No. RT-71061 (214949) should not have been admitted into evidence because private respondents merely presented the photocopy thereof is also unmeritorious. Private respondents presented the original of TCT No. RT-71061 (214949) in open court during the hearing held on April 13, 1994. x x x.

x x x x x x x x x

Furthermore, no objection was raised by counsel for petitioners in their written opposition/comment to private respondents' offer of evidence regarding the fact that what was marked and submitted to the court was the photocopy. In *Blas vs. Angeles-Hutalla*, the Court held thus:

> The established doctrine is that when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. In *Tison v. Court of Appeals*, the Supreme Court set out the applicable principle in the following terms:
>
>> [F]or while the documentary evidence submitted by petitioners do not strictly conform to the rules on their admissibility, we are, however, of the considered opinion that the same may be admitted by reason of private respondent's failure to interpose any timely objection thereto at the time they were being offered in evidence. It is elementary that an objection shall be made at the time when an alleged inadmissible document is offered in evidence, otherwise, the objection shall be treated as waived, since the right to object is merely a privilege which the party may waive.
>>
>> As explained in *Abrenica vs. Gonda*, *et al*., it has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, otherwise, it will be deemed to have been waived. The proper time is when from the question addressed to the witness, or from the answer thereto, or from the presentation of the proof, the inadmissibility of the evidence is, or may be inferred.
>>
>> Thus, a failure to except to the evidence because it does not conform with the statute is a waiver of the provisions of the law. . . .

Hence, considering the fact that counsel for petitioners admitted that the photocopy of TCT No. RT-71061 (214949) is a faithful reproduction of the original thereof, stipulated with private respondents' counsel that what will be marked and submitted to the trial court as Exhibit A is the photocopy, and the lack of objection on such ground which is then deemed a waiver thereof, the admission into evidence of the photocopy of TCT No. RT-71061 was absolutely correct.[54]

Also instructive on this point is *Quebral v. Court of Appeals*,[55] where the Court ruled that:

Even if it were true that Exhibit K consisted of a mere photocopy and not the original of the petitioner's letter, petitioner nevertheless failed to make timely objection thereto. As to when an objection to a document must be made, the Court ruled in *Interpacific Transit, Inc. v. Aviles* [186 SCRA 385 (June 6, 1990)]:

> Objection to the documentary evidence must be made at the time it is formally offered, not earlier. The identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it. Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence. What really matters is the objection to the document at the time it is formally offered as an exhibit.

In the case at bench, no such timely objection was ever made. Consequently, the evidence not objected to became property of the case, and all the parties to the case are considered amenable to any favorable or unfavorable effects resulting from the evidence. x x x."[56]

In any case, PEC-EDNP subsequently submitted to the RTC its original copies of Certificate of Title No. 1 and Deed of Donation dated April 24, 1974, together with its Motion for Reconsideration of the RTC Decision dated January 20, 1995.

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[54] *Id.* at 172-173.

[55] 322 Phil. 387 (1996).

[56] *Id.* at 401.

As for the spouses Decaleng's contention that Certificate of Title No. 1 does not exist, the Court fully agrees with the Court of Appeals that the same constitutes a collateral attack of Certificate of Title No. 1.

It is a hornbook principle that "a certificate of title serves as evidence of an indefeasible title to the property in favor of the person whose name appears therein."[57] In order to establish a system of registration by which recorded title becomes absolute, indefeasible, and imprescriptible, the legislature passed Act No. 496, which took effect on February 1, 1903. Act No. 496 placed all registered lands in the Philippines under the Torrens system. The Torrens system requires the government to issue a certificate of title stating that the person named in the title is the owner of the property described therein, subject to liens and encumbrances annotated on the title or reserved by law. The certificate of title is indefeasible and imprescriptible and all claims to the parcel of land are quieted upon issuance of the certificate. Presidential Decree No. 1529, known as the Property Registration Decree, enacted on June 11, 1978, amended and updated Act No. 496.[58]

Section 48 of Presidential Decree No. 1529 provides:

> Section 48. *Certificate not subject to collateral attack.* — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

A Torrens title cannot be attacked collaterally, and the issue on its validity can be raised only in an action expressly instituted for that purpose.[59] A collateral attack is made when, in another action to obtain a different relief, the certificate of title is assailed as an incident in said action.[60]

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[57] *Caraan v. Court of Appeals*, *supra* note 53 at 169-170.

[58] *Collado v. Court of Appeals*, 439 Phil. 149, 168 (2002).

[59] *Datu Kiram Sampaco v. Hadji Serad Mingca Lantud*, G.R. No. 163551, July 18, 2011, 654 SCRA 36, 54-55.

[60] *S.J. Vda. de Villanueva v. Court of Appeals*, 403 Phil. 721, 732 (2001).

In this case, the original complaint filed by PEC-EDNP before the RTC is for *accion publiciana* and *accion reinvindicatoria* (for recovery of possession and ownership) of the Ken-geka and Ken-gedeng properties. In said complaint, PEC-EDNP alleged ownership of the Ken-geka property as evidenced by Certificate of Title No. 1. In their defense, the spouses Decaleng raised issues as to the validity of Certificate of Title No. 1 (by asserting in their Answer that Certificate of Title No. 1 covered an area much larger than that actually owned by PEC-EDNP), and as to the existence of Certificate of Title No. 1 (by presenting Mountain Province Register of Deeds Dailay-Papa's certification that Certificate of Title No. 1 does not appear in the record of registered titles). Nevertheless, the spouses Decaleng only sought the dismissal of the complaint of PEC-EDNP, plus the grant of their counterclaim for the payment of moral damages, exemplary damages, litigation expenses, and attorney's fees; and they conspicuously did not pray for the annulment or cancellation of Certificate of Title No. 1. Evidently, the spouses Decaleng's attack on the validity, as well as the existence of Certificate of Title No. 1 is only incidental to their defense against the *accion publiciana* and *accion reinvindicatoria* instituted by PEC-EDNP, hence, merely collateral.

The spouses Decaleng, in an effort to skirt the prohibition against collateral attack of certificates of title, argue that they are not attacking the validity of Certificate of Title No. 1, but, rather, the existence of such a certificate. The Court notes that the spouses Decaleng did not only put in issue the purported non-existence of Certificate of Title No. 1, but also questioned the validity of the certificate itself.

The Court stresses that PEC-EDNP submitted to the RTC the owner's duplicate certificate of Certificate of Title No. 1, which can be used in evidence before Philippine courts in the same way as the original certificates in the registration book. Section 47 of Act No. 496 clearly states:

SEC. 47. The original certificate in the registration book, any copy thereof duly certified under the signature of the clerk, or of the register of deeds of the province or city where the land is situated,

and the seal of the court, and also the owner's duplicate certificate, shall be received as evidence in all the courts of the Philippine Islands and shall be conclusive as to all matters contained therein except as far as otherwise provided in this Act.

Moreover, Mountain Province Register of Deeds Dailay-Papa's certification to the effect that Certificate of Title No. 1 does not appear in the record of registered titles does not necessarily mean that such certificate has never been issued. As the Court held in *Chan v. Court of Appeals*:[61]

Petitioners' submission that OCT 2553 is not in the records of the Registry of Deeds concerned and the xerox copy of subject title exhibited before the trial court was not a genuine and faithful reproduction of the original copy of said certificate of title does not merit serious consideration. **The mere fact that the Registry of Deeds of the Province of Rizal does not have the original of a certificate of title does not necessarily mean that such title never existed because the same could have been lost, stolen, or removed from where said title was kept.** To show that no record of the original certificate of title in question existed requires a preponderance of proof petitioners failed to adduce.[62] (Emphasis supplied.)

In fact, in the present case, the Records Management Division Chief Jose C. Mariano, for the Director of Lands, wrote a letter dated August 31, 1993 addressed to the counsel for PEC-EDNP, giving the reason for the lack of records on the sales patent for the Ken—geka property and Certificate of Title No. 1 issued to the U.S. Episcopal Church:

In reply to your letter dated August 25, 1993, we regret to inform you that we have no reconstituted records of pre-war sales application of the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, which the basis of the issuance of alleged Sales Patent No. 14 on February 18, 1915. It may be informed further that **all our pre-war records were**

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[61] 359 Phil. 242 (1998).

[62] *Id.* at 257.

burned and/or destroyed when the Oriente Building where the Bureau of Lands was then housed was razed by fire during the liberation of Manila.[63] (Emphasis supplied.)

In contrast, the spouses Decaleng were unable to present convincing evidence to establish their rights of possession and ownership over the disputed properties superior to those of PEC-EDNP. The spouses Decaleng could not even establish the identity of the properties they claim to own. Although the spouses Decaleng were able to give the purported area measurements of said properties, they could not give the exact location and boundaries thereof. Assuming as true that the spouses Decaleng received properties from their parents as part of the *ay-yeng* or *liw-liwa* custom, there is no showing that such properties thus given to them are actually the same as the ones they are now occupying.

The spouses Decaleng were similarly vague as to the basis of their title. The evidence for the spouses Decaleng do not establish how their predecessors-in-interest acquired the disputed properties and how long they and their predecessors-in-interest have been in possession of the same.

While the spouses Decaleng testified that they inherited the properties in Ken-geka and Ken-gedeng from their parents who, in turn, inherited the same from their own parents, there still remains the question as to how the spouses Decaleng's predecessors-in-interest originally came into possession of the subject properties.

In their Answer before the RTC, the spouses Decaleng alleged possession of their properties from time immemorial or, at least, certainly for more than 50 years. These two allegations actually proffer two different bases for title: the first refers to a native title acquired through ancient possession of the land, which means that the land never became public land at all; while the second denotes an imperfect title acquired through the occupation of agricultural public land for the requisite period. The evidence

[63] Records, p. 152.

submitted by the spouses Decaleng did not support either allegation.

In *Cariño v. Insular Government*,[64] the United States Supreme Court granted an Igorot's application for registration of a piece of land in Benguet based on the latter's possession of the land from time immemorial, ratiocinating thus:

It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. x x x.

If the applicant's case is to be tried by the law of Spain, we do not discover such clear proof that it was bad by that law as to satisfy us that he does not own the land. To begin with, the older decrees and laws cited by the counsel for the plaintiff in error seem to indicate pretty clearly that the natives were recognized as owning some lands, irrespective of any royal grant. In other words, Spain did not assume to convert all the native inhabitants of the Philippines into trespassers or even into tenants at will. For instance, Book 4, title 12, Law 14 of the *Recopilación de Leyes de las Indias*, cited for a contrary conclusion in Valenton *vs.* Murciano, 3 Philippine, 537, while it commands viceroys and others, when it seems proper, to call for the exhibition of grants, directs them to confirm those who hold by good grants or *justa prescripción*. It is true that it begins by the characteristic assertion of feudal overlordship and the origin of all titles in the King or his predecessors. That was theory and discourse. The fact was that titles were admitted to exist that owed nothing to the powers of Spain beyond this recognition in their books.

Prescription is mentioned again in the royal cedula of October 15, 1754, cited in 3 Philippine, 546; "Where such possessors shall not be able to produce title deeds, it shall be sufficient if they shall show that ancient possession, as a valid title by prescription." It may be that this means possession from before 1700; but at all events, the principle is admitted. As prescription, even against Crown lands,

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[64] 41 Phil. 935 (1909).

was recognized by the laws of Spain we see no sufficient reason for hesitating to admit that it was recognized in the Philippines in regard to lands over which Spain had only a paper sovereignty.[65]

From the testimonies of the spouses Decaleng and their witnesses, the Court can glean actual possession of the properties in Ken-geka and Ken-gedeng by the spouses Decaleng and their predecessors-in-interest only as far back as the 1920s.[66] This hardly constitutes possession since time immemorial judging by the standard set by the Court in *Oh Cho v. Director of Lands*:[67]

The applicant failed to show that he has title to the lot that may be confirmed under the Land Registration Act. He failed to show that he or any of his predecessors in interest had acquired the lot from the Government, either by purchase or by grant, under the laws, orders and decrees promulgated by the Spanish Government in the Philippines, or by possessory information under the Mortgage Law (Section 19, Act 496). All lands that were not acquired from the Government, either by purchase or by grant, belong to the public domain. **An exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors in interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been a private property even before the Spanish conquest.** (*Carino vs. Insular Government*, 212 U.S., 449; 53 Law. ed., 594.) **The applicant does not come under the exception, for the earliest possession of the lot by his first predecessor in interest began in 1880**.[68] (Emphases supplied.)

Neither can the spouses Decaleng claim imperfect title to the properties in Ken-geka and Ken-gedeng for such can only be acquired by possession of **lands of the public domain** for the

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[65] *Id.* at 941-942.

[66] A rough determination based on the ages of the witnesses (who were around 70-80 years old when they took the witness stand before the RTC in 1993-1994) and their testimonies that they actually saw the parents of the spouses Decaleng working on the properties.

[67] 75 Phil. 890 (1946).

[68] *Id.* at 892.

period required by law.[69] Because the spouses Decaleng failed to provide and prove the necessary details on how and when their predecessors-in-interest came to possess the disputed

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[69] Imperfect or incomplete titles to public agricultural lands may be confirmed by judicial legalization or by administrative legalization (free patent). (Sec. 11 [Commonwealth Act No. 141, otherwise known as the Public Land Act].)

Sec. 44 of the Public Land Act provides:

Sec. 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, for **at least thirty (30) years** prior to the effectivity of this amendatory Act, has continuously occupied and cultivated, either by himself or through his predecessors-in-interest a tract or tracts of agricultural public land subject to disposition, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares. (As amended by RA No. 782, and by RA No. 6940, approved March 28, 1990.)

A member of the national cultural minorities who has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of land, whether disposable or not since July 4, 1955, shall be entitled to the right granted in the preceding paragraph of this section: *Provided,* That at the time he files his free patent application he is not the owner of any real property secured or disposable under this provision of the Public Land Law. (As amended by Rep. Act No. 3872, approved June 18, 1964.) Emphasis supplied.)

Section 48 of the Public Land Act, as amended by Presidential Decree No. 1073, reads:

Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

(a) [Repealed by Presidential Decree No. 1073).

(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition or ownership, **since June 12, 1945**, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

properties, there is no way for the Court to determine whether or not said properties were still part of the public domain when occupied by the spouses Decaleng's predecessors-in-interest. As the Court previously found herein, the Ken-geka property was already covered by a Certificate of Title issued in the name of the U.S. Episcopal Church (the predecessor-in-interest of PEC-EDNP) on February 18, 1915 and the Ken-gedeng property had been in the possession under claim of title by the U.S. Episcopal Church ever since its arrival in the Mountain Province in 1901.

WHEREFORE, the Petition of the spouses Decaleng in G.R. No. 171209 is hereby **DENIED** for lack of merit. The assailed Decision dated August 26, 2005 and Resolution dated January 18, 2006 of the Court of Appeals in CA-G.R. CV No. 49978 are **AFFIRMED**.

SO ORDERED.

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

(c) Members of the national cultural minorities who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of lands of alienable lands of the public domain, under a *bona fide* claim of ownership shall be entitled to the rights granted in subsection (b) hereof. (Emphasis supplied.)

[**] Per Raffle dated March 12, 2012.

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

SECOND DIVISION

[G.R. No. 173390. June 27, 2012]

MELCHOR L. LAGUA, *petitioner, vs.* **THE HON. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NEGLIGENCE OF COUNSEL CANNOT SERVE AS A SUBSTITUTE FOR JURISDICTIONAL REQUIREMENTS OF RULE 65 AND DOES NOT AMOUNT TO GRAVE ABUSE OF DISCRETION.— In his Petition, Lagua bewails the negligence and mishandling by his two previous counsels as the reason for the delay, which has lasted for more than two years. However, it is clear from the facts that despite the liberality and consideration afforded to him by the CA, he is by no means blameless. More importantly, his excuse cannot serve as a substitute for the jurisdictional requirements under Rule 65. It does not amount to any grave abuse of discretion tantamount to lack or excess of discretion that may be attributable to the appellate court. Under the circumstances, the CA was well within the authority granted to it under the cited rule. Nothing is more settled than the rule that the negligence and mistakes of counsel are binding on the client. Otherwise, there would never be an end to a suit, so long as counsel could allege its own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law. x x x Petitioner was granted bail, and he had all the time to contact his counsel or follow up on the appeal himself. He is similarly responsible for procuring the services of new counsel after having been told of Atty. Quimpo's withdrawal. Yet he offered no explanation why it took him so long to apprise Atty. Barrientos of the case, or why they had repeatedly failed to comply with the CA's Orders after several extensions. As he has lost the ordinary remedy of appeal because of his own laxity, we cannot allow him to haphazardly take advantage of the remedy of *certiorari.*

2. ID.; CRIMINAL PROCEDURE; APPEALS; A DELAY OF ALMOST TWO YEARS IN FILING APPELLANT'S BRIEF

IS A SHEER LAXITY THAT WARRANTS DISMISSAL OF THE APPEAL.— In the present case, accused Lagua was given *more time,* not only to file his Appellant's Brief, but also to secure new counsel to adequately prepare the appeal. The CA issued two Show Cause Orders and two Resolutions declaring the appeal as abandoned. Despite these issuances, his second Motion for Reconsideration was filed 18 days after his receipt of the second and final CA Resolution. To our mind, this delay is indicative of sheer laxity and indifference on his part, for which he has lost the statutory right of appeal. Even during the intervening period after counsel has withdrawn, litigants are expected to be vigilant and conscious of the status of their cases[.] x x x Neither can we deem petitioner Lagua's Motion for Reconsideration with Motion to Admit Appellant's Brief as substantial compliance with the procedural requirement. In *Cariño v. Espinoza,* the appellate court rightly disallowed the submission of the Appellant's Brief after a delay of seven months. In this case, it took petitioner *almost two years* from 26 February 2004 (after the CA gave him a second non—extendible period of 45 days) to finally submit his Appellant's Brief on 19 December 2005.

APPEARANCES OF COUNSEL

Barrosa Porciuncula & Hilario Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

SERENO, *J.*:

In dismissing the present Petition filed under Rule 65 of the Rules of Court, we find no valid, justifiable reason for petitioner's failure to file his appellant's brief with the Court of Appeals (CA) that would warrant a reversal of the CA Resolutions dated 25 November 2005[1] and 17 May 2006.[2] To rule otherwise would

[1] In CA-G.R. CR No. 27423, penned by Associate Justice Delilah Vidallon-Magtolis, and concurred in by Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta; *rollo,* pp. 37-38.

[2] Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Martin S. Villarama, Jr. and Mario L. Guariña III, *rollo,* pp. 39-42.

make light of this Court's extraordinary *certiorari* jurisdiction, which operates only upon a clear showing of grave abuse of discretion tantamount to lack or excess of jurisdiction on the part of the appellate tribunal.[3]

On 11 April 2003, the Regional Trial Court (RTC) of Pasig rendered a Decision in Criminal Case Nos. 118032-H and 118033-H finding the accused petitioner guilty of homicide and sentencing him to 8 years of *prision mayor* as minimum to 14 years of *reclusion temporal* as maximum in each case. On 19 May 2003, petitioner filed a Notice of Appeal with the CA, docketed as CA-G.R. CR No. 27423. On 18 June 2003, he filed a Very Urgent Petition for Bail Pending Appeal, which the CA granted without objection from the Office of the Solicitor General.[4] On 6 November 2003, an Order of release upon bond was issued in his favor by the Division Clerk of Court of the CA.[5]

On 14 October 2003, petitioner received the Order from the CA requiring, within 45 days from receipt thereof, or until 28 November 2003, the filing of his Appellant's Brief.[6] He filed a Motion for Extension of another 45 days from 28 November 2003, or until 12 January 2004, within which to file the said brief. On 8 January 2004, he filed a Second Motion for Extension asking for an additional 45 days, which the CA granted with a warning that no further extension shall be allowed.[7] Thus, petitioner had 45 days from 12 January 2004 or until 26 February 2004.

Despite the two extensions, petitioner Lagua still failed to file his appellant's brief. On 5 May 2004, the CA ordered him through counsel to show cause, within five days from receipt, why the appeal should not be dismissed pursuant to Section 8,

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[3] 1997 Rules of Civil Procedure, Rule 65, Sec. 1.

[4] *Rollo,* p. 78.

[5] *Id.* at 80.

[6] *Id.* at 81.

[7] *Id.* at 86.

Rule 124 of the Rules of Court. He again failed to submit his brief within the reglementary period and to comply with the Court's 5 May 2004 Resolution. Thus, on 1 September 2004, the CA issued a Resolution declaring the appeal abandoned and accordingly dismissed pursuant to the Rules.

On 14 October 2004, petitioner's counsel of record, Atty. Salvador Quimpo, manifested to the Court that he had already withdrawn as defense counsel for petitioner, but that he had failed to secure the latter's conformity.[8] The following day, petitioner himself filed a Motion for Reconsideration of the 1 September 2004 Resolution, requesting more time to secure the services of another counsel. On 20 October 2004, the Solicitor General, manifesting that accused-appellant's abandonment of his appeal rendered the judgment of conviction final and executory, moved for his immediate arrest and confinement at the New Bilibid Prison.[9]

In its Resolution dated 9 February 2005, the CA stated that it had never received a Notice of Withdrawal from Atty. Quimpo, but nevertheless granted a 30-day period for petitioner and his new counsel to file a Notice of Appearance. Again, petitioner failed to comply. On 8 July 2005, the CA issued another Show Cause Order, directing him to explain within 10 days why he had not caused the appearance of his new counsel, and why the appeal should not be considered abandoned. Instead of filing a timely compliance, petitioner's new counsel, Atty. Emerson Barrientos filed a Notice of Appearance on 8 March 2005 or *almost a month* after the Show Cause Order.

On 17 August 2005, the CA filed a Resolution stating that in the interest of justice, the Notice of Appearance was considered sufficient compliance with the Order of 8 July 2005. It granted the Motion for Reconsideration, set aside the Order of Dismissal issued on 1 September 2004, and gave petitioner and his new counsel a non-extendible period of 30 days within which to file the appellant's brief.

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

[9] *Id.* at 91-91.

Notwithstanding the new non-extendible period, petitioner again failed to seasonably file his brief, prompting the CA to issue the first assailed Resolution dated 25 November 2005, which, *for the second time,* declared his appeal abandoned and accordingly dismissed. Roused from inaction, he filed another Motion for Reconsideration with Motion to Admit Appellant's Brief on 19 December 2005, or *18 days after his counsel received the 25 November 2005 Resolution.*

In its second assailed Resolution issued on 17 May 2006, the CA denied petitioner's Motion for Reconsideration and ordered the Appellant's Brief to be expunged from the records, *viz*:

> Indeed the present appeal has been dismissed twice by the Court because of accused-appellant's failure to file his brief. The present motion for reconsideration of the second dismissal of the appeal was even filed three (3) days beyond the reglementary period. Ineluctably, the dismissal of the present appeal has become final and accused-appellant has lost his right to appeal.
>
> It bears stressing that accused-appellant cannot simply trifle with the rules of procedure on the pretext that his life and liberty are at stake. For appeal is a mere statutory privilege to be exercised in the manner and in accordance with the provisions of the law granting the privilege.[10] x x x.

Petitioner comes to this Court alleging grave abuse of discretion on the part of the lower court in declaring the appeal abandoned, pointing to the negligence and errors of his counsel as the cause of the two-year delay in coming up with the brief. Petitioner reasons that there would be no prejudice to the People if his appeal is reinstated, and that he has a good defense that can lead to his acquittal.

We dismiss the Petition.

The *certiorari* jurisdiction of the Supreme Court is rigorously streamlined, such that Rule 65 only admits cases based on the specific grounds provided therein. The Rule applies if there is

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[10] *Id.* at 42.

no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. The independent action for *certiorari* will lie only if grave abuse of discretion is alleged and proven to exist. Grave abuse of discretion is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[11]

In the present case, petitioner would have us strike down the Resolutions of the CA declaring his appeal as abandoned for purportedly being issued in grave abuse of discretion. Yet, far from committing the grievous error petitioner presents it to be, the CA merely exercised the authority expressly granted to it under Rule 124, which we quote below:

> Sec. 8. *Dismissal of appeal for abandonment or failure to prosecute*. — The appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this rule, except in case the appellant is represented by a counsel *de oficio*.

Petitioner was represented by private counsel (and not *counsel de oficio*) to whom the CA had granted multiple extensions: two for Atty. Quimpo; and two for Atty. Barrientos, whose Notice of Appearance was submitted *a month after* the Show Cause Order of 8 July 2005. As for Atty. Quimpo, he filed his Manifestation *more than a month* after the CA had first issued the dismissal. It was only because of the plea for compassion in petitioner's Motion for Reconsideration that the CA granted him another 30 days in order to secure the services of another lawyer. Again, petitioner failed to comply. Both he and the new counsel, Atty. Barrientos, also failed to comply with the second Show Cause Order.

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[11] *Beluso v. COMELEC,* G.R. No. 180711, 22 June 2010, 621 SCRA 450.

Yet again, the CA allowed Atty. Barrientos' Notice of Appearance and considered it substantial compliance with the second Show Cause Order. Out of the CA's liberality, petitioner was given another 30 days to come up with the Appellant's Brief. This he failed to submit, prompting the CA, for the second and final time, to declare his appeal as abandoned. Even then, his Motion for Reconsideration with Motion to Admit Appellant's Brief was filed *18 days after his counsel received the CA Resolution.*

In his Petition, Lagua bewails the negligence and mishandling by his two previous counsels as the reason for the delay, which has lasted for more than two years. However, it is clear from the facts that despite the liberality and consideration afforded to him by the CA, he is by no means blameless. More importantly, his excuse cannot serve as a substitute for the jurisdictional requirements under Rule 65. It does not amount to any grave abuse of discretion tantamount to lack or excess of discretion that may be attributable to the appellate court. Under the circumstances, the CA was well within the authority granted to it under the cited rule.

Nothing is more settled than the rule that the negligence and mistakes of counsel are binding on the client.[12] Otherwise, there would never be an end to a suit, so long as counsel could allege its own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law.

The rationale for this rule is reiterated in the recent case *Bejarasco v. People:*

> The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique. **The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself.**

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[12] *Sapad v. Court of Appeals*, 401 Phil. 478, 483 (2000).

It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.[13] (Emphasis supplied.)

In *Tan v. Court of Appeals,* the Court explained:

As clients, petitioners should have maintained contact with their counsel from time to time, and informed themselves of the progress of their case, thereby exercising that standard of care "which an ordinarily prudent man bestows upon his business."

Even in the absence of the petitioner's negligence, the rule in this jurisdiction is that a party is bound by the mistakes of his counsel. In the earlier case of *Tesoro v. Court of Appeals*, we emphasized –

> It has been repeatedly enunciated that "a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently. A client is bound by the mistakes of his lawyer. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced or learned."

Thus, with the ordinary remedy of appeal lost through the petitioner's own fault, we affirm that no reversible error was committed in the dismissal of the petition by the appellate court.[14]

Petitioner was granted bail, and he had all the time to contact his counsel or follow up on the appeal himself. He is similarly responsible for procuring the services of new counsel after having been told of Atty. Quimpo's withdrawal. Yet he offered no explanation why it took him so long to apprise Atty. Barrientos of the case, or why they had repeatedly failed to comply with the CA's Orders after several extensions. As he has lost the ordinary remedy of appeal because of his own laxity, we cannot

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[13] G.R. No. 159781, 2 February 2011, 641 SCRA 328, 330-331.

[14] 524 Phil. 752, 760-761 (2006).

allow him to haphazardly take advantage of the remedy of *certiorari.*

The Court cannot tolerate habitual failure to follow the procedural rules, which are indispensable for the orderly and speedy disposition of justice. Otherwise these rules would be rendered useless.[15] In *Polintan v. People,* the Court of Appeals gave the petitioner therein a total of 75 days to submit his Appellant's Brief, but he failed to do so. In that case, the accused Polintan filed a "Very Urgent *Ex-Parte* Motion to Admit Appellant's Brief." This Court affirmed the CA Resolution declaring his appeal abandoned, after finding his excuses too flimsy to warrant reversal.

In the present case, accused Lagua was given *more time,* not only to file his Appellant's Brief, but also to secure new counsel to adequately prepare the appeal. The CA issued two Show Cause Orders and two Resolutions declaring the appeal as abandoned. Despite these issuances, his second Motion for Reconsideration was filed 18 days after his receipt of the second and final CA Resolution. To our mind, this delay is indicative of sheer laxity and indifference on his part, for which he has lost the statutory right of appeal. Even during the intervening period after counsel has withdrawn, litigants are expected to be vigilant and conscious of the status of their cases, *viz:*

> The appellate court committed no error therefore in dismissing the appeal. Petitioners-appellants have shown no valid and justifiable reason for their inexplicable failure to file their brief and have only themselves to blame for their counsel's utter inaction and gross indifference and neglect in not having filed their brief for a year since receipt of due notice to file the same. They could not even claim ignorance of the appellate court's notice to file brief since it had required withdrawing counsel Valente to secure their written conformity before granting his withdrawal as counsel, and certainly they must have ascertained from him as well as new counsel the status of their appeal — which accounts for Atty. Valente's repeated prayers in his two motions for withdrawal for the granting of sufficient

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[15] *Polintan v. People,* G.R. No. 161827, 21 April 2009, 586 SCRA 111.

time for new counsel to file the brief. They had almost a year thereafter to make sure that their new counsel did attend to their appeal and did file the brief.[16]

In *Estate of Felomina G. Macadangdang v. Gaviola*,[17] the Court made a clear finding of negligence on the part of the lawyer handling the petitioner's case, but nevertheless affirmed the denial of the appeal. It confirmed that the petitioner was bound by his counsel's negligence. It ruled that "the right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by the law."

Neither can we deem petitioner Lagua's Motion for Reconsideration with Motion to Admit Appellant's Brief as substantial compliance with the procedural requirement. In *Cariño v. Espinoza,*[18] the appellate court rightly disallowed the submission of the Appellant's Brief after a delay of seven months. In this case, it took petitioner *almost two years* from 26 February 2004 (after the CA gave him a second non-extendible period of 45 days) to finally submit his Appellant's Brief on 19 December 2005.

Lastly, it is erroneous for petitioner to declare that there would be no prejudice to the People if his appeal is reinstated.[19] The judgment of conviction having attained finality, respondent is now entitled to execution as a matter of right. This Court has recently declared:

Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. The enforcement of such judgment should not be hampered or evaded, for the immediate enforcement of the parties' rights, confirmed by final judgment, is a major component of the ideal administration of

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[16] *Villasis v. CA*, 158 Phil. 335, 340-341 (1974).

[17] G.R. No. 156809, 4 March 2009, 580 SCRA 565, 573.

[18] G.R. No. 166036, 19 June 2009, 590 SCRA 43.

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

justice. This is the reason why we abhor any delay in the full execution of final and executory decisions. Thus, a remedy intended to frustrate, suspend, or enjoin the enforcement of a final judgment must be granted with caution and upon a strict observance of the requirements under existing laws and jurisprudence.[20] x x x.

WHEREFORE, the Petition is **DISMISSED**. The assailed Resolutions issued by the Court of Appeals on 25 November 2005 and 17 May 2006 in CA-G.R. CR No. 27423 are hereby **AFFIRMED**.

SO ORDERED.

Carpio (Senior Associate Justice, Chairperson), del Castillo,[*] *Perez,* and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 174007. June 27, 2012]

DEPARTMENT OF AGRARIAN REFORM, represented by OIC-Secretary NASSER C. PANGANDAMAN, *petitioner, vs.* **MANOLO V. GODUCO,**[1] *respondent.*

[G.R. No. 181327. June 27, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **MANOLO V. GODUCO,** *respondent.*

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[20] *Pahila- Garrido v. Tortogo*, G.R. No. 156358, 17 August 2011, 655 SCRA 553, 558.

[*] Designated additional member per Raffle dated 27 June 2012 in lieu of Associate Justice Arturo D. Brion due to prior action in the Court of Appeals.

[1] Now substituted by his wife Belen Goduco and son Luis Goduco.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAW; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); JUST COMPENSATION; COMPUTATION OF JUST COMPENSATION MUST BE MADE IN ACCORDANCE TO THE FORMULA OUTLINED PURSUANT TO R.A. 6657.—** [B]y law and jurisprudence, R.A. 6657, upon its effectivity, became the primary law in agrarian reform covering all the then pending and uncompleted processes; and P.D. No. 27 and E.O. No. 228 are only suppletory to the said law. Pursuant to the rule-making power of DAR under Section 49 of Republic Act No. 6657, a formula was outlined in DAR Administrative Order No. 5, series of 1998 in computing just compensation for lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA)[.] x x x The application of the formula is mandated by law. However, the presence or absence of one or more factors in the formula and the amounts that correspond to the present factors must be determined by the Special Agrarian Court as the trier of facts.

2. **ID.; ID.; ID.; ID.; RECKONING POINT IN THE COMPUTATION OF JUST COMPENSATION, EXPLAINED.—** The disposition that the seizure of the landholding would take effect on the payment of just compensation since it is only at that point that the land reform process is complete refers to property acquired under P.D. No. 27 but which remained unpaid until the passage of R.A. 6657. We said that in such a situation R.A. 6657 is the applicable law. But if the seizure is during the effectivity of R.A. 6657, the time of taking should follow the general rule in expropriation cases where the "time of taking" is the time when the State took possession of the same and deprived the landowner of the use and enjoyment of his property[.]

3. **ID.; ID.; ID.; ID.; INTEREST ON THE COMPUTED JUST COMPENSATION CANNOT BE IMPOSED.—** The interest applies only to lands taken under P.D. No. 27 and E.O. No. 228, pursuant to Administrative Order No. 13, Series of 1994 (A.O. No. 13) [as amended by A.O. No. 06, Series of 1998], and not Sec. 26 of R.A. 6657. There are Decisions by this Court where it granted interest at 12% on the award. To

clarify, this incremental interest is not granted on the computed just compensation. Rather, it is a penalty imposed for damages incurred by the landowner due to the delay in payment of just compensation.

APPEARANCES OF COUNSEL

Delfin B. Samson for DAR.
LBP Legal Department for Land Bank of the Phils.
Villarin Law Office for Manolo Goduco.

D E C I S I O N

In as much as the old concept of land ownership by a few has spawned valid and legitimate grievances that gave rise to violent conflict and social tension,

The redress of such legitimate grievances being one of the fundamental objectives of the New Society,

Reformation must start with the emancipation of the tiller of the soil from his bondage.[2]

But these reformation and emancipation need not be at the detriment of the landowners, for they too are part of this Society.

PEREZ, *J.*:

Before the Court are two Petitions for Review on *Certiorari*[3] filed by the Department of Agrarian Reform (DAR) and the Land Bank of the Philippines (LBP).

DAR is appealing the Decision[4] of the Tenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 89542 dated 26

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[2] Opening Statement, P.D. 27.

[3] *Rollo* (G.R. No. 174007), pp. 8-26 and *Rollo* (G.R. No. 181327), pp. 28-58.

[4] Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justices Rosmari D. Carandang and Monina Arevalo-Zeñarosa, concurring. *Rollo* (G.R. No. 174007), pp. 28-37.

January 2006 and the Resolution of the same Division dated 7 August 2006 which resulted in the affirmance of the Decision of the Regional Trial Court (RTC) of Cabanatuan City designated as the Special Agrarian Court. The dispositive portion of the assailed decision reads:

> **WHEREFORE,** premises considered, the Petition is hereby DENIED and is accordingly DISMISSED for lack of merit.[5]

The other petitioner LBP, is appealing the Decision[6] of the Third Division in CA-G.R. SP No. 89429 of the CA dated 31 July 2007 and the Resolution of the said Division dated 8 January 2008 which resulted in the affirmance with modification of the Decision of the aforementioned Special Agrarian Court. The dispositive portion of the assailed decision reads:

> **WHEREFORE,** the petition is partially GRANTED. The assailed Decision is AFFIRMED WITH MODIFICATION in that the 6% interest per annum is deleted.[7]

The facts as gathered by this Court follow:

Manolo Goduco (Goduco) is the only heir of Illuminada Villanueva *Vda. De* Goduco, the registered owner of several parcels of land located at Pambuan, Gapan City, Nueva Ecija covered by TCT Nos. NT-119140 and NT-119143 issued by the Registry of Deeds of the province.[8]

LBP is the financial intermediary for the Comprehensive Agrarian Reform Program (CARP) as designated under Section 64 of R.A. 6657.

DAR is the lead implementing agency of the CARP. It undertakes land tenure improvement and development of program beneficiaries.

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[5] *Id.* at 37.

[6] Penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Lucas P. Bersamin and Estela M. Perlas-Bernabe (now both members of the Court), concurring. *Rollo* (G. R. No. 181327), pp. 69-80.

[7] *Id.* at 80.

[8] CA *rollo* (CA-G.R. SP No. 89429), p. 79.

Pursuant to the Operation Land Transfer Program of the government under Presidential Decree (P.D.) No. 27, the mentioned parcels of land were placed under the program and were distributed by DAR to the qualified farmer-beneficiaries upon issuance of their respective Emancipation Patents on 29 December 1994[9] and 13 June 1996.[10] Farmer Edilberto R. Mendoza was issued TCT No. E.P. 79440 with an area of 17,890 square meters and TCT No. E.P.79442 with an area of 8,588 square meters, while farmer Ernesto Carriaga was issued with TCT No. E.P. 84260 with an area of 10, 956 square meters, TCT No. E.P. 86567 with an area of 2,844 square meters and TCT No. E.P. 86568 with an area of 9,336 square meters.

Thereafter, LBP fixed the value of the land as payment of just compensation as follows:

For TCT No. E.P. 79440 - ₱14,871.06

For TCT No. E.P. 79442 - ₱ 7,138.77

For TCT No. E.P. 84260 - ₱ 4,709.66

For TCT No. E.P. 86567 - ₱ 3,902.33

For TCT No. E.P. 86568 - ₱ 4,133.00

Dissatisfied with the valuation, Goduco filed a Petition for Determination of Just Compensation of the subject lands before the RTC of Cabanatuan City acting as Special Agrarian Court on 7 March 2000. He also filed a similar petition before the offices of DAR and LBP. In his petition before the court, he alleged that LBP fixed the valuation of the parcels of land without his or his mother's knowledge. He contended that the valuation amounting to a measely aggregate of ₱34,754.82 is highly inadequate and is confiscatory of their properties for the fair market value of the land can be pegged at least ₱400,000.00 per hectare. Finally, he added that the selling price of agricultural lands is at ₱1,000,000.00 per hectare.[11]

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[9] *Id.*

[10] *Id.* at 91.

[11] CA *rollo* (CA-G.R. SP No. 89542), pp. 40-47.

LBP, in its Answer, justified its valuation of the land by asserting that it was in strict adherence with P.D. No. 27 and Executive Order (E.O.) No. 228[12] and maintained that these provisions continue to be valid and constitutional. The pertinent provision of P.D. No. 27 states:

> For the purpose of determining the cost of the land to be transferred to the tenant-farmer pursuant to this Decree, the value of the land shall be equivalent to two and one-half (2 1/2) times the average harvest of three normal crop years immediately preceding the promulgation of this Decree.

The relevant portion of E.O. No. 228 reads:

> Sec. 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the Barangay Committee on Land Production in accordance with Department Memorandum Circular No. 26, Series of 1973, and related issuances and regulations of the Department of Agrarian Reform. The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of palay on October 21, 1972, or Thirty One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner.

DAR also filed its Answer and basically reiterated the arguments of LBP on the constitutionality and applicability of P.D. No. 27 and E.O. No. 228.[13]

At the trial, Goduco presented as witnesses Adoracion Khan and Conrado Roberto. He also testified to prove the value of the land as basis for just compensation.

Adoracion Khan testified that she is the administrator of the land owned by Filoteo G. Jacinto and Nelia Fuentebella which

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[12] CA *rollo* (CA-G.R. SP No. 89429), pp. 106-108.

[13] CA *rollo* (CA-G.R. SP No. 89542), pp. 52-55.

is near the land of Goduco. She added that the land of Jacinto and Fuentebella which has an area of 23,489 square meters, was sold for ₱1,500,000.00. She further opined that the land of Goduco could command a higher price because it is adjacent to the main canal of the National Irrigation Authority (NIA).[14]

Conrado Roberto, one of the land tenants of Goduco, testified that he bought a parcel of land with an area of 21,000 square meters from Goduco for ₱187,000.00 He described that the land he bought was inferior to the land in dispute, which can be sold for a higher price of ₱800,000.00. He also opined that the land of Goduco is near the irrigation canal, hence, can command a higher selling price.[15]

Lastly, Goduco himself testified that the land could be sold for ₱1,500,000.00 based on the price offered to him for the land. He presented pictures of a mango orchard, a road network, irrigation canals and of the municipal road adjacent to the land to substantiate his contention that the value of the land is much more than the assessment determined by LBP.[16]

LBP, on its part, presented its Field Attorney Atty. Alfredo B. Pandico, Jr. who testified that he handled the agrarian case of the parcels of land registered under the name of Illuminada Goduco.[17]

Lily San Luis, the bank's Claims Processing and Payment Division Officer, testified that she handled the case of the contested parcels of land and explained the process observed by the bank in such cases. LBP also presented as its documentary evidence the Claims Processing Form where the valuation of the parcels of land was indicated.[18]

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[14] RTC Decision. *Rollo* (G.R. No. 174007), p. 61.

[15] *Id.*

[16] *Id.* at 62.

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

[18] *Id.* at 64-65.

DAR offered in evidence a document dated 12 November 1981 showing the average gross production of the parcels of land of Goduco.[19]

The special agrarian court did not follow the price assessment of DAR. The dispositive portion of its 12 January 2005 decision[20] reads:

> WHEREFORE, all premises considered, judgment is hereby rendered ordering the defendant Department of Agrarian Reform through the defendant Land Bank of the Philippines to pay petitioner Manolo Goduco the total amount of Four Hundred Ninety Six Thousand One Hundred Forty (₱496,140.00) Philippine Currency, representing the just compensation of the property with a total area of 4.9614 hectares, situated in Pambuan, Gapan, Nueva Ecija, covered by TCT No. NT-119140 and TCT No. NT-119143 with 6% legal interest per annum from the date of taking on May 24, 1995 until fully paid.[21]

The trial court explained that the ₱100,000.00 per hectare valuation of the land followed the provisions of Section 17 of R.A. 6657. It also considered the condition and the location of the land which is irrigated and accessible to the municipal road. The notarized documents indicating the selling price of the neighboring parcels were also given weight by the court. Even if not put in issue before it, the trial court imposed interest computed from the date of taking of the land.[22]

Both the DAR and the LBP filed appeals before the CA.

DAR in its Petition for Review[23] before the Tenth Division of the CA raised as its sole assignment of error that the agrarian court erred when it ruled that the date of taking of subject

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[19] *Id.* at 65.

[20] CA *rollo* (CA-G.R. SP No. 89429), pp. 49-56.

[21] *Id.* at 56.

[22] *Id.* at 54-56.

[23] *Rollo* (G.R. No. 174007), p. 53; CA *rollo* (CA-G.R. No. SP No. 89542), p. 16.

property was 24 May 1995. Similarly, the arguments of LBP before the Third Division pertain to the alleged error of the lower court in fixing the value of the land based on the factors under R.A. 6657 even if the land was acquired under P.D. No. 27. It likewise argued that it was an error to grant 6% legal interest from the date of taking until full payment of the just compensation.

In CA-G.R. SP No. 89542, the Tenth Division of the CA ruled that the lands were acquired under R.A. 6657. Hence, the valuation factors under this law determine the just compensation.[24]

In CA-G.R. SP No. 89429, the Third Division of the CA[25] affirmed the trial court. The appellate court reasoned out that while the just compensation remains undetermined and unpaid, the agrarian process is not yet complete. Therefore, what will apply in determining just compensation is R.A. 6657; not P.D. No. 27 or E.O. No. 228. It ruled however, that the trial court erred in the imposition of 6% interest, which as provided by Administrative No. 13, is granted only under P.D. No. 27.

In its petition before this Court, DAR repeats the arguments that the applicable law is P.D. No. 27 and not R.A. 6657 and that the date of taking of the land was on 21 October 1972 and not in 1995. The DAR insists that the lands were covered by the Operation Land Transfer Program under P.D. No. 27, therefore, the date of the taking of the land must be 21 October 1972.

LBP, in its petition, also insists that the formula that should apply is the one prescribed under P.D. No. 27 and E.O. No. 228. It argues against the application of R.A. 6657 on properties acquired under the Operation Land Transfer Program of P.D. No. 27.

To summarize, LBP and DAR raise as issues the following:

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[24] *Id.* at 28-37.

[25] *Rollo* (G.R. No. 181327), pp. 11-22.

First, which law will govern the valuation of land covered by the emancipation patents, P.D. No. 27 and E.O. No. 228 or R.A. 6657?

Second, what is the reckoning date for determining just compensation?

Third and last, should interest be imposed from the date of taking?

The Court's Ruling

First and Second Issues: Applicable law and reckoning point

Both the LBP and DAR are adamant in their contention that the agrarian reform process is complete even if there is no payment yet of just compensation. It is further posited that to apply R.A. 6657 to the P.D. No. 27-acquired properties is improper for it will result in the retroactive application of R.A. 6657.

We disagree.

The first references are relevant provisions of the laws relied upon by the parties.

P.D. No. 27[26] provides that:

> For the purpose of determining the cost of the land to be transferred to the tenant-farmer pursuant to this Decree, the value of the land shall be equivalent to two and one-half (2 1/2) times the average harvest of three normal crop years immediately preceding the promulgation of this Decree[.]

E.O. No. 228[27] is the issuance on payment of land covered by P.D. No. 27:

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[26] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to them the Ownership of the Land they Till and Providing the Instruments and Mechanism therefor. 21 October 1972.

[27] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27; Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner, 17 July 1987.

Sec. 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the Barangay Committee on Land Production in accordance with Department Memorandum Circular No. 26, Series of 1973, and related issuances and regulations of the Department of Agrarian Reform. The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by Thirty Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of palay on October 21, 1972, or Thirty One Pesos (₱31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner.

Upon the other hand is the CARP statute of 10 June 1998. R.A. 6657[28] provides:

Section 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the current value of the 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 determination of just compensation for land covered by the Reform Program which spawned the issues about the covering law and the process of coverage has been discussed amply enough for present guidance.

In *Land Bank of the Philippines v. Natividad,*[29] it was ruled that the agrarian reform process is still incomplete if the just

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[28] An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and for other Purposes, 10 June 1988.

[29] 497 Phil. 738, 746 (2005).

compensation to be paid has yet to be settled. In that case, Land Bank argued that the property was acquired for purposes of agrarian reform on 21 October 1972, the time of the effectivity of P.D. No. 27, *ergo* just compensation should be based on the value of the property as of that time and not at the time of possession in 1993. However, the Court ruled otherwise. It held that the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled.

This ruling on the completion of the reform process was reiterated in the case of *Land Bank of the Philippines v. Ferrer*[30] where the Court upheld the position of the appellate court that the land shall be considered taken only upon payment of just compensation because it would complete the agrarian reform process.

Evidently in this case where the conflict is exactly on just compensation, the agrarian reform process has yet to be completed.

What petitioner wants is a departure from standing jurisprudence as these relate to the issue of the applicable law on just compensation.

We are not prepared to do so.

It was during the pendency of the process, or, in other words, when no payment has as yet been made, when R.A. 6657 became the law on land reform valuation. Evidently, the application of R.A. 6657 on the then present circumstance is not, contrary to petitioners' positions, violative of the principle of prospectivity of statutes.

In fact, R.A. 6657 did not repeal P.D. No. 27 and E.O. Nos. 228 and 229. Instead, it gave the Decree and the Order suppletory effect.

Section 75. ***Suppletory Application of Existing Legislation***. — The provisions of Republic Act No. 3844 as amended, Presidential

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[30] G.R. No. 172230, 2 February 2011, 641 SCRA 414, 422.

Decree Nos. 27 and 266 as amended, Executive Order Nos. 228 and 229, both Series of 1987; and other laws not inconsistent with this Act shall have suppletory effect.[31]

Such is the ruling in *Paris v. Alfeche*[32] where the Court ruled that considering the passage of R.A. 6657 before the completion of the application of the agrarian reform process to the subject lands, the same should now be completed under the said law, with P.D. No. 27 and E.O. No. 228 having suppletory effect.

In *Land Bank of the Philippines v. Natividad*,[33] we reiterated that since the reform process is still incomplete because the payment has not been settled yet and considering the passage of R.A. 6657, just compensation should be determined and the process concluded under the said law.

Further reiterations were made in *Land Bank of the Philippines v. Estanislao*[34] and *LBP v. J. L. Jocson and Sons,*[35] to quote:

This Court held in *Land Bank of the Philippines v. Natividad* that seizure of landholdings or properties covered by P.D. No. 27 did not take place on October 21, 1972, but upon the payment of just compensation. Taking into account the passage in 1988 of R.A. No. 6657 pending the settlement of just compensation, this Court concluded that it is R.A. No. 6657 which is the applicable law, with P.D. No. 27 and E.O. 228 having only suppletory effect.

Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. *In Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the **seizure** of the landholding did not take place on the date of effectivity of PD 27 but **would take effect on the payment of just compensation**.

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[31] Emphasis ours.

[32] 416 Phil. 473, 488 (2001).

[33] *Supra* note 29 at 451-452.

[34] G.R. No. 166777, 10 July 2007, 527 SCRA 181, 187.

[35] G.R. No. 180803, 23 October 2009, 604 SCRA 373, 381-382.

Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, *RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in Paris v. Alfeche.*

The same interpretation was arrived at in the subsequent decisions in *Land Bank of the Philippines v. Heirs of Eleuterio Cruz;*[36] in *Land Bank of the Philippines v. Ferrer;*[37] and more recently in the *Land Bank of the Philippines v. Araneta.*[38]

Clearly, by law and jurisprudence, R.A. 6657, upon its effectivity, became the primary law in agrarian reform covering all the then pending and uncompleted processes; and P.D. No. 27 and E.O. No. 228 are only suppletory to the said law.

Pursuant to the rule-making power of DAR under Section 49 of Republic Act No. 6657, a formula was outlined in DAR Administrative Order No. 5, series of 1998 in computing just compensation[39] for lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA),[40] to wit:

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

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[36] G.R. No. 175175, 29 September 2008, 567 SCRA 31.

[37] *Supra* note 30.

[38] G.R. No. 161796, 8 February 2012.

[39] *Land Bank of the Philippines v. Soriano*, G.R. Nos. 180772 and 180776, 6 May 2010, 620 SCRA 347, 353.

[40] Administrative Order No. 05, Series of 1998 entitled "Revised Rules and Regulations Governing the Valuation of Lands Voluntarily or Compulsory Acquired Pursuant to R.A. No. 6657."

The above formula shall be used if all three factors are present, relevant and applicable.

A1. 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 the 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.

This formula has been repeatedly applied in *Land Bank of the Philippines v. Barrido;*[41] *Land Bank of the Philippines v. Esther Rivera;*[42] and *Land Bank of the Philippines v. Department of Agrarian Reform.*[43]

The formula was not followed by the trial court in this case. It said:

In arriving at a valuation of the property in question, the Court will have to approximate which is just and equitable under the premises, using the evidence, testimonial and documentary, given by the parties and witnesses as there is still no hard and fast rule by which the Court could exactly determine its actual value.[44]

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[41] G.R. No. 183688, 18 August 2010, 628 SCRA 454.

[42] G.R. No. 182431, 17 November 2010, 635 SCRA 285.

[43] G.R. No. 171840, 4 April 2011, 647 SCRA 152.

[44] RTC Decision. *Rollo* (G.R. No. 174007), p. 66.

The application of the formula is mandated by law. However, the presence of absence of one or more factors in the formula and the amounts that correspond to the present factors must be the determined by the Special Agrarian Court as the trier of facts. A remand to the trial court is needed.

One final but important point: As we at the outset clarified, the repeated rulings that the land reform process is completed only upon payment of just compensation relate to the issue of the applicable law on just compensation. The disposition that the seizure of the landholding would take effect on the payment of just compensation since it is only at that point that the land reform process is completely refers to property acquired under P.D. No. 27 but which remained unpaid until the passage of R.A. 6657. We said that in such a situation R.A. 6657 is the applicable law. But if the seizure is during the effectivity of R.A. 6657, the time of taking should follow the general rule in expropriation cases where the "time of taking" is the time when the State took possession of the same and deprived the landowner of the use and enjoyment of his property x x x. We here repeat *Land Bank of the Philippines v. Livioco*:[45]

> There are agrarian cases which hold that just compensation should be valued at the "time of payment," (*Office of the President v. Court of Appeals,* 413 Phil. 711, 716 (2001); *Landbank of the Philippines v. Estanislao,* G.R. No. 166777, July 10, 2007, 527 SCRA 181, 187; *Landbank of the Philippines v. JL Jocson and Sons,* G.R. No. 180803, October 23, 2009, 604 SCRA 373, 380-381) these decisions are not applicable in the case at bar. Said cases involved the issue of choosing between an earlier law (Presidential Decree No. 27, by which the property was acquired) and a later law (RA 6657, which was enacted while the issue of just compensation in these cases was still pending). The Court ruled that the seizure of the properties covered by PD No. 27 did not occur upon the effectivity of PD 27 but upon the actual payment of just compensation. Since the prevailing law at the time of payment was already RA 6657, the landowners have the right to be compensated under the new law.

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[45] G.R. No. 170685, 22 September 2010, 631 SCRA 86.

As aptly summarized in *Landbank of the Philippines v. Natividad* (G.R. No. 127198, May 16, 2005, 458 SCRA 441, 451-452):

> Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals,* we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.
>
> Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. x x x

Unlike the above-cited cases, Livioco's property was acquired and to be paid under only one law, *i.e.*, RA 6657. There is no situation here which requires the Court to choose between the law prevailing at the time of acquisition and the law prevailing at the time of payment.

Since Livioco's property was acquired under RA 6657 and will be valued under RA 6657, the question regarding the "time of taking" should follow the general rule in expropriation cases where the "time of taking" is the time when the State took possession of the same and deprived the landowner of the use and enjoyment of his property.

Third Issue: Imposition of Interest

The issue regarding interest is also jurisprudentially settled. In *Land Bank of the Philippines v. Chico,*[46] the Court ruled that when just compensation is determined under R.A. 6657, no incremental, compounded interest of six percent (6%) per *annum* shall be assessed. The interest applies only to lands taken under P.D. No. 27 and E.O. No. 228, pursuant to Administrative Order No. 13, Series of 1994 (A.O. No. 13) [as

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[46] *Supra* note 48 at 244.

amended by A.O. No. 06, Series of 1998], and not Sec. 26 of R.A. 6657.

There are Decisions[47] by this Court where it granted interest at 12% on the award. To clarify, this incremental interest is not granted on the computed just compensation. Rather, it is a penalty imposed for damages incurred by the landowner due to the delay in payment of just compensation. Thus, did the Court say:

> In some expropriation cases, the Court allowed the imposition of said interest [12%], the same was in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance.[48]

WHEREFORE, premises considered, the Court hereby **RESOLVES:**

1. To **DENY** both appeals;
2. To **ORDER** the remand of the case to the trial court for the computation of the just compensation based on the formula under Administrative Order No. 05, Series of 1998 issued pursuant to R.A. 6657; and
3. To **DELETE** the interest imposed on just compensation.

SO ORDERED.

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

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[47] *Land Bank of the Philippines v. Escandor*, G.R. No. 171685, 632 SCRA 504; 11 October 2010; *Land Bank of the Philippines v. Celada*, 515 Phil. 467 (2006).

[48] *Id.* at 512.

FIRST DIVISION

[G.R. No. 174181. June 27, 2012]

ANDRE L. D' AIGLE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; ESTAFA; ELEMENTS OF ESTAFA UNDER ARTICLE 315, PARAGRAPH 1(b) OF THE REVISED PENAL CODE, PROVEN.—** [E]ssential elements of Estafa under Article 315, paragraph 1(b) of the RPC x x x have been sufficiently established by the prosecution. x x x From petitioner's own assertions, the existence of the first and fourth of the aforementioned elements is very clear. SPI's properties were received by the petitioner in trust. He received them for a particular purpose, that is, for the fabrication of bending machines and spare parts for SPI. And when SPI made a demand for their return after petitioner's alleged dismissal therefrom, petitioner deliberately ignored the same. x x x With regard to the element of misappropriation or conversion, x x x petitioner failed to account for, upon demand, the properties of SPI which were received by him in trust. This already constitutes circumstantial evidence of misappropriation or conversion of said properties to petitioner's own personal use. Even if petitioner merely retained the properties for the purpose of preserving his right of lien over them, same is immaterial because, to reiterate, failure to return upon demand the properties which one has the duty to return is tantamount to appropriating the same for his own personal use. x x x Lastly, it is obvious that petitioner's failure to return SPI's properties valued at ₱191,665.35 caused damage and prejudice to the latter.

2. **ID.; ID.; ID.; PROPER PENALTY WHERE THE AMOUNT INVOLVED EXCEEDS PHP 22,000.—** In the present case, petitioner poses no serious challenge to the amount involved which is ₱191,665.35. Since said amount is in excess of ₱22,000.00, the penalty imposable should be within the maximum term of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of *prision mayor*. "[A] period of one (1) year shall be added to the penalty for every additional

₱10,000.00 defrauded in excess of ₱22,000.00, but in no case shall the total penalty which may be imposed exceed twenty (20) years." Hence, sixteen (16) years must be added to the maximum term of the penalty of *prision mayor*. And since same exceeds twenty (20) years, the maximum term should be pegged at twenty (20) years of *reclusion temporal*. Applying now the Indeterminate Sentence Law, the penalty next lower than that prescribed by law which is *prision correccional* in its maximum to *prision mayor* in its minimum is *prision correccional* in its minimum to medium periods. "Thus, the minimum term of the indeterminate sentence should be anywhere from six (6) months and one (1) day to four (4) years and two (2) months x x x." Prescinding from the foregoing discussion, the Court finds that the CA correctly pegged the penalty in its maximum term of twenty (20) years of *reclusion temporal* but erred in imposing the minimum term of six (6) years and one (1) day of *prision mayor* as same is beyond the lawful range. Thus, the Court sets the minimum term of the indeterminate penalty at four (4) years and two (2) months of *prision correccional*. Accordingly, petitioner is hereby sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

APPEARANCES OF COUNSEL

Espiritu Vitales Espiritu Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J*.:

The "failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation."[1]

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking a reversal of the

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[1] *Lee v. People*, 495 Phil. 239, 250 (2005).

Decision[2] dated March 31, 2006 of the Court of Appeals (CA) in CA-G.R. CR No. 25830 which affirmed with modification the Decision[3] dated January 15, 2001 of the Regional Trial Court (RTC), Branch 93, San Pedro, Laguna in Criminal Case No. 0434-SPL convicting petitioner Andre L. D'Aigle of the crime of Estafa. Likewise assailed is the CA Resolution[4] dated August 17, 2006 denying the Motion for Reconsideration[5] thereto.

Factual Antecedents

On June 5, 1997, petitioner was charged with Estafa before the RTC under the following Information:

> That in, about and sometime prior to December 1996, in the Municipality of San Pedro, Province of Laguna, Philippines, within the jurisdiction of this Honorable Court, the said accused being then the Managing Director of Samfit Phils. received from said Samfit, Phils. for management, care and custody the following company properties:
>
> a) Electric transformer worth ₱16,500.00
>
> b) Two (2) units of electronic boxes and two (2) units of computer boxes worth ₱490,000.00
>
> c) Machine spare parts consisting of
>
> - set of rack and pinion
> - pair of bevel and gears MB-20-30
> - pair of meter gears 42 teeth
> - set of gears 32 teeth
> - gear bith bearing inserted
> - 3 SL 20 bearings "V" plate
> - one-way clutch
> - one-way bearing CSK 20HC5

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[2] CA *rollo*, pp. 162-181; penned by Associate Justice Aurora Santiago-Lagman and concurred in by Presiding Justice Ruben T. Reyes and Associate Justice Rebecca De Guia-Salvador.

[3] Records, vol. II, pp. 500-507; penned by Judge Francisco Dizon Pano.

[4] CA *rollo*, pp. 225-226.

[5] *Id.* at 182-216.

- 8 of LJ 34 bearings "V" type
- roller bearing 1 x 0
- 8 pieces of 6200 ZZE bearing with a total value of ₱12,765.35

d) [Equipment] and raw materials – valued at ₱162,400.00

with a total value of SIX HUNDRED EIGHTY ONE THOUSAND, SIX HUNDRED SIXTY FIVE PESOS & 35/100 (₱681,665.35)

under the express obligation to use the same for a particular purpose[,] that is, exclusively for the machinery of Samfit Phils. but accused far from complying with his obligation with grave abuse of confidence reposed upon him by his employer, did then and there willfully, unlawfully, and feloniously misapply, misappropriate and convert the aforesaid corporate properties to his own personal use and benefit and despite several demands made upon him, accused refused and failed and still refuses and fails to return or account for the same to the damage and prejudice of Samfit, Phils., represented by its President, Mr. Arturo Parducho, in the aforesaid sum of ₱681,665.35.

CONTRARY TO LAW.[6]

Petitioner pleaded not guilty upon arraignment and the case was set for pre-trial and trial on the merits.

During trial, the prosecution presented as its principal witness Arturo Parducho (Parducho), Director and President of Samfit Philippines, Inc. (SPI), a corporation primarily engaged in the manufacture of underwires for brassieres. According to him, petitioner was the former managing director of SPI tasked with the management of the company as well as the management, care and custody of SPI's personal properties. At the time that he was holding said position, petitioner was likewise a majority stockholder of TAC Manufacturing Corporation (TAC), an entity engaged in the fabrication of wire bending machine similar to that being used by SPI.[7]

Sometime in November 1996, petitioner was divested of his duties and responsibilities as SPI's managing director[8] due to

[6] Records, vol. I, pp. 1-2.

[7] TSN, January 28, 1998, pp. 6-7.

[8] Exhibit "A", records, vol. I, p. 196.

alleged conflict of business interest. Because of this, Parducho conducted an audit and inventory of SPI's properties and reviewed its financial statements, vouchers, books of account and other pertinent records. He also interviewed some of SPI's employees.[9] These revealed that several properties of SPI such as wire materials, electronic transformer, electronic and computer boxes, machine spare parts, while still under the management, care and custody of petitioner, went missing and were left unaccounted for.[10] Further investigation revealed that some of SPI's wire bending machines, computer and electronic boxes were inside the premises of TAC. This was confirmed by Daniel Gutierrez, a former employee of TAC, who likewise admitted that TAC copied the wire bending machines of SPI.[11]

In a letter dated January 14, 1997,[12] SPI's counsel formally demanded upon petitioner to turn over to SPI all its equipment under his care and custody. Ignoring the demand, petitioner was thus indicted with the present case. SPI also filed a replevin case against him for the recovery of the electronic and computer boxes. Subsequently, and by virtue of the Writ of Replevin,[13] an electronic box found inside TAC's premises was recovered from petitioner while a computer box was later on surrendered to the Sheriff.

In his defense, petitioner alleged that his engineering firm TAC fabricated spare parts for SPI on a daily basis. Aside from this, it also did the repair and maintenance of SPI's machines. He also claimed that he had an understanding with SPI that TAC would support SPI's operation until its business standing improves. And since petitioner only had a 10% share in SPI, TAC would fabricate for it two additional machines valued at $60,000.00 each so that he could get additional 40% share therein.

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[9] TSN, January 28, 1998, p. 9.

[10] Exhibit "B", records, vol. I, p. 227-230.

[11] TSN, July 13, 1998, pp. 4-5.

[12] Exhibit "L", records, vol. I, p. 207.

[13] Exhibit "N", *id.* at 212-213.

Under this set-up, Samfit UK would provide the micro stepping motors and motor drives as well as the control panels. However, petitioner was not able to finish fabricating the bending machines as he was dismissed by SPI. As a consequence, he filed a labor case against it before the Department of Labor and Employment.

Petitioner further claimed that SPI owes him about a million pesos for the repairs of its machines. While he admitted that SPI's electronic transformer, computer boxes and motor drives were recovered while in his possession thru a writ of replevin, he reasoned out that he did not return them to SPI after his dismissal because he intended to exercise his right of lien over them since he has properties which were still in the possession of SPI, collectibles amounting to ₱900,000.00, and unpaid one—month salary of ₱80,000.00. Finally, he denied having appropriated the computer boxes for his own benefit.[14]

Ruling of the Regional Trial Court

After trial, the RTC found that the prosecution had established the guilt of petitioner for the crime of Estafa under paragraph 1(b), Article 315[15] of the Revised Penal Code (RPC). It ratiocinated that the unjustified failure of petitioner to account for and deliver to SPI, upon demand, the properties entrusted to his care, custody and management is sufficient evidence of actual conversion thereof to his personal use. The dispositive portion of the RTC Decision[16] rendered on January 15, 2001 reads:

WHEREFORE, the Court hereby sentences accused ANDRE D' AIGLE to suffer an indeterminate penalty of imprisonment of one

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[14] TSN, November 11, 1998, pp. 14-16.

[15] Article 315. *Swindling (estafa)* — Any person who shall defraud another by any of the means mentioned hereinbelow x x x

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[16] *Supra* note 3.

(1) year, eight (8) months and twenty (20) days of *prision correccional* as minimum to twenty (20) years of *reclusio*[*n*] *temporal* as maximum; to indemnify private complainant in the amount of ₱191,665.35 and to pay costs.

SO ORDERED.[17]

Aggrieved, petitioner seasonably appealed to the appellate court.

Ruling of the Court of Appeals

In a Decision[18] dated March 31, 2006, the CA denied petitioner's appeal and affirmed with modification the trial court's Decision, *viz*:

WHEREFORE, the decision of the Regional Trial Court of San Pedro, Laguna (Branch 93), dated January 15, 2001, in Criminal Case No. 0434-SPL, is MODIFIED to the effect that appellant is sentenced to an indeterminate sentence of six (6) years and one (1) day of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal,* as maximum. The decision is AFFIRMED in all other respects.

SO ORDERED.[19]

Petitioner's Motion for Reconsideration[20] was likewise denied in a Resolution[21] dated August 17, 2006.

Hence, this petition with the following assignment of errors:

I

THE COURT OF APPEALS ERRED IN DENYING PETITIONER—ACCUSED'[S] MOTION FOR RECONSIDERATION FOR LACK OF VALID REASONS/JUSTIFICATION.

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[17] Records, vol. II, p. 507.

[18] *Supra* note 2.

[19] CA *rollo*, p. 180.

[20] *Supra* note 5.

[21] *Supra* note 4.

II

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT, (RTC-BRANCH 93, SAN PEDRO, LAGUNA), AND AT THE SAME TIME MODIFYING THE EXTENT OF THE PENALTY [IMPOSED] FOR THE CRIME ALLEGEDLY COMMITTED.[22]

Our Ruling

After a circumspect consideration of the arguments earnestly pressed by the petitioner *vis-à-vis* that of the respondent People of the Philippines (respondent), and in the light of the practically parallel finding of facts and conclusions of the courts below, this Court finds the instant petition partly meritorious.

Concerning the first assigned error, the Court finds no cogent reason to sustain petitioner's claim that the appellate court erred in denying his Motion for Reconsideration without valid reason or justification. The reason for the appellate court's denial of petitioner's Motion for Reconsideration is clear and simple, that is, after it made a thorough evaluation of the issues and arguments proffered in the said motion, the CA found that same were already passed upon and duly considered in its assailed Decision. This is very plain from the contents of the August 17, 2006 Resolution of the CA denying petitioner's Motion for Reconsideration. Undoubtedly, petitioner's motion for reconsideration was denied due to a valid reason and justifiable cause.

Petitioner also bemoans the fact that the dispositive portion of the trial court's Decision did not expressly mention that he was found guilty beyond reasonable doubt of the crime charged. Suffice it to say, however, that a judgment is not rendered defective just because of the absence of a declaration of guilt beyond reasonable doubt in the dispositive portion. The *ratio decidendi* of the RTC Decision extensively discussed the guilt of the petitioner and no scintilla of doubt against the same was

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[22] *Rollo*, p. 43.

entertained by the courts below. Indeed, petitioner's guilt was duly proven by evidence of the prosecution. In any event, a judgment of conviction, pursuant to Section 2, Rule 120 of the Rules of Court, is sufficient if it states: "1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; 2) the participation of the accused in the offense, whether as principal, accomplice or accessory; 3) the penalty imposed upon the accused; and 4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived." We find that all of these are sufficiently stated in the trial court's Decision.

Anent the second assigned error, petitioner posits that the CA erred in affirming the said RTC Decision and in modifying the penalty imposed upon him since the prosecution failed to establish beyond reasonable doubt all the elements of estafa. He argues that Article 315, paragraph 1(b) of the RPC requires that the person charged was given juridical possession of the thing misappropriated. Here, he did not acquire juridical possession of the things allegedly misappropriated because his relation to SPI's properties was only by virtue of his official functions as a corporate officer. It is actually SPI, on whose behalf he has acted, that has the juridical possession of the said properties.

Respondent, through the Office of the Solicitor General, on the other hand counters that the prosecution's evidence has fully established all the elements of the crime charged. Based on SPI's records, petitioner received from it various equipment of SPI on several occasions for the sole purpose of manufacturing underwires for brassieres. However after the conduct of an audit in December 1996, petitioner failed to properly account therefor.

Petitioner's arguments fail to persuade.

Entrenched in jurisprudence are the following essential elements of Estafa under Article 315, paragraph 1(b) of the RPC:

1. That money, goods or other personal properties are received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return, the same;
2. That there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt;
3. That such misappropriation or conversion or denial is to the prejudice of another; and
4. That there is a demand made by the offended party on the offender.[23]

All these elements have been sufficiently established by the prosecution.

Petitioner asserts that as majority stockholder of TAC, he entered into a business transaction with SPI wherein it would fabricate bending machines and spare parts for the latter. Under their agreement, SPI would provide the necessary components to be used in the fabrication as well as the electronic devices while work would be done at petitioner's premises. Pursuant to this, petitioner admitted to having received from SPI an electronic transformer, electronic box and a computer box.[24] When petitioner, however, was not able to finish the work allegedly due to his dismissal from SPI, the latter demanded for the return of its properties. However, petitioner did not heed the demand and simply kept the properties as lien for his claims against SPI.[25]

From petitioner's own assertions, the existence of the first and fourth of the aforementioned elements is very clear. SPI's properties were received by the petitioner in trust. He received them for a particular purpose, that is, for the fabrication of bending machines and spare parts for SPI. And when SPI made

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[23] *Cruzvale, Inc. v. Eduque*, G.R. Nos. 172785-86, June 18, 2009, 589 SCRA 534, 545.

[24] TSN, November 11, 1998, p. 14.

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

a demand for their return after petitioner's alleged dismissal therefrom, petitioner deliberately ignored the same.

The Court cannot agree with petitioner's postulation that he did not acquire juridical possession of SPI's properties since his relation with the same was only by virtue of his official function as SPI's corporate officer. As borne out by the records, the equipment subject matter of this case were received in trust by petitioner from SPI to be utilized in the fabrication of bending machines. Petitioner was given absolute option on how to use them without any participation on the part of SPI. Thus, petitioner acquired not only physical possession but also juridical possession over the equipment. As the Court held in *Chua-Burce v. Court of Appeals*:[26]

> When the money, goods or any other personal property is received by the offender from the offended party (1) in *trust* or (2) on *commission* or (3) for *administration*, the offender acquires both material or physical possession and *juridical possession* of the thing received. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner. x x x

With regard to the element of misappropriation or conversion, the prosecution was able to prove this through circumstantial evidence. "Misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence."[27] The "failure to account upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation."[28] As mentioned, petitioner failed to account for, upon demand, the properties of SPI which were received by him in trust. This already constitutes circumstantial evidence of misappropriation or conversion of said properties to petitioner's own personal use. Even if petitioner merely retained the properties for the purpose of preserving his right of lien over them, same

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[26] 387 Phil. 15, 26 (2000).

[27] *Lee v. People*, *supra* note 1.

[28] *Id.*

is immaterial because, to reiterate, failure to return upon demand the properties which one has the duty to return is tantamount to appropriating the same for his own personal use. As correctly noted by the CA:

> We are not impressed by appellant's excuse. We note that SPI's demand for the return of the properties subject of this case was made on January 14, 1997. At that time, appellant was no longer the managing director of SPI, he having been terminated from his position on November 19, 1996. This observation, coupled with SPI's demand for the return of its equipment and materials, show that appellant had lost his right to retain the said properties and the fact that he failed to return or at least account for them raises the presumption of misappropriation and conversion. x x x[29]

Lastly, it is obvious that petitioner's failure to return SPI's properties valued at ₱191,665.35 caused damage and prejudice to the latter.

In a last ditch effort to evade liability, petitioner claims that the controversy between him and SPI is an intra-corporate controversy considering that he was a stockholder of the latter. Such being the case, he avers that his conviction for estafa has no basis.

Contrary, however to petitioner's stance, by no stretch of imagination can the Court consider the controversy between him and SPI as an intra-corporate controversy. As correctly pointed out by the CA:

> Finally, we find no cogent basis, in law and in fact, which would support appellant's allegation that the acts complained of in this case were corporate acts. His allegation without more that he had an agreement with Mr. Bernie Kelly of SPI to the effect that his (appellant's) share in SPI would be increased to 40% in exchange for two bending machines does not give his act of retaining the properties a semblance of a corporate act. There is also no evidence that he acted on behalf of TAC Manufacturing Corporation, much less of SPI. Premises considered, we do not agree that appellant's

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[29] CA Decision p. 13; CA *rollo*, p. 174.

actuation should be considered as a corporate act, for which he claims he could not be held personally liable. x x x[30]

Regarding the credibility of prosecution witnesses, the RTC found said witnesses to be credible and therefore their testimonies deserve full faith and credence. The CA for its part, did not disturb the trial court's appreciation of the same. It is a well-entrenched doctrine "that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties."[31] Though jurisprudence recognizes highly meritorious exceptions, none of them obtain herein which would warrant a reversal of the challenged Decision. Thus, the Court accords deference to the trial court's appreciation of said testimonies. Accordingly, the RTC's finding of petitioner's guilt, as affirmed by the CA, is sustained.

The proper imposable penalty

The penalty in estafa cases as provided under paragraph 1, Article 315 of the RPC is *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount of the fraud is over ₱12,000.00 but does not exceed ₱22,000.00. If the amount involved exceeds the latter sum, the same paragraph provides the imposition of the penalty in its maximum period with an incremental penalty of one year imprisonment for every ₱10,000.00 but in no case shall the total penalty exceed twenty (20) years imprisonment.

In the present case, petitioner poses no serious challenge to the amount involved which is ₱191,665.35. Since said amount is in excess of ₱22,000.00, the penalty imposable should be within the maximum term of six (6) years, eight (8) months and twenty-one (21) days to eight (8) years of *prision mayor*.[32]

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[30] *Id.* at 16; *id.* at 177.

[31] *Philippine Health-Care Providers, Inc. (Maxicare) v. Estrada*, G.R. No. 171052, January 28, 2008, 542 SCRA 616, 621.

[32] See *Diaz v. People*, G.R. No. 171121, August 26, 2008, 563 SCRA 322, 339.

"[A] period of one (1) year shall be added to the penalty for every additional ₱10,000.00 defrauded in excess of ₱22,000.00, but in no case shall the total penalty which may be imposed exceed twenty (20) years."[33] Hence, sixteen (16) years must be added to the maximum term of the penalty of *prision mayor*. And since same exceeds twenty (20) years, the maximum term should be pegged at twenty (20) years of *reclusion temporal*. Applying now the Indeterminate Sentence Law, the penalty next lower than that prescribed by law which is *prision correccional* in its maximum to *prision mayor* in its minimum is *prision correccional* in its minimum to medium periods. "Thus, the minimum term of the indeterminate sentence should be anywhere from six (6) months and one (1) day to four (4) years and two (2) months x x x."[34]

Prescinding from the foregoing discussion, the Court finds that the CA correctly pegged the penalty in its maximum term of twenty (20) years of *reclusion temporal* but erred in imposing the minimum term of six (6) years and one (1) day of *prision mayor* as same is beyond the lawful range. Thus, the Court sets the minimum term of the indeterminate penalty at four (4) years and two (2) months of *prision correccional.* Accordingly, petitioner is hereby sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

WHEREFORE, the petition is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. CR No. 25830 dated March 31, 2006 and August 17, 2006, respectively, are hereby **AFFIRMED** with the **MODIFICATION** that petitioner is sentenced to suffer an indeterminate penalty of imprisonment of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

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[33] *Id.*

[34] *Id.*

SO ORDERED.

*Carpio (Senior Associate Justice),** *Leonardo-de Castro (Acting Chairperson),*** *Villarama, Jr.,* and *Perlas-Bernabe,**** *JJ.,* concur.

THIRD DIVISION

[G.R. No. 174809. June 27, 2012]

DUTY FREE PHILIPPINES SERVICES, INC., *petitioner, vs.* **MANOLITO Q. TRIA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; CHANGE OF THEORY ON APPEAL IS NOT ALLOWED.—** It was only in petitioner's Petition for *Certiorari* before the CA did it impute liability on DFP as respondent's direct employer and as the entity who conducted the investigation and initiated respondent's termination proceedings. Obviously, petitioner changed its theory when it elevated the NLRC decision to the CA. The appellate court, therefore, aptly refused to consider the new theory offered by petitioner in its petition. As the object of the pleadings is to draw the lines of battle, so to speak, between the litigants, and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with its pleadings. It is a matter of law that when a party adopts a particular theory and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal. The

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* Per raffle dated June 25, 2012.

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

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

case will be reviewed and decided on that theory and not approached and resolved from a different point of view. The review of labor cases is confined to questions of jurisdiction or grave abuse of discretion. The alleged absence of employer-employee relationship cannot be raised for the first time on appeal. The resolution of this issue requires the admission and calibration of evidence and the LA and the NLRC did not pass upon it in their decisions. We cannot permit petitioner to change its theory on appeal. It would be unfair to the adverse party who would have no more opportunity to present further evidence, material to the new theory, which it could have done had it been aware earlier of the new theory before the LA and the NLRC. More so in this case as the supposed employer of respondent which is DFP was not and is not a party to the present case.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EMPLOYER HAS THE BURDEN TO PROVE JUST CAUSE FOR EMPLOYEE'S DISMISSAL; EMPLOYER FAILED TO DISCHARGE THE BURDEN.—** Petitioner dismissed respondent from employment based on the recommendation of the DFPDC holding respondent guilty of dishonesty for his direct participation in the "fake condemnation" and "pilferage" of the missing 1,020 Marlboro Pack of 5 cigarettes. Respondent was implicated in the anomalous transaction by his co-employees who pointed to the former as the one who ordered the other suspects to look for a vehicle that would be used to transport the subject cigarettes. This, according to the DFPDC, was odd and strange. With this act alone and by reason of his position, the DFPDC concluded, and affirmed by petitioner, that respondent definitely had knowledge of the "fake condemnation." From these circumstances, petitioner sustained the findings of dishonesty and dismissed respondent from employment. x x x [W]e agree with the appellate court that DFPDC's conclusions are not supported by clear and convincing evidence to warrant the dismissal of respondent. In illegal dismissal cases, the employer is burdened to prove just cause for terminating the employment of its employee with clear and convincing evidence. This principle is designed to give flesh and blood to the guaranty of security of tenure granted by the Constitution to employees under the Labor Code.

In this case, petitioner failed to submit clear and convincing evidence of respondent's direct participation in the alleged fake condemnation proceedings.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes and Manalastas for petitioner.
Eugeryl T. Rondario for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the Court of Appeals (CA) Decision[1] dated May 31, 2006 and Resolution[2] dated September 21, 2006 in CA-G.R. SP No. 70839. The assailed decision affirmed the National Labor Relations Commission (NLRC) Resolution[3] dated March 15, 2002 in NLRC NCR Case No. 00-12-009965-98, while the assailed resolution denied petitioner Duty Free Philippines Services, Inc.'s (DFPSI's) motion for reconsideration.

The facts, as found by the CA, are as follows:

Petitioner Duty Free Philippines Services, Inc. is a manpower agency that provides personnel to Duty Free Philippines *(DFP).*

On March 16, 1989, [respondent] Manolo Tria was employed by Petitioner and was seconded to DFP as a Warehouse Supervisor.

In an *Audit Report*, dated January 16, 1998, it was revealed that 1,020 packs of Marlboro bearing Merchandise Code No. 020101 under WRR No. 36-04032 were not included in the condemnation proceedings held on December 27, 1996 and that there were "*glaring*

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[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Elvi John S. Asuncion and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 33-41.

[2] *Rollo*, p. 44.

[3] Penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo, concurring; CA *rollo*, pp. 35-37.

discrepancies" in the related documents which "*indicate a malicious attempt to conceal an anomalous irregularity."* The relevant Request for Condemnation was found to have been fabricated and all signatories therein, namely, Ed Garcia, Stockkeeper; Catherino A. Bero, DIU Supervisor; and Constantino L. Cruz, were held *"accountable for the irregular loss of the unaccounted Marlboro KS Pack of 5..."*

After further investigation, it was discovered that the subject merchandise was illegally brought out of the warehouse and it was made to appear that in all the documents prepared said goods were legally condemned on December 27, 1996. Ed Garcia, one of the respondents in the Audit Review, implicated [respondent] and [two] others. Garcia claimed that he was unaware of the illegality of the transaction as he was only obeying the orders of his superiors who included [respondent]. Garcia disclosed that it was [respondent] who ordered him to look for a van for the supposed "*direct condemnation"* of the subject merchandise.

Consequently, the Discipline Committee *requested* [respondent] to submit a written reply/explanation regarding the findings in the Audit Report and the allegations of Garcia.

[Respondent] *denied* his participation in the illegal transaction. Although he admitted that he instructed Garcia to look for a van, it was for the purpose of transferring the damaged merchandise from the main warehouse to the proper warehouse for damaged goods.

On August 27, 1998, the DFP Discipline Committee [DFPDC] issued a *Joint Resolution* holding [respondent] "*GUILTY OF DISHONESTY for (his) direct participation in the fake condemnation" and pilferage of the missing 1,020 Marlboro Pack of 5's cigarettes ... and orders (his) DISMISSAL from the service for cause and for loss of trust and confidence, with forfeiture of all rights and privileges due them from the company, except earned salaries and leave credits."*

On September 18, 1998, Petitioner sent [respondent] a *memorandum* terminating his employment with Petitioner and his secondment to DFP "*on the basis of the findings and recommendation of the (DFP's) Discipline Committee."*

Aggrieved, [respondent] filed a Complaint against Petitioner for Illegal Dismissal and for payment of backwages, attorney's fees and damages.[4]

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[4] *Rollo*, pp. 34-36.

On May 31, 1999, the Labor Arbiter (LA) rendered a Decision[5] finding respondent to have been illegally dismissed from employment. The dispositive portion of the decision reads:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered ordering the respondent company to reinstate complainant to his former position with all the rights, privileges, and benefits appertaining thereto, including seniority, plus full backwages which as of May 31, 1999 already amount to ₱172,672.50. Further, the respondent is ordered to pay complainant the equivalent of ten percent (10%) of the total backwages as and for attorney's fees.
>
> The claim for damages is denied for lack of merit.
>
> SO ORDERED.[6]

On appeal, the NLRC affirmed[7] the LA decision, but deleted the award of attorney's fees. Petitioner's motion for reconsideration was also denied[8] on March 15, 2002.

When petitioner elevated the case to the CA, it denied for the first time the existence of employer-employee relationship and pointed to DFP as respondent's real employer. The appellate court, however, considered said defense barred by estoppel for its failure to raise the defense before the LA and the NLRC.[9] It nonetheless ruled that although DFPDC conducted the investigation, petitioner's dismissal letter effected respondent's termination from employment.[10] On the validity of respondent's dismissal from employment, the CA respected the LA and NLRC findings and reached the same conclusion that respondent was

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[5] CA *rollo*, pp. 49-55.

[6] *Id.* at 54-55.

[7] Embodied in a Decision dated January 21, 2002; penned by Commissioner Tito F. Genilo, with Presiding Commissioner Lourdes C. Javier and Commissioner Ireneo B. Bernardo, concurring; *id.* at 38-48.

[8] CA *rollo*, pp. 35-37.

[9] *Rollo,* p. 37.

[10] *Id.* at 38.

indeed illegally dismissed from employment.[11] Petitioner's motion for reconsideration was likewise denied in a Resolution[12] dated September 21, 2006.

Undaunted, petitioner elevates the case before the Court in this petition for review on *certiorari* based on the following grounds:

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT PETITIONER DFPSI IS LIABLE FOR ILLEGAL DISMISSAL AND DECLARE THAT:

A. DFPSI IS THE DIRECT EMPLOYER OF RESPONDENT INSTEAD OF DUTY FREE PHILIPPINES ("DFP"); AND

B. THE ISSUE AS TO WHO TERMINATED RESPONDENT WAS RAISED ONLY FOR THE FIRST TIME ON APPEAL.

THE COURT OF APPEALS GRAVELY ERRED AND RULED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT FAILED TO RULE ON THE LIABILITY OF DFP, AS AN INDISPENSABLE PARTY TO THE COMPLAINT FOR ILLEGAL DISMISSAL.

THE COURT OF APPEALS GRAVELY ERRED AND RULED CONTRARY TO LAW AND JURISPRUDENCE WHEN IT HELD THAT RESPONDENT'S EMPLOYMENT WAS ILLEGALLY TERMINATED.[13]

Petitioner insists that the CA erred in not considering its argument that it is not the employer of respondent. It likewise faults the CA in not ruling on the liability of DFP as an indispensable party.

We cannot sustain petitioner's contention. In its Position Paper,[14] petitioner highlighted respondent's complicity and involvement in the alleged "fake condemnation" of damaged cigarettes as found by the DFPDC. This, according to petitioner, was a just cause for terminating an employee.

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[11] *Id.* at. 40.

[12] *Id.* at 44.

[13] *Id.* at 14.

[14] CA *rollo*, pp. 59-72.

In its Motion for Reconsideration and/or Appeal,[15] petitioner insisted that there was basis for the termination of respondent's employment. Even in its Supplemental Appeal[16] with the NLRC, petitioner reiterated its stand that respondent was terminated for a just and valid cause and due process was strictly observed in his dismissal. It further questioned the reinstatement aspect of the LA decision allegedly because of strained relations between them.

With the aforesaid pleadings submitted by petitioner, together with the corresponding pleadings filed by respondent, the LA and the NLRC declared the dismissal of respondent illegal. These decisions were premised on the finding that there was an employer-employee relationship. [17] Nowhere in said pleadings did petitioner deny the existence of said relationship. Rather, the line of its defense impliedly admitted said relationship. The issue of illegal dismissal would have been irrelevant had there been no employer-employee relationship in the first place.

It was only in petitioner's Petition for *Certiorari* before the CA did it impute liability on DFP as respondent's direct employer and as the entity who conducted the investigation and initiated respondent's termination proceedings. Obviously, petitioner changed its theory when it elevated the NLRC decision to the CA. The appellate court, therefore, aptly refused to consider the new theory offered by petitioner in its petition. As the object of the pleadings is to draw the lines of battle, so to speak, between the litigants, and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with its pleadings.[18] It is a matter of law that when a party adopts a particular theory

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[15] *Id.* at 105-121.

[16] *Id.* at 141-156.

[17] *CAPANELA v. NLRC*, 311 Phil. 744, 755 (1995).

[18] *Cocomangas Hotel Beach Resort v. Visca*, G.R. No. 167045, August 29, 2008, 563 SCRA 705, 718; *Manila Electric Company v. Benamira*, G.R. No. 145271, July 14, 2005, 463 SCRA 331, 348-349.

and the case is tried and decided upon that theory in the court below, he will not be permitted to change his theory on appeal. The case will be reviewed and decided on that theory and not approached and resolved from a different point of view.[19]

The review of labor cases is confined to questions of jurisdiction or grave abuse of discretion.[20] The alleged absence of employer-employee relationship cannot be raised for the first time on appeal.[21] The resolution of this issue requires the admission and calibration of evidence and the LA and the NLRC did not pass upon it in their decisions.[22] We cannot permit petitioner to change its theory on appeal. It would be unfair to the adverse party who would have no more opportunity to present further evidence, material to the new theory, which it could have done had it been aware earlier of the new theory before the LA and the NLRC.[23] More so in this case as the supposed employer of respondent which is DFP was not and is not a party to the present case.

In *Pamplona Plantation Company v. Acosta,*[24] petitioner therein raised for the first time in its appeal to the NLRC that respondents therein were not its employees but of another company. In brushing aside this defense, the Court held:

x x x Petitioner is estopped from denying that respondents worked for it. In the first place, it never raised this defense in the proceedings before the Labor Arbiter. Notably, the defense it raised pertained to the nature of respondents' employment, *i.e.*, whether they are seasonal employees, contractors, or worked under the *pakyaw* system. Thus, in its Position Paper, petitioner alleged that some of the

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[19] *Cocomangas Hotel Beach Resort v. Visca*, *supra*.

[20] *Magnolia Dairy Products Corp. v. NLRC*, 322 Phil. 508, 516 (1996).

[21] *Id.*

[22] *Id.*

[23] *China Air Lines, Ltd. v. Court of Appeals*, G.R. Nos. L-45985 and L-46036, May 18, 1990, 185 SCRA 449, 458.

[24] G.R. No. 153193, December 6, 2006, 510 SCRA 249.

respondents are coconut filers and copra hookers or *sakadors*; some are seasonal employees who worked as scoopers or *lugiteros*; some are contractors; and some worked under the *pakyaw* system. In support of these allegations, petitioner even presented the company's payroll which will allegedly prove its allegations.

By setting forth these defenses, petitioner, in effect, admitted that respondents worked for it, albeit in different capacities. Such allegations are negative pregnant — denials pregnant with the admission of the substantial facts in the pleading responded to which are not squarely denied, and amounts to an acknowledgment that respondents were indeed employed by petitioner.[25] (Emphasis supplied.)

Also in *Telephone Engineering & Service Co., Inc. v. WCC, et al.,*[26] the Court held that the lack of employer-employee relationship is a matter of defense that the employer should properly raise in the proceedings below. The determination of this relationship involves a finding of fact, which is conclusive and binding and not subject to review by this Court.[27]

In this case, petitioner insisted that respondent was dismissed from employment for cause and after the observance of the proper procedure for termination. Consequently, petitioner cannot now deny that respondent is its employee. While indeed, jurisdiction cannot be conferred by acts or omission of the parties, petitioner's belated denial that it is the employer of respondent is obviously an afterthought, a devise to defeat the law and evade its obligations.[28]

It is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[29]

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[25] *Pamplona Plantation Company v. Acosta*, *supra*, at 253.

[26] 191 Phil. 663 (1981).

[27] *Telephone Engineering & Service Co., Inc. v. WCC, et al.*, *supra,* at 669.

[28] *Id.* at 670.

[29] *Manila Electric Company v. Benamira*, *supra* note 18, at 349.

Petitioner is bound by its submissions that respondent is its employee and it should not be permitted to change its theory. Such change of theory cannot be tolerated on appeal, not due to the strict application of procedural rules, but as a matter of fairness.[30]

As to the legality of respondent's dismissal, it is well settled that under Rule 45 of the Rules of Court, only questions of law may be raised, the reason being that this Court is not a trier of facts, and it is not for this Court to reexamine and reevaluate the evidence on record.[31] Findings of fact and conclusions of the Labor Arbiter as well as those of the NLRC or, for that matter, any other adjudicative body which can be considered as a trier of facts on specific matters within its field of expertise, should be considered as binding and conclusive upon the appellate courts.[32]

Petitioner dismissed respondent from employment based on the recommendation of the DFPDC holding respondent guilty of dishonesty for his direct participation in the "fake condemnation" and "pilferage" of the missing 1,020 Marlboro Pack of 5 cigarettes.[33] Respondent was implicated in the anomalous transaction by his co-employees who pointed to the former as the one who ordered the other suspects to look for a vehicle that would be used to transport the subject cigarettes. This, according to the DFPDC, was odd and strange. With this act alone and by reason of his position, the DFPDC concluded, and affirmed by petitioner, that respondent definitely had knowledge of the "fake condemnation." From these circumstances, petitioner sustained the findings of dishonesty and dismissed respondent from employment.

Again, we agree with the appellate court that DFPDC's conclusions are not supported by clear and convincing evidence

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[30] *Id.*

[31] *Pamplona Plantation Company v. Acosta*, *supra* note 24, at 252.

[32] *CAPANELA v. NLRC*, *supra* note 17, at 755-756.

[33] *Rollo*, p. 35.

to warrant the dismissal of respondent. In illegal dismissal cases, the employer is burdened to prove just cause for terminating the employment of its employee with clear and convincing evidence. This principle is designed to give flesh and blood to the guaranty of security of tenure granted by the Constitution to employees under the Labor Code.[34] In this case, petitioner failed to submit clear and convincing evidence of respondent's direct participation in the alleged fake condemnation proceedings. To be sure, unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees. In case of doubt, such cases should be resolved in favor of labor, pursuant to the social justice policy of labor laws and the Constitution.[35]

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. The Court of Appeals Decision dated May 31, 2006 and Resolution dated September 21, 2006, in CA-G.R. SP No. 70839, are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin,[*] *Abad,* and *Perlas-Bernabe, JJ.,* concur.

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[34] *Litton Mills, Inc. v. Sales*, 481 Phil. 73, 88 (2004).

[35] *Century Canning Corporation v. Ramil*, G.R. No. 171630, August 8, 2010, 627 SCRA 192, 202.

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

FIRST DIVISION

[G.R. No. 175055. June 27, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF MAXIMO PUYAT AND GLORIA PUYAT, represented by Attorney-in-Fact Marissa Puyat,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAW; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); JUST COMPENSATION; R.A. 6657 DETERMINES THE JUST COMPENSATION FOR LANDS ACQUIRED UNDER PRESIDENTIAL DECREE NO. 27.— It has been held that, when the government takes property pursuant to PD 27, but does not pay the landowner his just compensation until after RA 6657 has taken effect in 1988, it becomes more equitable to determine the just compensation using RA 6657. x x x In the case at bar, respondents' title to the property was cancelled and awarded to farmer-beneficiaries on March 20, 1990. In 1992, Land Bank approved the initial valuation for the just compensation that will be given to respondents. Both the taking of respondents' property and the valuation occurred during the effectivity of RA 6657. When the acquisition process under PD 27 remains incomplete and is overtaken by RA 6657, the process should be completed under RA 6657, with PD 27 and EO 228 having suppletory effect only. This means that PD 27 applies only insofar as there are *gaps* in RA 6657; where RA 6657 is sufficient, PD 27 is superseded. Among the matters where RA 6657 is sufficient is the determination of just compensation. In Section 17 thereof, the legislature has provided for the factors that are determinative of just compensation. Petitioner cannot insist on applying PD 27 which would render Section 17 of RA 6657 inutile.

2. ID.; ID.; ID.; ID.; IMPOSITION OF INTEREST RATE FOR DELAY IN PAYMENTS IS PROPER.— The 6% interest rate imposed by the trial and appellate courts would be a double imposition of interest had the courts below also applied DAR AO No. 13, series of 1994. But the fact remains that the courts

below did not apply DAR AO No. 13. In fact, that is precisely the reason why Land Bank appealed the trial court's decision to the CA, and the latter's decision to this Court. Therefore, Land Bank is cognizant that the lower courts' imposition of the 6% interest cannot constitute a double imposition of a legal interest. The Court is not unaware that current jurisprudence sets the interest rate for *delay* in payments in agrarian cases at 12% per annum. In the case at bar, however, the respondents did not contest the interest awarded by the lower courts and instead asked for the affirmance *in toto* of the appellate court's decision. In keeping with the demands of due process, therefore, the Court deems it fit not to disturb the interest rate imposed by the courts below.

3. ID.; ID.; ID.; ID.; WHERE REMAND OF THE CASE FOR VALUATION OF PROPERTIES PURSUANT TO REPUBLIC ACT NO. 9700 (R.A. 9700) WOULD BE ABHORRENT TO THE RULES OF FAIR PLAY.— There is no merit in Land Bank's motion to remand the case. RA 9700 took effect at a time when this case was already submitted for resolution. All the issues had been joined and the parties had argued exhaustively on their various contentions. The issue regarding the applicability of RA 9700 to the instant case was not among those discussed in the parties' memoranda. For us to rule that RA 9700 decrees a remand of the case would be abhorrent to the rules of fair play. Moreover, Land Bank's position — that RA 9700 decrees a wholesale remand of all cases involving the determination of just compensation so that they may all be resolved using Section 17 of RA 6657, *as amended by RA 9700*, no matter in what stage of proceedings they are found — is a contentious issue that should be ventilated in a proper case. It appears that the DAR itself, in implementing RA 9700, does not share Land Bank's position that all pending valuations shall be processed in accordance with Section 17 of RA 6657, *as amended by RA 9700*. x x x The Implementing Rules of RA 9700 thus authorize the valuation of lands in accordance with the *old* Section 17 of RA 6657, as amended (prior to further amendment by RA 9700), so long as the claim folders for such lands have been received by Land Bank prior to its amendment by RA 9700 in 2009. In the instant case, Land Bank received the claim folder for the respondents' property in 1992, which was long before the effectivity of

RA 9700 in 2009. Following DAR's own understanding of RA 9700, it appears that there is no reason to remand the case since the valuation can be determined in accordance with the *old* Section 17 of RA 6657, as amended (prior to further amendment by RA 9700).

4. **ID.; ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION WAS MADE WITH DUE CONSIDERATION FOR THE FACTORS PROVIDED UNDER R.A. 6657.—** The trial and appellate courts arrived at the just compensation with due consideration for the factors provided in Section 17 of RA 6657 (prior to its amendment by RA 9700). They took into account the nature of the property, its actual use or the crops planted thereon, the volume of its produce, and its value according to government assessors. As the CA correctly held, the determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. While the courts should be mindful of the different formulae created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Mercedes B. Evangelista for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

In agrarian reform cases, when the acquisition process under Presidential Decree (PD) No. 27 remains incomplete upon the effectivity of Republic Act (RA) No. 6657, the process should be completed under the new law.[1]

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[1] *Paris v. Alfeche*, 416 Phil. 473, 488 (2001).

Before the Court is a Petition for Review[2] assailing the June 28, 2006 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 86582. The dispositive portion of the assailed Decision reads:

> **WHEREFORE,** the decision dated May 11, 2004 as amended by the order dated September 3, 2004 is **AFFIRMED** subject to the modification that the reckoning of the 6% interest per annum shall be from March 21, 1990.
>
> Costs of suit shall be paid by the petitioner.
>
> **SO ORDERED.**[4]

Factual Antecedents

Gloria and Maximo Puyat,[5] both deceased, are the registered owners of a parcel of riceland consisting of 46.8731 hectares located in *Barangay Bakod Bayan*, Cabanatuan City, Province of Nueva Ecija (subject property). Respondents are the heirs of Gloria and Maximo Puyat, and the pro-indiviso co-owners of the subject property.

The records do not disclose when the Department of Agrarian Reform (DAR) placed 44.3090 hectares of Puyats' land under Operation Land Transfer pursuant to PD 27. It is, however, clear that the DAR issued several emancipation patents in favor of various farmer-beneficiaries in December 1989.[6] All of the said patents were annotated on Puyats' Transfer Certificate of

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[2] *Rollo*, pp. 25-55.

[3] *Id.* at 56-66; penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Martin S. Villarama, Jr. and Celia C. Librea-Leagogo.

[4] CA Decision, pp. 10-11; *id.* at 65-66.

[5] *Id.* at 111-115.

[6] There were several annotations appearing on Transfer Certificate of Title (TCT) No. 1773, which is Puyats' title to the subject property. There are ten (10) emancipation patents issued to various farmer-beneficiaries on December 8, 1989; ten (10) emancipation patents issued on December 11, 1989; and one (1) emancipation patent issued on December 20, 1989. (*Id.* at 112-115)

Title (TCT) No. 1773 on March 20, 1990, and thereby caused the concomitant partial cancellation of Puyats' title.

The Puyats did not receive any compensation for the cancellation of their title over the awarded portions of the subject property.

It was only on September 18, 1992 (more than two years after the DAR awarded the property to farmer-beneficiaries) that the Land Bank of the Philippines (Land Bank) received DAR's instruction to pay just compensation to the Puyats.[7] Accordingly, Land Bank made its initial valuation of ₱2,012.50 per hectare or a total of ₱92,752.10. Deducting the farmers' lease rentals amounting to ₱5,241.20, the Land Bank recommended the payment to the landowners of the net value of ₱87,510.90.[8] Respondents received Land Bank's initial valuation together with the Notice of Acquisition and Valuation Form, and rejected the valuation for being "ridiculously low."

The heirs of Puyat filed a complaint for determination and payment of just compensation[9] with the Regional Trial Court (RTC) of Cabanatuan City, Nueva Ecija on November 24, 1998. The complaint, docketed as Agr. Case No. 124-AF, was raffled to Branch 23 of the said court.

Respondents presented the supervising agriculturalist from the City Agro-Industrial Office, who testified that the average palay production for *Barangay Bakod Bayan* ranges from 70 to 80 cavans per hectare.[10] Another officer from the same office testified that the average annual palay production is around 65 cavans per hectare.[11] The zoning officer of the City Planning and Development Office testified that the subject property is located in the agro-industrial district, which is near the central

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[7] Claims Processing Form, *id.* at 124.

[8] *Id.*, *id.* at 125.

[9] *Id.* at 107-110.

[10] RTC Decision, pp. 2-3; *id.* at 131-132.

[11] *Id.* at 3; *id.* at 132.

business district of Cabanatuan City.[12] The zonal value determined by the Bureau of Internal Revenue (BIR) for this area is ₱10.00 per square meter.[13] Respondents prayed that their 468,731 square meter-property be valued at ₱100,000.00 per hectare.[14]

The Land Bank and the DAR answered that the valuation was made in strict compliance with the formula provided for lands acquired under PD 27 and Executive Order (EO) No. 228. DAR presented a memorandum dated 1976,[15] which shows that the average gross production for three years prior to 1976 was 23 cavans[16] per hectare only. It maintained that the valuation of respondents' property should be made using the prevailing rates on October 21, 1972, or the date when PD 27 took effect. Land Bank, on the other hand, presented its Claims Processing Form,[17] which showed that it set the valuation at ₱2,012.50. per hectare.[18]

Ruling of the Regional Trial Court

The trial court first determined what law should be applied in determining the just compensation due to respondents. According to the trial court, while the property was appropriated pursuant to PD 27, its valuation should be made in accordance with Section 17 of RA 6657.

The trial court found that respondents' property could yield an average of 65 cavans per hectare, per harvest season. It could be planted with rice and corn. It is located in an agro-industrial area, accessible by concrete roads, and properly serviced by telecommunication and other utilities. The BIR pegged the

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[12] *Id.*; *id.*

[13] *Id.* at 8; *id.* at 137.

[14] Complaint, pp. 2-3; *id.* at 108-109.

[15] RTC Decision, p. 6; *id.* at 135.

[16] Claims Processing Form, *id.* at 125.

[17] *Id.* at 124-127.

[18] Land Bank's Formal Offer of Exhibits; CA *rollo*, p. 81.

zonal value for this area at ₱10 per square meter, or ₱100,000.00 per hectare.

Taking the above factors in consideration, the court declared that the reasonable compensation for respondents' property should be ₱100,000.00 per hectare.

Since the government took the respondents' property on March 20, 1990 (the date when the emancipation patents were annotated on respondents' TCT No. 1773) without giving the respondents just compensation for such taking, there was delay in payment which justifies the imposition of legal interest. Thus, the trial court ordered the DAR, through the Land Bank, to pay 6% legal interest per annum from the date of taking until the amount is fully paid.

The trial court disposed of the case thus:

WHEREFORE, all premises considered, judgment is hereby rendered ordering defendant Department of Agrarian Reform through the defendant Land Bank of the Philippines to pay plaintiffs Gloria Puyat and all the Heirs of Maximo Puyat, thru their Attorney-in-Fact Marissa Puyat the total amount of Four Million Six Hundred Eighty Seven Thousand Three Hundred Ten (₱4,687,310.00) Philippine Currency, representing the just compensation of the property with a total area of 46.8731 hectares, situated in Barangay Bakod Bayan, Cabanatuan City, Nueva Ecija, covered by T.C.T No. 1773 with 6% legal interest per annum from date of taking (which the Court determines to be in 1990) until fully paid.

SO ORDERED.[19]

Upon Land Bank's motion, the trial court modified its decision by reducing the compensable area to the actual area acquired by the DAR. The court explained:

Considering that only 44.3090 hectares [were] distributed to farmer-beneficiaries this should only be the area to be compensated at the rate of ₱100,000.00 per hectare for a total amount of Four

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[19] RTC Decision, p. 9; *rollo*, p. 138; penned by Presiding Judge Lydia Bauto Hipolito.

Million Four Hundred Thirty Thousand Nine Hundred (₱4,430,900.00) Pesos.[20]

x x x x x x x x x

Wherefore, the Motion for Reconsideration is partially Granted.

The Decision dated May 11, 2004 is hereby amended and defendant Department of Agrarian Reform through the Land Bank of the Philippines [is] hereby directed to pay plaintiffs Gloria Puyat and the Heirs of Maximo Puyat, thru their Attorney-in-Fact Marissa Puyat, the amount of Four Million Four Hundred Thirty Thousand Nine Hundred (₱4,430,900.00) Pesos representing the just compensation of the covered 44.3090 hectares of their property (covered by TCT No. 1773) situated at Barangay Bakod Bayan, Cabanatuan City, which [were] actually distributed to farmer-beneficiaries with 6% legal interest per annum from the date of taking (in 1990) until fully paid.

SO ORDERED.[21]

Land Bank appealed the modified decision to the CA. It raised two main issues. *First*, it argued that the trial court erred in computing the just compensation using the factors provided in Section 17 of RA 6657. Since respondents' land was acquired in accordance with PD 27, its valuation should likewise be limited to the formula mandated under PD 27 and EO 228. *Second,* if the court followed the formula provided for lands acquired under PD 27 and EO 228, a 6% yearly compounded interest is already provided therein, hence the additional 6% legal interest imposed by the trial court would be redundant. The prayer reads:

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that after due consideration, a **DECISION** be rendered **ANNULLING AND SETTING ASIDE** the Decision dated 11 May 2004 x x x and the Order dated 03 September 2004 x x x for being **CONTRARY TO P.D. NO. 27 AND E.O. NO. 228**, and **RELEVANT/MATERIAL EVIDENCE PRESENTED**, and **TO ISSUE** another Decision **UPHOLDING** the **LAND VALUATION**

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[20] RTC Order, p. 1; *id.* at 139.

[21] *Id.* at 3; *id.* at 141.

based on the foregoing laws and evidence amounting to **EIGHTY NINE THOUSAND ONE HUNDRED SEVENTY ONE PESOS & 86/100 (PHP 89,171.86)** as the just compensation for the subject landholding.

x x x x x x x x x[22]

Ruling of the Court of Appeals

The appellate court noted that the question presented is what law should be used in the determination of just compensation of lands acquired pursuant to PD 27.[23] Corollarily, once a court determines which law governs just compensation, can its decision be limited to the formula provided in the administrative orders of the DAR?

The CA held that the determination of just compensation is a judicial function, which cannot be unduly restricted by requiring the courts to strictly adhere to formulae appearing in legislative or executive acts. Being a judicial function, courts can choose to rely on the factors enumerated in Section 17 of RA 6657, even if these factors do not appear in PD 27 or EO 228. Such reliance cannot be assailed as irregular or illegal considering that the courts would still rely on reasonable factors for ascertaining just compensation.[24]

The CA also explained that the imposition of legal interest on the just compensation is not an error. The legal interest was properly imposed considering that the Puyats were deprived of their property since March 20, 1990 without receiving just compensation therefor. However, in order to be precise, the CA modified the RTC Decision by imposing the legal interest not from "1990," but from March 20, 1990, which is the date when the emancipation patents were inscribed on TCT No. 1773.

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[22] Petitioner's Memorandum to the CA, pp. 24-25; *id.* at 169-170.

[23] CA Decision, p. 4; *id.* at 10.

[24] *Id.* at 6-9; *id.* at 12-15.

Land Bank moved for a reconsideration[25] of the adverse decision, which motion was denied by the appellate court in its October 16, 2006 Resolution.[26]

Issues

1. Can lands acquired pursuant to PD 27 be valued using the factors appearing in Section 17 of RA 6657?
2. Is it proper to impose the 6% legal interest per annum on the unpaid just compensation?
3. Should the case be remanded to the trial court for the recomputation of just compensation using Section 17 of RA 6657, as amended by RA 9700?

Land Bank argues that the just compensation must be valued at the time of taking of the property. Since respondents' lands were acquired pursuant to PD 27, it is deemed taken under the law operative since October 21, 1972 (the effectivity date of PD 27). Thus, Land Bank posits that the CA erred in computing the just compensation based on Section 17 of RA 6657, a law that came into effect ***after*** the time of taking.

Further, according to Land Bank, if PD 27 and EO 228 are to be applied, the interest rate is already provided for under DAR AO No. 13, series of 1994, as amended by DAR AO No. 2, series of 2004. Thus, the 6% interest on the just compensation imposed by the trial and appellate courts is erroneous for being a double interest and should be deleted.

Our Ruling

Which law determines the just compensation for lands acquired under Presidential Decree No. 27?

The Court has already resolved the first question posed by Land Bank in several decisions.[27] It has been held that, when

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[25] *Id.* at 72-88.

[26] *Id.* at 68-69.

[27] *Land Bank of the Philippines, v. Chico,* G.R. No. 168453, March 13, 2009, 581 SCRA 226, 241; *Land Bank of the Philippines v. Pacita Agricultural*

the government takes property pursuant to PD 27, but does not pay the landowner his just compensation until after RA 6657 has taken effect in 1988, it becomes more equitable to determine the just compensation using RA 6657. *Land Bank of the Philippines v. Natividad*[28] explained it thus:

Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals,* we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect [upon] payment of just compensation.

Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche.*

x x x x x x x x x

It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially

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Multi-Purpose Cooperative, G.R. No. 177607, January 19, 2009, 576 SCRA 291, 310; *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, November 27, 2008, 572 SCRA 108, 119; *Land Bank of the Philippines v. Heirs of Angel T. Domingo,* G.R. No. 168533, February 4, 2008, 543 SCRA 627, 642; *Land Bank of the Philippines v. Estanislao,* G.R. No. 166777, July 10, 2007, 527 SCRA 181, 187; *Lubrica v. Land Bank of the Philippines,* G.R. No. 170220, November 20, 2006, 507 SCRA 415, 423-424; *Meneses v. Secretary of Agrarian Reform*, G.R. No. 156304, October 23, 2006, 505 SCRA 90, 102; *Land Bank of the Philippines v. Natividad,* 497 Phil. 738, 746-747 (2005); *Paris v. Alfeche*, *supra* note 1.

[28] *Supra*.

imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.[29]

In the case at bar, respondents' title to the property was cancelled and awarded to farmer-beneficiaries on March 20, 1990. In 1992, Land Bank approved the initial valuation for the just compensation that will be given to respondents. Both the taking of respondents' property and the valuation occurred during the effectivity of RA 6657. When the acquisition process under PD 27 remains incomplete and is overtaken by RA 6657, the process should be completed under RA 6657, with PD 27 and EO 228 having suppletory effect only.[30] This means that PD 27 applies only insofar as there are *gaps* in RA 6657; where RA 6657 is sufficient, PD 27 is superseded. Among the matters where RA 6657 is sufficient is the determination of just compensation. In Section 17 thereof, the legislature has provided for the factors that are determinative of just compensation. Petitioner cannot insist on applying PD 27 which would render Section 17 of RA 6657 inutile.

Interest rate awarded for the delay

The trial and appellate courts imposed an interest of 6% per annum on the just compensation to be given to the respondents based on the finding that Land Bank was guilty of delay.

Land Bank maintains that the formula contained in DAR AO No. 13, series of 1994, already provides for 6% compounded interest. Thus, the *additional* imposition of 6% interest by the trial and appellate courts is unwarranted.[31]

There is a fallacy in Land Bank's position. The 6% interest rate imposed by the trial and appellate courts would be a double imposition of interest had the courts below also applied DAR

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[29] *Id.* at 746-747.

[30] *Paris v. Alfeche*, *supra* note 1.

[31] Petitioner's Memorandum, pp. 26-29; *rollo*, pp. 238-241.

AO No. 13, series of 1994. But the fact remains that the courts below did not apply DAR AO No. 13. In fact, that is precisely the reason why Land Bank appealed the trial court's decision to the CA, and the latter's decision to this Court. Therefore, Land Bank is cognizant that the lower courts' imposition of the 6% interest cannot constitute a double imposition of a legal interest.

The Court is not unaware that current jurisprudence sets the interest rate for *delay* in payments in agrarian cases at 12% per annum.[32] In the case at bar, however, the respondents did not contest the interest awarded by the lower courts and instead asked for the affirmance *in toto* of the appellate court's decision.[33] In keeping with the demands of due process, therefore, the Court deems it fit not to disturb the interest rate imposed by the courts below.

No need to remand

After the parties filed their respective memorandum in 2007 and submitted the case for resolution,[34] Congress passed a new agrarian reform law, RA 9700, which *further* amended RA 6657, as amended. RA 9700, entitled *An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of all Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, as amended, and Appropriating Funds Therefor*, took effect on July 1, 2009.[35]

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[32] *Apo Fruits Corporation v. Land Bank of the Philippines,* G.R. No. 164195, October 12, 2010, 632 SCRA 727, 746, 754 (This Resolution was affirmed with finality in the Court's Resolution dated April 5, 2011, 647 SCRA 207, 230); *Land Bank of the Philippines v. Wycoco,* 464 Phil. 83, 100 (2004).

[33] Respondent's Memorandum, p. 9; *rollo*, p. 265.

[34] Land Bank filed its Memorandum on September 17, 2007 (*id.* at 213), whereas respondents filed their Memorandum on October 15, 2007 (*id.* at 257).

[35] SECTION 34. Effectivity Clause. — This Act shall take effect on July 1, 2009 and it shall be published in at least two (2) newspapers of general circulation. (REPUBLIC ACT NO. 9700)

It provides in Section 5 thereof that all valuations that are "subject to challenge by the landowners" shall be "completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended." Section 5 of RA 9700 is reproduced below:

> SECTION 5. Section 7 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:
>
> > SEC. 7. Priorities. — The DAR, in coordination with the Presidential Agrarian Reform Council (PARC) shall plan and program the final acquisition and distribution ***of all remaining unacquired and undistributed agricultural lands*** from the effectivity of this Act until June 30, 2014. Lands ***shall be*** acquired and distributed as follows:
> >
> > Phase One: During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. x x x rice and corn lands under Presidential Decree No. 27; x x x: Provided, furthermore, That all previously acquired lands wherein valuation is subject to challenge by landowners ***shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended***; x x x[36]

Relatedly, RA 9700 amended Section 17 of RA 6657 by adding factors for the determination of just compensation, *i.e.*, the value of standing crop and seventy percent (70%) of the zonal valuation of the BIR, translated into a basic formula by the DAR. The amended provision reads as follows:

> SECTION 7. ***Section 17 of Republic Act No. 6657, as amended,*** is hereby further amended to read as follows:
>
> > SEC. 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated

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[36] REPUBLIC ACT NO. 9700 (Emphasis supplied).

> into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.[37]

Thus, in a Manifestation and Motion dated January 21, 2010,[38] Land Bank submits that RA 9700 has rendered its Petition moot and that the case should now be ***remanded*** to the trial courts so that the valuation for respondents' property may be made in accordance with Section 17 of RA 6657, as amended ***by*** RA 9700.

Respondents opposed. They maintained that there is no more need to remand the case to the trial court because their property has already been valued using Section 17 of RA 6657, as amended.[39]

There is no merit in Land Bank's motion to remand the case. RA 9700 took effect at a time when this case was already submitted for resolution. All the issues had been joined and the parties had argued exhaustively on their various contentions. The issue regarding the applicability of RA 9700 to the instant case was not among those discussed in the parties' memoranda. For us to rule that RA 9700 decrees a remand of the case would be abhorrent to the rules of fair play.

Moreover, Land Bank's position — that RA 9700 decrees a wholesale remand of all cases involving the determination of just compensation so that they may all be resolved using Section 17 of RA 6657, *as amended by RA 9700*, no matter in what stage of proceedings they are found — is a contentious issue that should be ventilated in a proper case. It appears that the DAR itself, in implementing RA 9700, does not share Land Bank's position

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[37] REPUBLIC ACT NO. 9700.

[38] *Rollo*, pp. 282-291.

[39] Respondents' Comments, pp. 6-7; *id.* at 303-304.

that all pending valuations shall be processed in accordance with Section 17 of RA 6657, *as amended by RA 9700.* Administrative Order No. 02, series of 2009 (DAR AO No. 02-09), which is the Implementing Rules of RA 9700 and which DAR formulated pursuant to Section 31[40] of RA 9700, provides:

VI. *Transitory Provision*

x x x x x x x x x

[W]ith respect to land valuation, all Claim Folders received by LBP ***prior to July 1, 2009*** shall be valued in accordance with Section 17 of R.A. No. 6657 ***prior to its amendment by R.A. No. 9700.***

The Implementing Rules of RA 9700 thus authorize the valuation of lands in accordance with the *old* Section 17 of RA 6657, as amended (prior to further amendment by RA 9700), so long as the claim folders for such lands have been received by Land Bank prior to its amendment by RA 9700 in 2009. In the instant case, Land Bank received the claim folder for the respondents' property in 1992,[41] which was long before the effectivity of RA 9700 in 2009. Following DAR's own understanding of RA 9700, it appears that there is no reason to remand the case since the valuation can be determined in accordance with the *old* Section 17 of RA 6657, as amended (prior to further amendment by RA 9700).

Further, DAR AO No. 02-09 makes clear distinctions with respect to the laws that should govern the valuation of lands, to wit:

IV. Statement of Policies

x x x x x x x x x

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[40] SECTION 31. Implementing Rules and Regulations. – The PARC and the DAR shall provide the necessary implementing rules and regulations within thirty (30) days upon the approval of this Act. Such rules and regulations shall take effect on July 1, 2009 and it shall be published in at least two (2) newspapers of general circulation. (REPUBLIC ACT NO. 9700)

[41] Claims Processing Form, *rollo*, p. 124.

D. *Land Valuation and Landowner Compensation*

1. The compensation for lands covered under RA 9700 shall be:

    a) the amount determined in accordance with the criteria ***provided for in Section 7 of the said law*** and existing guidelines on land valuation; x x x

2. All previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and ***finally resolved pursuant to Section 17 of R.A. No. 6657, as amended.***

In like manner, claims over tenanted rice and corn lands under P.D. No. 27 and Executive Order (E.O.) No. 228 whether submitted or not to the Land Bank of the Philippines (LBP) and not yet approved for payment shall be ***valued under R.A. No. 6657, as amended.***

Landholdings covered by P.D. No. 27 and falling under Phase I of R.A. No. 9700 shall be ***valued under R.A. No. 9700.***

The above shows DAR's opinion that valuations shall be made ***either*** under <u>RA 9700</u> ***or*** under "<u>Section 17 of R.A. No. 6657, as amended.</u>" It appears that lands yet to be acquired and distributed by the DAR when RA 9700 took effect shall be valued using RA 9700, while lands already acquired but unpaid when RA 9700 took effect shall be valued using "Section 17 of R.A. No. 6657, as amended" (*i.e.*, as amended by earlier amendatory laws, prior to further amendment by RA 9700). The administrative order, therefore, negates Land Bank's contention that all pending valuations should make use of Section 17 of RA 6657, as amended ***by RA 9700.*** Land Bank's contention must await resolution in a proper case where the issue is timely raised and properly argued by the parties. The instant case is not the suitable venue.

Lastly, in arriving at the valuations for respondents' property, the Court also considers that the courts below had already followed Section 17 of RA 6657, as amended. That RA 9700 added two new factors to the said provision, is not sufficient ground for remanding the case under the factual milieu of this case. To

remand the case now for another valuation, so that the two new factors may also be considered, appears impractical and inequitable. The respondents have been deprived of their property for 22 years. It is time that they receive what has long been due them.

No wanton disregard of the factors provided under Republic Act No. 6657

Land Bank maintains that, assuming *arguendo* that RA 6657 is the applicable law, the trial and appellate courts wantonly disregarded the basic valuation formula in DAR AO No. 5, series of 1998, which implements Section 17 of RA 6657. It insists that courts are not at liberty to dispense of these formulations at will. Land Bank thus asks that the case be remanded to the trial court for a proper determination of the just compensation in accordance with DAR AO No. 5, series of 1998.

We disagree. The trial and appellate courts arrived at the just compensation with due consideration for the factors provided in Section 17 of RA 6657 (prior to its amendment by RA 9700). They took into account the nature of the property, its actual use or the crops planted thereon, the volume of its produce, and its value according to government assessors. As the CA correctly held, the determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. While the courts should be mindful of the different formulae created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it.[42] *Apo Fruits Corporation v. Court of Appeals*[43] thoroughly discusses this issue, to wit:

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[42] *Land Bank of the Philippines v. Chico, supra* note 27 at 243; *Apo Fruits Corporation v. Court of Appeals,* G.R. No. 164195, December 19, 2007, 541 SCRA 117, 131-132.

[43] *Apo Fruits Corporation v. Court of Appeals, supra.*

x x x [T]he basic formula and its alternatives — administratively determined (as it is not found in Republic Act No. 6657, but merely set forth in DAR AO No. 5, Series of 1998) — although referred to and even applied by the courts in certain instances, does not and cannot strictly bind the courts. To insist that the formula must be applied with utmost rigidity whereby the valuation is drawn following a strict mathematical computation goes beyond the intent and spirit of the law. The suggested interpretation is strained and would render the law inutile. Statutory construction should not kill but give life to the law. As we have established in earlier jurisprudence, the valuation of property in eminent domain is essentially a judicial function which is vested in the regional trial court acting as a SAC, and not in administrative agencies. The SAC, therefore, must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be arbitrarily restricted by a formula dictated by the DAR, an administrative agency. Surely, DAR AO No. 5 did not intend to straightjacket the hands of the court in the computation of the land valuation. While it provides a formula, it could not have been its intention to shackle the courts into applying the formula in every instance. The court shall apply the formula after an evaluation of the three factors, or it may proceed to make its own computation based on the extended list in Section 17 of Republic Act No. 6657, which includes other factors[.] x x x[44]

As a final note, it has not escaped the Court's notice that the DAR and the Land Bank appear nonchalant in depriving landowners of their properties. They seem to ignore the requirements of law such as notice, valuation, and deposit of initial valuation before taking these properties, and yet they ask for a strict compliance with the law when it comes to compensating the landowners. This inequitable situation appears in innumerable cases and this Court feels duty-bound to remind the DAR and the Land Bank to give as much regard for the law when taking property as they do when they are ordered to pay for them. The rights of landowners cannot be lightly set aside and disregarded for the attainment of the lofty ideals of agrarian reform.

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

WHEREFORE, premises considered, the Petition is **DENIED** for lack of merit. The assailed June 28, 2006 Decision of the Court of Appeals in CA-G.R. SP No. 86582 is **AFFIRMED**.

SO ORDERED.

Velasco, Jr.,[*] *Leonardo-de Castro (Acting Chairperson),*[**] *Brion,*[***] and *Perlas-Bernabe,*[****] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 176692. June 27, 2012]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **VERONICA ATEGA NABLE,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAW; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); JUST COMPENSATION; COMPUTATION OF JUST COMPENSATION MUST CONFORM TO THE FACTORS LISTED IN SECTION 17 OF R.A. 6657.—** We cannot fail to note that the computation by the CA closely conformed to the factors listed in Section 17 of Republic Act No. 6657, especially the factors of the *actual use* and *income* of the affected landholding. The Court has consistently ruled that the ascertainment of just compensation by the RTC as SAC on the basis of the landholding's nature, location, market value,

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[*] Per raffle dated June 25, 2012.

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

[***] Per raffle dated June 25, 2012.

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

assessor's value, and the volume and value of the produce is valid and accords with Section 17. The Court has likewise ruled that in appraising just compensation the courts must consider, in addition, all the facts regarding the condition of the landholding and its surroundings, as well as the improvements and the capabilities of the landholding. Thus, we sustain the computation. x x x As the Court has already noted, the CA and the RTC did not disregard but applied the formula adopted in DAR AO No. 5. x x x [T]he RTC took into consideration not only the board of commissioners' report on the affected landholding's value, but also the several factors enumerated in Section 17 of Republic Act No. 6657 and the applicable DAR AOs as well as the value of the improvements.

2. ID.; ID.; ID.; ID.; *FARMING EXPERIENCE* AND *THUMB METHOD OF CONVERSION* TESTS ARE RELEVANT TO THE FACTORS LISTED IN RA 6657.— The Court finds nothing objectionable or irregular in the use by the RTC of the assailed the *farming experience* and the *thumb method of conversion* tests. Such tests are not inconsistent or incompatible with the factors listed in Section 17 of Republic Act No. 6657, as the aforequoted elucidation of the RTC shows. Although Section 17 of Republic Act No. 6657 has not explicitly mentioned the *farming experience* and the *thumb method of conversion* as methods in the determination of just compensation, LBP cannot deny that such methods were directly relevant to the factors listed in Section 17, particularly those on the nature, actual use and income of the landholding.

3. ID.; ID.; ID.; ID.; AWARD OF INTEREST AND COMMISSIONER'S FEE IS PROPER.— The CA correctly prescribed 12% interest *per annum* on the unpaid balance of 31,034,819.00 reckoned from the taking of the land in 1993 until full payment of the balance. This accords with our consistent rulings on the matter of interest in the expropriation of private property for a public purpose. x x x The charging of ₱25,000.00 as commissioners' fees against LBP is likewise upheld. Section 16, Rule 141 of the *Rules of Court*, expressly recognizes such fees. x x x [T]he Court finds the amount of ₱25,000.00 as fair and commensurate to the work performed by the commissioners[.]

4. ID.; ID.; ID.; ID.; DELETION OF ATTORNEY'S FEES, SUSTAINED .— We sustain the CA's deletion of the RTC's award of 10% attorney's fees. Under Article 2208, *Civil Code*, an award of attorney's fees requires factual, legal, and equitable justifications. Clearly, the reason for the award must be explained and set forth by the trial court in the body of its decision. The award that is mentioned only in the dispositive portion of the decision should be disallowed. Considering that the reason for the award of attorney's fees was not clearly explained and set forth in the body of the RTC's decision, the Court has nothing to review and pass upon now. The Court cannot make its own findings on the matter because an award of attorney's fees demands the making of findings of fact.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Blanco & Esguerra Law Office for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Land Bank of the Philippines (LBP) hereby assails the amount of ₱26,523,180.00 as just compensation for the taking of landowner Veronica Atega Nable's landholding pursuant to the Comprehensive Agrarian Reform Program (CARP) determined by the Regional Trial Court (RTC) as Special Agrarian Court (SAC) and affirmed by the Court of Appeals (CA).

Antecedents

Veronica Atega Nable (Nable) was the sole owner of a landholding consisting of three contiguous agricultural lots situated in Barangay Taligaman, Butuan City and covered by Original Certificate of Title (OCT) No. P-5 whose total area aggregated to 129.4615 hectares.[1] She had inherited the landholding from her late parents, Spouses Pedro C. Atega and Adela M. Atega.

[1] Records, pp. 2-3 and 16-19 (Folio 1).

In 1993, the Department of Agrarian Reform (DAR) compulsorily acquired a portion of the landholding with an area of 127.3365 hectares pursuant to Republic Act No. 6657 (*Comprehensive Agrarian Reform Law of 1988, or* CARL).[2] LBP valued the affected landholding at only ₱5,125,036.05,[3] but Nable rejected the valuation.[4]

On January 17, 2001, the Department of Agrarian Reform Adjudication Board (DARAB) affirmed the valuation of LBP.[5] After DARAB denied her motion for reconsideration,[6] Nable instituted against DAR and LBP a petition for the judicial determination of just compensation in the RTC in Butuan City, praying that the affected landholding and its improvements be valued at 350,000.00/hectare, for an aggregate valuation of ₱44,567,775.00.[7]

During pre-trial, the parties agreed to refer the determination of just compensation to a board of commissioners,[8] who ultimately submitted a written report to the RTC on June 27, 2003 recommending ₱57,660,058.00 as the just compensation for Nable.[9]

On November 26, 2004, the RTC rendered its judgment, as follows:

WHEREFORE, in the light of the foregoing consideration, this Court hereby renders judgment ordering the public defendants to pay the following:

a) The total amount of ₱26,523,180.00 for the land and improvements;

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[2] *Id.* at 20.

[3] *Id.* at 21.

[4] *Id.* at 4.

[5] *Id.* at 25-35.

[6] *Id.* at 582-583 (Folio 2).

[7] *Id.* at 1-15 (Folio 1).

[8] *Id.* at 123-124.

[9] *Id.* at 169-174.

b) The 6% interest based on the total amount as Just Compensation to be reckoned at the time of taking that is January 1993;

c) Commissioner's fee in the amount of ₱25,000.00;

d) Attorney's Fee which is 10% percent of the total amount awarded as Just Compensation; and

e) Litigation expenses.

SO ORDERED.[10]

The RTC later denied LBP's motion for reconsideration.[11]

On appeal, LBP urged in its petition for review that the RTC gravely erred as follows:

I

IN TOTALLY DISREGARDING DAR ADMINISTRATIVE ORDER (AO) NO. 11, S. OF 1994 AS AMENDED BY AO NO. 5, S. 1998 IN CONJUNCTION WITH SEC. 17, RA 6657 AND THE DECISION OF THE DARAB CENTRAL, QUEZON CITY [JC-RX-BUT-0055-CO-97] AND THE DECISION OF THE SUPREME COURT IN THE CASE OF VICENTE AND LEONIDAS BANAL VS. LANDBANK, G.R. NO. 143276 PROMULGATED ON 20 JULY 2004;

II

IN TAKING JUDICIAL NOTICE OF THE RESPONDENT'S CARETAKER AFFIDAVIT; FARMING EXPERIENCE" AND "RULE OF THUMB METHOD OF CONVERSION" IN DEROGATION OF THE PRODUCTION DATA FROM THE DEPARTMENT OF AGRICULTURE, AND PHILIPPINE COCONUT AUTHORITY (PCA) USED BY LBP/DAR IN THE DETERMINATION OF JUST COMPENSATION; AND

III

IN (1) AWARDING SIX (6%) PERCENT INTEREST ON THE TOTAL AMOUNT OF JUST COMPENSATION; (2) COMMISSIONER'S FEES

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[10] *Id.* at 426-434.

[11] Records, pp. 472-473 (Folio 1).

IN THE AMOUNT OF ₱25,000.00; AND (3) TEN (10%) ATTORNEY'S FEES OF THE TOTAL AMOUNT AWARDED.

On August 17, 2006, the CA affirmed the RTC judgment with modifications,[12] to wit:

IN THE LIGHT OF THE FOREGOING, the petition for review is DENIED for lack of merit. The assailed decision is AFFIRMED with MODIFICATION that the just compensation of the subject property is ₱36,159,855.00 less the amount of ₱5,125,036.05 paid by petitioner to private respondent.

Petitioner Bank is hereby ORDERED to immediately pay:

A] Respondent the remaining balance of ₱31,034,819.00 plus twelve (12%) percent per annum as interest (computed from the above remaining balance and from 1993 until full payment thereof); and

B] Mr. Hospicio T. Suralta, Jr., Mr. Rogelio C. Virtudazo, and Mr. Simeon E. Avila, Jr. the sum of ₱25,000.00 as Commissioners' fee.

The Writ of Preliminary Injunction issued is hereby DISSOLVED.

SO ORDERED.

Upon denial of its motion for reconsideration on January 30, 2007,[13] LBP has appealed by petition for review on *certiorari*.

Issues

LBP asserts that:

A

THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE SAC's DECISION WHICH TOTALLY DISREGARDED SEC. 17, RA 6657 IN CONJUNCTION WITH DAR ADMINISTRATIVE ORDER (AO) NO. 11, S. OF 1994 AS AMENDED BY AO NO. 5, S. 1998; THE DECISION OF

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[12] *Rollo*, pp. 74-102.

[13] *Id.* at 103.

THE DARAB CENTRAL, QUEZON CITY [JC-RX-BUT-0055-CO-97] AND THE DECISION OF THE SUPREME COURT IN THE CASE OF VICENTE AND LEONIDAS BANAL VS. LANDBANK, G.R. NO. 143276 PROMULGATED ON 20 JULY 2004 AND LBP VS CELADA, G.R. NO. 164876 PROMULGATED ON 23 JANUARY 2006.

B

THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE SAC's DECISION WHICH TAKE JUDICIAL NOTICE OF THE RESPONDENT'S OWN FACTORS OF VALUATION SUCH AS CARETAKER AFFIDAVIT; "FARMING EXPERIENCE" AND "RULE OF THUMB METHOD OF CONVERSION" WHICH ARE NOT RELATED TO OR NECESSARILY IMPLIED FROM THE FACTORS ENUMERATED UNDER SEC. 17, RA 6657 AND DAR AOs.

C

THE COURT OF APPEALS GRAVELY ERRED IN GIVING PROBATIVE VALUE AND JUDICIAL NOTICE TO THE BOARD OF COMMISSIONER'S REPORT WHICH IS NOT ONLY HEARSAY AND IRRELEVANT AS NO HEARING WAS CONDUCTED THEREON IN VIOLATION OF SEC. 3, RULE 129 OF THE RULES OF COURT AS THE PARTIES WERE REQUESTED TO SUBMIT THEIR RESPECTIVE MEMORANDA.

D

THE COURT OF APPEALS GRAVELY ERRED IN AWARDING (1) TWELVE (12%) PER CENT INTEREST PER ANNUM COMPUTED FROM THE REMAINING BALANCE OF ₱31,034,819.00 FROM 1993 UNTIL FULL PAYMENT THEREOF; (2) COMMISSIONER'S FEES IN THE AMOUNT OF ₱25,000.00; AND (3) TEN (10%) PER CENT ATTORNEY'S FEES OF THE TOTAL AMOUNT AWARDED.[14]

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[14] *Id.* at 28-31.

Ruling

The appeal lacks merit.

I.

The CA and the RTC did not disregard Section 17, Republic Act No. 6657, and DAR AO No. 5, Series of 1998

Section 4, Article XIII, of the Constitution has mandated the implementation of an agrarian reform program for the distribution of agricultural lands to landless farmers subject to the payment of just compensation to the landowners, *viz*:

> Section 4. The Sate shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the rights of small landowners. The State shall further provide incentives for voluntary land-sharing.

The Congress has later enacted Republic Act No. 6657 to implement the constitutional mandate. Section 17 of Republic Act No. 6657 has defined the parameters for the determination of the just compensation, *viz*:

> Section 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and 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 nonpayment 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 Congress has thereby required that any determination of just compensation should consider the following factors, namely: (*a*) the cost of the acquisition of the land; (*b*) the current value of like properties; (*c*) the nature, actual use and income of the land; (*d*) the sworn valuation by the owner; (*e*) the tax declarations; (*f*) the assessment made by government assessors; (*g*) the social and economic benefits contributed to the property by the farmers and farmworkers and by the Government; and (*h*) the fact of the non-payment of any taxes or loans secured from any government financing institution on the land.

Pursuant to its rule-making power under Section 49 of Republic Act No. 6657,[15] the Department of Agrarian Reform (DAR) promulgated DAR Administrative Order (AO) No. 6, Series of 1992, DAR AO No. 11, Series of 1994 (to amend AO No. 6), and DAR AO No. 5, Series of 1998 (to amend AO No. 11) ostensibly to translate the factors provided under Section 17 in a basic formula. The formulae embodied in these AOs have been used in computing the just compensation upon taking into account all the factors stated in Section 17, *supra*. It is relevant to note that the Court has consistently regarded reliance on the formulae under these AOs to be mandatory.[16]

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[15] Section 49. *Rules and Regulations*. — The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation.

[16] *Land Bank of the Philippines v. Escandor*, G. R. No. 171685, October 11, 2010, 632 SCRA 504, 515; *Land Bank of the Philippines v. Barrido*, G.R. No. 183688, August 18, 2010, 628 SCRA 454, 460; *Land Bank of the Philippines v. Kumassie Plantation Company Incorporated,* G.R. No. 177404, December 4, 2009, 607 SCRA 365, 369; *Land Bank of the Philippines v. Belista*, G.R. No. 164631, June 26, 2009, 591 SCRA 137; *Land Bank of the Philippines v. Heirs of Honorato De Leon*, G.R. No. 164025, May 8, 2009, 587 SCRA 454, 462; *Allied Bank Corporation v. Land Bank of the Philippines*, G.R. No. 175422, March 13, 2009, 581 SCRA 301, 310; *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, November 27, 2008, 572 SCRA 108; *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, G.R. No. 175175, September 29, 2008, 567 SCRA 31; *Meneses v. DAR Secretary,* G. R. No. 156304, October 23, 2006, 505 SCRA 90; *Land Bank of the Philippines v. Wycoco,* G.R. No. 140160, January 13, 2004, 419 SCRA 67.

Of relevance here is DAR AO No. 5, whose formula of just compensation follows:

A. II. The following rules and regulations are hereby promulgated to govern the valuation of lands subject of acquisition whether under voluntary offer to sell (VOS) or compulsory acquisition (CA).

A. 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 three factors are present, relevant, and applicable.

A1. 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)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2.

The RTC found that the entire landholding was prime coconut land located along the national highway planted to 95 fruit—bearing coconut trees per hectare, more or less, or a total of 12,153 fruit-bearing coconut trees. It ascertained Nable's just compensation by considering the affected landholding's nature, location, value and the volume of the produce, and by applying the formula under DAR AO No. 5, Series of 1998, *viz*:

x x x x x x x x x

Nonetheless, the said report (commissioners' report) impliedly belied the classification made by the defendants (DAR and LBP) by stating among others, that the land is **fully cultivated** contrary to the allegation that portion of which is an idle land. While this Court may affirm, modify or disregard the Commissioner's Report, **the Court may consider the number of listed coconut trees and bananas actually counted by the Board during their field inspection**.

x x x x x x x x x

The Court is of the opinion that the **actual production data** not the government statistics is the most accurate data that should be used if only to reflect the true and fair equivalent value of the property taken by the defendant through expropriation. Considering the number of coconut trees to a high of 12,153 all bearing fruits, it would be contrary to farming experience involving coconuts to have an average production per month of 2,057.14 kilos without necessarily stating that the said land is **classified as prime coconut land**. Apportioning the number of coconut trees to the total land area would yield, more or less 95 trees per hectare well within the **classification of a prime coconut land**.

Even the settled rule of thumb method of conversion, 1000 kilos of nuts make 250 kilos copra resecada long before adopted by coconut farmers spells substantial difference. The Court deems it more reasonable the **production data** submitted by the plaintiff supported by the affidavit of Mrs. Wilma Rubi, to wit:

x x x **Hence, the computation of the just compensation of the subject land, to wit:**

FORMULA: LV = (CNI X 0.6) + (CS X 0.3) + (MV X 0.1)

WHERE: LV = Land Values

CNI = Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration

Since the Comparable Sales factor is missing, the formula shall be as follows:

LV = (CNI X 0.9) + (MV X 0.1)

To compute the CNI, the following formula shall be used, to wit:

$$CNI = \frac{(AGP \times SP) - CO}{0.12}$$

The cost of operation could not be obtained or verified and since the landholdings subject in the instant case are planted to coconut which are productive at the time of Field Investigation (FI), it will continue to use the assumed NIR of 70%.

Thus, the computation, to wit:

$$CNI = \frac{(AGP \times SP\ (70\%)}{.12}$$

$$= \frac{(5{,}671.3 \text{ kls.} \times 5.93)\ 70\%}{.12}$$

$$= \frac{23{,}541.56}{.12}$$

CNI = 196,179.7

LV = (196,179.7 X 0.9) + (14,158 X 0.1)

= 176,561.73 + 1,415.8

LV = ₱22,662,466

Improvements:

Computation:

x x x x x x x x x

Total - ₱3,860,714.00

Summary Computation of Total Just Compensation:

1) Land Value - ₱22,662,466.00

2) Improvements - ₱ 3,860,714.00

Total - ₱26,523,180.00

"Just compensation means the equivalent for the value of the property at the time of its taking. It means a fair and full equivalent value for the loss sustained. All the facts as to the condition of the property and its surroundings, its improvements and capabilities should be considered" (Export Processing Zone Authority vs. Dulay 149

SCRA 305 [1987]). Consistent with the said ruling, the Court considered the findings of the commissioners as to the plants/fruit tree introduced into the land constituting as **valuable improvements** thereto. Thus, the above computation.

x x x x x x x x x

Considering therefore the **actual production** in addition with the desirable land attributes as a contiguous titled property **fertile**, with **valuable intercrops**, constituting as **improvements**, **fully cultivated**, **proximate location along the national highway**, the Court deems it just and equitable the valuation in total per Court's computation.[17]

The CA affirmed the RTC's valuation upon finding that the evidence on record substantiated the valuation, but saw the need to correct the amount from ₱26,523,180.00 to ₱31,034,819.00 because of the RTC's honest error in calculation. The CA's following explanation for its affirmance is worth noting:

To recapitulate, the Annual and Monthly Gross Production of copra on the subject property are as follows:

	Average Yearly Production	Average Monthly Production
Directly Processed Copra –	15,580 kilos	1,298.3 kilos
Whole Nuts Resecada - (converted tibook)	209,908 kilos	4,373 kilos
		5,671.3 kilos

We likewise observe that in the computation of the CNI OR Capitalized Net Income, both DARAB and the court *a quo* used the following formula:

$$CNI = \frac{(AGP \times SP) - CO}{.12}$$

Unfortunately, DARAB and **the court *a quo* committed an error in the calculation thereon** (emphasis supplied). After multiplying

[17] Records (Folio 1), pp. 428-433 (emphases supplied).

the AGP (Average Gross Production) from SP (Selling Price/kilo), they multiplied the result with the CO (Cost of Operation), instead of subtracting the same as reflected in the above formula.

Thus, pursuant to Administrative Order No. 11, as amended, the correct computation should be:

$$\mathbf{CNI = \frac{(AGP \times SP) - CO}{.12}}$$

Wherein: AGP – 5,671.3 kilos (Average Gross Production)

SP - ₱5.93/kilo (Selling Price – from PCA data)

CO – 70% (assumed Cost of Operations, AO No. 11)

$$= \frac{(5{,}671.53 \text{ kilos} \times 5.93) - 70\%}{.12}$$

$$= \frac{33.632.17 - .7}{.12}$$

$$= \frac{33.631.472}{.12}$$

CNI = 280,262.26

To compute the Land Value (LV) per hectare, we use the formula as prescribed by Administrative Order No. 11, as amended:

LV = (CNI x 0.9) + (CS x 0.3) + (MV x 0.1)

WHERE: LV = Land Values

CNI = Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration

When CS is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

Wherein: CNI – 280,262.26

MV - ₱14,158.40 (Market Value per Tax Declaration of the subject property)

LV = (280,262.26 x 0.9) + (₱14,158.40 x 0.1)

= 252,236.03 + ₱1,415.84

LV = ₱253,651.87/hectare

Total Land Value = ₱253,651.87 hectare x 127.3365 hectares

= ₱32,299,141.00

Summary of Valuation:

1) Total Land Value - ₱32,299,141.00
2) Improvements - ₱3,860,714.00 (as found by the court *a quo*)

TOTAL - ₱36,159,855.00

Hence, the correct just compensation that must be paid to herein respondent is **Thirty Six Million One Hundred Fifty Nine Thousand Eight Hundred Fifty Five Pesos (₱36,159,855.00).**[18]

x x x

In the case at bench, petitioner Bank initially paid respondent the sum of ₱5,125,036.05 on August 26, 1993. The total just compensation payable to the latter, as computed above, is ₱36,159,855.00. **Hence, the difference of ₱31,034,819.00** (emphasis supplied) must earn the interest of 12% per annum, or ₱3,724,178.20, from 1993 until fully paid thereon in order to place the owner in a position as good (but not better than) the position she was in before the taking occurred as mandated by the Reyes doctrine.[19] (Emphasis supplied)

We cannot fail to note that the computation by the CA closely conformed to the factors listed in Section 17 of Republic Act No. 6657, especially the factors of the *actual use* and *income* of the affected landholding. The Court has consistently ruled that the ascertainment of just compensation by the RTC as SAC on the basis of the landholding's nature, location, market value, assessor's value, and the volume and value of the produce is valid and accords with Section 17, *supra*.[20] The Court has

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[18] *Rollo*, pp. 89-91.

[19] *Id.* at 97.

[20] See, *e.g., Land Bank of the Philippines v. Chico*, G.R. No. 168453, March 13, 2009, 581 SCRA 226, 242; *Land Bank of the Philippines v.*

likewise ruled that in appraising just compensation the courts must consider, in addition, all the facts regarding the condition of the landholding and its surroundings, as well as the improvements and the capabilities of the landholding.[21] Thus, we sustain the computation.

We also stress that the factual findings and conclusions of the RTC, when affirmed by the CA, are conclusive on the Court. We step in to review the factual findings of the CA only when we have a compelling reason to do so, such as any of the following:

1. When the factual findings of the CA and the RTC are contradictory;
2. When the findings are grounded entirely on speculation, surmises, or conjectures;
3. When the inference made by the CA is manifestly mistaken, absurd, or impossible;
4. When there is grave abuse of discretion in the appreciation of facts;
5. When the CA, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
6. When the judgment of the CA is premised on a misapprehension of facts;
7. When the CA fails to notice certain relevant facts that, if properly considered, will justify a different conclusion;

Heirs of Angel T. Domingo, G.R. No. 168533, February 4, 2008, 543 SCRA 627, 643; *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, February 6, 2007, 514 SCRA 537, 566; *Land Bank of the Philippines v. Natividad*, G.R. No. 127198, May 16, 2005, 458 SCRA 441, 452-453.

[21] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 19, 2007, 541 SCRA 117, 132; *National Power Corporation v. Manubay Agro-Industrial Development Corporation*, G.R. No. 150936, August 18, 2004, 437 SCRA 60, 69; *Export Processing Zone Authority v. Dulay*, No. 59603, April 29, 1987, 149 SCRA 305, 315.

8. When the findings of fact are themselves conflicting;
9. When the findings of fact are conclusions without citation of the specific evidence on which they are based; and,
10. When the findings of fact of the CA are premised on the absence of evidence, but such findings are contradicted by the evidence on record.[22]

Considering that LBP has not shown and established the attendance of any of the foregoing compelling reasons to justify a review of the findings of fact of the CA, we do not disturb the findings of fact of the CA and the RTC.

Nonetheless, LBP urges that the CA should have relied on the rulings in *Land Bank of the Philippines v. Banal*[23] and *Land Bank of the Philippines v. Celada*[24] in resolving the issue of just compensation.

In *Banal*, the Court invalidated the land valuation by the RTC because the RTC did not observe the basic rules of procedure and the fundamental requirements in determining just compensation cases. In *Celada*, the Court set aside the land valuation because the RTC had used only one factor in valuing the land and had disregarded the formula under DAR AO No. 5, Series of 1998. The Court stated that the RTC "was at no liberty to disregard the formula which was devised to implement the said provision."[25] Thus, LBP submits that the RTC's land valuation, as modified by the CA, should be disregarded because of the failure to consider the factors listed in Section 17 of RA 6657 and the

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[22] *Fuentes v. Court of Appeals*, G. R. No. 109849, February 26, 1997; 268 SCRA 703, 708-709; *Sta. Maria v. Court of Appeals*, G. R. No. 127549, January 28, 1998; 285 SCRA 351, 357-358; *Reyes v. Court of Appeals (Ninth Division)*, G. R. No. 110207, July 11, 1996, 258 SCRA 651, 659; *Floro v. Llenado*, G.R. No. 75723, June 2, 1995, 244 SCRA 713, 720; *Remalante v. Tibe*, No. 59514, February 25, 1988, 158 SCRA 138, 145.

[23] G.R. No. 143276, July 20, 2004, 434 SCRA 543.

[24] G.R. No. 164876, January 23, 2006, 479 SCRA 495.

[25] *Id.*

formula prescribed under DAR AO No. 5, Series of 1998, amending DAR AO No. 11, Series of 1994.

LBP's submission is grossly misleading. As the Court has already noted, the CA and the RTC did not disregard but applied the formula adopted in DAR AO No. 5. Moreover, the reasons for setting aside the RTC's determinations of just compensation in *Banal* and *Celada* did not obtain here. In *Banal*, the RTC as SAC did not conduct a hearing to determine the landowner's compensation with notice to and upon participation of all the parties, but merely took judicial notice of the average production figures adduced in *another* pending land case and used the figures without the consent of the parties.[26] The RTC did not also appoint any commissioners to aid it in determining just compensation. In contrast, the RTC as SAC herein conducted actual hearings to receive the evidence of the parties; appointed a board of commissioners to inspect and to estimate the affected landholding's value; and gave due regard to the various factors before arriving at its valuation. In *Celada*, the Court accepted the valuation by LBP and set aside the valuation determined by the RTC because the latter valuation had been based "solely on the observation that there was a patent disparity between the price given to the respondent and the other landowners."[27] Apparently, the RTC had used only a single factor in determining just compensation. Here, on the other hand, the RTC took into consideration not only the board of commissioners' report on the affected landholding's value, but also the several factors enumerated in Section 17 of Republic Act No. 6657 and the applicable DAR AOs as well as the value of the improvements.

II.
***Farming Experience* and *Rule of Thumb Method of Conversion* are relevant to the statutory factors for determining just compensation**

The RTC elucidated:

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[26] *Supra*, note 23, pp. 550-551.

[27] *Supra*, note 24, pp. 505-506.

The Court is of the opinion that the actual production data not the government statistics is the most accurate data that should be used if only to reflect the true and fair equivalent value of the property taken by the defendant through expropriation. Considering the number of coconut trees to a high of 12,153 all bearing fruits, it would be contrary to **farming experience** involving coconuts to have an average production per month of 2,057.14 kilos without necessarily stating that the said land is classified as prime coconut land. Apportioning the number of coconut trees to the total land area would yield, more or less 95 trees per hectare well within the classification of a prime coconut land.

Even the settled rule of **thumb method of conversion**, 1000 kilos of nuts make 250 kilos *copra resecada* long before adopted by coconut farmers spells substantial difference. The Court deems it more reasonable the production data submitted by the plaintiff supported by the affidavit of Mrs. Wilma Rubi, to wit:

COPRA RESECADA:

Months	No. of Kilos	Sales
a.) November 1992	No copra	-0-
b.) October 1992	1,416	₱ 9,345.60
c.) September 1992	2,225	₱ 14,540.65
d.) August 1992	No copra	-0-
e.) July 1992	323.5	₱ 2,523.30
f.) June 1992	1,867	₱ 15,946.10
g.) May 1992	713	₱ 5,940.60
h.) April 1992	746	₱ 6,490.20
i.) March 1992	1,962.5	₱ 16,485.00
j.) February 1992	2,652.5	₱ 22,281.00
k.) January 1992	495.5	₱ 4,558.00
l.) December 1991	3,178.5	₱ 27,419.05
	15,580	₱ 125,080.10

x x x x x x x x x

The defendant (LBP) did not bother to disprove the aforestated documentary evidence submitted by the plaintiff (Nable). However, the selling price/kilo (SP/Kg.) used by the defendants (DAR and LBP) in their computation is more reasonable/fair price per kilo of copra during the time of taking. The time of taking must have relevance on the determination of the selling price (SP) prevailing when expropriation was effected. x x x[28]

LBP protests the use by the RTC of the *farming experience* and the *thumb method of conversion* as gauges of the justness of LBP and DARAB's valuation of the affected landholding.

The Court finds nothing objectionable or irregular in the use by the RTC of the assailed the *farming experience* and the *thumb method of conversion* tests. Such tests are not inconsistent or incompatible with the factors listed in Section 17 of Republic Act No. 6657, as the aforequoted elucidation of the RTC shows.

Although Section 17 of Republic Act No. 6657 has not explicitly mentioned the *farming experience* and the *thumb method of conversion* as methods in the determination of just compensation, LBP cannot deny that such methods were directly relevant to the factors listed in Section 17, particularly those on the nature, actual use and income of the landholding.

III.

LBP was allowed the opportunity to refute the Commissioners' Report and Rubi's affidavit

LBP insists that the CA and the RTC both erred in relying on the Commissioners' Report and on caretaker Wilma Rubi's affidavit because the RTC did not conduct a hearing on the motion to approve the Commissioners' Report; and because it (LBP) was deprived of the opportunity to contest the Commissioners' Report and Wilma Rubi's affidavit.

LBP's insistence is factually and legally unwarranted.

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[28] Records (Folio 1), pp. 429-430 (emphases supplied).

It appears that upon its receipt of the Commissioners' Report, LBP submitted to the RTC on July 30, 2003 an opposition to the Commissioners' Report and to Nable's motion to approve the Commissioners' Report;[29] and that the RTC later sent to LBP a notice for the hearing on September 19, 2003 of the motion to approve the Commissioner's Report.[30] LBP's counsel received the notice of hearing on August 28, 2003.[31] Yet, neither LBP's counsel nor its representative appeared at the hearing held on September 19, 2003; instead, only Nable's counsel attended.[32] Even so, the RTC still directed the parties to submit their respective memoranda on the Commissioners' Report.[33] On its part, LBP filed its memorandum (with supporting documents attached).[34]

Under the circumstances, LBP had no justification to complain that it had not been allowed the opportunity to oppose or comment on the Commissioners' Report.

Anent Wilma Rubi's affidavit, LBP did not object to its presentation during the trial. LBP objected to the affidavit for the first time only on appeal in the CA. Expectedly, the CA rejected its tardy objection, and further deemed LBP's failure to timely object to "respondent's introduction of (the) affidavit" as an implied admission of the affidavit itself.[35]

The Court agrees with the CA's rejection of LBP's objection to the affidavit.

Any objection to evidence must be timely raised in the course of the proceedings in which the evidence is first offered.[36] This

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[29] *Id.* at 211-213.

[30] *Id.* at 217.

[31] *Id.* at 218.

[32] *Id.* at 223.

[33] *Id.* at 225.

[34] *Id.* at 328-341.

[35] *Rollo*, p. 95.

[36] On when an objection to evidence is to be made, Rule 132, *Rules of Court*, states:

enables the adverse party to meet the objection to his evidence, as well as grants to the trial court the opportunity to pass upon and rule on the objection. The objection to evidence cannot be made for the first time on appeal, both because the party who has failed to timely object becomes estopped from raising the objection afterwards; and because to assail the judgment of the lower court upon a cause as to which the lower court had no opportunity to pass upon and rule is contrary to basic fairness and procedural orderliness.[37]

IV.

Awarding of interest and commissioners' fee, and deletion of attorney's fee are proper

The CA correctly prescribed 12% interest *per annum* on the unpaid balance of ₱31,034,819.00 reckoned from the taking of the land in 1993 until full payment of the balance. This accords with our consistent rulings on the matter of interest in the expropriation of private property for a public purpose.[38] The following justification for *that* rate of interest rendered in *Republic v. Reyes*[39] is now worthy of reiteration, *viz*:

Section 36. *Objection*. - Objection to evidence offered orally must be made immediately after the offer is made.

Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.

An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

In any case, the grounds for the objections must be specified.(36 a)

[37] See, *e.g.*, *Heirs of Lorenzo v. Land Bank of the Philippines,* G.R. No. 166461, April 30, 2010, 619 SCRA 609, 623-624.

[38] *E.g.*, *Land Bank of the Philippines v. Rivera*, G.R. No. 182431, November 17, 2010, 635 SCRA 285, 294-295; *Apo Fruits Corporation v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, 632 SCRA 727, 743-748; *Curata v. Philippine Ports Authority*, G.R. Nos. 154211-12, June 22, 2009, 590 SCRA 214, 358; *Philippine Ports Authority v. Rosales-Bondoc*, G.R. No. 173392, August 24, 2007, 531 SCRA 198, 222; *Land Bank of the Philippines v. Imperial*, G.R. No. 157753, February 12, 2007, 515 SCRA 449, 458.

[39] G.R. No. 146587, July 2, 2002, 383 SCRA 611, 622-623.

The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, it fixed at the time of the actual taking by the government. Thus, **if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interests accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.**

The Bulacan trial court, in its 1979 decision, was correct in imposing interests on the zonal value of the property to be computed from the time petitioner instituted condemnation proceedings and "took" the property in September 1969. **This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time**. Article 1250 of the Civil Code, providing that, in case of extraordinary inflation or deflation, the value of the currency at the time of the establishment of the obligation shall be the basis for the payment when no agreement to the contrary is stipulated, has strict application only to contractual obligations. In other words, a contractual agreement is needed for the effects of extraordinary inflation to be taken into account to alter the value of the currency. (Emphasis supplied)

The charging of ₱25,000.00 as commissioners' fees against LBP is likewise upheld. Section 16, Rule 141 of the *Rules of Court*, expressly recognizes such fees, to wit:

Section 16. *Fees of commissioners in eminent domain proceedings*. — The commissioners appointed to appraise land sought to be condemned for public uses in accordance with the rules shall each receive a compensation to be fixed by the court of not less than (₱300.00) Pesos per day for the time actually and necessarily employed in the performance of their duties and in making their

report to the court which fees shall be taxed as a part of costs of the proceedings.

Applying the rule, the Court finds the amount of ₱25,000.00 as fair and commensurate to the work performed by the commissioners, which the CA summed up as follows:

> We observe that in the Commissioners' Report, the three (3) appointed Commissioners actually inspected 127 hectares of the subject property. It took them five (5) days to complete the ocular inspection and individually counted 12,153 coconut trees, 28,024 bananas, 4,928 *Tundan*, 821 *Falcata*, 1,126 *Temani*, 298 Bamboos, Jackfruit, 90 *Santol*, 51 *Rombuon*, 260 *Ipil-Ipil*, 5,222 Abaca plant, 68 Star Apple, 1,670 *Antipolo*, 67 *Narra* trees, 23 Durian trees, 139 Mango trees, 83 Avocado trees, 23 *Lanzones* trees, 84 Cacao, 18 *Marang*, and 13 trees of *Lawaan*.
>
> Hence, for the actual time spent and thoroughness of its Report, it is proper for the said commissioners to be compensated in the amount of ₱25,000.00, which is only ₱1,666.66 per day.[40]

We sustain the CA's deletion of the RTC's award of 10% attorney's fees. Under Article 2208, *Civil Code*, an award of attorney's fees requires factual, legal, and equitable justifications. Clearly, the reason for the award must be explained and set forth by the trial court in the body of its decision. The award that is mentioned only in the dispositive portion of the decision should be disallowed.[41]

Considering that the reason for the award of attorney's fees was not clearly explained and set forth in the body of the RTC's decision, the Court has nothing to review and pass upon now. The Court cannot make its own findings on the matter because an award of attorney's fees demands the making of findings of fact.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on August 17, 2006 by the Court of Appeals; and **ORDERS** petitioner to pay the costs of suit.

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[40] *Rollo*, pp. 99-100.

[41] *Nazareno v. City of Dumaguete*, G.R. No. 177795, June 19, 2009, 590 SCRA 110, 146.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 176783. June 27, 2012]

ELIZABETH DIMAANO, *petitioner, vs.* **THE HON. SANDIGANBAYAN and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

REMEDIAL LAW; LEGAL FEES; SHERIFF'S FEE; IMPOSITION OF SHERIFF'S FEE TO A PARTY FROM WHOM MONEY WAS WRONGFULLY TAKEN IS PROPER.— [T]he imposition of the sheriff's fee is not a penalty for some wrong that Dimaano had done. It is an assessment for the cost of the sheriff's service in collecting the judgment amount for her benefit. Its collection is authorized under Rule 141 of the Rules of Court[.] x x x [T]he order to pay a party the money owed him and the order to pay another the money unlawfully taken from him are both awards of actual or compensatory damages. They compensate for the pecuniary loss that the party suffered and proved in court. The recipients of the award, whether for money owed or taken from him, benefit from the court's intervention and service in collecting the amount. As the Sandiganbayan correctly said, what determines the assessment of the disputed court fee is the fact that the court, through valid processes, ordered a certain sum of money to be placed in the hands of the sheriff for turnover to the winning party.

APPEARANCES OF COUNSEL

Romeo N. Bartolome for petitioner.
The Solicitor General for respondents.

D E C I S I O N

ABAD, *J*.:

This is a case about the propriety of collecting sheriff's percentage fee on the execution of a court order for return to a party of money that the government illegally confiscated from her.

The Facts and the Case

On March 3, 1986 respondent Republic of the Philippines, acting through the Presidential Commission on Good Government (PCGG), confiscated cash of ₱2,868,850.00 and US$50,000.00 and some items from petitioner Elizabeth Dimaano's (Dimaano) house on a belief that they were ill-gotten wealth of an army general who belonged to the martial law regime.[1] The PCGG subsequently filed a forfeiture action against her and others before the Sandiganbayan.[2]

On November 18, 1991 the Sandiganbayan dismissed the forfeiture case against Dimaano and ordered the Republic to return the money and items it seized from her.[3] On July 21, 2003 this Court affirmed the order.[4] Consequently, Dimaano

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[1] See *Republic of the Philippines v. Sandiganbayan*, 454 Phil. 504 (2003). The PCGG suspected that several properties of Dimaano were part of Major General Josephus Q. Ramas' unexplained wealth.

[2] The case was docketed before the Sandiganbayan as Civil Case 0037 (*Republic v. Josephus Ramas and Elizabeth Dimaano*); records, Vol. 1, pp. 11-39.

[3] *Rollo*, pp. 32-60.

[4] *Republic of the Philippines v. Sandiganbayan*, *supra* note 1. According to the Supreme Court, it is true that under the resulting government of the EDSA Revolution no constitution was operative. This did not necessarily mean,

filed with the Sandiganbayan a motion for the release of the seized cash and items[5] which that court granted on March 3, 2005[6] and further affirmed on August 1, 2005.[7]

Following the issuance of the writ of execution on February 14, 2006,[8] Dimaano discovered that the PCGG had transferred the money to accounts that needed allocation documents from the Department of Budget and Management (DBM) before it could be withdrawn from the National Treasury. Eventually, however, the mistake was rectified and on April 4, 2006 the Bureau of Treasury released a ₱4,058,850.00 check to Dimaano in partial satisfaction of the writ.[9] But the Sandiganbayan assessed Dimaano ₱163,391.50 as sheriff's percentage collection fee[10] pursuant to A.M. 04-2-04-SC Re: Revision of Rule 141 of the Rules of Court.

Dimaano filed a motion for reconsideration of the Sandiganbayan's assessment order.[11] She assailed it as

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however, that the Philippines ceased to be bound by its treaty obligations, examples of which are the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. The Court thus concluded that the raiding team, headed by Capt. Rodolfo Sebastian, exceeded their authority when they seized items not particularly described in the search warrant. And failing to show any other legal basis for the monies' seizure, they indeed violated petitioner's rights to privacy, home, and property.

[5] Records, Vol. 1, pp. 202-204.

[6] Penned by Presiding Justice Teresita Leonardo-de Castro (now a member of the Court) and concurred in by Justices Francisco H. Villaruz, Jr. and Efren N. dela Cruz.

[7] Penned by Presiding Justice Teresita Leonardo-de Castro (now a member of the Court) and concurred in by Justices Diosdado M. Peralta (now also a member of the Court) and Efren N. dela Cruz.

[8] *Rollo*, pp. 115-116.

[9] The pieces of jewelry had not yet been returned to Dimaano.

[10] *Rollo*, pp. 118-119; Resolution written by Justice Diosdado M. Peralta and concurred in by Presiding Justice Teresita Leonardo-de Castro (both are now members of the Court) and Justice Efren N. De La Cruz.

[11] Records, Vol. 2, pp. 69-72.

unwarranted since the sheriff's percentage collection fee applied only to actions for money covering collectibles or unsatisfied debts or in actions pertaining to interest-bearing obligations. She also argued that the fee assessment would be iniquitous in her case because a) it penalized her when in fact, she was the wronged party; and b) it rewarded the police officers' transgressions of her rights.[12]

On January 5, 2007 the Sandiganbayan denied Dimaano's motion for reconsideration, holding that the assessment of the challenged fee was not dependent on the "nature of the case" but on the fact of collection. And since the rule did not distinguish between "money collected" and "money returned" through the sheriff's effort, neither should petitioner, hence, Dimaano's recourse to this Court.

Issue Presented

The sole issue presented in this case is whether or not the Sandiganbayan rightfully assessed Dimaano a sheriff's percentage collection fee on the money that the Republic returned to her pursuant to the writ of execution that the court issued in the case.

Ruling of the Court

Dimaano attempts to make a distinction between money ordered "collected" from the judgment debtor and paid to the judgment creditor and money ordered "returned" by one party to another from whom such money was unlawfully taken. Dimaano claims that she was already a victim when the government illegally seized her money. It would be unfair that she should still pay the government some fee to get her money back.

But, first, the imposition of the sheriff's fee is not a penalty for some wrong that Dimaano had done. It is an assessment for the cost of the sheriff's service in collecting the judgment amount for her benefit. Its collection is authorized under Rule 141 of the Rules of Court, as amended,[13] thus:

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[12] *Rollo*, pp. 120-123.

[13] Amended by A.M. 04-2-04-SC effective August 16, 2004.

x x x x x x x x x

SEC. 3. *Persons authorized to collect legal fees.* — Except as otherwise provided in this rule, the officers and persons hereinafter mentioned, together with their assistants and deputies, may demand, receive, and take the several fees hereinafter mentioned x x x.

x x x x x x x x x

SEC. 10. *Sheriffs, PROCESS SERVERS and other persons serving processes.* — x x x (l) For money collected by him x x x by order, execution, attachment, or any other process, judicial or extrajudicial which shall immediately be turned over to the Clerk of Court, x x x.

Second, the order to pay a party the money owed him and the order to pay another the money unlawfully taken from him are both awards of actual or compensatory damages. They compensate for the pecuniary loss that the party suffered and proved in court.[14] The recipients of the award, whether for money owed or taken from him, benefit from the court's intervention and service in collecting the amount. As the Sandiganbayan correctly said, what determines the assessment of the disputed court fee is the fact that the court, through valid processes, ordered a certain sum of money to be placed in the hands of the sheriff for turnover to the winning party.

In addition to raising before the Court the matter of the sheriff's fee, Dimaano also questions the Sandiganbayan's failure to award interest on the amount that was to be returned to her considering that the government used and invested the money as if it were its own. But, as the Republic points out, Dimaano could no longer seek the award of interest since she filed no appeal from the decision of the Sandiganbayan that ordered merely the return of such amount with no mention of interest.[15]

WHEREFORE, the Court **AFFIRMS** the Resolutions of the Sandiganbayan dated July 25, 2006 and January 5, 2007 that

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[14] CIVIL CODE, Article 2199 in relation to Articles 2195 and 1157.

[15] *Rollo*, pp. 130-145.

assessed petitioner Elizabeth Dimaano sheriff's percentage fee for the partial satisfaction of the writ of execution dated February 14, 2006.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin,[*] *del Castillo,*[**] and *Perlas-Bernabe, JJ.,* concur.

FIRST DIVISION

[G.R. No. 176949. June 27, 2012]

ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION, *petitioner, vs.* **LOURDES K. MENDOZA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTION OR DEFENSE BASED ON DOCUMENT; CHARGE INVOICES ARE NOT ACTIONABLE DOCUMENTS.—** [A] document is actionable when an action or defense is grounded upon such written instrument or document. In the instant case, the Charge Invoices are not actionable documents *per se* as these "only provide details on the alleged transactions." These documents need not be attached to or stated in the complaint as these are evidentiary in nature. In fact, respondent's cause of action is not based on these documents but on the contract of sale between the parties.

2. **ID.; EVIDENCE; PREPONDERANCE OF EVIDENCE; DELIVERY OF SUPPLIES AND MATERIALS DULY**

[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 1241 dated June 14, 2012

[**] Designated Additional Member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated June 27, 2012

PROVED BY CHARGE INVOICES AND PURCHASE ORDERS.— But although the Charge Invoices are not actionable documents, we find that these, along with the Purchase Orders, are sufficient to prove that petitioner indeed ordered supplies and materials from Highett and that these were delivered to petitioner. Moreover, contrary to the claim of petitioner, the Charge Invoices were properly identified and authenticated by witness Tejero who was present when the supplies and materials were delivered to petitioner and when the invoices were stamped received by petitioner's employee, Roel Barandon. It bears stressing that in civil cases, only a preponderance of evidence or "greater weight of the evidence" is required. In this case, except for a bare denial, no other evidence was presented by petitioner to refute respondent's claim. Thus, we agree with the CA that the evidence preponderates in favor of respondent.

APPEARANCES OF COUNSEL

Benedictine Law Center for petitioner.
Respicio Velasquez & Rodriguez Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In civil cases, the party with the most convincing evidence prevails.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated April 28, 2006 and the Resolution[3] dated March 9, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 69180.

Factual Antecedents

On January 6, 2000, respondent Lourdes K. Mendoza, sole proprietor of Highett Steel Fabricators (Highett), filed before

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[1] *Rollo,* pp. 9-92 with Annexes "A" to "I" inclusive.

[2] *Id.* at 22-41; penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Martin S. Villarama, Jr. and Japar B. Dimaampao.

[3] *Id.* at 43-44.

the Regional Trial Court (RTC) of Caloocan City, Branch 126, a Complaint[4] for a sum of money, docketed as Civil Case No. C-19100, against petitioner Asian Construction and Development Corporation, a duly registered domestic corporation.

In the complaint, respondent alleged that from the period August 7, 1997 to March 4, 1998, petitioner purchased from Highett various fabricated steel materials and supplies amounting to ₱1,206,177.00, exclusive of interests;[5] that despite demand, petitioner failed and/or refused to pay;[6] and that due to the failure and/or refusal of petitioner to pay the said amount, respondent was compelled to engage the services of counsel.[7]

Petitioner moved for a bill of particulars on the ground that no copies of the purchase orders and invoices were attached to the complaint to enable petitioner to prepare a responsive pleading to the complaint.[8] The RTC, however, in an Order dated March 1, 2000, denied the motion.[9] Accordingly, petitioner filed its Answer with Counterclaim[10] denying liability for the claims and interposing the defense of lack of cause of action.[11]

To prove her case, respondent presented the testimonies of (1) Artemio Tejero (Tejero), the salesman of Highett who confirmed the delivery of the supplies and materials to petitioner, and (2) Arvin Cheng, the General Manager of Highett.[12]

The presentation of evidence for petitioner, however, was deemed waived and terminated due to the repeated non-appearance of petitioner and its counsel.[13]

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[4] *Id.* at 46-48.

[5] *Id.* at 46.

[6] *Id.* at 46-47.

[7] *Id.* at 47.

[8] Records, pp. 8-10.

[9] *Id.* at 11.

[10] *Rollo*, pp. 51-53.

[11] *Id.* at 51-52.

[12] *Id.* at 55-56.

[13] Records, p. 93.

Ruling of the Regional Trial Court

On December 1, 2000, the RTC rendered a Decision[14] in favor of respondent, to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the [petitioner] corporation to pay the [respondent] the following:

a. ₱1,206,177.00, representing the principal amount, which is the purchase price of the materials and other supplies ordered by and delivered to [petitioner];

b. ₱244,288.59, representing the accrued interest as of August 31, 1999 plus xxx additional interest to be computed at the rate of 12% per annum until the total indebtedness is paid in full;

c. ₱150,000.00 for and as Attorney's fees; and

d. Cost of suit.

SO ORDERED.[15]

Ruling of the Court of Appeals

On appeal, the CA affirmed with modification the Decision of the RTC. The decretal portion of the CA Decision[16] reads:

WHEREFORE, the assailed Decision of the RTC [Br. 126, Caloocan City] dated December 1, 2000 is hereby **AFFIRMED** with the **MODIFICATION**, in that the reckoning point for the computation of the 1% monthly interest shall be 30 days from date of each delivery.

SO ORDERED.[17]

Petitioner sought reconsideration but the same was unavailing.[18]

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[14] *Rollo*, pp. 54-59; penned by Judge Luisito C. Sardillo.

[15] *Id.* at 59.

[16] *Id.* at 22-41.

[17] *Id.* at 40.

[18] *Id.* at 43.

Issues

Hence, this petition raising the following issues:

I. WHETHER X X X THE CHARGE INVOICES ARE ACTIONABLE DOCUMENTS.

II. WHETHER X X X THE DELIVERY OF THE ALLEGED MATERIALS [WAS] DULY PROVEN.

III. WHETHER X X X RESPONDENT IS ENTITLED TO ATTORNEY'S FEES.[19]

Petitioner's Arguments

Petitioner argues that a charge or sales invoice is not an actionable document; thus, petitioner's failure to deny under oath its genuineness and due execution does not constitute an admission thereof.[20] Petitioner likewise insists that respondent was not able to prove her claim as the invoices offered as evidence were not properly authenticated by her witnesses.[21] Lastly, petitioner claims that the CA erred in affirming the award of attorney's fees as the RTC Decision failed to expressly state the basis for the award thereof.[22]

Respondent's Arguments

Respondent, in her Comment,[23] prays for the dismissal of the petition contending that the arguments raised by petitioner are a mere rehash of those presented and already passed upon by the CA.[24] She maintains that charge invoices are actionable documents,[25] and that these were properly identified and

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[19] *Id.* at 13.

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

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

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

[23] *Id.* at 107-111.

[24] *Id.* at 107.

[25] *Id.* at 108-109.

authenticated by witness Tejero, who testified that upon delivery of the supplies and materials, the invoices were stamped received by petitioner's employee.[26] Respondent contends that the award of attorney's fees was justified as the basis for the award was clearly established during the trial.[27]

Our Ruling

The petition is partly meritorious.

The charge invoices are not actionable documents

Section 7 of Rule 8 of the Rules of Court states:

> SEC. 7. Action or defense based on document. — Whenever an action or defense is based upon a written instrument or document, **the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit,** which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading. (Emphasis supplied.)

Based on the foregoing provision, a document is actionable when an action or defense is grounded upon such written instrument or document. In the instant case, the Charge Invoices[28] are not actionable documents *per se* as these "only provide details on the alleged transactions."[29] These documents need not be attached to or stated in the complaint as these are evidentiary in nature.[30] In fact, respondent's cause of action is not based on these documents but on the contract of sale between the parties.

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[26] *Id.* at 110.

[27] *Id.*

[28] Records, pp. 82-86; Exhibits "H - L".

[29] *Lazaro v. Brewmaster International, Inc.*, G.R. No. 182779, August 23, 2010, 628 SCRA 574, 582.

[30] *Id.*

Delivery of the supplies and materials was duly proved

But although the Charge Invoices are not actionable documents, we find that these, along with the Purchase Orders,[31] are sufficient to prove that petitioner indeed ordered supplies and materials from Highett and that these were delivered to petitioner.

Moreover, contrary to the claim of petitioner, the Charge Invoices were properly identified and authenticated by witness Tejero who was present when the supplies and materials were delivered to petitioner and when the invoices were stamped received by petitioner's employee, Roel Barandon.[32]

It bears stressing that in civil cases, only a preponderance of evidence or "greater weight of the evidence" is required.[33] In this case, except for a bare denial, no other evidence was presented by petitioner to refute respondent's claim. Thus, we agree with the CA that the evidence preponderates in favor of respondent.

Basis for the award of Attorney's fees must be stated in the decision

However, with respect to the award of attorney's fees to respondent, we are constrained to disallow the same as the rationale for the award was not stated in the text of the RTC Decision but only in the dispositive portion.[34]

WHEREFORE, the petition is hereby **PARTLY GRANTED**. The assailed Decision dated April 28, 2006 and the Resolution dated March 9, 2007 of the Court of Appeals in CA-G.R. CV No. 69180 are hereby **AFFIRMED** with **MODIFICATION**. The award of attorney's fees in the amount of ₱150,000.00 is hereby **DELETED**.

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[31] Records, pp. 72-81; Exhibits "B-G".

[32] *Rollo*, pp. 29-32.

[33] *Oño v. Lim*, G.R. No. 154270, March 9, 2010, 614 SCRA 514, 525.

[34] *SCC Chemicals Corporation v. Court of Appeals*, 405 Phil. 514, 523-524 (2001).

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), * *Peralta,* ** *Bersamin,* and *Perlas-Bernabe,* *** *JJ.,* concur.

SECOND DIVISION

[G.R. No. 180615. June 27, 2012]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **JOSE R. EVANGELISTA,** *respondent.*

SYLLABUS

REMEDIAL LAW; JUDGMENTS; A DECISION IN A CASE IS NOT BINDING ON A PARTY WHO WAS NOT IMPLEADED THEREIN.— The 11 August 1999 decision in CA-G.R. SP No. 41546, as affirmed by this Court on 16 May 2005 in G.R. No. 140945, set aside paragraph 3 of the assailed decision, which nullified any transfer, assignment, sale or mortgage made by Sarte. Such finding of nullity, however, is confined to the transaction between Sarte and respondent, the portion of the land of which was covered by TCT No. 122944, simply because respondent was not given his day in court in Civil Case No. Q-91-10071. x x x The case docketed as CA-G.R. CV No. 52466 referred to in CA-G.R. SP No. 41546 has now been terminated with the Court of Appeals, in its 21 July 2005 Decision, affirming the trial court's decision in Civil Case No. Q-91-10071 in its entirety thereby awarding the entire parcel of land in favor of petitioner. The fact remains, however, that since CA-G.R. CV No. 52466 is a mere appeal from the trial court's decision in Civil Case No. Q-91-10071, and that respondent had not been impleaded in that case, such ruling is not binding insofar as respondent's TCT No. 122944 is concerned.

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

** Per raffle dated June 25, 2012.

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

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
R.R. Mendez & Associates Law Offices for respondent.

D E C I S I O N

PEREZ, ***J.*:**

This is a petition for review on *certiorari* under Rule 45 seeking to reverse and set aside the following resolutions of the Court of Appeals in CA-G.R. SP No. 41546: (a) Resolution[1] dated 17 July 2007, which granted respondent Jose Evangelista's (respondent) Motion for Issuance of Writ of Execution of the Decision[2] dated 11 August 1999 of the Court of Appeals; and (b) Resolution[3] dated 12 November 2007 denying National Housing Authority's (petitioner) Motion for Reconsideration of the Resolution of 17 July 2007.

The Writ of Execution[4] subject of the assailed Resolution directs the Quezon City Register of Deeds to: (a) annotate on respondent's TCT No. 122944 the dispositive part of the 11 August 1999 Decision[5] declaring the third paragraph of the

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[1] CA *rollo*, pp. 206-211. Penned by then Presiding Justice Ruben T. Reyes (now retired Supreme Court Associate Justice), with Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo, concurring.

[2] *Id.* at 141-152. Penned by then Associate Justice Ruben T. Reyes (now retired Supreme Court Associate Justice), with Associate Justices Jainal D. Rasul and Eloy R. Bello, Jr., concurring.

[3] *Id.* at 230-231. Penned by Associate Justice Regalado E. Maambong with Associate Justices Hakim S. Abdulwahid and Celia C. Librea-Leagogo, concurring.

[4] *Id.* at 212.

[5] "WHEREFORE the petition is granted. The assailed part or paragraph No. 3 of the dispositive portion of the decision dated November 29, 1995 of the Regional Trial Court, Br. CIII, Quezon City in Civil Case No. Q-91-10071 is hereby declared void, non-binding and inapplicable in so far as petitioner's TCT No. 122944 is concerned.

dispositive portion of the decision dated 29 November 1995 of the Regional Trial Court of Quezon City void, non-binding and inapplicable insofar as TCT No. 122944 is concerned; and (b) cancel Entry No. 7159,[6] an Affidavit of Adverse Claim executed by petitioner, which was annotated thereon.

The Antecedents

This case involves a 915-square meter parcel of land situated at V. Luna Road, Quezon City originally registered in the name of People's Homesite and Housing Corporation (PHHC), the predecessor of petitioner .

An overview of the subsequent transfer of ownership/title to the property to several individuals is shown below:

Year	New Transfer Certificate of Title	Owner	Mode of Acquisition	Remarks
1968	TCT No. 138007	Adela Salindon	purchased from PHHC	
After Salindon died	TCT No. 239729	Arsenio S. Florendo, Jr., *etc.*	bought from the heirs during the settlement of Salindon's estate	TCT No. 138007 was cancelled
1984		NHA	Supreme Court decision dated 19	

Let a copy hereof be furnished the Register of Deeds of Quezon City for the proper annotation. No pronouncement as to costs."

Id. at 151-152.

[6] "Entry No. 7159/T-No. 122944: AFFIDAVIT OF ADVERSE CLAIM-

Executed under oath by Manuel V. Fernandez (in behalf of NHA), adverse claimant, claiming among others that NHA has the right of the ownership of the property being the subject of controversy in Civil Case No. Q-91-10071, entitled '*National Housing Authority vs. Luisito Sarte, et al.*,' now pending before RTC, Br. 103, Q.C. Doc. No. 76, page 16, Bk. I, s. of 1995 of Not. Pub. of Q.C. Belsie Cailipan Sy.

Date of the instrument – May 4, 1995

Date of the inscription – May 4, 1995."

Id. at 37. TCT No. 122944.

			May 1984 nullifying and setting aside the award in favor of Salindon	
1986	TCT No. 28182	Luisito Sarte	Acquired as highest bidder in the public auction conducted by the Quezon City Treasurer's Office (despite the promulgation of the 14 May 1984 decision) due to the Florendos' non-payment of real estate taxes	
1986	TCT Nos. 108070 (Lot 1-A) & 108071 (Lot 1-B)	Luisito Sarte		Sarte had the lot subdivided into two (2) parts: (1) Lot 1-A; and (2) Lot 1-B
1994	TCT No. 108070	Respondent Evangelista	Deed of Assignment executed by Sarte	
1994	TCT No. 122944 (Lot 1-A);	Respondent Evangelista		TCT No. 108070 was cancelled; An Affidavit of Adverse Claim and Notice of *Lis Pendens* were subsequently annotated at the back of TCT No. 122944
	TCT No. 126639 (Lot 1-B)	Not a party to the instant case		

Thus, in 1968, Adela Salindon (Salindon) acquired the property from PHHC and was issued TCT No. 138007. However, in a Decision dated 20 May 1975 of the City Court of Quezon City, the sale was declared null and void. During the pendency of

the appeal, Salindon died and her heirs settled her estate, including the subject lot. This resulted in the cancellation of TCT No. 138007 and the issuance of a new title, TCT No. 239729, in favor of its new owners, namely, Arsenio S. Florendo, Jr., Milagros Florendo, Beatriz Florendo and Eloisa Florendo-Kulphongpatana. Meanwhile, the Supreme Court, in its Decision dated 19 May 1984 in G.R. No. L-60544 entitled *Arsenio Florendo, Jr. et al. v. Hon. Perpetua D. Coloma, Presiding Judge of Branch VIII, City Court of Quezon City, et. al.*, nullified and set aside the award in favor of Salindon and declared petitioner owner of the property.

The issue of ownership then arose when, notwithstanding the promulgation of the 19 May 1984 decision of the Supreme Court awarding the property to petitioner NHA, the Quezon City Treasurer's Office sold the land at a public auction due to the Florendos' years of non-payment of realty taxes. Consequently, TCT No. 28182 was issued in favor of Luisito Sarte (Sarte), the highest bidder at the auction. Sarte had the property divided into two (2) parts, Lot 1-A and Lot 1-B, for which he was issued new titles, to wit, TCT Nos. 108070 and 108071, respectively. This prompted petitioner to file an action for recovery of real property against Sarte, the City Treasurer of Quezon City and the Quezon City Register of Deeds (QCRD) before the Regional Trial Court of Quezon City in 1991. The case was docketed as Civil Case No. Q-91-10071.

During the pendency of Civil Case No. Q-91-10071, however, Sarte was able to transfer ownership of Lot 1-A covered by TCT No. 108070 to respondent because there was no notice of *lis pendens* annotated at the back of the title. TCT No. 108070 was thus correspondingly cancelled and a new one, TCT No. 122944, issued in the name of respondent. Significantly, it was only on TCT No. 122944 that the Affidavit of Adverse Claim (Entry No. 7159/T-No. 122944) and the Notice of *Lis Pendens* (Entry No. 1367/T-No. 122944)[7] were annotated.

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[7] "Entry No. 1367/T-No. 122944: NOTICE OF *LIS PENDENS* -

By virtue of a notice of *lis pendens* presented and filed by Oscar I. Garcia & Virgilio C. Abejo, notice is hereby given that a case has been pending

Incidentally, the complaint for *Annulment of Deed of Assignment, Deed of Absolute Sale, Real Estate Mortgage, Cancellation of TCT Nos. 122944 and 126639 and Damages* docketed as Civil Case No. Q-95-23940 subject of Entry No. 1367 was dismissed on 23 October 1995 in view of the pendency of Civil Case No. Q-91-10071.[8]

On 29 November 1995, the trial court rendered its Decision[9] in Civil Case No. Q-91-10071, the dispositive portion of which reads:

ACCORDINGLY, judgment is hereby rendered in favor of the plaintiff National Housing Authority as follows:

1. The auction sale conducted by the Quezon City Treasurer in 1986 of the parcel of land consisting of 915.50 sq. m. subject of this case previously covered by TCT No. 138007 of the Register of Deeds of Quezon City issued in the name of Adela Salindon and wherein defendant Luisito Sarte was the auction buyer and TCT No. 239729 in the name of Arsenio Florendo, Milagros Florendo, Beatriz Florendo and Eloisa F. Kulphongpatana is hereby declared null and void *ab initio*;
2. TCT No. 28182 subsequently issued in the name of defendant Luisito Sarte by the Quezon City Registry of Deeds is hereby declared null and void *ab initio* and the herein defendant Quezon City Register of Deeds is hereby ordered to cancel said TCT 28182 in the name of Luisito Sarte;
3. **Any transfers, assignment, sale or mortgage of whatever nature of the parcel of land subject of this case made by**

RTC, Q.C. in Civil Case No. Q-95-23940 entitled '*National Housing Authority, plaintiff, -vs.- Luisito Sarte, Jose Evangelista, Northern Star Agri-Business Corporation, BPI Agricultural Development Bank & the Register of Deeds of Quezon City*, defendants,' plaintiff praying for Annulment of the Deed of Assignment, Deed of Absolute Sae, Real Estate Mortgage, Cancellation of TCT Nos. 122944 and 126639 & damages.

Date of the Instrument – May 24, 1995

Date of the Inscription – May 31, 1995"

Id.

[8] *National Housing Authority v. Evangelista*, 497 Phil. 762, 774 (2005).

[9] Records, pp. 379-385.

> **defendant Luisito Sarte or his/her agents or assigns before or during the pendency of the instant case are hereby declared null and void, together with any transfer certificates of title issued in connection with the aforesaid transactions by the Register of Deeds of Quezon City who is likewise ordered to cancel or cause the cancellation of such TCTs;**
>
> 4. The defendant Register of Deeds of Quezon City is hereby ordered to issue a new transfer certificate of title over the entire parcel of land (915.50 sq. m.) subject of this case in favor of the National Housing Authority by way of satisfying the Supreme Court in G.R. No. 50544 promulgated on [19] May 1984;
>
> 5. The NHA is hereby required and authorized to put in place on the property at bar a notice, readable, bold, and stable, sufficiently signifying the essence of this court's decision so that no person may err as to the real ownership of the instant parcel of land and to fence the same to prevent entry of squatters or other illegal intruders. *(Emphasis supplied)*

Aggrieved, Sarte, the City Treasurer of Quezon City, and the QCRD appealed the decision to the Court of Appeals. The case entitled *NHA v. Sarte, the City Treasurer of Quezon City, et al.* was docketed as CA-G.R. CV No. 52466.

On the other hand, respondent filed before the Court of Appeals a petition for the annulment of paragraph 3 of the dispositive portion of the judgment that nullified any transfer, assignment, sale or mortgage made by Sarte. His action was anchored on the ground that he, who acquired the property from Sarte, had been adversely affected by the aforequoted decision despite his non-participation in the litigation. The case entitled *Evangelista v. The Honorable Judge, Regional Trial Court of Quezon City Branch CIII, National Housing Authority* was docketed as CA-G.R. SP No. 41546.

On 11 August 1999, respondent obtained a favorable judgment in CA-G.R. SP No. 41546, to wit:

> WHEREFORE, the petition is granted. The assailed part or paragraph No. 3 of the dispositive portion of the decision dated

November 29, 1995 of the Regional Trial Court, Br. CIII, Quezon City in Civil Case No. Q-91-10071 is hereby declared void, non-binding and inapplicable in so far as petitioner's [Evangelista's] TCT No. 122944 is concerned.

Let a copy hereof be furnished the Register of Deeds of Quezon City for the proper annotation. No pronouncement as to costs.[10]

After its motion for reconsideration was denied by the Court of Appeals, petitioner elevated the case to this Court. The petition entitled *National Housing Authority v. Jose Evangelista* was docketed as G.R. No. 140945.

On 16 May 2005, the Court denied the petition in this wise:

In this case, it is undisputed that respondent was never made a party to Civil Case No. Q-91-10071. It is basic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court.[11] Yet, the assailed paragraph 3 of the trial court's decision decreed that "(A)ny transfers, assignment, sale or mortgage of whatever nature of the parcel of land subject of this case made by defendant Luisito Sarte or his/her agents or assigns before or during the pendency of the instant case are hereby declared null and void, together with any transfer certificates of title issued in connection with the aforesaid transactions by the Register of Deeds of Quezon City who is likewise ordered to cancel or cause the cancellation of such TCTs." Respondent is adversely affected by such judgment, as he was the subsequent purchaser of the subject property from Sarte, and title was already transferred to him. It will be the height of inequity to allow respondent's title to be nullified without being given the opportunity to present any evidence in support of his ostensible ownership of the property. Much more, it is tantamount to a violation of the constitutional guarantee that no person shall be deprived of property without due process of law.[12] Clearly, the trial court's judgment is void insofar as paragraph 3 of its dispositive portion is concerned.

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[10] CA *rollo*, pp. 151-152.

[11] *National Housing Authority v. Evangelista*, *supra* note 8 at 770 citing *Heirs of Antonio Pael v. Court of Appeals*, 382 Phil. 222, 249.

[12] *Id.* at 771 citing Article III, Section 1, 198[7] Constitution.

x x x x x x x x x

WHEREFORE, the petition for review on *certiorari* is DENIED for lack of merit and the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. [41546] are hereby AFFIRMED.

Thereafter, on 21 July 2005, the same 29 November 1995 decision of the trial court in Civil Case No. Q-91-10071 subject of Sarte's ordinary appeal in CA-G.R. CV No. 52466 was affirmed in its entirety by the Court of Appeals. The Court of Appeals pronounced:

As could be gleaned from the facts of the case, the City Treasurer of Quezon City was already informed twice of the Supreme Court decision declaring NHA as the owner of the disputed lot x x x.

x x x x x x x x x

It is a truism that a purchaser of property can acquire no more than what the seller can legally transfer because the latter can only sell what he owns or is authorized to sell.

> *A purchaser of property cannot close his eyes and claim that he acted in good faith under the belief that there was no defect in the vendor's title. A person buying can acquire no more than what the seller can legally transfer, because the latter can only sell what he owns or is authorized to sell.*

Applying the foregoing doctrine, the City Treasurer of Quezon [City] can only legally transfer to the buyer Sarte such right he is authorized to sell. And appellant Sarte cannot simply close his eyes by claiming that he acted in good faith under the belief that there was no defect in the authority of the City Treasurer to sell.

x x x x x x x x x

WHEREFORE, the Appeal is **DISMISSED**. The decision of RTC Branch CIII of Quezon City is hereby **AFFIRMED** in its entirety.[13]

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[13] *Rollo*, pp. 150-153. Court of Appeals Decision dated 21 July 2005. Penned by Associated Justice Lucenito N. Tagle with Associate Justices Martin S. Villarama, Jr. (now a member of the Court) and Rosmari D. Carandang, concurring.

The decision became final and executory on 15 August 2005.

Meanwhile, on 12 July 2006, respondent sought the issuance of a writ of execution of the Court of Appeals' 11 August 1999 Decision in CA-G.R. SP No. 41546 entitled *Evangelista v. The Honorable Judge, Regional Trial Court of Quezon City Branch CIII, National Housing Authority*, which this Court affirmed in the 16 May 2005 Decision in G.R. No. 140945, and which became final and executory on 1 July 2005.

The Court of Appeals granted the motion in its Resolution of 17 July 2007. Thus:

> ACCORDINGLY, the motion is **GRANTED**. Let a writ of execution issue **DIRECTING** the Register of Deeds of Quezon City to annotate the dispositive part of the Court of Appeals Decision dated August 11, 1999 in the title of petitioner and to cancel Entry No. 7159 annotated on petitioner's TCT No. 122944.[14]

It also denied the motion for reconsideration filed by petitioner.[15]

Hence, this instant petition.

Issue

The core issue in this case is whether or not the 21 July 2005 Decision of the Court of Appeals in CA-G.R. CV No. 52466 entitled *National Housing Authority v. Luisito Sarte, the City Treasurer of the Quezon City, and the Quezon City Register of Deeds*, which affirmed the trial court's decision in Civil Case No. Q-91-10071 in its entirety thereby awarding the entire parcel of land in favor of petitioner, effectively overturned the Court of Appeals' 11 August 1999 Decision in CA-G.R. SP No. 41546 entitled *Evangelista v. The Honorable Judge, Regional Trial Court of Quezon City Branch CIII, National Housing Authority* specifically nullifying paragraph 3 of the dispositive portion of the same decision of the trial court (*i.e.*, that any

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[14] CA *rollo*, p. 211.

[15] *Id.* at 230-231. Resolution of 12 November 2007.

transfer, assignment, sale or mortgage made by Sarte is a nullity) insofar as respondent's TCT No. 122944 is concerned.

Corrolarily, whether or not the Court of Appeals erred in granting respondent's motion for the issuance of writ of execution of the Court of Appeals' 11 August 1999 Decision in CA-G.R. SP No. 41546 entitled *Evangelista v. The Honorable Judge, Regional Trial Court of Quezon City Branch CIII, National Housing Authority*.

Our Ruling

We deny the petition.

At the outset, it bears emphasis that the Court of Appeals reviewed the same trial court's decision dated 29 November 1995 in Civil Case No. Q-91-10071 declaring: (1) in CA-G.R. SP No. 41546 (petition for annulment of paragraph 3 of the judgment filed by respondent, who was not impleaded in the case before the trial court) — that paragraph 3 of the said judgment of the trial court, which nullified any transfer, assignment, sale or mortgage made by Sarte, is not binding nor applicable insofar as respondent's TCT No. 122944 is concerned; and (2) in CA-G.R. CV No. 52466 (an ordinary appeal filed by Sarte who was the defendant in the case before the court *a quo*) — that the entire parcel of land belongs to petitioner.

Nonetheless, we see no conflict between the two (2) decisions.

The 11 August 1999 decision in CA-G.R. SP No. 41546, as affirmed by this Court on 16 May 2005 in G.R. No. 140945, set aside paragraph 3 of the assailed decision, which nullified any transfer, assignment, sale or mortgage made by Sarte. Such finding of nullity, however, is confined to the transaction between Sarte and respondent, the portion of the land of which was covered by TCT No. 122944, simply because respondent was not given his day in court in Civil Case No. Q-91-10071. Thus:

A person who was not impleaded in the complaint cannot be bound by the decision rendered therein, for no man shall be affected by a proceeding in which he is a stranger.[16]

In fact, the Court, in so affirming the 11 August 1999 decision in CA-G.R. SP No. 41546 clarified in its Decision of 16 May 2005 in G.R. No. 140945 that:

Lest it be misunderstood, the Court is not declaring that respondent is a purchaser of the property in good faith. This is an issue that cannot be dealt with by the Court in this forum, as the only issue in this case is whether or not the CA erred in annulling paragraph 3 of the trial court's decision on grounds of lack of jurisdiction and lack of due process of law. Whether or not respondent is a purchaser in good faith is an issue which is a different matter altogether that must be threshed out in a full-blown trial for that purpose in an appropriate case and in the proper forum. Also, CA-G.R. CV No. 52466, which is the appeal from the trial court's decision in Civil Case No. Q-91-10071, is pending before the CA, and it would be premature and unwarranted for the Court to render any resolution that would unnecessarily interfere with the appellate proceedings.[17] (*Emphasis supplied*)

The case docketed as CA-G.R. CV No. 52466 referred to in CA-G.R. SP No. 41546 has now been terminated with the Court of Appeals, in its 21 July 2005 Decision, affirming the trial court's decision in Civil Case No. Q-91-10071 in its entirety thereby awarding the entire parcel of land in favor of petitioner.

The fact remains, however, that since CA-G.R. CV No. 52466 is a mere appeal from the trial court's decision in Civil Case No. Q-91-10071, and that respondent had not been impleaded in that case, such ruling is not binding insofar as respondent's TCT No. 122944 is concerned.

This Court has well-expounded on this matter in G.R. No. 140945, to wit:

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[16] *National Housing Authority v. Evangelista*, *supra* note 8 at 764 citing *Heirs of Antonio Pael v. Court of Appeals*, 382 Phil. 222, 249 (2000); *Arcelona v. Court of Appeals*, 345 Phil. 250, 270.

[17] *Id.* at 773-774.

Petitioner argues that it should not bear the consequence of the trial court's denial of its motion to include respondent as defendant in Civil Case No. Q-91-10071. True, it was not petitioner's fault that respondent was not made a party to the case. But likewise, it was not respondent's fault that he was not given the opportunity to present his side of the story. Whatever prompted the trial court to deny petitioner's motion to include respondent as defendant is not for the Court to reason why. Petitioner could have brought the trial court's denial to the CA on *certiorari* but it did not. Instead, it filed Civil Case No. Q-95-23940 for Annulment of Deed of Assignment, Deed of Absolute Sale, Real Estate Mortgage, Cancellation of TCT Nos. 122944 and 126639, and Damages, against herein respondent Sarte and others. Unfortunately for petitioner, this was dismissed by the Regional Trial Court of Quezon City (Branch 82) on the ground of *litis pendentia*. Be that as it may, the undeniable fact remains — **respondent is not a party to Civil Case No. Q-91-10071, and paragraph 3, or any portion of the trial courts' judgment for that matter, cannot be binding on him**.[18] *(Emphasis supplied)*

Moreover, referring to the last three lines of the aforequoted paragraph, petitioner's argument that the fourth and fifth paragraphs[19] of the trial court's 29 November 1995 decision particularly awarding the entire property in its favor clearly has no leg to stand on. This Court has categorically ruled that any portion of the judgment adverse to the rights of respondent shall not be binding upon him.

Finally, petitioner pointed out that the trial court has already denied respondent's motion for cancellation of Entry No. 7159/

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[18] *National Housing Authority v. Evangelista, supra* note 8 at 771.

[19] "4. The defendant Register of Deeds of Quezon City is hereby ordered to issue a new transfer certificate of title over the entire parcel of land (915.50 sq. m.) subject of this case in favor of the National Housing Authority by way of satisfying the Supreme Court in G.R. No. 50544 promulgated on [19] May 1984;

5. The NHA is hereby required and authorized to put in place on the property at bar a notice, readable, bold, and stable, sufficiently signifying the essence of this court's decision so that no person may err as to the real ownership of the instant parcel of land and to fence the same to prevent entry of squatters or other illegal intruders."

Records, pp. 384-385.

T-No. 122944 annotated at the back of TCT No. 122944. Such contention is likewise without merit.

The Order[20] dated 31 July 2006 of the Regional Trial Court, Branch 103, Quezon City, indicated the grounds for the denial of the motion, to wit:

1. This court has no jurisdiction to act on said motion considering that the execution of the decision of the Court of Appeals of the movant's Petition for Annulment of Judgment which decision declared null and void the 3rd paragraph of the decision of this court dated November 29, 1995 rests with the Court of Appeals which is the court of origin. Hence, there must be at least an order coming from the Court of Appeals for this court to effect the prayed for cancellation

2. The movant as well as this court were not impleaded as a party in the above-captioned case. In fact, the court is not aware of the alleged decision of the Court of Appeals nullifying the judgment of this court as stated by Mr. Jose Evangelista.

And, it was precisely by virtue of this Order that respondent sought relief from the proper forum.

All considered, we find that the Court of Appeals did not commit any reversible error when it resolved to: (a) grant respondent's Motion for Issuance of Writ of Execution of the Decision dated 11 August 1999; and (b) cause the cancellation of Entry No. 7159 annotated on respondent's TCT No. 122944.

Suffice it to state, by way of reiteration, that this Court is not declaring that respondent has purchased the property in good faith, only that he was not given his day in court to establish his right over the property. The issue of whether or not he was a purchaser in good faith is, therefore, a matter that must be resolved in an appropriate case and in the proper forum.[21]

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[20] CA *rollo*, p. 220.

[21] *National Housing Authority v. Evangelista*, *supra* note 8 at 481.

WHEREFORE, the petition is **DENIED**. The Resolutions dated 17 July 2007 and 12 November 2007 both of the Court of Appeals in CA-G.R. SP No. 41546 are hereby **AFFIRMED**. The Court of Appeals is **DIRECTED** to **CAUSE** the implementation of the Writ of Execution it issued on 17 July 2007 directing the Register of Deeds of Quezon City "to annotate the dispositive part of the Court of Appeals Decision dated 11 August 1999 in the title of [Evangelista] and to cancel Entry No. 7159 annotated on [Evangelista's] TCT No. 122944."

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 185346. June 27, 2012]

BANCO FILIPINO SAVINGS AND MORTGAGE BANK, *petitioner, vs.* **MIGUELITO M. LAZARO,** *respondent.*

[G.R. No. 185442. June 27, 2012]

MIGUELITO M. LAZARO, *petitioner, vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK and TEODORO O. ARCENAS, JR., BF RETIREMENT FUND AND PERFECTO YASAY JR. (IN SUBSTITUTION OF DECEASED CONRADO BANZON),** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; RETIREMENT OF EMPLOYEE; YEARS COVERED BY A BANK'S LIQUIDATION PERIOD SHALL BE CREDITED AS PART OF EMPLOYEE'S RETIREMENT PAY.— In

Philippine Veterans Bank v. NLRC, this Court explained that banks under liquidation retain their legal personality. In fact, even if they are prohibited from conducting regular banking business, it is necessary that debts owed to them be collected. Lazaro performed the duty of foreclosing debts in favor of Banco Filipino. It cannot rightfully disclaim Lazaro's work that benefitted it. Consequently, we find no grievous error committed by the CA in crediting the years covered by the liquidation period as part of Lazaro's retirement pay.

2. **ID.; ID.; ID.; "FINAL SALARY" OF THE EMPLOYEE IS THE BASIS FOR COMPUTING HIS RETIREMENT PAY.—** Referring to the Rules of the Banco Filipino Retirement Fund, this Court observes that they refer to the "final salary" of the employee as basis for computing the latter's retirement pay. As established by the LA, the NLRC and the CA, the final salary of Lazaro was 38,000, and not ₱50,000. This consistent factual determination can no longer be retried.

3. **ID.; ID.; ID.; ROUNDING OFF PROVISION UNDER THE LABOR CODE IN THE COMPUTATION OF RETIREMENT BENEFIT APPLIES ONLY IN THE ABSENCE OF AN AGREEMENT.—** We rule that the CA committed no reversible error when it did not round off Lazaro's length of service. To begin with, his plea for rounding off his length of service is mistakenly based on Article 287 of the Labor Code[.] x x x Lazaro cannot anchor his claim on the said provision, because governing in this case is the Rules of the Banco Filipino Retirement Fund. Indeed, as found in the Implementing Rules of the Retirement Pay Law and in jurisprudence, only in the absence of an applicable retirement agreement shall Article 287 of the Labor Code apply. There is a *proviso* however, that an employee's retirement benefits under any agreement shall not be less than those provided in the said article. It cannot be gainsaid that the Rules of the Banco Filipino Retirement Fund provide for benefits lower than those in the Labor Code. In fact, the bank offers a retirement pay equivalent to one **and** one-half month salary for every year of service, a rate over and above the one-half month salary threshold provided by the law. Moreover, although the Rules of the Banco Filipino Retirement Fund do not grant a rounding off scheme, they nonetheless provide that prorated credit shall be given for incomplete years, regardless of the fraction of months in

the retiree's length of service. Hence, even if the retiree rendered only a fraction of five months, the retiree shall still be credited with retirement benefits based on the fraction of five months of service actually rendered.

4. ID.; ID.; ID.; CLAIM FOR PROFIT SHARES MUST BE SUBSTANTIATED.— Anent the claim for profit shares, the CA has already made a finding that Lazaro received full payment thereof based on the check, voucher, Withholding Tax Certificate and Quitclaim attached by Banco Filipino. x x x [T]his Court cannot try the case anew to determine fully whether the CA seriously erred in making a factual conclusion that Lazaro received full payment of his profit shares. x x x In any event, Lazaro has not demonstrated that Banco Filipino earned profits from 1985 to 1993, the very period during which the bank was closed. The records show that Banco Filipino's allegation pertaining to its profit shares for 1985 to 1993 remains unrefuted. Considering that Lazaro does not dispute its submission, we rule that he has failed to substantiate the affirmative relief prayed for.

APPEARANCES OF COUNSEL

Ma. Mylene P. Carag-Cruz for Banco Filipino Savings and Mortgage Bank, *et al*.

Miguelito M. Lazaro and *Lenito T. Serrano* for Miguelito M. Lazaro

D E C I S I O N

SERENO, *J.*:

Before this Court are two consolidated Petitions for Review under Rule 45 filed by Banco Filipino Savings and Mortgage Bank (Banco Filipino) (G.R. No. 185346) and Miguelito M. Lazaro (Lazaro) (G.R. No. 185442). Both Petitions assail the Court of Appeals (CA) 23 January 2008 Decision and 12 November 2008 Resolution in CA-G.R. SP No. 93145.

Ruling against Lazaro, the CA sustained the judgments of the courts *a quo* denying his monetary claims for salary differential,

attorney's fees and profit sharing. Nevertheless, the appellate court granted him seven years of retirement differential pay covering the period within which the bank was under liquidation.

The pertinent facts are as follows:[1]

On 1 February 1968, Lazaro started working for Banco Filipino as a probationary employee. Rising from the ranks, he was promoted to the position of assistant manager, which he held until the bank was closed by the Central Bank of the Philippines on 25 January 1985. Notwithstanding the cessation of the regular operations of the bank, Lazaro was reemployed on 16 April 1992 as a member of a task force[2] assigned to collect its delinquent accounts.

After this Court adjudged that the bank's closure was illegal,[3] Banco Filipino eventually reopened in June 1992. Lazaro continued to work for the bank until he retired from his last post as assistant vice-president on 1 December 1995. Thereafter, he was paid retirement benefits for 20 years and 7 months of service pegged at his latest gross salary rate of ₱38,000 per month.

Lazaro, however, demanded a higher amount. Specifically, he asserted that since his employment lasted from 1 February 1968 until 1 December 1995, he should be credited with 27 years and 10 months of service. Additionally, he claimed that the base amount of his retirement pay should be increased from ₱38,000 to ₱50,000 to reflect the salary increase given by the bank to its senior officers in December 1995.

Aside from demanding his retirement pay differential, Lazaro also required Banco Filipino to pay the 10% attorney's fees it received while foreclosing delinquent accounts. Furthermore,

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[1] CA Decision penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison concurring, *rollo* (G.R. No. 185346), pp. 28-39.

[2] Lazaro's Service Record, Annex F-1, *rollo* (G.R. No. 185442), p. 129.

[3] *Banco Filipino Savings and Mortgage Bank v. The Monetary Board*, G.R. No. 70054, 11 December 1991, 204 SCRA 767.

he sought the payment of his 10% profit share from 1984 to 1995.

Banco Filipino refused the additional demands of Lazaro. As a result, he filed a Complaint for underpayment of retirement benefits, as well as nonpayment of attorney's fees and profit shares before the Labor Arbiter (LA).

In its defense, Banco Filipino emphasized that Lazaro was entitled only to 20 years and 7 months of service, for he could not include in his employment the period of 7 years within which the bank was ordered closed.

Banco Filipino also denied the contention of Lazaro that the basis of his retirement pay should be increased from ₱38,000 to ₱50,000. According to the bank, Lazaro was not covered by the salary increase granted in December 1995, since he had resigned as early as 1 December 1995. In this regard, the bank cited the Rules of the Banco Filipino Retirement Fund as follows:[4]

> The normal retirement date of a member shall be a lump sum amount or gratuity equal to one and one-half month's salary for every year of service based on the final salary of the member. Credit will be given for incomplete years pro-rated at one-twelfth (1/12) of the full years credit for each month of service.

As regards the attorney's fees, the bank argued that Lazaro was not entitled thereto, because he had merely performed his functions as a legal counsel of the bank, for which he was already compensated. Lastly, Banco Filipino refused to give profit shares without the Monetary Board's approval as required by law.

Ultimately, the LA gave credence to the bank's defenses and, hence, denied all of Lazaro's demands.[5] On appeal, the National Labor Relations Commission (NLRC) affirmed the LA's Decision.[6]

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[4] Exhibit A, CA *rollo*, p. 111.

[5] LA's Decision, CA *rollo*, p. 32.

[6] NLRC's Resolution, CA *rollo*, p. 41.

After receiving the adverse judgment, Lazaro pursued the action before the CA. The appellate court modified the LA's Decision and held that Lazaro was entitled to retirement pay differential.[7] It reasoned that, as a consequence of the bank's continued operations notwithstanding the receivership proceedings, Banco Filipino could not disclaim the work performed by Lazaro during the said period.[8] Thus, the whole duration of seven years must be included in computing his retirement pay differential.

As for the claims consisting of attorney's fees and additional retirement pay on the basis of increased salaries, the CA concurred in the LA's denial of those claims.[9] With respect to the profit shares demanded by Lazaro, it dismissed his demands, considering that the bank had already paid him in full, as evidenced by the attached vouchers and checks.[10]

Banco Filipino and Lazaro separately moved for reconsideration, both of which the appellate court denied.[11]

In the instant Petitions, the parties question the CA's dispositions of Lazaro's monetary claims.

Banco Filipino assails the grant of a retirement pay differential. It emphasizes that the liquidation period should not be included in computing retirement benefits.

Additionally, Banco Filipino cites *Banco Filipino Staff Association v. Banco Filipino Savings and Mortgage Bank* and claims that this Court had already ruled to exclude the seven-year period of closure from the length of service of the bank's employees.[12]

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[7] *Supra* note 1, at 37.

[8] *Id.*

[9] *Id.* at 37-38.

[10] *Id.* at 38.

[11] CA Resolution dated 12 November 2008, *rollo* (G.R. No. 185346), p. 44.

[12] CA *rollo*, p. 477.

On the other hand, Lazaro reiterates his demand for a higher salary base for computing his retirement pay. He also asks that his retirement pay differential be reckoned from work rendered for 27 years and 10 months. Further, he asks that the 10 months be further rounded off to one year, given that the Labor Code considers a fraction of at least six (6) months as a whole year.[13]

Lazaro also reiterates his claim for attorney's fees. He additionally denies having received his profit share in full. Instead, he claims that the amounts he received were only for the years 1984, 1994 and 1995.[14] Banco Filipino therefore still owes him profit shares covering the period 1985 to 1993.

Lazaro also brings up a matter that he raised for the first time in his Motion for Reconsideration before the CA.[15] He claims a one-day salary differential for the work he rendered on the day of his retirement on 1 December 1995.[16] Hence, he supposedly should be paid the difference between his previous salary of ₱38,000 and the new salary of 50,000 given to senior officers.

Additionally, he prays for moral damages, exemplary damages, attorney's fees and expenses of the suit.[17]

Accordingly, the combined issues presented for our resolution are as follows:

I. Whether the CA gravely erred in granting retirement pay differentials to Lazaro;

II. Whether the CA committed grievous error in dismissing Lazaro's claims for attorney's fees and profit shares; and

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[13] Lazaro's Petition for Review, *rollo* (G.R. No. 185442), p. 67.

[14] *Id.* at 67-68.

[15] CA *rollo*, p. 493.

[16] *Supra* note 13.

[17] *Supra* note 13, at 78.

III. Whether the CA committed grievous error in not addressing Lazaro's claims for a one-day salary differential and damages consisting of moral and exemplary damages, attorney's fees and expenses of suit.

Ruling of the Court

Retirement Pay Differentials

In essence, Banco Filipino maintains that the seven-year period when it was under liquidation should not be credited in computing Lazaro's retirement pay because, during that period, the bank was considered closed. It cites, as further basis, G.R. No. 165367 pertaining to *Banco Filipino Staff Association v. Banco Filipino Savings and Mortgage Bank*[18] to support the exclusion of the liquidation period.

This contention is without merit, for it inaccurately portrays the status of a bank under liquidation. In *Philippine Veterans Bank v. NLRC,*[19] this Court explained that banks under liquidation retain their legal personality. In fact, even if they are prohibited from conducting regular banking business, it is necessary that debts owed to them be collected.[20] Lazaro performed the duty of foreclosing debts in favor of Banco Filipino. It cannot rightfully disclaim Lazaro's work that benefitted it. Consequently, we find no grievous error committed by the CA in crediting the years covered by the liquidation period as part of Lazaro's retirement pay.

With respect to *Banco Filipino Staff Association v. Banco Filipino Savings and Mortgage Bank*, which Banco Filipino cites in order to prove that this Court had earlier excluded the seven-year period of closure from the length of service of the

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[18] Banco Filipino's Petition for Review, *rollo* (G.R. No. 185346), p. 21.

[19] 375 Phil. 957 (1999).

[20] *Provident Savings Bank v. Court of Appeals,* G.R. No. 97218, 17 May 1993, 222 SCRA 125.

bank's employees, the CA read the case correctly; *i.e*. that this Court did not categorically exclude the seven-year period of closure from the length of service of Banco Filipino employees.[21] Thus, the bank cannot use our pronouncement in the said case to defeat Lazaro's claim for retirement pay differential.

Notably, Lazaro remains unsatisfied with the award of retirement pay differential. He seeks these further adjustments: (1) the basis for the computation of his retirement pay should be increased from ₱38,000 to ₱50,000; and (2) the retirement pay differential should include 8 years, and not just 7 years and 7 months of his service.

With respect to the claim that the base for computing the retirement pay should be ₱50,000 and not ₱38,000, the courts *a quo* found that since the applicable Rules of the Banco Filipino Retirement Fund state that the computation shall be for "each completed month of service,"[22] Lazaro — who did not complete his services for December 1995 – cannot claim the salary increase granted, when he has already left Banco Filipino, and credit it to his retirement pay. Conversely, Lazaro argues that the Rules of the Banco Filipino Retirement Fund do not explicitly state that the computation shall be for each completed month of service.[23]

Referring to the Rules of the Banco Filipino Retirement Fund, this Court observes that they refer to the "final salary" of the employee as basis for computing the latter's retirement pay.[24]

As established by the LA, the NLRC and the CA, the final salary of Lazaro was ₱38,000, and not ₱50,000.[25] This consistent

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[21] *Supra* note 11, at 41-42.

[22] *Supra* note 7, *citing* the NLRC's Resolution, which in turn cited the LA's Decision.

[23] *Supra* note 13, at 62.

[24] *Supra* note 4.

[25] *Supra* note 1, at 30, *citing* the NLRC's Resolution, which in turn cited the LA's Decision.

factual determination can no longer be retried. It is aphoristic that a reexamination of factual findings cannot be done through a petition for review on certiorari under Rule 45 of the Rules of Court, because this Court reviews only questions of law.[26]

With regard to the second adjustment Lazaro prays for, we note that he assiduously went through the whole process of appeal to seek a rounding off of his 27 years and 10 months of work to 28 years and consequently obtain a higher retirement pay. Considering the bank's grant of 20 years and 7 months of retirement pay,[27] plus the CA's award of a 7-year retirement pay differential,[28] in effect, only 5 months worth of prorated retirement pay remains unsettled. At this juncture, this Court reminds everyone that while access to the courts is guaranteed, there must be limits thereto.[29]

We rule that the CA committed no reversible error when it did not round off Lazaro's length of service. To begin with, his plea for rounding off his length of service is mistakenly based on Article 287 of the Labor Code, which provides:

Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond

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[26] *Diokno v. Cacdac*, G.R. No. 168475, 4 July 2007, 526 SCRA 440.

[27] Banco Filipino Retirement Benefit, Exhibit D, CA *rollo*, p. 114.

[28] *Supra* note 7.

[29] *Ancheta v. Ancheta*, 468 Phil. 900 (2004).

sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, **a fraction of at least six (6) months being considered as one whole year.**

Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves. x x x. (Emphasis supplied.)

Lazaro cannot anchor his claim on the said provision, because governing in this case is the Rules of the Banco Filipino Retirement Fund. Indeed, as found in the Implementing Rules of the Retirement Pay Law[30] and in jurisprudence,[31] only in the absence of an applicable retirement agreement shall Article 287 of the Labor Code apply. There is a *proviso* however, that an employee's retirement benefits under any agreement shall not be less than those provided in the said article.

It cannot be gainsaid that the Rules of the Banco Filipino Retirement Fund provide for benefits lower than those in the Labor Code. In fact, the bank offers a retirement pay equivalent to one **and** one-half month salary for every year of service, a rate over and above the one-half month salary threshold provided by the law.

Moreover, although the Rules of the Banco Filipino Retirement Fund do not grant a rounding off scheme, they nonetheless provide that prorated credit shall be given for incomplete years, regardless of the fraction of months in the retiree's length of service.[32] Hence, even if the retiree rendered only a fraction of

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[30] GUIDELINES FOR THE EFFECTIVE IMPLEMENTATION OF R.A. 7641, THE RETIREMENT PAY LAW (1996).

[31] *Salafranca v. Philamlife Village Homeowners Association, Inc.*, 360 Phil. 652 (1998).

[32] *Supra* note 4.

five months, the retiree shall still be credited with retirement benefits based on the fraction of five months of service actually rendered.

Notwithstanding the lack of a rounding-up provision, still, the higher retirement pay, together with the prorated crediting, cannot be deemed to be less favorable than that provided for by the law. Ultimately, the more important threshold[33] to be considered in construing whether the retirement agreement provides less benefits, compared to those provided by the Retirement Pay Law, is that the retirement benefits in the said agreement should at least amount to one-half of the employee's monthly salary.

Therefore, considering that Lazaro is bound by the terms of the Rules of the Banco Filipino Retirement Fund, it follows that he cannot claim his 27 years and 10 months of work to be rounded off to 28 years in order to obtain a higher retirement pay.

Attorney's Fees and Profit Shares

Lazaro must establish a legal basis — either by law, contract or other sources of obligations[34] — to merit the receipt of the additional 10% attorney's fees collected in the various foreclosure procedures he settled as the bank's legal officer.

After a perusal of the instant Petition, we note that Lazaro has not produced any contract or provision of law that would warrant the payment of the additional attorney's fees. Without any basis, therefore, this Court sustains the rulings of the courts below that he is only entitled to his salaries as the bank's legal officer, because the services he rendered in the foreclosure proceedings was part of his official tasks.[35]

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[33] *Cainta Catholic School v. Cainta Catholic School Employees Union,* 523 Phil. 134 (2006).

[34] CIVIL CODE, Art. 1157.

[35] *Supra* note 1, at 36; NLRC's Resolution, CA *rollo*, pp. 38-40 citing the LA's Decision.

Anent the claim for profit shares, the CA has already made a finding that Lazaro received full payment thereof based on the check,[36] voucher,[37] Withholding Tax Certificate[38] and Quitclaim[39] attached by Banco Filipino. However, he points out that the payment covered only his profit shares in 1984, 1994 and 1995; and, hence, the bank reneged on it duty to give his shares from 1985 to 1993.

On this point, this Court cannot try the case anew to determine fully whether the CA seriously erred in making a factual conclusion that Lazaro received full payment of his profit shares. This Court is not a trier of facts, and this doctrine applies with greater force to labor cases.[40] We generally do not weigh anew the evidence already passed upon by the CA.[41] In any event, Lazaro has not demonstrated that Banco Filipino earned profits from 1985 to 1993, the very period during which the bank was closed.

The records show that Banco Filipino's allegation pertaining to its profit shares for 1985 to 1993 remains unrefuted.[42] Considering that Lazaro does not dispute its submission, we rule that he has failed to substantiate the affirmative relief prayed for.

One-day salary differential and Lazaro's claims for moral and exemplary damages, attorney's fees and expenses of suit

Prefatorily, Lazaro's claims for one - day salary differential, which was raised only before the CA, merits instant dismissal.

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[36] Annex P-1, *rollo* (G.R. No. 185442), p. 235.

[37] *Id.*

[38] *Id.* at 237.

[39] *Id.* at 236.

[40] *San Juan de Dios Educational Foundation Employees Union-Alliance of Filipino Workers v. San Juan de Dios Educational Foundation, Inc. (Hospital)*, G.R. No. 143341, 28 May 2004, 430 SCRA 193.

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

[42] Banco Filipino's Comment, *rollo* (G.R. No. 185442), p. 402.

This ruling is supported by basic considerations of due process, which prohibits the raising of issues for the first time on appeal.[43] Points of law, theories, issues, and arguments not brought to the attention of the lower court will not be considered by the reviewing court.[44] To consider them would be unfair to the adverse party, who would have no opportunity to present contrary evidence as it could have done had it been aware of the new theory at the time of the hearing before the trial court.[45]

As for damages, attorney's fees and expenses of the suit, the courts *a quo* consistently did not grant, or even address, the claims of Lazaro. But to finally write *finis* to this case, we hold that he is not entitled to those reliefs.

To obtain moral damages, the claimant must prove the existence of bad faith by clear and convincing evidence, for the law always presumes good faith. It is not even enough that one merely suffered sleepless nights, mental anguish and serious anxiety as the result of the actuations of the other party.[46]

In this case, Lazaro did not state any moral anguish that he suffered. Neither did he substantiate his imputations of malice to Banco Filipino. He only made a sweeping declaration, without concrete proof, that the bank in refusing his claim maliciously damaged his property rights and interest.[47] Accordingly, neither moral damages nor exemplary damages[48] can be awarded to him.

With respect to attorney's fees, an award is proper only if the one was forced to litigate and incur expenses to protect

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[43] *Canada v. All Commodities Marketing Corporation,* G.R. No. 146141, 17 October 2008, 569 SCRA 321.

[44] *Tolosa v. NLRC*, 449 Phil. 271 (2008).

[45] *Baluyut v. Poblete*, G.R. No. 144435, 6 February 2007, 514 SCRA 370.

[46] *Acuña v. Court of Appeals,* 523 Phil. 325 (2006).

[47] *Supra* note 13, at 79.

[48] *De Guzman v. NLRC*, G.R. No. 90856, 23 July 1992, 211 SCRA 723.

one's rights and interest by reason of an unjustified act or omission of the party for whom it is sought.[49] The award of attorney's fees is more of an exception than the general rule, since it is not sound policy to place a penalty on the right to litigate.[50]

Here, Banco Filipino had a *prima facie* legitimate defense that, because it underwent liquidation proceedings, it cannot be compelled to credit that period to the retirement pay and profit shares of its employees. It also rationalized that Lazaro cannot be additionally paid attorney's fees without showing any basis for the compensation. Considering that Banco Filipino's refusal cannot be accurately characterized as unjustified, Lazaro cannot claim an award of attorney's fees.

IN VIEW THEREOF, the assailed 23 January 2008 Decision and 12 November 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 93145 are hereby **AFFIRMED**.

SO ORDERED.

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

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[49] *Asian Center for Career and Employment System and Services, Inc. v. NLRC*, 358 Phil. 380 (1998).

[50] *Development Bank of the Philippines v. Court of Appeals*, 330 Phil. 901 (1996).

SECOND DIVISION

[G.R. No. 187188. June 27, 2012]

SALVADOR O. MOJAR, EDGAR B. BEGONIA, Heirs of the late JOSE M. CORTEZ, RESTITUTO GADDI, VIRGILIO M. MONANA, FREDDIE RANCES, and EDSON D. TOMAS, *petitioners, vs.* **AGRO COMMERCIAL SECURITY SERVICE AGENCY, INC., *et al.*,**[1] *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF PLEADINGS, JUDGMENTS, AND OTHER PAPERS; SERVICE TO COUNSEL OF RECORD WAS VALID DESPITE THE FACT THAT HE WAS ALREADY DECEASED AT THE TIME.—** Such service to Atty. Espinas, as petitioners' counsel of record, was valid despite the fact he was already deceased at the time. If a party to a case has appeared by counsel, service of pleadings and judgments shall be made upon his counsel or one of them, unless service upon the party is specifically ordered by the court. It is not the duty of the courts to inquire, during the progress of a case, whether the law firm or partnership representing one of the litigants continues to exist lawfully, whether the partners are still alive, or whether its associates are still connected with the firm. It is the duty of party-litigants to be in contact with their counsel from time to time in order to be informed of the progress of their case. It is likewise the duty of parties to inform the court of the fact of their counsel's death. Their failure to do so means that they have been negligent in the protection of their cause. They cannot pass the blame to the court, which is not tasked to monitor the changes in the circumstances of the parties and their counsel.

2. **ID.; SUBSTITUTION OF COUNSEL; FLIMSY EXCUSE IS NOT ALLOWED TO JUSTIFY FAILURE TO SUBSTITUTE**

[1] While the caption of the Petition indicates "*et. al*.," no other respondent is named.

COUNSEL.— Petitioners were negligent in the conduct of their litigation. Having known that Atty. Espinas was already bedridden as early as December 2007, they should have already obtained new counsel who could adequately represent their interests. The excuse that Atty. Aglipay could not enter his appearance before the CA "because [petitioners] failed to get [their] folder from the office of Atty. Espinas" is flimsy at best. x x x The fact that petitioners were unable to obtain their folder from Atty. Espinas is immaterial. Proof of service upon the lawyer to be substituted will suffice where the lawyer's consent cannot be obtained. With respect to the records of the case, these may easily be reconstituted by obtaining copies thereof from the various courts involved. x x x. It is questionable why, knowing these matters, petitioners did not seek the replacement of their counsel, if the latter was unable to pursue their case.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TRANSFER OF SECURITY GUARDS TO ANOTHER PLACE DOES NOT AMOUNT TO ILLEGAL DISMISSAL.—** In cases involving security guards, a relief and transfer order in itself does not sever the employment relationship between the security guards and their agency. Employees have the right to security of tenure, but this does not give them such a vested right to their positions as would deprive the company of its prerogative to change their assignment or transfer them where their services, as security guards, will be most beneficial to the client. An employer has the right to transfer or assign its employees from one office or area of operation to another in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause. While petitioners may claim that their transfer to Manila will cause added expenses and inconvenience, we agree with the CA that, absent any showing of bad faith or ill motive on the part of the employer, the transfer remains valid.

APPEARANCES OF COUNSEL

Mario Aglipay for petitioners.
Augustus Cesar E. Azura for respondents.

D E C I S I O N

SERENO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to annul the entire proceedings before the Court of Appeals (CA) in CA-G.R. SP No. 102201, in which it issued its Decision dated 21 July 2008 and Resolution dated 16 March 2009.[2]

Statement of Facts and of the Case

Petitioners were employed as security guards by respondent and assigned to the various branches of the Bank of Commerce in Pangasinan, La Union and Ilocos Sur.

In separate Office Orders dated 23 and 24 May 2002, petitioners were relieved from their respective posts and directed to report to their new assignments in Metro Manila effective 3 June 2002. They, however, failed to report for duty in their new assignments, prompting respondent to send them a letter dated 18 June 2002. It required a written explanation why no disciplinary action should be taken against them, but the letter was not heeded.

On 15 February 2005, petitioners filed a Complaint for illegal dismissal against respondent and the Bank of Commerce, Dagupan Branch, before the National Labor Relations Commission (NLRC). Petitioners claimed, among others, that their reassignment was a scheme to sever the employer-employee relationship and was done in retaliation for their pressing their claim for salary differential, which they had earlier filed against respondent and the Bank of Commerce before the NLRC. They also contended that the transfer to Manila was inconvenient and prejudicial, since they would incur additional expenses for board and lodging.

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[2] Both the Decision dated 21 July 2008 and Resolution dated 16 March 2009 were penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court) and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Sixto C. Marella, Jr.; *rollo*, pp. 26-35 and 36-39.

On 22 May 2006, the Labor Arbiter (LA) rendered a Decision[3] finding that petitioners were illegally dismissed. The dispositive portion reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered ordering respondents to reinstate all the complainants to their former assignment in Pangasinan with full backwages and if reinstatement is no longer possible, to pay separation pay of one month for every year of service each of the seven complainant security guards. (*A detailed computation of the judgment award is attached as Annex* "*A.*")[4] (Italicized in the original)

On appeal, the NLRC affirmed the LA's ruling, with the modification that the Complaint against the Bank of Commerce was dismissed.[5] The dispositive portion provides:

> WHEREFORE, premises considered, the appeal of Agro Commercial Security Service Agency, Inc. is hereby DISMISSED for lack of merit. The Appeal of Bank of Commerce is GRANTED for being impressed with merit. Accordingly, judgment is hereby rendered MODIFYING the Decision of the Labor Arbiter dated May 22, 2006 by DISMISSING the complaint against Bank of Commerce-Dagupan. All other dispositions of the Labor Arbiter not so modified, STAYS.[6]

On 23 January 2008, respondent filed a Motion for Extension to file a Petition for *Certiorari* before the CA. In a Resolution dated 20 February 2008, the latter granted the Motion for Extension, allowing respondent until 10 February 2008 within which to file its Petition. On 9 February 2008, respondent filed its Petition for *Certiorari* before the appellate court.

On 30 June 2008, the CA issued a Resolution noting that no comment on the Petition had been filed, and stating that the case was now deemed submitted for resolution.

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[3] Penned by Labor Arbiter Luis D. Flores; *rollo*, pp. 45-49.

[4] *Id.* at 48-49.

[5] Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go; *rollo*, pp. 52-56.

[6] *Id.* at 56.

On 21 July 2008, the CA rendered its Decision. Finding merit in the Petition, it found the Orders transferring petitioners to Manila to be a valid exercise of management prerogative. The records were bereft of any showing that the subject transfer involved a diminution of rank or salaries. Further, there was no showing of bad faith or ill motive on the part of the employer. Thus, petitioners' refusal to comply with the transfer orders constituted willful disobedience of a lawful order of an employer and abandonment, which were just causes for termination under the Labor Code. However, respondent failed to observe the due process requirements in terminating them. The dispositive portion of the CA Decision provides:

WHEREFORE, premises considered, the instant petition is **GRANTED**. The assailed Decision and Resolution of the NLRC dated July 31, 2007 and October 31, 2007[,] respectively, in NLRC NCR CA No. 046036-05 are **REVERSED** and **SET ASIDE**. The complaints of private respondents for illegal dismissal are hereby **DISMISSED**. However, petitioner is ordered to pay private respondents the sum of ₱10,000.00 each for having violated the latter's right to statutory due process.[7]

On 1 August 2008, petitioner Mojar filed a Manifestation[8] before the CA, stating that he and the other petitioners had not been served a copy of the CA Petition. He also said that they were not aware whether their counsel before the NLRC, Atty. Jose C. Espinas, was served a copy thereof, since the latter had already been bedridden since December 2007 until his demise on "25 February 2008."[9] Neither could their new counsel, Atty. Mario G. Aglipay, enter his appearance before the CA, as petitioners failed to "get [the] folder from the office of Atty. Espinas, as the folder can no longer be found."[10]

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[7] *Rollo*, p. 34.

[8] *Id.* at 192-193.

[9] In their Manifestation, petitioner Mojar states that Atty. Espinas passed away on 25 February 2008. However, in the Petition, petitioners state that he passed away on 8 February 2008. Notably, no death certificate has been presented by them.

[10] *Id.* at 192.

Thereafter, petitioners filed a Motion to Annul Proceedings[11] dated 9 September 2008 before the CA. They moved to annul the proceedings on the ground of lack of jurisdiction. They argued that the NLRC Decision had already attained finality, since the Petition before the CA was belatedly filed, and the signatory to the Certification of non-forum shopping lacked the proper authority.

In a Resolution dated 16 March 2009, the CA denied the Motion to Annul Proceedings.

Hence, this Petition.

The Petition raised the following arguments: (1) There was no proof of service attached to the Motion for Extension to file a Petition for *Certiorari* before the CA; thus, both the Motion and the Petition were mere scraps of paper. (2) Respondent purposely intended to exclude petitioners from the proceedings before the CA by omitting their actual addresses in the CA Petition, a mandatory requirement under Section 3, Rule 46; in relation to Section 1, Rule 65 of the Rules of Court. Further, respondent failed to prove the valid service of its CA Petition upon petitioners' former counsel of record. (3) The CA was grossly ignorant of the law in ignoring jurisprudence, which states that when the floating status of an employee lasts for more than six months, the latter may be considered to have been constructively dismissed.

On 3 September 2009, respondent filed its Comment on the Petition, pursuant to this Court's 29 June 2009 Resolution. In its Comment, it argued that the CA Decision had already become final and executory, inasmuch as the Motion to Annul Proceedings, a procedural approach not provided for in the Rules, was filed some 44 days after the service of the CA Decision on the counsel for petitioners. Further, Atty. Aglipay had then no legal standing to appear as counsel, considering that there was still no substitution of counsel at the time he filed the Motion to Annul Proceedings.

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[11] *Rollo*, pp. 40-44.

In any case, petitioners are bound by the actions of their counsel, Atty. Espinas.

On 1 March 2010, this Court issued a Resolution requiring petitioners to file their reply, which petitioners complied with on 26 April 2010. In their Reply, petitioners state among others that the records of the CA case showed that there was a deliberate violation of their right to due process. The CA Petition did not contain the required affidavit of service, which alone should have caused the *motu proprio* dismissal thereof. Further, the instant Petition before this Court is an appropriate mode to contest the CA Decision and Resolution, which petitioners contend are void judgments. They also argue that there is no rule on the client's substitution in case of the death of counsel. Instead, the reglementary period to file pleadings in that case must be suspended and made more lenient, considering that the duty of substitution is transferred to a non-lawyer.

On 30 March 2011, respondent filed a Motion for Early Resolution of the case. Petitioners likewise filed a Motion for Leave (For the Admission of the Instant Comment on Private Respondent's Motion for Early Resolution), stating that they were joining respondent in moving for the early resolution of the case.

This Court will resolve the issues raised *in seriatim*.

Actual Addresses of Parties

Petitioners contend that the CA should not have taken cognizance of the Petition before it, as their actual addresses were not indicated therein as required under Section 3, Rule 46[12]

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[12] Rules of Court, Rule 46, Sec. 3, provides:

SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements*. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

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of the Rules of Court, and pursuant to *Cendaña v. Avila*.[13] In the 2008 case *Cendaña*, this Court ruled that the requirement that a petition for *certiorari* must contain the actual addresses of all the petitioners and the respondents is mandatory. The failure to comply with that requirement is a sufficient ground for the dismissal of a petition.

This rule, however, is not absolute. In the 2011 case *Santos v. Litton Mills Incorporated*,[14] this Court ruled that where the petitioner clearly mentioned that the parties may be served with the court's notices or processes through their respective counsels, whose addresses have been clearly specified as in this case, this act would constitute substantial compliance with the requirements of Section 3, Rule 46. The Court further observed that the notice required by law is notice to counsel if the party has already appeared by counsel, pursuant to Section 2, Rule 13 of the Rules of Court.

In its Petition before the CA, respondent clearly indicated the following:

THE PARTIES

2.0. The petitioner AGRO COMMERCIAL SECURITY SERVICE AGENCY, INC. (*hereafter petitioner AGRO*), is a corporation existing under Philippine laws, and may be served with process thru counsel, at his address hereunder indicated; private respondents (1) SALVADOR O. MOJAR; (2) EDGAR B. BEGONIA; (3) JOSE M. CORTEZ; (4) FREDDIE RANCES; (5) VIRGILIO MONANA; (6) RESTITUTU [sic] GADDI; and, (7) EDSON D. TOMAS, are all of age, and during the material period, were in the employ of petitioner AGRO as security guards; said respondents may be served with process thru their common counsel, ATTY. JOSE C. ESPINAS at No. 51 Scout Tuazon, Quezon City; on the other hand, respondent National Labor Relations Commission, 1st Division, Quezon City, is the agency having

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The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

[13] G.R. No. 168350, 31 January 2008, 543 SCRA 394.

[14] G.R. No. 170646, 22 June 2011, 652 SCRA 510.

jurisdiction over labor disputes in the Philippines and may be served with process at offices in Quezon City;[15]

The foregoing may thus be considered as substantial compliance with Section 3, Rule 46. In any case, and as will be discussed further below, the CA had sufficient reason to take cognizance of the Petition.

Affidavit of Service

Section 3, Rule 46 provides that the petition for *certiorari* should be filed together with the proof of service thereof on the respondent. Under Section 13, Rule 13 of the Rules of Court, if service is made by registered mail, as in this case, proof shall be made by an affidavit of the person mailing and the registry receipt issued by the mailing office. Section 3, Rule 46 further provides that the failure to comply with any of the requirements shall be sufficient ground for the dismissal of the petition.

Petitioners allege that no affidavit of service was attached to the CA Petition. Neither is there any in the copy of the CA Petition attached to the instant Petition. In its Comment, respondent claims that petitioners – through their counsel, Atty. Aglipay - can be charged with knowledge of the pendency of the CA Petition. It says that on April 2008, Atty. Aglipay filed before the NLRC an Entry of Appearance and Motion for Execution Pending Appeal.[16] However, petitioners merely indicated therein that they were "respectfully mov[ing] for the execution pending appeal of the Labor Arbiter's decision dated 22 May 2006 affirmed by the NLRC."[17] There was no indication that they had been served a copy of the CA Petition. No other proof was presented by respondent to show petitioners' actual receipt of the CA Petition. In any case, this knowledge, even if presumed, would not - and could not - take the place of actual service and proof of service by respondent.

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[15] *Rollo*, p. 65.

[16] *Id.* at 225-228.

[17] *Id.* at 225.

In *Ferrer v. Villanueva*,[18] petitioner therein failed to append the proof of service to his Petition for *Certiorari*. Holding that this failure was a fatal defect, the Court stated:

> There is no question that petitioner herein was remiss in complying with the foregoing Rule. In *Cruz v. Court of Appeals*, we ruled that with respect to motions, **proof of service is a mandatory requirement**. We find no cogent reason why this dictum should not apply and with more reason to a petition for *certiorari*, in view of Section 3, Rule 46 which requires that the petition shall be filed **"together with proof of service thereof."** We agree with the Court of Appeals that the lack of proof of service is a fatal defect. The utter disregard of the Rule cannot be justified by harking to substantial justice and the policy of liberal construction of the Rules. Technical rules of procedure are not meant to frustrate the ends of justice. Rather, they serve to effect the proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. (Emphasis in the original)

Indeed, while an affidavit of service is required merely as proof that service has been made on the other party, it is nonetheless essential to due process and the orderly administration of justice.[19]

Be that as it may, it does not escape the attention of this Court that in the CA Resolution dated 16 March 2009, the appellate court stated that their records revealed that Atty. Espinas, petitioners' counsel of record at the time, was duly served a copy of the following: CA Resolution dated 20 February 2008 granting respondent's Motion for Extension of Time to file the CA Petition; CA Resolution dated 24 April 2008 requiring petitioners to file their Comment on the CA Petition; and CA Resolution dated 30 June 2008, submitting the case for resolution, as no comment was filed.

Such service to Atty. Espinas, as petitioners' counsel of record, was valid despite the fact he was already deceased at the time.

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[18] G.R. No. 155025, 24 August 2007, 531 SCRA 97, 102.

[19] *Ang Biat Huan Sons Industries, Inc. v. Court of Appeals*, G.R. No. 154837, 22 March 2007, 518 SCRA 697.

If a party to a case has appeared by counsel, service of pleadings and judgments shall be made upon his counsel or one of them, unless service upon the party is specifically ordered by the court. It is not the duty of the courts to inquire, during the progress of a case, whether the law firm or partnership representing one of the litigants continues to exist lawfully, whether the partners are still alive, or whether its associates are still connected with the firm.[20]

It is the duty of party-litigants to be in contact with their counsel from time to time in order to be informed of the progress of their case. It is likewise the duty of parties to inform the court of the fact of their counsel's death.[21] Their failure to do so means that they have been negligent in the protection of their cause.[22] They cannot pass the blame to the court, which is not tasked to monitor the changes in the circumstances of the parties and their counsel.

Substitution of Counsel

Petitioners claim that Atty. Espinas passed away on 8 February 2008. They further claim that he was already bedridden as early as December 2007, and thus they "failed to get any information whether [he] was served with a copy of the [CA Petition]."[23]

Petitioners were negligent in the conduct of their litigation. Having known that Atty. Espinas was already bedridden as early as December 2007, they should have already obtained new counsel who could adequately represent their interests. The excuse that Atty. Aglipay could not enter his appearance before the CA "because [petitioners] failed to get [their] folder from the office of Atty. Espinas"[24] is flimsy at best.

The requirements for a valid substitution of counsel have been jurisprudentially settled in this wise:

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[20] *Salting v. Velez*, G.R. No. 181930, 10 January 2011, 610 SCRA 124.

[21] *Id.*

[22] *Id.*

[23] *Rollo*, p. 192.

[24] *Id.*

Under Section 26, Rule 138 of the Rules of Court and established jurisprudence, a valid substitution of counsel has the following requirements: (1) the filing of a written application for substitution; (2) the client's written consent; (3) the consent of the substituted lawyer if such consent can be obtained; and, in case such written consent cannot be procured, (4) a proof of service of notice of such motion on the attorney to be substituted in the manner required by the Rules. Where death of the previous attorney is the cause of substitution of the counsel, a verified proof of the death of such attorney (usually a death certificate) must accompany the notice of appearance of the new counsel.[25]

The fact that petitioners were unable to obtain their folder from Atty. Espinas is immaterial. Proof of service upon the lawyer to be substituted will suffice where the lawyer's consent cannot be obtained. With respect to the records of the case, these may easily be reconstituted by obtaining copies thereof from the various courts involved.

Petitioners allegedly went to the CA sometime prior to 31 July 2008, or the date of filing of their Manifestation before the CA, to inquire about the status of their case. Allegedly, they "always visited the Court of Appeals for [the] development of their case."[26] It is doubtful that a person who regularly follows up the status of his case before a court would not be told, first, that a petition has been filed against him; and, second, that the court's resolutions have been sent to his counsel. It is questionable why, knowing these matters, petitioners did not seek the replacement of their counsel, if the latter was unable to pursue their case. Further, despite their manifestation that, sometime prior to 31 July 2008, they were already aware that the case had been submitted for resolution, they still waited until 9 September 2008 – or until they allegedly had knowledge of the CA Decision – before they filed the Motion to Annul Proceedings.

In *Ampo v. Court of Appeals*,[27] this Court explained the vigilance that must be exercised by a party:

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[25] *Bernardo v. Court of Appeals*, 341 Phil. 413, 425-426 (1997).

[26] *Rollo*, p. 17.

[27] 517 Phil. 750, 755-756 (2006).

We are not persuaded by petitioner's argument that he was not aware that his counsel had died or that an adverse judgment had already been rendered until he received the notice of promulgation from the RTC of Butuan City on April 20, 2005. Time and again we have stated that equity aids the vigilant, not those who slumber on their rights. Petitioner should have taken it upon himself to periodically keep in touch with his counsel, check with the court, and inquire about the status of the case. Had petitioner been more prudent, he would have found out sooner about the death of his counsel and would have taken the necessary steps to prevent his present predicament.

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Litigants who are represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their cases. Relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence. The circumstances of this case plainly show that petitioner only has himself to blame. Neither can he invoke due process. The essence of due process is simply an opportunity to be heard. Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy. Where a party, such as petitioner, was afforded this opportunity to participate but failed to do so, he cannot complain of deprivation of due process. If said opportunity is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee.

In this case, petitioners must bear the fruits of their negligence in the handling of their case. They may not decry the denial of due process, when they were indeed afforded the right to be heard in the first place.

Substantive Issue: Illegal Dismissal

Petitioners argue that they were illegally dismissed, based on the 1989 case *Agro Commercial Security Services Agency, Inc. v. NLRC.*,[28] which holds that when the floating status of employees lasts for more than six (6) months, they may be considered to have been illegally dismissed from the service.

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[28] 256 Phil. 1182 (1989).

Unfortunately, the above-mentioned case is not applicable here. In *Agro*, the service contracts of the security agency therein with various corporations and government agencies — to which the security guards were previously assigned — were terminated, generally due to the sequestration of the said offices. Accordingly, many of the security guards were placed on floating status. "Floating status" means an indefinite period of time when one does not receive any salary or financial benefit provided by law.[29] In this case, petitioners were actually reassigned to new posts, albeit in a different location from where they resided. Thus, there can be no floating status or indefinite period to speak of. Instead, petitioners were the ones who refused to report for work in their new assignment.

In cases involving security guards, a relief and transfer order in itself does not sever the employment relationship between the security guards and their agency. Employees have the right to security of tenure, but this does not give them such a vested right to their positions as would deprive the company of its prerogative to change their assignment or transfer them where their services, as security guards, will be most beneficial to the client.[30]

An employer has the right to transfer or assign its employees from one office or area of operation to another in pursuit of its legitimate business interest, provided there is no demotion in rank or diminution of salary, benefits, and other privileges; and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause.[31]

While petitioners may claim that their transfer to Manila will cause added expenses and inconvenience, we agree with the

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[29] *Id.*

[30] *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, 21 July 2008, 559 SCRA 110.

[31] *Salvaloza v. National Labor Relations Commission*, G.R. No. 182086, 24 November 2010, 636 SCRA 184.

CA that, absent any showing of bad faith or ill motive on the part of the employer, the transfer remains valid.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Decision dated 21 July 2008 and Resolution dated 16 March 2009 in CA-G.R. SP No. 102201 are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188302. June 27, 2012]

NANCY L. TY, *petitioner, vs.* **BANCO FILIPINO SAVINGS AND MORTGAGE BANK,** *respondent.*

SYLLABUS

REMEDIAL LAW; JUDGMENTS; DOCTRINE OF *STARE DECISIS,* EXPLAINED AND APPLIED.— G.R. No. 137533, as reiterated in G.R. Nos. 130088, 131469, 155171, 155201 and 166608, is binding and applicable to the present case following the salutary doctrine of *stare decisis et non quieta movere*, which means "to adhere to precedents, and not to unsettle things which are established." Under the doctrine, when this Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same. The doctrine of *stare decisis* is based upon the legal principle or rule involved and not upon the judgment, which results therefrom. In this particular sense, *stare decisis* differs

from *res judicata*, which is based upon the judgment. x x x It bears stressing that the basic facts of the present case and those of G.R. No. 137533 and G.R. Nos. 130088, 131469, 155171, 155201 and 166608 are the same. Clearly, in light of G.R. No. 137533 and G.R. Nos. 130088, 131469, 155171, 155201 and 166608, which the Court follows as precedents, the present action for reconveyance cannot prosper. It is the Court's duty to apply the previous rulings in G.R. No. 137533 and in G.R. Nos. 130088, 131469, 155171, 155201 and 166608 to the present case. **Once a case has been decided one way, any other case involving exactly the same point at issue, as in the present case, should be decided in the same manner**.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala and Cruz for petitioner.
Morales Rojas & Rios-Vidal for respondent.

D E C I S I O N

BRION, ***J.*:**

We resolve the petition for review on *certiorari,*[1] filed by Nancy L. Ty (*petitioner*), to challenge the March 31, 2009 decision[2] and the June 10, 2009 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 107104. The CA decision dismissed the petitioner's petition for *certiorari* for lack of merit. The CA resolution denied the petitioner's subsequent motion for reconsideration.

THE FACTUAL ANTECEDENTS

Sometime in 1979, the Banco Filipino Savings and Mortgage Bank (*respondent*) wanted to purchase real properties as new

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[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Marlene Gonzales-Sison; *rollo*, pp. 48-67.

[3] *Id.* at 69.

branch sites for its expansion program. Since the General Banking Act[4] limits a bank's real estate holdings to no more than 50% of its capital assets, the respondent's Board of Directors decided to warehouse some of its existing properties and branch sites to allow more flexibility in the opening of branches, and to enable it to acquire new branch sites.[5]

The petitioner, a major stockholder and a director of the respondent, persuaded two other major stockholders, Pedro Aguirre and his brother Tomas Aguirre, to organize and incorporate Tala Realty Services Corporation (*Tala Realty*) to hold and purchase real properties in trust for the respondent.[6]

Subsequently, Remedios A. Dupasquier prodded her brother Tomas to endorse to her his shares in Tala Realty and she registered them in the name of her controlled corporation, Add International Services, Inc.[7] The petitioner, Remedios, and Pedro controlled Tala Realty through their respective nominees.[8]

In implementing their trust agreement, the respondent sold to Tala Realty some of its properties. Tala Realty simultaneously leased to the respondent the properties for 20 years, renewable for another 20 years at the respondent's option with a right of first refusal in the event Tala Realty decides to sell them.[9] However, in August 1992, Tala Realty repudiated the trust,

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[4] Republic Act No. 337, Sections 25 (a) and 34 (now Section 51 of the General Banking Law of 2000).

[5] *Rollo*, p. 661.

[6] *Id.* at 662.

[7] *Id.* at 662-663.

[8] The petitioner exercised control through Pilar D. Ongking, then through Cynthia E. Messina, and lastly through Dolly W. Lim. Remedios exercised control through Add International Services, Inc. and Elizabeth H. Palma. Pedro exercised control through Adelito Vergel de Dios, then through Severino S. Banzon, later through Emigdio Tanjuatco, Sr., and lastly through Rubencito M. del Mundo; *id.* at 663-664.

[9] *Id.* at 666-669.

claimed the titles for itself, and demanded payment of rentals, deposits, and goodwill, with a threat to eject the respondent.[10]

Thus, from 1995 to 1996, the respondent filed 17 complaints against Tala Realty, the petitioner, Pedro, Remedios, and their respective nominees for reconveyance of different properties with 17 Regional Trial Courts (*RTCs*) nationwide, including Civil Case No. 2506-MN before Branch 170 of the RTC of Malabon (*Malabon case*), subject of the present case.[11]

The petitioner and her co-defendants moved to dismiss the Malabon case for forum shopping and *litis pendentia*, citing the 16 other civil cases filed in various courts[12] involving the same facts, issues, parties, and reliefs pleaded in the respondent's complaint.[13]

The Malabon RTC denied the motion to dismiss,[14] finding no commonality in the 16 other civil cases since they involved

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[10] *Id.* at 669.

[11] *Id.* at 659-679.

[12] The 16 other civil cases and their respective RTC Branches:

Civil Case No. Q-95-24830	Branch 91, Quezon City
Civil Case No. 95-127	Branch 57, Lucena
Civil Case No. 22493	Branch 28, Iloilo
Civil Case No. 545-M-95	Branch 85, Malolos, Bulacan
Civil Case No. 4521	Branch 84, Batangas City
Civil Case No. U-6026	Branch 48, Urdaneta, Pangasinan
Civil Case No. 4992	Branch 66, La Union
Civil Case No. 2176-F	Branch 86, Cabanatuan City
Civil Case No. 3036	Branch 13, Cotabato
Civil Case No. 95-0230	Branch 274, Parañaque
Civil Case No. 95-170-MK	Branch 272, Marikina
Civil Case No. 95-75212	Branch 45, Manila
Civil Case No. 95-75213	Branch 46, Manila
Civil Case No. 95-75214	Branch 47, Manila
Civil Case No. 23,821-95	Branch 33, Davao
Civil Case No. 96-0036	Branch 255, Las Piñas (*Id.* at 204-206).

[13] *Id.* at 71-80 (*the petitioner*) and 733-758 (*Tala Realty*).

[14] May 15, 1996 order; *id.* at 680-681.

different causes of action. The Malabon RTC also denied[15] the subsequent motions for reconsideration and for suspension of proceedings.[16]

After the petitioner and her co-defendants filed their respective answers *ad cautelam*,[17] the petitioner filed a motion to hold proceedings in abeyance,[18] citing the pendency with this Court of G.R. No. 127611[19] that assailed the denial of their motion to dismiss Civil Case No. 4521 before the Batangas City RTC (Branch 84), and also prayed for a writ of prohibition to order the 17 RTC branches and the three CA divisions, where the same cases were pending, to desist from further proceeding with the trial of the cases.

The Malabon RTC granted to hold proceedings in abeyance.[20] When the Malabon RTC denied[21] the respondent's motion for reconsideration, the respondent elevated its case to the CA via a Rule 65 petition for *certiorari*.[22] The CA initially dismissed the petition,[23] but on motion for reconsideration, it modified its ruling, setting aside the RTC's order to hold proceedings in abeyance for mootness, due to this Court's dismissal of G.R. No. 127611 for late filing.[24]

Subsequently, the respondent moved for pre-trial.[25] Tala Realty opposed the motion and filed again a motion to suspend proceedings,[26]

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[15] October 10, 1996 order; *id.* at 688-690.

[16] *Id.* at 682-687.

[17] *Id.* at 81-99 (*the petitioner*) and 100-113 (*Tala Realty*).

[18] *Id.* at 114-118.

[19] *Tala Realty, et al. v. Hon. Paterno Tac-An and Banco Filipino Savings and Mortgage Bank.*

[20] April 3, 1997 resolution; *id.* at 119-120.

[21] August 11, 1997 resolution; *id.* at 121.

[22] Docketed as CA-G.R. SP No. 46327; *id.* at 122-135.

[23] May 14, 1998 decision; *id.* at 136-141.

[24] August 12, 1998 resolution; *id.* at 142-143.

[25] *Id.* at 145-147.

[26] *Id.* at 151-157.

citing the pendency with this Court of G.R.No. 132703,[27] a petition for *certiorari* that assailed the CA's affirmance[28] of the dismissal order of the Iloilo City RTC (Branch 28) in Civil Case No. 22493.[29]

The petitioner filed her separate opposition to the respondent's motion for pre-trial and a motion to hold proceedings in abeyance, stating that after the dismissal of G.R. No. 127611, two other similar petitions have been elevated to this Court: (1) G.R. No. 130184,[30] involving the CA's reversal of the dismissal of Civil Case No. Q-95-24830 in the Quezon City RTC (Branch 91), and (2) G.R. No. 132703.[31]

The Malabon RTC granted the motion, and again ordered to hold proceedings in abeyance.[32] Six years later, the Malabon RTC directed the parties' counsels to inform it of the status of the pending cases.[33]

In her compliance,[34] the petitioner summarized this Court's rulings in the consolidated cases of G.R. Nos. 130184 and 139166,[35] and in G.R. No. 132703,[36] and reported on the other cases involving the same parties decided by this Court, such as G.R. Nos. 129887,[37] 137980,[38] 132051,[39] 137533,[40]

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[27] *Banco Filipino v. Court of Appeals.*

[28] December 18, 1996 decision and December 19, 1997 resolution in CA-G.R. SP No. 41355; *id.* at 159-192, 193-194.

[29] *Id.* at 238-268.

[30] *Tala Realty Services Corporation, et al. v. Banco Filipino Savings and Mortgage Bank; id.* at 202-237.

[31] *Id.* at 195-201.

[32] May 19, 1999 order; *id.* at 269-270.

[33] February 14, 2007 order; *id.* at 271.

[34] *Id.* at 272-297.

[35] *Nancy L. Ty v. Banco Filipino Savings and Mortgage Bank,* November 19, 2001 minute resolution; *id.* at 355-361.

[36] *Banco Filipino v. Court of Appeals,* 389 Phil. 644 (2000).

[37] *Tala Realty Services Corp. v. Banco Filipino,* 382 Phil. 661 (2000).

[38] *Tala Realty Services Corp. v. Banco Filipino,* 389 Phil. 455 (2000).

[39] *Tala Realty Services Corp. v. Banco Filipino,* 412 Phil. 50 (2001).

[40] *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank,* 441 Phil. 1 (2002).

143263,[41] and 142672,[42] as well as the other related cases decided by this Court, *i.e.*, G.R. Nos. 144700,[43] 147997,[44] 167255,[45] and 144705.[46]

On the other hand, the respondent filed its compliance with motion to revive proceedings,[47] citing the Court's consolidated decision in G.R. Nos. 130184 and 139166,[48] and the decisions in G.R. Nos. 144700,[49] 167255,[50] and 144705,[51] commonly holding that there existed no forum shopping, *litis pendentia* and *res judicata* among the respondent's reconveyance cases pending in the other courts of justice.

In her comment to the respondent's motion to revive proceedings,[52] the petitioner argued that the proceedings should not be revived since all the reconveyance cases are grounded on the same theory of implied trust which this Court in G.R. No. 137533[53] found void for being illegal as it was a scheme to circumvent the 50% limitation on real estate holdings under the General Banking Act.

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[41] *Tala Realty Services Corp. v. Banco Fil. Savings & Mortgage Bank,* 466 Phil. 164 (2004).

[42] *Banco Filipino Savings and Mortgage Bank v. Tala Realty Services Corporation,* September 27, 2006, 503 SCRA 442.

[43] *Tala Realty Services Corporation, et al. v. Banco Filipino Savings and Mortgage Bank,* November 22, 2000 minute resolution; *id.* at 353.

[44] *Tala Realty Services Corp. v. Banco Fil. Savings & Mortgage Bank,* 430 Phil. 89 (2002).

[45] *Tala Realty Services Corporation v. Banco Filipino Savings and Mortgage Bank,* June 8, 2005 minute resolution; *id.* at 379.

[46] *Ty v. Banco Filipino Savings & Mortgage Bank,* 511 Phil. 510 (2005).

[47] *Rollo*, pp. 298-324.

[48] *Supra* notes 30 and 35.

[49] *Supra* note 43.

[50] *Supra* note 45.

[51] *Supra* note 46.

[52] *Rollo*, pp. 414-427.

[53] *Supra* note 40.

Tala Realty, on the other hand, pointed out that it was the court's prerogative to suspend or not its proceedings pending the resolution of issues by another court, in order to avoid multiplicity of suits and prevent vexatious litigations.[54]

THE RTC RULING

In its May 6, 2008 order, the RTC granted the respondent's motion to revive proceedings, noting that *res judicata* is not applicable since there are independent causes of action for each of the properties sought to be recovered.[55]

When the RTC denied[56] the petitioner's motion for reconsideration,[57] she elevated her case to the CA via a Rule 65 petition for *certiorari*, assailing the RTC orders.[58]

THE CA RULING

In its March 31, 2009 decision, the CA affirmed the RTC's orders.[59] It noted that *res judicata* does not apply since the issue of validity or enforceability of the trust agreement was raised in an ejectment case, not an action involving title or ownership, citing the Court's pronouncement in G.R. No. 144705[60] that G.R. No. 137533[61] does not put to rest all pending litigations involving the issues of ownership between the parties since it involved only an issue of *de facto* possession.

When the CA denied[62] her motion for reconsideration,[63] the petitioner filed the present petition.

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[54] *Rollo*, pp. 428-441.

[55] *Id.* at 450-453.

[56] October 28, 2008 order; *id.* at 481-483.

[57] *Id.* at 454-461.

[58] *Id.* at 484-517.

[59] *Supra* note 2.

[60] June 5, 2006 minute resolution; *id.* at 396-399.

[61] *Supra* note 40.

[62] *Supra* note 3.

[63] *Rollo*, pp. 560-569.

THE PETITION

The petitioner argues that the CA erred in refusing to apply G.R. No. 137533 under the principle of *res judicata* by conclusiveness of judgment and *stare decisis*, and ignoring the November 26, 2007 minute resolution in G.R. No. 177865[64] and the April 7, 2009 consolidated decision in G.R. Nos. 130088, 131469, 155171, 155201, and 166608[65] that reiterated the Court's pronouncement in G.R. No. 137533.

THE CASE FOR THE RESPONDENT

The respondent submits that the petitioner is estopped from amending the issues since she never raised the pendency of the consolidated cases of G.R. Nos. 130088, 131469, 155171, 155201 and 166608 in her CA petition, which was based only on the Court's rulings in G.R. No. 137533 and G.R. No. 177865.

THE ISSUE

The core issues boil down to whether the Court's ruling in G.R. No. 137533 applies as *stare decisis* to the present case.

OUR RULING

We grant the petition.

The case at bar presents the same issue that the Court already resolved on April 7, 2009 in G.R. Nos. 130088, 131469, 155171, 155201 and 166608, wherein we applied the Court's November 22, 2002 decision in G.R. No. 137533, one of several ejectment cases filed by Tala Realty against the respondent arising from the same trust agreement in the reconveyance case subject of the present petition, that the trust agreement is void and cannot thus be enforced. We quoted therein the Court's ruling in G.R. No. 137533, thus:

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[64] *Banco Filipino Savings and Mortgage Bank v. Tala Realty Services Corporation, et al.*; *id.* at 442.

[65] *Tala Realty Services Corporation v. Court of Appeals,* April 7, 2009, 584 SCRA 63.

The Bank alleges that the sale and twenty-year lease of the disputed property were part of a larger implied trust "warehousing agreement." Concomitant with this Court's factual finding that the 20-year contract governs the relations between the parties, we find the Bank's allegation of circumstances surrounding its execution worthy of credence; the Bank and Tala entered into contracts of sale and lease back of the disputed property and created an implied trust "warehousing agreement" for the reconveyance of the property. In the eyes of the law, however, this implied trust is inexistent and void for being contrary to law.[66]

An implied trust could not have been formed between the Bank and Tala as this Court has held that "where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud."[67]

x x x [T]he bank cannot use the defense of nor seek enforcement of its alleged implied trust with Tala since its purpose was contrary to law. As admitted by the Bank, it "warehoused" its branch site holdings to Tala to enable it to pursue its expansion program and purchase new branch sites including its main branch in Makati, and at the same time avoid the real property holdings limit under Sections 25(a) and 34 of the General Banking Act which it had already reached x x x.

Clearly, the Bank was well aware of the limitations on its real estate holdings under the General Banking Act and that its "warehousing agreement" with Tala was a scheme to circumvent the limitation. Thus, the Bank opted not to put the agreement in writing and call a spade a spade, but instead phrased its right to reconveyance of the subject property at any time as a "first preference to buy" at the "same transfer price." This agreement which the Bank claims to be an implied trust is contrary to law. Thus, while we find the sale and lease of the subject property genuine and binding upon the parties, we cannot enforce the implied trust even assuming the parties intended to create it. In the words of the Court in the *Ramos* case, "the courts will not assist the payor in achieving his improper purpose by enforcing a resultant trust for him in accordance with the 'clean hands' doctrine."

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[66] *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, *supra* note 40, p. 38.

[67] *Id.* at 40.

The Bank cannot thus demand reconveyance of the property based on its alleged implied trust relationship with Tala.[68] (italics supplied.)

The Bank and Tala are *in pari delicto*, thus, no affirmative relief should be given to one against the other. The Bank should not be allowed to dispute the sale of its lands to Tala nor should Tala be allowed to further collect rent from the Bank. The clean hands doctrine will not allow the creation or the use of a juridical relation such as a trust to subvert, directly or indirectly, the law. **Neither the Bank nor Tala came to court with clean hands; neither will obtain relief from the court as the one who seeks equity and justice must come to court with clean hands**.[69] (emphases ours; citation omitted)

G.R. No. 137533, as reiterated in G.R. Nos. 130088, 131469, 155171, 155201 and 166608, is binding and applicable to the present case following the salutary doctrine of *stare decisis et non quieta movere*, which means "to adhere to precedents, and not to unsettle things which are established."[70] Under the doctrine, when this Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same.[71] The doctrine of *stare decisis* is based upon the legal principle or rule involved and not upon the judgment, which results therefrom. In this particular sense, *stare decisis* differs from *res judicata*, which is based upon the judgment.[72]

The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:

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[68] *Id.* at 41-42.

[69] *Id.* at 45.

[70] *Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform (DAR),* G.R. No. 169514, March 30, 2007, 519 SCRA 582, 618, citing *Black's Law Dictionary*, Fifth Edition.

[71] *Ibid.*, citing *Horne v. Moody*, 146 S.W.2d 505 (1940).

[72] *Id.* at 618-619.

Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same [issue].[73] (italics supplied)

It bears stressing that the basic facts of the present case and those of G.R. No. 137533 and G.R. Nos. 130088, 131469, 155171, 155201 and 166608 are the same. Clearly, in light of G.R. No. 137533 and G.R. Nos. 130088, 131469, 155171, 155201 and 166608, which the Court follows as precedents, the present action for reconveyance cannot prosper. It is the Court's duty to apply the previous rulings in G.R. No. 137533 and in G.R. Nos. 130088, 131469, 155171, 155201 and 166608 to the present case. **Once a case has been decided one way, any other case involving exactly the same point at issue, as in the present case, should be decided in the same manner**.[74]

WHEREFORE, the petition is **GRANTED**. The assailed decision and resolution of the Court of Appeals in CA-G.R. SP No. 107104 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 2506-MN before Branch 170 of the Regional Trial Court of Malabon, Metro Manila is hereby **DISMISSED**.

SO ORDERED.

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

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[73] *Id.* at 619.

[74] *Manila Electric Company, Inc. v. Lualhati*, G.R. Nos. 166769 and 166818, December 6, 2006, 510 SCRA 455, 471; and *Commissioner of Internal Revenue v. Trustworthy Pawnshop, Inc.*, 522 Phil. 497, 506 (2006).

THIRD DIVISION

[G.R. No. 189697. June 27, 2012]

ELEUTERIO RIVERA, as Administrator of the Intestate Estate of Rosita L. Rivera-Ramirez, *petitioner, vs.* **ROBERT RAMIREZ and RAYMOND RAMIREZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; COURT OF APPEALS' ADJUDICATION OF ISSUES NEVER RAISED BEFORE THE REGIONAL TRIAL COURT AMOUNTS TO GRAVE ABUSE OF DISCRETION.— [T]he issues regarding the late Rosita's supposed judicial adoption of Raymond as her child and the consequent absence of right on the part of Eleuterio, *et al*. to file a petition for the settlement of Rosita's estate were never raised and properly tried before the RTC. Consequently, the CA gravely abused its discretion in adjudicating such issues and denying Eleuterio and his relatives their right to be heard on them.

2. ID.; SPECIAL PROCEEDINGS; ACTION BY AND AGAINST ADMINISTRATOR; ADMINISTRATOR'S RIGHT TO THE PRODUCTION AND EXAMINATION OF CERTAIN DOCUMENTS, UPHELD.— As for the right of the administrator of Rosita's estate to the production and examination of the specified documents believed to be in Robert's possession, Section 6, Rule 87 of the Rules of Court provides that these can be allowed based on the administrator's belief that the person named in the request for subpoena has documents in his possession that tend to show the decedent's right to real or personal property. x x x The production and examination is nothing to be afraid of since the intestate court has no authority to decide who the decedent's heirs are in connection with such incident which is confined to the examination of documents which may aid the administrator in determining properties believed to belong to the decedent's estate. What is more, that court has no authority to decide the

question of whether certain properties belong to the estate or to the person sought to be examined. In fact, if after the examination the court has good reason to believe that the person examined is in possession of properties that belong to the deceased, the administrator cannot detain the property. He has to file an ordinary action for recovery of the properties. The purpose of the production and examination of documents is to elicit information or secure evidence from persons suspected of having possession of, or knowledge of properties suspected of belonging to the estate of the deceased. The procedure is inquisitorial in nature, designed as an economical and efficient mode of discovering properties of the estate.

3. **ID.; ID.; ID.; ACTION BY THE ADMINISTRATOR IF THE COURT, AFTER EXAMINATION, HAS GOOD REASON TO BELIEVE THAT THE PERSON EXAMINED IS IN POSSESSION OF THE PROPERTIES THAT BELONG TO THE DECEASED.—** If after the examination the court has good reason to believe that the person examined is in possession of properties that belong to the deceased, the administrator cannot detain the property. He has to file an ordinary action for recovery of the properties. The purpose of the production and examination of documents is to elicit information or secure evidence from persons suspected of having possession of, or knowledge of properties suspected of belonging to the estate of the deceased. The procedure is inquisitorial in nature, designed as an economical and efficient mode of discovering properties of the estate.

APPEARANCES OF COUNSEL

Virgilio C. Manguera & Associates for petitioner.
Ranada Malaya Sanchez & Simpao Law Office for Robert Ramirez.
Santos V. Catubay for Raymond Ramirez.

D E C I S I O N

ABAD, *J*.:

This case is about a court's adjudication of non-issues and the authority of the administrator to examine and secure evidence

from persons having knowledge of properties allegedly belonging to the decedent's estate.

The Facts and the Case

The spouses Adolfo Ramirez (Adolfo) and Rosita Rivera (Rosita) were married in 1942. Their only child died in infancy. They acquired during their lifetime the Sta. Teresita General Hospital and other properties. Rosita died in September 1990, followed by her husband Adolfo in December 1993.

On February 7, 1995 petitioner Eleuterio P. Rivera (Eleuterio) filed a petition for issuance of letters of administration with the Regional Trial Court (RTC) of Quezon City covering the estate of Rosita, who allegedly died without a will and with no direct ascendants or descendants.[1] Eleuterio claimed[2] that he was Rosita's nephew, being the son of her brother Federico. Eleuterio submitted to the intestate court a list of the names of the decedent's other nephews and nieces all of whom expressed conformity to Eleuterio's appointment as administrator of her estate.

On March 28, 1995 the RTC issued letters of administration appointing Eleuterio as Rosita's estate administrator.[3] On September 6, 1995 Eleuterio submitted an initial inventory of her properties. On April 18, 1996 he filed in his capacity as administrator a motion with the court to compel the examination and production of documents relating to properties believed to be a part of her estate, foremost of which was the Sta. Teresita General Hospital that respondent Robert Ramirez (Robert) had been managing.[4] Robert claims, together with Raymond Ramirez (Raymond) and Lydia Ramirez (Lydia), that they were children of Adolfo by another woman. Robert opposed the issuance of the subpoena.

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[1] Docketed as Special Proceeding Q-95-22919.

[2] Records, pp. 1-5.

[3] *Id.* at 39-41.

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

On joint motion of the parties, however, the RTC issued an order on March 26, 1998, suspending the proceedings in the case pending the resolution of a separate case involving the properties of the estate.[5] Four years later or on May 16, 2002 Eleuterio, as administrator of Rosita's estate, moved for the revival of the proceedings and requested anew the production and examination of documents in Robert's possession relating to Rosita's estate. The RTC apparently never got to act on the motion.

Meantime, on March 25, 2005 administrator Eleuterio moved for the joint settlement in the same case of the estates of Rosita and her husband, Adolfo[6] considering that the spouses' properties were conjugal. Eleuterio expressed willingness to co-administer the late spouses' estate with Adolfo's heirs, namely, Raymond, Robert, and Lydia Ramirez. Robert agreed to the joint settlement of the estate of the deceased spouses but insisted that the court also probate the deceased Adolfo's will of October 10, 1990 which Robert presented.

As a side issue, Robert initially retained the services of Atty. Antonio Pacheo to represent him in the estate case. The lawyer had previously counseled for the late Adolfo and the hospital. But Robert and Atty. Pacheo soon had a parting of ways, resulting in the dismissal of the lawyer. Raymond, who did not see eye to eye with his brother Robert, subsequently retained the services of Atty. Pacheo to represent him in the case. This created an issue because Robert wanted the lawyer inhibited from the case considering that the latter would be working against the interest of a former client.

On July 17, 2006 Eleuterio, as administrator of Rosita's estate, reiterated his motion to compel examination and production of the hospital's documents in Robert's possession. On February 12, 2007 the RTC granted the administrator's motion and ordered Robert to bring to court the books of account, financial statements,

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[5] *Id.* at 217.

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

and other documents relating to the operations of the Sta. Teresita General Hospital. The RTC also declined to inhibit Atty. Pacheo as Raymond's counsel. Robert moved to quash the subpoena on the grounds that the documents belonged to the hospital, which had a distinct personality; that the hospital did not form part of Rosita's estate; and that Eleuterio, as administrator only of Rosita's estate, had no right to inspect and have access to Adolfo's estate. But the RTC denied Robert's motion on June 19, 2007.

Robert filed a special civil action of *certiorari* before the Court of Appeals (CA),[7] imputing grave abuse of discretion by the RTC for allowing the production and examination of the subject documents and for not inhibiting Atty. Pacheo from the case. On February 17, 2009 the CA rendered judgment,[8] annulling the RTC's orders insofar as they granted the production and examination of the hospital's documents. Essentially, the CA ruled that Eleuterio and Rosita's other collateral relatives were not her heirs since she had an adopted child in Raymond and that, consequently, Eleuterio, *et al*. had no standing to request production of the hospital's documents or to institute the petition for the settlement of her estate. The CA affirmed, however, the non-inhibition of Atty. Pacheo from the case. Eleuterio's motion for reconsideration having been denied, he filed the present petition for review.

Issues Presented

The case presents two issues:

1. Whether or not the CA erred in ruling that Eleuterio and his relatives were not Rosita's heirs and, therefore, had no right to institute the petition for the settlement of her estate or to seek the production and examination of the hospital's documents; and

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[7] CA-G.R. SP 100203.

[8] Penned by Justice Magdangal M. De Leon and concurred in by Justices Jose L. Sabio, Jr. and Ramon R. Garcia; *rollo*, pp. 49-60.

2. Whether or not the CA erred in ruling that Eleuterio, *et al*. had no standing to subpoena the specified documents in Robert's possession.

Ruling of the Court

One. The CA held that based on the article *Women Physicians of the World*[9] found in the record of the case before it, the late Rosita, a physician, had adopted Raymond as her child. An adopted child, said the CA, is deemed a legitimate child of the adopter. This being the case, Raymond's presence barred Eleuterio and Rosita's other collateral relatives from inheriting intestate from her.[10] A further consequence is that they also did not have the right to seek the production and examination of the documents allegedly in Robert's possession.

But, whether or not the late Rosita had judicially adopted Raymond as her child is a question of fact that had neither been considered nor passed upon by the RTC in a direct challenge to the claim of Eleuterio and Rosita's other collateral relatives that they have the right to inherit from her. The relevant issue before the RTC was only whether or not the duly appointed administrator of Rosita's estate had the right to the production and examination of the documents believed to be in Robert's possession. Indeed, one of the reasons Robert brought the special civil action of *certiorari* before the CA is that Eleuterio had no right to inspect the requested documents and have access to Adolfo's estate when Eleuterio's authority as administrator extended only to Rosita's estate.

The Court understands the CA's commendable desire to minimize multiple appeals. But the issues regarding the late Rosita's supposed judicial adoption of Raymond as her child and the consequent absence of right on the part of Eleuterio, *et al*. to file a petition for the settlement of Rosita's estate were never raised and properly tried before the RTC. Consequently,

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[9] Attached to Raymond's pleading entitled Evidence in Support of Opposition to Motions to Quash and Disqualify Counsel; records, pp. 549-555.

[10] CIVIL CODE, Art. 1003.

the CA gravely abused its discretion in adjudicating such issues and denying Eleuterio and his relatives their right to be heard on them.

Two. As for the right of the administrator of Rosita's estate to the production and examination of the specified documents believed to be in Robert's possession, Section 6, Rule 87 of the Rules of Court provides that these can be allowed based on the administrator's belief that the person named in the request for subpoena has documents in his possession that tend to show the decedent's right to real or personal property. Thus:

> Section 6. *Proceedings when property concealed, embezzled, or fraudulently conveyed.* — If an executor or administrator, heir, legatee, creditor, or other individual interested in the estate of the deceased, complains to the court having jurisdiction of the estate that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods or chattels of the deceased, **or that such person has in his possession or has knowledge of any deed, conveyance, bond, contract or other writing which contains evidence of or tends to disclose the right, title, interest, or claim of the deceased to real or personal estate**, or the last will and testament of the deceased, the Court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint; and if the person so cited refuses to appear, or to answer on such examination or such interrogatories as are put to him, the court may punish him for contempt, and may commit him to prison until he submits to the order of the court. The interrogatories put to any such person, and his answers thereto, shall be in writing and shall be filed in the clerk's office. (Emphasis supplied)

The production and examination is nothing to be afraid of since the intestate court has no authority to decide who the decedent's heirs are in connection with such incident which is confined to the examination of documents which may aid the administrator in determining properties believed to belong to the decedent's estate. What is more, that court has no authority to decide the question of whether certain properties belong to the estate or to the person sought to be examined.[11]

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[11] Francisco, *Rules of Court,* Vol. V-B, East Publishing, 1970, p. 245.

In fact, if after the examination the court has good reason to believe that the person examined is in possession of properties that belong to the deceased, the administrator cannot detain the property. He has to file an ordinary action for recovery of the properties.[12] The purpose of the production and examination of documents is to elicit information or secure evidence from persons suspected of having possession of, or knowledge of properties suspected of belonging to the estate of the deceased. The procedure is inquisitorial in nature, designed as an economical and efficient mode of discovering properties of the estate.[13]

WHEREFORE, the Court **GRANTS** the petition, **REVERSES** the decision of the Court of Appeals in CA-G.R. SP 100203 dated February 17, 2009, and **REINSTATES** the February 12, 2007 order of the Regional Trial Court of Quezon City in Special Proceedings Q-95-22919 granting petitioner Eleuterio P. Rivera's motion to compel examination and production of document dated July 17, 2006.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,[*] and *Perlas-Bernabe, JJ.,* concur.

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[12] *Modesto v. Modesto*, 105 Phil. 1066, 1069 (1959).

[13] *Supra* note 11.

[*] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 1241 dated June 14, 2012.

FIRST DIVISION

[G.R. No. 189999. June 27, 2012]

ANGELES UNIVERSITY FOUNDATION, *petitioner, vs.* **CITY OF ANGELES, JULIET G. QUINSAAT, in her capacity as Treasurer of Angeles City and ENGR. DONATO N. DIZON, in his capacity as Acting Angeles City Building Official,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; NATIONAL BUILDING CODE (P.D. 1096); BUILDING PERMIT FEES ARE NOT IMPOSITIONS ON PROPERTY BUT ON THE ACTIVITY SUBJECT OF GOVERNMENT REGULATION.—** Note that the "other charges" mentioned in Sec. 8 of R.A. No. 6055 is qualified by the words "imposed by the Government *on all x x x property* used exclusively for the educational activities of the foundation." Building permit fees are not impositions on property but on the activity subject of government regulation. While it may be argued that the fees relate to particular properties, *i.e.,* buildings and structures, they are actually imposed on certain activities the owner may conduct either to build such structures or to repair, alter, renovate or demolish the same. This is evident from the x x x provisions of the National Building Code[.] That a building permit fee is a regulatory imposition is highlighted by the fact that in processing an application for a building permit, the Building Official shall see to it that the applicant satisfies and conforms with approved standard requirements on zoning and land use, lines and grades, structural design, sanitary and sewerage, environmental health, electrical and mechanical safety as well as with other rules and regulations implementing the National Building Code. Thus, ancillary permits such as electrical permit, sanitary permit and zoning clearance must also be secured and the corresponding fees paid before a building permit may be issued. And as can be gleaned from the implementing rules and regulations of the National Building Code, clearances from various government authorities exercising and enforcing regulatory functions affecting buildings/structures, like local government units, may be further required before a building permit may be issued.

2. **ID.; ID.; ID.; BUILDING PERMIT FEES ARE NOT TAXES ALTHOUGH COLLECTION THEREOF INCIDENTALLY GENERATES REVENUE.—** A charge of a fixed sum which bears no relation at all to the cost of inspection and regulation may be held to be a tax rather than an exercise of the police power. In this case, the Secretary of Public Works and Highways who is mandated to prescribe and fix the amount of fees and other charges that the Building Official shall collect in connection with the performance of regulatory functions, has promulgated and issued the Implementing Rules and Regulations which provide for the bases of assessment of such fees[.] x x x Petitioner failed to demonstrate that the above bases of assessment were arbitrarily determined or unrelated to the activity being regulated. Neither has petitioner adduced evidence to show that the rates of building permit fees imposed and collected by the respondents were unreasonable or in excess of the cost of regulation and inspection. x x x Concededly, in the case of building permit fees imposed by the National Government under the National Building Code, revenue is incidentally generated for the benefit of local government units. x x x Considering that exemption from payment of regulatory fees was not among those "incentives" granted to petitioner under R.A. No. 6055, there is no such incentive that is retained under the Local Government Code of 1991. Consequently, no reversible error was committed by the CA in ruling that petitioner is liable to pay the subject building permit and related fees.

3. **ID.; CONSTITUTIONAL LAW; EXEMPTION OF EDUCATIONAL INSTITUTIONS FROM REAL PROPERTY TAX; COLLECTION OF REAL PROPERTY TAX FROM AN EDUCATIONAL INSTITUTION INVOLVING PROPERTY NOT SOLELY DEVOTED TO EDUCATIONAL ACTIVITIES, UPHELD.—** Petitioner failed to discharge its burden to prove that its real property is actually, directly and exclusively used for educational purposes. While there is no allegation or proof that petitioner leases the land to its present occupants, still there is no compliance with the constitutional and statutory requirement that said real property is actually, directly and exclusively used for educational purposes. The respondents correctly assessed the land for real property taxes for the taxable period during which the land is not being devoted

solely to petitioner's educational activities. Accordingly, the CA did not err in ruling that petitioner is likewise not entitled to a refund of the real property tax it paid under protest.

APPEARANCES OF COUNSEL

Jimeno Cope & David Law Offices for petitioner.
Romeo L. Yusi, Jr. and *Eduardo G. Pineda* for respondents.

D E C I S I O N

VILLARAMA, JR., ***J.*****:**

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, which seeks to reverse and set aside the Decision[1] dated July 28, 2009 and Resolution[2] dated October 12, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 90591. The CA reversed the Decision[3] dated September 21, 2007 of the Regional Trial Court of Angeles City, Branch 57 in Civil Case No. 12995 declaring petitioner exempt from the payment of building permit and other fees and ordering respondents to refund the same with interest at the legal rate.

The factual antecedents:

Petitioner Angeles University Foundation (AUF) is an educational institution established on May 25, 1962 and was converted into a non-stock, non-profit education foundation under the provisions of Republic Act (R.A.) No. 6055[4] on December 4, 1975.

[1] *Rollo,* pp. 45-59. Penned by Associate Justice Rosmari D. Carandang with Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr. concurring.

[2] *Id.* at 61-62.

[3] Records, pp. 184-194. Penned by Judge Omar T. Viola.

[4] AN ACT TO PROVIDE FOR THE CONVERSION OF EDUCATIONAL INSTITUTIONS FROM STOCK CORPORATIONS TO NON-PROFIT FOUNDATIONS, DIRECTING THE GOVERNMENT SERVICE INSURANCE SYSTEM, THE SOCIAL SECURITY SYSTEM AND THE DEVELOPMENT BANK OF THE PHILIPPINES

Sometime in August 2005, petitioner filed with the Office of the City Building Official an application for a building permit for the construction of an 11-storey building of the Angeles University Foundation Medical Center in its main campus located at MacArthur Highway, Angeles City, Pampanga. Said office issued a Building Permit Fee Assessment in the amount of ₱126,839.20. An Order of Payment was also issued by the City Planning and Development Office, Zoning Administration Unit requiring petitioner to pay the sum of ₱238,741.64 as Locational Clearance Fee.[5]

In separate letters dated November 15, 2005 addressed to respondents City Treasurer Juliet G. Quinsaat and Acting City Building Official Donato N. Dizon, petitioner claimed that it is exempt from the payment of the building permit and locational clearance fees, citing legal opinions rendered by the Department of Justice (DOJ). Petitioner also reminded the respondents that they have previously issued building permits acknowledging such exemption from payment of building permit fees on the construction of petitioner's 4-storey AUF Information Technology Center building and the AUF Professional Schools building on July 27, 2000 and March 15, 2004, respectively.[6]

Respondent City Treasurer referred the matter to the Bureau of Local Government Finance (BLGF) of the Department of Finance, which in turn endorsed the query to the DOJ. Then Justice Secretary Raul M. Gonzalez, in his letter-reply dated December 6, 2005, cited previous issuances of his office (Opinion No. 157, s. 1981 and Opinion No. 147, s. 1982) declaring petitioner to be exempt from the payment of building permit fees. Under the 1st Indorsement dated January 6, 2006, BLGF reiterated the aforesaid opinion of the DOJ stating further that "xxx the Department of Finance, thru this Bureau, has no authority to review the resolution or the decision of the DOJ."[7]

TO ASSIST IN SUCH CONVERSION, AND FOR OTHER PURPOSES. Approved on August 4, 1969.

[5] Records, pp. 19-20.

[6] *Id.* at 26-29.

[7] *Id.* at 30-37.

Petitioner wrote the respondents reiterating its request to reverse the disputed assessments and invoking the DOJ legal opinions which have been affirmed by Secretary Gonzalez. Despite petitioner's plea, however, respondents refused to issue the building permits for the construction of the AUF Medical Center in the main campus and renovation of a school building located at Marisol Village. Petitioner then appealed the matter to City Mayor Carmelo F. Lazatin but no written response was received by petitioner.[8]

Consequently, petitioner paid under protest[9] the following:

Medical Center (new construction)

Building Permit and Electrical Fee		₱ 217,475.20
Locational Clearance Fee		283,741.64
Fire Code Fee		144,690.00
	Total —	₱ 645,906.84

School Building (renovation)

Building Permit and Electrical Fee		₱ 37,857.20
Locational Clearance Fee		6,000.57
Fire Code Fee		5,967.74
	Total —	₱ 49,825.51

Petitioner likewise paid the following sums as required by the City Assessor's Office:

Real Property Tax – Basic Fee		₱ 86,531.10
SEF		43,274.54
Locational Clearance Fee		1,125.00
	Total —	₱ 130,930.64[10]
	[GRAND TOTAL —	**₱ 826,662.99]**

By reason of the above payments, petitioner was issued the corresponding Building Permit, Wiring Permit, Electrical Permit

[8] *Id.* at 38-49.

[9] *Id.* at 48-56, 66-74, 87-89.

[10] *Id.* at 75-80, 90.

and Sanitary Building Permit. On June 9, 2006, petitioner formally requested the respondents to refund the fees it paid under protest. Under letters dated June 15, 2006 and August 7, 2006, respondent City Treasurer denied the claim for refund.[11]

On August 31, 2006, petitioner filed a Complaint[12] before the trial court seeking the refund of ₱826,662.99 plus interest at the rate of 12% per annum, and also praying for the award of attorney's fees in the amount of ₱300,000.00 and litigation expenses.

In its Answer,[13] respondents asserted that the claim of petitioner cannot be granted because its structures are not among those mentioned in Sec. 209 of the National Building Code as exempted from the building permit fee. Respondents argued that R.A. No. 6055 should be considered repealed on the basis of Sec. 2104 of the National Building Code. Since the disputed assessments are regulatory in nature, they are not taxes from which petitioner is exempt. As to the real property taxes imposed on petitioner's property located in Marisol Village, respondents pointed out that said premises will be used as a school dormitory which cannot be considered as a use exclusively for educational activities.

Petitioner countered that the subject building permit are being collected on the basis of Art. 244 of the Implementing Rules and Regulations of the Local Government Code, which impositions are really taxes considering that they are provided under the chapter on "Local Government Taxation" in reference to the "revenue raising power" of local government units (LGUs). Moreover, petitioner contended that, as held in *Philippine Airlines, Inc. v. Edu*,[14] fees may be regarded as taxes depending

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[11] *Id.* at 57-64, 81-97.

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

[13] *Id.* at 105-110.

[14] No. L-41383, August 15, 1988, 164 SCRA 320.

on the purpose of its exaction. In any case, petitioner pointed out that the Local Government Code of 1991 provides in Sec. 193 that non-stock and non-profit educational institutions like petitioner retained the tax exemptions or incentives which have been granted to them. Under Sec. 8 of R.A. No. 6055 and applicable jurisprudence and DOJ rulings, petitioner is clearly exempt from the payment of building permit fees.[15]

On September 21, 2007, the trial court rendered judgment in favor of the petitioner and against the respondents. The dispositive portion of the trial court's decision[16] reads:

> WHEREFORE, premises considered, judgment is rendered as follows:
>
> a. Plaintiff is exempt from the payment of building permit and other fees Ordering the Defendants to refund the total amount of Eight Hundred Twenty Six Thousand Six Hundred Sixty Two Pesos and 99/100 Centavos (₱826,662.99) plus legal interest thereon at the rate of twelve percent (12%) per annum commencing on the date of extra-judicial demand or June 14, 2006, until the aforesaid amount is fully paid.
>
> b. Finding the Defendants liable for attorney's fees in the amount of Seventy Thousand Pesos (Php70,000.00), plus litigation expenses.
>
> c. Ordering the Defendants to pay the costs of the suit.
>
> SO ORDERED.[17]

Respondents appealed to the CA which reversed the trial court, holding that while petitioner is a tax-free entity, it is not exempt from the payment of regulatory fees. The CA noted that under R.A. No. 6055, petitioner was granted exemption only from income tax derived from its educational activities

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[15] *Supra* note 5.

[16] *Id.* at 184-194.

[17] *Id.* at 194.

and real property used exclusively for educational purposes. Regardless of the repealing clause in the National Building Code, the CA held that petitioner is still not exempt because a building permit cannot be considered as the other "charges" mentioned in Sec. 8 of R.A. No. 6055 which refers to impositions in the nature of tax, import duties, assessments and other collections for revenue purposes, following the *ejusdem generis*rule. The CA further stated that petitioner has not shown that the fees collected were excessive and more than the cost of surveillance, inspection and regulation. And while petitioner may be exempt from the payment of real property tax, petitioner in this case merely alleged that "the subject property is to be used actually, directly and exclusively for educational purposes," declaring merely that such premises is intended to house the sports and other facilities of the university but by reason of the occupancy of informal settlers on the area, it cannot yet utilize the same for its intended use. Thus, the CA concluded that petitioner is not entitled to the refund of building permit and related fees, as well as real property tax it paid under protest.

Petitioner filed a motion for reconsideration which was denied by the CA.

Hence, this petition raising the following grounds:

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS NECESSITATING THE HONORABLE COURT'S EXERCISE OF ITS POWER OF SUPERVISION CONSIDERING THAT:

I. IN REVERSING THE TRIAL COURT'S DECISION DATED 21 SEPTEMBER 2007, THE COURT OF APPEALS EFFECTIVELY WITHDREW THE PRIVILEGE OF EXEMPTION GRANTED TO NON-STOCK, NON-PROFIT EDUCATIONAL FOUNDATIONS BY VIRTUE OF RA 6055 WHICH WITHDRAWAL IS BEYOND THE AUTHORITY OF THE COURT OF APPEALS TO DO.

A. INDEED, RA 6055 REMAINS VALID AND IS IN FULL FORCE AND EFFECT. HENCE, THE COURT OF APPEALS ERRED WHEN IT RULED IN THE QUESTIONED DECISION THAT NON-STOCK, NON-PROFIT EDUCATIONAL FOUNDATIONS ARE NOT EXEMPT.

B. THE COURT OF APPEALS' APPLICATION OF THE PRINCIPLE OF *EJUSDEM GENERIS* IN RULING IN THE QUESTIONED DECISION THAT THE TERM "OTHER CHARGES IMPOSED BY THE GOVERNMENT" UNDER SECTION 8 OF RA 6055 DOES NOT INCLUDE BUILDING PERMIT AND OTHER RELATED FEES AND/OR CHARGES IS BASED ON ITS ERRONEOUS AND UNWARRANTED ASSUMPTION THAT THE TAXES, IMPORT DUTIES AND ASSESSMENTS AS PART OF THE PRIVILEGE OF EXEMPTION GRANTED TO NON-STOCK, NON-PROFIT EDUCATIONAL FOUNDATIONS ARE LIMITED TO COLLECTIONS FOR REVENUE PURPOSES.

C. EVEN ASSUMING THAT THE BUILDING PERMIT AND OTHER RELATED FEES AND/OR CHARGES ARE NOT INCLUDED IN THE TERM "OTHER CHARGES IMPOSED BY THE GOVERNMENT" UNDER SECTION 8 OF RA 6055, ITS IMPOSITION IS GENERALLY A TAX MEASURE AND THEREFORE, STILL COVERED UNDER THE PRIVILEGE OF EXEMPTION.

II. THE COURT OF APPEALS' DENIAL OF PETITIONER AUF'S EXEMPTION FROM REAL PROPERTY TAXES CONTAINED IN ITS QUESTIONED DECISION AND QUESTIONED RESOLUTION IS CONTRARY TO APPLICABLE LAW AND JURISPRUDENCE.[18]

Petitioner stresses that the tax exemption granted to educational stock corporations which have converted into non-profit foundations was broadened to include any other charges imposed

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[18] *Rollo,* pp. 19-21.

by the Government as one of the incentives for such conversion. These incentives necessarily included exemption from payment of building permit and related fees as otherwise there would have been no incentives for educational foundations if the privilege were only limited to exemption from taxation, which is already provided under the Constitution.

Petitioner further contends that this Court has consistently held in several cases that the primary purpose of the exaction determines its nature. Thus, a charge of a fixed sum which bears no relation to the cost of inspection and which is payable into the general revenue of the state is a tax rather than an exercise of the police power. The standard set by law in the determination of the amount that may be imposed as license fees is such that is commensurate with the cost of regulation, inspection and licensing. But in this case, the amount representing the building permit and related fees and/or charges is such an exorbitant amount as to warrant a valid imposition; such amount exceeds the probable cost of regulation. Even with the alleged criteria submitted by the respondents (*e.g*., character of occupancy or use of building/structure, cost of construction, floor area and height), and the construction by petitioner of an 11-storey building, the costs of inspection will not amount to ₱645,906.84, presumably for the salary of inspectors or employees, the expenses of transportation for inspection and the preparation and reproduction of documents. Petitioner thus concludes that the disputed fees are substantially and mainly for purposes of revenue rather than regulation, so that even these fees cannot be deemed "charges" mentioned in Sec. 8 of R.A. No. 6055, they should properly be treated as tax from which petitioner is exempt.

In their Comment, respondents maintain that petitioner is not exempt from the payment of building permit and related fees since the only exemptions provided in the National Building Code are public buildings and traditional indigenous family dwellings. *Inclusio unius est exclusio alterius.* Because the law did not include petitioner's buildings from those structures exempt from the payment of building permit fee, it is therefore

subject to the regulatory fees imposed under the National Building Code.

Respondents assert that the CA correctly distinguished a building permit fee from those "other charges" mentioned in Sec. 8 of R.A. No. 6055. As stated by petitioner itself, charges refer to pecuniary liability, as rents, and fees against persons or property. Respondents point out that a building permit is classified under the term "fee." A fee is generally imposed to cover the cost of regulation as activity or privilege and is essentially derived from the exercise of police power; on the other hand, impositions for services rendered by the local government units or for conveniences furnished, are referred to as "service charges."

Respondents also disagreed with petitioner's contention that the fees imposed and collected are exorbitant and exceeded the probable expenses of regulation. These fees are based on computations and assessments made by the responsible officials of the City Engineer's Office in accordance with the Schedule of Fees and criteria provided in the National Building Code. The bases of assessment cited by petitioner (*e.g.* salary of employees, expenses of transportation and preparation and reproduction of documents) refer to charges and fees on business and occupation under Sec. 147 of the Local Government Code, which do not apply to building permit fees. The parameters set by the National Building Code can be considered as complying with the reasonable cost of regulation in the assessment and collection of building permit fees. Respondents likewise contend that the presumption of regularity in the performance of official duty applies in this case. Petitioner should have presented evidence to prove its allegations that the amounts collected are exorbitant or unreasonable.

For resolution are the following issues: (1) whether petitioner is exempt from the payment of building permit and related fees imposed under the National Building Code; and (2) whether the parcel of land owned by petitioner which has been assessed for real property tax is likewise exempt.

R.A. No. 6055 granted tax exemptions to educational institutions like petitioner which converted to non-stock, non-profit educational foundations. Section 8 of said law provides:

> SECTION 8. The Foundation shall be exempt from the payment of all taxes, import duties, assessments, and **other charges imposed by the Government on all** income derived from or **property, real or personal, used exclusively for the educational activities of the Foundation.**(Emphasis supplied.)

On February 19, 1977, Presidential Decree (P.D.) No. 1096 was issued adopting the National Building Code of the Philippines. The said Code requires every person, firm or corporation, including any agency or instrumentality of the government to obtain a building permit for any construction, alteration or repair of any building or structure.[19] Building permit refers to "a document issued by the Building Official x x x to an owner/applicant to proceed with the construction, installation, addition, alteration, renovation, conversion, repair, moving, demolition or other *work activity* of a specific project/building/structure or portions thereof after the accompanying principal plans, specifications and other pertinent documents with the duly notarized application are found satisfactory and substantially conforming with the National Building Code of the Philippines x x x and its Implementing Rules and Regulations (IRR)."[20] Building permit fees refers to the basic permit fee and other charges imposed under the National Building Code.

Exempted from the payment of building permit fees are: (1) public buildings and (2) traditional indigenous family dwellings.[21] Not being expressly included in the enumeration of structures to which the building permit fees do not apply, petitioner's claim for exemption rests solely on its interpretation of the term "other charges imposed by the National Government" in the tax exemption clause of R.A. No. 6055.

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[19] Sec. 301, P.D. No. 1096.

[20] Rule I, Sec. 106, 2004 Revised Implementing Rules and Regulations of the National Building Code of the Philippines (P.D. 1096). Italics supplied.

[21] Sec. 209, P.D. 1096.

A "charge" is broadly defined as the "price of, or rate for, something," while the word "fee" pertains to a "charge fixed by law for services of public officers or for use of a privilege under control of government."[22] As used in the Local Government Code of 1991 (R.A. No. 7160), *charges* refers to pecuniary liability, as rents or fees against persons or property, while *fee* means a charge fixed by law or ordinance for the regulation or inspection of a business or activity.[23]

That "charges" in its ordinary meaning appears to be a general term which could cover a specific "fee" does not support petitioner's position that building permit fees are among those "other charges" from which it was expressly exempted. Note that the "other charges" mentioned in Sec. 8 of R.A. No. 6055 is qualified by the words "imposed by the Government *on all x x x property* used exclusively for the educational activities of the foundation." Building permit fees are not impositions on property but on the activity subject of government regulation. While it may be argued that the fees relate to particular properties, *i.e.,* buildings and structures, they are actually imposed on certain activities the owner may conduct either to build such structures or to repair, alter, renovate or demolish the same. This is evident from the following provisions of the National Building Code:

Section 102. Declaration of Policy

It is hereby declared to be the policy of the State *to safeguard life, health, property, and public welfare,* consistent with the principles of sound environmental management and control; and to this end, make it the purpose of this Code to provide for all buildings and structures, *a framework of minimum standards and requirements to regulate and control* their location, site, design quality of materials, construction, use, occupancy, and maintenance.

Section 103. Scope and Application

(a) The provisions of this Code shall apply to the design,location, sitting, construction, alteration, repair,conversion, use, occupancy,

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[22] *Black's Law Dictionary,* Fifth Edition, pp. 211 and 553.

[23] Sec. 131 (g) and (l), Local Government Code of 1991.

maintenance, moving, demolition of, and addition to public and private buildings and structures, except traditional indigenous family dwellings as defined herein.

x x x x x x x x x

Section 301. Building Permits

No person, firm or corporation, including any agency or instrumentality of the government shall *erect, construct, alter, repair, move, convert or demolish* any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done. (Italics supplied.)

That a building permit fee is a regulatory imposition is highlighted by the fact that in processing an application for a building permit, the Building Official shall see to it that the applicant satisfies and conforms with approved standard requirements on zoning and land use, lines and grades, structural design, sanitary and sewerage, environmental health, electrical and mechanical safety as well as with other rules and regulations implementing the National Building Code.[24] Thus, ancillary permits such as electrical permit, sanitary permit and zoning clearance must also be secured and the corresponding fees paid before a building permit may be issued. And as can be gleaned from the implementing rules and regulations of the National Building Code, clearances from various government authorities exercising and enforcing regulatory functions affecting buildings/ structures, like local government units, may be further required before a building permit may be issued.[25]

Since building permit fees are not charges on property, they are not impositions from which petitioner is exempt.

As to petitioner's argument that the building permit fees collected by respondents are in reality taxes because the primary

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[24] Sec. 303, P.D. No. 1096.

[25] *Office of the Ombudsman v. Espiritu,* G.R. No. 174826, April 8, 2008, 550 SCRA 695, 705.

purpose is to raise revenues for the local government unit, the same does not hold water.

A charge of a fixed sum which bears no relation at all to the cost of inspection and regulation may be held to be a tax rather than an exercise of the police power.[26] In this case, the Secretary of Public Works and Highways who is mandated to prescribe and fix the amount of fees and other charges that the Building Official shall collect in connection with the performance of regulatory functions,[27] has promulgated and issued the Implementing Rules and Regulations[28] which provide for the bases of assessment of such fees, as follows:

1. Character of occupancy or use of building
2. Cost of construction " 10,000/sq.m (A,B,C,D,E,G,H,I), 8,000 (F), 6,000 (J)
3. Floor area
4. Height

Petitioner failed to demonstrate that the above bases of assessment were arbitrarily determined or unrelated to the activity being regulated. Neither has petitioner adduced evidence to show that the rates of building permit fees imposed and collected by the respondents were unreasonable or in excess of the cost of regulation and inspection.

In *Chevron Philippines, Inc. v. Bases Conversion Development Authority*,[29] this Court explained:

In distinguishing tax and regulation as a form of police power, the determining factor is the purpose of the implemented measure.

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[26] *Progressive Development Corporation v. Quezon City,* G.R. No. 36081, April 24, 1989, 172 SCRA 629, 636, citing *Saldaña v. City of Iloilo,* 104 Phil. 28, 33 (1958).

[27] Sec. 203 (4), P.D. No. 1096.

[28] Rule 11, No. 3 (1), IRR of P.D. No. 1096.

[29] G.R. No. 173863, September 15, 2010, 630 SCRA 519.

If the purpose is primarily to raise revenue, then it will be deemed a tax even though the measure results in some form of regulation. On the other hand, **if the purpose is primarily to regulate, then it is deemed a regulation and an exercise of the police power of the state, even though incidentally, revenue is generated**. Thus, in *Gerochi v. Department of Energy*, the Court stated:

> "The conservative and pivotal distinction between these two (2) powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, **the fact that revenue is incidentally raised does not make the imposition a tax.**"[30] (Emphasis supplied.)

Concededly, in the case of building permit fees imposed by the National Government under the National Building Code, revenue is incidentally generated for the benefit of local government units. Thus:

Section 208. Fees

Every Building Official shall keep a permanent record and accurate account of all fees and other charges fixed and authorized by the Secretary to be collected and received under this Code.

Subject to existing budgetary, accounting and auditing rules and regulations, the Building Official is hereby authorized to retain not more than twenty percent of his collection for the operating expenses of his office.

The remaining eighty percent shall be deposited with the provincial, city or municipal treasurer and shall accrue to the General Fund of the province, city or municipality concerned.

Petitioner's reliance on Sec. 193 of the Local Government Code of 1991 is likewise misplaced. Said provision states:

SECTION 193. *Withdrawal of Tax Exemption Privileges.* — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or

[30] *Id.* at 526.

juridical, including government-owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, **non-stock and non-profit** hospitals and **educational institutions**, are hereby withdrawn upon the effectivity of this Code. (Emphasis supplied.)

Considering that exemption from payment of regulatory fees was not among those "incentives" granted to petitioner under R.A. No. 6055, there is no such incentive that is retained under the Local Government Code of 1991. Consequently, no reversible error was committed by the CA in ruling that petitioner is liable to pay the subject building permit and related fees.

Now, on petitioner's claim that it is exempted from the payment of real property tax assessed against its real property presently occupied by informal settlers.

Section 28(3), Article VI of the 1987 Constitution provides:

x x x x x x x x x

(3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, **actually, directly and exclusively used** for religious, charitable or **educational purposes** shall be exempt from taxation.

x x x x x x x x x (Emphasis supplied.)

Section 234(b) of the Local Government Code of 1991 implements the foregoing constitutional provision by declaring that —

SECTION 234. *Exemptions from Real Property Tax.* — The following are exempted from payment of the real property tax:

x x x x x x x x x

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements **actually, directly, and exclusively used** for religious, charitable or **educational purposes;**

x x x x x x x x x (Emphasis supplied.)

In *Lung Center of the Philippines v. Quezon City*,[31] this Court held that only portions of the hospital actually, directly and exclusively used for charitable purposes are exempt from real property taxes, while those portions leased to private entities and individuals are not exempt from such taxes. We explained the condition for the tax exemption privilege of charitable and educational institutions, as follows:

> Under the 1973 and 1987 Constitutions and Rep. Act No. 7160 in order to be entitled to the exemption, the petitioner is burdened to prove, by clear and unequivocal proof, that (a) it is a charitable institution; and (b) its real properties are **ACTUALLY**, **DIRECTLY** and **EXCLUSIVELY** used for charitable purposes. ***"Exclusive" is defined as possessed and enjoyed to the exclusion of others***; debarred from participation or enjoyment; and "exclusively" is defined, "in a manner to exclude; as enjoying a privilege exclusively." If real property is used for one or more commercial purposes, it is not exclusively used for the exempted purposes but is subject to taxation. The words "dominant use" or "principal use" cannot be substituted for the words "used exclusively" without doing violence to the Constitutions and the law. Solely is synonymous with exclusively.
>
> ***What is meant by actual, direct and exclusive use of the property for charitable purposes is the direct and immediate and actual application of the property itself to the purposes for which the charitable institution is organized***. It is not the use of the income from the real property that is determinative of whether the property is used for tax-exempt purposes.[32] (Emphasis and underscoring supplied.)

Petitioner failed to discharge its burden to prove that its real property is actually, directly and exclusively used for educational purposes. While there is no allegation or proof that petitioner leases the land to its present occupants, still there is no compliance with the constitutional and statutory requirement that said real property is actually, directly and exclusively used for educational purposes. The respondents correctly assessed the land for real

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[31] G.R. No. 144104, June 29, 2004, 433 SCRA 119, 138.

[32] *Id.* at 137-138.

property taxes for the taxable period during which the land is not being devoted solely to petitioner's educational activities. Accordingly, the CA did not err in ruling that petitioner is likewise not entitled to a refund of the real property tax it paid under protest.

WHEREFORE, the petition is **DENIED.** The Decision dated July 28, 2009 and Resolution dated October 12, 2009 of the Court of Appeals in CA-G.R. CV No. 90591 are **AFFIRMED.**

No pronouncement as to costs.

SO ORDERED.

Leonardo-de Castro (*Acting Chairperson*),[*] *Bersamin, Perez,*[**] and *Perlas-Bernabe,*[***] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 190336. June 27, 2012]

LAND BANK OF THE PHILIPPINES (including its MANAGER, VALUATION AND LANDOWNERS COMPENSATION OFFICE [now AGRARIAN OPERATIONS CENTER X], Cagayan de Oro City), *petitioner, vs.* **PAZ O. MONTALVAN, joined by her husband, JESUS J. MONTALVAN,** *respondents.*

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[*] Designated Acting Chairperson of the First Division per Special Order No. 1226 dated May 30, 2012.

[**] Designated Additional Member per Raffle dated June 25, 2012 vice Associate Justice Mariano C. Del Castillo who rescued himself from the case due to close association to one of the parties.

[***] Designated Acting Member of the First Division per Special Order No. 1227 dated May 30, 2012.

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAW; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); JUST COMPENSATION; PENDING DARAB PROCEEDINGS NOT A BAR TO FILE A PETITION FOR DETERMINATION OF JUST COMPENSATION WITH THE SPECIAL AGRARIAN COURT (SAC).—** The SAC has been statutorily determined to have **original and exclusive jurisdiction over all petitions for the determination of just compensation due to landowners under the CARP**. This legal principle has been upheld in a number of this Court's decisions and has passed into the province of established doctrine in agrarian reform jurisprudence. In fact, this Court has sustained the exclusive authority of the SAC over the DARAB, even in instances when no administrative proceedings were conducted in the DARAB. x x x That the DARAB proceedings are still pending is not a fatal defect that will oust the SAC from its original and exclusive jurisdiction over a petition for judicial determination of just compensation in an agrarian reform case. The DAR referral of the issue of valuation to the DARAB will not prevent respondents from asserting in the SAC their rights as landowners, especially since the function of fixing the award of just compensation is properly lodged with the trial court and is not an administrative undertaking.

2. **ID.; ID.; ID.; ID.; FAILURE TO FILE MOTION FOR RECONSIDERATION OR AN APPEAL FROM THE DARAB DECISION NOT A VIOLATION OF THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.—** Neither can respondents' failure to file a motion for reconsideration or an appeal from the Decision of the DARAB be considered as a grave and serious violation of the doctrine of exhaustion of administrative remedies. Such reasoning would ultimately deprive the SAC of the authority to hear and decide the matter of just compensation. There is no inherent inconsistency between (a) the **primary jurisdiction of the DAR** to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all questions involving the implementation of agrarian reform, including those of just compensation; and (b) the **original and exclusive jurisdiction of the SAC** over all petitions for the

determination of just compensation. "The first refers to administrative proceedings, while the second refers to judicial proceedings." The jurisdiction of the SAC is not any less "original and exclusive," because the question is first passed upon by the DAR; as the judicial proceedings are not a continuation of the administrative determination. x x x [T]he mere fact that landowners, respondents herein, failed to avail themselves of a motion for reconsideration or of an appeal from an adverse Decision of the DARAB will not affect the jurisdiction of the SAC, which had already been exercising authority over the case prior to that adverse ruling. Not being a continuation of the administrative proceedings, the pending Complaint filed by respondents Montalvan in the judicial courts will not be foreclosed by the DARAB's Decision.

3. ID.; ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT IN THE DETERMINATION OF JUST COMPENSATION, IF SUBSTANTIATED BY COMMISSIONER'S REPORT, ARE CONCLUSIVE ON THE COURT.— Petitioner asks us to evaluate the SAC-appointed Panel of Commissioners' evidentiary basis for determining the value of respondents' property. In effect, petitioner bank is praying for the resolution of a question of fact, which is improper in the instant Rule 45 Petition. This Court is not a trier of facts; it is not its function to reexamine the SAC's factual findings, which were supported by the report of the independent Panel of Commissioners and were duly affirmed by the appellate court. Absent any allegation of irregularity or grave abuse of discretion, the factual findings of the lower courts, if substantiated by the Commissioners' Report, are perforce binding and conclusive on this Court and will no longer be disturbed. Hence, the judicial determination of the value of the expropriated portion amounting to ₱50,000 per hectare is affirmed.

4. ID.; ID.; ID.; TITLE OF THE LAND EXCLUDED FROM THE EXPROPRIATED PROPERTY MUST BE RETURNED BACK TO THE OWNER WITH THE RIGHT TO CLAIM DAMAGES.— [I]t was a mistake on the part of the Republic to transfer the title of respondents Montalvan over the entire 147.6913-hectare land. In its Field Investigation Report, the DAR established its intent to acquire only 72 hectares, which was suitable for agricultural purposes under the CARP. But instead of dividing the lands and issuing two titles over the

two portions (one, subject of the CARP; and the other, excluded therefrom), the DAR simply caused the transfer of the entire title to the name of the Republic, without distinction between the expropriated and the excluded portions. x x x The consequence of our finding of unjust and improper titling of the entire property by the Republic is that the title over the excluded portion shall be returned or transferred back to respondents Montalvan, with damages. The costs of the cancellation of the present title and the issuance of two new titles over the divided portions of the property (the expropriated portion to be retained by the Republic under the VOS arrangement in the CARP, and the excluded portion to revert to respondents) shall be borne by DAR, without prejudice to the right of respondents to seek damages in a proper court. x x x [T]he DAR violated the property rights of respondent landowners when it caused the titling of the entire land to encompass even the 75.6913-hectare excluded portion. This invasion of proprietary rights, which is imputable to the Republic, deserves redress. However, the form of that redress is limited in this case to damages arising from the erroneous titling of the property. It cannot extend to the point where the Republic would be compelled to acquire the excluded portion, beyond the coverage of the CARP[.]

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Gonzales Batiller David Leabres & Reyes for respondents.

D E C I S I O N

SERENO, *J.*:

Before the Court is a Rule 45 Petition filed by petitioner Land Bank of the Philippines (LBP) questioning the 18 March 2009 Decision and 23 October 2009 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 75279-MIN, which affirmed with modification the award of just compensation granted to the landowners, respondents Paz O. Montalvan and Jesus J. Montalvan, by the Regional Trial Court (RTC) of Ozamis City, Branch 15 in CAR Case No. 8.

The factual circumstances of the case, as recounted by the Special Agrarian Court (SAC)[1] and the CA,[2] are without much controversy and may be summarized as follows

Respondents Paz O. Montalvan and Jesus J. Montalvan are spouses and registered owners of parcels of land situated in Balintonga (formerly Monterico) Aloran, Misamis Occidental. The said property is covered by Transfer Certificate of Title Nos. (TCTs) T-285 and T-294 with an area of approximately 162.9669 hectares. On 12 September 1989, they voluntarily offered to sell the entire property to the Government under the Comprehensive Agrarian Reform Program (CARP).

In reply to the voluntary offer to sell (VOS) of respondents, the Department of Agrarian Reform (DAR), through its Regional Office (Region 10) in Cagayan de Oro City, informed them that it was focusing only on 147.6913 hectares of the entire 162.9669-hectare land. After conducting a field investigation report on the chosen portion, which it reduced further to only 72 hectares out of the 147.6913 hectares that it would be acquiring (the expropriated portion), the DAR found that the remaining 75.6913-hectare land (the excluded portion) was not suitable for agriculture.[3] Thereafter, the DAR Regional Office sent a Notice of Land Valuation, by which it offered to pay respondents the amount of **₱510,768.72** for the expropriated portion of their property, including improvements thereon.

Respondents raised their objections to the valuation and argued that "the coconut trees alone, if converted to coco lumber bring a net value of at least **₱35,000 per hectare**, and the offer was for only ₱30,000 per hectare, or less than the actual value of the land and the coconuts on it."[4] (Emphasis supplied.)

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[1] SAC Decision dated 15 March 2002, pp. 1-4; *rollo*, pp. 174-177.

[2] CA Decision dated 18 March 2009, pp. 2-7; *id.* at 9-14.

[3] The excluded portion amounted to 75.6913 hectares of the 147.6913-hectare land. The DAR identified that 70.6913 hectares as consisting of land that was above the 18% slope, undeveloped, roads or creeks. It also set aside five hectares as the required retention limit in favor of the landowners. (Field Investigation Report dated 31 May 1991; *id.* at 130-135)

[4] CA Decision dated 18 March 2009, p. 3; *id.* at 10.

However, the DAR explained that it could only acquire the 72 hectares of the expropriated portion, because the excluded portion was above an 18% slope or was undeveloped, which made it exempt from CARP coverage. The DAR likewise noted the rejection by respondents of its valuation and stated that the matter had been referred to the DAR Adjudication Board (DARAB) for administrative summary proceedings to determine the compensation for the expropriated portion.

On 07 February 1992, without any action forthcoming from the DARAB, respondents directly filed a separate Complaint with the RTC, acting as a SAC, for the latter to fix the just compensation for the expropriated portion of their agricultural lands. Petitioner LBP moved to dismiss respondents' Complaint on the ground that the proceedings for the valuation of the lands were still pending with the DARAB.

In its Order dated 30 March 1992, the SAC denied the Motion to Dismiss. It likewise denied the subsequent Motion for Reconsideration filed by petitioner LBP. Hence, the latter duly filed its Answer and raised, as an affirmative defense, respondents' failure to exhaust administrative remedies before resorting to the Complaint for just compensation before the SAC.

Significantly, while the cases in the DARAB and the SAC were still pending, the DAR on 03 September 1992 caused the partial cancellation of TCT No. T-285 in the name of respondents. **A new title (TCT No. T-11696) in the name of the Republic of the Philippines was issued covering the entire 147.6913 hectares**. Nevertheless, petitioner LBP made no deposit in favor of respondents Montalvan as just compensation for the entire land. During the trial in the SAC, Engr. Jose Montalvan, the son of respondents, testified that the DAR had indeed acquired both the expropriated and the excluded portions of his parents' lands. These portions, previously titled under TCT No. T-285, were acquired by the DAR, even if the investigation and valuations conducted by the latter and petitioner LBP were limited only to the 72-hectare expropriated portion.

In its Decision dated 12 October 1992, the DARAB ruled on the referral with respect to the disputed valuation and upheld the DAR's earlier valuation of ₱510,768.72 for the 72-hectare expropriated land.[5] On 21 January 1993, the DARAB issued a Certification that confirmed that no appeal was filed from its Decision, which, hence, became final and executory.

Citing the recent DARAB Decision and Certification, petitioner LBP moved, for a second time, for the dismissal of respondents' Complaint in the SAC. Yet, the SAC rejected petitioner's plea and again denied its second Motion to Dismiss.[6]

In the Order dated 11 October 1995, the SAC directed petitioner LBP to revaluate the property using the guidelines in the recently amended DAR Administrative Orders.[7] Hence, petitioner bank submitted a revaluation of the expropriated portion and offered ₱1,020,010.66 as just compensation. Despite the increase in petitioner's earlier offer, respondents Montalvan rejected it.

Considering the impasse, the SAC constituted an independent panel of commissioners[8] to evaluate and assess the property, a move that was not opposed by petitioner LBP. On 30 May 2001, the panel of commissioners submitted a Commissioners'

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[5] "WHEREFORE, decision is hereby rendered upholding the valuation of Land Bank of the Philippines in the amount of ₱510,768.72 for the 72.0000 hectares of the herein landowner's property." (DARAB Decision dated 12 October 1992; CA Decision dated 18 March 2009, p. 4 [*id.* at 11]).

[6] SAC Order dated 07 April 1993.

[7] DAR Administrative Order No. 06-1992, as amended by DAR Administrative Order No. 11-1994.

[8] The members of the Panel of Commissioners were the following: (a) James Butalid (Provincial Assessor for the Province of Misamis Occidental); (b) Antonio Nerida (Senior Agriculturist, Philippine Coconut Authority for the Province of Misamis Occidental); and (c) Loreto Mutia (retired agriculturist of the DAR, Misamis Occidental), who replaced Atty. Procopio Lao III (Provincial Agriculturist, DAR, Misamis Occidental) when the latter declined the appointment. (CA Decision dated 18 March 2009, pp. 5-6; *rollo*, pp. 12-13)

Report dated 12 January 2000,[9] in which they agreed that the fair market value of the 72-hectare expropriated property of respondents was **₱50,000 per hectare**, or a total of **₱3,600,000**.

After the submission of the Commissioners' Report, petitioner LBP reassessed the land and offered to pay respondents **₱26,210.75 per hectare**, or a total of **₱1,887,174.12** for the expropriated portion.[10] However, this latest valuation offer was again rejected by respondents Montalvan.

Thereafter, petitioner LBP raised its objections to the Commissioners' Report and alleged that the commissioners were all selected by respondents Montalvan, thus making their findings as to the market value of the expropriated portion self-serving.

The SAC favored the valuations made by the Panel of Commissioners over the 72 - hectare expropriated portion and even directed petitioner LBP to also pay respondents Montalvan for the 75.6913-hectare excluded lands, all titled in the name of the Republic, in its Decision dated 15 March 2002, which disposed as follows:

WHEREFORE, in light of the foregoing considerations, judgment is hereby rendered ordering the Department of Agrarian Reform to acquire plaintiffs' 162.9669 hectares of land embraced in TCT No. T-285 and TCT No. T-294, subject to retention, if qualified;

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[9] "That on October 26, 1999, the Commission convened again and discussed as to the value of the said land until they finally and unanimously agreed to have its fair market value at Fifty Thousand Pesos (₱50,000.00) per hectare."

"That the valuation made by the Commissioners was only on the area of 72.0000 hectares, which were fully planted with cocotrees at the time of inspection/verification which was in October 1999."

"The Commissioners also considered the location of the land. Though distant from the National Highway, it is slightly flat. The cocotrees production is good. They also based on the Assessor's market value, BIR Zonal Value and the selling price of adjacent lands." (Commissioners Report dated 12 January 2000, p. 2; *id.* at 184)

[10] "On September 6, 2001 Land Bank re-assessed the land (72 hectares) and came up with a valuation at ₱1,887,174.12 or at ₱26,210.75 per hectare. The same was rejected by the plaintiffs." (CA Decision 18 March 2009, p. 6; *id.* at 13)

and ordering Land Bank to pay for and as just compensation for the 72 hectares at ₱50,000.00 per hectare and at ₱35,000.00 per hectare for the rest of the areas; and to pay the costs.[11]

Acting on the Notice of Appeal filed by petitioner LBP,[12] the CA issued the questioned 18 March 2009 Decision and affirmed the award of just compensation to respondents Montalvan, but deleted the payment of costs, as follows:

> **WHEREFORE,** the Decision dated March 15, 2002 of the Regional Trial Court, Branch 15 of Ozamis City, acting as a Special Agrarian Court, appealed from is **AFFIRMED with the modification** that since the DAR actually acquired way back September 3, 1992 plaintiffs land known as Lot 1-Psu 53883 containing 147.6913 hectares covered by TCT No. T-285 previously in the name of the plaintiffs and now covered by TCT No. T-11696 in the name of the Republic of the Philippines, the defendant Land Bank of the Philippines is hereby Ordered to pay just compensation for the same at Fifty thousand pesos (₱50,000.00) per hectare for the 72 hectares and at Thirty-five thousand pesos (₱35,000.00) per hectare for the rest of the area of 75.6913 hectares, and that the payment of costs is deleted.[13]

Petitioner LBP partially moved for the reconsideration of the assailed CA Decision. It argued that only the 72-hectare expropriated property was subject to CARP, but not the excluded property, which was allegedly outside the jurisdiction of the SAC. Moreover, it argued that the award of ₱35,000 per hectare for the 75.6913-hectare excluded portion had no factual and legal bases. However, the appellate court remained unconvinced and denied the Motion for Reconsideration.[14]

Hence, the instant Rule 45 Petition filed by petitioner LBP.

ISSUES

A. Considering the pendency of the DARAB proceedings, whether respondents Montalvan's filing with the SAC of a Petition

[11] Decision dated 15 March 2002, pp. 5-6; *id.* at 178-179.

[12] Petitioner LBP's Notice of Appeal dated 24 April 2002; *id.* at 180.

[13] *Id.* at 22.

[14] CA Resolution dated 23 October 2009; *id.* at 119-122.

for judicial determination of just compensation was premature and in violation of the rule on the exhaustion of administrative remedies.

B. Whether the Court has authority to review the determination made by the SAC with respect to the amount of just compensation.

C. Whether petitioner LBP can be directed to pay just compensation for the 75.6913-hectare excluded portion, which is now titled in the name of the Republic of the Philippines, even if these lands are not suitable for agricultural purposes.

OUR RULING

Finding no merit in the arguments raised by petitioner LBP, the Court denies the instant Rule 45 Petition. However, the third issue with respect to the just compensation for the excluded portion of respondents Montalvan's lands deserves some consideration.

With respect to the first issue, petitioner LBP argues that respondents' filing with the SAC of a separate Complaint for the determination of just compensation was premature and in violation of the doctrine of exhaustion of administrative remedies. Petitioner reasoned that the revaluation proceedings in the DARAB following respondents' rejection of the initial DAR offer were still pending. The line of reasoning employed by petitioner is not novel and has since been discredited by jurisprudential precedents.

The SAC has been statutorily determined to have **original and exclusive jurisdiction over all petitions for the determination of just compensation due to landowners under the CARP**.[15] This legal principle has been upheld in a number

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[15] "The Special Agrarian **Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners**, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act." (Republic Act No. 6657, as amended, Sec. 56; emphasis supplied.)

of this Court's decisions and has passed into the province of established doctrine in agrarian reform jurisprudence.[16] In fact, this Court has sustained the exclusive authority of the SAC over the DARAB, even in instances when no administrative proceedings were conducted in the DARAB.[17]

In *LBP v. CA*,[18] the Court affirmed the jurisdiction of the SAC (RTC-Cabanatuan City, Branch 23) in determining the just compensation due to Marcia E. Ramos for her expropriated ricelands, even though the proceedings in the DARAB were still continuing at the time she resorted to the direct filing of a Complaint with the SAC. This doctrine was reiterated in *LBP v. Celada*,[19] in which Leonila P. Celada was permitted to file a petition for judicial determination of just compensation with the SAC (RTC-Tagbilaran City), even if the summary administrative proceedings in the DARAB (Region VII - Cebu City) had just been initiated. It was not an error for the SAC to assume jurisdiction over the issue of just compensation despite the pendency of the DARAB proceedings, as thus ruled by the Court:

We do not agree with petitioner's submission that the SAC erred in assuming jurisdiction over respondent's petition for determination of just compensation despite the pendency of the administrative proceedings before the DARAB. In *Land Bank of the Philippines v. Court of Appeals*, the landowner filed an action

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[16] "In a number of cases, the Court has upheld the original and exclusive jurisdiction of the RTC, sitting as SAC, over all petitions for determination of just compensation to landowners in accordance with Section 57 of RA No. 6657." (*LBP v. Belista*, G.R. No. 164631, 26 June 2009, 591 SCRA 137)

[17] In *LBP v.* Wycoco, 464 Phil. 83 (2004), the Court ruled that the SAC properly acquired jurisdiction over petitioner Wycoco's complaint for determination of just compensation. The Court stressed that "although no summary administrative proceeding was held before the DARAB, LBP was able to perform its legal mandate of initially determining the value of Wycoco's land pursuant to Executive Order No. 405, Series of 1990."

[18] 376 Phil. 252 (1999).

[19] 515 Phil. 467 (2006).

for determination of just compensation **without waiting for the completion of the DARAB's re-evaluation of the land**. The Court nonetheless held therein that the SAC acquired jurisdiction over the action for the following reason:

> It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." **This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions**. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Sec. 57 and therefore would be void. **Thus, direct resort to the SAC by private respondent is valid**.

It would be well to emphasize that the taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. **Consequently, the SAC properly took cognizance of respondent's petition for determination of just compensation**.[20] (Emphasis supplied.)

These judicial precedents are directly applicable to the case at bar. That the DARAB proceedings are still pending is not a fatal defect that will oust the SAC from its original and exclusive jurisdiction over a petition for judicial determination of just compensation in an agrarian reform case. The DAR referral of the issue of valuation to the DARAB will not prevent respondents from asserting in the SAC their rights as landowners, especially since the function of fixing the award of just compensation is

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[20] *Id.* at 476-477.

properly lodged with the trial court and is not an administrative undertaking.[21]

Neither can respondents' failure to file a motion for reconsideration or an appeal from the Decision of the DARAB be considered as a grave and serious violation of the doctrine of exhaustion of administrative remedies. Such reasoning would ultimately deprive the SAC of the authority to hear and decide the matter of just compensation.

There is no inherent inconsistency between (a) the **primary jurisdiction of the DAR** to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all questions involving the implementation of agrarian reform, including those of just compensation; and (b) the **original and exclusive jurisdiction of the SAC** over all petitions for the determination of just compensation. "The first refers to administrative proceedings, while the second refers to judicial proceedings."[22] The jurisdiction of the SAC is not any less "original and exclusive," because the question is first passed upon by the DAR; as the judicial proceedings are not a continuation of the administrative determination.[23] In *LBP v. Escandor*,[24] the Court further made the following distinctions:

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[21] "In *Republic of the Philippines v. Court of Appeals*, we held that Section 50 must be construed in harmony with Section 57 by considering cases involving the determination of just compensation and criminal cases for violations of R.A. No. 6657 as excepted from the plenitude of power conferred upon the DAR. Indeed, there is a reason for this distinction. The DAR is an administrative agency which cannot be granted jurisdiction over cases of eminent domain (such as taking of land under R.A. No. 6657) and over criminal cases. Thus, in *Land Bank of the Philippines v. Celada*, *Export Processing Zone Authority v. Dulay* and *Sumulong v. Guerrero*, we held that **the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies**. Also, in *Scoty's Department Store, et al. v. Micaller*, we struck down a law granting the then Court of Industrial Relations jurisdiction to try criminal cases for violations of the Industrial Peace Act." (*LBP v. Suntay*, G.R. No. 157903, 11 October 2007, 535 SCRA 605)

[22] *LBP v. Natividad*, 497 Phil. 738 (2005), citing *Philippine Veteran's Bank v. CA*, 379 Phil. 141, 147 (2000).

[23] *Philippine Veteran's Bank v. CA*, 379 Phil. 141, 147 (2000).

[24] G.R. No. 171685, 11 October 2010, 632 SCRA 504.

It is settled that the determination of just compensation is a judicial function. **The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party**. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be.

Although the DAR is vested with primary jurisdiction under the Comprehensive Agrarian Reform Law (CARL) of 1988 to determine in a preliminary manner the reasonable compensation for lands taken under the CARP, such determination is subject to challenge in the courts. The CARL vests in the RTCs, sitting as SACs, original and exclusive jurisdiction over all petitions for the determination of just compensation. This means that the RTCs do not exercise mere appellate jurisdiction over just compensation disputes.

We have held that the jurisdiction of the RTCs is not any less "original and exclusive" because the question is first passed upon by the DAR. The proceedings before the RTC are not a continuation of the administrative determination. Indeed, although the law may provide that the decision of the DAR is final and unappealable, still a resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.[25] (Emphasis supplied.)

Applied to the instant case, the mere fact that landowners, respondents herein, failed to avail themselves of a motion for reconsideration or of an appeal from an adverse Decision of the DARAB will not affect the jurisdiction of the SAC, which had already been exercising authority over the case prior to that adverse ruling. Not being a continuation of the administrative proceedings, the pending Complaint filed by respondents Montalvan in the judicial courts will not be foreclosed by the DARAB's Decision.

As regards the second issue of the amount of just compensation awarded to respondents by the SAC for the 72-hectare expropriated agricultural lands, petitioner LBP again fails to convince the Court. Petitioner asks us to evaluate the SAC-appointed Panel

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[25] *Id.* at 512-513.

of Commissioners' evidentiary basis for determining the value of respondents' property. In effect, petitioner bank is praying for the resolution of a question of fact, which is improper in the instant Rule 45 Petition. This Court is not a trier of facts; it is not its function to reexamine the SAC's factual findings, which were supported by the report of the independent Panel of Commissioners and were duly affirmed by the appellate court.[26] Absent any allegation of irregularity or grave abuse of discretion, the factual findings of the lower courts, if substantiated by the Commissioners' Report, are perforce binding and conclusive on this Court and will no longer be disturbed. Hence, the judicial determination of the value of the expropriated portion amounting to 50,000 per hectare is affirmed.

We now come to the third and final issue surrounding the appellate court's ruling, which directed the DAR and petitioner LBP to pay just compensation for the excluded portion of the lands of respondents Montalvan.

To recall, when respondents Montalvan voluntarily offered to sell their property, the DAR Regional Office selected only 72 hectares as suitable for agriculture and subject to the payment of just compensation. It, however, showed no interest in acquiring under the CARP the 75.6913 hectares. A legal difficulty, however, arose before this Court when the DAR caused the transfer of the title to the entire 147.6913-hectare land, and yet offered to pay just compensation only for the expropriated, and not for the excluded, portion.

Clearly, it was a mistake on the part of the Republic to transfer the title of respondents Montalvan over the entire 147.6913-

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[26] "It is hornbook doctrine that under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Supreme Court. This Court is not a trier of facts and it is not its function to re-examine and weigh anew the respective sets of evidence of the parties. Factual findings of the RTC, herein sitting as a SAC, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record." (*LBP v. Chico*, G.R. No. 168453, 13 March 2009, 581 SCRA 226, 239, citing *Security Bank and Trust Company v. Gan*, 526 Phil. 214, 217 [2006] and *Pleyto v. Lomboy*, 476 Phil. 373, 384-385 [2004])

hectare land. In its Field Investigation Report, the DAR established its intent to acquire only 72 hectares, which was suitable for agricultural purposes under the CARP. But instead of dividing the lands and issuing two titles over the two portions (one, subject of the CARP; and the other, excluded therefrom), the DAR simply caused the transfer of the entire title to the name of the Republic, without distinction between the expropriated and the excluded portions.

Hence, the DAR unjustly enriched itself when it appropriated the entire 147.6913-hectare real property of respondents Montalvan, because the entire lot was decidedly beyond the area it had intended to subject to agrarian reform under the VOS arrangement. Even the Field Investigation Report issued by the DAR found that the excluded portion together with the five-hectare retention limit was not to be the subject of agrarian reform expropriation. Under the Civil Code,[27] there is unjust enrichment when a person retains the property of another without just or legal ground and against the fundamental principles of justice, equity and good conscience.[28] Hence, although the Court affirms the award of just compensation for the expropriated portion owned by respondents, the Republic cannot hold on to the excluded portion consisting of 75.6913 hectares, despite both portions being included under one new title issued in its favor.

The consequence of our finding of unjust and improper titling of the entire property by the Republic is that the title over the excluded portion shall be returned or transferred back to respondents Montalvan, with damages. The costs of the cancellation of the present title and the issuance of two new titles over the divided portions of the property (the expropriated

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[27] "Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." (CIVIL CODE, Art. 22)

[28] *Republic v. Court of Appeals*, G.R. No. 160379, 14 August 2009, 596 SCRA 57.

portion to be retained by the Republic under the VOS arrangement in the CARP, and the excluded portion to revert to respondents) shall be borne by DAR, without prejudice to the right of respondents to seek damages in a proper court.

The reason for this is that DAR cannot be compelled to purchase an entire property offered under a VOS scheme, especially when some portions are unsuitable for agriculture. In *LBP v. Wycoco*,[29] we ruled thus:

> Anent the third issue, the DAR cannot be compelled to purchase the entire property voluntarily offered by Wycoco. The power to determine whether a parcel of land may come within the coverage of the Comprehensive Agrarian Reform Program is essentially lodged with the DAR. That Wycoco will suffer damages by the DAR's non-acquisition of the approximately 10 hectare portion of the entire land which was found to be not suitable for agriculture is no justification to compel DAR to acquire the whole area.[30]

The discretion to choose which among the lands submitted under a VOS scheme to be subject of agrarian reform coverage lies with the DAR. In this case, after its experts had examined the properties offered by respondents Montalvan, the DAR identified only the 72-hectare expropriated portion as suitable under the CARP for agricultural purposes. Both the SAC and the CA exceeded their jurisdiction when they resolved to substitute the discretion given to the DAR and ordered that even the excluded portion be subject to agrarian reform expropriation, even if found to be unsuitable for agricultural purposes.

In addition, the failure of the lower courts to receive and hear evidence of the values of the excluded portions further highlights the lack of factual and legal bases for the payment of just compensation. The SAC ordered the DAR and petitioner LBP to pay ₱35,000 per hectare for the excluded portion.[31] However, no factual basis was offered to sustain this specific

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[29] 464 Phil. 83 (2004).

[30] *Id.* at 98.

[31] SAC Decision dated 15 March 2002, p. 6; *rollo*, p. 179.

rate of payment, except for the self-serving claims of respondents Montalvan, who rejected the DAR's initial valuation and cited the presence of coconut trees as justification for demanding an increase in the offer.[32] Indeed, the Commissioners' Report was specifically limited to the expropriated portion and made no findings on the value of the excluded portion.[33]

The transfer of the title to the entire property, which was beyond the scope of the agrarian reform expropriation proceedings in the DARAB and the SAC, nevertheless entitles respondents — as landowners — to claim damages for having been deprived of the use and possession of the excluded portion.

A government agency's prolonged occupation of private property without the benefit of expropriation proceedings entitles the landowner to damages.[34] Temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered, but its amount cannot be proved with certainty from the nature of the case.[35] These damages may be allowed when the court is convinced that the aggrieved party suffered some pecuniary loss but, from the nature of the case, definite proof of that pecuniary loss cannot be adduced.[36] When the court is convinced that there has been such a loss, the judge is empowered to calculate moderate damages, rather than let the complainant suffer without redress from the defendant's wrongful act.[37]

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[32] CA Decision dated 18 March 2009, p. 3; *id.* at 10.

[33] "That the valuation made by the Commissioners was only on the area of 72.0000 hectares which were fully planted with cocotrees at the time of inspection/verification which was in October 1999." (Commissioners' Report dated 12 January 2000, p. 2; *id.* at 184)

[34] *City of Iloilo v. Contreras-Besana*, G.R. No. 168967, 12 February 2010, 612 SCRA 458, citing *MIAA v. Rodriguez*, 518 Phil. 750, 757 (2006).

[35] CIVIL CODE, Art. 2224.

[36] *De Guzman v. Tumolva*, G.R. No. 188072, 19 October 2011, citing *Seguritan v. People*, 618 SCRA 406, 420 (2010) and *Canada v. All Commodities Marketing Corp.*, 569 SCRA 321, 329 (2008).

[37] *Heirs of Gaite v. The Plaza, Inc.,* G.R. No. 177685, 26 January 2011, 640 SCRA 576, citing *Government Service Insurance System v. Labung-Deang*, 417 Phil. 662 (2001).

In the instant case, the DAR violated the property rights of respondent landowners when it caused the titling of the entire land to encompass even the 75.6913-hectare excluded portion. This invasion of proprietary rights, which is imputable to the Republic, deserves redress. However, the form of that redress is limited in this case to damages arising from the erroneous titling of the property. It cannot extend to the point where the Republic would be compelled to acquire the excluded portion, beyond the coverage of the CARP, and pay just compensation for land ill-suited for agricultural purposes, as prayed for by respondents and ordered by the courts below.

WHEREFORE, the Petition for Review on *Certiorari* dated 08 January 2010 filed by petitioner Landbank of the Philippines is **PARTIALLY GRANTED**. Accordingly, the 18 March 2009 Decision and 23 October 2009 Resolution of the Court of Appeals in CA-G.R. CV No. 75279-MIN are **PARTIALLY MODIFIED**, as follows:

a. Petitioner LBP is directed to pay respondents Paz O. Montalvan and Jesus J. Montalvan just compensation for their 72-hectare land previously covered by Transfer Certificate of Title No. T-285 and expropriated under the Comprehensive Agrarian Reform Program on 03 September 1992 at the rate of ₱50,000 per hectare, or a total of ₱3,600,000.

b. Transfer Certificate of Title No. T-11696 covering the 147.6913-hectare land in the name of the Republic of the Philippines is **CANCELLED**, and the Republic is **ORDERED** to cause the issuance of two new titles over the same property, one covering 72 hectares in favor of the Republic; and another covering the remaining portion of 75.6913 hectares in favor of respondents Montalvan, with the costs of the transfer to be against the Republic.

c. Respondents Montalvan are hereby recognized to have the right to seek damages for the wrongful titling of the land described in paragraph (b) hereof in an appropriate proceeding.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194781. June 27, 2012]

RGM INDUSTRIES, INC., *petitioner, vs.* **UNITED PACIFIC CAPITAL CORPORATION,** *respondent.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; LOAN; LEGAL INTEREST RATE, IMPOSED.—** Stipulated interest rates are illegal if they are unconscionable and courts are allowed to temper interest rates when necessary. In exercising this vested power to determine what is iniquitous and unconscionable, the Court must consider the circumstances of each case. What may be iniquitous and unconscionable in one case, may be just in another. We cannot uphold the petitioner's invocation of our ruling in *DBP v. Court of Appeals*, wherein the interest rate imposed was reduced to 10% per annum. The overriding circumstance prompting such pronouncement was the regular payments made by the borrower. Evidently, such fact is wanting in the case at bar, hence, the petitioner cannot demand for a similar interest rate. The circumstances attendant herein are similar to those in *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation* wherein we levied the legal interest rate of 12% per annum.

2. **ID.; ID.; ID.; CIRCUMSTANCES CONSIDERED IN REDUCING THE PENALTY CHARGE AND ATTORNEY'S FEES.—** [P]ursuant to *Bank of the Philippine Islands, Inc. v. Yu*, we deem it proper to further reduce the penalty charge decreed by the CA from 2% per month to 1% per month or

12% per annum in view of the following factors: (1) respondent has already received ₱7,504,522.27 in penalty charges, and (2) the loan extended to respondent was a short-term credit facility. On the basis of the same precedent, the attorney's fees must likewise be equitably reduced considering that: (1) the petitioner has already made partial payments; (2) the attorney's fees are not an integral part of the cost of borrowing but a mere incident of collection; and (3) the attorney's fees were intended as penal clause to answer for liquidated damages, hence, the rate of 10% of the unpaid obligation is too onerous. Under the premises, attorney's fees equivalent to one percent (1%) of the outstanding balance is reasonable.

APPEARANCES OF COUNSEL

Joseph C. Cerezo for petitioner.
Rico & Associates for respondent.

R E S O L U T I O N

REYES, *J.*:

At bar 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 July 23, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 87727 which affirmed with modification the Decision[2] dated April 11, 2005 of the Regional Trial Court (RTC), Branch 147 of Makati City, in Civil Case No. 99-1888, ordering RGM Industries, Inc. (petitioner) to pay its obligation to United Pacific Capital Corporation (respondent). The RTC's judgment was modified as to the interest rates and penalty charges imposed.

Likewise assailed is the CA's Resolution[3] dated December 14, 2010 denying the petitioner's motion for reconsideration.

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Fernanda Lampas Peralta and Rodil V. Zalameda, concurring; *rollo*, pp. 9-24.

[2] Penned by Presiding Judge Maria Cristina J. Cornejo; *id.* at 49-51.

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

The uniform factual findings of the courts a *quo*[4]

The respondent is a domestic corporation engaged in the business of lending and financing. On March 3, 1997, it granted a thirty million peso short-term credit facility in favor of the petitioner. The loan amount was sourced from individual funders on the basis of a direct-match facility for which a series of promissory notes were issued by the petitioner for the payment of the loan.

The petitioner failed to satisfy the said promissory notes as they fell due and the loan had to be assumed in full by the respondent which thereby stepped into the shoes of the individual funders.

Consequently, on April 4, 1998, the petitioner issued in favor of the respondent a consolidated promissory note in the principal amount of ₱27,852,075.98 for a term of fourteen (14) days and maturing on April 28, 1998. The stipulated interest on the consolidated promissory note was 32% per annum. In case of default, a penalty charge was imposed in an amount equivalent to 8% per month of the outstanding amount due and unpaid computed from the date of default.

The petitioner failed to satisfy the consolidated promissory note, the principal balance of which as of April 28, 1998 was ₱27,668,167.87.

The respondent thus sent demand letters to the petitioner but the latter failed to pay and instead asked for restructuring of the loan. The respondent declined the request and on October 5, 1999, filed the herein complaint for collection of sum of money against the petitioner.

The petitioner did not dispute the loan it owes but claimed that the agreed interest rate was fixed at 15.5% per annum and not the varying interest rates imposed by the respondent which reached as high as 40% per annum. The petitioner asserted that the respondent unilaterally imposed the increased interest

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[4] *Supra* notes 1 and 2.

rates in violation of the principle of mutuality of contracts.

The respondent, on the other hand, argued that the increased interest rates were mutually agreed upon and that the same cannot be considered usurious because usury is legally non-existent in this jurisdiction.

Ruling of the RTC

The RTC ruled in favor of the respondent and held thus:

> WHEREFORE, premises considered, Judgment is hereby rendered for the (respondent) ordering the (petitioner) RGM Industries[,] Inc. as the Issuer of the consolidated promissory note, to pay (respondent) the amount of [₱]27,668.167.87 representing the outstanding principal obligation plus interest at the rate of 32% per annum and penalty charges at the rate of 8% per month from date of default on the consolidated promissory note until fully paid, and an amount equivalent to 25% of the amount due as and for attorney's fees, and to pay the costs of suit.
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> SO ORDERED.[5]

Ruling of the CA

On appeal, the CA affirmed the RTC's judgment but modified the interest rates and penalty charges imposed. The CA held that the interest rates levied by the respondent were excessive and unconscionable hence, must be reduced to 12% per annum. The CA likewise lowered the penalty charges to 2% per month considering that the ₱7,504,522.27 paid by the petitioner was already applied thereto and the nature of the contract between the parties was a short-term credit facility. The attorney's fees were reduced from 25% to 10% of the outstanding obligation. The decretal portion of the CA Decision reads:

> **WHEREFORE,** premises considered, the instant appeal is hereby **PARTLY GRANTED**. The impugned Decision is **AFFIRMED with MODIFICATIONS**. The interest rate of 32% per annum is equitably reduced to 12% per annum, the penalty charge of 8% per month to

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[5] *Rollo*, p. 51.

2% per month and attorney's fees of 25% of the total unpaid obligation to 10%.

SO ORDERED.[6]

Its motion for reconsideration[7] of the foregoing issuance having been denied,[8] the petitioner interposed the present petition arguing that the modified interest rates and penalty charges decreed by the CA are still exorbitant and that the CA failed to appreciate the partial payments already made when it upheld the amount of ₱27,668,167.87 as petitioner's outstanding balance.

Our Ruling

The petition is partially impressed with merit.

The issue on partial payments and their application to the outstanding balance involves a calibration of the evidence presented, hence, factual in nature and not reviewable in the petition at bar. Oft-repeated is the rule that petitions for review under Rule 45 of the Rules of Court may be brought only on questions of law, not on questions of fact.[9]

Nevertheless, we are convinced that the courts a *quo,* in concluding the outstanding balance of the petitioner, have both carefully considered and appreciated the evidence of partial payments adduced. As found by the CA, the payments made by the petitioner before the complaint was filed were duly deducted from the outstanding balance; while the payments made during the pendency of the case were applied to the due and outstanding penalty charges.

We affirm the interest rate decreed by the CA. Stipulated interest rates are illegal if they are unconscionable and courts are allowed to temper interest rates when necessary. In exercising this vested power to determine what is iniquitous and

[6] *Id.* at 23.

[7] *Id.* at 45-48.

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

[9] *Imperial v. Jaucian,* 471 Phil. 484, 493 (2004).

unconscionable, the Court must consider the circumstances of each case. What may be iniquitous and unconscionable in one case, may be just in another.[10]

We cannot uphold the petitioner's invocation of our ruling in *DBP v. Court of Appeals*,[11] wherein the interest rate imposed was reduced to 10% per annum. The overriding circumstance prompting such pronouncement was the regular payments made by the borrower. Evidently, such fact is wanting in the case at bar, hence, the petitioner cannot demand for a similar interest rate.

The circumstances attendant herein are similar to those in *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation*[12] wherein we levied the legal interest rate of 12% per annum.

However, pursuant to *Bank of the Philippine Islands, Inc. v. Yu*,[13] we deem it proper to further reduce the penalty charge decreed by the CA from 2% per month to 1% per month or 12% per annum in view of the following factors: (1) respondent has already received ₱7,504,522.27 in penalty charges, and (2) the loan extended to respondent was a short-term credit facility.

On the basis of the same precedent, the attorney's fees must likewise be equitably reduced considering that: (1) the petitioner has already made partial payments; (2) the attorney's fees are not an integral part of the cost of borrowing but a mere incident of collection;[14] and (3) the attorney's fees were intended as penal clause to answer for liquidated damages, hence, the rate

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[10] *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation,* 523 Phil. 360, 366 (2006).

[11] 398 Phil. 413 (2000).

[12] *Supra* note 10.

[13] G. R. No. 184122, January 20, 2010, 610 SCRA 412.

[14] *New Sampaguita Builders Construction, Inc. (NSBCI) v. PNB*, 479 Phil. 483, 510 (2004).

of 10% of the unpaid obligation is too onerous.[15] Under the premises, attorney's fees equivalent to one percent (1%) of the outstanding balance is reasonable.[16]

WHEREFORE, in consideration of the foregoing, the Petition is hereby **PARTLY GRANTED**. The Decision dated July 23, 2010 of the Court of Appeals in CA-G.R. CV No. 87727 is **AFFIRMED** with the **MODIFICATIONS** that: (1) the penalty charge is reduced to 1% per month or 12% per annum; and (2) the attorney's fees is reduced to 1% of the total unpaid obligation.

SO ORDERED.

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

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[15] CIVIL CODE, Article 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

[16] *Supra* note 13, at 425.

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— Novation did not transpire where no irreconcilable incompatibility existed between the receipt and the promissory note. *(Id.)*

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